
ARTICLES

THE (BROKEN) PROMISE OF COURTS FOR COMMERCIALLY SEXUALLY EXPLOITED CHILDREN (CSEC): INCREMENTALISM, INTERSECTIONALITY, AND INADEQUATE INTERVENTION

ALEKSANDRA CHAUHAN, PH.D., J.D.*

Specialty courts for children subjected to commercial sexual exploitation (CSEC specialty courts) replicate several problematic strands of the history of the juvenile legal system, especially attitudes towards girls of color. The founders of the juvenile court believed that, if the courts had full control over young people's lives, they could reform and save wayward children. The courts' overarching intervention into the marginalized families was riddled with racist, classist, gender-stereotyped, and patriarchal mythology that believed that institutional environments like schools and families work for poor girls of color trapped in the juvenile legal system. CSEC courts reinforce these structures while causing further trauma. Though heightened services are needed for girls battling intersecting forms of oppression, CSEC courts—like other specialty courts—exemplify important limitations to gender-specific reform given their focus on individual “change” and failure to meaningfully confront systemic issues.

* Solo practitioner at Chauhan Law Firm LLC. During research and writing, Dr. Chauhan was a Visiting Assistant Professor of Law, Director, Criminal Practice Clinic, Joseph F. Rice School of Law, University of South Carolina. Deep gratitude to Professor Josh Gupta-Kagan and Professor Eduardo Ferrer for insightful remarks; to Inge Kutt Lewis for assistance with editing the paper; and to my research assistant, Bethany Weatherford, for help with research and edits. Thank you to Professor Randy Hertz for organizing the invaluable Clinical Law Review Writers' Workshop; to Professor Mae Quinn for facilitating our group; and Professors Rachel Burg, Zoe Engberg, Julia Hernandez, and Hector Linares for meaningful comments on my draft.

This Article contributes to three streams of academic discourse. First, it shows that CSEC specialty courts have been flawed from the beginning and have continued the errors of other specialty courts and the historic errors of the juvenile legal system, especially in attitudes towards girls of color. Second, it provides an assessment of existing Safe Harbor laws and CSEC specialty courts in the United States, primarily from the vantage point of system-involved girls. It also explores both the advantages and the disadvantages of CSEC specialty courts specifically as a platform for deconstructing specialty courts generally. Third, it offers a new model of justice that does not rely on a detention-to-protection framework and does not necessitate that girls subjected to commercial sexual exploitation (CSE) obtain protection and access services by interfacing with the state and its allies in its most punitive form. The Article argues that the existing mechanism of centering on law enforcement and judicial process in antitrafficking interventions overlooks the strained relationship between the juvenile legal system and communities of color and calls for centering on the intersectional vulnerabilities of Black girls by demanding identification and focus on the structures that cause harm.

TABLE OF CONTENTS

INTRODUCTION.....	4
I.THE FAILURES OF THE (ORIGINAL) JUVENILE COURT: A BRIEF HISTORY ON HOW PATERNALISM, RACISM, AND CLASSISM SHAPED THE FAMILY COURTS	10
<i>A. Delinquency Courts</i>	14
<i>B. Dependency Courts</i>	15
II.SEX TRAFFICKING OF YOUTH	18
<i>A. Definitions</i>	18
<i>B. Early Prostitution Law</i>	19
<i>C. The Scope of the Problem</i>	23
<i>D. Risk Factors for Trafficking Children</i>	25
III.SAFE HARBOR LAWS	29
<i>A. Incrementalism of Safe Harbor Laws</i>	29
<i>B. Criticism of the Victim Rhetoric of Safe Harbor Laws</i>	31
IV.SPECIALTY COURTS	38
<i>A. Overall Effectiveness of Various Specialty Courts for Youth</i>	38
1. Juvenile Drug Treatment Courts (JDTCs)	39
2. Juvenile Mental Health Courts (JMHCs)	41
<i>B. CSEC Courts</i>	45
1. CSEC Court Model: Detention-to-Protection Framework	45
2. Expansion of CSEC Courts.....	45
3. Assessment of CSEC Courts	46
<i>i. Positive Impacts of CSEC Courts</i>	46
<i>ii. Shortcomings of CSEC Courts</i>	49
V.A REVISED APPROACH: COMMUNITY-LED PREVENTION AND INTERVENTION EFFORTS FREE FROM JUVENILE LEGAL SYSTEM CONTINGENCIES	56
CONCLUSION	61

INTRODUCTION

“Now a cop sees a 16 year old prostituting on the street. [...] They arrest her because it’s the only way we can help her.”¹

The juvenile legal system’s practice of necessitating incarceration of girls² and mandating social services as part of a claimed “problem-solving” approach to the adjudication of sex trafficking cases³ is deeply problematic and raises serious concerns about the possibility of providing respectful and efficacious services to the girls.⁴ Unfortunately, institutionalizing girls to protect them has a long criminal justice history.⁵ Understanding the historical origins of the court acting as a parental figure to the child is essential to contextualizing the informality, paternalism, and harmful effects of juvenile proceedings.⁶ Moreover, courts continue to be coercive and over-punitive to the poor and marginalized youth, especially girls of color,⁷ and they overreach as managers of social service provisions. The impact of racial histories and gendered ideologies of the juvenile legal system is

¹ Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 DIALECTICAL ANTHROPOLOGY 257, 257 (2013) (quoting an NGO Advocate’s interview).

² Within the United States, children and adolescents identified as victims of commercial sexual exploitation (“CSE”) are predominantly girls of color. See 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, 1675 (2015); see also Monica Landers et al., *Baseline Characteristics of Dependent Youth Who Have Been Commercially Sexually Exploited: Findings from a Specialized Treatment Program*, 26 J. CHILD SEXUAL ABUSE 692, 697 (2017). Research suggests that histories of CSE among cisgender, heterosexual boys as well as individuals who identify as lesbian, gay, bisexual, transgender, and queer are underreported. See Melissa Moynihan et al., *Interventions That Foster Healing Among Sexually Exploited Children and Adolescents: A Systematic Review*, 27 J. CHILD SEXUAL ABUSE 403, 415 (2018). While both cisgender and transgender populations are involved in the sex trade, antitrafficking efforts have predominantly focused on cisgender girls under the age of eighteen. See *id.* This Article therefore focuses on antitrafficking efforts targeted at cisgender girls and young women under the age of eighteen.

³ Becca Kendis, *Human Trafficking and Prostitution Courts: Problem Solving or Problematic?*, 69 CASE W. RES. L. REV. 805, 838 (2019).

⁴ GLOB. HEALTH JUSTICE P’SHIP, UN-MEETABLE PROMISES: RHETORIC AND REALITY IN NEW YORK CITY’S HUMAN TRAFFICKING INTERVENTION COURTS 52 (2018). https://law.yale.edu/sites/default/files/area/center/ghjp/documents/un-meetable_promises_htic_report_ghjp_2018rev.pdf.

⁵ Musto, *supra* note 1, at 268.

⁶ Michele Benedetto Neitz, *A Unique Bench, a Common Code: Evaluating Judicial Ethics in Juvenile Court*, 24 GEO. J. LEGAL ETHICS 97, 101 (2011).

⁷ See generally *id.* This source speaks to issues impacting all girls of color; however, due to limited availability of data, many of the studies target the particular impact on Black girls.

affecting the way states make decisions on how to allocate their funds and create interventions for both children considered delinquent, children in the welfare system, and the ones deemed victims of CSE.⁸

It is important to understand that girls with suspected or confirmed histories of CSE are often involved with the child welfare and juvenile legal systems, both as a precursor to CSE and as a result of CSE victimization. The girls' lived experiences are a result of intersecting and inseparable subordinating identities.⁹ They are poor, non-white, young women, and their lives "cannot be captured wholly by looking at the race or gender dimensions of those experiences separately."¹⁰ These multiple identities not only compound systemic disadvantage but also "interact in a synergistic way" to produce distinct forms of oppression.¹¹ Intersectionality prompts us to consider what it means to have a marginalized status within a marginalized group. As stated by the girls themselves:

As young women of color involved in the sex trade, we are being oppressed on multiple levels. We are female, of color, involved in the sex trade, poor—the limitation of choices and access, mistreatment and neglect by "helping systems," police surveillance and abuse of power, partner abuse, sexual abuse and exploitation, family violence[,] and economic disenfranchisement. They are also young girls, many of color, so racism and ageism are ever present factors in how they are treated—in addition to being in the sex trade. Girls also identify their sexual orientation and gender identification along a broad spectrum including lesbian and transgender as well as bisexual or heterosexual. Homophobia is an additional factor that defines how the world sees and treats them—in addition to being in the sex trade.¹²

⁸ Phillips, *supra* note 2, at 1646.

⁹ This Article examines the treatment of girls using Kimberlé Crenshaw's theory of intersectionality. See *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1242–45 (1991). Crenshaw drew on Black feminist and critical legal theory, and developed the concept of intersectionality, a term describing the various social forces, social identities, and ideological instruments through which power and disadvantage are expressed and legitimized.

¹⁰ Crenshaw points out that "[i]ntersectional subordination need not be intentionally produced; in fact, it is frequently the consequence of the imposition of one burden that interacts with preexisting vulnerabilities to create yet another dimension of disempowerment." *Id.* at 1249.

¹¹ Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate Group Identities*, 59 SEX ROLES 377, 378 (2008). As research into racism, sexism, classism, homophobia, and disability has progressed, critics have argued that isolating any single one of these identities for study neglects the experience of individuals with multiple subordinate identities. See Pamela Trotman Reid & Lillian Comas-Díaz, *Gender and Ethnicity: Perspectives on Dual Status*, 22 SEX ROLES 397, 405 (1990).

¹² 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*, 26 (2011).

Until 2000, CSE girls were arrested and detained on prostitution charges.¹³ Since then, major efforts have been made to decriminalize youth victims of CSE and divert them to specialty courts.¹⁴ These types of diversionary courts are designed to offer participants an alternative to traditional judicial involvement.¹⁵ They are based on a model of court supervision which recognizes the behavioral and environmental factors affecting youth and prioritizes treatment and linkage to care.¹⁶ They are meant to employ a non-adversarial, non-punitive approach to connect youth to rehabilitative and therapeutic services and can include, but are not limited to, juvenile mental health courts, juvenile drug treatment courts, and now, commercially sexually exploited children (“CSEC”) courts.¹⁷ Yet, these courts have not been rooted in evidence-based research, and, over the years, they have grappled with significant inconsistencies in frameworks, program duration, eligibility and exclusion criteria, goals and objectives, and success measurements.¹⁹ CSEC courts create an additional level of tension as “the histrionic political rhetoric deployed in popular discussions of human trafficking comes into conflict with the precise legal framework needed to assign blame, hold offenders accountable, and protect the community.”²⁰ The juvenile legal system strives to identify a clear victim/defender dynamic: The state seeks a victim in need of rescue, and the girls

¹³ REBECCA EPSTEIN & PETER EDELMAN, BLUEPRINT: A MULTIDISCIPLINARY APPROACH TO THE DOMESTIC SEX TRAFFICKING OF GIRLS, 4 (2014), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/Blueprint.pdf>; KRISTIN FINKLEA ET AL., CONG. RSCH. SERV. R41878, SEX TRAFFICKING OF CHILDREN IN THE UNITED STATES: OVERVIEW AND ISSUES FOR CONGRESS, 32 (2015), <https://sgp.fas.org/crs/misc/R41878.pdf>.

¹⁴ Elizabeth S. Barnet et al., *Identifying Best Practices for “Safe Harbor” Legislation to Protect Child Sex Trafficking Victims: Decriminalization Alone Is Not Sufficient*, 51 CHILD ABUSE & NEGLECT, 249, 250 (2016).

¹⁵ *Diversion in the Juvenile Justice System*, NAT’L CONF. OF STATE LEGIS., <https://www.ncsl.org/civil-and-criminal-justice/diversion-in-the-juvenile-justice-system> (last updated May 23, 2022).

¹⁶ *Id.*

¹⁷ The commercial sexual exploitation of children (“CSEC”) is defined as “a range of crimes and activities involving the sexual abuse or exploitation of a child for financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person.” CHILDREN’S ADVOCACY CENTERS OF WASHINGTON, <https://cacwa.org/csec-main-page/> (last visited Dec. 6, 2025). It is a broad term commonly used to describe sex trafficking involving children, also known as domestic minor sex trafficking (DMST). *See infra* Part II.A.

¹⁸ *See* Brandi Liles et al., *A California Multidisciplinary Juvenile Court: Serving Sexually Exploited and At-Risk Youth*, 34 BEHAV. SCI. & LAW 234, 235–36 (2016); *see also* Lisa Callahan et al., *A National Survey of US Juvenile Mental Health Courts*, 63 PSYCHIATRIC SERV. 130, 132 (2012).

¹⁹ Misty Luminais et al., *A Safe Harbor Is Temporary Shelter, Not a Pathway Forward: How Court-Mandated Sex Trafficking Intervention Fails to Help Girls Quit the Sex Trade*, 14 VICTIMS & OFFENDERS 540 (2019).

²⁰ *Id.* at 541.

want to define themselves as “actors with agency in a complicated situation.”²¹ Both legal and political frameworks overlook how girls perceive their actions and what solutions they are seeking.²² The resulting approach ultimately proves to be ineffective and potentially perpetuates harm against girls.²³ Jyoti Nanda stresses that girls in juvenile courts are often seen “as social problems themselves rather than as young girls affected by social problems.”²⁴ The system is determined to fix the girls without considering and addressing the broader socio-political contexts that impact their actions and the repercussions for those actions.²⁵

Research points towards some positive prospects for CSEC courts, such as enhancing access to specialized services and supporting stability of the girls affected by CSE.²⁶ Yet, several studies argue the appropriateness and efficacy of those courts.²⁷ The most salient shortcomings that all researchers agree on are lack of empirical data and rigorous evaluations of CSEC courts.²⁸ There are gaps in knowledge about the demographic, psychosocial characteristics, and health needs of youth impacted by CSE. Therefore, it is extremely difficult to assess the effectiveness of the courts on psychosocial and legal outcomes for girls. Additionally, the existing courts do not systematically collect participant data and do not have a uniform standard for measuring success,²⁹ which means there is no methodical way of tracking progress or success rates across CSEC courts. What is known, though, is the fact that girls who participate in these courts can be facing potential negative consequences (e.g., longer systems involvement and institutionalization).³⁰

This Article provides a comprehensive examination of the current studies of CSEC courts and a critical evaluation of existing practices from

²¹ *Id.*

²² *Id.*

²³ Stephan Gies et al. *Safe Harbor Laws: Changing the Legal Response to Minors Involved in Commercial Sex. Phase 1. The Legal Review*, NCJRS NAT'L CRIM. JUST. REFERENCE SERV. (Sept. 2019), <https://www.ojp.gov/pdffiles1/ojdp/grants/253244.pdf>.

²⁴ Jyoti Nanda, *Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System*, 59 UCLA L. REV. 1502, 1507 (2012).

²⁵ Fanna Gamal, *Good Girls: Gender-Specific Interventions in Juvenile Court*, 35 COLUM. J. GENDER & L. 228, 247 (2018).

²⁶ See *infra* Part IV.B.3.a.

²⁷ See *infra* Part IV.B.3.b.

²⁸ See Emma Hetherington et al., *CSEC Treatment Courts: An Opportunity for Positive, Trauma-Informed, and Therapeutic Systems Responses in Family and Juvenile Courts*, 43 MITCHELL HAMLINE L.J. OF PUB. POL'Y & PRAC. 200, 228, 230 (2022).

²⁹ Sarah Godoy et al., *A Systematic Review of Specialty Courts in the United States for Adolescents Impacted by Commercial Sexual Exploitation*, 24 TRAUMA, VIOLENCE, & ABUSE 1344, 1357 (2023).

³⁰ See Gies et al., *supra* note 23, at 3; see also Godoy et al., *supra* note 29, at 1344.

various perspectives. This research considers the intended and unintended consequences of CSEC courts and examines the simplistic presumptions that all CSEC courts interventions are inherently “good” or helpful to the populations they aim to assist. It also questions the historical overreliance on the juvenile legal system to provide social services to the girls and emphasizes the countless ways in which courts’ interference has led to girls of color being disproportionately exposed to state-sponsored violence perpetrated by those within the criminal justice and law enforcement systems. The juvenile legal system continues to be the necessary mechanism for identification and “protection” of girls as victims of CSE. Yet, this historic legacy of the juvenile legal system has caused more harm than good. Skepticism of the system’s role in managing and providing social services to children is warranted, especially when the communities affected are already deeply marginalized and disempowered by the very state that claims to offer help.³¹ This Article calls for minimizing the role of the CSEC courts and their involvement in the girls’ lives and for investing more intentionally in “opportunity structures” outside of the court system.³² This Article cultivates a new model of justice that does not rely on a detention-to-protection framework and does not necessitate that CSE girls obtain protection and access services by interfacing with the state and its allies in its most punitive form.

The biggest limitation of this Article is that it focuses only on Black girls. Research gaps in data and our knowledge of the CSE of other minors of color need to be filled. There is also a need to understand the experiences and needs of cisgender, heterosexual boys as well as individuals who identify as LGBTQ+.

Part I of this Article highlights the strands of history of family courts that are replicated in contemporary CSEC courts. From their inception, the family courts served as pillars for government-funded and regulated assistance and managers of social service provisions. The courts’ early features, such as informal personalized justice, gender stereotypes, racist structures, paternalism, and significant judicial discretion, allowed for unlimited intervention in the lives of youth and families, especially marginalized youth of color. Those families were perceived by the courts as a problem

³¹ See GLOB. HEALTH JUST. P’SHIP, YALE L. SCH. & YALE SCH. OF PUBL. HEALTH, DIVERSION FROM JUSTICE: A RIGHTS-BASED ANALYSIS OF LOCAL “PROSTITUTION DIVERSION PROGRAMS” AND THEIR IMPACTS ON PEOPLE IN THE SEX SECTOR IN THE UNITED STATES 7, 69 (2018), https://www.nswp.org/sites/default/files/diversion_from_justice_ghjp_-_2018.pdf.

³² See Corey Shdaimah & Marie Bailey-Kloch, “Can You Help with That Instead of Putting Me in Jail?”: Participant Insights on Baltimore City’s Specialized Prostitution Diversion Program, 35 JUST. SYS. J. 257, 268 (2014).

to be solved, leading to the creation of a family regulation system that has proven to be ineffective and detrimental.

Part II of the Article describes the development of prostitution laws and their intention to regulate the incorrigible girls' sexual conduct by placing them in juvenile reform schools, with the goal of training them to become proper wives and mothers. For young people in need of social services, the juvenile legal system has continued to be the entry point.

Part III shows that, although Safe Harbor laws introduced the decriminalization of prostitution of minors, Black girls still struggle with being protected by the law. The historical genealogy of sexual exploitation of Black women and girls affects the perception of Black girls as less innocent and more willing to participate in sex trade. This part also points to a major criticism of the underlying rhetoric of the victim embraced by the Safe Harbor laws.

Part IV offers a critical overview of various specialty courts for youth, i.e., Juvenile Drug Treatment Courts and Juvenile Mental Health Courts, with an emphasis placed on the CSEC specialty courts. It highlights both the positive impacts of the specialty courts and their major drawbacks. The consensus among researchers is that, despite some perceived benefits of the courts' structures, the specialty courts do not follow evidence-based practices which leads to counterproductive outcomes, such as increased referral and detention rates.³³ There are no standardized data collection processes within the judicial system for CSEC courts,³⁴ which means there is a dearth of longitudinal data and rigorous empirical evaluation of CSEC courts. This Article shows that CSEC courts replicate problematic strands of the family courts highlighted in **Part I**. The author draws attention to the contradictory roles of the CSEC courts as a protector and paternal figure, as well as an enforcer of the penal system. This "care through criminalization"³⁵ entangles youth and their families in the judicial system and, given the pervasive racial disparities within the U.S. criminal legal system, results in prolonged surveillance that may have acutely negative implications for Black girls.

Part V suggests a community-led prevention and intervention model for CSE youth that is not contingent on the juvenile legal system. CSEC courts perpetuate the historic errors of the family courts and the errors of specialty courts, especially in their attitude towards girls of color.³⁶ They

³³ See Musto, *supra* note 1, at 267–68, 271.

³⁴ See Luminais et al., *supra* note 19, at 540, 543.

³⁵ Gamal, *supra* note 25.

