

# Beyond Detention-as-Protection for Child Sex Trafficking Victims

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## INTRODUCTION

When Gina<sup>1</sup> walked into the public defender office at the youth detention center in a large East Coast city, she immediately appeared out of place. Barely twelve years old, Gina looked to be only eight, and was so petite that even the smallest uniforms had to be tied together to stay on. Initially, she refused to eat, as she missed her mother's food and could not understand why she was being detained.

The juvenile court had determined that Gina was a Person in Need of Supervision, or a "PINS" youth. She had excessive absences from school and she had been found roaming the streets at night. As additional details of Gina's life were revealed, it became clear to the judges and the youth advocates that Gina was a victim of child sex trafficking. They learned that she was the target of rival gangs, each of whom wanted Gina to be their "girl." Despite Gina's involvement in the court system, the pimps continued their pursuit of Gina and enticed her with promises of safety, love, and familiarity.

The juvenile courts struggled to fulfill their duty to protect Gina from further victimization, and when Gina cut off her GPS ankle monitor, the prosecutor seized upon the opportunity to bring Gina deeper into the justice system. Now that Gina could be charged with destruction of government property for cutting off her ankle monitor, she could be identified as a "delinquent" and detained in a secure facility. The court had finally found a way to "protect" her by locking her up. Unfortunately, by detaining Gina, the state only further traumatized a girl who had already experienced horrific forms of abuse and victimization.

Gina's story is not unique. Faced with difficult decisions about how to protect victims of trafficking, judges "reported that they feel forced to send some girls to detention because they have no other treatment options, even though they know that the girls present no danger to the public and would be better off in the community."<sup>2</sup> Girls like Gina often first enter the child-welfare or juvenile-justice

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1. Name changed to preserve anonymity.

2. Megan Anitto, Consent, Coercion, and Compassion: Emerging Legal Responses to the

systems as “status offenders” or “PINS” youth when, because of their age, behaviors such as truancy or running away bring them under the purview of government systems. Once in the system, traffickers often exploit the girls’ more vulnerable status and promise them a sense of belonging.<sup>3</sup> Many of these children “ran away from home or were abandoned by family members; many are homeless and known as youth who have been ‘thrown away.’”<sup>4</sup>

Under the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA), judges cannot order status offenders to secure detention facilities. Because of this restriction, prosecutors encounter a devastating choice. Instead of releasing a girl to the community where she may face serious risks, prosecutors may “bootstrap” a delinquency charge to bring the child into the juvenile justice system. They can now “keep her safe” and hopefully out of the reach of the traffickers. Although proponents argue that detention is “the only option available,” it is a “practice that pulls the victim deeper into the juvenile justice system, re-victimizes [the young person], and hinders access to services.”<sup>5</sup>

Though these cases frequently arise across American cities, they do not garner the same attention as international trafficking scandals. The young children, often no more than eleven or twelve, are victims under international and federal law. They are neither offenders nor delinquents, and juvenile courts must not treat them as such. The Trafficking Victims Protection Act of 2000 (TVPA) defines sex trafficking as “the recruitment, harboring, transportation, provision, or obtaining . . . of a person for the purposes of a commercial sex act,” in which the “commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age.”<sup>6</sup> The TVPA is clear that all children who experience trafficking are victims and that, by virtue of their age, they do not need to show force, fraud, or coercion to come under the purview of the law. As victims, girls like Gina should receive appropriate services and individualized treatment, rather than detention and further trauma.

This article explores the deep harm caused by detaining victims of child sex trafficking in the name of protection and argues that communities should instead adopt a public health approach to child sex trafficking. Part I describes the scope of the child sex trafficking problem and outlines the major risk factors of child sex trafficking, while Part II describes the legal landscape for victims of child sex trafficking and the increasing prevalence of the detention-as-treatment model.

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Commercial Sexual Exploitation of Minors, 30 Yale L. & Pol’y Rev. 1, 65 (2011).

3. Cassi Feldman, *Report Finds 2,000 of State’s Children are Sexually Exploited, Many in New York City*, N.Y. TIMES, April 24, 2007, at B6 (describing a study that found that 85% of commercially sexually exploited children in New York State have had contact with the child welfare system).
4. Annitto, *supra* note 2, at 9.
5. KRISTIN FINKLEA, ADRIENNE L. FERNANDES-ALCANTARA, ALISON SISKIN, CONG. RESEARCH SERV., R41878, SEX TRAFFICKING OF CHILDREN IN THE UNITED STATES: OVERVIEW AND ISSUES FOR CONGRESS 33 (2015).
6. Trafficking Victims Protection Act, 22 U.S.C. § 7102 (2000).

However, as shown in Parts III and IV, both detention and its most commonly cited alternative—the child welfare system—do not adequately address the needs of trafficking victims. Detention exacerbates trauma, undermines trust in the justice system, and imposes lasting collateral consequences. Though it does not cause the same harms as detention, the child-welfare system is also not viable for supporting trafficked youths, as demonstrated by the fact that many trafficked youths are repeatedly brought into the system. Instead of relying on detention or the child-welfare system, Part V argues that communities should adopt a public health approach, targeting the root causes of child trafficking and preventing court involvement. Programs such as universal childcare, afterschool programs, mental-health services, and client-driven housing options can more holistically and appropriately address the needs of youth at risk of entering or engaged in trafficking.

### I. THE PROBLEM OF CHILD SEX TRAFFICKING

When the issue of child sex trafficking first rose to the public's attention at the turn of the twentieth century, the trafficking networks existed in brothels and concentrated neighborhood areas.<sup>7</sup> Sexually exploited children were easily identifiable, and children's rights advocates rushed to help these youth.<sup>8</sup> The developing child-welfare movement, in part a response to these brothels and other harmful practices, attempted to eliminate them.<sup>9</sup> However, child sex trafficking did not disappear. Rather, it was pushed underground. Today, the commercial sexual exploitation of children has a dramatically different character than it did at the beginning of the twentieth century. The hidden nature of the problem makes identifying victims and providing appropriate services immensely challenging.

In the most comprehensive study of child sex trafficking, Richard Estes and Neil Alan Weiner estimated that more than 244,000 youth in the United States were at risk of becoming victims of trafficking.<sup>10</sup> Estes and Weiner used reports of runaway youth and calls to national youth hotlines to develop their estimate.<sup>11</sup> However, this 2001 study occurred before the proliferation of technology and

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7. RICHARD J. ESTES & NEIL A. WEINER, *THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA, AND MEXICO* 39 (2001). Although previous studies had provided estimates of the scope of child sexual exploitation, the Estes and Weiner study is the most widely-cited. Their 27-month study included interviews with trafficking survivors, key stakeholders, and law enforcement agencies across 17 cities in the United States. One of the major shortcomings of previous studies is their use of varying definitions of sexually exploited youth, which may over- or under-estimate the scope of the problem.

8. *Id.*

9. *Id.*

10. *Id.*; see also NAT'L RESEARCH COUNCIL & INST. OF MEDICINE, *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES* 42 (Ellen W. Clayton, Richard D. Krugman, and Patti Simon eds., 2013) [hereinafter *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION*].

11. See Estes & Weiner, *supra* note 7, at 21.

before the influx of unaccompanied youth seeking asylum in the United States. These two factors suggest that current estimates of the child trafficking problem may be significantly higher than previously noted.

Several factors contribute to the lack of exact available data about the number of youth subject to commercial sexual exploitation. Victims and survivors are difficult to identify due to the illegal and underground nature of the activity. Therefore, scholars use proxies or risk factors to estimate the level of exploitation.<sup>12</sup> Additionally, victims of trafficking may not self-identify as such due to the stigma surrounding sex work. Lastly, many victims may be arrested for other “survival” behaviors, including petit larceny and trespassing, and their status as victims is often obscured by their arrest.<sup>13</sup>

Although the demographics of victims of child exploitation vary by region, there are a few unifying characteristics. Mirroring the racial disparities among court-involved youth generally, minorities are disproportionately represented among trafficked youth, as are LGBT youth.<sup>14</sup> Additionally, the “average age of a minor’s first involvement in sexual exploitation is 12 [to] 14, while some are forced into sex trafficking as early as age 10.”<sup>15</sup> Arguments about the underlying risk factors and causes of child sex trafficking, outlined below, may help explain and contextualize these statistics.

Society has not reached a consensus on how to discuss the issue of child trafficking. A variety of terms have emerged out of this confusion: child prostitute, child sex trafficking victim, and commercially sexually exploited child (CSEC).<sup>16</sup> The first term focuses on the actions of the youth engaging in delinquent behavior.<sup>17</sup> This attaches fault to the child for participating in sex work, and assumes the youth’s full control over their actions. On the other hand, “child sex trafficking victim” and “commercially sexually exploited child” comport with emerging social science and international law recognizing the status of these youth as victims and survivors.<sup>18</sup> This paper will use the latter terms to describe the status

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12. Elizabeth Barnert, Zarah Iqbal, Janine Bruce, Arash Anoshiravani, Gauri Kolhatkar, Jordan Greenbaum, *Commercial Sexual Exploitation and Sex Trafficking of Children and Adolescents: A Narrative Review*, 17 ACADEMIC PEDIATRICS 825, 826 (2017).

13. See Barry C. Feld, *Violent Girls or Relabeled Status Offenders?: An Alternative Interpretation of the Data*, 55 CRIME & DELINQ. 241, 244 (2009).

14. Jasmine Phillips, *Black Girls and the (Im)Possibilities of a Victim Trope: The Intersectional Failures of Legal and Advocacy Interventions in the Commercial Sexual Exploitation of Minors in the United States*, 62 UCLA L. REV. 1642, 1645 (2015) (“In the United States, Black youth account for approximately 62 percent of minors arrested for prostitution offenses even though Blacks only make up 13.2 percent of the U.S. population.”).

