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Retribution Without Rehabilitation: How the "Troubled Teen Industry" Infringes on the Rights of Privately Placed Youth

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RETRIBUTION WITHOUT REHABILITATION: HOW THE "TROUBLED TEEN INDUSTRY" INFRINGES ON THE RIGHTS OF PRIVATELY PLACED YOUTH

ELIZABETH MORGAN*

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I. INTRODUCTION

At 3:00 a.m., a teenage girl awakens to a large, strange man looming over her in her bedroom.[1] He turns on the lights and gruffly commands her to get dressed and follow him and another grown man to a car.[2] Scared and confused, she resists verbally but follows their demands.[3] The two men drive the girl away.[4] Sobbing, she attempts to remember the names of the highway exits they pass as they travel farther and farther away from her home but is unable to read the signs through her tears.[5] This seems like a kidnapping, except for the fact that the girl's parents have silently observed the entire scene up until their daughter is whisked away from their home by strangers.[6] In fact, not only have they stood by, her parents are the ones who requested this abduction and paid money (likely large sums) for this service.[7]

The girl does not know that her ultimate destination is a property in a small city three hours from her home.[8] When she

1. Rachel Aviv, *The Shadow Penal System for Struggling Kids,* THE NEW YORKER (Oct. 11, 2021), www.newyorker.com/magazine/2021/10/18/the-shadow-penal-system-for-struggling-kids [perma.cc/R6QR-XHVM].

2. *Who's Watching the Kids?* (PBS television broadcast Mar. 3, 2010).

3. Aviv, *supra* note 1.

4. *Id.*

5. *Id.*

6. Trisha Telep, *The Man Who Takes Troubled Youths to Therapy Camp*, BBC NEWS (Apr. 22, 2014), www.bbc.com/news/magazine-26513805 [perma.cc/YXL2-VKJR].

7. MAIA SZALAVITZ, HELP AT ANY COST: HOW THE TROUBLED-TEEN INDUSTRY CONS PARENTS AND HURTS KIDS 5 (2006) ("The cost of tough love treatment is comparable to the tuition at an Ivy League university."); *see also* Adiel Kaplan, *Does Science Support the 'Wilderness' in Wilderness Therapy?*, UNDARK (Jan. 29, 2020), undark.org/2020/01/29/does-science-support-the-wilderness-in-wilderness-therapy/[perma.cc/ZXX8-AP2Y] (describing wilderness therapy as costing $500 - $600 per day for months or even years); *see also* Aviv, *supra* note 1 (noting that tuition at Teen Challenge facilities—a religious TTI program—is estimated at approximately $30,000 per year).

8. Aviv, *supra* note 1.

arrives, she will be searched.[9] She will be stripped of her clothes until she is fully naked.[10] She will be forced to bend over and cough.[11] She will then learn she has arrived at her new school.[12] Eventually, she will be forced to carry a pregnancy to term, denied timely treatment for life-threatening preeclampsia, forced without counsel to give her child up for adoption, punished with isolation, forced to publicly testify to classmates about her pregnancy and related trauma, and ultimately, fall into a suicidal depression.[13]

The girl's name is Emma.[14] Emma is a victim of the Troubled Teen Industry ("TTI"), a largely unregulated, mostly unlicensed multibillion-dollar industry consisting of boot camps, behavioral modification treatment centers, wilderness therapy programs, and "emotional growth boarding schools—that sell [themselves] to parents, at least in large part, as therapy."[15] In many cases, parents sign contracts relinquishing control over their child to the facility.[16] Parents may not fully understand the consequences of these contracts and may be further influenced by deceptive marketing practices employed by the program.[17] TTI programs "have been known to spare no expense in using manipulative marketing tactics to lure parents into the programs. Some children have even been known to choose to go to these facilities because of how well the school is advertised."[18]

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9. Isabella Murray, *Paris Hilton Urges Federal Action to Reform 'Troubled Teen' Facilities*, ABC NEWS (May 12, 2022, 12:07 PM), www.abcnews.go.com/Politics/paris-hilton-urges-federal-action-reform-troubled-teen/story?id=84620293 [perma.cc/A5AL-FY3N]. This general industry practice is not specific to Emma's experience. *Id.*

10. *Id.*

11. *Id.*; *see also* Amanda Simmons, *Sorry, Kid, You Have No Rights Here: How Can We Protect Unadjudicated Youth in Private Residential Treatment Facilities from Harmful and Unnecessary Strip Searches?*, 44 CHILD. LEGAL RTS. J. 1, 3 (2023) ("The courts that have handled child strip search cases have recognized that a strip search inflicts more than a mere indignity on the child, and some have correctly concluded that a strip search is a traumatic event") (quotation marks omitted). However, constitutional protections rarely apply in private school or treatment settings. *Id.*

12. This particular location is affiliated with the Pentecostal Assemblies of God denomination. Aviv, *supra* note 1.

13. *Id.*

14. *Id.*

15. Maia Szalavitz, *YouTube's 'This is Paris' Reveals Hilton's Rich Girl Persona Masks Genuine Trauma*, NBC NEWS (Sept. 19, 2020, 3:30 AM) [hereinafter Szalavitz, *Genuine Trauma*], www.nbcnews.com/think/opinion/youtube-s-real-story-paris-hilton-reveals-her-rich-girl-ncna1240354 [perma.cc/2AMP-4EWT].

16. Aviv, *supra* note 1.

17. U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-713T, RESIDENTIAL PROGRAMS: SELECTED CASES OF DEATH, ABUSE, AND DECEPTIVE MARKETING 16 (2008).

18. Shayla Klein, *'My Parents Were Taken Advantage of By Evil People'* –

Working in concert with "youth transportation agencies," these operations use a "tough love" approach that regularly includes physical, sexual, and psychological abuse; clinically unsupported therapies; trafficking; human rights violations; forced labor; unhygienic practices; denial of medical care; poor sanitation; sleep deprivation; indoctrination; starvation; overcrowding; and even death.[19] On an annual basis, these programs purportedly serve upwards of 50,000 children. [20] Nonetheless, federal agencies have been reluctant to intervene due to muddy legal waters, parental immunity, and political corruption and entrenchment. Robust legislation is long overdue.

State juvenile justice systems have endorsed, if not enthusiastically embraced, these programs as an alternative to more traditional state-run juvenile carceral facilities.[21] However, this comment is focused on children and adolescents *outside* state carceral systems. Most TTI victims are involuntarily and privately placed into schools and programs by their parents or foster service, in contrast to juveniles that are publicly placed in a boot camp facility or similar program as an alternative to jail.[22] It is important to emphasize these privately-placed children have not been officially accused or convicted of committing crimes. Rather, they have been deemed deviant or delinquent by their parents or

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How the Troubled Teen Industry Manipulates Parents, 12 WBOY, www.wboy.com/only-on-wboy-com/my-parents-were-taken-advantage-of-by-evil-people-how-the-troubled-teen-industry-manipulates-parents/ [perma.cc/ZCD6-N6W4] (Aug. 21, 2021, 3:43 PM).

19. SZALAVITZ, *supra* note 7, at 1; *see also* Ira P. Robbins, *Kidnapping Incorporated: The Unregulated Youth-Transportation Industry and the Potential for Abuse*, 51 AM. CRIM. L. REV. 563, 564-600 (2014); *see also* Szalavitz, *Genuine Trauma*, *supra* note 15; *see also Program Deaths*, UNSILENCED, www.unsilenced.org/facility-deaths/ [perma.cc/A8U3-S5JJ] (last visited Oct. 7, 2022) (noting that if overdoses and deaths by suicide are taken into account, to date 380 kids and young adults have died after encountering these programs); *see also* Jesse Hyde, *Life and Death in a Troubled Teen Bootcamp*, ROLLING STONE (Nov. 12, 2015), www.rollingstone.com/culture/culture-news/life-and-death-in-a-troubled-teen-boot-camp-31639/ [perma.cc/7YHB-HWL5] (describing the dangers of teen bootcamps).

20. Tyler Kingkade, *Teens Were Sent to Wyoming Ranches for Therapy. They Say They Found a Nightmare of Hard Labor and Humiliation*, NBC NEWS, www.nbcnews.com/news/us-news/wyoming-christian-troubled-teen-ranches-abuse-rcna46112 [perma.cc/VF5B-7HCF] (Sept. 7, 2022, 4:46 PM).

21. SZALAVITZ, *supra* note 7, at 54.

22. Teressa E. Ravenell, *Left, Left, Left, Right Left: The Search for Rights and Remedies in Juvenile Boot Camps*, 35 COLUM. J.L. & SOC. PROBS. 347, 347-69 (2002). "Since the early 1990's the penal system has increasingly turned to boot camps as an alternative to traditional rehabilitation." *Id.* at 351. "In 1992, the Office of Juvenile Justice and Delinquency Prevention [hereinafter OJJDP] funded three pilot programs specifically geared towards adolescent offenders in Ohio, Colorado, and Alabama." *Id.* "As of 1998, ten States operated juvenile boot camps." *Id.*

caregivers, and as a result, are thrust into a shadow carceral system that deprives them of their civil rights, liberty, and sometimes their lives.

Part II, Background, explores the history of the Troubled Teen Industry from its origins in cult-affiliated practices in concert with antiquated mental health treatment through the current movement to close these operations and pass legislation to regulate facilities and programs.[23] Part III, Analysis, presents the current state of regulation and oversight, and discusses the patchwork of state licensing schemes, parental immunity, and religious exemptions. Part IV, Proposal, presents practical reforms and policies at the federal and state levels. In addition, this section asserts that TTI victims, like Emma, have suffered serious harm from abusive practices and are owed reparations.

II. BACKGROUND

A. TTI History

It started with a cult.[24] Synanon founder Charles "Chuck" Dederich introduced the "tough love"[25] philosophy into pseudo-therapeutic addiction treatment.[26] Synanon began in 1958, selling itself "as a cure for hardcore heroin addicts who could help each other by 'breaking' new initiates with isolation, humiliation, hard labor, and sleep deprivation."[27] During the 1970s and 1980s,

23. Tony Maglio, *Samantha Bee Skewers 'Hometown Buffet Krampus' Dr Phil in Takedown of the Troubled-Teen Industry,* THE WRAP (Nov. 18, 2021, 7:44 AM), www.thewrap.com/full-frontal-samantha-bee-dr-phil-show-troubled-teens-video/ [perma.cc/A64W-LBUG]; *see also* SZALAVITZ, *supra* note 7, at 26; *see also* Travis Anderson, *Representative Clark Talks Child Protection with Paris Hilton*, THE BOSTON GLOBE, www.bostonglobe.com/2022/05/13/metro/rep-clark-talks-child-protection-with-paris-hilton-dc/ [perma.cc/X6AP-GEP5] (May 13, 2022, 3:50 PM); *see also* Maggie Higgins (@maggiehiggins4), TIKTOK, www.tiktok.com/@maggiehiggins4/ [perma.cc/JW6B-QKMW] (illustrating a TTI survivor's social media presence).