³⁶ See Priscilla A. Ocen, (*E*)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors, 62 UCLA L. REV. 1586, 1614–15, 1619–20, 1624 (2015).

reinforce paternalism, gender-stereotypes, and racist structures, while causing further trauma. Though heightened services are needed for girls battling intersecting forms of oppression, CSEC courts—like other specialty courts—exemplify important limitations to gender-specific reform, given their focus on individual “change” and failure to meaningfully confront systemic issues.³⁷

This Article emphasizes that depicting Black girls as problems that need to be solved and talking about CSE girls as victims that need to be saved by the judicial system strip the girls of their right to self-determination and offer inadequate interventions. Specialty courts are not designed to deal with the complexity of youth’s lived experiences. Those mechanisms for supporting youth need to happen outside of the legal system.

This Article concludes by underscoring the shortsightedness of utilizing punitive systems of control, like CSEC courts, to undo intersecting systems and structures of domination and by calling on the judicial system to pay attention to the intersecting racial, economic, and gendered root causes of the problem of CSE to establish long-lasting solutions.

I. THE FAILURES OF THE (ORIGINAL) JUVENILE COURT: A BRIEF HISTORY ON HOW PATERNALISM, RACISM, AND CLASSISM SHAPED THE FAMILY COURTS

In 1925, Judge Charles Hoffman of Cincinnati, Ohio, wrote about the creation of the juvenile court, and he declared that the court would “mark the inauguration of a new social order founded on the principles of humanity and love rather than that of retribution and hate.”³⁸ As emphasized by Jane Spinak:

[T]he juvenile court was novel not in its concern about children but rather in its formation to situated government-funded and -regulated assistance under court authority. . . . While there were private charitable agencies providing limited financial or casework assistance at the end of the nineteenth century, the juvenile court was created specifically as the site of government-supported assistance for these children. At that time there were no state child protective services, no state or federally funded foster care, no state-run institutional care facilities except the adult jails and prisons or the detested houses of refuge in which delinquent children were then committed.³⁹

³⁷ See *id.* at 1638–39.

³⁸ Charles W. Hoffman, *Organization of Family Courts, with Special Reference to the Juvenile Court*, in *THE CHILD, THE CLINIC, AND THE COURT* 255, 258 (1925).

³⁹ JANE M. SPINAK, *END OF FAMILY COURT: HOW ABOLISHING THE COURT BRINGS JUSTICE TO CHILDREN AND FAMILIES* 18 (Nancy E. Dowd ed., 2023).

Children were referred to juvenile court if there were considered (1) neglected, (2) truant, and (3) delinquent.⁴⁰ The judge's job was to find a solution to fix the matter of the child, and thus "the juvenile court became the first dedicated problem-solving court."⁴¹ The setting of the early juvenile court was very informal, and it was venerated as non-adversarial, preventive, and rehabilitative.⁴² The juvenile court was created around three intermingled concepts: first, the court was given jurisdiction over a specialized set of matters related to the family; second, the informal process of a specialized court was intended to save the child; and third, the court was placed within an efficient and well-managed unified court system.⁴³

The juvenile court evolved during the twentieth century, especially after the specialized courts were required to assume a more formal approach to comply with procedural due process mandates in the 1960s and 1970s.⁴⁴ Yet, "the concept of informal personalized justice with significant judicial discretion in a specialized forum has remained remarkably intact in family court for over a hundred years."⁴⁵ Lack of formality was not the only criticism the juvenile courts received. Many were concerned that these courts had too much arbitrary power and that the judges were "trying to be 'all things to all men' instead of determining whether assistance to the family would be better found in a school, a hospital, a charity, or a church."⁴⁶ Yet, the judges justified their intervention, believing that the court was able to diminish or even eliminate the family's disruption.⁴⁷

Because the terms "dependency" and "delinquency" were broadly defined, they allowed poor children to be brought to court as a preventive measure.⁴⁸ The concept of *parens patriae*, the authority of the parental state, proved to be a cultural and legal framework for regulating both the dependency and the delinquency issues.⁴⁹ It established the foundation for

⁴⁰ See *id.* at 18–19.

⁴¹ *Id.*

⁴² See *id.* at 23–24; see also Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 695 (1991).

⁴³ See SPINAK, *supra* note 39, at 22.

⁴⁴ See Aleksandra Chauhan, *Rethinking Youth Release: An Analysis of the South Carolina Board of Juvenile Parole in the Context of the Evolving Landscape of Reforms of Juvenile Release Authorities*, 75 S.C. L. REV. 975, 984–85 (2024).

⁴⁵ SPINAK, *supra* note 39, at 24.

⁴⁶ Thomas D. Eliot, *The Trend of the Juvenile Court*, 52 ANNALS AM. ACAD. POL. & SOC. SCI. 149, 154 (1914).

⁴⁷ See SPINAK, *supra* note 39, at 25.

⁴⁸ See *id.* at 28–29.

⁴⁹ See GEOFF K. WARD, *THE BLACK CHILD-SAVERS: RACIAL DEMOCRACY AND JUVENILE JUSTICE* 25 (2012) (explaining that the doctrine of *parens patriae* originally served as a means of property regulation, enabling the Crown to manage the assets of landed orphans.) See

extensive judicial discretion aimed at promoting the “best interest of the child” rather than concentrating solely on guilt and innocence.⁵⁰ The founders believed that, if the courts had full control over young people’s lives, they could reform and save wayward children.⁵¹ It quickly became obvious that the court’s intervention was not equally applied to the poor and the rich.⁵² In fact, the intent of the court was not only to save families from destitution but to make them into “the progressive reformers’ understanding of Americans—that is to say, white Americans Most children of color at the time—African American, Native American, Mexican American, and Asian American—were not considered worthy of citizenship project even if they found themselves in the early court.”⁵³ Theodore Roosevelt described the juvenile justice system as “a manufactory of citizens.”⁵⁴ It was clear that it was organized to reproduce a white democracy⁵⁵ and that “the juvenile justice agenda of Americanization has [] been a long-standing ‘racial project’”⁵⁶

The progressive child savers were not only not interested in including Black children in their white democratic society, but they also simply “perpetuated existing racial stereotypes about blackness and delinquency and enforced societal notions of race and class stratification.”⁵⁷ Black girls were viewed as beyond redemption and Black mothers as ones who could not raise moral, well-behaved, and sexually restrained daughters.⁵⁸ The juvenile court embraced the historical stereotypes of Black girls as immoral,

generally JOHN R. SUTTON, STUBBORN CHILDREN: CONTROLLING DELINQUENCY IN THE UNITED STATES, 1640–1981 (Andrew Scull ed., 1988).

⁵⁰ See WARD, *supra* note 49, at 25, 32; see also Feld, *supra* note 42, at 691.

⁵¹ See MEDA CHESNEY-LIND & RANDALL G. SHELDEN, GIRLS, DELINQUENCY, AND JUVENILE JUSTICE 185–86 (4th ed. 2014); see also Eduardo R. Ferrer, *Razing and Rebuilding Delinquency Courts: Demolishing the Flawed Philosophical Foundation of Parens Patriae*, 54 LOY. U. CHI. L.J. 885, 889–91 (2023).

⁵² See SPINAK, *supra* note 39, at 26–28 (“According to statistics, many child abuse cases come from within families well-placed financially and of repute. In considering help to such families, reporting to the police[] and taking court actions right away may not be appropriate.”); see also Monard G. Paulsen, *Juvenile Courts, Family Courts, and the Poor Man*, 54 CALIF. L. REV. 694, 698 (1966).

⁵³ SPINAK, *supra* note 39, at 27; see also WARD, *supra* note 49, at 3 (“White adults controlled juvenile justice systems, and those systems were typically reserved for white youths, denying nonwhite youth and adults equal recognition, opportunity, and influence.”).

⁵⁴ WARD, *supra* note 49, at 3.

⁵⁵ See *id.* at 33 (citing David S. Tanenhaus, a legal historian, stating that “American juvenile justice was from its earliest days imagined and organized as a project in ‘Americanization.’”).

⁵⁶ See *id.*

⁵⁷ Cheryl Nelson Butler, *Blackness as Delinquency*, 90 WASH. U. L. REV. 1335, 1340 (2013).

⁵⁸ *Id.* at 1335, 1388–89.

sexually promiscuous, and sexually available.⁵⁹ The Progressive-era courts were supposed to protect the “sexual chastity and domesticity traditionally associated with girlhood.”⁶⁰ Yet, while the white girls who were found guilty of “morality offenses” were afforded the protection of being considered a victim, Black girls were considered deviant offenders and were disproportionately represented in female reformatories.⁶¹ In reform schools, Black girls were subject to punitive, rather than rehabilitative, practices;⁶² they were involuntarily sterilized and experienced physical and sexual abuse by staff and guards who saw them as promiscuous.⁶³

It also became evident that the court’s therapeutic mantle (being able to treat social ills) served as a concealment of “the state’s failure to address the inequities suffered by most of the families finding themselves at the courtroom door.”⁶⁴ Moreover, the approach was highly coercive and thus compromised the therapeutic relationship between the family and the judge.⁶⁵ As emphasized by Spinak, “[g]ood intentions were insufficient justifications for court intervention, if, after six decades of adjudicating youth matters most courts were ‘not equipped to diagnose their problems, prescribe remedies suited to the individual needs, or provide the treatment necessary to help them.’”⁶⁶ There was hardly any improvement in the children’s behavior after they were removed from homes.⁶⁷

⁵⁹ Lisa Rosenthal & Marci Lobel, *Stereotypes of Black American Women Related to Sexuality and Motherhood*, 40 PSYCH. WOMEN Q. 414, 419 (2016). Those hyper-sexualized images of a Black women have a long history and are connected to the sexualized exploitation of Black women during slavery. Henning says, “Jezebel’ have been created by white men for years in order to justify their abuse and oppression of Black women and girls.” KRISTIN HENNING, *THE RAGE OF INNOCENCE: HOW AMERICA CRIMINALIZES BLACK YOUTH* 100 (2021); see also PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 5 (2009) (“From the mummies, jezebels, and breeder women of slavery to the smiling Aunt Jemimas on pancake mix boxes, ubiquitous Black prostitutes, and ever-present welfare mothers of contemporary popular culture, negative stereotypes applied to African-American women have been fundamental to Black women’s oppression.”).

⁶⁰ Ocen, *supra* note 36, at 1612 (citing Tera Agyepong, *Aberrant Sexualities and Racialized Masculinization: Race, Gender and the Criminalization of African American Girls at the Illinois Training School for Girls at Geneva, 1893–1945*, 25 GENDER & HIST. 270, 273 (2013)).

⁶¹ *Id.*

⁶² *Id.* at 1613.

⁶³ Butler, *supra* note 57, at 1386–87.

⁶⁴ SPINAK, *supra* note 39, at 36.

⁶⁵ *Id.*

⁶⁶ *Id.* at 95. See Orman W. Ketcham, *The Unfulfilled Promise of the American Juvenile Court*, 7 CRIME & DELINQ. 97, 100–01 (1961).

⁶⁷ SPINAK, *supra* note 39, at 95.

A. Delinquency Courts

By the 1960s, states started to create rules to differentiate between dependency and delinquency courts.⁶⁸ Yet, “despite those clearer classifications, children were still being taken from their families because of poverty, the inability to access services, and the belief that it was in their ‘best interests’ because of a parent’s lifestyle.”⁶⁹ The failures of the original juvenile court—lengthy incarceration, harsh punishment, inadequate education, forced labor—became more and more apparent.⁷⁰ The 1960s also introduced the concept of due process to family courts. The Supreme Court in *Kent v. United States*, and again in *In re Gault*, decided that juvenile court was the “worst of both worlds,” providing neither the individualized rehabilitation promised to youth, nor the procedural rights afforded to adults.⁷¹

In the 1970s,⁷² liberals, critical of the perceived inefficacy of rehabilitation, were not able to present coherent alternatives to tough-on-crime proposals, and, in the end, they joined the law-and-order movement to avoid being labeled as soft on crime.⁷³ The politicization of crime policies in 1980s and 1990s led to a push towards more punitive measures in the juvenile legal system.⁷⁴ Also, since conservative politicians shaped a law-

⁶⁸ *Id.*

⁶⁹ *Id.* at 96.

⁷⁰ *Id.* at 107.

⁷¹ *In re Gault*, 387 U.S. 1, 18 n.23 (1967) (quoting *Kent v. United States*, 383 U.S. 541, 556 (1966)); see also *Schall v. Martin*, 467 U.S. 253, 263 (1984) (discussing the need for due process in the characteristically informal juvenile court); *In re Winship*, 397 U.S. 358, 365–66 (1970). As Henning notices, “The proponents of due process complained that the rhetoric of rehabilitation was a mask for punishment imposed without necessary procedural safeguards.” Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 391 (2013).

⁷² BARRY C. FELD, *THE EVOLUTION OF THE JUVENILE COURT* 106 (2015). Deserts-based sentences concentrate on an offender’s prior conduct rather than practical factors such as rehabilitation, deterrence, or confinement. In contrast, determinate sentences apply penalties that look back, considering the nature of the offense, the level of culpability, or the individual’s criminal history.

⁷³ *Id.*

⁷⁴ The new generation of reformers went beyond rejecting the paternalistic characterization of youth offenders. Some, like John DiLulio, seemed to view youth involved in crime as more culpable and dangerous than adult criminals. DiLulio, a University of Pennsylvania criminologist, predicted in 1995 that the new century would bring a juvenile crime wave far worse than the 1990s. John DiLulio, *The Coming of the Super-Predators*, WASH. EXAMINER 23 (Nov. 27, 1995), <https://www.washingtonexaminer.com/magazine/1558817/the-coming-of-the-super-predators/>. DiLulio later expressed regret for the hyperbole and acknowledged that the prediction had not come to pass. See Elizabeth Becker, *As Ex-Theorist on Young ‘Superpredators,’ Bush Aide Has Regrets*, N.Y. TIMES, A19 (Feb. 9, 2001), <https://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html>.

and-order message, they implicitly attributed rising crime rates to Black youth.⁷⁵ Youth incarceration rates rose,⁷⁶ and so did the rates of disproportional representation of minority youth in the juvenile legal system.⁷⁷ Ian Haney López describes this tactic as strategic racism—“purposeful efforts to use racial animosity as leverage to gain political power.”⁷⁸ Despite long-term declines in youth incarceration since the 1990s,⁷⁹ Black youth remained vastly more likely to be incarcerated than their white peers.⁸⁰

B. Dependency Courts

After seeing that the juvenile court was incapable of providing aid effectively to families in need, the federal Children’s Bureau began to advocate for states and counties to create child welfare agencies capable of providing various services for families in need.⁸¹ Yet, the development of

⁷⁵ FELD, *supra* note 72, at 89.

⁷⁶ Youth confinement rates peaked in 1994–95 (381 youth per 100,000 young people ages ten to majority). See *Youth Incarceration in the United*, ANNIE E. CASEY FOUND. (Dec. 14, 2021), <https://www.aecf.org/resources/youth-incarceration-in-the-united-states>.

⁷⁷ *Id.* For a thorough examination of the history of politics of race and youth crime, see FELD, *supra* note 72; WARD, *supra* note 49; MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); Henning, *supra* note 71.

⁷⁸ See IAN HANEY LÓPEZ, *DOG WHISTLE POLITICS: HOW CODED RACIAL APPEALS HAVE REINVENTED RACISM AND WRECKED THE MIDDLE CLASS* 48(2014); see also FELD, *supra* note 72, at 89. For a thorough examination of politics, youth, race, and crime, see FELD, *supra* note 72.

⁷⁹ By 2020, the number of violent crime arrests involving youth reached a new low, seventy-five percent below the 1994 peak, and half the number ten years earlier. See Joshua Rovner, *Youth Justice by the Numbers*, THE SENTENCING PROJECT (Nov. 20, 2025), <https://www.sentencingproject.org/policy-brief/youth-justice-by-the-numbers/>.

⁸⁰ The 2019 Census of Juvenile in Residential Placement found that the post-adjudication placement rate for Black youth was 3.6 times the rate for non-Hispanic white youth. See Taylor Walker, *A Look At Recent Research Shows That Youth Incarceration Continues To Fail Kids And Their Communities, While Negatively Impacting Public Safety*, WITNESSLA (Dec. 13, 2022), <https://witnessla.com/a-look-at-recent-research-shows-that-youth-incarceration-continues-to-fail-kids-and-their-communities-while-negatively-impacting-public-safety/>. As of October 2019, youth facilities (including 1,510 detention centers, residential treatment centers, group homes, and youth prisons) held 36,479 youths, of which 41 percent were Black despite comprising only 15 percent of all youth in the United States. See *Easy Access to Juvenile Populations*, EZAPOPOP (July 31, 2024), <https://www.ojjdp.gov/ojstatbb/ezapop/>. Youth of color are also incarcerated disproportionately at the correctional phase of the juvenile court process after being found guilty of an offense, and research finds that the disparities in correctional confinement are due primarily to the cumulative impact of large disparities in early stages of justice system involvement like arrest, formal processing in court, and detention. See Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, THE SENTENCING PROJECT (Mar. 1, 2023), <https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/#executive-summary>.

⁸¹ SPINAK, *supra* note 39, at 164.

public welfare system was complicated by the history of oppressive racism toward Black mothers and children.⁸² States were able to create their own “suitability” standards for families applying for federal aid.⁸³ The policies arbitrarily denied benefits to Black families based on perceptions of their homes as immoral.⁸⁴ This included situations where social workers identified men other than biological fathers as caring for the recipients’ children, social workers suspected a man was living in the home, and/or the mother had children born out of wedlock.⁸⁵ As pointed out by Spinak, “relying on local white norms and prejudices, Black homes—particularly throughout the South—were considered immoral for having living arrangement[s] that did not meet white middle-class standards.”⁸⁶ Even though the federal law was modified to include a precise definition of suitability, the removal of Black children from homes continued.⁸⁷ The system that used to ignore Black children was transformed into one that was taking them in huge numbers.⁸⁸ What’s even more problematic is that, because there were no federal rules governing foster care time limits and no financial incentives to return children home, thousands of children remained in foster care.⁸⁹

Despite federal interventions against the arbitrary state home suitability policies, like the Flemming Rule,⁹⁰ this incomprehensible trend of

⁸² *Id.* at 165.

⁸³ *Id.*

⁸⁴ Claudia Lawrence-Webb, *African American Children in the Modern Child Welfare System: A Legacy of the Flemming Rule*, 76 CHILD WELFARE LEAGUE OF AM. 9, 11 (1997).

⁸⁵ *Id.*

⁸⁶ SPINAK, *supra* note 39, at 165; *see also* Butler, *supra* note 57, at 1393 (stating the stereotype of the degenerate Black neighborhood branded Black communities as inherently degenerate and breeders of delinquent children).

⁸⁷ SPINAK, *supra* note 39, at 165–66.

⁸⁸ *Id.* at 166; *see also* RACIAL DISPROPORTIONALITY AND DISPARITIES IN THE CHILD WELFARE SYSTEM 3 (Alan J. Dettlaff ed., 2021).

⁸⁹ SPINAK, *supra* note 39, at 167 (“One-fifth of these children were away from their parents for longer than six years; between 30–40 percent of children who entered foster care never returned home to their parents”).

⁹⁰ Lawrence-Webb, *supra* note 83, at 12 (“The Flemming Rule declared that if a state believed a particular home was ‘unsuitable,’ that state had to (1) provide due process protections for the family, and (2) provide service interventions to families that were deemed to be ‘unsuitable.’”); *see also id.* at 20 (“The intent of the Flemming Rule was to ensure that children had their basic needs met along with their families and received equal services to rectify problems in order to safeguard them from neglect and to protect them. A major unexpected detrimental outcome arose from implementation of the Flemming Rule, however, because the services it mandated were often culturally insensitive. The workers serving African American families were often untrained Caucasian eligibility workers from lower working-class families who held entrenched negative racial stereotypes of African American clients and lacked professional social work education or skills.”)

separating families of color continues to this day.⁹¹ Black, Indigenous, and Latinx children are separated from their families at disproportionately higher rates than white children.⁹² Most of these families are accused not of abuse but of neglect, “which is inextricably linked to poverty.”⁹³ The overrepresentation of families of color among poor families is due to systemic conditions that have prevailed for generations.⁹⁴ Several scholars agree that the resources should be invested in “fortifying communities and reducing familial stress to prevent child maltreatment;” yet, the United States chose to build “a foster care infrastructure that spends billions on removals and placements.”⁹⁵ As Polikoff and Spinak expressed in their foreword to a symposium on child welfare in 2021:

The current family regulation system is predicated on seeing the individual families who come within its grip as presenting the problems to be addressed. It purports to address those problems through surveillance, intervention in family life, deep reliance on removing children, and providing services to families that rarely support their complex needs. This approach fails to recognize or embrace the strengths of families and communities. The family regulation system has become an ineffective and harmful substitute for the more fundamental need to invest in families, communities, and tribes in order to ensure adequate housing, income, child care, health and mental health services, and educational opportunities for all families.⁹⁶

As stated by Amelia Franck Meyer, “We now know the current system of family separation was built on a set of false assumptions—that

⁹¹ See generally Tanya Asim Cooper, *Racial Justice*, in CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND AGENCIES IN NEGLECT, ABUSE, AND DEPENDENCY CASES 91 (Josh Gupta-Kagan et al. eds., 4th ed. 2022) (explaining legal frameworks and research on racial injustices in the child welfare system).