15. Veronica L. Hardy, Kevin D. Compton, Veronica S. McPhatter, *Domestic Minor Sex Trafficking: Practice Implications for Mental Health Professionals*, 28 J. OF WOMEN AND SOC. WORK 8, 14 (2013).

16. See ESTES & WEINER, *supra* note 7, at 9.

17. Cheryl Hanna, *Somebody’s Daughter: The Domestic Trafficking of Girls for the Commercial Sex Industry and the Power of Love*, 9 WM. & MARY J. WOMEN & L. 1, 10-11 (2002).

18. Joan A. Reid & Shayne Jones, *Exploited Vulnerability: Legal and Psychological Perspectives on Child Sex Trafficking Victims*, 6 VICTIMS & OFFENDERS 207, 209 (2011).

of these youth.

There is no single factor or circumstance that predicts a youth's vulnerability to commercial exploitation. However, following interviews with CSEC youth, scholars have identified three levels through which to describe risk factors: individual-level factors, family-level factors, and community-level or macro factors.<sup>19</sup> This section will outline each of these levels in turn. Although the three-part ecological framework identifies specific risk factors, most of these factors are not discrete, but rather interact to make youth susceptible to trafficking.

### A. Individual-Level Risk Factors

On the individual youth level, perhaps the most highly correlated characteristic was a history of running away.<sup>20</sup> A history of abscondence, whether from home or from a congregate care or foster care setting, raises questions about the underlying causes of runaway behavior. Scholars argue that certain experiences in the home push youth out to the streets, including prior physical or sexual abuse, mental health concerns, and substance abuse issues.<sup>21</sup>

First, many trafficked youth previously experienced physical or sexual abuse.<sup>22</sup> The harmful effects of childhood sexual abuse are well-known, ranging from severe mental health issues to stunted brain development. Survivors of childhood sexual abuse are "less likely to be able to protect themselves from sexual exploitation, less likely to recognize the inappropriateness of the sexual activity involved in being prostituted, and at high risk of developing into easy prey for a predatory child trafficker."<sup>23</sup> Many youth reported abuse by family members or their parents' partners.<sup>24</sup> In such cases, a child may choose to run away from home, believing that life on the streets would be better than life at home.

Second, chronic runaways may also struggle with mental health and substance abuse needs. The landmark study by Estes and Weiner noted that a significant proportion of the runaway population suffers from mental illnesses, many of which go untreated.<sup>25</sup> Subsequent studies have corroborated these findings, adding that many trafficked youth suffer from chronic depression and

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19. See Barnert, *supra* note 12, at 326.

20. See *id.* ("Studies of runaway/homeless youth document rates of commercial sexual activity in the range of 9% to 28%.")

21. *Id.*

22. Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 111 (2008) ("A recent study found that up to 40 percent of girls and 30 percent of boys who are victims of commercial sexual exploitation have also been victims of physical or sexual abuse at home.")

23. Reid, *supra* note 18, at 218.

24. See ESTES & WEINER, *supra* note 7, at 6.

25. *Id.* at 63 ("Nearly 66% of street youth studied in Seattle, for example, were diagnosed with disruptive behavior disorders, attention deficit disorders, mania, schizophrenia, or post-traumatic stress syndrome.").

low self-esteem.<sup>26</sup> Commercial sexual exploitation further compounds these feelings of loss of control over their lives, and many youth turn to drugs and alcohol to cope.<sup>27</sup> Mental illnesses and substance abuse work in tandem to make a child more vulnerable to trafficking by a pimp or by peers.<sup>28</sup>

Furthermore, developmental psychology provides valuable insight into the particular vulnerabilities of youth, which childhood sexual abuse, mental illness, and substance abuse only exacerbate. As recent Supreme Court decisions noted, youth are especially vulnerable to outside influences and struggle with impulse control.<sup>29</sup> Brain scans show that the prefrontal cortex, which controls executive function and decision-making, continues to develop to maturity through the age of 25.<sup>30</sup> Teenagers respond more to short-term outcomes and pleasures than to considerations of long-term consequences, often leading to poor decisions.<sup>31</sup> Promises of material goods or pleasurable experiences capitalize on this immaturity in brain development and render youth exceptionally vulnerable to the deceit and manipulation of a trafficker.<sup>32</sup> These conditions are amplified for survivors of abuse, who may seek affection and approval from individuals attempting to take advantage of them.<sup>33</sup>

Whether due to mental illness, previous sexual abuse, or substance use issues, chronic runaways face significant hardship on the streets. Extreme vulnerability and desperation lead some youth to turn to traffickers and other forms of sex work as a means of survival.<sup>34</sup> Many perceive survival sex as among their limited range of options to support themselves, as “sex is a commodity that they trade for the most basic of needs because it is all they perceive that they have to offer.”<sup>35</sup> Traffickers exploit a runaway’s lack of basic needs with promises of shelter, food, and a sense of belonging.<sup>36</sup>

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26. Kristen R. Choi, *Risk Factors for Domestic Minor Sex Trafficking in the United States: A Literature Review*, 11 J. OF FORENSIC NURSING 66, 73 (2015).

27. *See id.*

28. *See id.* (“It is not clear whether behavioral risk factors were antecedents to or outcomes of trafficking, as antecedents to or outcomes of experiencing or being exposed to violence and trauma before trafficking.”).

29. *See, e.g., Graham v. Florida*, 560 U.S. 48, 68 (2010); *Roper v. Simmons*, 543 U.S. 551, 598 (2005).

30. COALITION FOR JUVENILE JUSTICE, WHAT ARE THE IMPLICATIONS OF ADOLESCENT BRAIN DEVELOPMENT FOR JUVENILE JUSTICE? 3 (2006), <https://perma.cc/RKK6-DKWN>.

31. Reid, *supra* note 18, at 214; *see also* Kristin N. Henning, *Juvenile Justice After Graham v. Florida: Keeping Due Process, Autonomy, and Paternalism in Balance*, 38 WASH. U. J.L. & POL’Y 17, 24 (2012).

32. *See* Reid, *supra* note 18, at 214.

33. *Id.* at 215.

34. *See* Hanna, *supra* note 17, at 13.

35. *Id.*

36. *Id.*

## B. Family-Level Risk Factors

The significant overlap between chronic runaways and commercially sexually exploited youth suggests that youth are running away from something; family-level factors may clarify the roots of the behavior. Scholars have examined a number of family environment factors for possible correlates to exploitation, including domestic violence, family conflict, parental substance abuse, single-parent homes, death of a parent, and abuse and neglect.<sup>37</sup> As with the individual-level factors, many of the family-level indicators increase the risk that the youth may run away or be forced out of their home.

A history of unresolved domestic and family violence may be one of the strongest predictors of vulnerability to trafficking.<sup>38</sup> As with childhood sexual abuse, histories of physical violence may lead youth to believe that any situation is better than staying at home. Youth may run away from home or be “thrown away” by their caregivers.<sup>39</sup> Although parents may push their children out of the home, this phenomena of “throwaway” youth often occurs among foster youth and youth in congregate care settings.<sup>40</sup>

Family disruption contributes to complex trauma and impacts psychosocial development.<sup>41</sup> Emerging social science research reveals the biological effects of trauma on a child’s brain and the child’s ability to control her behavior.<sup>42</sup> As with the individual-level factors noted above, exposure to family-level factors has detrimental effects on a child’s brain development and increases the risk that the youth will be subject to commercial sexual exploitation.<sup>43</sup> The final level of the ecological framework, community factors, interacts with the individual- and family-level factors to raise a child’s susceptibility to exploitation.

## C. Community-Level Risk Factors

Although the exact causes of trafficking may be unique to each youth, there are certain community-level factors that increase the risk of exploitation. Estes and Weiner found that, though not an exclusive cause of trafficking, poverty creates the “context that contributes to the sexual exploitation of many poor

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37. Choi, *supra* note 26, at 71.

38. Hanna, *supra* note 17, at 22.

39. See CONFRONTING COMMERCIAL SEXUAL EXPLOITATION, *supra* note 10, at 86.

40. Anthony Marcus et al., *Conflict and Agency among Sex Workers and Pimps: A Closer Look at Domestic Minor Sex Trafficking*, 653 ANNALS OF THE AM. ACAD. OF POL. AND SOC. SCI. 225, 234 (2014); see also Hanna, *supra* note 17, at 21.

41. Beth Sapiro, Laura Johnson, Judy L. Postmus, Cassandra Simmel, *Supporting Youth Involved in Domestic Minor Sex Trafficking: Divergent Perspectives on Youth Agency*, 58 CHILD ABUSE & NEGLECT 99, 104 (2016).

42. See Bernice B. Donald & Erica Bakies, *A Glimpse Inside the Brain’s Black Box: Understanding the Role of Neuroscience in Criminal Sentencing*, 85 FORDHAM L. REV. 481, 486 (2016).

43. *Id.*; see also Choi, *supra* note 26, at 71.



children.”<sup>44</sup> Socioeconomic status strongly correlates with exploitation among children living in urban areas, those residing in public housing, and families who lost welfare benefits after welfare reform. Poverty at the family level may result in cramped living spaces for whole families, parents struggling to make ends meet with multiple jobs, and inadequate supervision of youth while parents are at work. Without appropriate supervision, youth have a higher risk of exposure to and exploitation by traffickers. They may seek activities to occupy themselves, and they may fall victim to false promises of material goods.<sup>45</sup>

Community-level poverty also raises questions about the provision of services and the adequacy of the education system. Studies have long shown the correlation between school performance and community socioeconomic status. If a child cannot receive appropriate services in school or does not feel engaged in schoolwork, they are more likely to drop out. A study of the CSEC population revealed that “dropping out of school and low educational attainment were correlated with victimization.”<sup>46</sup> Similar to the rationale behind the risk of inadequate supervision, the dearth of afterschool programs in underserved communities makes youth susceptible to inducements by traffickers.<sup>47</sup>

All of the risk factors described here, both community-level and individual, are interrelated. Issues related to individual mental health are inextricable from histories of abuse or family violence, and the perceived lack of alternatives may stem from intense poverty within a family and throughout the community. Furthermore, other factors may also heighten the risk of exploitation, including “the presence of large numbers of unattached and transient males in communities . . . and the recruitment of children by organized crime units for sex trafficking.”<sup>48</sup> Although studies have found strong correlations between trafficking and these factors, identification of one or more risk factor does not necessarily dictate that a child will fall victim to sex trafficking and other forms of trafficking.<sup>49</sup> Addressing these vulnerabilities is neither simple nor reducible to one solution. Therefore, responses to child sex trafficking must be interdisciplinary and must focus on the interrelated root causes of exploitation.