24. SZALAVITZ, *supra* note 7, at 26.

25. The term "tough love" refers to using disciplinary techniques that range from emotional withdrawal to physical, emotional or verbal abuse. *48 Hours: Tough Love* (CBS television broadcast circa 1998); *see also* Veronika Tait, *Dismantling the Myth of Tough Love*, PSYCH. TODAY (July 5, 2020), www.psychologytoday.com/us/blog/pulling-through/202007/dismantling-the-myth-tough-love [perma.cc/QH5V-7JAE] (defining "tough love" from a psychological perspective).

26. *Controversial Synanon Founder Charles Dederich Sr. Dies at 83*, WASH. POST (Mar. 3, 1997, 7:00 PM) [hereinafter *Synanon Founder Dies*], www.washingtonpost.com/archive/local/1997/03/04/controversial-synanon-founder-charles-dederich-sr-dies-at-83/0b399226-ab4d-4e9f-913e-705f52d0148f/ [perma.cc/3Q8W-CKTD].

27. Maia Szalavitz, *The Cult That Spawned the Tough-Love Teen Industry*,

Synanon devolved into a violent cult before finally collapsing in 1991, but the group's influential practices had firmly established a foothold in addiction treatment.[28] According to journalist and TTI expert Maia Szalavitz, "[n]o fewer than 50 programs . . . can trace their treatment philosophy, directly or indirectly" to Synanon.[29] In particular, Synanon employed a method called "The Game."[30] During sessions of The Game, "participants would viciously verbally attack each other, leveling allegations that may or may not have been true."[31] Alternatively known as "attack therapy" or "encounter groups," this "brutal form" of treatment became a ubiquitous practice within the TTI.[32]

Synanon served as a philosophical foundation for several derivative TTI offshoot operations.[33] In addition because there is such little regulation, it is relatively easy to begin a program or even a school for troubled teens.[34] This brief history examines several of

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MOTHER JONES (Oct. 2007) [hereinafter Szalavitz, *Teen Industry*], www.motherjones.com/politics/2007/08/cult-spawned-tough-love-teen-industry/ [perma.cc/W6VF-SQYS]; s*ee also*, *Deadly Cults*, (Oxygen television broadcast June 14, 2020) (explaining that Dederich created the term "Synanon"). There are competing stories about the words he chose to combine. *Id.* One version says a participant stumbled over the words "symposium" and "seminar." *Id.* Others suggest he combined the Greek prefix "syn" (meaning "coming together") with "anon" from a reference to Alcoholics Anonymous ("AA"). *Id.*

28. SZALAVITZ, *supra* note 7, at 31.

29. *Id.*

30. Hillel Aron, *The Story of This Drug Rehab-Turned-Violent Cult Is Wild, Wild Country-Caliber Bizarre*, L.A. MAG. (Apr. 23, 2018), www.lamag.com/citythinkblog/synanon-cult/ [perma.cc/HRD9-N7LS].

31. John Dougherty, *Children of Synanon*, PHX. NEW TIMES (Oct. 10, 1996), www.phoenixnewtimes.com/news/children-of-synanon-6423375 [perma.cc/FB35-2KTY].

32. Robert Reinhold, *Encounter Movement, a Fad Last Decade Finds New Shape*, N.Y. TIMES (Jan. 13, 1974), www.nytimes.com/1974/01/13/archives/encounter-movement-a-fad-last-decade-finds-new-shape-tried-by.html [perma.cc/P8YY-KSA9]; *e.g.*, Matt Novak, *Synanon's Sober Utopia: How a Drug Rehab Program Became a Violent Cult*, GIZMODO (Apr. 15, 2014), www.gizmodo.com/synanons-sober-utopia-how-a-drug-rehab-program-became-1562665776 [perma.cc/TBG9-J6E6] (covering the history of Synanon and its ongoing influence); *see also The Troubled Teen Industry*, WWASP SURVIVORS (Feb. 3, 2012), www.wwaspsurvivors.com/the-troubled-teen-industry/ [perma.cc/6UE3-MPRW]; *see generally* Laura Wixon & Jordyn Krause, *Playing the Game: The Origins and Impact of Synanon*, BREAKING CODE SILENCE, www.breakingcodesilence.org/playing-the-game/ [perma.cc/7RDH-YWG4] (last visited Oct. 7, 2022). (discussing the iterations of the Synanon "game" throughout the industry)

33. SZALAVITZ, *supra* note 7, at 29.

34. Sulome Anderson, *When Wilderness Bootcamps Take Tough Love Too Far*, THE ATLANTIC (Aug. 12, 2014), www.theatlantic.com/health/archive/2014/08/when-wilderness-boot-camps-take-tough-love-too-far/375582/ [perma.cc/BTZ3-JV32] (describing the difficulties of regulating the industry). States have been lax in their

the most established Synanon lineages, without attempting to document every single operation (particularly drug rehabs that provide services to adults, as well as to children, thus falling outside the purview of TTI).[35]

1. The Seed and Straight, Inc.

a. The Seed

In 1970, comedian and recovering alcoholic Arthur Robert Barker founded "The Seed."[36] With no therapeutic or drug-counseling credentials, Barker modeled his teen drug treatment on Synanon.[37] In Barker's version of the Synanon Game, "children were berated and bullied into giving false confessions – often exaggerating or outright lying about their experience with crime, drugs, etc."[38] Those familiar with The Seed estimate that only thirty percent of residents actually suffered from addiction.[39] According to one survivor, Marc Polonsky, The Seed "utilized coercive techniques such as aggressive confrontation, intimidation, verbal abuse, sleep deprivation, and restricted access to the bathroom to tear down a teen's sense of self and replace it with the ready-made identity of a 'Seedling.'"[40]

Although The Seed survived in some form until 2001, its influence largely waned following a 1974 Senate report scrutinizing

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requirements for schools to register their existence at all. *Id.* Thus, such a catalog may not even be possible. *Id.*

35. Lisa Marsh, *Inside the Dramatic Rise and Fall of Phoenix House*, AVENUE MAG. (June 20, 2022), www.avenuemagazine.com/inside-the-dramatic-rise-and-fall-of-phoenix-house/ [perma.cc/N2FY-6XYJ]; *see also* Greg Moran, *Youth Home Closed After Sex Acts, Meth*, SAN DIEGO UNION-TRIB., www.sandiegouniontribune.com/2016/03/08/youth-home-closed-after-sex-acts-meth/ [perma.cc/GE2D-ZJTX] (Aug. 23, 2016, 12:03 AM); *see also* Kristina Cooke & Robin Respaut, *How a Respected Drug-Rehab Program Spun Out of Control*, REUTERS (Sept. 2, 2015, 3:00 PM), www.reuters.com/investigates/special-report/usa-rehab-phoenixhouse/ [perma.cc/3RG7-E3SJ] (describing Phoenix Houses, rehabilitation centers founded by Mitchell Rosenthal, a Synanon follower).

36. *The Seed*, UNSILENCED, www.unsilenced.org/timeline/the-seed/ [perma.cc/6A75-772G] (last visited Oct. 7, 2022).

37. *Id.*

38. *Id.*

39. *Id.*

40. Marc Polonsky, *The Seed*, THE SUN (Jan. 2007), www.thesunmagazine.org/issues/373/the-seed [perma.cc/H66P-4U45]; *see also* Cyndy Etler, *I Was Caged, Beaten and Warehoused by Republicans at a 'Concentration Camp for Throwaway Teens' in the 1980s*, INDEP. (Mar. 21, 2019, 5:48 PM), www.independent.co.uk/ voices/straight-inc-camp-republicans-us-abuse-teenager-children-trump-mel-sembler-a8834016.html [perma.cc/JS38-XAP9] (illustrating how control over using bathroom facilities is a common practice in TTI).

the program's federal funding.[41] Barker received a $200,000 federal grant from the National Institute of Drug Abuse ("NIDA") and requested an additional $700,000 for the program. [42] In his scathing report, the late Senator Sam Ervin (D,N. Carolina) compared The Seed's encounter groups to "the highly refined brainwashing techniques employed by the North Koreans" during the Korean War.[43] The negative publicity surrounding Senator Ervin's report inspired a group of "Seedlings" consisting of former Seed participants and their parents, to form Straight Incorporated ("Straight") to continue with The Seed's mission statement without the attendant scrutiny.[44]

b. Straight Incorporated

Meanwhile, in 1982, counselors Phyllis and David York published their bestselling book, *ToughLove*, which "popularized the idea that families, not just treatment programs, should practice tough love."[45] Combining twelve-step-style philosophies with tough love punitiveness, the Yorks' "twist was to claim that harsh measures actually helped end teen problems, rather than just improve life for other family members."[46]

That same year, President Ronald Reagan declared a "War on Drugs."[47] Encouraged by Mel Sembler, a strip mall developer and powerful Republican donor,[48] Nancy Reagan adopted an anti-drug

41. SZALAVITZ, *supra* note 7, at 22–23. Biblical references abound in the Troubled Teen Industry. *Id.* "The Seed" is an allusion to "The Parable of the Mustard Seed." *Id.* This parable appears in three of the four gospels: *Mark* 4:30-32, *Matthew* 13:31-32, *Luke* 13:18-19, as well as the non-canonical Gospel of Thomas. *Parable of the Mustard Seed*, WIKIPEDIA, en.wikipedia.org/wiki/Parable_of_the_Mustard_Seed#:~:text=It%20appears%20in%20Matthew%20(13,of%20Thomas%20(verse%2020) (last visited Sep. 6, 2024). The New International Version of the Bible ("NIV") presents the story from Mark as follows: "Again he [Jesus] said, "What shall we say the kingdom of God is like, or what parable shall we use to describe it? It is like a mustard seed, which is the smallest of all seeds on earth. Yet when planted, it grows and becomes the largest of all garden plants, with such big branches that the birds can perch in its shade." *Mark* 4:30-32 (NIV). The parable is understood to mean that the gospel started small and would spread quickly. SZALAVITZ, *supra* note 7, at 22-23. In the context of TTI, the reference becomes more foreboding, especially as cult behaviors grow within each organization. *Id.*

42. With inflation taken into account, this amount is equivalent to $1.2 million today. SZALAVITZ, *supra* note 7; *see generally* Eleanor Randolph, *Today the Seed, Tomorrow the World*, THE NEW TIMES, Sept. 6, 1974 (providing several examples of the costliness of TTI programs)

43. SZALAVITZ, *supra* note 7, at 21–22.

44. *Id.* at 52.

45. *Id.* at 7.

46. *Id.*

47. Andrew Glass, *Reagan Declares 'War on Drugs', October 14, 1982*, POLITICO (Oct. 14, 2010, 4:44 AM), www.politico.com/story/2010/10/reagan-declares-war-on-drugs-october-14-1982-043552 [perma.cc/QPT4-MUMC].