⁹² See Charles Puzanchera et al., *Disproportionality Rates for Children of Color in Foster Care Dashboard (2010-2021)*, NAT’L CTR. FOR JUV. JUST. (2023), https://www.ncjj.org/AFCARS/Disproportionality_Dashboard.asp?selDisplay=2; see generally DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE (2002) (providing a systematic overview of the subject).

⁹³ Bryan Samuels, *Family and Child Well-Being: An Urgent Call to Action*, 21 CHILD BUREAU EXPRESS (Aug./Sept. 2020), <https://web.archive.org/web/20200927001554/https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5602.31b92c150517620efe54bcb39>.

⁹⁴ *Id.*

⁹⁵ *Id.*; see also Darcey H. Merritt, *Lived Experiences of Racism Among Child Welfare-Involved Parents*, 13 RACE & SOC. PROBS. 63, 64 (2021); Vivek S. Sankaran, *Our Moment of Obligation: Replacing Foster Care with a Family Compassion System*, 21 CHILD BUREAU EXPRESS (Aug./Sept. 2020), <https://web.archive.org/web/20200927005906/https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5599>. See generally Nancy D. Polikoff & Jane M. Spinak, *Foreword: Strengthened Bonds: Abolishing the Child Welfare System and Re-Envisioning Child Well Being*, 11 COLUM. J. RACE & L. 427 (2021).

⁹⁶ Polikoff & Spinak, *supra* note 95, at 433.

‘rescuing’ Black, Brown, indigenous, or poor White children from their families and placing them with Whiter or richer families provides them a ‘better’ life—and has not, by any measure, produced the desired outcomes.”⁹⁷

II. SEX TRAFFICKING OF YOUTH

A. Definitions

According to the Trafficking Victims Protection Act of 2000 (“TVPA”) and its subsequent reauthorizations, “severe forms of trafficking in persons” include “(A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or (B) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.”⁹⁸ “Sex trafficking” is then defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”⁹⁹ Commercial sex is defined as “any sex act on account of which anything of value is given to or received by any person.”¹⁰⁰ The definition of “sex trafficking” emphasizes that when a victim is under eighteen years of age, neither force, fraud, nor coercion is necessary to prove victimization.¹⁰¹

Youth involvement in sex trade has many names. It has been called child sex work, child prostitution, teen prostitution, juvenile prostitution, domestic minor sex trafficking, and CSEC.¹⁰² This language reflects the changing political climate and the societal attitude towards the topic.¹⁰³

⁹⁷ Amelia Franck Meyer, *Building a New Way, Together*, 21 CHILD BUREAU EXPRESS (Aug./Sept. 2020), <https://web.archive.org/web/20200927001937/https://cbexpress.acf.hhs.gov/index.cfm?event=website.viewArticles&issueid=218§ionid=2&articleid=5603>; see A.B.A. *Resol. 606—Race and Child Welfare* (2022), A.B.A. POLICIES, https://www.americanbar.org/groups/public_interest/child_law/resources/attorneys/ (last visited Dec. 6, 2025) (delineating the history of laws facilitating the surveillance, separation of Black children and parents, and underinvestment in Black families).

⁹⁸ 22 U.S.C. § 7102(11)(A)–(B).

⁹⁹ 22 U.S.C. § 7102(12).

¹⁰⁰ 22 U.S.C. § 7102(4).

¹⁰¹ 22 U.S.C. § 7102(4), (11)–(12).

¹⁰² CARRIE N. BAKER, *FIGHTING THE US YOUTH SEX TRADE: GENDER, RACE, AND POLITICS* 10 (2018).

¹⁰³ See generally *REGULATING SEX: THE POLITICS OF INTIMACY AND IDENTITY* (ELIZABETH BERNSTEIN & LAURIE SCHAFFNER eds., 2005).

In this Article, I will use the term CSEC as an umbrella term describing a “range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person.”¹⁰⁴ Survival sex (children engaging in sex acts in exchange for money, food, shelter, or other basic necessities), often encountered in runaway or thrown away youth (children made to leave the home),¹⁰⁵ is not explicitly included in this definition; yet inclusion of this activity is implied. For the purposes of this Article, survival sex is considered a form of CSEC.

B. Early Prostitution Law

The Alien Prostitution Importation Act of 1875 was the first federal law forbidding international prostitution traffic.¹⁰⁶ Three decades later, Congress passed the Mann Act of 1910, also called the White Slave Traffic Act,¹⁰⁷ which was the first piece of legislation aimed at protecting women and girls from domestic trafficking.¹⁰⁸ The legislators “used the words ‘white slavery’ to promote their vision of women held in bondage against their will, of mysterious drugging and abductions of helpless young girls”¹⁰⁹ The narrative implied that the young white women were “held against their will by foreign men, particularly Jews and men from southern Europe, who were not considered white at that time, and men from Asia.”¹¹⁰ As pointed out by Ryan Shields and Elizabeth Letourneau, “[s]ome legal scholars have argued that the development of the Mann Act was founded in race-based fears of sexual exploitation of white women

¹⁰⁴ CHILDREN’S ADVOC. CTRS. OF WASH., *supra* note 17. My focus in this article is on CSEC within the United States, not on an international scale. While these phenomena are related, there are different legal and social approaches to them.

¹⁰⁵ Jody M. Greene et al., *Prevalence and Correlates of Survival Sex Among Runaway and Homeless Youth*, 89 AM. J. PUB. HEALTH 1406, 1406 (1999).

¹⁰⁶ 8 U.S.C. § 1328; *see also* 18 Stat. 477 (1875).

¹⁰⁷ 18 U.S.C. §§ 2421–2424.

¹⁰⁸ Michael Conant, *Federalism, the Mann Act, and the Imperative to Decriminalize Prostitution*, 5 CORNELL J.L. & PUB. POL’Y 99, 99 (1996).

¹⁰⁹ Marlene D. Beckman, Notes, *The White Slave Traffic Act: The Historical Impact of a Criminal Law Policy on Women*, 72 GEO. L.J. 1111, 1111 (1984).

¹¹⁰ BAKER, *supra* note 102, at 20 (“The cover art of the 1911 book, *Fighting the Traffic in Young Girls* by Ernest A. Bell, for example, portrays a glowing white girl behind bars with her hands prayerfully folded in front of her looking imploringly skyward with the caption, ‘My God! If Only I Could Get Out of Here,’ while a shady figure of a man lurks in the background, rubbing his hands together in a gesture of avarice, or perhaps lust This image is surprisingly similar to images used in contemporary anti-trafficking campaigns.”).

and girls, to the exclusion of women and girls of color.”¹¹¹ Some sociologists argued that white slavery narratives “performed the ideological work necessary for gender and racial formation . . . [t]hey clarified the boundaries of racial categories and allowed native-born whites to speak of a collective ‘us’ as opposed to a ‘them.’”¹¹² The enforcement of the Mann Act was also seen as a racialized process.¹¹³ “While white women and children were conceptualized as victims, women of color were charged and prosecuted as prostitutes.”¹¹⁴

In the early 1920s, the “incorrigible girl” statutes became popular. The white reformers were pushing for laws to protect girls from themselves by authorizing the detention of girls “in danger of becoming morally depraved.”¹¹⁵ These laws were intended to “redirect the illicit impulses of the sexually nonconforming female delinquent into more normative channels.”¹¹⁶ As emphasized by Carrie Baker, “these laws were targeted in particular at immigrant and working class adolescent girls living in tenement districts, and were a form of addressing the potential ‘moral degradation’ of overcrowded and impoverished homes, morally suspect employment environments, and the ‘alluring world of commercial amusement.’”¹¹⁷ The state was regulating the sexual conduct of the “incorrigible girls” by placing them in juvenile reformatories “where they could be trained to become good wives and mothers.”¹¹⁸ Historian Mary Odem argues that “the extensive system of courts, special police, detention centers, and reformatories established by purity reformers continued to monitor and regulate the sexuality of young women and girls throughout most of the twentieth

¹¹¹ Ryan T. Shields & Elizabeth J. Letourneau, *Commercial Sexual Exploitation of Children and the Emergence of Safe Harbor Legislation: Implications for Policy and Practice*, 17 CURRENT PSYCHIATRY REP. 3 (Feb. 6, 2015), <https://link.springer.com/article/10.1007/s11920-015-0553-5>.

¹¹² BRIAN DONOVAN, WHITE SLAVE CRUSADES: RACE, GENDER, AND ANTI-VICE ACTIVISM 1887–1917, at 129 (2006).

¹¹³ See Shields & Letourneau, *supra* note 111, at 3.

¹¹⁴ *Id.*

¹¹⁵ Cheryl D. Hicks, “*In Danger of Becoming Morally Depraved*”: *Single Black Women, Working-Class Black Families, and New York State’s Wayward Minor Laws, 1917–1928*, 151 UNIV. OF PA. L. REV. 2077, 2082–88 (2003).

¹¹⁶ J. SHOSHANNA EHRLICH, REGULATING DESIRE: FROM THE VIRTUOUS MAIDEN TO THE PURITY PRINCESS 62 (2014) (cited in BAKER, *supra* note 102, at 22); see also MARY E. ODEM, DELINQUENT DAUGHTERS: PROTECTING AND POLICING ADOLESCENT FEMALE SEXUALITY IN THE UNITED STATES, 1885–1920, 95–127 (1995).

¹¹⁷ BAKER, *supra* note 102, at 22.

¹¹⁸ *Id.* Baker points out that “[t]he number of reformatories for delinquent girls and young women expanded in the early twentieth century, rising to fifty-seven across the country by 1924.”

century.”¹¹⁹ That century revealed also a gender bias in the juvenile legal system. The sexual double standard was seen in the length of detention that girls received for charges like runaway or truancy.¹²⁰ Girls were much more likely to be detained and for much longer periods of time than boys.¹²¹ John MacDonald and Meda Chesney-Lind point out that “courts have had particular difficulty with persistent female defiance.”¹²²

The country saw a spike in the number of youth running away from homes in the late 1960s and early 1970s.¹²³ At the same time, many scholars and leaders observed that detaining runaway, truant, and incorrigible youth (so-called status offenders) was not only not helping, but also was causing more harm to the young people.¹²⁴ Congress passed the Runaway and Homeless Youth Act of 1974, which provided funding for the development of shelters for runaway youth, and created the Office of Juvenile Justice and Delinquency Prevention Act (“OJJDP”), which supported the diversion of status offenders from the juvenile justice system and provided funding to states to assist in creating those diversion programs.¹²⁵ At the same time, changing gender roles, challenges to racial hierarchies in society, and increased visibility of the commercial sex trade made many stakeholders eager to protect youth from what they deemed as growing sexual threats.¹²⁶

A few more federal laws were adopted during the 1970s and 80s which targeted juvenile prostitution and runaway or homeless youth (a population at risk for sexual exploitation): the Protection of Children Against Sexual Exploitation Act of 1977, which prohibited the trafficking of boys and thus broadened the scope of the Mann Act; the Child Abuse Prevention and Treatment Act of 1977, which was the first federal effort to address the abuse and neglect of children, and its later amendments, which expanded the definition of child abuse and neglect to include sexual exploitation of children; and the Missing Children Act of 1982, which created a clearinghouse of information collected on missing or runaway youth.¹²⁷ Yet, these efforts to combat exploitation did not focus on decriminalization of juvenile prostitution, even in cases where juvenile “prostitutes” were

¹¹⁹ ODEM, *supra* note 115, at 189.

¹²⁰ BAKER, *supra* note 102, at 22.

¹²¹ *Id.*

¹²² John M. MacDonald & Meda Chesney-Lind, *Gender Bias and Juvenile Justice Revisited: A Multilayer Analysis*, 47.2 CRIME & DELINQ. 173 (2001).

¹²³ BAKER, *supra* note 102, at 27.

¹²⁴ *Id.* at 30.

¹²⁵ *Id.* at 31.

¹²⁶ *Id.* at 36.

¹²⁷ Shields & Letourneau, *supra* note 111, at 3.

considered victims.¹²⁸ For young people in need of social services, juvenile or adult criminal justice continued to be the entry point.¹²⁹

In 1996, the Declaration and Agenda for Action for the First World Congress Against the Commercial Sexual Exploitation of Children created a widespread, formal definition of CSEC.¹³⁰ It provided a consensus that

[e]veryone involved in working with CSEC should use language that qualifies U.S. citizen CSEC victims as “real” victims (e.g., as sex trafficking victims and not as prostitutes) so that the criminal justice process will not make these victims feel criminalized and so that they will be more willing to participate in prosecutions.¹³¹

Soon after, Congress passed the Victims of Trafficking and Violence Protection Act of 2000 (“TVPA”), “the first comprehensive federal law to address trafficking in persons” in the United States.¹³² This Act increased fines and sentences for individuals engaged in CSE, and it also called for the decriminalization of prostitution for persons under the age of eighteen.¹³³ By the end of 2017, thirty-five states had enacted safe harbor statutes to remove punitive sanctions for CSE victims.¹³⁴ According to an OJJDP study, “fifteen states still allow the arrest and prosecution of minors who are victims of commercial sexual exploitation and sex trafficking.”¹³⁵

President Barak Obama highlighted concerns about CSEC during his address to the 2012 Clinton Global Initiative, showing that CSEC had become a prominent social issue.¹³⁶ After TVPA, the second decisive step in reframing the legal status of prostituted and trafficked minors took place in 2013 with the release of the Institute of Medicine (“IOM”) and National Research Council (“NRC”) report on the commercial sexual exploitation

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ William Adams et al., *Effects of Federal Legislation on the Commercial Sexual Exploitation of Children*, OJJDP JUV. JUST. BULL. (July 2010), <https://www.ojp.gov/pdffiles1/ojjdp/228631.pdf>.

¹³¹ *Id.* at 8.

¹³² *Federal Law*, NAT’L HUMAN TRAFFICKING HOTLINE, <https://humantraffickinghotline.org/en/human-trafficking/federal-law> (last visited on Dec. 10, 2025).

¹³³ See *supra* notes 61–65 and accompanying text.

¹³⁴ *Research Central: OJJDP Study Examines Safe Harbor Legislation*, OJJDP NEWS @ A GLANCE (Sept./Oct. 2019), https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/newsletter/253287/sf_5.html.

¹³⁵ *Id.*

¹³⁶ *President Obama’s Speech on Human Trafficking*, ABA (Jan. 1, 2013), https://www.americanbar.org/groups/judicial/publications/judges_journal/2013/winter/president_obamas_speech_on_human_trafficking/.

and sex trafficking of children in the United States.¹³⁷ The report called for “a paradigm shift from treating victims and survivors of commercial sexual exploitation and sex trafficking of minors as criminals to understanding and recognizing commercial sexual exploitation and sex trafficking of minors as forms of child abuse.”¹³⁸ The recommendations emphasized strengthening the law’s response to CSEC and developing legislation to “redirect the young victims away from formal processing in the juvenile justice system to state agencies that could provide supportive services.”¹³⁹ The recommendation stated that

[a]ll national, state, local, tribal, and territorial jurisdictions should develop laws and policies that redirect young victims and survivors of commercial sexual exploitation and sex trafficking from arrest and prosecution as criminals or adjudication as delinquents to systems, agencies, and services that are equipped to meet their needs. Such laws should apply to all children and adolescents under age 18.¹⁴⁰

This legislation, referred to as a “Safe Harbor law,” was to be implemented across the country to give credence to the fact that “minors involved in prostitution were not in violation of any rule or regulation but rather victims of abuse—an approach that is consistent with child protection principles and goals of federal and state laws regulating treatment of minors.”¹⁴¹ As Shields and Letourneau state, “It is the inclusion of the language of decriminalization in contemporary policy that distinguishes Safe Harbor laws from juvenile prostitution laws of the past.”¹⁴²

C. *The Scope of the Problem*

There is a plethora of global and national estimates; yet the total number of trafficking victims is unknown.¹⁴³ In a national study conducted

¹³⁷ BRANDN GREEN ET AL., SAFE HARBOR LAWS: CHANGING THE LEGAL RESPONSE TO MINORS INVOLVED IN COMMERCIAL SEX: PHASE 3. THE QUALITATIVE ANALYSIS 3 (Dec. 2018), <https://www.ojp.gov/pdffiles1/ojdp/grants/253244.pdf>.

¹³⁸ ELLEN WRIGHT CLAYTON ET AL., CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES 373 (2013).

¹³⁹ GREEN, *supra* note 137, at 4.

¹⁴⁰ CLAYTON ET AL., *supra* note 138, at 8.

¹⁴¹ GREEN, *supra* note 137, at 4 (citing CLAYTON ET AL., *supra* note 138, at 8).

¹⁴² Shields & Letourneau, *supra* note 111, at 3.

¹⁴³ V. Jordan Greenbaum, *Commercial Sexual Exploitation and Sex Trafficking of Children in the United States*, 44 CURRENT PROBS. PEDIATRIC & ADOLESCENT HEALTH CARE 245, 246 (2014); see also Elizabeth Barnert et al., *Commercial Sexual Exploitation and Sex Trafficking of Children and Adolescents: A Narrative Review*, 17 ACAD. PEDIATRICS 825 (2017); Melissa

in 2016 with grant funding from the U.S. Department of Justice, researchers admitted that the data sources they worked with had several limitations in their quality and precision.¹⁴⁴ Therefore, it was not feasible to create a precise number that would reflect the national estimate of trafficking victims.¹⁴⁵ The research team produced “a conservative (i.e., intentionally wide) range for a national population estimate, varying assumptions to produce a lower and upper limit.”¹⁴⁶ They estimated that between 4,457 and 20,994 youth are victims of CSEC nationwide.¹⁴⁷

Jordan Greenbaum lists several obstacles to obtaining accurate data on incidence and prevalence of CSEC: (1) no common database tracking such information; (2) agencies and researchers using their own databases, which leads to gaps in identification, double-counting, and an inability to compare study populations; (3) variations in defining key terms (such as CSEC and trafficking); (4) differences in the sampling methods used by various researchers; (5) lack of resources to undertake sophisticated, comprehensive prevalence studies; and (6) difficulty in identifying victims.¹⁴⁸ Others also add that researching human trafficking is challenging because of “the geographic and demographic diversity of trafficked people, and the inherently hidden nature of the population of interest.”¹⁴⁹ “The combination of traffickers’ restrictions on trafficked people’s movements, the stigma of self-identification and related criminalization, and a shortage of trained frontline responders create[] difficulties in risk identification and monitoring of human trafficking.”¹⁵⁰

Considering the underreported nature of youth involvement in CSEC, official data, which presents merely a conservative estimate of the problem, indicate that the scope of those impacted by sexual exploitation is not trivial.¹⁵¹ Yet, it is evident that “children of color make up a disproportionate number of sexually exploited children in the United States.”¹⁵²

Moynihan et al., *A Systematic Review of the State of the Literature on Sexually Exploited Boys Internationally*, 76 CHILD ABUSE & NEGLECT 440, 440 (2018).

¹⁴⁴ Rachel Swaner et al., YOUTH INVOLVEMENT IN THE SEX TRADE: A NATIONAL STUDY vii (2016), <https://www.mentoring.org/wp-content/uploads/2020/03/NCJRS-Average-age-almost-16-years-old-249952.pdf>.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at xiii.

¹⁴⁸ Greenbaum, *supra* note 143, at 246.

¹⁴⁹ Michael Gallo et al. *Community Health Centers and Sentinel Surveillance of Human Trafficking in the United States*, 137 PUB. HEALTH REFS. 23S, 23S (2022).

¹⁵⁰ *Id.*

¹⁵¹ Shields & Letourneau, *supra* note 111, at 2.