## II. THE EXISTING LEGAL FRAMEWORK

To understand the “detention-as-protection” phenomenon that marked Gina’s experience in the juvenile justice system, it is important to first

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44. ESTES & WEINER, *supra* note 7, at 41.

45. CONFRONTING COMMERCIAL SEXUAL EXPLOITATION, *supra* note 10, at 94 (noting that “deterrents to engaging in high-risk behaviors may not exist without adequate parental or adult supervision, and as a result, adolescents may make decisions about such behaviors without being cognitively prepared to do so”).

46. Choi, *supra* note 26, at 68.

47. *Id.*

48. FINKLEA ET AL., *supra* note 5, at 3.

49. *See id.*

acknowledge the legal framework from which this problem arises. Following the development of the modern-day juvenile court system in the 1960s, reformers advocated for the advancement of due process rights for juveniles.<sup>50</sup> In the subsequent decades, Congress and state legislatures responded with new laws and procedures, including the comprehensive juvenile justice law, the Juvenile Justice and Delinquency Prevention Act.<sup>51</sup>

The limitations of the JJDPa have led to constant tension between public safety advocates, prosecutors, and youth advocates. The result of these tensions has been the proliferation of safe harbor laws and the use of new “bootstrapping” techniques by judges and prosecutors. Safe harbor laws aim to immunize youth from prosecution for child prostitution, instead diverting youth to community-based programs. On the other hand, “bootstrapping” involves charging youth with delinquent acts other than prostitution, such as simple assault or petit larceny, in order to keep the youth in the delinquency system.

### A. The Juvenile Justice and Delinquency Prevention Act of 1974

The Juvenile Justice and Delinquency Prevention Act of 1974, heralded as a landmark law, aimed to protect the rights of youth in the juvenile justice system.<sup>52</sup> The law provided for greater due process protections, ordered that states reduce their detention rates, and granted funding for the development of community-based programs aimed to treat youth.<sup>53</sup> One of the JJDPa’s most celebrated provisions is the deinstitutionalization mandate for status offenders who have not been charged with or adjudicated for a delinquency offense. Prior to this law, status offenders were processed through the delinquency system, and often detained in the same facilities as those accused of delinquent or criminal behavior.<sup>54</sup> Through the JJDPa, Congress recognized that “social service [and] community-focused interventions were more effective and less costly means of responding to runaways, truants, and disobedient youth,” and asked states to develop social service programs that more appropriately targeted the needs of this population.<sup>55</sup>

Underlying the JJDPa’s mandate against institutionalization was the belief that detention may be particularly harmful for juvenile status offenders. Advocates for deinstitutionalization had argued that commingling status offenders with delinquent youth exposed them to criminal tendencies that would increase the risk

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50. See Henning, *supra* note 31, at 21.

51. KRISTIN FINKLEA, CONG. RESEARCH SERV., RL33947, JUVENILE JUSTICE: LEGISLATIVE HISTORY AND CURRENT LEGISLATIVE ISSUES 6 (2012).

52. See *id.*

53. See *id.* at 9.

54. See Feld, *supra* note 13, at 244.

55. Claire Shubik & Jessica Kendall, *Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act*, 45 FAM. CT. REV. 384, 384 (2007).

of future violent behavior.<sup>56</sup> Additionally, they worried commingling would stigmatize the young people by labeling them as delinquents for actions that would not be criminal if committed by an adult.<sup>57</sup> Advocates had also argued that detention did not address the underlying reasons why a young person may repeatedly skip school, run away from home, or use drugs or alcohol.<sup>58</sup> If a goal of the juvenile justice system was to rehabilitate and treat young people to ensure their future success in society, leaving the underlying causes of behavior untreated would undermine any efforts toward this goal. Reformers recognized the benefits of individualized treatment services, which keep youth in the community and offer the necessary programs to youth who may be at risk of being trafficked.<sup>59</sup>

Although the JJDPa required states to reduce their use of detention and develop community-based programs, states struggled to develop adequate treatment services without guidance from the federal government or from experts. However, state judges were still bound by the JJDPa's prohibition on detaining status offenders. Therefore, judges would send these youth home, with no services, and the youth would promptly abscond from their home.<sup>60</sup>

Frustrated with the problem of chronic runaways, juvenile justice agencies across the country petitioned Congress to amend the JJDPa in 1980 to carve out an exception for the secure detention of status offenders.<sup>61</sup> This exception, which became known as the "valid court order" (VCO) exception, allows judges to order detention of status offenders who violate a court order.<sup>62</sup> Under the VCO exception, a status offender who runs away from home in violation of a judge's order to remain at home may be detained in a secure facility.<sup>63</sup>

The VCO exception ushered in a new period of high detention rates of youth for noncriminal behavior. However, using many of the same arguments that prompted the deinstitutionalization of status offenders, a few states, including Connecticut and Texas, have considered eliminating the VCO exception from their state statutes and returning to the prohibition of detention under the original JJDPa.<sup>64</sup> Other states, such as New York, have unsuccessfully sought to expand the valid court order exception.<sup>65</sup> Despite the continuing debate over the VCO

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56. Robert W. Sweet Jr., *Deinstitutionalization of Status Offenders: In Perspective*, 18 PEPP. L. REV. 389, 403 (1991); see also BARRY HOLMAN & JASON ZIEDENBERG, JUSTICE POLICY INST., THE DANGERS OF DETENTION: THE IMPACT OF INCARCERATING YOUTH IN DETENTION AND OTHER SECURE FACILITIES (2006).

57. See Shubik and Kendall, *supra* note 55, at 385.

58. See Adelson, *supra* note 22, at 111; see also THE ANNIE E. CASEY FOUNDATION, NO PLACE FOR KIDS: THE CASE FOR REDUCING JUVENILE INCARCERATION (2011).

59. Shubik & Kendall, *supra* note 55, at 384.

60. *Id.* at 388.

61. *Id.* at 389.

62. *See id.*

63. *See id.*

64. *Id.*

65. *See id.*

exception, youth advocates in a number of states have petitioned for laws specific to sexually exploited children, ultimately leading to the proliferation of “Safe Harbor” laws.<sup>66</sup>

### B. Safe Harbor Laws

While the JJDPA addresses the detention of status offenders generally, a number of states have since adopted laws – known as Safe Harbor laws – that target the specific treatment of youth engaging in prostitution.<sup>67</sup> These laws reject the idea that children can legally engage in prostitution and restrict the circumstances under which a child may be prosecuted for commercial sexual activity. The impetus for these laws is the inconsistency between statutory rape laws and prostitution charges.<sup>68</sup> Under many statutory rape statutes, a fourteen-year-old girl is unable to consent to sex. However, that same girl could be prosecuted for prostitution if any money was exchanged. Safe Harbor laws aim to reconcile this discrepancy and protect young people from prosecution in the juvenile justice system. Most of these provisions are statutory, though judicial decisions have also insulated young girls from prosecution.<sup>69</sup>

Safe Harbor laws have three main goals: to “immunize children from prosecution for prostitution,” to “divert children away from the juvenile justice system and put them in places to help them,” and to “make sure that those who deal in sex trafficking are harshly punished.”<sup>70</sup> Although specific state statutes vary, the enforcement mechanisms remain fairly consistent. A young person arrested for prostitution will be brought before a judge, diverted from prosecution, and referred to social services programs.<sup>71</sup> Their immunity from prosecution is often contingent on compliance with services, including counseling, compulsory attendance in school, and a curfew. For example, New York’s Safe Harbor for Sexually Exploited Minors Act initially diverts minors to the probation system under the jurisdiction of the juvenile court.<sup>72</sup> Courts may order participation in

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66. Brendan M. Conner, *In Loco Aequitatis: The Dangers of “Safe Harbor” Laws for Youth in the Sex Trades*, 12 STAN. J. CIV. RTS. & CIV. LIBERTIES 43, 47 (2016).

67. See NATIONAL CONFERENCE OF STATE LEGISLATURES, SAFE HARBOR: STATE EFFORTS TO COMBAT CHILD SEX TRAFFICKING 5 (2017) (noting that, as of 2017, at least twenty-nine states and the District of Columbia have adopted some form of a safe harbor provision).

68. Lauren Meads, *Fulfilling the Safe Harbor Promise: Enhancing Resources for Sexually-Exploited Youth to Create a True Victim-Centered Approach*, 35 LAW & INEQ. 105, 113 (2017).

69. *In re B.W.*, 313 S.W.3d 818 (Tex. 2010) (The Texas Supreme Court held that children under the age of fourteen, who cannot legally consent to sex, should not at the same time be charged with prostitution).

70. Darian Etienne, *Victims Not Criminals: Exempting and Immunizing Children Subjected to Sex Trafficking From Persecution for Prostitution*, 16 WHITTIER J. CHILD & FAM. ADVOC. 44, 60-61 (2017).