48. Sembler served as chair of the Republican Party's finance committee

platform as her official cause.[49] Sembler was a former Seed parent who founded Straight Incorporated alongside his wife, Betty.[50] Nancy Reagan declared Straight was her "favorite" drug treatment program.[51] Straight would become one of the most notorious and influential TTI operations.[52] Although Straight grew exponentially throughout the first half of the 1980s, it faced harsh criticism for its use of corporal punishment, sleep deprivation, food restriction, and systematic humiliation.[53] It was the Seed in everything but name.[54]

Straight began in Florida and spread throughout the Eastern United States, opening locations in Georgia, Ohio, and Virginia.[55] Eventually, Straight would operate additional facilities in Texas, Michigan, Massachusetts, Maryland, and California.[56] While some parents and children evangelized about the miracles of Straight, several of the organization's participants claimed they had been detained against their will, physically and emotionally abused, imprisoned, surveilled, and restrained for long periods of time.[57] Many victims insisted they never had a drug problem in the first place.[58]

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during the 2000 Presidential election and headed the Scooter Libby defense fund. Maia Szalavitz, *Getting Tough on Private Prisons for Teens*, THE AM. PROSPECT (Oct. 15, 2007) [hereinafter Szalavitz, *Prisons for Teens*], www.prospect.org/article/getting-tough-private-prisons-teens/ [perma.cc/JYL9-9ZCH].

49. Etler, *supra* note 40 ("Straight Inc. was founded by Trump Victory co-chair and major Republican fundraiser Mel Sembler, a man who started out selling dresses."). "He still considers it his 'greatest achievement." *Id.*; *see generally* Maia Szalavitz, *The Trouble with Troubled Teen Programs*, REASON (Jan. 2007) [hereinafter Szalavitz, *Teen Programs*], www.reason.com/2006/12/28/the-trouble-with-troubled-teen/ [perma.cc/2WWG-JUUC].

50. Etler, *supra* note 40.

51. *Id.*

52. SZALAVITZ, *supra* note 7, at 23.

53. *Id.* at 50.

54. *Id.* at 23.

55. *60 Minutes* (CBS television broadcast Jan. 29, 1984).

56. SURVIVING STRAIGHT INC., www.survivingstraightinc.com [perma.cc/QAE7-A77Q] (last visited Oct. 9, 2022).

57. Jenny Abamu, *How Some Schools Restrain or Seclude Students: A Look at A Controversial Practice*, NPR (June 15, 2019, 6:01 AM), www.npr.org/2019/06/15/729955321/how-some-schools-restrain-or-seclude-students-a-look-at-a-controversial-practice [perma.cc/7A94-VUAN]; *e.g.*, Jennifer S. Richards, Jodi S. Cohen & Lakeidra Chavis, *Schools Aren't Supposed to Forcibly Restrain Children as Punishment. In Illinois, It Happened Repeatedly*, PROPUBLICA (Dec. 20, 2019, 5:00 AM), www.propublica.org/article/illinois-school-restraints [perma.cc/4KW2-RCJ4] (noting Illinois prohibits child restraint, but a recent ProPublica expose revealed it is used frequently throughout the state).

58. Nancy Smith, *STRAIGHT, Inc. Victim: 'Where Is Our Apology?'*, SUNSHINE ST. NEWS (Apr. 27, 2017, 9:00 AM), www.sunshinestatenews.com/story/straight-inc-victim-where-our-apology

Unlike many TTI boarding schools that would follow Straight, actual Straight participants spent their nights in "host homes" rather than onsite.[59] Straight insisted that host parents lock children in their rooms so they could not escape.[60] Straight would even inspect the home to make sure parents were following protocol, though curiously, not for safety.[61] When one host father began to express concern about Straight's practices, wondering how to handle a scenario in which his home caught fire in the middle of the night, Straight authorities responded: "If your child were on the street, your child would die. If your child were in a fire, they would die, so you're not any worse off."[62]

Program leaders used peer pressure to convince new arrivals to give up drugs.[63] In a typical intake scenario, a new participant arrived with her parents.[64] The parents stayed in the lobby of the unmarked building while teen participants led the new arrival into a small room to face questioning.[65] Most of the staff members were former program participants and had no clinical training or qualifications.[66] They would pepper the "newcomer" with questions about drug use, sex, and other deeply personal subjects, while tape-recording the answers.[67]

These intrusive interviews did not take into account that struggling kids may have experienced any number of traumas before arriving at the facility, including physical and sexual abuse.[68] The intake interrogation could last upwards of ten hours.[69] Afterward, without consulting the parents,[70] the staff brought the

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[perma.cc/2ZHX-R6F8].

59. SZALAVITZ, s*upra* note 7, at 23–25. Straight participants in their "first phase" would reside with a "host" family at night, and parents of "oldcomers," or more advanced Straight participants would be expected to set up a "host home" at their own houses. *Id.* These "host homes" were not vetted as homes are in the foster care system. *Id.* Rather, Straight host homes were intentionally set up to detain and surveil children using motion detectors and alarms, with participants reporting feeling imprisoned. *Id.* This practice allowed the program to market itself "outpatient." *Id.* Nonetheless, Straight did not house children onsite like many of the TTI operations to come. *Id.*

60. *60 Minutes*, *supra* note 55.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. SZALAVITZ, *supra* note 7, at 29.

66. William Nottingham, *Drug Program Allegedly Used Coercive Tactics to Control Clients*, ST. PETERSBURG TIMES, Feb. 12, 1978, at 14-B.

67. *Id.*

68. *Id.*

69. *60 Minutes*, *supra* note 55 (describing at least one intake meeting leading to a lawsuit that resulted in Straight paying the victim $20,000 for detaining him against his will and coercing his signature on an agreement).

70. Straight relied on scare tactics, convincing parents that Straight was the

teen to a small concrete room and inevitably informed her that she would stay in the program.[71] After being strip-searched, including body cavities, peer staff would forcefully grab the child by the belt loop to control their movement.[72] In their first days, the newcomers were not allowed to speak.[73] They were always accompanied, including during trips to the bathroom where an "oldcomer" stood eighteen inches from the newcomer as they relieved themselves.[74]

The bulk of Straight's program centered around a Synanon-style "game," but with a twist Straight called "spit therapy."[75] A successful 1993 lawsuit described it as "spitting in the face of and yelling at [the child] … for approximately one hour with the desired goal to 'make the plaintiff come honest with his drug history.'"[76] Straight Survivors report being beaten, restrained, subjected to coercive thought reform, detained against their will, deprived of food and sleep, and sometimes left to sit in their own excrement and menstrual blood.[77] The ACLU referred to Straight as "a concentration camp for throwaway teens."[78]

Straight employed dubious recruitment tactics. When a sibling would show up to visit their family member in treatment, the kids running Straight would insist the visitor go through the intake interview process, which would inevitably lead to them forcefully suggesting the visitor needed Straight treatment too.[79] "[D]iscovering that siblings of participants also needed treatment

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last stop before the child face a dangerous life on the streets. SZALAVITZ, *supra* note 7, at 30.

71. *60 Minutes*, *supra* note 55.

72. SZALAVITZ, *supra* note 7, at 34; Etler, *supra* note 40.

73. SZALAVITZ, *supra* note 7, at 37.

74. Etler, *supra* note 40; *see also The Program* (Netflix 2024) (depicting a similar practice at The Academy at Ivy Ridge, a WWASP operation, where residents were forced to use restroom facilities with the stall doors open).

75. *Drug Client Sues Straight Inc. Over 'Spit Therapy' Session*, VA. J., Feb. 25, 1993.

76. *Id.*

77. BARRY L. BEYERSTEIN, STRATEGIES FOR CHANGE, NEW DIRECTIONS IN DRUG POLICY (1992), *as reprinted in Excerpts from The Beyerstein Report on Straight*, THESTRAIGHTS.NET, www.thestraights.net/essays/beyerstein_report_on_straight.htm [perma.cc/NL7A-LXY7] (last visited Aug. 28, 2024); *see also* Lee Fang, *GOP Mogul Behind Drug Rehab 'Torture' Centers Is Bankrolling Opposition to Pot Legalization in Colorado*, THE NATION (Sept. 18, 2012), www.thenation.com/article/archive/gop-mogul-behind-drug-rehab-torture-centers-bankrolling-opposition-pot-legalization-colo/ [perma.cc/BN6X-9BFS] (noting that a California state investigation into a Yorba Linda Straight facility revealed "Samantha Monroe, who was placed into a STRAIGHT Inc. clinic in Tampa at age 13, says she was locked in a room, and forced to wear clothes stained with urine, feces and menstrual blood—a punishment her counselors called 'humble pants'").

78. Smith, *supra* note 58.

79. Collins v. Straight, Inc., 748 F.2d 916, 917 (4th Cir. 1984).

could be a lucrative source of additional customers, but parents who'd come to see the program as a savior didn't look for such conflicts of interest."[80] If they quibbled with the sibling being put in the program, Straight would threaten to kick the participant child out, warning the parents of a dangerous life on the streets.[81] Meanwhile, a sibling who visited may not return to their own home for months or even years.[82]

While "oldcomers" were responsible for most of the day-to-day "therapy," some parents, often with some form of medical training, donated time and services to the program.[83] Parents of participants served as volunteers, answering phones, providing clerical services, and transporting kids to doctors' appointments for free.[84] Parents "manned booths to collect donations [and gave] talks to civic groups" equating to free advertising for Straight.[85]

In 1975, despite a congressional mandate to cease providing federal funding to experimental drug treatment and research, Straight founders secured funding for the organization with an initial $100,000 grant from Law Enforcement Assistant Agency ("LEAA").[86] Straight operated as a non-profit, so any expansion into more states appeared to reinforce the idea that the tactics were effective, not that aggressive recruitment could enrich the directors.[87] Eventually, unable to overcome multimillion-dollar lawsuits, Straight ceased operation in 1993.[88] But rather than close its doors, it changed its name to the Straight Foundation and then to Drug-Free America. Drug-Free America still operates today, although no longer as a treatment program.[89] The founders remain thoroughly entrenched in GOP fundraising.[90]

Inspired by Straight's practices, "[f]ormer employees opened virtually identical programs in New Jersey, Kentucky, Utah, New Mexico, and Florida in the late '80s and early '90s."[91] Straight's

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80. SZALAVITZ, *supra* note 7, at 24.

81. *Id.* at 30.

82. *Id.* at 26.

83. *Id.*

84. *Id.*

85. *Id.* at 5.

86. William Nottingham, *Officials Say Straight Money Was Inadequate*, ST. PETERSBURG TIMES, Mar. 3, 1978, at 3B.

87. SZALAVITZ, *supra* note 7, at 26; *see also The Program*, *supra* note 74 (illustrating multi-level marketing (i.e., pyramid scheme) style tactics for recruitment including discounts and benefits to parents who referred new recruits, and bonus structures for staff members who helped retain enrollments).

88. David Villano, *Money Man*, BUS. FLA., May 1, 1997, www.floridatrend.com/article/13940/money-man [perma.cc/367Y-TAVX].

89. Fang, *supra* note 77.

90. *Id.*

91. Maia Szalavitz, *The Trouble with Troubled Teen Programs*, REASON

former national clinical director, Miller Newton, went on to establish KIDS Centers of America.[92] KIDS not only employed former Straight staff but also utilized techniques from Straight and The Seed.[93] KIDS would eventually collapse under the weight of lawsuit settlements as well.[94] However, Straight inspired a second copycat organization, Pathway Family Center, that remains in operation today.[95]

2. Bootcamps and Wilderness Programs

Outdoor survivalist-style wilderness programs appeared as early as the 1930s-40'swith programs such as Outward Bound and other "adventure therapy."[96] These types of military-style outdoor and wilderness boot camps did not gain widespread popularity, however, until the 1990s.[97] Szalavitz explains that American culture was primed for these programs: "[t]he media spread fears of a new generation of violent teenaged super-predators."[98] This solution gained political appeal across the spectrum. Liberals liked that it was not prison and usually meant a shorter sentence than conventional detention, while the lower costs, military style, and tough discipline appealed to conservatives.[99] Programs combined survivalist challenges, strict discipline, and Synanon-style attack therapy.[100]

The 1990s offered another boon to the boot camp and wilderness therapy industry—the talk show era.[101] Montel

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MAG. (Jan. 2007) [hereinafter Szalavitz, *Trouble with Troubled*], reason.com/2006/12/28/the-trouble-with-troubled-teen/ [perma.cc/WPC3-NGZ4].