¹⁵² Cheryl Nelson Butler, *The Racial Roots of Human Trafficking*, 62 UCLA L. REV. 1464, 1482 (2015); *see also* Stephany Powell, *Sex Trafficking in the African American Community Is*

Within the United States, children and adolescents identified as victims of CSE are predominantly girls of color.¹⁵³ Out of all the participants of the twenty-one CSEC courts identified by Sarah Godoy et al., most of them were Black, with a large proportion being Latinx.¹⁵⁴ Further, research suggests that histories of CSE among cisgender, heterosexual boys, and individuals who identify as LGBTQ+ are underreported.¹⁵⁵

D. Risk Factors for Trafficking Children

“[T]here is no standard typology of victims of child trafficking.”¹⁵⁶ Some courts and agencies use assessment tools to identify risk factors that are associated with trafficking.¹⁵⁷ Yet, these correlations do not differentiate as to why some individuals with these factors are victimized and others are not.

Researchers suggest that there is no one clear pathway, but certain risk factors can be recognized as the ones that create situations that lead to involvement in the commercial sex industry.¹⁵⁸ Risk factors with the

a *Human Rights Violation*, NAT'L CTR. ON SEXUAL EXPLOITATION (Feb. 1, 2023) <https://endsexualexploitation.org/articles/human-trafficking-in-the-african-american-community-is-a-human-rights-violation/>.

¹⁵³ Monica Landers et al., *Exploring Relationships as Mediators of Treatment Outcomes Among Commercially Sexually Exploited Youth*, 100 CHILD ABUSE & NEGLECT 1, 4 (2020); see also Phillips, *supra* note 2 at 1645 n.11.

¹⁵⁴ Godoy et al., *supra* note 29, at 1347, 1352.

¹⁵⁵ See Heather Tillewein et al., *Silencing the Rainbow: Prevalence of LGBTQ+ Students Who Do Not Report Sexual Violence*, 20 INT'L J. ENV'T RSCH. & PUB. HEALTH 2020 (2023); see also Luis Caballero et al., *Man Up: How the Stigma of Masculinity Can Hurt Male Survivors*, RISE Blog, Texas Tech. University. Risk Intervention & Safety Education (Apr. 4, 2022), <https://www.depts.ttu.edu/rise/Blog/manup.php>.

¹⁵⁶ BRIAN J. ATKINSON & EMMA M. HETHERINGTON, CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND AGENCIES IN CHILD NEGLECT, ABUSE, AND DEPENDENCY CASES 558 (Josh Gupta-Kagan et al. eds., 4th ed. 2022).

¹⁵⁷ Liles et al., *supra* note 18, at 238–39; see also CATHERINE KAUFKA WALTERS ET AL., BUILDING A CHILD WELFARE RESPONSE TO CHILD TRAFFICKING HANDBOOK 39–40 (2011), for a list of child trafficking indicators. Such lists are often used by providers, and they provide guidance on how to identify possible evidence of child trafficking.

¹⁵⁸ See Dominique E. Roe-Sepowitz, *Juvenile Entry into Prostitution: The Role of Emotional Abuse*, 18 VIOLENCE AGAINST WOMEN 562, 563–64, 566–67 (2012); see also CHESNEY-LIND & SHELDON, *supra* note 51, at 165. Ijadi-Maghsoodi et al. provide a helpful ecological framework for contextualizing CSEC. They say that

[t]he ecological perspective acknowledges the distinct connection between the youth and the physical and sociocultural environment in which the youth interact. The contact between and the interdependence of these risk outcomes are inextricably tied to interactions between each level: individual risk factors, family

highest correlation to CSEC “have been identified at the individual, family, peer, neighborhood, and societal levels.”¹⁵⁹ These include family trauma, a history of child maltreatment (particularly sexual abuse), poor educational achievement, drug use and addictions, self-injurious disposition, and victimization.¹⁶⁰ A study conducted in 2019 suggested that running away from home, childhood emotional abuse, childhood sexual abuse, and rape are significantly associated with CSEC.¹⁶¹ As those researchers say,

[c]hildhood sexual abuse often acts as a risk factor and antecedent to running away, which then makes youth highly susceptible for commercial sexual exploitation. . . . Running away from home, which may be prompted by sexual abuse, remains a significant risk factor for early involvement in the commercial sex industry.¹⁶²

As pointed out by research on the social networks of runaway and homeless youth, having peers who trade sex or engage in survival sex often influences youths’ involvement in similar behaviors.¹⁶³ Additionally,

factors/dynamics, neighborhood/community living conditions, institutions and systems of care, social and legal policies.

Roya Ijadi-Maghsoodi et al., *Understanding and Responding to the Needs of Commercially Sexually Exploited Youth: Recommendations for the Mental Health Provider*, 25 CHILD AND ADOLESCENT PSYCHIATRIC CLINICS N. AM. 107, 110 (2016).

¹⁵⁹ CLAYTON ET AL., *supra* note 138, at 9.

¹⁶⁰ See Bernard Schissel & Kari Fedec, *The Selling of Innocence: The Gestalt of Danger in the Lives of Youth Prostitutes*, 41 CANADIAN J. CRIMINOLOGY 33, 35-50 (1999).

¹⁶¹ Lisa Fedina et al. *Risk Factors for Domestic Child Sex Trafficking in the United States*, 34 J. INTERPERSONAL VIOLENCE 2653, 2653, 2666-67 (2019) (citing K. R. Ahrens et al., *Association Between Childhood Sexual Abuse and Transactional Sex in Youth Aging out of Foster Care*, 36 CHILD ABUSE & NEGLECT 75, 75-80 (2012)). The authors emphasize that running away appears to be the strongest predictor for CSEC. “Runaway youth are susceptible to both engaging in survival sex to meet their needs and to being coerced or forced into the commercial sex industry by third parties (e.g., peers, family members, boyfriends/girlfriends).” *Id.* at 2667.

¹⁶² *Id.* Clarke and others say, “Childhood abuse appears to be the beginning of a negative chain of events leading into eventual involvement in prostitution. Dysfunctional family systems and poor social and educational experiences also appear to be important links in this chain.” Ross J. Clarke et al. *Age at Entry into Prostitution: Relationship to Drug Use, Race, Suicide, Education Level, Childhood Abuse, and Family Experiences*, 22 J. HUM. BEHAVIOR SOC. ENV’T 270, 272 (2012) (citing R. L. Dalla, *Et tū brutē? A Qualitative Analysis of Streetwalking Prostitutes’ Interpersonal Support Networks*, 22 JOURNAL OF FAM. ISSUES 1066, 1067-68 (2001)); see also RICHARD J. ESTES & NEIL ALAN WEINER, THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN THE U.S., CANADA AND MEXICO 2 (2001).

¹⁶³ Fedina et al., *supra* note 161, at 2666; see also Michael Gossop et al., *Sexual Behaviour and Its Relationship to Drug-Taking Among Prostitutes in South London*, 89 ADDICTION 961, 963-64 (1994).

having family members involved in sex work is greatly associated with CSEC.¹⁶⁴

Results from the 2019 study also show that racial and ethnic minority participants have more than twice the odds of being trafficked as minors compared with white non-Hispanics.¹⁶⁵ The majority of the study's sample was Black (60 percent), female (72.5 percent), and extremely impoverished with annual incomes less than \$10,000 (70 percent).¹⁶⁶ As pointed out by the authors, “[r]acial and ethnic differences in domestic child sex trafficking must be understood within the context of socioeconomic disadvantage as well; that is, social, educational, and economic disadvantage disproportionately affects racial and ethnic minority girls and women in the United States.”¹⁶⁷ Others agree that minorities experience higher hazard rates for entry into prostitution and at earlier ages.¹⁶⁸ That can be a reflection of less economic opportunities and other disadvantages associated with the lower socioeconomic status of minority groups.¹⁶⁹ Black and other minority women are also heavily represented among the homeless, or they reside in poverty-stricken areas in which street-level prostitution occurs.¹⁷⁰ “The poverty, joblessness, and inadequate housing that characterize[] . . . predominately Black and Latino neighborhoods undermine[] the stability of the[] families and communities.”¹⁷¹ With families in distress and scarce

¹⁶⁴ Fedina et al., *supra* note 161, at 2667. As the authors stress, further research is needed to better understand family-and peer-driven recruitment processes.

¹⁶⁵ *Id.* at 2668.

¹⁶⁶ *Id.* It is important to notice that one of the misconceptions is that CSEC is primarily a problem among girls, although the research shows that boys and girls experience similar rates of sexual exploitation. See generally French Nafekh, E., Ackerman-Brimberg, M., Walker Brown, K., Masciangelo, J., Earl, N. & Dickeson, L., *Understanding the Commercial Sexual Exploitation of Boys & Young Men: How Service Providers Can Break Down Biases & Barriers to Help Boys & Men Thrive*, NAT'L CTR. FOR YOUTH L. (2023), https://youthlaw.org/sites/default/files/attachments/2023-06/NCYL_Issue%20Briefs_Boys%20and%20Young%20Men%20CS E_v5.pdf; see also Moynihan et al., *supra* note 143, at 440.

¹⁶⁷ Fedina et al., *supra* note 161, at 2668 (citing L. A. Kramer & E. C. Berg, *A Survival Analysis of Timing of Entry into Prostitution: The Differential Impact of Race, Educational Level, and Childhood/Adolescent Risk Factors*, SOCIOLOGICAL INQUIRY 73, 511–528 (2003)); see also B. RICHIE, *COMPELLED TO CRIME: THE GENDER ENTRAPMENT OF BLACK BATTERED WOMEN* (1996). See generally Susan F. McClanahan et al., *Pathways into Prostitution Among Female Jail Detainees and Their Implications for Mental Health Services*, 50 PSYCHIATRIC SERV. 1606, 1607, 1611 (1999). Clarke and others found in their study that of all racial groups studied, Black females had the highest rates of entry into youth prostitution. Clarke et al., *supra* note 162, at 279, 284, 286.

¹⁶⁸ Lisa A. Kramer & Ellen C. Berg, *A Survival Analysis of Timing of Entry into Prostitution: The Differential Impact of Race, Educational Level, and Childhood/Adolescent Risk Factors*, 73 SOCIO. INQUIRY 511, 524 (2003).

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ Ocen, *supra* note 36, at 1591.

community resources, girls are often placed in the juvenile legal system or left to find their way on the street.¹⁷² Involvement in the welfare system also puts girls at risk for CSEC. The foster care system makes children vulnerable to sexual abuse and exposes them to trauma, which in turn makes them more susceptible to being targeted by pimps outside the home.¹⁷³

Researchers point out that the issue of adultification and racial bias plays a significant role in the reasons why minority youth are not only more at risk for CSEC, but also why they are often not afforded the protection of the system.¹⁷⁴ As stated by Brian J. Atkinson and Emma M. Hetherington, “As a result of systemic, individual, and implicit racial bias, Black children, and Black girls in particular, are more likely to be seen as willing participants in their exploitation and are thus less likely to be identified as victims or to receive therapeutic treatment.”¹⁷⁵ Studies on ideological constructs of children of color show that Black children are often viewed as less innocent and more adult.¹⁷⁶ Black girls are perceived as more mature

¹⁷² *Id.*

¹⁷³ *Id.*; see also LINDA A. SMITH ET AL., THE NATIONAL REPORT ON DOMESTIC MINOR SEX TRAFFICKING: AMERICA’S PROSTITUTED CHILDREN 4 (2009), https://sharedhope.org/wp-content/uploads/2012/09/SHI_National_Report_on_DMST_2009.pdf.

¹⁷⁴ As stated by Ocen:

[L]ike many other areas in the criminal justice system, the enforcement of policies regarding sexually exploited children is uneven and rife with racial disparities. Often the protective state and federal policies regarding child sex trafficking are invoked only after a child is deemed by a member of law enforcement to be a likely victim of sexual trafficking. Such discretionary designation enables racial bias—implicit or explicit—to shape who is viewed as a perpetrator and who is viewed as a victim. Studies have found that Black girls constitute a disproportionate number of juvenile arrests for prostitution, that they are more likely than their white counterparts to be adjudicated through the juvenile system, and that they are more likely to be detained in a locked facility even if identified as a victim of sexual trafficking. In sum, Black girls are often not viewed as children for purposes of protection under state and federal law.

Supra note 36, at 1591; see also REBECCA EPSTEIN ET AL. GIRLHOOD INTERRUPTED: THE ERASURE OF BLACK GIRLS’ CHILDHOOD (2017), <https://genderjusticeandopportunity.georgetown.edu/wp-content/uploads/2020/06/girlhood-interrupted.pdf>.

¹⁷⁵ ATKINSON & HETHERINGTON, *supra* note 156, at 560.

¹⁷⁶ The 2017 research from Georgetown Law’s Center on Poverty and Inequality found that adults view Black girls as less innocent and more like adults than white girls. The survey the researchers conducted showed that Black girls were viewed to behave older than their stated age, to be more knowledgeable about adult topics, like sex, and to be more likely to take on more adult roles and responsibilities than white girls of their age. EPSTEIN ET AL., *supra* note 174, at 8; see also Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. PERSONALITY & SOC. PSYCH. 526, 527 (2014); Elizabeth S. Scott & Laurence Steinberg, *Blaming Youth*, 81 TEX. L. REV. 799, 807–11 (2003). Ocen emphasizes that exclusion from notions of childhood and innocence are part of a historical genealogy of sexual exploitation of Black women and girls.

and, thus, as possessing more agency over their sexuality than their white counterparts.¹⁷⁷ “They are viewed as ‘street smart,’ less dependent on adults, and less vulnerable to adult manipulation or abuse.”¹⁷⁸ Those characteristics make it more likely that they will be treated as suspects by law enforcement and adjudicated as delinquents rather than protected as victims.¹⁷⁹

III. SAFE HARBOR LAWS

A. *Incrementalism of Safe Harbor Laws*

Safe Harbor laws are designed to protect youth from punitive sanctions and instead refer them to youth-serving agencies that can provide supportive services.¹⁸⁰ “The laws are based on the premise that these crimes should be understood as acts of abuse and violence against youth and that minors who are exploited commercially for sexual purposes should not be considered criminals, but rather victims and survivors.”¹⁸¹ As such, all Safe Harbor laws must redirect youth away from the legal system.¹⁸² Safe Harbor laws have used a variety of approaches.¹⁸³ A 2012 review of the various laws stated that generally Safe Harbor laws offered some combination of four functions: (1) decriminalizing prostitution for anyone under a specified age so they cannot be charged with a crime or adjudicated as a delinquent; (2) diverting prostituted minors from

Stereotypes of their sexual maturity and promiscuity were used to justify the exploitation of the reproductive capacities of Black women and girls as a means of maintaining the system of chattel slavery. In the post-Reconstruction era, prostitution offenses were used as a basis to control Black female sexuality and to reassert control over their labor under the auspices of the criminal justice system. Indeed, criminalization played a significant role in reinforcing stereotypes of sexual agency and deviance among Black women and girls. In the Jim Crow era, sexuality was cited as a basis to excuse the routine rape and abuse of Black females. In the contemporary era, the image of the lascivious and fecund Black teenager was used to promote draconian social welfare reform. These images persist in denying Black girls their childhood and innocence within a juvenile justice system grappling with how to handle sexually trafficked minors.

Ocen, *supra* note 36, at 1594, 1598–1600.

¹⁷⁷ Ocen, *supra* note 61, at 1593.

¹⁷⁸ *Id.*

¹⁷⁹ *See id.* at 1594.

¹⁸⁰ *See* GIES ET AL., *supra* note 23, at 6, 25.

¹⁸¹ *Research Central*, *supra* note 134.

¹⁸² GREEN ET AL., *supra* note 137, at 4.

¹⁸³ GIES ET AL., *supra* note 23, at 6.

delinquency proceedings into other forms of services or specialized programs; (3) providing specialized or regular services for prostituted minors; and (4) reclassifying minors as victims or sexually exploited children.¹⁸⁴

These basic elements of Safe Harbor laws are classified as “immunity, diversion, mandatory referral, or a combination of these elements.”¹⁸⁵ Immunity means that states can provide prostituted minors with immunity from arrest and prosecution.¹⁸⁶ Under these laws, it is a criminal offense for an adult to engage in sexual activity with a minor, as minors are legally deemed incapable of giving consent.¹⁸⁷ In cases involving minors engaged in prostitution, when the minor is a part of a diversionary program, they are initially charged but then redirected away from formal prosecution.¹⁸⁸ The youth still remains under the authority of the court, which retains the authority to mandate participation in treatment programs or place the youth in custody to prevent them from returning to unsafe environments such as the streets.¹⁸⁹ Typically, if the youth complies with the requirements of the diversion program, the prostitution charge is dismissed.¹⁹⁰ Under mandatory referral, prostituted youth are classified as children in need of services; yet, this approach does not involve the risk of formal prosecution.¹⁹¹ This hybrid approach “bridges immunity and diversion by removing the victim from the justice system and placing them in a youth-serving agency.”¹⁹²

Despite clear guidelines on what constitutes Safe Harbor laws, states continue to differ in both their approach on how to operationalize these functions, who is eligible to be considered for “safe harbor,” and who makes the decisions.¹⁹³ That leads to uncertainty about what constitutes a safe harbor state.¹⁹⁴ In fact, there is a discrepancy among studies regarding which states have implemented Safe Harbor laws.¹⁹⁵ As pointed out by Stephan Gies, in 2014, Polaris reported that twenty-seven states had

¹⁸⁴ Daniel Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL’Y BRIEF 67, 86 (2012).

¹⁸⁵ GREEN ET AL., *supra* note 137, at 4–5.

¹⁸⁶ *Id.* at 4.

¹⁸⁷ *See id.*

¹⁸⁸ *See id.*

¹⁸⁹ *See id.* at 4–5.

¹⁹⁰ *See id.* at 5.

¹⁹¹ *See id.*

¹⁹² *Id.*

¹⁹³ *See* GIES ET AL., *supra* note 23, at 6.

¹⁹⁴ *See id.* at 7 (authors suggest that at least some of the disparity in numbers is definitional).

¹⁹⁵ *See id.* at 8, 9 tbl.2.1.

enacted some form of Safe Harbor law.¹⁹⁶ In 2017, the National Conference of State Legislatures found that of the thirty-one states that had enacted Safe Harbor laws, two had immunity-only laws, eleven had diversion-only laws, and eighteen had both.¹⁹⁷ The same year, Shared Hope International found that fifteen states both (1) prohibited the criminalization of minors under 18 for prostitution offenses, and (2) provided a non-punitive avenue to specialized services through one or more points of entry.¹⁹⁸

B. *Criticism of the Victim Rhetoric of Safe Harbor Laws*

The states vary in their implementation specifics of Safe Harbor legislation, but they all agree that youth involved in prostitution are considered victims, not offenders.¹⁹⁹ There is a consensus of viewing the girls involved in CSE as emotionally and socially vulnerable, drawn into the commercial sex industry without the capacity to fully or legally consent to sexual activities.²⁰⁰ Consequently, even if a young person claims to have consented or seems to have gained benefits, whether monetary or otherwise, they are still regarded as victims under Safe Harbor legislation.²⁰¹ However, the conceptualization of youths involved in prostitution as victims has been criticized.²⁰²

First, research shows that not all minors are afforded “victim” status.²⁰³ Racial stereotypes often underlie the rhetoric of Safe Harbor laws,

¹⁹⁶ See *id.* at 7.

¹⁹⁷ See *id.*

¹⁹⁸ See *id.*

¹⁹⁹ See Shields & Letourneau, *supra* note 111, at 3.

²⁰⁰ See *id.*

²⁰¹ See *id.*

²⁰² Phillips argues that the legal interventions (i.e., Safe Harbor laws) have been put forth with certain victims in mind—women and children who are forced into the sex trade by exploiters. Advocates debate the prevalence of sex trafficking when compared to other forms of labor exploitation and whether an abolitionist or nonabolitionist approach to adult prostitution should frame how the “victim” label is ascribed and how interventions are developed and implemented. Phillips, *supra* note 2, at 1644; see also ALISON BASS, GETTING SCREWED: SEX WORKERS AND THE LAW (2015); JOE DOEZEMA, SEX SLAVES AND DISCOURSE MASTERS: THE CONSTRUCTION OF TRAFFICKING (2010); Wendi J. Adelson, *Child Prostitute or Victim of Trafficking?*, 6 U. ST. THOMAS L.J. 96, 116–17 (2008); NEGOTIATING SEX WORK: UNINTENDED CONSEQUENCES OF POLICY AND ACTIVISM (Carisa R. Showden & Samantha Majic eds., 2014).