71. See *id.*

72. Cheryl N. Butler, *Bridge Over Troubled Water: Safe Harbor Laws for Sexually Exploited Minors*, 93 N.C. L. REV. 1281, 1325 (2014).

services as a condition for dismissal of the charge.<sup>73</sup> In Alameda County, California, diversion through the safe harbor program is conditioned on witness cooperation. Only upon participating in the prosecution of pimps and traffickers are girls able to access safe houses and other treatment services.<sup>74</sup>

Although the Safe Harbor laws are rooted in the understanding that these girls are victims, their coercive nature renders these laws far from victim-centered and may in fact prevent young people from accessing all necessary services.<sup>75</sup> Access to services may be conditioned on full cooperation with prosecutors, but the realities of child sex trafficking may hinder full compliance with court conditions. These girls have experienced severe trauma and, often, may have been abandoned by their families.<sup>76</sup> After leaving a court hearing, the girls may return to the only familiar person they know—their trafficker.<sup>77</sup> They may not be able to attend school every day and may be isolated from the community before they can attend counseling services. The response to the reality of child sex trafficking should not be an impossible burden, but an individually-tailored and compassionate approach conscious of the child's circumstances.

### C. “Bootstrapping”

Even though both the JJDPa and Safe Harbor laws were passed to end the detention of status offenders and victims of trafficking, judges and juvenile justice agencies sometimes engage in bootstrapping to detain victims of trafficking “for their own protection” without violating the JJDPa or Safe Harbor laws.<sup>78</sup> Presented with a status offender who may face significant risk of trafficking in the community, a prosecutor may opt to charge the young person with a delinquency offense, most often simple assault, to bring them within the purview of the delinquency system. Once in the delinquency system, the deinstitutionalization requirements of the JJDPa and the immunity for prostitution offenses under Safe Harbor laws no longer dictate the detention options for that youth. The court may legally order the child to be detained in a secure facility while those charges are

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73. *Id.* at 1332.

74. *See id.* at 1335.

75. *See* Conner, *supra* note 66, at 90-91; *see also* Butler, *supra* note 72, at 1335.

76. *See* Annitto, *supra* note 2, at 9.

77. Sarah Wasch, Debra Schilling Wolfe, Elizabeth H. Levitan, Kara Finck, *An Analysis of Safe Harbor Laws for Minor Victims of Commercial Sexual Exploitation: Implications for Pennsylvania and Other States*, U. PA. FIELD CTR. 7 (2016); *see also* Rosemary Killian & Loretta M. Young, *Human Trafficking: A Primer*, 34 DEL. LAW 8, 9 (2016) (“Unfortunately, for some victims, ‘the life’ may be their first experience of ‘family’ and belonging.”); *see also* Kimberly Mehlman-Orozco, *What Happens After a Human Trafficking Victim is ‘Rescued’?*, The Hill, (July 29, 2016), <https://perma.cc/B68Y-N5W9> (“Given the trauma bond that often exists between victims and offenders, it is common for sex trafficking survivors to return to their victimizer, especially when adequate services are absent.”).

78. *See* Feld, *supra* note 13, at 242; *see also* Conner, *supra* note 66, at 83-84 (victims of child sex trafficking may also be charged with “proxy” or “masking” charges, “alternative charge[s] brought against youth engaging in sex trades.”).

pending. In Gina’s case, once the prosecutor charged Gina with “destruction of government property” for cutting off her ankle monitor, Gina had a formal delinquency case, allowing the judge to detain her in the secure facility.

The high number of girls charged with simple assault demonstrates the prevalence of bootstrapping. A 2009 study found that girls are increasingly charged with simple assault, often for disputes with parents and other family members.<sup>79</sup> These statistics lend credence to the fear that girls may be charged with simple assault to bring them into the delinquency system and to unlock the possibility of detention.<sup>80</sup> They also stand in contrast to the deinstitutionalization mandate of the JJDPa and state Safe Harbor laws.

### III. DETENTION FAILS TO MEET THE NEEDS OF TRAFFICKED CHILDREN

Although the justification for detaining child victims of sex trafficking is for their protection and to provide access to services, detention is immensely harmful to young people—both during detention and following release. From stigmatizing youth to increasing the risk of re-arrest, detention inflicts additional trauma on adolescents who have already endured horrific forms of abuse. Though the justice system routinely detains youth in the name of protection, detention actually causes more harm to victims and undermines broader interests in public safety.

#### A. Harms During Detention: Trauma and Erosion of Trust

Trafficked youth have experienced significant trauma when they come into contact with the justice system. A majority of those youth endured severe abuse prior to running away from home. Detention as protection only exacerbates that trauma, rendering the practice more harmful than helpful. Furthermore, detention strips youth of agency over their own lives, reinforcing their sense of a loss of control and undermining their trust in the justice system.

##### 1. Detention Exacerbates Trauma

First, the very experience of being prosecuted, of having their life put on display before the court, forces the young person to relive the trauma of their experiences. Standing before a judge, a prosecuted youth must listen to others describe their experiences and their status as a victim. The child must then attempt to reconcile their status as a victim with the decision to detain them, a tension that is fundamentally counterintuitive. Once in the detention facility, the placement can be retraumatizing and can mimic their trafficking experience.<sup>81</sup> Their every move

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79. See Feld, *supra* note 13, at 261.

80. See *id.* at 253; see also Cynthia Godsoe, *Punishment as Protection*, 52 HOUS. L. REV. 1313, 1319 (2015); Francine T. Sherman, *Justice for Girls: Are We Making Progress?*, 59 UCLA L. REV. 1584, 1610 (2012).

81. See Hardy, *supra* note 15, at 15.

is closely monitored and restricted, they have no control over their basic needs, like food consumption, and young girls are particularly vulnerable to additional abuse.<sup>82</sup> The detention facility begins to mimic the lockdown setting of life with the trafficker.<sup>83</sup>

Furthermore, youth in detention often suffer significant abuse while in detention facilities.<sup>84</sup> Studies show that girls disproportionately experience sexual misconduct and abuse by staff members in facilities.<sup>85</sup> The Supreme Court grappled with the utility and potential harms of detention of youth in the 1980s. In the landmark case *Schall v. Martin*, the Court upheld the use of preventive detention of youth as a way to protect both the youth and the community.<sup>86</sup> In his lengthy dissent, Justice Marshall criticized the practice, analogizing the harms of juvenile facilities to those of adult jails.<sup>87</sup> He argued that detaining youth makes courts

liable to be exposing these youngsters to all sorts of things. They are liable to be exposed to assault, they are liable to be exposed to sexual assaults. You are taking the risk of putting them together with a youngster that might be much worse than they, possibly might be, and it might have a bad effect in that respect.<sup>88</sup>

Additionally, studies have linked detention with the aggravation of mental illness, including with severe depression. One psychologist found a nexus between the onset of depression and the point of incarceration.<sup>89</sup> Another study suggests that “poor mental health, and the conditions of confinement together conspire to make it more likely that incarcerated teens will engage in suicide and self-harm.”<sup>90</sup> In fact, one study found that the suicide rate for incarcerated youth is two to four times the suicide rate of youth in the community.<sup>91</sup> Without appropriate services, youth already struggling with mental health issues will suffer unnecessarily in detention.

Although the decision to detain youth in secure facilities, separate from

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82. See Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257, 268 (2013) (noting that “such habits of institutionalization are punctuated by a parallel track record of exposing youth to gendered forms of victimization while institutionalized”).

83. *Id.*; see Hardy, *supra* note 15, at 15.

84. FRANCINE T. SHERMAN, GIRLS’ JUSTICE INITIATIVE, GIRLS IN THE JUVENILE JUSTICE SYSTEM: PERSPECTIVES ON SERVICES AND CONDITIONS OF CONFINEMENT 14 (2003); see also Musto, *supra* note 82, at 268.

85. See Godsoe, *supra* note 80, at 1334.

86. 467 U.S. 253 (1984).

87. *Id.*

88. *Id.* at 290 (citing J. Quinones a Family Court Judge).

89. See Holman, *supra* note 56, at 2 (referencing studies by Kashani et al. and Mace et al.).

90. *Id.*

91. *Id.* at 9.

adults, was inspired by the desire to create a distinction between adults and children in the criminal justice system, it effectively entrenched the idea that juvenile offenders were “different” and did not fit within the broader community.<sup>92</sup> This “othering” is precisely the argument traffickers use to exploit a girl’s vulnerability. Furthermore, detention and punishment send the message that these girls are culpable for their exploitation and that they are responsible for their victimization and the crime committed against them. Detention conveys that the youth are “no longer worthy of the legal protection provided through child abuse or statutory rape laws.”<sup>93</sup>

## 2. Detention Undermines the Legitimacy of the Justice System

When law enforcement officers arrest victims of child sex trafficking, many hope to prosecute the traffickers, or whomever is responsible for the youth’s victimization. To do so, they rely on information from the child. Law enforcement officers believe that identification and prosecution of the traffickers can better ensure a youth’s safety in the community. However, many victims of trafficking fear repercussions from their traffickers for working with the police.<sup>94</sup> Due to trauma bonding between a youth and her pimp,<sup>95</sup> she may also believe that her pimp is the only person who can protect her. Therefore, she may not readily share information with law enforcement.

In response to this lack of compliance, law enforcement officials and judges detain children subject to cooperation, or they condition services on collaboration with the police.<sup>96</sup> Coercing a child to testify against her trafficker forces her to relive the trauma of the trafficking experience. In some cases, law enforcement officials also condition receipt of critical mental health services on cooperation with law enforcement.<sup>97</sup> This completely undermines the protection justification for detention. Ultimately, coercing cooperation leads to distrust of law enforcement officials.<sup>98</sup> Victims of trafficking begin to view police as participants in a system working against them, rather than as people who desire to help and empower them.<sup>99</sup> After detention, youth are less likely to seek assistance from police in times of need and are more likely to return to their traffickers out of

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92. See Shubik & Kendall, *supra* note 55, at 385; see also Godsoe, *supra* note 80, at 1335 (“These girls suffer from low self-esteem, worthlessness, and guilt, which are likely exacerbated by the inherent message in prosecution that they are culpable for their exploitation.”).