92. *KIDS Centers of America (1984-1990)*, BREAKING CODE SILENCE, www.breakingcodesilence.org/kids-centers-of-america/ [perma.cc/M34Y-4JT9] (last visited Oct. 9, 2022).

93. *Id.*

94. *Id.*

95. Szalavitz, *Teen Industry*, *supra* note 27.

96. *Our Story*, OUTWARD BOUND INT'L, www.outwardbound.net/our-story/ [perma.cc/HB6Z-36JJ] (last visited Oct. 9, 2022); *Troubled Teen Industry Timeline*, UNSILENCED, www.unsilenced.org/troubled-teen-industry-timeline/ [perma.cc/9MMX-W8FM] (last visited Oct. 8, 2022).

97. SZALAVITZ, *supra* note 7, at 51.

98. *Id.*

99. *Id.*

100. *Id.*

101. Myriam Marquez, *Boot Camps the Rage in Wasteland of Daytime TV*, S. FLA. SUN SENTINEL, www.sun-sentinel.com/news/fl-xpm-2000-09-12-0009110872-story.html [perma.cc/75EX-VB6T] (Sept. 28, 2021, 1:07 AM). *But see* Steve Cartisano, *Challenger Foundation Ducks One Lawsuit But Is Slapped With Another*, THE DESERET NEWS, Jun. 6, 1990, www.poundpuplegacy.org/node/36128 [perma.cc/29AG-KENK] (reporting on a Mormon wilderness therapy program critiqued on the Phil Donahue show);

Williams,[102] Sally Jessy Raphael,[103] Dr. Phil,[104] Jenny Jones,[105] and Ricki Lake would feature teens behaving badly and bring in tough military-esque drill sergeants to whisk teens off to such programs in an effort to scare the teens "straight."[106] While there was no scientific evidence to support these therapies, the apparent celebrity endorsements convinced parents that the shows would not feature these programs if they were not effective.[107]

Due to their remote locations, harsh conditions, intense physical demands, and exposure to the elements, wilderness and boot camp programs proved to be particularly dangerous, if not deadly. In 1990, Kristen Chase, 16, died of heat stroke while under the care of the Challenger Foundation.[108] Also in 1990, Michelle

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Exposing troubled teen industry, *Shocking Twist: Phil Donahue Stands Up to Defend Abusive Wilderness Therapy Program*, YOUTUBE (Jan. 1, 2023), www.youtube.com/watch?v=n0gBmaVUkAM [perma.cc/UG64-89AJ].

102. Eagle Ranch, *Eagle Ranch Academy on Montel Williams Show - Troubled Teens Eagle Ranch Academy*, YOUTUBE (Sept. 7, 2015), www.youtube.com/watch?v=3zcNJlHDBYQ [perma.cc/M9HN-XXFR] (portraying Eagle Ranch Academy as an effective solution for troubled teens). *But see The Montel Williams Show: Teen Rehabs* (Paramount television broadcast Jan. 15, 2005) (covering the abuses of the Troubled Teen Industry). Shockingly, the show chose to send children to places like Eagle Ranch Academy *after* the expose´ show aired. *Id.*

103. Justin Lords, *Sally Jessy Raphael Show - "I Want To Send My Teen To Boot Camp!"*, YOUTUBE (Jan. 11, 2021), www.youtube.com/watch?v=p1Rj5NIcW0c [perma.cc/BQ5A-856B].

104. Brittany Shammas, *Dr. Phil Pressured a Teen to Go to a Troubled Youth Ranch Where She Was Sexually Assaulted, Lawsuit Says*, WASH. POST (Oct. 21, 2021, 5:08 PM), www.washingtonpost.com/nation/2021/10/21/teen-sues-dr-phil [perma.cc/DP8H-H6RK]; *see also Dr. Phil: I Want to Give Up My Car Stealing, Knife-Wielding, Twerking 13-Year-Old Daughter Who Tried To Frame Me For A Crime* (CBS television broadcast Sept. 14, 2016); *see also* Elizabeth Gulino, *Bhad Bhabie Was Just 13 When Dr. Phil Sent Her To A Troubled Teen Ranch — Here's What Happened*, REFINERY 29, www.refinery29.com/en-us/2021/03/10379818/bhad-bhabie-teen-ranch-abuse-dr-phil [perma.cc/Y257-D8B5] (Mar. 22, 2021, 2:27 PM) (depicting Danielle Bregoli, a.k.a rapper Bhad Bhabie, being sent to Turn-About Ranch, a TTI operation). Bregoli would go on to denounce her treatment in the program. *Id.* Another Turn-About and Dr. Phil alum, Hannah Archuleta, would come forward to accuse Turn-About staffers of sexual assault. *Id.*

105. Lia Beck, *Whatever Happened To Jenny Jones & Her Self-Titled Talk Show?*, REFINERY 29, www.refinery29.com/en-us/2020/05/9789045/what-happened-to-the-jenny-jones-show [perma.cc/L8DW-X6NQ] (May 12, 2020, 2:25 PM); *see also* Lorna Collier, *The Last Resort*, CHI. TRIB., www.chicagotribune.com/2001/05/27/the-last-resort/ [perma.cc/CK36-PG7V] (Aug. 20, 2021, 10:41 AM) (listing Jenny Jones among other talk show hosts supporting industry practices); *see also* Best Of The Jenny Jones Show, *Boot Camp my Kid on the Jenny Jones Show*, YOUTUBE (Dec. 19, 2019), www.youtube.com/watch?v=TiAh2uXyc6Q [perma.cc/VD92-FSAS].

106. *Id.*

107. SZALAVITZ, *supra* note 7, at 101.

108. *Utah Wilderness Therapy Deaths*, SALT LAKE TRIB. (Oct. 11, 2007, 12:00

Sutton died from dehydration and heat exposure at Summit Quest in Northern California.[109] In 1994, Aaron Bacon, 15, died after collapsing on a desert trail from severe (and preventable) peritonitis, after North Star program authorities denied him of medical treatment, believing that he was faking his pain.[110] In 2000, Mikey Wiltsie, 12, died at a camp run by Eckerd Youth Alternatives after a 320 lb. camp counselor sat on Mikey's 65 lb. frame, ignoring his cries and assertions that he could not breathe.[111] In 2001, Ian August, 14, died of a heat-related death while on a hike with Skyline Journey Youth Program in 110-degree heat.[112] Also in 2001, Erica Harvey, 15, died from dehydration and heatstroke while on a hike in Nevada with Catherine Freer Wilderness Therapy Expeditions.[113] In 2002, Katie Lank, 16, died after falling 70 feet into a crevasse on a hike with Redrock Ranch Academy.[114] Also in 2002, Charles Moody, 17, died while being restrained at On Track of Mason, Texas.[115] In 2013, Bruce Steiger, 18, who attended Tierra Blanca Ranch for at-risk youth, died from injuries sustained after being flung from the back of a pickup truck driven recklessly by a staffer.[116] As recently as February 2024, at wilderness therapy provider Trails Carolina, a twelve-year-old boy died from suffocation after staff shut him in a cabin with boarded up windows .[117] These deaths represent only a few of the reported deaths, not

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AM), archive.sltrib.com/story.php?ref=/news/ci_7139316 [perma.cc/R9LTAV5V].

109. *Teen-Ager's Death on Hike Investigated*, L.A. TIMES (May 13, 1990, 12:00 AM), www.latimes.com/archives/la-xpm-1990-05-13-mn-439-story.html [perma.cc/X67S-8V9E].

110. Jon Krakauer, *Loving Them to Death: The Story of One Teenager's 'Wilderness Experience,'* OUTSIDE MAG. (October 1995); Joe Morgenstern, *A Death in the Desert*, L.A. TIMES (Jan. 15, 1995, 12:00 AM), www.latimes.com/archives/la-xpm-1995-01-15-tm-20285-story.html [perma.cc/67QE-362T]; *see also* Susan W. Volk, *Peritonitis*, *in* SMALL ANIMAL CRITICAL CARE MEDICINE 643 (Silverstein & Hopper eds., 2015), www.ncbi.nlm.nih.gov/pmc/articles/PMC7152366/ [perma.cc/3XZ8-XSCV] (explaining peritonitis is an inflammation of the lining of the gut that can range from mild to severe if the condition is allowed to regress to the point of sepsis, which was the ultimate cause of Aaron Bacon's death).

111. SZALAVITZ, *supra* note 7, at 120.

112. Krakauer, *supra* note 110.

113. *Id.*

114. *Id.*

115. *Id.*

116. Phaedra Haywood, *Suit Claims Boy Abused Before Crash Death at Youth Camp*, SANTA FE NEW MEXICAN, www.santafenewmexican.com/news/local_news/suit-claims-boy-abused-before-crash-death-at-youth-camp/article_2afda1bf-e301-5384-a36c-50603fa2c1d3.html [perma.cc/Y5AH-RP6J] (Feb. 15, 2015).

117. Jennifer Emert, *Special Report: Wilderness Therapy Tragedy Sparks Calls For Reform*, ABC 13 NEWS, www.wlos.com/news/local/health-debates-wilderness-therapy-trails-carolina-mental-health-north-carolina-division-of-

only from wilderness programs, but TTI programs in general.[118]

The Western United States has been particularly welcoming to TTI programs, with Utah boasting the most programs.[119] In addition to the wholesome reputation of the Church of Jesus Christ of Latter-Day Saints ("LDS Church") and the vast expanses of wilderness, "[t]he land is affordable, workers don't demand high wages and state regulators are stretched thin and reluctant to punish violations."[120] For example, a 1982 case, *Milonas v. Williams*, revealed Utah's Provo Canyon School used physical abuse, punitive use of isolation and restraint, and mail censorship.[121] Recently, in her documentary, *This is Paris*, celebrity Paris Hilton brought renewed attention to the TTI by revealing her own traumatic experiences at the Provo Canyon School.[122] Hilton alleged physical abuse as well as sexual, detailing "middle-of-the-night gynecological exams."[123]

3. World Wide Association of Specialty Programs ("WWASP")

Robert Lichfield founded the World Wide Association of Specialty Programs and Schools ("WWASP") in the late 1990s.[124]

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health-service-regulation [perma.cc/MU7Q-WVG7] (May 22, 2024, 8:41 PM).