²⁰³ Phillips, *supra* note 2, at 1646.

and the notion of victimhood is racially coded.²⁰⁴ The legacy of harmful stereotypes of Black women and girls complicates the implementation of Safe Harbor laws, as these biases can influence how their vulnerability and victimhood are perceived within the legal system.²⁰⁵ In fact, as Jasmine Phillips asserts, racial stereotypes make the label of a “victim” rebuttable when applied to Black girls.²⁰⁶ As discussed in Part II, Black femininity is defined in white supremacist society through stereotypes or “controlling images,” including “the jezebel” or “whore.”²⁰⁷ Images of the deviant, sexually aggressive Black female lie at the heart of Black women’s oppression, condoning sexual abuse while also constructing white womanhood as normal female sexuality.²⁰⁸ Baker concludes that “in arguing that youth are victims, not perpetrators of child prostitution, activists, either consciously or unconsciously, make a strategic decision to focus on white girls in order to reinforce their message of blamelessness and to avoid triggering the stereotypes of deviant African American sexuality that would weaken their argument.”²⁰⁹

Black youths continue to be stigmatized and profiled as criminals generally.²¹⁰ These biases undermine the ability of police and other stakeholders to properly recognize when Black youth have been trafficked.²¹¹ They adopt the view “that only a morally corrupt person would choose to be a prostitute”²¹² and are more likely to view youth involved in prostitution as offenders.²¹³ The phenomenon of “othering, or the marginalization

²⁰⁴ See *id.* at 1642; see also, Butler, *supra* note 152, at 1464; Emily Chaloner, *Anybody’s Daughter? How Racial Stereotypes Prevent Domestic Child Prostitutes of Color from Being Perceived as Victims*, 30 CHILD.’S LEGAL RTS. J. 48 (2010).

²⁰⁵ See Phillips, *supra* note 2, at 1655; see also *supra* Part II.D (discussing adultification and Black girls).

²⁰⁶ Phillips, *supra* note 2, at 1645.

²⁰⁷ See *supra* Part II.

²⁰⁸ See COLLINS, *supra* note 59, at 81, 83.

²⁰⁹ BAKER, *supra* note 102, at 210.

²¹⁰ See Goff et al., *supra* note 176.

²¹¹ Research suggests that police officers in the United States are inconsistent in their treatment of youth involved in prostitution. See generally David Finkelhor & Richard Ormrod, *Prostitution of Juveniles: Patterns from NIBRS*, JUV. JUS. BULLETIN (2004), <https://www.ojp.gov/pdffiles1/ojjdp/203946.pdf>.

²¹² See Butler, *supra* note 152, at 1499; see also Kate Sutherland, *From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities*, 9 WM. & MARY J. WOMEN & L. 313 (2002) (discussing how age of sexual consent laws are not enforced against Black or working class girls “unless the welfare rolls are threatened by a resulting [unwanted] pregnancy” and are not enforced in cases involving white girls unless it is between “a white middle class girl and a working-class boy or a black boy, or an older man”).

²¹³ Finkelhor & Ormrod, *supra* note 211, at 2. Some say that police officers are not sufficiently trained to identify potential trafficking victims in the field. See, e.g., Amy Farrell & Rebecca Pfeffer, *Policing Human Trafficking: Cultural Blindness and Organizational Barriers*. 653

of one group as inferior and therefore unworthy of socialization within the dominant ‘superior’ group, is demonstrated by studies showing that, in the United States, prostituted women of color are targeted by law enforcement officials for harassment and arrest more often than their white counterparts.”²¹⁴

Second, some argue that the victim rhetoric centralizes state surveillance and control.²¹⁵ As Elizabeth Bernstein noticed, dominant antitrafficking discourse

locates all social harm outside of the institutions of corporate capitalism and the state apparatus. In this way, the masculinist institutions of big business, the state, and the police are reconfigured as allies and saviors, rather than enemies, of unskilled migrant workers, and the responsibility for slavery is shifted from structural factors and dominant institutions onto individual, deviant men: foreign brown men (as in the White Slave trade of centuries past) or even more remarkably, African American men living in the inner city.²¹⁶

This approach feeds a crime-control agenda by framing trafficking as a humanitarian issue that the “privileged” can combat by supporting efforts to rescue and restore victims and punish the depraved individuals who perpetrate the abuse.²¹⁷ This type of centering on law enforcement in antitrafficking interventions overlooks the strained relationship between the criminal justice system and communities of color.²¹⁸ Through the

ANNALS AM. ACAD. POL. & SOC. SCI. 46, 42 (2014), <https://www.jstor.org/stable/24541774>. Others indicate that police officers may simply not be interested in shifting their perspective. See, e.g., AMY FARRELL ET AL., IDENTIFYING CHALLENGES TO IMPROVE THE INVESTIGATION AND PROSECUTION OF STATE AND LOCAL HUMAN TRAFFICKING CASES 125 (2012) (ebook), <https://www.ojp.gov/pdffiles1/nij/grants/238795.pdf>. The authors give a striking example to underlie their point when they cite the interview with law enforcement:

Yeah. I mean, yeah, and I think there is a lot of people out there: prosecutors, law enforcement, period, that they just don’t really believe a lot of these people are victims. I mean, they’re just never going to believe it . . . they saw these girls and all they saw were stripper whores.

²¹⁴ Butler, *supra* note 152, at 1499.

²¹⁵ See Phillips, *supra* note 2, at 1669, 1670–71.

²¹⁶ Elizabeth Bernstein, *The Sexual Politics of the “New Abolitionism,”* 18 DIFFERENCES: A J. OF FEMINIST CULTURAL STUD. 128, 144 (2007), https://glc.yale.edu/sites/default/files/pdf/sexual_politics_of_new_abolitionism_.pdf.

²¹⁷ See *id.* at 137; see also BAKER, *supra* note 102, at 205 (citing ALEXANDRA LUTNICK, DOMESTIC MINOR SEX TRAFFICKING: BEYOND VICTIMS AND VILLAINS 91–92 (2016)) (giving an example of a police training video from California as “rescue porn” because it focused “exclusively on young cisgender women who have a third party forcing them to trade sex” and “where the young cisgender women are provocatively dressed and are being exploited by a person of color until police officers come in and save them”).

²¹⁸ See Phillips, *supra* note 2, at 1669; see also Noah Berlatsky, *Child Sex Workers’ Biggest Threat: The Police*, NEW REPUBLIC (Jan. 20, 2016), <https://newrepublic.com/article/128028/child-sex-workers-biggest-threat-police>.

antitrafficking policies, law enforcement powers have been greatly expanded.²¹⁹ That includes policies allowing for wiretaps, stiffer penalties, Racketeer Influenced and Corrupt Organizations Act (“RICO”) prosecutions, and state-federal collaboration.²²⁰ These policies and laws have invested millions of dollars a year in law enforcement, much of which goes toward street-level enforcement of prostitution laws.²²¹ Some also contend that the antitrafficking movement and its alliance with law enforcement contributes to the build-up of the prison industrial complex, which again, is to the detriment of communities of color.²²²

Moreover, as Phillips notices, the victim rhetoric does not allow for meeting the needs of all youth.²²³ In fact, images of victimization often promote myopic interventions.²²⁴ The antitrafficking narrative primarily relies on the victim-exploiter model, overlooking the fact that many young people in sex work operate independently and are recruited through peer networks.²²⁵ This dominant perspective tends to focus on assigning blame to “traffickers” or “exploiters” without strong empirical evidence to support severe punitive measures.²²⁶ Much like the approach to domestic violence, antitrafficking efforts often prioritize punitive actions against pimps and buyers, alongside funding for law enforcement task forces and training.²²⁷ Rather than enhancing social support and developing community-based solutions in low-income areas, antitrafficking advocates focus heavily on gathering evidence, capturing traffickers, and extending prison sentences.²²⁸ As Janie Chuang concludes, “[u]nder this construction, the government and society are absolved of their responsibility for having fostered the broader socioeconomic conditions that feed the trafficking phenomenon.”²²⁹ The punitive Safe Harbor policies tend to disproportionately affect low-income communities, especially Black communities, where Black individuals are more frequently policed and prosecuted as exploiters.²³⁰

²¹⁹ See BAKER, *supra* note 102, at 212.

²²⁰ See *id.*

²²¹ See *id.*

²²² See *id.* at 211–12 (noting that it has been alleged that men of color are disproportionately prosecuted for prostituting minors).

²²³ Phillips, *supra* note 2, at 1647.

²²⁴ See *id.* at 1650.

²²⁵ See *id.* at 1646.

²²⁶ See *id.*

²²⁷ See *id.*

²²⁸ See *id.* at 1646–47.

²²⁹ Janie Chuang, *Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy*, 158 U. PA. L. REV. 1655, 1705 (2010).

²³⁰ See Phillips, *supra* note 2, at 1642, 1647.

At the same time, this reliance on punitive criminal justice measures fails to fully address the needs of youth in the sex trade and does not necessarily improve safety in communities of color.²³¹

Some scholars have criticized Safe Harbor laws as ones by which the state justified the increasing “culture of control.” The laws allowed for strengthening of coercive social service agencies that have increasing control over the lives of young people, especially youth of color.²³² The trend is similar to the one during the Progressive Era, when the state expanded the regulation of women’s personal lives through shelters and welfare programs that were “increasingly value-laden” and “tied to the promotion of the traditional nuclear family, fear of dependency, and distrust of women as mothers.”²³³ The irony is that welfare agencies do not have the needed services for CSE youth, and involvement with the social services constitutes one of the risk factors for entering survival sex.²³⁴ In an interview with Baker, women expressed concern that Safe Harbor laws have resulted in police turning youth found in the sex trade over to social workers who put them in group homes that lack services to treat them, which often leads them right back into the sex trade.²³⁵ Another concern is that one of Safe Harbor laws’ “unintended consequences” is that they allow for an extended period of court supervision and institutionalization of CSE youth.²³⁶ A child charged with a ninety-day misdemeanor charge, once in the purview of court and identified as CSE youth, can end up being placed in a secure facility for an indeterminate period of time for their protection. As Brendan M. Conner says, these types of situations are reminiscent of the days before the deinstitutionalization of status offenders in the 1970s.²³⁷

Many scholars also view antitrafficking programs as a form of carceral feminism.²³⁸ For carceral feminists, the key and most effective approach

²³¹ See *id.* at 1647; see also BAKER, *supra* note 102, at 212 (citing one of her interviewees who said that the money that goes to law enforcement “would be better spent on creating good homes for youth.”).

²³² See BAKER, *supra* note 102, at 214.

²³³ KRISTIN BUMILLER, IN AN ABUSIVE STATE: HOW NEOLIBERALISM APPROPRIATED THE FEMINIST MOVEMENT AGAINST SEXUAL VIOLENCE 5 (2008).

²³⁴ See 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, 68–69 (2016); see also *supra* Part II.D, at 19.

²³⁵ BAKER, *supra* note 102, at 214.

²³⁶ Conner, *supra* note 234, at 49.

²³⁷ *Id.* at 96–100.

²³⁸ “Carceral feminism is a label that is applied to a particular strand of feminist thought, and the label was developed as part of a growing discourse analyzing the dangers of relying on the state’s punitive power to advance women’s liberation by assuming that increased criminal justice solutions are effective forms of justice for survivors of sexual violence. In this way, certain feminists facilitate, rather than counter, the carcerality controlling arm of the neoliberal state.”

to ending sexual violence involves enhanced policing, stricter laws and prosecutions, and greater use of imprisonment.²³⁹ Antitrafficking laws and policies are perceived as coercive and paternalistic, entangling youth and adults in a “burgeoning, though largely unscrutinized, combination of law-enforcement punishment combined with psychosocial, social-service, and technologically mediated efforts to assist them.”²⁴⁰ Trafficked persons become a tool for those pursuing penological goals, their access to assistance legally contingent on their cooperation with prosecutions.²⁴¹ Trafficking thus emerges as yet another context in which “feminist liberatory discourse challenging patriarchy and female dependency . . . has been replaced by a discourse emphasizing crime control.”²⁴² Bumiller argues that the neoliberal state has appropriated the feminist movement against sexual violence to promote the expansion of a coercive and punitive criminal legal system, as well as social service bureaucracies that tightly control women’s lives.²⁴³ The deregulation of the economy, according to Kristin Bumiller, ushered “increased social stratification and a generalized sense of insecurity that then led to more regulation of the poor and minorities,” particularly crime control as a “new form of social exclusion reinforcing other forms of discrimination against minorities and directed against potentially unruly classes of persons.”²⁴⁴

Critics have also questioned the dominant trafficking narrative framing the youth as victims and denying them agency, and, ultimately, their human rights.²⁴⁵ This narrative adopts an anti-prostitution perspective, viewing prostitution as “inherently coercive.”²⁴⁶ The shift in the language from child prostitution to CSEC has been viewed to undermine youth

Sarah Deer & Abigail Barefoot, *The Limits of the State: Feminist Perspective on Carceral Logic, Restorative Justice and Sexual Violence*, 28 KAN. J.L. & PUB. POL’Y 505, 509 (2019); see also Chuang, *supra* note 229, at 1702–03.

²³⁹ See Deer & Barefoot, *supra* note, 238, at 509.

²⁴⁰ Baker, *supra* note 102, at 213 (citing JENNIFER MUSTO, CONTROL AND PROTECT: COLLABORATION, CARCERAL PROTECTION, AND DOMESTIC SEX TRAFFICKING IN THE UNITED STATES 3 (2016)).

²⁴¹ See Aya Gruber, *The Feminist War on Crime*, 92 IOWA L. REV. 741, 772, 809 (2007).

²⁴² *Id.* at 812.

²⁴³ BUMILLER, *supra* note 233, at 6; see also Elizabeth Bernstein, *Militarized Humanitarianism Meets Carceral Feminism: The Politics of Sex, Rights, and Freedom in Contemporary Antitrafficking Campaigns*, 36 SIGNS: J. WOMEN IN CULTURE & SOC’Y 45, 56 (2010); Elizabeth Bernstein, *Introduction: Sexual Economies and New Regimes of Governance*, 21 SOC. POL. 345, 346 (2014); Elizabeth Bernstein, *Carceral Politics as Gender Justice? The “Traffic in Women” and Neoliberal Circuits of Crime, Sex, and Rights*, 41 THEORY & SOC’Y 233, 235, 241 (2012), <https://www.jstor.org/stable/pdf/41475719.pdf>.

²⁴⁴ BAKER, *supra* note 102, at 213 (citing BUMILLER, *supra* note 233).

²⁴⁵ See *id.* at 206.

²⁴⁶ Phillips, *supra* note 2, at 1651.

agency.²⁴⁷ Penelope Saunders distinguishes between these two as the former defining the child as inherently at fault, and the latter defining youth as always victimized and innocent and sexuality as a dangerous perversion.²⁴⁸ She argues that “[t]hese narratives endure because the drama of purity besmirched at the hands of adults plays neatly into cultural notions of the sacred nature of childhood, where children must necessarily be preserved in a state of innocence outside of the reality of economics and sexuality.”²⁴⁹ She also calls for a development of “a new formulation of the child as a human-right-bearing subject,” emphasizing that “the notion of children developing self-determination must be part of any protective framework.”²⁵⁰ Baker found authors who continue to use phrases like “youth sex worker” or “child sex worker,” which implies that youth and even children can consent to selling sex.²⁵¹ She also provides examples of women’s empowerment groups that advocate for youth to be allowed to sell sex because “doing so can be an avenue for youth to escape abusive situations in parental or foster homes and give youth an opportunity to provide for themselves.”²⁵² Alexandra Lutnick agrees that to call youth victims “robs them of autonomy” and impedes them from meeting their needs.²⁵³ As Phillips noticed, “the dominant framework fails to account for nuanced narratives and various pathways into the sex trade for minors . . . [and] is stigmatizing to minors that do not identify with the prevailing frame.”²⁵⁴

²⁴⁷ See Penelope Saunders, *Identity to Acronym: How “Child Prostitution” Became CSEC*, in REGULATING SEX 167, 168, 181 (Elizabeth Bernstein & Laurie Schaffner eds., Routledge 1st ed. 2005).

²⁴⁸ *Id.* at 180, 183.

²⁴⁹ *Id.* at 183.

²⁵⁰ *Id.* at 180, 184.

²⁵¹ See BAKER, *supra* note 102, at 206–07.

²⁵² *Id.* at 207.

²⁵³ See LUTNICK, *supra* note 217, at 111; see also Sarah Hunt, *Representing Colonial Violence: Trafficking, Sex Work, and the Violence of Law*, 37 ATLANTIS: CRITICAL STUD. IN GENDER, CULTURE & SOC. JUST. 25, 34 (2015), <https://atlantisjournal.ca/index.php/atlantis/article/view/3042>.

²⁵⁴ Phillips, *supra* note 2, at 1646.

IV. SPECIALTY COURTS

A. Overall Effectiveness of Various Specialty Courts for Youth

Specialty courts²⁵⁵ (also called specialized courts, diversion courts, treatment courts, and problem-solving courts) have been widely used for many years²⁵⁶ as a way to judicially address the unique needs of certain groups of people, such as veterans and individuals struggling with substance use, mental health conditions, or homelessness.²⁵⁷ Most specialty courts adopt the philosophy that the criminal legal system can do more than just impose sanctions; it can address underlying social and health problems that contribute to criminal behavior.²⁵⁸ Those courts are meant to provide a more therapeutically oriented judicial approach to court supervision and treatment.²⁵⁹ They aim to modify future behavior by addressing underlying factors that lead individuals into the criminal legal system.²⁶⁰ This approach focuses on reducing recidivism and alleviating the strain on the criminal legal system, while also enhancing the welfare of individuals and communities.²⁶¹ The most common specialized courts for

²⁵⁵ See generally RACHEL PORTER ET AL., WHAT MAKES A COURT PROBLEM-SOLVING?: UNIVERSAL PERFORMANCE INDICATORS FOR PROBLEM-SOLVING JUSTICE (2010).

²⁵⁶ Kristen DeVall et al. say that “the legacy of treatment courts began in 1989 in Miami-Dade County, Florida; yet, the first two juvenile drug treatment courts were established in Wilmington, Delaware and Visalia, California in 1995.” KRISTEN DEVALL ET AL., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES 2, 3 (2022), https://issuu.com/ndcrc/docs/pcp_juveniledrugtreatmentcourts_brief_2022_digital.

²⁵⁷ See PORTER ET AL., *supra* note 255, at 1.

²⁵⁸ See Adele Harrell, *Judging Drug Courts: Balancing the Evidence*, 2 CRIMINOLOGY & PUB. POL’Y 207, 207 (2003), <https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9133.2003.tb00119.x>.

²⁵⁹ See Bruce J. Winick, *Problem Solving Courts: Therapeutic Jurisprudence in Practice*, in PROB. SOLVING CTS.: SOC. SCI. & LEGAL PERSPS. 211–12 (Richard L. Wiener & Eve M. Bank eds., 2013).

²⁶⁰ See Richard L. Wiener & Leah Georges, *Social Psychology and Problem-Solving Courts: Judicial Roles and Decision Making*, in PROB. SOLVING CTS.: SOC. SCI. & LEGAL PERSPS. 3, 4 (Richard L. Wiener & Eve M. Bank eds., 2013).

²⁶¹ Greg Berman & John Feinblatt, *Problem Solving Courts: A Brief Primer*, 23 L. & POL’Y 128 (2001). As brought up by DeVall et al., the term “sociological jurisprudence” was coined in 1912 by Roscoe Pound who argued the “the law must look to the relationship between itself and the social effects it creates.” See KRISTEN DEVALL ET AL., PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES, Veterans Treatment Courts Brief 2, 3 (2022), https://issuu.com/ndcrc/docs/pcp_veteranstreatmentcourts_brief_2022_digitalrele. In 1999, David Wexler and Bruce Winick argued that scholars needed to examine “the extent to which substantive rules, legal procedures, and the roles of lawyers and judges produce therapeutic or anti-therapeutic consequences for individuals involved in the legal process.” *Id.* That was the beginning of the term “therapeutic

youth are Juvenile Drug Treatment Courts (“JDTCs”) and Juvenile Mental Health Courts (“JMHCs”).