93. Reid, *supra* note 18, at 210.

94. See Wasch, *supra* note 77, at 7.

95. Sapiro, *supra* note 41, at 101.

96. Musto, *supra* note 82, at 270 (noting the failings of processes that are “enforcement centric” because the end goal is not services for the child, but prosecution of the perpetrator).

97. See *id.*

98. See *id.*

99. See *id.*



desperation.<sup>100</sup>

From inflicting additional trauma to undermining the legitimacy of law enforcement, detention of child sex trafficking victims causes irreparable, lifelong harm. At almost every turn, “carceral protectionism” fails to protect youth and ultimately undermines overall public safety. As Professor Cynthia Godsoe notes, “sanctioning prostituted children utterly fails to protect them—the cure is indeed worse than the disease.”<sup>101</sup>

## **B. After Detention: Stigma and Collateral Consequences of Detention**

Detaining young people carries immense consequences for their future. In addition to suffering significant trauma in the detention facility, a young person marked as “delinquent” will likely experience significant stigma once they are released into the community. The potential consequences of detention extend to many areas of formerly detained youths’ lives, including their prospects for education, employment, and housing.

First, youth with a delinquency adjudication on their records face discrimination by other systems and programs. Anti-commingling regulations prohibit delinquent youth from residing with other youth in the child-welfare system.<sup>102</sup> For some youth, this means that, once they are adjudicated delinquent, they cannot return to their former foster care placements or other group home settings. Essentially, the stigma of the delinquency adjudication ruptures some of the few stable relationships many of these youth may have.

Furthermore, while incarcerated, youth receive extremely poor education, if any at all.<sup>103</sup> They lose valuable credits during the school year and are not given appropriate special education services to facilitate learning while detained.<sup>104</sup> Naturally, when youth return to the community, many experience frustration at having fallen behind.<sup>105</sup> They may never receive credit for the time spent in the detention facility’s school, and some find it difficult to catch up on credit hours after release. Therefore, many youth do not return to school after detention.<sup>106</sup>

The high dropout rate among detained youth has significant ripple effects, worsening employment prospects and health outcomes. Students who drop out of high school “face higher unemployment . . . and earn substantially less than youth

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100. See Godsoe, *supra* note 80, at 1333.

101. *Id.* at 1335.

102. See, e.g., D.C. CODE § 16-2313 (2019).

103. See Katherine Twomey, *The Right to Education in Juvenile Detention under State Constitutions*, 94 VA. L. REV. 765, 771 (2008) (“For example, detention centers often only provide short, infrequent classes, and even these are often not based around a meaningful curriculum.”).

104. See *id.* at 772.

105. David Domenici & James Forman Jr., *What It Takes to Transform a School Inside a Juvenile Justice Facility*, in JUSTICE FOR KIDS: KEEPING KIDS OUT OF THE JUVENILE JUSTICE SYSTEM 292-93 (Nancy Dowd ed., 2011).

106. See THE ANNIE E. CASEY FOUNDATION, *supra* note 58, at 11.

who do successfully return and complete school.”<sup>107</sup> The lack of engagement in school and loss of employment prospects further exacerbates the circumstances that made the youth vulnerable to trafficking in the first place, including low incomes and poor housing conditions.<sup>108</sup>

#### IV. CHILD WELFARE AS AN ALTERNATIVE AND ITS LIMITATIONS

Recognizing that detention does not alter the underlying circumstances that may have pushed the youth into a trafficking situation, advocates worked for interventions that provide an alternative to the detention-as-protection model. The most common of these alternative interventions is foster care placement and services. However, despite its significant advantages over the juvenile justice system, the child welfare system has significant limitations. These include the lack of specialized services and the net-widening effects of child protection, which may bring more families under state supervision. As a result, involving trafficked youth in the child welfare system frequently does not address the root causes of trafficking and instead risks severing important family relationships.

##### A. Advantages of Child Welfare Intervention

Despite critiques by youth advocates, the child welfare system offers numerous advantages over the juvenile delinquency system. First, the child welfare system offers youth more treatment resources, including mental health and medical care, which are often not available in detention centers. Additionally, youth in the child welfare system may not experience the same level of stigma as do youth in the delinquency system due to perceptions of culpability and control.

Treatment through the child welfare system provides children with access to professional medical care, including mental health care. Service providers aim to engage the youth in treatment options that are cognizant of the youth’s ability. In its ideal form, the child welfare system would employ holistic practices to create individualized service plans for each youth.<sup>109</sup> By engaging the entire family in services, the child welfare system may be able to remedy some of the circumstances that initially made the youth vulnerable to trafficking, such as physical abuse, domestic violence, and family conflict.<sup>110</sup>

Perhaps the most important advantage is that the child welfare system carries less stigma and imposes fewer collateral consequences for the youth than the delinquency system. For example, foster youth are not labeled delinquents, and

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107. See HOLMAN & ZEIDENBERG, *supra* note 56, at 9.

108. See *id.*

109. Kate Brittle, *Child Abuse By Another Name: Why the Child Welfare System is the Best Mechanism In Place to Address the Problem of Juvenile Prostitution*, 36 HOFSTRA L. REV. 1339, 1375 (2008).

110. See Choi, *supra* note 26, at 71.

are instead treated as victims of abuse or neglect.<sup>111</sup> For victims of child sex trafficking, this distinction “conveys the unequivocal message to these girls and the public at large that prostituted girls are victims, not culpable for their own exploitation.”<sup>112</sup> While the delinquency system and subsequent detention penalize young girls for their victimization, the child welfare system attempts to intervene to provide services.

In addition to lesser stigma for the youth, the child welfare system reduces the stigma and distrust the youth associate with law enforcement. Though this may still be a concern with the child welfare system, the degree of distrust may be muted. Foster youth may be more likely to request help or seek out protection in the face of troubling circumstances.<sup>113</sup>

## B. Limitations of Child Welfare Intervention

Despite its potential advantages over detention, the child welfare system is an over-burdened and under-resourced system, which leads to significant consequences for victims of trafficking. First, many trafficked youth are either currently or were previously involved with the child welfare system, demonstrating its earlier failure to protect them from trafficking.<sup>114</sup> One study of commercially sexually exploited youth in the United States “estimated that between fifty and eighty percent of exploited youth have had contact with the child welfare system,” whether in foster homes, group homes, or residential facilities.<sup>115</sup> This phenomenon is particularly salient for youth aging out of foster care, who are at an increased risk of homelessness and unemployment.<sup>116</sup>

There are several potential explanations for the apparent revolving door between the child welfare system and sex trafficking. Congressman Dave Reichert from Washington, the principal sponsor behind the Preventing Sex Trafficking and Strengthening Families Act, noted that “we have unintentionally isolated kids in foster care from their families, peers, and communities,” which may increase their vulnerability to pimps.<sup>117</sup> Traffickers prey on this isolation and vulnerability,

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111. See Godsoe, *supra* note 80, at 1380.

112. *Id.*

113. Jessica F. Speckman, *Trafficking and the Child Welfare System Link: An Analysis*, 28 J. AM. ACAD. MATRIM. LAW. 391, 407 (2016).

114. *Id.* at 1369.

115. Phillips, *supra* note 14, at 1649; see also Speckman, *supra* note 113, at 392-93 (“The FBI reported that more than 60% of US children recovered from [sex trafficking] incidents in 2013 had previously been living in foster care or group homes. 85% of girls involved in sex trades were previously in homes involved in the child welfare system . . . Connecticut reported in 2012 that 86 of 88 minors identified as [sex trafficking] victims were involved in the child welfare system and most reported that they suffered abuse while in foster care placements or residential facilities.”).

116. Dale M. Cecka, *The Civil Rights of Sexually Exploited Youth in Foster Care*, 117 W. VA. L. REV. 1225, 1244 (2015).

117. Dave Reichert, *Foster Care Kids Too Vulnerable to Sex Traffickers*, BELLINGHAM HERALD (Jan. 15, 2014), <https://www.bellinghamherald.com/opinion/article22221066.html>.

promising love, protection, and material goods.<sup>118</sup> For an abused or neglected child who may not feel loved or safe in their foster home, the pimp's promises are all too enticing. Moreover, foster homes can themselves be abusive, forcing youth to run away for lack of better alternatives.<sup>119</sup> As previously noted, once on the streets, youth are particularly vulnerable to exploitation, whether by pimps or by means of survival sex.<sup>120</sup>

Additionally, youth advocates have noted that the child welfare system may not be able to provide for the particular needs of trafficked youth. This failure “may be due to inadequate training, insufficient resources, high caseloads, and the perception that victims should be handled in the juvenile justice system.”<sup>121</sup> Given the particular harms that trafficking inflicts on youth, services must acknowledge their unique characteristics and vulnerabilities. Due to resource constraints and a lack of specialized training, youth are often ordered to engage in general services, such as substance abuse or group counseling, which do not necessarily provide the therapeutic elements required to be effective.<sup>122</sup>

Lastly, like detention, the child welfare system strips youth of any agency over their own lives and choices. Services are imposed upon the youth and family, often without genuine engagement of the family unit in the decision-making process.<sup>123</sup> The predominant model of protective services has “positioned children and youth as passive recipients of services and not active decision-makers in their own lives.”<sup>124</sup> Foster youth rarely have the ability to decide where they live, which school they attend, and which activities to join.<sup>125</sup> This system denies youth agency over their lives and normalizes the idea that others can make decisions for the child, deepening the risk of exploitation and vulnerability to trafficking. Any use of the protective model must strike a balance between an adolescents' right to protection from sexual exploitation and their right to participate in decisions impacting their lives.<sup>126</sup>

### C. Unintentional Consequences of Turning to the Child Welfare System

In addition to the functional limitations of the child welfare system noted in the previous section, an intervention that strictly relies on the child welfare system

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118. See Speckman, *supra* note 113, at 409.