118. *See* Szalavitz, *Genuine Trauma*, *supra* note 15 and accompanying text. *But see* Jennifer Levi & Kevin Barry, "*Made to Feel Broken": Ending Conversion Practices and Saving Transgender Lives*, 136 HARV. L. REV. 1112, 1150 (2023) (reviewing FLORENCE ASHLEY, BANNING TRANSGENDER CONVERSION PRACTICES: A LEGAL AND POLICY ANALYSIS (2022)) (illustrating that these statistics do not reflect deaths by suicide). "One trans survivor wrote, 'I was able to stay in contact with a few people who were at Elevations with me. Many of them have taken their lives since then . . . . Most of them were queer . . . . For some of them, it was just too big of a thing that had happened to go back to living a normal life." *Id.* at 1153.

119. Jessica Miller, *Inside Utah's Troubled Teen Industry: How It Started, Why Kids Are Sent Here and What Happens to Them*, SALT LAKE TRIB. [hereinafter Miller, *Inside Utah*], www.sltrib.com/news/2020/08/30/inside-utahs-troubled/ [perma.cc/HNV8-ZNSH] (Sept. 1, 2021, 5:21 PM).

120. *Id.*; *see also* Jessica Miller, *How Utah Became the Leading Place to Send the Nation's Troubled Teens*, APM REPS. (Apr. 5, 2022) [hereinafter Miller, *How Utah Became*], www.apmreports.org/story/2022/04/05/how-utah-leads-nation-troubled-teens [perma.cc/DND5-43JT] (describing why the climate of religion, parents' rights, and vast outdoor spaces resulted in Utah becoming the *de facto* capital of TTI).

121. Milonas v. Williams, 691 F.2d 931, 936 (10th Cir. 1982).

122. THIS IS PARIS (The Intellectual Property Corporation 2020).

123. Murray, *supra* note 9.

124. Lee Rood, *Midwest Founder Helped Create Troubled-Teens Industry*, DES MOINES REG., www.desmoinesregister.com/story/news/2016/04/16/midwest-founder-helped-create-troubled-teens-industry/82992202/ [perma.cc/38C5-D6F5] (Apr. 16, 2016, 9:08 PM).

The first treatment center was Cross Creek Manor (which eventually expanded to Cross Creek Programs) in Utah.[125] WWASP would eventually boast over thirty organizations under its umbrella with locations all over the globe.[126] Lichfield, like Straight founder Mel Sembler, is a Republican fundraiser.[127] Lichfield is also a former employee of Provo Canyon School.[128]

WWASP functioned as a series of "interconnected limited liability corporations—over which ownership is unclear."[129] However, the organization was run by a small group of interconnected people including Lichfield; Lichfield's brother, Narvin Lichfield; Ken Farnsworth (another former employee of Provo Canyon School); J. Ralph Atkin (founder of SkyWest Airlines, and Lichfield's lawyer); Ken Kay (President of WWASP); and Jay Kay (Farnsworth's son).[130] These men interchangeably shared officer titles and duties for the various schools and programs under the WWASP umbrella.[131]

WWASP treatment centers used "a level system, similar to that utilized by Straight" but housed children on-site rather than in host homes.[132] Like its predecessors, WWASP-affiliated programs utilized attack therapy practices while "discrediting teen complaints."[133] These sessions were referred to as "trainings" or "hot

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125. Timothy Williams, *Students Recall Special Schools Run Like Jails*, N.Y. TIMES (July 23, 2013), www.nytimes.com/2013/07/24/us/students-recall-a-school-run-like-a-prison.html [perma.cc/7U8L-9MGU].

126. *World Wide Association of Specialty Programs and Schools*, WIKIPEDIA, en.wikipedia.org/wiki/World_Wide_Association_of_Specialty_Programs_and_Schools [perma.cc/Z8LD-62R7] (listing locations in Costa Rica, United States, Mexico, Czech Republic, Western Samoa, and Jamaica) (last visited Aug. 28, 2024).

127. Szalavitz, *Teen Industry*, *supra* note 27*; see also Therapeutic Child Abuse and the Need for Change*, US REPRESENTED (Dec. 1, 2014), www.usrepresented.com/ 2014/12/01/therapeutic-child-abuse/ [perma.cc/L7KD-3W5E].

128. *Id.*

129. SZALAVITZ, *supra* note 7, at 135; *see also* Williams, *supra* note 125 ("Mr. Lichfield, family members, and business partners have financial interests in a layer of secondary companies through a web of limited liability companies, consulting arrangements, and property ownership that Mr. Lichfield has acknowledged in depositions — while also saying he does not fully understand the links himself."). "These entities oversee the marketing, business and educational services for many of the schools and have received up to one-third of the programs' gross revenues, according to business records and court depositions." *Id.*

130. SZALAVITZ, *supra* note 7, at 135; *see also The Program, supra* note 74 (revealing Ken Kay's previous employment was as a security guard at a school).

131. *Id.*

132. SZALAVITZ, *supra* note 7, at 137.

133. Elizabeth Gulino, *"I Was Forced To Sculpt My Rape": What Is Happening Inside The Troubled Teen Industry?*, REFINERY 29, www.refinery29.com/en-us/2021/06/10401693/troubled-teens-programs-

seats," in which children would be forced to reveal their darkest experiences, for which they were then shamed mercilessly.[134] Even though participants may have experienced abuse before arriving at a WWASP facility, there was no concern for confidentiality or observing HIPAA practices.[135] In 1998, the U.S. State Department investigated WWASP operations abroad, detailing:

> [C]redible allegations of physical abuse at WWASP's facility in Samoa, citing 'beatings, isolation, food and water deprivation, choke-holds [sic], kicking, punching, bondage, spraying with chemical agents, forced medication, [and] verbal abuse.' It called for an investigation by the local government, which resulted in the program's closure… In 2003, Costa Rican child welfare authorities raided WWASP's Dundee Ranch Academy. They found staff "unqualified to attend to needs of children," "inadequate food and meal portions," and "some punishments [that] qualify as physical and psychological abuse." The owner of the facility was arrested for human rights violations …[136]

Meanwhile, WWASP programs required parents to attend Lifespring seminars that sold them on the process and shamed them for questioning WWASP methods.[137] Lifespring is a self-help program that has regularly been accused of being a cult.[138] In order to encourage parents to keep their children in WWASP programs after they turned 18 (and continue to pay tuition fees), Lifespring encouraged parents to develop an "exit plan" to employ if their child attempted to leave the program.[139] The exit plan was to threaten harsh consequences that often included total estrangement from the family.[140] If the child stayed in the program, however, it would retain parental support and communication, and other benefits such as a college education or being allowed to go home following "successful" completion of the program.[141] In the words of Now-retired New Jersey attorney Phillip Elberg, who specialized in suits against TTI bad actors, "[t]he kids weren't in the cult. The parents were."[142]

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industry-problem [perma.cc/G5UN-78QP] (June 29, 2021, 8:00 AM).

134. *Id.*

135. *Id.*

136. SZALAVITZ, *supra* note 7, at 50.

137. *Id.* at 158.

138. *Id.*; *see also* Allan Smith & Alex Seitz-Wald, *The Untold Story of Ginni Thomas' Anti-cult Activism — After She Was 'Deprogrammed'*, NBC NEWS, www.nbcnews.com/politics/politics-news/untold-story-ginni-thomass-anti-cult-activism-was-deprogrammed-rcna22131 [perma.cc/WZ9Z-7LQW] (June 14, 2022, 5:10 AM) (comparing Lifespring to the notorious NXIVM cult).

139. *Id.* at 151.

140. *Id.*

141. *Id.* at 148–49.

142. *The Program*, *supra* note 74.

Eventually, after lawsuits and accusations proved to be too much to withstand, WWASP facilities began to close, but "left a trail of shuttered programs, and for many students, unknown fates for academic and medical records."[143] In other words, "graduates" of WWASP programs may have no academic history that allows them to apply to college or other programs.[144] Some programs, while formerly affiliated with WWASP, continue to operate without the umbrella organization.[145]

4. Success Stories

Success stories are generally anecdotal.[146] The programs "let testimonials tell the story, a method that's fine for advertising, but that medical history has shown to be a poor way to sort out helpful treatments from fraudulent ones."[147] The following are several examples of testimony from satisfied parents:

> "I came really close to writing this kid off … I didn't know what to do, I was lost and I couldn't get help. Nobody knew how to treat this disease. Finally, … the miracle that he's become." Parent from Straight, Inc.[148]

> "His eyes are just completely different. Before he came here, they had changed color and sunk in. He was gone. Now his eyes have gone back to what they used to be like. When he came walking out of the woods, I couldn't believe it. His eyes were this bright, amazing, shining blue that just smacks you—like they used to be, before all the trouble." Parent from Redcliff Ascent.[149]

> "This is my child back," another grateful parent says. "He's respectful, he's talkative, he's funny again." Parent from Redcliff

143. Justin Higginbottom, *Reform School Survivors Allege Abuse of Their Personal Files Too*, AL JAZEERA AMERICA (Oct. 31, 2014, 5:00 AM), america.aljazeera.com/articles/2014/10/31/missing-records-wwaspreformschools.html [perma.cc/B5HV-Q2NX].

144. SZALAVITZ, *supra* note 7, at 151; *see also The Program*, *supra* note 74 (illustrating the consequences of survivors exiting WWASP programs without a diploma). Thomas Houlahan, an investigative journalist, emphasized that he refuses to "refer to [WWASP survivors] as students because they weren't being given anything that could be called an adequate education." *Id. The Program* also depicts deserted hallways of deteriorating buildings filled with stacks of personal records for former participants. *Id.*

145. Katelyn Newberg & Sabrina Schnur, *State Closes Youth Psychiatric Facility at Center of RJ Investigation*, PAHRUMP VALLEY TIMES (May 2, 2023, 7:10 AM), www.pvtimes.com/uncategorized/state-closes-youth-psychiatric-facility-at-center-of-rj-investigation-121161/ [perma.cc/8KSC-TZKV]

146. Anderson, *supra* note 34.

147. SZALAVITZ, *supra* note 7, at 7.

148. *60 Minutes, supra* note 55.

149. Anderson, *supra* note 34.

Ascent.[150]

> "With my son it worked; it's not going to work for every kid. When you send your kid there, you're giving them the last chance to turn their lives around." Parent from WWASP.[151]

However, according to Szalavitz, "[p]arents who choose such treatment are rarely aware that there's no scientific evidence that favors it."[152] Additionally, it is unlikely parents are aware that these programs overstate potential dangers facing their children, while exaggerating "the severity of their children's particular problems in order to make the sale."[153]

B. TTI Today

Since the 1990s and early 2000s, many of the most controversial TTI programs have closed.[154] However, most of the closures have been either voluntary or economically-motivated (i.e., buckled under the weight of lawsuits).[155] The government, at any level, has been reluctant to intervene.[156] Attorney Philip Elberg spearheaded civil suits against TTI bad actors.[157] He represented several plaintiffs in actions against KIDS of North Jersey, including Lulu Corter.[158] Corter suffered serious abuse at the hands of KIDS staffers.[159] With Elberg's guidance, Corter brought suit against KIDS, and eventually accepted a settlement agreement while the jury was deliberating at the end of the trial.[160] Through his research, Elberg uncovered that KIDS was only a small part of a nationwide problem.[161]

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150. Telep, *supra* note 6.