1. Juvenile Drug Treatment Courts (JDTCs)

Drug court programs are designed to reduce recidivism among individuals with substance use issues. These programs typically include risk evaluations, regular interactions with judges, close supervision, a system of rewards and penalties, and referrals to counseling and treatment.²⁶² Juvenile drug court programs usually span twelve to eighteen months, though the duration can vary, as graduation often depends on consistent sobriety and adherence to program rules.²⁶³ By 2023 there were an estimated 261 JDTCs.²⁶⁴ The number of JDTCs across the United States has been decreasing.²⁶⁵ As noticed by Kristen DeVall, there may be more than one reason why many programs closed.²⁶⁶ Some bases for the closure included lack of sufficient referrals, insufficient funding, and a loss of judicial or political will and/or interest.²⁶⁷

The assessments of the JDTCs effectiveness have either failed to find significant differences or have shown mixed results regarding their impact on reducing recidivism or making significant differences in key

jurisprudence.” *Id.* While first applied to the study of mental health law, therapeutic jurisprudence has been applied to myriad types of law, including criminal law. The principles of therapeutic jurisprudence promote a non-adversarial, treatment-oriented approach when adjudicating youth offenders, while still upholding their due process rights. Therapeutic jurisprudence takes an interdisciplinary view of justice, employing both behavioral sciences and the law as complementary tools in analyzing and crafting sound law. Without trumping other judicial considerations, such as public safety or constitutional protections, therapeutic jurisprudence looks to the practical effects law has on individuals within the legal system and assumes that all other things being equal, the law should be restructured to better accomplish therapeutic values. See JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS (Bruce J. Winick & David B. Wexler eds., 2003); see also PORTER et al., *supra* note 256; David B. Wexler, *Putting Mental Health into Mental Health Law: Therapeutic Jurisprudence*, 16 LAW & HUM. BEHAV. 27, 32 (1992); Greg Berman & John Feinblatt, *Problem Solving Courts: A Brief Primer*, 23 L. & POL’Y 128 (2001).

²⁶² See Steven Belenko & Richard Dembo, *Treating Adolescent Substance Abuse Problems in the Juvenile Drug Court*, 26 INT’L J. L. & PSYCHIATRY 87, 95–96, 99 (2003).

²⁶³ EMILY TANNER-SMITH ET AL., META-ANALYSIS OF RESEARCH ON EFFECTIVENESS OF JUVENILE DRUG COURTS 4 (2016), <https://www.ojp.gov/pdffiles1/ojdp/grants/250439.pdf>.

²⁶⁴ *Treatment Courts Across US States/Territories (2023)*, NAT’L TREATMENT CT. RES. CTR. (June 2024), https://ntcrc.org/wp-content/uploads/2024/06/2023_NTCRC_TreatmentCourt_Count_Table.pdf.

²⁶⁵ There were 433 JDTCs in 2014. See TANNER-SMITH ET AL., *supra* note 263; see also DEVALL, *supra* note 261, at 6.

²⁶⁶ See DEVALL, *supra* note 261, at 16–120 (showing a table that includes the reasons provided by survey respondents in DeVall).

²⁶⁷ *Id.*

outcomes.²⁶⁸ A 2012 meta-analysis of drug court studies found that JDTCs “have a slight positive effect on some outcomes for youth but not as strong an effect as their counterparts in the adult justice system.”²⁶⁹ A 2016 meta-analysis of forty-six studies on JDTCs found no significant evidence that these courts were more effective than traditional court processes in reducing overall recidivism, drug-related offenses, or substance use.²⁷⁰ This lack of impact was observed both during the program and after its completion.²⁷¹

On top of that, critics of drug courts have pointed to their potential net-widening effect.²⁷² They say that the presence of these courts causes more people to enter the criminal legal system through higher arrest rates and police interactions.²⁷³ The institutional effect of drug courts has been to raise the numbers of offenders routed into the criminal system²⁷⁴ and, in some instances, to impose harsher punishments than people would have received in a criminal court.²⁷⁵

The OJJDP funded a multi-site evaluation of JDTCs to assess their effectiveness in reducing reoffending and enhancing youth social outcomes, as well as to evaluate whether these programs incorporate evidence-based treatment practices. The study’s findings did not support

²⁶⁸ See generally G. ROGER JARJOURA ET AL., JUVENILE DRUG TREATMENT COURT GUIDELINES 3 (2016), <https://www.arcourts.gov/sites/default/files/Juvenile%20Drug%20Court%20%20Guidelines.pdf>. Evidence about the effectiveness of courts using a JDTC-type model is inconclusive due, in part, to weak study designs, inconsistency in the populations studied, and uncertainty about the extent to which evidence-based treatment was available. *Id.* “Evidence about the effectiveness of courts using a JDTC-type model is inconclusive due, in part, to weak study designs, inconsistency in the populations studied, and uncertainty about the extent to which evidence-based treatment was available.” *Id.* at 1.

²⁶⁹ Lesli Blair et al., *Juvenile Drug Courts: A Process, Outcome, and Impact Evaluation*, JUV. JUS. BULL. (May 2015), <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/248406.pdf>.

²⁷⁰ See TANNER-SMITH ET AL., *supra* note 263, at 13–14.

²⁷¹ See *id.* at 14.

²⁷² See Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1059 (2015), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1189&context=vlr> (“Net-widening refers to reforms that make it easier to sweep individuals into the criminal process, and decriminalization does so in sophisticated ways.”). “[N]et widening effects ironically can expand the overall reach of the penal state.” *Id.* at 1077; see also Morris B. Hoffman, *The Drug Court Scandal*, 78 N.C. L. REV. 1437, 1501–04 (2000). “Over thirty years ago, James Austin and Barry Krisberg pointed out that well-meaning reforms of the 1960s and 70s, including ‘[d]iversion, decarceration, [and] decriminalization’ that were intended to shrink the criminal process, in fact functioned to expand state control over an ever-growing criminal justice population.” James Austin & Barry Krisberg, *Wider, Stronger, and Different Nets: The Dialectics of Criminal Justice Reform*, 18 J. RSCH. CRIME & DELINQ. 165, 167 (1981).

²⁷³ See Natapoff, *supra* note 272, at 1095.

²⁷⁴ See *id.*

²⁷⁵ See *id.*

JDTCs.²⁷⁶ In most of the sites studied, youth participating in drug courts experienced higher recidivism rates compared to their peers who were placed on probation.²⁷⁷ Overall, the courts did not follow evidence-based practices, and the researchers concluded that this may have led to the observed counterproductive outcomes, such as increased referral and detention rates.²⁷⁸ OJJDP suggested that “the drug court model, as currently implemented, may not be an optimal fit for some youth.”²⁷⁹ Since youth are “still developing cognitively and socially, they may not weigh risks and consequences the same way as adult drug court participants.”²⁸⁰ Additionally, youth may “naturally age out of substance-using behavior with few negative consequences and therefore may not benefit from drug court practices that were designed for serious addicts in the adult justice system.”²⁸¹

2. Juvenile Mental Health Courts (JMHCs)

JMHCs, like JDTCs, operate under a paradigm of therapeutic jurisprudence, with the main purpose of treatment and rehabilitation of youth (i.e., treating mental health issues and reducing recidivism).²⁸² They are designed to use a multidisciplinary team approach to develop and monitor treatment plans and compliance, as well as provide necessary treatment to youth.²⁸³

Early JMHCs were introduced in 1998 in York County, Pennsylvania; in 2000 in Mahoning County, Ohio; and in 2001 in Santa Clara County, California.²⁸⁴ “By early 2012, there were approximately fifty

²⁷⁶ See Blair et al., *supra* note 269, at 4, 8.

²⁷⁷ See *id.*

²⁷⁸ *Id.* at 1.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² See Patrick Gardner, *An Overview of Juvenile Mental Health Courts*, ABA (Sep. 1, 2011), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol30/september_2011/an_overview_of_juvenilementalhealthcourts.

²⁸³ See *id.*

²⁸⁴ See Lisa Callahan, et al., *A National Survey of U.S. Juvenile Mental Health Courts, PSYCHIATRIC SERVS.*, Feb. 2012, Vol. 63, No. 2, at 130, 131, <https://psychiatryonline.org/doi/epdf/10.1176/appi.ps.201100113>.

JMHCs in [fifteen] states, either in operation or in the planning stages.”²⁸⁵ In 2023, there were sixty JMHCs across the United States.²⁸⁶

Only a few studies have evaluated the effectiveness of JMHCs, and there is currently no longitudinal data available to evaluate the sustained effectiveness of these interventions.²⁸⁷ An evaluation of one of the first JMHCs, the Court for the Individualized Treatment of Adolescents (“CITA”) in Santa Clara, showed reductions in the frequency of serious, violent, and other delinquency behavior among youth who completed the program.²⁸⁸ Yet, the study had several weaknesses—including a nonrandomized control group, a lack of a comparison or control group, and selection bias.²⁸⁹ Further research needs to be done to explore other outcomes as well, such as rate of compliance with treatment plans or whether the program was implemented as designed.²⁹⁰ The researchers also did not have information on a viable comparison group or on post-release recidivism patterns.²⁹¹

In 2013, researchers provided findings of their evaluation of the JMHC of Colorado’s First Judicial District, a program modeled after CITA, in comparison to the CITA program.²⁹² They showed the efficacy of the Colorado JMHC in lowering recidivism rates both during program participation and for at least one year after successful completion. They also indicated that there is preliminary evidence “that post-release recidivism rates of youth in the JMHC were significantly lower than those for a

²⁸⁵ Donna M. L. Heretick & Joseph A. Russell, *The Impact of Juvenile Mental Health Court on Recidivism Among Youth*, 3 J. JUV. JUS. 1, 1–2 (2013). <https://www.ojp.gov/pdffiles/244254.pdf>. Other sources mention that Santa Clara County had the first JMHCs. See, e.g., David Arredondo et al., *Juvenile Mental Health Court: Rationale and Protocols*, 52 JUV. & FAM. CT. J. 1 (2001), https://judgehyman.com/downloads/JMHC_RATIONALE_AND_PROTOCOL.PDF.

²⁸⁶ See LINDSAY J. BAKER, KRISTEN DEVAL & CHRISTINA LANIER, *PAINTING THE CURRENT PICTURE: A NATIONAL REPORT ON TREATMENT COURTS IN THE UNITED STATES 4* (National Drug Court Resource Center 2025).

²⁸⁷ See ELLEN HARRIS & TAMMY SELTZER, *THE ROLE OF SPECIALTY MENTAL HEALTH COURTS IN MEETING THE NEEDS OF JUVENILE OFFENDERS 5* (Judge David L. Bazelon Center for Mental Health Law 2004), <https://www.bazelon.org/wp-content/uploads/2018/03/Role-of-Specialty-MH-Courts-Juveniles.pdf>.

²⁸⁸ See Monic P. Behnken et al., *Reduction in Recidivism in a Juvenile Mental Health Court: A Pre- and Post-Treatment Outcome Study*, 60 JUV. & FAM. CT. J. 23, 42 (2009), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1755-6988.2009>.

²⁸⁹ See *id.* at 40.

²⁹⁰ See *id.*; see also Ashley M. Mayworm & Jill D. Sharkey, *Gender-Specific Mental Health Outcomes of a Community-Based Delinquency Intervention*, 3 J. JUV. JUS., 1, 15, <http://bscchomepageofh6i2avqeocm.usgovarizona.cloudapp.usgovcloudapi.net/wp-content/uploads/JOJJ0301.pdf#page=15>. <https://www.ojp.gov/pdffiles/244254.pdf>

²⁹¹ See Behnken et al., *supra* note 288, at 40.

²⁹² See Heretick & Russell, *supra* note 285, at 3.

sample of other youth in the juvenile justice system diagnosed with mental disorders.”²⁹³ This study also had several limitations: it did not have information on the participants’ prior offense histories, both for those in the JMHC and those in other probation programs in Colorado; it provided limited measurable information on treatment adherence and mental health service usage; it did not include a comparison group of eligible youth who opted out of the JMHC; and it was confined to a single judicial district, making it difficult to determine how applicable the findings are to other regions or programs. There are only a few rigorous, empirical evaluations demonstrating consistent support for the premise that any of the specialized youth courts will have the desired impact of reducing recidivism.²⁹⁴

Perceived benefits of JMHCs include the advantages of a multidisciplinary approach to treatment, increased dispositional alternatives for judges, monitoring strategies that can increase compliance with treatment plans, and an increased awareness of the problem of the lack of mental health services.²⁹⁵ However, numerous concerns have been raised about JMHCs.²⁹⁶ Despite the fact that participation in JMHCs is supposed to be voluntary, there is a concern that “given the mental health status of youth participants, their status as minors,” and the anxiety and unpredictability that youth experience when interacting with the juvenile justice system, they may not be making an informed, independent, and voluntary decision about whether to participate in the program.²⁹⁷ Another concern, similar to JDTC, is net widening. JMHCs may use their leverage to assure their participants receive access to community mental health services which are otherwise challenging to access. That can lead to more youth being referred to the court (and becoming involved with the juvenile legal

²⁹³ *Id.* at 10.

²⁹⁴ See DANIEL P. MEARS & LAUDAN Y. ARON, ADDRESSING THE NEEDS OF YOUTH WITH DISABILITIES IN THE JUVENILE JUSTICE SYSTEM: THE CURRENT STATE OF KNOWLEDGE 44 (Urban Institute 2003), <https://www.urban.org/sites/default/files/publication/59476/410885-Addressing-the-Needs-of-Youth-with-Disabilities-in-the-Juvenile-Justice-System.PDF>.

²⁹⁵ See Joseph J. Cocozza & Jennie L. Shufelt, *Juvenile Mental Health Courts: An Emerging Strategy*, NCMHJJ: NAT’L CTR. MENTAL HEALTH & JUV. JUS. 4 (2006), <https://www.prainc.com/wp-content/uploads/2022/03/2006-R2P-Juvenile-Mental-Health-Courts464167.pdf>.

²⁹⁶ See *id.* at 5.

²⁹⁷ See *id.* Coercion “is one of the more controversial aspects of problem-solving courts.” Some, especially supporters of problem-solving courts look at the court’s coercive power as a necessary motivation tool for getting individuals to accept, commit to, and successfully complete treatment. Specialty court judges have described this approach as “benevolent coercion,” viewing the imposition of sanctions to enforce compliance as “providing help” rather than “imposing punishment.” These perspectives, along with “the courts’ control over typically private decisions,” have sparked significant concerns over paternalism. See Kendis, *supra* note 3, at 828.

system) simply to obtain mental health services²⁹⁸ and to nondelinquent youth becoming part of the juvenile legal system.²⁹⁹ As stated in the literature review on JMHCs, “Parents or guardians may seek delinquency court jurisdiction for their children to receive services, even if their children are not delinquent. Law enforcement officials may be quick to arrest youths with mental health issues for minor, nonviolent offenses because they believe the specialized court will better address their issues.”³⁰⁰ The concern is that some youth-serving institutions, such as schools, might see JMHCs as a way to offload their responsibilities and reduce costs. JMHCs may also shape how justice system professionals perceive young people with emotional and behavioral challenges and influence how criminal justice authorities view young people with emotional and behavioral disorders.³⁰¹ Ellen Harris and Tammy Seltzer point out that “[m]any specialized courts may ‘pull into the net’ of the justice system youth who otherwise would have had their cases dismissed or who would have received nominal sanctions.”³⁰² Another concern is that “[p]articipating in a mental health court is stigmatizing for participants, and many youth are uncomfortable identifying with the specialized court.”³⁰³ Some also argue that since the juvenile legal system is treatment and rehabilitation oriented, the same mechanisms could be established and the same services provided within a regular juvenile court setting.³⁰⁴ “[A]ll courts, including mental health courts . . . can accommodate people with mental illnesses and achieve successful outcomes for them without compromising public safety if they function within a broader program of system reform.”³⁰⁵

²⁹⁸ See Kendis, *supra* note 3, at 830–31.

²⁹⁹ See *id.*

³⁰⁰ *Id.*

³⁰¹ *Id.* at 6.

³⁰² *Id.* The authors indicate that this criticism has been applied to other specialty courts, as well. They provide an example of Denver which ended its ten-year experiment with specialty drug courts in 2003. According to one of the court’s judges, Morris B. Hoffman, the creation of the drug court prompted police to widen the net for ever-smaller drug busts, tripling the number of defendants sent to prison. See Hoffman, *supra* note 272, at 1504, 1534; see also Terry Carter, *Red Hook Experiment: In this Brooklyn Neighborhood, Justice Has a Distinct Community Flavor*, 90 ABA J. 36, 42 (2004), <https://www.jstor.org/stable/27842531>.

³⁰³ Ellen Harris & Tammy Seltzer, *The Role of Speciality Mental Health Courts in Meeting the Needs of Juvenile Offenders*, JUDGE DAVID L. BAZELON CTR. FOR MENTAL HEALTH L. (Sept. 2004), <https://static.prisonpolicy.org/scans/juvenilemhcourts.pdf>.

³⁰⁴ See Cocozza & Shufelt, *supra* note 295, at 5.

³⁰⁵ Robert Bernstein & Tammy Seltzer, *Criminalization of People with Mental Illnesses: The Role of Mental Health Courts in System Reform*, 7 UDC L. REV. 143, 149 (2003), <https://digitalcommons.law.udc.edu/cgi/viewcontent.cgi?article=1174&context=udclr>.

B. CSEC Courts

1. CSEC Court Model: Detention-to-Protection Framework

CSEC courts “are often created due to some interest by a judge who agrees to preside over the cases.”³⁰⁶ Empirical evidence is lacking to guide and measure the application of the specialty court model to youth with histories of sex trafficking.³⁰⁷ Available literature highlights significant discrepancies in the operation of different CSEC courts.³⁰⁸ For instance, some courts provide “services through a dedicated court schedule,” where proceedings occur on set dates with a consistent judge and court team, while others deliver services through less formal diversion programs with more flexible structures.³⁰⁹ Godoy et al. were able to identify seven key characteristics of the CSEC courts:

- (1) identification [of risk of sex trafficking] and assessment of needs; (2) trauma-informed protocols that account for histories of sexual exploitation; (3) linkages to specialized services or resources, such as support groups specific to CSE; (4) monitoring of judicial compliance; (5) capacity building and specialized CSE training for court staff and community members; (6) multidisciplinary and cross-system collaboration; and (7) consistent and meaningful interpersonal relationships.³¹⁰

2. Expansion of CSEC Courts

At present, there is no centralized database tracking the number of specialty courts nationwide that serve adolescents at risk of or with confirmed histories of CSE, largely due to the absence of formal federal oversight or monitoring of these court models.³¹¹ In their 2023 study, Godoy’s research team identified twenty-one CSEC specialty courts.³¹² The highest number of those courts were found in California (ten).³¹³ The other eleven courts were located in Florida, Hawaii, Louisiana, New Mexico, Ohio,

³⁰⁶ Teresa C. Kulig & Leah C. Butler, *From “Whores” to “Victims”: The Rise and Status of Sex Trafficking Courts*, 14 VICTIMS & OFFENDERS 299, 306 (2019), <https://www.tandfonline.com/doi/epdf/10.1080/15564886.2019.1595242?needAccess=true>.

³⁰⁷ See Godoy et al., *supra* note 29, at 1357–58.

³⁰⁸ See *id.* at 1347.

³⁰⁹ *Id.*

³¹⁰ *Id.* at 1347, 1352.

³¹¹ See *id.* at 1345.

³¹² See *id.* at 1347.

³¹³ See *id.*

Texas, and Washington.³¹⁴ Of the courts identified, fifteen exclusively served adolescents involved in the juvenile justice system, two focused on youth within the child welfare system, and another two were designed to support adolescents engaged in either system.³¹⁵

3. Assessment of CSEC Courts

As previously mentioned, there is a paucity of empirical research describing the effectiveness of CSEC courts. Yet, the existing evaluations present conflicting perspectives.³¹⁶ As noticed by Luminais et al., evaluations that incorporate the voices of current and former sex workers take a more critical view of court intervention, whereas research focusing on service providers and court officials are more likely to highlight positive results.³¹⁷ The outcomes of the available studies examining a sample of courts are presented below. They are divided into categories of research discussing positive impact and shortcomings of CSEC courts.

i. Positive Impacts of CSEC Courts

One of the most comprehensive reviews of literature examining CSEC specialty courts was the 2022 study done by Godoy et al.³¹⁸ The researchers reviewed thirty-nine publications that examined twenty-one specialized courts focused on addressing the needs of youth affected by CSE. Out of the twenty-one specialty courts, only seven provided descriptive and outcome data, and only four of them served girls.³¹⁹ Thus, the findings come from that limited sample.³²⁰ The researchers noted that only one court had all the seven key characteristics outlined in [Part IV.B.1](#), though most of the courts shared several characteristics.³²¹ The effectiveness of the courts was assessed based on the following criteria: “(a) increased stability; (b) increased access to services; (c) increased educational attainment; (d) decreased incidents of running away; and (e) decreased

³¹⁴ *See id.*

³¹⁵ *See id.*

³¹⁶ *See id.* at 1357–58.