119. See *id.*

120. See *id.* (“[C]hildren who run away are more likely to be approached by traffickers and solicited for prostitution or other forms of exploitation within the first forty-eight hours.”).

121. FINKLEA ET AL., *supra* note 5, at 30.

122. See Melissa L. Breger, *Healing Sex-Trafficking Children: A Domestic Family Law Approach to an International Epidemic*, 118 W. VA. L. REV. 1131, 1155 (2016).

123. See Sapiro, *supra* note 41, at 102.

124. *Id.*

125. See Speckman, *supra* note 113, at 415.

126. See Sapiro, *supra* note 41, at 102.

carries significant risks, including dangerous net-widening and deterrent effects. These risks stem from the legal justification needed to bring youth victims of trafficking within the child welfare system, a decision which is often predicated on finding that children have been harmed by their parent or guardian. When a parent facilitates the trafficking of their child, there is a clear route for the child welfare system to take custody of the child; however, the child welfare system's jurisdiction is less apparent when a parent is not responsible for the trafficking, particularly when the child may have run away from home prior to their victimization.<sup>127</sup> In these situations, children often enter the child welfare system after courts find that parents have neglected the child due to "failure to protect" or a lack of supervision, findings that can be grounds for removing some or all of the children from parents' custody.<sup>128</sup> Additionally, in most states, these are two independent grounds for neglect commonly referred to as "conditions injurious" or "harmful environment."<sup>129</sup> These concepts often have corollaries in criminal law, so a finding of neglect in the child welfare context can raise the possibility of criminal prosecution.<sup>130</sup>

The risk that they may be prosecuted or have their other children removed from the home can make parents less likely to reach out for help with the child being trafficked. The child welfare system's treatment of domestic violence victims illustrates some of these problems. A victim of severe domestic violence can be brought into the child welfare system on the grounds that they failed to protect their child from witnessing the domestic violence.<sup>131</sup> Failure-to-protect charges can then develop into criminal charges.<sup>132</sup> Studies have shown that

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127. See Brittle, *supra* note 109, at 1355-56 ("[T]he parents of prostituted youth would be guilty of failing to protect their child from abuse if they knew or should have known that their child was prostituting.").

128. See *id.* at 1355.

129. See, e.g., CONN. GEN. STAT. § 46b-120(b)(2)(B)(4) (2018) ("A child may be found neglected who . . . is being permitted to live under conditions, circumstances or associations injurious to the well-being of the child."); D.C. CODE § 16-2301(9)(A)(i-ii) ("The term 'neglected child' means a child: . . . whose parent, guardian, or custodian has failed to make reasonable efforts to prevent the infliction of abuse upon the child; . . . who is without proper parental care or control, subsistence, education, or other care or control necessary for his or her physical, mental, or emotional health . . ."); N.Y. FAM. CT. ACT § 1012(f)(i)(B) ("Neglected child means a child younger than age 18 whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his or her parent or other person legally responsible for his or her care to exercise a minimum degree of care . . . in providing the child with proper supervision or guardianship . . .").

130. See Brittle, *supra* note 109, at 1355; see also Jeanne A. Fugate, *Who's Failing Whom? A Critical Look at Failure-to-Protect Laws*, 76 N.Y.U. L. REV. 272, 276-77 (2001) (criticizing failure to protect laws for exacerbating gender disparities).

131. See Fugate, *supra* note 130, at 280 ("Many times the woman is abused herself, and courts may determine that a battered woman is guilty of failure to protect because her abuse at the batterer's hands ought to have alerted her to the batterer's tendency to violence.").

132. *Id.* at 278 ("Every state has a statute imposing some form of criminal liability for passive child abuse, with classifications ranging from a misdemeanor, or a felony with a maximum sentence of up to five years, to the possibility, in child fatality cases, of a murder or manslaughter charge if the person has the requisite mens rea.").

“women who fear prosecution (or a family court proceeding severing ties with their children) may not take the positive steps of reporting abuse, seeking medical care, or pursuing civil or criminal remedies to stop the abuse.”<sup>133</sup> In the trafficking context, the potential consequences of becoming involved with the child welfare system raises similar concerns and could mean that a parent will not seek specialized services for their child or reach out to law enforcement for assistance in locating a missing child.

Another critique of the use of the child protection system to provide services to victims of child sex trafficking is their gendered application. Historically, individuals charged with failure to protect are female.<sup>134</sup> The domestic violence context again provides a helpful illustration. Women who “fail to protect” their children from witnessing domestic violence are sorted into the category of “bad mothers” who are responsible for their own victimization and “deserve to be punished.”<sup>135</sup> This narrative obscures the complicated situations rife with issues of control, poverty, and trauma, in which domestic violence, like trafficking, often occurs.<sup>136</sup> Failure-to-protect laws rely on gendered stereotypes that penalize mothers for “not sacrificing everything, not knowing enough about her children, and leaving her children while she works.”<sup>137</sup> They may force mothers who want services for their children to make the impossible choice between providing for their children economically and risking prosecution or child welfare intervention. This is hardly a sustainable choice for mothers hoping to protect their children from trafficking, and one that must be addressed without thrusting women into the criminal justice system.

## V. A PUBLIC HEALTH APPROACH TO TRAFFICKING

Although both the juvenile justice and child welfare systems aim to protect youth from sex trafficking, their limitations render them not only imperfect but, in many cases, actively harmful. Youth may return home from detention facilities having suffered additional trauma and perhaps more vulnerable to return to trafficking. On the other hand, the child welfare interventions may present an “oversimplified picture of youth involved in [domestic minor sex trafficking] as child victims of adult criminals, [which] obscures the many tensions, ambiguities, and uncertainties inherent in this work.”<sup>138</sup> Under-resourced child welfare systems are not able to provide the necessary therapeutic and specialized services. A more

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133. *Id.* at 307-08.

134. *Id.* at 279-82 (comparing decades of liability for women failing to protect children from male abusers with relatively recent application of the same laws to abusive women with male partners).

135. *Id.* at 290.

136. *See id.* at 293 (discussing issues of lack of housing, financial support, fear, and an unsupportive criminal justice system as compounding factors in abusive situations).

137. *Id.* at 300.

138. Sapiro, *supra* note 41, at 108.

appropriate intervention must account for and reflect the varied circumstances that make youth vulnerable to trafficking and the various experiences that sustain the involvement.<sup>139</sup> A public health approach can both provide these varied services to victims, and, ideally, contribute to the prevention of trafficking.

A public health approach to child sex trafficking requires child-facing systems that validate the experiences of the communities from which trafficked youth come, and address their needs through holistic services. This section suggests some specific programs communities can implement to both provide services to victims and work to prevent trafficking. It also highlights existing programs that serve youth at risk of and engaged in commercial sex work while embodying the principles of a public health approach to trafficking.

### A. Public Health and Child Sex Trafficking

A public health approach to social issues involves understanding the problem from a holistic perspective and recognizing that there is no single solution to a social ill.<sup>140</sup> Rather, recommendations must address individual and societal factors that contribute to the issue.<sup>141</sup> A public health approach “de-emphasizes criminal sanctions and focuses on reshaping societal views and social behaviors. Law remains a critical tool, but its value is not limited to serving as a vehicle for punishment, and criminal law, while still necessary, is no longer the primary tool for preventing harm.”<sup>142</sup> Previously employed in the HIV/AIDS context and currently advocated for in the opioid epidemic, a public health approach can help fill the gaps where the criminal justice system fails.<sup>143</sup>

In the context of child sex trafficking, a public health framework would highlight the underlying causes of trafficking in the community to facilitate earlier interventions aimed at prevention and harm reduction.<sup>144</sup> As described above, many youth engage in trafficking behavior due to exploitation or as a means of

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139. See Marcus, *supra* note 40, at 243 (“[W]e fear that TVPA may undermine itself by creating a chasm between social service and law enforcement authorities and the many young sex workers and their third parties who could be the eyes and ears of antitrafficking in illicit and semiclandestine sex markets.”).

140. See Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 452 (2011).

141. *Id.* (“At its roots, public health aims to identify potential harms to populations and ‘move upstream’ to identify the causes of these harms and prevent the harms from occurring in the first place.”).

142. *Id.* at 452-53.

143. See *id.* at 480-81 (“While a law-enforcement centric model is built on the assumption that criminal law sanctions provide a deterrent and will prevent further exploitation of certain individuals, research shows that criminal law is not the most effective tool for changing behavior. In a best-case scenario, a criminal law approach still deals with human trafficking only after the harm occurs.”).

144. See *id.* at 485 (“Addressing the root causes of trafficking—including poverty, lack of economic and social rights, discrimination, and other factors—is essential to making meaningful progress in preventing human trafficking.”).

survival.<sup>145</sup> Whether a youth is initiated into trafficking by a pimp or exercises their agency to enter into sex work, they often do so for a perceived lack of alternatives.<sup>146</sup> Effective services must create these alternatives and support youth, in a variety of ways, until they truly have a choice. Unlike detention, a public health approach prioritizes services for trafficking victims that alleviate constraints on the youth's agency.

Studies show that effective interventions for trafficked children “must recognize their dignity and autonomy.”<sup>147</sup> The goal should be returning to trafficking victims and retaining for all youth the power to make decisions about their bodies and their lives “without policing, punishment, or violence.”<sup>148</sup> A common maxim in the public health and social work fields is that individuals are experts in their own lives. Services and government agencies should provide the basic foundation so that youth can access and act on that expertise.