151. Tim Weiner, *Program to Help Youths Has Troubles of Its Own*, N.Y. TIMES (Sep. 6, 2003), www.nytimes.com/2003/09/06/us/program-to-help-youths-has-troubles-of-its-own.html?searchResultPosition=2 [perma.cc/7647-LSKW].

152. SZALAVITZ, *supra* note 7, at 3–4.

153. *Id.*; *see also The Program*, *supra* note 74 (describing how one WWASP-affiliated behavior modification school, The Academy at Ivy Ridge, only allowed parents to share positive comments on school message boards).

154. *Facility Report Database*, BREAKING CODE SILENCE, www.breakingcodesilence.org/for-professionals/facility-reporting/ [perma.cc/B2RC-N4BZ] (last visited Oct. 9, 2022).

155. *Id.*

156. Murray, *supra* note 9.

157. Amanda Robert, *Troubling Treatment: Efforts Are Underway to Reform Teen Behavioral Programs*, A.B.A. J. (Aug. 1, 2021, 3:30 AM), www.abajournal.com/magazine/article/efforts-are-underway-to-reform-teen-behavioral-programs [perma.cc/P2F6-4U5Q].

158. SZALAVITZ, *supra* note 7, at 246.

159. *Id.*

160. *See id.* (noting the jury returned a verdict in Corter's favor, but the damages in the settlement agreement were higher than the jury award).

161. Robert, *supra* note 157.

In 2008, following a congressional hearing, the United States Government Accountability Office released a report entitled "Residential Programs: Selected Cases of Death, Abuse, and Deceptive Marketing."[162] The report detailed "ineffective management and operating practices, in addition to untrained staff, [that] contributed to the death and abuse of youth enrolled in selected programs. The practice of physical restraint also figured prominently in three of the cases."[163] The report additionally provided details of four deaths associated with residential programs.[164]

Following the report, now-retired Congressman George Miller (D–California), assisted by Elberg, introduced the Stop Child Abuse in Residential Programs for Teens Act ("SCARPTA").[165] The bill was intended to "direct the Department of Health and Human Services ("HHS") to require programs designed to modify behaviors of children in a residential environment (covered programs) to prohibit child abuse and neglect and meet other specified minimum standards."[166] Specifically, the bill requires HHS to "(1) implement a review process for overseeing, investigating, and evaluating reports of child abuse and neglect at covered programs; and (2) establish a process to assist states in the oversight and enforcement of this bill."[167] The bill did not attract much momentum from the committee.[168] Miller would go on to re-introduce the legislation four more times without success.[169]

Following Miller's retirement, Rep. Adam Schiff (D–California) re-introduced the bill two additional times, but the bill still has not passed.[170] A few months after the GAO report, the Bureau of Land Management issued a memorandum stating they would no longer issue permits to unlicensed residential treatment programs on public lands.[171] Despite the report and much media attention, no

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162. GAO-08-713T, *supra* note 17; Robert, *supra* note 157.

163. Robert, *supra* note 157, at 1.

164. *Id.* at 8-10.

165. Stop Child Abuse in Residential Programs for Teens Act of 2008, H.R. 5876, 110th Cong. (2008).

166. *Id.*

167. *Id.*

168. Ari Schneider, *What Happened at Wilderness Therapy: A Look Inside the Outdoor Branch of the "Troubled Teen" Industry*, TEEN VOGUE (Aug. 24, 2022), www.teenvogue.com/story/what-happened-at-wilderness-therapy [perma.cc/PY8R-EWRS].

169. H.R. 5876*; see* www.congress.gov/bill/110th-congress/house-bill/5876/cosponsors [perma.cc/55BK-FEJ8] for full legislative history.

170. *Id.*

171. *Instructional Memorandum on Health and Safety of Participants Attending Wilderness Therapy Programs or Residential Treatment Programs for Troubled Youth on Public Lands*, U.S. BUREAU OF LAND MGMT. (June 25, 2008), www.blm.gov/policy/im-2008-141 [perma.cc/G8P4-F3T3].

federal law has yet addressed these behavior modification programs.[172]

The most recent action at the federal level was announced by Rep. Ro Khanna (D–California) in October of 2021. Khanna drafted the legislation with the activist 501(c)(3) non-profit organization Breaking Code Silence.[173] Breaking Code Silence is "a network of institutional abuse survivors who are/were incarcerated in the U.S. 'troubled teen industry' (TTI)."[174] The new bill offers not only regulatory oversight but holistic solutions, including funding for much-needed research into evidence-based interventions for troubled teens.[175] With an eye on for-profit programs, the bill was designed to provide economic motivations for following regulatory protocol and disincentives for negligent or abusive practices. [176] This bill has received the most positive attention thus far thanks to Paris Hilton's social media megaphone.[177] However citing a lack of conservative support, Magill announced the bill "was set to be introduced to Congress [the week of May 12, 2022], but after consulting with our advisors and sponsors, we've come to the difficult decision to postpone the introduction of the federal bill."[178]

As noted above, certain Republican donors have been entrenched in the Troubled Teen Industry and have lobbied on its behalf.[179] Moreover, much like prison towns,[180] many of these programs are located in rural (and heavily conservative) communities that economically rely on these schools and ranches.[181]

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172. Schneider, *supra* note 168.

173. Murray, *supra* note 9.

174. *About Us*, BREAKING CODE SILENCE, www.breakingcodesilence.org/about-us/ [perma.cc/C3QC-LRX9] (last visited Mar. 4, 2023).

175. Schneider, *supra* note 168.

176. *Id.* at 177.; Murray, *supra* note 9.

177.; Murray, *supra* note 9.

178. *Id.*; *see also* Elyse Wyatt, *Manipulating Parents, Exploiting Children: The Need for Government Oversight of Private Youth Facilities*, 33 B.U. PUB. INT. L.J. 103, 127–28 (2024) (stating that, in April 2023, SICAA was re-introduced to Congress "having been substantially watered down since it was first imagined"). The bill no longer includes a Bill of Rights for children in congregate care, "as was originally discussed by representatives and advocacy organizations." *Id.* at 127. SICAA remains pending. *Id.* at 128.

179. Art Levine, *Dark Side of a Bain Success*, SALON (July 18, 2012, 11:45 AM), www.salon.com/2012/07/18/dark_side_of_a_bain_success/ [perma.cc/JLP2-ZH29] (detailing the ties between Mitt Romney's former private equity firm, Bain Capital, and CRC, a provider for troubled teens, including Mel Sembler and Robert Lichfield).

180. Tanvi Misra, *The Economics of Prison Boomtowns*, BLOOMBERG (May 2, 2017, 10:51 AM), www.bloomberg.com/news/articles/2017-05-02/inside-the-prison-towns-of-the-rural-south [perma.cc/MZV8-JB4F] (explaining prison towns are communities surrounding state and federal prisons that rely on the institution economically).

181. *Id.*

According to Nicki Bush, a child psychologist and professor at the, these facilities "provide a lot of jobs and stimulate the local economy, and that creates a sense of pride that they're helping the youth of America. So, there's social capital to having one of these in your area."[182]

Most oversight efforts, while sparse, have been at the state level or from professional associations such as the National Association of Therapeutic Schools and Programs ("NATSAP").[183] Membership in the NATSAP is voluntary, and non-member programs are not subject to its policies.[184] There are no laws to prohibit a shuttered operation from rebranding under a new name in a different state.[185] Even if a state does have regulations, like California, children from that state can be sent to a far more lenient state for treatment, like Utah.[186]

Following the philosophies of the industry's Synanon roots, programs today generally operate under the belief that "teens need to be isolated, deprived, and broken for them to improve, and this is done by making them participate in humiliating group activities, forcing them into manual labor, giving them small amounts of food, and threatening them with violence."[187] To prevent escape, facilities have been known to take away children's shoes and coats.[188] These practices are referred to as "institutional child abuse—child abuse or neglect by a person who is an employee of a public or privately covered program; or institutional practices, policies, or conditions that are reasonably likely to result in child abuse or neglect."[189] State regulations may potentially protect publicly-placed children; however, they afford little protection to privately-placed children, as their parents may have effectively signed away control of them to the facility.[190] This is common, as TTI programs "have been known to spare no expense in using manipulative marketing tactics

182. Anderson, *supra* note 34. Bush works with the Alliance for the Safe, Therapeutic, and Appropriate Use of Residential Treatment ("ASTART"), an organization of medical professionals, family members and former residents of such programs. *Id.* She says ASTART often encounters obstacles because of strong local ties. *Id.*

183. Schneider, *supra* note 168.

184. *Id.* NATSP began requiring accreditation beginning June 30, 2023. *Id.*

185. *Id.*

186. *Id.*

187. Nicole Sakre, *The Hidden Abuse of Teen Wilderness Therapy*, ACHONA ONLINE (Nov. 2, 2021), www.achonaonline.com/features/2021/11/the-hidden-abuse-of-teen-wilderness-therapy/ [perma.cc/DB3C-GN69].

188. *Id.*

189. *The Troubled Teen Industry*, #BREAKINGCODESILENCE, www.bcsnetwork.org/the-troubled-teen-industry/ [perma.cc/KM5L-B5TS] (last visited Oct. 29, 2022).

190. Aviv, *supra* note 1.

to lure parents into the programs."[191]

Individual programs differ in the precise scheme of abusive practices they utilize for "behavior modification" or questionable therapeutic purposes.[192] The industry seems to favor certain specific tactics that deserve scrutiny. First, as tragically illustrated by the death of foster placement Cornelius Frederick,[193] most TTI facilities physically restrain children.[194] Frederick was a foster child who asphyxiated while restrained at Lakewood Academy, a facility in Michigan that takes both public and private placements.[195] In one incident in North Carolina, "staff used zip-ties to restrain a fourteen-year-old for more than an hour in blatant violation of state and federal law."[196] The girl already had a history of being physically abused.[197]

Facilities also chemically restrain children by involuntarily injecting them with psychiatric medications like Thorazine[198] and Haldol.[199] Oregon child welfare authorities flew to Utah to investigate a facility after staff injected an Oregon girl seventeen times and pinned her down over thirty times.[200] "The numbers were

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191. Klein, *supra* note 18.

192. Szalavitz, *Teen Industry*, *supra* note 27.

193. Tyler Kingkade & Hannah Rappleye, *The Brief Life of Cornelius Frederick: Warning Signs Missed Before Teen's Fatal Restraint*, NBC NEWS, www.nbcnews.com/news/us-news/brief-life-cornelius-frederick-warning-signs-missed-teen-s-fatal-n1234660 [perma.cc/7VSJ-4CJ9] (Aug. 14, 2020, 2:19 PM) (explaining Frederick was a foster placement who asphyxiated while being restrained at Lakewood Academy in Michigan).

194. NATIONAL DISABILITY RIGHTS NETWORK, DESPERATION WITHOUT DIGNITY 31 (2021) [hereinafter NDRN], www.ndrn.org/wp-content/uploads/2021/10/ NDRN_Desperation_without_Dignity_Final.pdf [perma.cc/3REV-QLVR].

195. Kingkade, *supra* note 20.

196. *Id.* (noting ten employees of Anderson Health Services have been charged with child abuse since 2017).