³¹⁷ *See* Luminais et al., *supra* note 19, at 543.

³¹⁸ *See* Godoy et al., *supra* note 29.

³¹⁹ *See id.* at 1356. The remaining three courts did not exclude youth of varying genders. Only one court presented data which included boys and transgender youth. *See id.*

³²⁰ Moreover, the courts that presented data, provided “relatively small sample size, and some courts did not quantify participants served.” *Id.* at 1358. Thus, as noticed by the authors of the review, “the generalizability of these outcomes is limited.” *Id.*

³²¹ *See id.* at 1356.

recidivism in the juvenile justice system or commercial sexual activity.”³²² Of the seven courts, two delivered positive results in all five domains.³²³ One court had positive results in four domains (increased access to care was not specified).³²⁴ One court increased placement stability and improved access to services.³²⁵ One court improved access to services.³²⁶ One court reduced recidivism, and one did not have information to access any of its domain.³²⁷ The researchers concluded that CSEC specialty courts can be an integral system response for youth and a viable mechanism for enhancing access to specialized services and supporting the overall stability of youth affected by sex trafficking.³²⁸ The researchers agreed that “more empirical data and rigorous evaluations of CSEC courts are required to better [gauge] their overall and long-term effectiveness and guide future service provision” and “to understand if and how this may [impact] the disruption of intergenerational risk of system involvement.”³²⁹

Another study pointed to the benefits of CSEC courts being the consistency within the court, such as having the same judge, public defender, and district attorney, which helped youth establish meaningful connections with their team.³³⁰ The consistency of specialty court professionals creates an environment where survivors may develop trusting relationships with adults, a factor that prior research suggests is crucial in exiting and not returning to sex trafficking.³³¹

A major perceived advantage of court interventions is the referral to services.³³² Some researchers assert that for youth impacted by sex

³²² *Id.* at 1354. “Reduced recidivism is measured as a decrease in re-entry into the juvenile [legal] system and/or commercial sexual activity.” *Id.* at 1355.

³²³ *See id.*

³²⁴ *See id.*

³²⁵ *See id.*

³²⁶ *See id.*

³²⁷ *See id.*

³²⁸ *See id.* at 1358. Another study evaluating CSEC courts determined that “case management was likely an essential component of this continued relationship,” as addressing the immediate needs of the participants was of utmost importance. *See* Deborah A. Gibbs et al., *Services to Domestic Minor Victims of Sex Trafficking: Opportunities for Engagement and Support*, 54 CHILD AND YOUTH SERVS. REV. 1, 6 (2015).

³²⁹ Godoy et al., *supra* note 29, at 1356, 1358.

³³⁰ *See* Liles et al., *supra* note 18, at 242.

³³¹ *See* Jennifer E. O’Brien, “Sometimes, Somebody Just Needs Somebody—Anybody—to Care”: *The Power of Interpersonal Relationships in the Lives of Domestic Minor Sex Trafficking Survivors*, 81 CHILD ABUSE & NEGLECT 1, 8 (2018), <https://www.sciencedirect.com/science/article/pii/S0145213418301613?via%3Dihub>.

³³² *See* Eraka P. Bath et al., *A Specialty Court for U.S. Youth Impacted by Commercial Sexual Exploitation*, 100 CHILD ABUSE & NEGLECT 1, 2 (2020), <https://doi.org/10.1016/j.chiabu.2019.104041>.

trafficking, involvement in the juvenile legal system can serve as a critical gateway to healthcare, while courts can also help connect them to housing and educational resources.³³³ One study particularly focused on the Succeeding Through Achievement and Resilience (“STAR”) Court, a specialized, trauma-informed, multidisciplinary program in Los Angeles County, California, designed to address the complex and interconnected needs of youth involved in the juvenile justice system.³³⁴ The researchers specifically analyzed the procedures and outcomes associated with: “(1) the identification of mental health disorders and substance use; (2) referrals to educational resources and linkage to mental health and substance use treatment; and (3) legal trajectories and proxies of stability, including court involvement, citation history, child welfare involvement, and placement history.”³³⁵ They found that participation in the specialty court for youth impacted by sex trafficking “suggests an increase in identification of mental health and substance use needs and linkages and referrals to mental health and substance use treatment services. In addition, there was increased stabilization as indicated by decreased substantiated child welfare allegations, fewer running away episodes, and placements and criminal involvement.”³³⁶ Therefore, the researchers concluded that specialty courts that incorporate a multidisciplinary, trauma-informed approach present a promising intervention model for addressing the significant treatment needs of youth affected by sex trafficking.³³⁷

It has been noted that the positive impact of CSEC courts can be seen most among girls who want to change their lives.³³⁸ In one court evaluation, two of the four participants who successfully completed the program entered while pregnant or shortly after giving birth.³³⁹ When interviewed, one of the girls expressed sincere gratitude for the help she received, especially regarding her child’s wellbeing.³⁴⁰

³³³ *See id.* at 3.

³³⁴ *See id.*

³³⁵ *Id.*

³³⁶ *Id.* at 2

³³⁷ *See id.* (emphasizing that future research is needed to show the effectiveness of the CSEC courts).

³³⁸ *See* Luminais et al., *supra* note 19, at 553.

³³⁹ *See id.*

³⁴⁰ *See id.*

ii. Shortcomings of CSEC Courts

Although CSEC courts are often viewed as progressive alternatives to traditional criminal justice approaches,³⁴¹ they also have been the subject of extensive debate and criticism. Lack of empirical data, especially of evaluation studies, is a big weakness identified in existing literature reviews on CSEC specialty courts.³⁴² There is no national database for CSEC courts, and, therefore, it is impossible to monitor their current operational status.³⁴³ There is also no consistent measurement of success, and thus there is no systematic way of monitoring progress or success rates across courts.³⁴⁴ It is unclear whether court actors fail to collect data on outcomes, if the data collected are not made available for analysis, or if a combination of these factors is at play.³⁴⁵ Another gap in the research is a study comparing the outcomes of justice-involved youth affected by sex trafficking who participated in CSEC courts to those who do not have access to specialized court services.³⁴⁶ There is also no research on a more diverse range of populations which addresses the existing gaps in our understanding of the treatment needs and legal paths of males and LGBTQ+ youth affected by sex trafficking.³⁴⁷ Equally concerning is the current lack of evidence-based frameworks to guide the operation of CSEC courts.³⁴⁸

³⁴¹ See *supra* Part IV.B.3.a.

³⁴² See Godoy et al., *supra* note 29, at 1345.

³⁴³ Some governmental entities track courts across their state, but there is wide variance on documentation among these states. Godoy points out that, there are no federal policies in place to establish a systematic approach for tracking court data and infrastructure, nor are there standardized data collection processes within the judicial system to help determine the number of participants involved in these courts. See *id.* at 1355.

³⁴⁴ See *id.* at 1355–56.

³⁴⁵ See Kulig & Butler, *supra* note 306, at 313.

³⁴⁶ See Bath et al., *supra* note 332, at 10.

³⁴⁷ See *id.*

³⁴⁸ See Luminais et al., *supra* note 19, at 555. As stated by Bath, “Additional attention is needed to develop and implement evidence-based interventions tailored to the unique needs of youth experiencing CSE, accounting for their racial/ethnic backgrounds and the impact of prior system involvement.” Eraka Bath et al., *Substance Use, Mental Health, and Child Welfare Profiles of Juvenile Justice-Involved Commercially Sexually Exploited Youth*, 30 J. CHILD & ADOLESCENT PSYCHOPHARMACOLOGY 389, 395 (2020), <https://doi.org/10.1089/cap.2019.0057>. It remains uncertain whether evidence-informed approaches for treating trauma symptoms in other populations would be sufficient or effective for survivors of human trafficking, especially considering the complex trauma many experience as well as the numerous other needs they often have. See Nathaniel A. Dell et al., *Helping Survivors of Human Trafficking: A Systematic Review of Exit and Postexit Interventions*, 20 TRAUMA, VIOLENCE, & ABUSE 1, 22 (2017), <https://doi.org/10.1177/1524838017692553>.

Furthermore, researchers found that the specialty courts are not designed to deal with the complexity of youth's lived experiences.³⁴⁹ In addition, the conflicting worldviews and objectives of each actor complicate the process.³⁵⁰ The juvenile legal system has a need to identify a clear victim/offender: The political rhetoric calls for "uncomplicated victims in need of rescue;" yet youths want to "define themselves as actors with agency in a complicated situation."³⁵¹ The researchers point out that the disease/disorder model of other specialty courts cannot be easily transferred to the CSEC specialty courts.³⁵² On one hand, the participants of CSEC courts, similar to other youth specialty courts, have extensive histories of trauma, suffer the effects of poverty, substance abuse, and other mental health issues, and per Safe Harbor laws they are considered victims.³⁵³ Yet, because of their status in the juvenile legal system, they are considered delinquents.³⁵⁴ The trafficking-informed approach compels court officials to acknowledge that youth before them may simultaneously be victims and delinquents.³⁵⁵ The argument posits that their victimization led them to commit the crimes under consideration, like participants in other specialty courts, where the defendant is held accountable for their actions, even when addiction drives the behavior.³⁵⁶ For trafficking victims, they are expected both to be accountable for their actions and to recognize how exploitation and victimization have led them to this point, which can undermine any sense of agency they may have.³⁵⁷ The court,

³⁴⁹ See Luminais et al., *supra* note 19, at 543–44. Gibbs et al. noticed:

Factors precipitating trafficking engagement were rarely remediable within short-term service engagement. Service delivery was sometimes complicated by state or funding agency requirements, such as parental notification when minors stay at youth shelters, or parental permission for minors to receive mental health services. Many housing and benefit programs are restricted to adults, and youth may avoid other service resources out of fear of child welfare involvement. Although intended to protect minors, these provisions frequently represented structural barriers to services for youth whose families do not protect or provide for them. In addition to resources addressing their immediate circumstances, young people will need extensive and extended support in order to launch successfully into young adulthood.

Gibbs et al., *supra* note 328, at 6.

³⁵⁰ See Luminais et al., *supra* note 19, at 541.

³⁵¹ *Id.*

³⁵² See *id.* at 542–43.

³⁵³ See Ryan T. Shields & Elizabeth J. Letourneau, *Commercial Sexual Exploitation of Children and the Emergence of Safe Harbor Legislation: Implications for Policy and Practice*, 17 CURRENT PSYCHIATRY REP. 1, 3–4 (2015), <https://doi.org/10.1007/s11920-015-0553-5>.

³⁵⁴ See Luminais et al., *supra* note 19, at 542.

³⁵⁵ See *id.* at 553.

³⁵⁶ See *id.* at 543.

³⁵⁷ See *id.*

by design, functions as a punitive system, focused on assigning blame and penalizing the guilty.³⁵⁸

Moreover, the cause-and-effects relationship between the underlying reason for being trafficked and some types of crimes is not always clear.³⁵⁹ Luminais et al. criticize the traditional understanding of trafficking which assumes that the genesis of the problem is the person exploiting the youth (“trafficker”).³⁶⁰ They state that there are other, “more ambiguous types of ‘trafficking’ such as youth who are ‘involved in the life’ of arranging ‘clients’ for other girls ‘involved in the life,’ or girls termed ‘self-trafficked’ because they sell nude photographs of themselves.”³⁶¹ Then, in situations where a pimp profits from a girl’s exploitation, the girl herself may not recognize or define the relationship as abusive or coercive. The researchers stress that the exploiter-victim metaphor can lead to inaccurate practices.³⁶²

Luminais et al. conclude that “the conflict that is created by the differences between the framework of human trafficking, the legal outlook

³⁵⁸ See *id.* The authors point to the fundamental dissonance of the conflicting “victim-delinquent” framework as a leading factor of struggles in the CSEC court they evaluated. They say:

A victim of trafficking framework demands a clear, sympathetic victim, exploited by identifiable persons who cause the victim to commit crimes against her will, particularly in a political context. A delinquent framework, following a neoclassical approach to the criminal justice system based on accountability and individualizations of punishment and deterrence, suggests that this same person must be held accountable for her actions. In reality, the youth on the docket were, in some ways, exploited and traumatized but were also actors in their own lives. They were both victim and delinquent. They came with reasons why engaging in the sex trade is an understandable, if regrettable, choice on their part. Often, no one specific person forced the victim to commit a crime. Their stories were like so many of the children at juvenile court; stories that involve trauma, poverty, abuse, etc. However, the youth on the docket were offered diversion and a little extra support because, in this political moment, there is an increased awareness and interest in helping (“saving”) girls from the evils of sex trafficking.

Id. at 543. While examining an adult sex trafficking diversion court, Gruber et al. agree that maintaining this line between victim-defendants and real defendants is challenging in practice. “As a victimhood-based maneuver, rather than an anti-incarceration maneuver, the HTICs [Human Trafficking Intervention Courts] must necessarily be lenient toward defendants who are in fact victims, but it does not have to extend the same courtesy to ‘real’ defendants.” Aya Gruber et al., *Penal Welfare and the New Human Trafficking Intervention Courts*, 68 FLA. L. REV. 1333, 1380 (2016).

³⁵⁹ See Luminais et al., *supra* note 19, at 542.

³⁶⁰ See *id.*

³⁶¹ *Id.* at 543. A random sample of minor prostitution arrests found that most (57 percent) involved a third-party exploiter, 31 percent involved no third-party exploiter, and the remaining 12 percent involved familial exploitation. Kimberly J. Mitchell et al., *Conceptualizing Juvenile Prostitution as Child Maltreatment: Findings from the National Juvenile Prostitution Study*, 15 CHILD MALTREATMENT 18, 24–25 (2010).

³⁶² *Id.*

needed to administer a court, and the lived experiences of youth is irreconcilable.”³⁶³ According to them, “[a]ll youth entering the juvenile legal system with trauma, regardless of whether it is perpetrated by family members or gang members or economic conditions, deserve access to a system that is restorative and rehabilitative rather than punitive.”³⁶⁴ They emphasize that “[s]ingling out a subsection of girls for special treatment because trafficking is a hot topic makes an experiment of their lives while offering few clear benefits.”³⁶⁵

Another observed drawback of CSEC courts is that the court and key decision-makers often overlook input from victims about the types of support and services they truly need.³⁶⁶ As a result, even well-intended efforts frequently fall short of providing victims with the essential resources and services they need, particularly housing and employment.³⁶⁷ There are also studies, based in Critical Race Feminism,³⁶⁸ that reveal that although well-intentioned, these gender-specific youth courts rely on harmful gender stereotypes to direct girls towards outdated and hegemonic notions of girlhood, ones centered in white, middle-class notions of femininity.³⁶⁹ Accordingly, CSEC courts “target[] girls, mostly girls of color, for enhanced scrutiny and surveillance” and use “intrusive and punitive methods of social control.”³⁷⁰ That criminalization model stems from the concept of individuation of delinquency.³⁷¹ Gamal explains that in CSEC courts,

just as the court’s discretion is elevated, the girl’s autonomous choices are cast as a product of individual pathology rather than social inequity. In this context,

³⁶³ *Id.* at 555.

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *See id.* at 543.

³⁶⁷ *See id.* (citing Gibbs et al., *supra* note 328, at 4, 5).

³⁶⁸ “Critical race feminism (CRF) refers to a multidisciplinary theory developed to highlight and address the legal concerns of women of color (i.e., women of African, Asian, Latin, Middle Eastern, and Native American descent). CRF takes into consideration the intersections of race, class, and gender in understanding the experiences of women of color, thus attending to the unique needs of this population.” SUZETTE L. SPEIGHT & MYRIAM KADEBA, *THE SAGE ENCYCLOPEDIA OF PSYCHOLOGY AND GENDER* 398, 398 (Kevin L. Nadal ed., 2017).

³⁶⁹ Gamal, *supra* note 25, at 228. For example, Gamal, in her analysis, relies on a concept of hegemonic femininity which presumes that there is some ideal form of femininity (middle-class, heterosexual, white femininity) to which all other expressions of femininity are subordinate. There are numerous ideals of that femininity and one of them is that “good girls” should not adopt the male characteristics of willfulness and they should be subordinate to their male superiors, intimate partners, and family members. Another ideal is heterosexism, which values sexual chastity until marriage and an expectation that good girls “belong in the home or at school, where they can prepare for lives cultivating a nuclear family subordinate to a male head of household.” *Id.* at 240–41 (citation omitted).

³⁷⁰ *Id.* at 228.

³⁷¹ *Id.* at 247.

delinquency is not a result of failing schools, housing instability, or over-policing. Instead, delinquency is cast as a lapse in *personal* judgment and a failure in *individual* responsibility.³⁷²

Once the court's *parens patriae* authority is triggered, the court has the power to intervene in every facet of the girl's life, requiring compliance and adherence to a patriarchal court authority.³⁷³ Gamal notices that common conditions in CSEC courts reflect outdated views that push girls back into failing schools, force them to choose between detention and potentially harmful home environments, and hinder their ability to earn money.³⁷⁴ At the same time, the court takes on "the protective role of a paternal figure and the coercive force of the penal system."³⁷⁵ Similar to a parental figure, the court has the authority to provide the girl with material resources.³⁷⁶ However, before offering such support, it first uses the state's coercive power to criminalize and regulate her behavior.³⁷⁷ That logic of CSEC courts, as Gamal calls it, "care through criminalization," puts an expectation of young girls "to be submissive to a caring and coercive paternalistic court."³⁷⁸

Researchers also noticed that the longer the youth and her family remain involved in the court system, the worse their chances were for not continuing that relationship beyond the CSEC court.³⁷⁹ One other reason why the court should play as small a role as possible in the lives of youth is that it would be easy for the court to replace the exploiter in controlling every aspect of the youth's life.³⁸⁰ Additionally, CSEC courts, regardless of motivation, have been criticized for being an expansion of "penal welfare" or a system of social services that are accessible through and administered by the courts, ensuring a long-term entanglement with the criminal legal system.³⁸¹ In fact, researchers have made it clear that as an

³⁷² *Id.*

³⁷³ *Id.* at 246; *see also supra* Part I.

³⁷⁴ Gamal, *supra* note 25, at 242.

³⁷⁵ *Id.* at 247.

³⁷⁶ *Id.*

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ Luminais et al., *supra* note 19, at 551.

³⁸⁰ *Id.*

³⁸¹ Gruber et al., *supra* note 358, at 1333, 1337. Although Gruber et al. discuss that issue in the context of adult sex trafficking courts, the author of this Article believes that argument to be relevant to the discussion of the CSEC courts. Gruber et al. say: "In an era in which 'mass incarceration' is a familiar term and tough-on-crime and broken windows ideologies are falling into disfavor, penal welfare enables entrenched institutions of criminal law to continue to function despite a growing crisis in public confidence." *Id.* at 1333. They embrace Garland's definition of penal-welfarism where he "contrasts penal welfarism, which embraces rehabilitation, indeterminate sentencing, expertise, diagnosis, and the like, with more classic penal ideologies

unintended negative consequence these courts may result in longer surveillance and system involvement.³⁸² As stated by Godoy, “Adolescents and their families may experience protracted engagement with the judicial system as a result of their involvement in a specialty court. Given the pervasive racial disparities within the U.S. criminal legal system, prolonged surveillance may have particularly negative implications for black, indigenous, and other people of color.”³⁸³

What’s more, participation in CSEC courts does not prevent youth from being incarcerated or institutionalized.³⁸⁴ CSE youth are often arrested and detained in order to receive services and “for their own protection.”³⁸⁵ Oftentimes, as a result of a lack of services, resources, and supportive systems, but also as the outcome of historic precedent of detaining youth for their involvement in prostitution,³⁸⁶ some front-line police officers have agreed that, given the limited options available for young people, arresting them is seen as the most effective way to help them.³⁸⁷ In fact, based on her numerous interviews with law enforcement, Jennifer Musto detected a recurring theme that arrest and detention-like facilities are considered essential for protecting trafficked youth.³⁸⁸ Moreover, youth

like retributivism and the principle of legality,” and “highlight how criminal courts today administer ‘ordinary’ welfare, including basic services, material goods, and other social-safety net items.” *Id.* at 1337 n.15 (citing DAVID GARLAND, *THE CULTURE OF CONTROL: CRIME AND SOCIAL ORDER IN CONTEMPORARY SOCIETY* 38 (Univ. of Chi. Press 2001)).

³⁸² Godoy et al., *supra* note 29, at 1345 (citing Bath et al., *supra* note 332, at 2).