Additionally, public health campaigns must engage community partners and leverage the knowledge of affected communities.<sup>149</sup> This fundamental principle recognizes that affected communities have expertise about the forms of services and interventions that will work to prevent harm.<sup>150</sup> Engaging communities ensures that programs will be culturally appropriate and will build on existing social and community networks to enable buy-in and participation.<sup>151</sup> This kind of collaboration must occur at all levels of a decision-making structure and across multiple disciplines, incorporating law enforcement, child welfare agencies, community partners, schools, and families.

## B. Specific Recommendations

Targeting the root causes of child sex trafficking requires individuals to think creatively about services and prevention. Advocates must not rely on the traditional juvenile justice and child welfare infrastructure to protect youth from sex trafficking. As the primary goal of a public health approach would be to intervene before youth are pulled into the trafficking system, communities must offer programs beginning when children are young and continuing into their teenage years. Such programs include universal childcare, therapeutic housing options, and trauma-informed counseling programs.

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145. See Hanna, *supra* note 17, at 13.

146. See *id.* (“Often, sex is a commodity that [trafficked children] trade for the most basic of needs because it is all they perceive that they have to offer.”).

147. Marcus, *supra* note 40, at 243.

148. Phillips, *supra* note 14, at 1673 (citing YOUNG WOMEN’S EMPOWERMENT PROJECT, GIRLS DO WHAT THEY HAVE TO DO TO SURVIVE: ILLUMINATING METHODS USED BY GIRLS IN THE SEX TRADE AND STREET ECONOMY TO FIGHT BACK AND HEAL 8 (2010), <https://perma.cc/B5CH-ZDBY>).

149. See Todres, *supra* note 140, at 493.

150. See *id.* at 494.

151. *Id.* at 495.



### 3. Universal Childcare and Afterschool Programs

When Gina first entered the public defender office at the detention facility, she explained that her mother worked afternoons and nights, and that Gina and her two younger siblings would be left at home, either under Gina's care or her aunt's care. This was a makeshift solution, and one that was unsustainable for a twelve-year old. It was a solution out of necessity and not one that her mother would have freely chosen. Her mother was torn between trying to earn enough money to put food on the table and supervising her children. Gina's family's story is the story of many low-income families.<sup>152</sup> To prevent other parents from having to make another impossible choice, states should institute a universal childcare program for younger children and afterschool programs for older youth.

A study by Child Care Aware of America, an advocacy organization for childcare services, found that the average yearly cost of childcare in the United States is between \$9000 and \$9600 per child.<sup>153</sup> For families with multiple children or families living under the federal poverty line, the high costs are simply prohibitive.<sup>154</sup> Families may turn to informal care networks, which could be inconsistent and temporary, or to older siblings as caregivers.<sup>155</sup> As a result, many children may fall through the cracks, making them more vulnerable to exploitation by traffickers. Universal childcare, or at a minimum expanded funding for child care for low-income families, can ensure that parents can work without fear, and that children are not left unsupervised and unengaged.

For older youth, cities should institute free afterschool programs close to youths' homes. These programs should not simply warehouse youth until the evening, but must be engaging so that youth want to participate in the program. Programs where youth are paid a small stipend for consistent attendance at afterschool programs offer a model other cities can follow.<sup>156</sup> These are tailored

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152. See Leila Schochet, *The Child Care Crisis is Keeping Women Out of the Workforce*, THINKPROGRESS, (Mar. 28, 2019), <https://perma.cc/3TBV-Z3GC>; see also Leila Schochet & Rasheed Malik, *2 Million Parents Forced to Make Career Sacrifices Due to Problems with Child Care*, THINKPROGRESS, (Sept. 13, 2017), <https://perma.cc/NS23-DM44>.

153. CHILD CARE AWARE OF AMERICA, *THE US AND THE HIGH COST OF CHILD CARE: A REVIEW OF PRICES AND PROPOSED SOLUTIONS FOR A BROKEN SYSTEM* 25-26 (2018).

154. See *id.* at 11.

155. LYNDA LAUGHLIN, CENSUS BUREAU, *WHO'S MINDING THE KIDS? CHILD CARE ARRANGEMENTS* 8 (2013), <https://perma.cc/QXZ5-HEUR>.

156. See GEORGIA HALL, JOYCE SHORTT, NATIONAL INSTITUTE ON OUT-OF-SCHOOL TIME, *IT'S ABOUT TIME! A LOOK AT OUT-OF-SCHOOL TIME FOR URBAN TEENS* 7 (2004) (The After School Matters (ASM) program in Chicago, Illinois offers an apprenticeship program for high school students. The program "strives to prepare youth for jobs, in addition to providing health and fitness oriented clubs. Youth who participate in ASM apprenticeships receive a 10-week stipend."); see also LAURA HARRIS, NATIONAL GOVERNOR'S ASSOCIATION FOR BEST PRACTICES *REDUCING DROPOUT RATES THROUGH EXPANDED LEARNING OPPORTUNITIES* 4 (2011) ("Students with just one supportive relationship with a caring adult early in high school are more likely to be doing well in terms of health, economic security, and community involvement at the end of high school. Qualified ELO program staff can help motivate students who may feel isolated, disconnected, and unsuccessful during the

to youth's interests and include more programming than just academic or homework assistance.<sup>157</sup> Studies found that out-of-school programs, such as the After School Matters program in Chicago, can help raise the high school graduation rate and can provide additional supports to students who are at risk of dropping out.<sup>158</sup> Through improved afterschool programming, communities can prevent youth from turning to high-risk and exploitative opportunities traffickers may offer.

Older youth can also benefit from mentoring. One study found that "youths with a mentor are 53 percent more likely to advance to the next level of education than are youth who do not have a mentor."<sup>159</sup> Additionally, mentoring programs reduce exposure to high-risk behaviors and negative relationships.<sup>160</sup> The relationships youth develop through mentoring programs can help them stay in school and serve as an example of a positive relationship.<sup>161</sup>

#### 4. Trauma-Informed Programs

Trauma interacts cyclically with child sex trafficking: prior trauma makes a youth more vulnerable to trafficking and trafficking only imposes additional trauma on the youth. Both preventive services under a public health framework and protective services after the harm has occurred must be trauma-informed. This means that services, whether relating to substance abuse, mental health, or parenting, must be cognizant of the experiences of trafficking victims. More specifically, they must be aware of the specific developmental needs and barriers for this population, such as challenges children face when forming healthy relationships and bonds. Trauma-informed services must be client-centered, "highlighting the client's right to self-determination in her recovery process, emphasizing the client's strength and resilience, recognizing the cultural uniqueness of each client, and consistently involving the client in a collaborative relationship."<sup>162</sup> Though trauma-informed practices originated in the mental health sphere, the core principles may be applied to various types of services for

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regular school day.").

157. See Barton J. Hirsch, *Learning and Development in After-School Programs*, 92 KAPPAN MAG., no. 5, 2011, at 66, 67.

158. See Harris, *supra* note 156, at 5 ("A recent study found that that while attending a high-quality preschool alone boosts the graduation rate for disadvantaged students from 41 percent to 66 percent, investing in additional supports as these children age can raise the graduation rate from 66 percent to 91 percent."). Harris further observes that participants in the ASM program had lower dropout rates and missed fewer days of school than those who did not participate. *See id.* at 8.

159. Todres, *supra* note 140, at 483.

160. *See id.*

161. *See id.*; see also Nicole R. Thomson & Debra H. Zand, *Mentees' Perceptions of Their Interpersonal Relationships: The Role of the Mentor-Youth Bond*, 41 YOUTH & SOC'Y 434, 435 (2010).

162. Hardy, *supra* note 15, at 14.

trafficking victims.

Sociologists have drawn parallels between sex trafficking and substance abuse issues, noting that the process of exiting or leaving an exploitative situation may take many iterations and attempts.<sup>163</sup> Service providers should understand this concept of the “revolving door as a reality of providing services to this population and not as an indictment of a program’s success or failure.”<sup>164</sup> Instead of pushing youth out of the program for noncompliance, trauma-informed services will instead acknowledge that disruption as part of the process.<sup>165</sup>

One of the most important services that must be offered to youth at-risk of or engaged in trafficking is counseling and mental health care. Mental health services must be tailored to the particular needs of each individual youth, instead of a generic referral to counseling programs. That is, the choice of modality of therapy, whether Cognitive Behavioral Therapy (CBT), Multisystemic Therapy (MST), or Functional Family Therapy (FFT), must be cognizant of the youth’s needs, strengths, and available resources. Whether working with youth struggling with difficult home environments or with youth who have already left their homes and been subjected to trafficking, counseling services must be appropriate for each child’s situation. For some youth, this may be individual psychotherapy, while other youth may benefit from group sessions involving peer counseling. Youth often prefer to seek advice from peers rather than from adults, who may talk down to them.<sup>166</sup> Peer counseling sessions can incorporate mental health services while also encouraging positive relationships with youth who have endured similar hardships. These programs help further the goal of empowerment by helping youth retain control over and participate in decisions made about them.

Lastly, the physical space for these services must be tailored to the needs of this population. Services must be accessible and inviting, located within the community and staffed by community members. A successful program is one where “kids are enriched and educated and comfortable and are not locked off in the world but are integrated back into it—holding anyone in a facility just to hold them [does not] do anything.”<sup>167</sup> As explored above, one of the issues with detention facilities is that they mimic the experience of being trafficked—locked in one place and isolated from the community, with every minute controlled.<sup>168</sup> Youth must be free to come and go, and the space should be comforting and warm.

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163. See Sapiro, *supra* note 41, at 105.

164. *Id.*

165. See *id.* (One component of a trauma-informed practice is an outcome or success metric that takes into account the specific nature of the trafficking phenomena. Specifically, that youth may initially seek services and return to the trafficking situation through the “revolving door.” However, this is not an indictment of the program, but the reality of the trafficking problem.).

166. Laura Barnitz, *Effectively Responding to the Commercial Sexual Exploitation of Children: A Comprehensive Approach to Prevention, Protection, and Reintegration Services*, 80 CHILD WELFARE 597, 605 (2001).