197. *Id.*

198. Thorazine, generic name Chlorpromazine, is a powerful sedative typically administered to schizophrenic patients or patients suffering from bi-polar disorder. *Chlorpromazine Tablets*, CLEVELAND CLINIC, my.clevelandclinic.org/health/drugs/18811-chlorpromazine-tablets [perma.cc/TLD4-QX58] (last visited Mar. 4, 2023).

199. Miranda Spencer, *Interview: Abuse and Neglect at Private "Troubled Teen" Centers*, MAD IN AM. (Jan. 6, 2022), www.madinamerica.com/2022/01/interview-abuse-neglect-private-troubled-teen-centers/ [perma.cc/GP79-B3TT]; *see also Haloperidol (Oral Route)*, MAYO CLINIC, www.mayoclinic.org/drugs-supplements/haloperidol-oral-route/precautions/drg-20064173?p=1#:~:text=Descriptions [perma.cc/WRW7-UCXX] (last visited July 17, 2024) (explaining that Haldol, or Haloperidol, is an antipsychotic typically administered to schizophrenic patients or patients in hospice care).

200. Jessica Miller Schreifels, *Utah 'Troubled-Teen' Centers Have Used 'Booty Juice' to Sedate Kids, a Practice Outlawed in Other States*, The SALT LAKE TRIB., www.sltrib.com/news/2021/02/04/utah-troubled-teen/

so alarming [that] officials got her on a plane and took her back to Oregon in March 2019."[201] Children are also often overprescribed medications to keep them more docile and compliant.[202]

In addition to physical and chemical restraint, programs may punish children by forcing them to stare at a wall or stand in one place for hours on end.[203] In other instances, children may be completely secluded, isolated, or even placed in solitary confinement.[204] These practices are in direct violation of federal regulations called the Conditions of Participation ("CoP").[205] The CoP "specify the manner in which Medicaid funds may be used in [facilities] that receive Medicaid…and explicitly prohibit any form of restraint used as a means of coercion, discipline, convenience, or retaliation."[206] Providers defend the use of such practices as "necessary, therapeutic techniques" but no empirical research backs up these claims.[207]

Breaking Code Silence catalogs a litany of additional alleged abuses from various programs: forbidding communication with parents and peers, as well as speech and non-verbal communication in general; redacting or supervising communication with parents, especially if the child alludes to mistreatment at the facility; exposing children to uncredentialed staff and clinicians; employing aversion therapy, attack therapy, abusive "therapeutic" practices such as "rape reenactment, cruel and unusual punishments (e.g., excessive exercise, humiliation, false confessions), excessive and unnecessary use of strip searches and cavity searches, sexual abuse; and denying medical treatment and care of basic needs like weather-appropriate clothing, food, water, or access to bathrooms and menstrual products.[208]

[perma.cc/DQV6-WY93] (Sept. 1, 2021, 5:22 PM).

201 *Id.* (noting teens at some facilities refer to the Thorazine or Haldol injections as "booty juice" because they are often administered in the upper thigh or buttocks).

202. Spencer, *supra* note 199.

203. Szalavitz, *Teen Industry*, *supra* note 27.

204. NDRN, *supra* note 194.

205. *Id.*

206. Catherine Krebs, *Five Facts About the Troubled Teen Industry*, A.B.A. (Oct. 22, 2021), www.americanbar.org/groups/litigation/resources/newsletters/childrens-rights/five-facts-about-troubled-teen-industry/ [perma.cc/HR9M-MCHB] (highlighting that one for-profit organization alone, Sequel, received up to 90% of their revenue from Medicaid and Medicare).

207. *Id.*

208. *The Troubled Teen Industry*, *supra* note 189*; see also* Rachel Litchman, *Why Is Child Sexual Abuse So Common in Institutions?*, MAD IN AM. (Jan. 26, 2022), www.madinamerica.com/2022/01/child-sexual-abuse-common-institutions/ [perma.cc/C8S7-USZ6] (emphasizing that institutionalized sexual abuse may not necessarily involve rape, or sexual penetration). Abuses that occur in hospitals, TTI programs, etc. may involve strip and cavity searches,

Many programs, particularly those that are religiously-affiliated, also provide conversion therapy.[209] In fact, the TTI has been referred to as a "dumping ground" for LGBTQIA+ youth.[210] Generally, placement in residential therapeutic facilities is "inappropriate and, in fact, harmful for the vast majority of youth, and they are never appropriate just because a youth is LGBTQ."[211]

Of course, parents have faced the challenge of raising adolescents before the development of the TTI. As Szalavitz notes, "[t]he idea of using 'tough love' to reform troubled kids goes back at least as far as the Bible."[212] One only needs to pick up a copy of *Romeo & Juliet* or press play on *Rebel Without a Cause*[213] to witness juvenile struggles from times past. In fact, sending away a difficult child harkens back to the Magdalene Laundries in Ireland or the "Baby Scoop" era when unwed mothers were sent away.[214]

The difference between then and now is that a particularly American blend of religion, capitalism, lack of regulation, cults of personality, inaccessible health care, stigma around mental illness, dubious celebrity endorsement, underfunded public education, political corruption, and culture that pathologizes the normal behaviors of adolescence has cultivated an industry that evades

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invasive exams, or humiliation. *Id.*

209. Levi & Barry, *supra* note 118.

210. *Id.*

211. *Id.*

212. SZALAVITZ, *supra* note 7, at 6 (referencing *Proverbs* 13:24, "He who spares the rod hates his son, but he who loves him is diligent to discipline him").

213. WILLIAM SHAKESPEARE, ROMEO & JULIET. In the play, the teenage lovers are prohibited from seeing each other by their warring families. *Id.* Both characters, in desperation, kill themselves. *Id.*; *see also* REBEL WITHOUT A CAUSE (Warner Bros. 1955). In the film, three teenage characters rebel against societal expectations. *Id.* They meet at the local police precinct after committing relatively minor violations. *Id.* Later, the teenage girl's father calls her a "dirty tramp" after she dresses provocatively. *Id.* The film ends tragically when one of the male characters is shot down by police because he is carrying what turns out to be an unloaded gun. *Id.*

214. Ed O'Loughlin, *These Women Survived Ireland's Magdalene Laundries. Now They're Ready to Talk*, N.Y. TIMES (June 6, 2018), www.nytimes.com/2018/06/06/world/europe/magdalene-laundry-reunion-ireland.html [perma.cc/4FG5-F8N6]; Kelly O'Connor McNees, *What History Teaches Us About Women Forced to Carry Unwanted Pregnancies to Term*, TIME (Sept. 30, 2021, 12:24 PM), www.time.com/6103001/baby-scoop-era-abortion/ [perma.cc/94YA-YJX7]; *see also* Ed O'Loughlin, *A Blot on Ireland's Past, Facing Demolition*, N.Y. TIMES (Jan. 15, 2018), www.nytimes.com/2018/01/15/world/europe/magdalene-laundries-ireland.html [perma.cc/9K63-5JAA] (explaining the Magdalene Laundries were Irish for-profit institutions operated by the Catholic Church that forced orphaned, abandoned, and abused girls, sex workers, and unwed mothers to work without pay as a form of penance). Mortality was notoriously high for both women and infants. *Id.* These laundries were in operation until 1995. *Id.*

oversight and scrutiny.[215] Parents within every race and social class struggle with teenage misbehavior.[216] Meanwhile, some children may find themselves placed in residential treatment during a custody dispute between their parents, "either because the family situation is upsetting to a child and they may be acting out, or because one of the parents does not really want custody but also does not want the other parent to have custody."[217] It can be difficult to know where to turn for help.[218] Despite the news and social media's fascination with TTI, there is little legal history, scholarship, or regulatory movement to develop a licensing scheme or agency oversight.[219] Still, grassroots pressure fueled by media coverage has been effective.[220] As recently as October 6, 2022, Trinity Teen Solutions, a notorious religious TTI school in Wyoming, shut its doors following an NBC news investigation revealing abusive treatment and forced labor on its for-profit ranch.[221] Notably, Trinity Teen Solutions retains its state operating license.[222]

Thanks to the efforts of newly incorporated activist organizations such as Unsilenced and Breaking Code Silence, as

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215. Chelsea Filer, *Survivor Testimony of High Impact Tecate Mexico 2002*, WWASP SURVIVORS, www.wwaspsurvivors.com/survivor-testimony/high-impact-cf/ [perma.cc/RZ9P-LNC8] (last visited Oct. 9, 2022); *see also* Tim Weiner, *U.S. Youths Rebel at Harsh School in Costa Rica and Many Head for Home*, N.Y. TIMES (May 27, 2003), www.nytimes.com/2003/05/27/world/us-youths-rebel-at-harsh-school-in-costa-rica-and-many-head-for-home.html [perma.cc/7PJY-C2C4] (describing a particularly abusive operation in Costa Rica) While there have been many international TTI programs, particularly in Mexico, Samoa, Costa Rica, and Jamaica, most have been operated by Americans.

216. SZALAVITZ, *supra* note 7, at 2.

217. Levi & Barry, *supra* note 118.

218. SZALAVITZ, *supra* note 7, at 3.

219. Tyler Kingkade, *Girls Alleged Abuse at Circle of Hope Girls' Ranch for Years. It Stayed Open Until They Got on TikTok*, ABC NEWS [hereinafter Kingkade, *TikTok*], www.nbcnews.com/news/us-news/girls-alleged-abuse-reform-school-years-it-stayed-open-until-n1241011 [perma.cc/J9B6-7EQL] (Sep. 25, 2020, 11:51 AM); Kate Briquelet, *Ex-Students Reveal Abuse at 'Christian Torture Compound'*, THE DAILY BEAST, www.thedailybeast.com/agape-school-ex-students-reveal-abuse-at-christian-torture-compound-in-missouri [perma.cc/92JM-TS4Z] (July 5, 2022, 7:53 AM); Peter White, *Troubled-Teen Industry Drama Series In The Works From 'Freaky' Star Misha Osherovich, Skylar Landsee & Fremantle*, DEADLINE (Apr. 14, 2022, 9:30 AM), www.deadline.com/2022/04/troubled-teen-industry-drama-series-misha-osherovich-1235001227/ [perma.cc/ZT45-4P7A].

220. Kingkade, *TikTok*, *supra* note 219.

221. Tyler Kingkade, *Wyoming Ranch for Troubled Teens Closes Following Abuse Allegations*, NBC NEWS (Oct. 6, 2022) [hereinafter Kingkade, *Abuse Allegations*], www.nbcnews.com/news/us-news/trinity-teen-solutions-wyoming-ranch-closes-abuse-allegations-rcna50762 [perma.cc/L2QH-VKBG].

222. *Id.*

well as the activism of celebrity Paris Hilton and thousands of "TikTok-ers" sharing their personal experiences, the industry is currently undergoing a social reckoning.[223] But regulation and oversight remain spotty at best. The following section analyzes the current state of the law, regulations, or lack thereof, and the jurisprudence that faces changemakers.

III. ANALYSIS

The American Bar Association ("ABA") describes the TTI as existing in "a murky area of law."[224] In the words of Oregon State Senator Sara Gelser, "[i]t's a public health problem, and it's a public policy problem . . . a rights issue, a mental health issue, a consumer protection issue, and a taxpayer accountability issue."[225] Through loopholes, exemptions, legislative reluctance, and political entrenchment, TTI programs have avoided most oversight. Part III of this article uses a large provider, Sequel Youth & Family Services, to illustrate how different levels of government treat TTI actors. Additionally, it examines how religiously-affiliated programs may act with impunity in some states. Finally, this part of the article analyzes child and parental rights, as well as constitutional protections.