³⁸³ *Id.* at 1357.

³⁸⁴ See Musto, *supra* note 1, at 267–68.

³⁸⁵ *Id.*

³⁸⁶ See *supra* Introduction (discussing the juvenile legal system as the very mechanism of helping at risk and vulnerable populations, including girls); see also *supra* Part II (discussing criminalization of juvenile prostitution).

³⁸⁷ Musto, *supra* note 1, at 267. Others suggest that because of the challenges in identification of CSE victims, the victims can go unnoticed or be initially identified and treated as offenders based on their activities at the time of the arrest. See Kulig & Butler, *supra* note 306, at 303.

³⁸⁸ Musto, *supra* note 1, at 267–68. Musto quotes her interview with a police officer who talked about her dilemma:

We have to focus on arresting victims as an option because right now we don’t have other options. I don’t necessarily like putting victims in jail. I recognize that’s what we’re doing. I’m incarcerating a victim. But I’m doing it for their best interest. Give me another option and we’ll do it! Law enforcement as a whole—we don’t necessarily want to incarcerate the victim, but we have to work with the tools we have. You give me another way, we’ll look at it. There have been some legislators and grassroots organizations that are looking to decriminalize juvenile prostitution. And I’m like “fine! I’m not opposed to it. But don’t do it until you give us another tool.” Because then I have nothing. Without that, I wouldn’t have a legal reason to hold them in detention for their best interest.

Id. at 267–68.

participating in CSEC courts can still face spending time at a youth facility as part of the court's recommendation.³⁸⁹ Incarceration of youth has dire and longitudinal effects on the young people and potentially exposes them to various forms of further victimization.³⁹⁰ The fact that youth often come to a CSEC court as a result of them being arrested points to other issues of concern regarding CSEC courts, including coercion and net-widening. As in other specialty courts, youth often agree to participate in them to avoid other consequences they may face in a criminal legal system, e.g., detention time.³⁹¹ The threat of detention or prison time is highly coercive.³⁹² Coercion then can interfere with therapeutic goals.³⁹³ What's more, threats of prosecution are not only ineffective, but may also increase victims' dependence on sex-trade market facilitators, as they may see them to be "the one person who can protect her from the system, incarceration."³⁹⁴ As Musto concludes,

Even programs designed to empower youth and provide them with a continuum of comprehensive and wraparound services are typically offered only after they are brought into the juvenile justice system. The close alliances between law enforcement agents, victim advocates, and social service providers may therefore perpetuate youth's distrust in the system and encourage their reliance on market facilitators.³⁹⁵

And, just like in the case of JDTCs and JMHCs, there is a concern that "[w]hen these programs are established, officers in that jurisdiction may begin arresting and 'diverting individuals they would have otherwise left alone on the grounds of connecting them with social services.'"³⁹⁶ "Some diversion programs have even acknowledged that policing and arrests will increase as a way to fill 'open slots.'"³⁹⁷

All in all, there are a lack of studies examining the role the courts play in desistance from sex work for youth. Yet, the available research

³⁸⁹ Some girls at the Safe Harbor Project in Ohio faced placement in a shelter or a detention center when a bed space for a therapeutic facility was not available. See Luminais et al., *supra* note 19, at 550.

³⁹⁰ Chauhan, *supra* note 44, at 1004.

³⁹¹ Gamal, *supra* note 25, at 249.

³⁹² Kendis, *supra* note 3, at 828.

³⁹³ Bruce J. Winick & David B. Wexler, *Drug Treatment Court: Therapeutic Jurisprudence Applied*, 18 *TOURO L. REV.* 479, 483 (2002).

³⁹⁴ Musto, *supra* note 1, at 271 (citing Linda Williams, *Provide Justice for Prostituted Teens: Stop Arresting and Prosecuting Girls*, in *CONTEMPORARY ISSUES IN CRIMINAL JUSTICE POLICY: PROPOSALS FROM THE AMERICAN SOCIETY OF CRIMINOLOGY CONFERENCE 300* (Natasha A. Frost et al. eds., 2009)).

³⁹⁵ *Id.*

³⁹⁶ Kendis, *supra* note 3, at 831.

³⁹⁷ *Id.*

assessing that issue for adult CSEC courts points to a lack of effectiveness of the courts.³⁹⁸

V. A REVISED APPROACH: COMMUNITY-LED PREVENTION AND INTERVENTION EFFORTS FREE FROM JUVENILE LEGAL SYSTEM CONTINGENCIES

This Article illustrates how historic legacies of juvenile legal systems have influenced the antitrafficking efforts and how antitrafficking interventions have been deployed against girls. The ultimate efficacy of these interventions is not yet known, but studies point to the fact that, despite good intentions, the court's involvement is inefficient and oftentimes detrimental.³⁹⁹ The CSEC courts perpetuate the flaws of the original family court, especially in approaches towards girls of color.⁴⁰⁰ Girls of color have been disproportionately exposed to state-sponsored violence committed by individuals who make up the carceral and law apparatus, and CSEC courts present another example of the state's overreliance on the juvenile and criminal legal systems to redress sex trafficking.⁴⁰¹ Moreover, given the economic costs of policing, prosecution, defending, and court administration, and the social and human costs of arrests, court appearances, and incarceration, using the criminal system to provide services is neither a necessary nor an efficient way to reach CSE youth.⁴⁰²

³⁹⁸ *Id.* at 807–08. Luminais et al. bring up studies showing failure rates as high as 84 percent. They also highlight that what proves to be effective in one jurisdiction may not be applicable to others, as each jurisdiction has its own local court response to human trafficking. Luminais et al., *supra* note 19, at 544.

³⁹⁹ Musto says,

In the absence of research on youth's perspectives of these anti-trafficking rescue and rehabilitative tactics and in light of research with adult sex workers suggesting that after years of criminal justice and rehabilitative interventions, many are not interested in being saved by the criminal justice system or "saved from the saviors" themselves, questions about these interventions' ability to offer comprehensive support and whether such protective efforts are not yet another variation of the softened, albeit still penalizing and punishing anti-trafficking fist.

Musto, *supra* note 1, at 271.

⁴⁰⁰ Ocen, *supra* note 36, at 1617.

⁴⁰¹ The limitations of the criminal legal system in stopping gender-based violence are well-documented. See RESTORATIVE JUSTICE AND VIOLENCE AGAINST WOMEN (James Ptacek ed., 2010); Lara Stemple, *Male Rape and Human Rights*, 60 HASTINGS L.J. 605 (2009).

⁴⁰² See Gruber et al., *supra* note 358, at 1393–94. By 2017, it has been determined that more than thirteen million dollars have been invested in Safe Harbor per biennium. LAURA SCHAUBEN ET AL., SAFE HARBOR: EVALUATION REPORT 1 (2017), https://www.wilder.org/sites/default/files/imports/SafeHarbor_EvaluationReport_10-17.pdf. Luminais et al. also state that given the "delinquent" framework, the court's time constraints, and inflexibility of a

Community-led prevention and intervention efforts should be the very mechanisms for supporting youth and that needs to happen outside of the justice system.⁴⁰³ The social forces that contribute to girls' delinquency and their involvement in sex trafficking such as "limited economic opportunities, under-resourced educational environments, gentrification and displacement, and racial and gender discrimination"⁴⁰⁴ must be recognized and addressed. Meeting the fundamental needs of youth in our society must take priority over addressing trafficking.⁴⁰⁵ When we talk about these "needs," we are raising fundamental questions about the availability of resources in underserved and economically disadvantaged communities. But as pointed out by the Global Health Justice Partnership, "the dominant language of 'needs' and 'services' for 'trafficking victims' . . . obscures this fundamental resource question."⁴⁰⁶ In many instances, specific services such as trauma counseling, drug and alcohol treatment, and mental health services are crucial, but barriers of poverty, citizenship status, and criminal records can make accessing these services challenging.⁴⁰⁷

Placing the analysis of the CSEC court in the context of racial histories and gendered ideologies of the juvenile legal system suggests that social services accessed through the CSEC courts and contingent on juvenile legal system involvement are not appropriate from a health justice framework.⁴⁰⁸ As discussed in this article, many girls need access to resources and services, but the structure of CSEC courts, similar to other specialty courts, make the program another "agent of coercive control and loss of autonomy" for the girls.⁴⁰⁹ CSE girls have high healthcare needs.⁴¹⁰ Healthcare providers are in a unique position to identify exploited youth and offer specialized services.⁴¹¹ As emphasized in the Global Health Justice Partnership report,

Courts should not be in the business of ordering cookie cutter treatments: Any requirement that defendants undergo a mental health or substance use

criminal justice system, the court might not be the best entity to serve the majority of trafficking youth." Luminais et al., *supra* note 19, at 555.

⁴⁰³ Luminais et al. also point out that "[a] more holistic, community approach would like better serve the youth—one that can be long-term, flexible in its approach and framework, and available to all." Luminais et al., *supra* note 19, at 555.

⁴⁰⁴ See Gamal, *supra* note 25, at 247.

⁴⁰⁵ See Gibbs et al., *supra* note 328, at 6.

⁴⁰⁶ GLOB. HEALTH JUSTICE P'SHIP, *supra* note 4, at 53–54.

⁴⁰⁷ *Id.*

⁴⁰⁸ *See id.*

⁴⁰⁹ *Id.*

⁴¹⁰ Elizabeth Barnert et al., *Understanding Commercially Sexually Exploited Young Women's Access to, Utilization of, and Engagement in Health Care: "Work Around What I Need,"* 29 WOMEN'S HEALTH ISSUES 315, 316 (2019).

⁴¹¹ Barnert et al., *supra* note 143, at 828.

assessment in order to determine individualized needs should be at the point of contact with a service provider (not the courts) to minimize the risk of expanding the authority of the criminal justice system over services.⁴¹²

The appropriate place for determining needs is with the service provider, who has professional training in ethically engaging with and providing services to marginalized populations, including individuals involved with the juvenile legal system.⁴¹³

The most comprehensive, multidisciplinary, and multi-state agency model of addressing the needs of CSE youth exists in the state of Minnesota. Enacted in 2011,⁴¹⁴ the original Safe Harbor law laid the groundwork for legal protections and access to state services for youth and young adults who have experienced sexual exploitation. The model, called No Wrong Door, was based on the assumptions that “[w]henver possible, existing programs should be used to provide services to victims, and supportive service providers must be fully funded to work with victims (including homeless, domestic violence, and sexual assault supportive service providers).”⁴¹⁵ Providing comprehensive intervention services and housing for CSEC across the state; providing regionally tailored navigation support and culturally responsive services; and delivering cross-sector training on recognizing, supporting, and referring CSEC are central goals of the No Wrong Door model.⁴¹⁶ The model places emphasis, among others, on training of service providers in identifying sexual exploitation and knowing which services to refer them to; being aware of the availability of services across the state; recognizing trauma-informed services that are tailored to individual needs, including those that are gender-responsive, culturally sensitive, age-appropriate, and affirming of gay, lesbian, bisexual, transgender, and questioning youth; seeing that youth have a right to

⁴¹² GLOB. HEALTH JUSTICE P'SHIP, *supra* note 4, at 52.

⁴¹³ *Id.* at 53.

⁴¹⁴ Additional funding allocations were made in 2013 and 2014. See *Safe Harbor Legislative Timeline*, MINN. DEP'T OF HEALTH (Feb. 23, 2024), <https://www.health.state.mn.us/communities/humantrafficking/safeharbor/legislativetimeline.html>.

⁴¹⁵ *Id.* at 2. The grants to organizations that support the framework are administered by the Minnesota Department of Health (MDH) and Human Services (DHS). See *Minnesota Human Trafficking and Exploitation Prevention and Response*, MINN. DEP'T OF HEALTH (Aug. 7, 2024), <https://www.health.state.mn.us/communities/humantrafficking/documents/hthandout.pdf>. Specialized services and Regional Navigators are funded through MDH; DHS organizes housing, shelter, and outreach. Housing and services are provided statewide and are divided into regions. See AN EVALUATION OF THE SAFE HARBOR INITIATIVE IN MINNESOTA 2023: REPORT TO COMMISSIONER (2023), <https://www.health.state.mn.us/communities/humantrafficking/documents/2023safeharboreval.pdf> [hereinafter REPORT TO COMMISSIONER].

⁴¹⁶ SCHAUBEN ET AL., *supra* note 402, at 5–6. For an overview of the outcomes of No Wrong Door framework, see the Logic Model. *Id.* at 6.

privacy and self-determination; and linking them to services based on positive youth development.⁴¹⁷

The main referral source for the youth to services come from community agencies.⁴¹⁸ The age cutoff for obtaining Safe Harbor services was initially eighteen years old, but was increased to twenty-four years old in 2016.⁴¹⁹ The vast majority of participants are females,⁴²⁰ and more than half of the participants are people of color.⁴²¹ The Safe Harbor program has been evaluated numerous times.⁴²² The most recent findings identify several positive impacts of the Safe Harbor program and some opportunities for improvement.⁴²³ The essential support Safe Harbor offers, such as “meeting youths’ basic needs, helping youth secure permanent housing, providing mental health services, ensuring consistency and stability of services, providing culturally responsive services, and providing services to support youth to grow toward independence,” were found with satisfaction of a substantial majority (ninety-five percent) of youth survey respondents.⁴²⁴ One law enforcement survey participant expressed their opinion of the Safe Harbor program:

The [region redacted] Safe Harbor navigator was the one that kind of made contact with this individual, [found a] phenomenal place to stay in [location redacted] and . . . was able to help her stay there for a couple of nights. . . . The navigator was able to work with a shelter in [location redacted] and get the female transportation and everything up to [location redacted] and to a safe place and find the resources to change your phone number and get a new phone.⁴²⁵

All surveys participants pointed to the strengths that make Safe Harbor an effective program, such as “strong relationships between youth and providers, youths’ resourcefulness and determination, providing a community so youth feel less alone, protecting privacy and confidentiality,

⁴¹⁷ *Id.* at 2.

⁴¹⁸ *See id.* at 9 (estimating that forty-eight percent of youth from 2015 to 2017 were referred by community agencies).

⁴¹⁹ *Id.* at 10.

⁴²⁰ *Id.* at 9, 11 (revealing that eighty-three percent of participants from 2015 to 2017 were female); *see also* REPORT TO COMMISSIONER, *supra* note 415, at 9–10 (establishing that cis-gender females made up seventy-six percent of the program enrollment in 2023).

⁴²¹ SCHAUBEN ET AL., *supra* note 402, at 11 (revealing that fifty-five percent of participants from 2015 to 2017 were youth of color); *see also* REPORT TO COMMISSIONER, *supra* note 416, at 8–9 (illustrating a similar percentage in 2023).

⁴²² *Minnesota Safe Harbor Evaluation*, MINN. DEP’T OF HEALTH, <https://www.health.state.mn.us/communities/humantrafficking/reports/sheval.html> (last updated Nov. 8, 2024).

⁴²³ *See id.*

⁴²⁴ *See* REPORT TO COMMISSIONER, *supra* note 415, at 18 (cleaned up).

⁴²⁵ *Id.*

enabling youth to co-create services, and provider partnerships.”⁴²⁶ Identified areas for improvement include “supporting and providing more trauma-informed approaches, addressing violence in shelters, a short supply of shelter space, improving statewide coordination of services and care, and increasing training and resources to adequately serve LGBTQ+ youth.”⁴²⁷ The 2023 evaluation also highlights the critical importance of cross-sector governmental and community collaboration in preventing human trafficking and exploitation.⁴²⁸

It is clear that, despite the ongoing challenges the Safe Harbor program in Minnesota faces, it has been one of the most successful models of decriminalizing sexually exploited youth and providing coordinated services. It shows that services received by CSEC courts participants can be made available to all youth on a voluntary basis and dissociated from juvenile legal system involvement.

Although it is evident that the Safe Harbor program recognizes the need for youth’s self-determination and aims to be a culturally competent and gender-responsible program, the evaluations of the program do not elaborate on these components of the program.⁴²⁹ Therefore, this Article proposes that models like the Safe Harbor program center the experiences of Black girls and other marginalized youth. Doing so will help them understand and address the factors which make youth hyper vulnerable to CSE.⁴³⁰ As stressed by Phillips, any development of comprehensive legal and social solutions that are non-stigmatizing and meet youth where they are must start with a dialogue.⁴³¹ In order to center the intersectional vulnerabilities of Black girls, youth and communities of color as a whole have to be empowered.⁴³² Empowerment necessitates identifying and addressing the structures that cause harm.⁴³³ This Article emphasizes the need for acknowledgment of the racial and gender injustices and shows that economic disparities and limited social supports place youth in vulnerable situations, making them susceptible to exploitation and more likely to turn to prostitution as a means of self-sufficiency. “The belief that exploiter

⁴²⁶ *Id.* (cleaned up).

⁴²⁷ *Id.* at 18–19 (cleaned up).

⁴²⁸ *Id.* at 26; see also Andrea Nichols et al., *Team Approaches to Addressing Sex Trafficking of Minors: Promising Practices for a Collaborative Model*, 13 *SOCIETIES* 1 (2023), for a protocol on engaging a team approach inclusive of multiple community partners as a promising mezzo level response to addressing the CSEC.

⁴²⁹ See SCHAUBEN ET AL., *supra* note 402; see also REPORT TO COMMISSIONER, *supra* note 415, at 8–9.

⁴³⁰ Phillips, *supra* note 2, at 1671.

⁴³¹ *Id.* at 1671–72.

⁴³² *Id.* at 1672.

⁴³³ *Id.*

impunity is the primary culprit obscures the role of deep poverty.”⁴³⁴ It is important to create strategies to enhance safety within communities of color and foster community accountability without excessive dependence on law enforcement.⁴³⁵ It can be done by locating support services and interventions within impacted communities. Such a strategy will lead to empowerment and healing of communities of color.⁴³⁶

Empowerment also means that girls are treated as experts in their own lives, that they are allowed to have control over their decisions, and have the authority to choose their actions, even if their choices differ from what adults consider safe or appropriate.⁴³⁷ Girls need to have the power to make all of the decision about their bodies and lives “without policing, punishment, or violence.”⁴³⁸ Neither the portrayal of the marginalized communities as a “problem” that needs to be solved, nor the portrayal of the CSE girls as victims who need to be saved by someone else recognizes that girls “have knowledge and expertise in matters relating to [their] own lives that no one else will have.”⁴³⁹ In the words of girls from the Young Women’s Empowerment Project, “We are not the problem—we are the solution.”⁴⁴⁰ States interested in creating holistic programs, aimed at ending sexual exploitation of youth, should pay close attention to the voices of these girls.⁴⁴¹ Young people’s circumstances must shape their progress toward outcomes.

CONCLUSION

The notions of paternalism, racial and gender stereotypes, and classism shaped the original family courts, and they continue to permeate all aspects of juvenile legal system, including specialty courts, such as CSEC courts. Although access to services and resources are essential for girls facing intersecting forms of oppression, CSEC courts—like other specialty courts—demonstrate significant limitations in gender-specific reform. Their focus on individual “change” often neglects to address systemic

⁴³⁴ *Id.*

⁴³⁵ *Id.* at 1674.

⁴³⁶ *Id.*

⁴³⁷ YOUNG WOMEN’S EMPOWERMENT PROJECT, *supra* note 12, at 8.

⁴³⁸ *Id.*

⁴³⁹ *Id.*

⁴⁴⁰ *Id.*

⁴⁴¹ *See id.* at 31–36 (representing youth actively and fiercely developing their own social support systems, self-care principles, and social justice campaign is YWEP, a group of young women and girls with lived experiences in the sex trade); *see also* Elizabeth Barnert et al., *supra* note 143, at 828 (emphasizing the importance of listening to voices of survivor-leaders); Elizabeth Barnert et al., *supra* note 410, at 321.

issues in a meaningful way. This Article shows why CSEC courts are not the appropriate mechanisms for intervention in sex trafficking of youth. The existing model of justice for CSE youth where “arresting to assist and carcally entrapping to empower is situated as the most legible paradigm for the achievement of justice”⁴⁴² is problematic. Courts, by design, function as punitive systems, focusing on assigning blame and penalizing the guilty. The appropriate place for determining the needs of youth subjected to CSE is with the youth themselves and possibly with the assistance of culturally competent service providers. Addressing the intersectional vulnerabilities of Black girls must begin with listening to the voices of youth affected by CSE and empowering communities of color. True empowerment involves recognizing and tackling the structural issues that inflict harm.

⁴⁴² Musto, *supra* note 1, at 273.