167. Sapiro, *supra* note 41, at 106.

168. See Hardy, *supra* note 15, at 14.

Providers may elect to have hygiene facilities and hot meals for youth who may not be able to return home, or for those youth may have previously turned to sex work as a means of survival.

### 5. Therapeutic Safe Houses for Youth Unable to Return Home

Realistically, there are going to be some cases when youth cannot remain in their homes, whether due to abuse or neglect, death of parents or guardians, or other reasons. Under those circumstances, the child welfare system will likely intervene due to mandatory reporting laws and other legal obligations. Traditional congregate care settings, or placements such as group homes that house multiple youth, are ill-suited to the particular needs of youth who have been trafficked, and may in many ways resemble detention.<sup>169</sup> Child welfare systems must offer therapeutic safe houses for youth victims of sex trafficking. These safehouses, which should not have lockdown capacity, may be best positioned to provide the “most efficient solution to the services problem.”<sup>170</sup>

Placements can offer all necessary services either in the facility or close to the facility to ensure that youth have access to the services. Youth can receive around-the-clock support and intensive mental health services from staff and providers who visit the placement.<sup>171</sup> In some circumstances, these placements may serve as a temporary respite from potentially harmful family dynamics. Not only do these placements offer critical assistance, but they address the housing concerns that may lead justice systems to detain youth.

### 6. Responding to Critiques

The most common critique is that such specialized services and programs are expensive and would require significant investment from the government or from private foundations and donors. According to a 2014 study by the Justice Policy Institute, the average cost of detaining an individual child in the United States is \$407.58 per day, with the highest daily cost in New York of \$966.20 and the lowest daily cost in Louisiana of \$127.84.<sup>172</sup> The report also listed the average yearly cost per child as \$148,767, which is significantly higher than localities

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169. See, e.g., *What are the outcomes for youth placed in congregate care settings?*, CASEY FAMILY PROGRAMS (Feb. 5, 2018), <https://perma.cc/LNZ2-9QTD>; see also “Reducing Congregate Care,” ANNIE E. CASEY FOUNDATION (Apr. 4, 2012), <https://perma.cc/7FNA-TTTF> (“According to Casey data, congregate care placements cost child welfare systems three to five times the amount of family-based placements.”).

170. Brittle, *supra* note 109, at 1372.

171. See *id.*

172. JUSTICE POLICY INST., *STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION* 11 (2014) (In Gina’s case in the District of Columbia, detaining a youth costs the government \$761.00 per day (\$277.765 per year). In California, the cost is \$570.79 per day (\$208,338 per year)).

spend on education per pupil.<sup>173</sup> If the juvenile justice system were to cease its practice of detaining victims of sex trafficking, that money could be repurposed to cover the costs of specialized preventive services. Those funds must be channeled toward providing housing and services that actually address the particularized needs of this population.

### C. Model Programs

A public health framework requires that each program or intervention be specifically tailored to fit the needs of the particular community. Each city may adopt a different set of priorities depending on the specific risk factors associated with that community. Nevertheless, child advocates and survivors of child sex trafficking have developed successful community programs and drop-in centers in major US cities. Each of these programs described below incorporates survivors and youth into their programming, and each program promises a safe and comfortable environment not conditioned on compliance with law enforcement.

First, Courtney's House, a drop-in center for commercially sexually exploited children in Washington, D.C., was founded by Tina Frundt, a leading advocate for CSEC youth and a survivor herself. In addition to offering a comfortable space for youth to spend time, Courtney's House provides "survivor-focused, trauma-informed holistic services."<sup>174</sup> Although the program receives some referrals from the child welfare and juvenile justice systems, it provides an individualized assessment at intake.<sup>175</sup> Courtney's House does not require that clients are referred through a court-based program. In fact, Courtney's House staff travel to high-risk areas on Friday and Saturday nights to offer information about the survivor hotline to potentially trafficked youth.<sup>176</sup> Courtney's House has been widely recognized, most notably by President Obama, for its nonjudgmental atmosphere and its tailored services.<sup>177</sup> With additional funding, Courtney's House could reach more survivors.

In California, two organizations have garnered national attention for their innovative and nonjudgmental programs. The first, Children of the Night in Los Angeles focuses on emergency interventions to pull youth from dangerous trafficking situations whenever they request assistance, no questions asked.<sup>178</sup> The program then continues to work with the youth through intensive, individualized case management services including mental health services, benefits assistance,

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173. *Id.*

174. *How We Help*, COURTNEY'S HOUSE, <https://perma.cc/G7S6-795P>.

175. *Id.*

176. *Domestic Minor Sex Trafficking: Hearing Before the Subcomm. on Crime, Terrorism, and Homeland Security of the H. Comm. On the Judiciary*, 111th Cong. 149 (2010) (statement of Tina Frundt, Executive Director/Founder, Courtney's House).

177. *Who We Are*, COURTNEY'S HOUSE, <https://perma.cc/2YCY-NQ6Y>.

178. *Mission Statement*, CHILDREN OF THE NIGHT <https://perma.cc/PK9V-5H52>.

transitional housing, and referrals to legal aid providers.<sup>179</sup> Second, Larkin Street Services in San Francisco targets the broader population of homeless and runaway youth, offering both a drop-in center and transitional shelter housing.<sup>180</sup> The case management staff work with each youth to develop individualized plans for permanent housing, employment, and educational goals.<sup>181</sup> Empowerment is at the core of both of these programs, as youth drive the service planning process and decide for themselves their goals and level of engagement.<sup>182</sup>

In Chicago, the Young Women's Empowerment Project (YWEP) is an entirely youth-run cooperative organization focused on harm reduction and peer education.<sup>183</sup> All staff were formerly involved in sex work and are between the ages of twelve and twenty-four.<sup>184</sup> YWEP offers weekly drop-in hours for any female-identifying youth to pick up free clothing, clean syringes, or condoms.<sup>185</sup> For youth interested in job-placement and education programs, YWEP will refer the young girls to trusted service providers.<sup>186</sup> YWEP does not interact with law enforcement or the court systems, instead offering young girls the freedom to engage with other survivors without any fear of justice-system involvement.<sup>187</sup>

Lastly, Girls Educational & Mentoring Services (GEMS) in New York is widely applauded for their "Victim, Survivor, Leader (VSL)" model of services.<sup>188</sup> Under this model, young girls are trained to be mentors and leaders in their own communities.<sup>189</sup> Services are survivor-led, strengths-based, and trauma-informed, ensuring that each young girl receives programming most appropriate for her. Unlike YWEP, however, GEMS provides crisis-care services, including transitional housing and court advocacy, in addition to the peer leadership program.<sup>190</sup>

Central to each of these programs are youth empowerment and nonjudgmental, trauma-informed services. Not only do young people have the ability to decide their own service engagements, but they are also empowered to participate in system-wide advocacy. They are not treated as offenders or victims in need of pity, but as experts in their lives, entitled to respect and dignity. Access to these programs is not conditioned on compliance with services or with law enforcement. Rather, they evince the trauma-informed principles, recognizing the unique needs of child trafficking victims. These programs, if sufficiently funded

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179. *Case Management*, CHILDREN OF THE NIGHT, <https://perma.cc/D434-Z7JT>.

180. *Our Programs*, LARKIN STREET SERVICES, <https://perma.cc/ZXC3-R774>.

181. *Id.*

182. *Id.*

183. *About*, YOUNG WOMEN'S EMPOWERMENT PROJECT, <https://perma.cc/9QZ3-Y953>.

184. *Id.*

185. *Id.*

186. *Our Values*, YOUNG WOMEN'S EMPOWERMENT PROJECT, <https://perma.cc/7NGP-SSHK>.

187. *Id.*

188. *Girls Educational & Mentoring Services*, <https://perma.cc/XY8P-J6KL>.

189. *Id.*

190. *Id.*

and replicated, could eliminate the need for drastic detention-as-protection practices. Jurisdictions should learn from model organizations to appropriately support currently and formerly commercially exploited youth.

## CONCLUSION

While the problem of commercial sexual exploitation of children is highly complex, it is clear that neither detaining youth in secure facilities to “protect them” nor placing them in the custody of the child welfare system is the solution. Youth who have already experienced significant trauma and abuse should not be subjected to additional abuse in detention simply because judges feel as if they have no other option. The child welfare system, while an improvement over the juvenile justice system, still falls short of its promise to protect youth, as many trafficking victims had previously been in the child welfare system.

Instead, governments should use a public health framework to address trafficking. This framework does not fault youth or their parents for trafficking, but instead targets its root causes. At a fraction of the cost of detaining a young person, programs such as universal childcare, mentoring and afterschool programs, and trauma-informed mental health services can fill the gap left by the criminal justice system. By listening to affected communities and understanding their true needs, jurisdictions can help mitigate the risk factors that make youth vulnerable to trafficking. The 2018 reauthorization of the Juvenile Justice and Delinquency Prevention Act, titled the “Juvenile Justice Reform Act of 2018,” is a small step in the right direction, requiring juvenile justice agencies to screen for human trafficking concerns.<sup>191</sup> But there is significant work still to be done, beginning with removing the valid court order exception and providing funding for creative, preventive services for youth at risk of trafficking.

Stories like Gina’s are not unique. There are many circumstances where children are detained because society believes it has no better options. Runaway youth are arrested and detained oftentimes to protect them from the street. In each of these situations, children are fleeing from something, knowing that the possibility of trafficking and detention may be better than where they came from. However, the harms of detention are too serious for it to be used as a form of protection. Governments must instead invest in survivor-led, community-based alternatives proven effective at addressing the underlying vulnerabilities of victims.

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191. KRISTIN FINKLEA & MATTHEW W. NESVET, CONG. RESEARCH SERV., IN11076, JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT (JJDP) FORMULA GRANT REAUTHORIZATION 1 (2019).