A. Federal Oversight

As previously established, no federal legislation regulates therapeutic boarding schools, behavior modification programs, or privately-engaged congregate care.[226] Critics of the TTI maintain that the lack of consistent regulation and oversight, whether state or federal, puts vulnerable children in precarious circumstances."[227] One state may license a program as a therapeutic boarding school;

223. *The TikTokkers Taking Down the Troubled Teen Industry*, SLATE (May 14, 2022, 5:00 AM), www.slate.com/podcasts/icymi/2022/05/tiktok-troubled-teen-industry-tiktokkers-revealing-truth [perma.cc/SEY7-HCEN].

224. Robert, *supra* note 157.

225. *Id.*

226. Nicole Belenitsky, *I See You, Survivor: A Call to Dismantle the Troubled Teen Industry*, CORNELL J.L. & PUB. POL'Y: THE ISSUE SPOTTER (Mar. 31, 2022), jlpp.org/i-see-you-survivor-a-call-to-dismantle-the-troubled-teen-industry%ef%bf%bc/ [perma.cc/P75U-U9GC]; *see also* Teresa Wiltz, *This New Federal Law Will Change Foster Care As We Know It,* STATELINE (May 2, 2018, 12:00 AM), www.stateline.org/2018/05/02/this-new-federal-law-will-change-foster-care-as-we-know-it/ [perma.cc/G6S7-4SMG] (discussing the Family First Act, a relatively new law that "caps federal funding for group homes, also known as 'congregate care.'"). The law has no effect on children placed in these homes privately. *Id.*

227. Robert, *supra* note 157.

another may categorize a similar operation as a residential treatment center.[228] Senator Gelser explains, "[m]ost states are sending bunches of kids to other states for placement, and once they're gone, those kids have no protection anymore."[229] Gelser goes on to say, "[t]he state they go to, they don't think they're responsible for them, and the state that sends them assumes the licensing and abuse entities in the other states are on top of it, but they're not."[230]

Guidance at a national level comes from a private industry trade association, the National Association for Therapeutic Schools and Programs ("NATSAP"). NATSAP formed "to not only serve as a resource for these programs but also to advocate for proper care of youth in treatment."[231] The NATSAP supports uniform licensing standards, requires licensed clinicians, and insists that member programs are licensed within their respective states.[232] As of June 30, 2023, all NATSAP member programs require national behavioral health accrediting agency accreditation.[233]

While NATSAP has made recent strides to improve the quality of care in TTI programs, the organization's leadership is populated with industry insiders, some of whom have backgrounds in highly-scrutinized facilities.[234] Derek Daley, NATSAP's vice president, was an instructor at several controversial TTI programs including RedCliff Ascent, Aspen Achievement Academy, and Open Sky Wilderness Therapy.[235] Kelly Webster, NATSAP's treasurer, is a former instructor at The Grove School which has been criticized for improper use of restraint.[236] The school faced further scrutiny

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228 *Id.*

229. *Id.*

230. *Id.*

231. *Id.*

232. *Id.*

233. *NATSAP and the TTI*, UNSILENCED, www.unsilenced.org/natsap-and-the-tti/ [perma.cc/G8VH-BHVQ] (last visited June 22, 2024).

234. *Id.*

235. Derek Daley, LINKEDIN, www.linkedin.com/in/derek-daley-43aab42b/ [perma.cc/SNN9-8MVW] (last visited June 22, 2024); *see also Open Sky Wilderness Therapy (2006-Present),* BREAKING CODE SILENCE, www.breakingcodesilence.org/open-sky-wilderness-therapy/ [perma.cc/3VGJ-LQNG] (last visited June 22, 2024) (documenting a history of abuse allegations against the organization). Open Sky shuttered its doors in 2024. *Id.*; *see also* Sam Myers, *Survivors of Wilderness Therapy Camps Describe Trauma, Efforts to End Abuses*, ARK. ADVOC. (Aug. 7, 2023, 5:55 AM) www.arkansasadvocate.com/2023/08/07/dark-forest-a-look-inside-controversial-wilderness-therapy-camps/ [perma.cc/6ML5-PMAS] (describing abuse allegations at Aspen Achievement Academy that included sodomizing a participant).

236. *Student Dies by Suicide at the Grove School, a Boarding School for "Struggling Adolescents"*, BREAKING CODE SILENCE, www.breakingcodesilence.org/student-commits-suicide-at-the-grove-school-a-boarding-school-for-struggling-adolescents/ [perma.cc/KX2F-YH2E] (last

following the death of a student by suicide.[237] Notably, NATSAP is not a licensing or accrediting body.[238] In any case, as stated above, membership with NATSAP is not compulsory.[239]

Although there is no federal oversight, programs like industry heavyweight Sequel Youth and Family Services[240] benefit from government funding, including at the federal level.[241] An analysis of Sequel illustrates the difficulties not only in regulating the TTI, but also because Sequel practices implicate law and policy at the federal, state, and local levels.[242] Until 2021, Sequel was one of the leading youth behavioral care providers in the U.S.[243] Sequel boasted locations in twenty U.S. states.[244] However, over forty U.S. states sent children to Sequel facilities, both privately and through foster care systems.[245] At its peak, Sequel was valued by investors at $400 million.[246] The company hoped for and promised its investors an eventual billion-dollar valuation.[247]

In 2017, Sequel alone took in millions of dollars from private equity, and obtained hundreds of millions more in government funding.[248] This allowed Sequel to open new locations, while "deploying a sophisticated marketing strategy to convince state officials to send more children, despite government inspections

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visited June 22, 2024).

237. *Id.*

238. *Troubled Teen Industry Timeline*, *supra* note 96.

239. Schneider, *supra* note 168.

240. Hannah Rappleye, Tyler Kingkade & Kate Snow, *A Profitable 'Death Trap': Sequel Youth Facilities Raked in Millions While Accused of Abusing Children,* NBC NEWS, www.nbcnews.com/news/us-news/profitable-death-trap-sequel-youth-facilities-raked-millions-while-accused-n1251319 [perma.cc/T5F6-87VA] (Dec. 16, 2020, 4:17 PM) (explaining Sequel is an Alabama-based for-profit company founded by Jay Ripley in 1999).

241. Krebs, *supra* note 206 (describing Sequel as collecting over 90% of their revenue from Medicare and Medicaid).

242. Rappleye, Kingkade & Snow, *supra* note 240.

243. Curtis Gilbert & Lauren Dake, *'Youth Were Abused Here'*, APM REPS. (Sep. 28, 2020), www.apmreports.org/story/2020/09/28/for-profit-sequel-facilities-children-abused [perma.cc/Q8E6-NQYA].

244. *Id.*

245. *Id.*

246. *Id.*

247. *Id.*; *see also* Celeste Fremon, *Controversial Company That Profited From The "Troubled Teen" Industry Now Has Millions From The Feds To Open A Lock-Up For Immigrant Kids In Los Angeles*, WITNESS L.A. (Jan. 7, 2020), www.witnessla.com/controversial-company-that-profited-from-the-troubled-teen-industry-now-has-millions-from-the-feds-to-open-a-lock-up-for-immigrant-kids-in-los-angeles/ [perma.cc/9LYE-2TUC] (discussing how, in 2020, despite a state law prohibiting California to do so, the federal government contracted with VisionQuest, a for-profit TTI company, to detain immigrant children).

248. Rappleye, Kingkade & Snow, *supra* note 240.

flagging violations at Sequel locations in at least nine states."[249] Sequel managed to evade recrimination for the majority of its history.[250] Occasionally, journalists would seize on scandalous reports from Sequel facilities.[251] Still, "the full picture of the problems in Sequel's programs was obscured by a patchwork of oversight bodies spread across multiple states and local jurisdictions. When conditions at a facility became too bad, the company simply closed it."[252] Sequel was headquartered in Alabama.[253] However, due to increasing complaints, multiple states began to investigate its operations.[254]

B. State Oversight

The hodgepodge manner of oversight is most obvious at the state level.[255] The activist organization Breaking Code Silence explains that "only a patchwork of inconsistent and ineffective state-to-state statutes exist. In many states, there are absolutely no laws and absolutely no jurisdiction to protect children from institutional abuse."[256] A two-year study published by the ABA in 2007 revealed that out of the four states surveyed, none "were able to report how many children were placed privately by their parents

249. *Id.*

250. Gilbert & Dake, *supra* note 243.

251. Jessica Miller, *Violence, Often Instigated by Staff, Has Become Common at Red Rock Canyon School in St. George for Troubled Children*, SALT LAKE TRIB. [hereinafter Miller, *Canyon School*], www.sltrib.com/news/2019/06/23/violence-often-instigated/ [perma.cc/2KRN-E9VR] (June 23, 2019, 10:35 AM); *see also* Jessica Miller, *Embattled Company to Close a Second Utah Treatment Center for Troubled Teens,* SALT LAKE TRIB. [hereinafter Miller, *Embattled Company*], www.sltrib.com/news/2019/07/15/embattled-company-close/ [perma.cc/W9CG-JXUJ] (July 15, 2019, 12:10 PM) (providing a further example of newspaper coverage of Sequel facilities); *see also* Hannah Rapleye et al., *They Make Millions by Operating Youth Facilities. But Children Allege Rampant Abuse*, NBC NEWS, www.news.yahoo.com/profitable-death-trap-states-paid-203252854.html [perma.cc/CHF9-ZE96] (Dec. 16, 2020, 5:17 PM) (serving as an example of further journalistic coverage of Sequel); *see also*, Lauren Dake, *Out of State, Out of Mind*, OR. PUB. BROAD. (Dec. 11, 2019, 8:00 AM), www.opb.org/news/article/oregon-foster-care-abuse-neglect-sequel/ [perma.cc/997F-KS5Z] (providing an example of public media coverage of Sequel).

252. Gilbert & Dake, *supra* note 243 (illustrating how Riverside Academy in Wichita, Kansas closed quietly in response to abuse allegations).

253. Rappleye, Kingkade & Snow, *supra* note 240.

254. DISABILITY RIGHTS WASHINGTON, WASHINGTON'S OUT-OF-STATE YOUTH PLEAD: LET US COME HOME (2018), www.disabilityrightswa.org/reports/let-us-come-home [perma.cc/QWX2EHJH].

255. Lenore Behar et al., *The American Bar Association's Youth at Risk Initiative: Protecting Youth Placed in Unlicensed, Unregulated Residential "Treatment" Facilities*, 45 FAM. CT. REV. 399, 407 (2007).

256. *The Troubled Teen Industry*, *supra* note 189.

or how many children were placed out of state by local agencies or by parents, nor was there any attempt to monitor the effectiveness of those placements."[257] Yet, "policies regarding the regulation of both public and private residential facilities are the responsibility of each state."[258] If states choose to intervene, they may do so through "legislation, regulation, or other administrative action."[259]

Without regulation, if children are privately placed, the only oversight they have is from their parents or guardians.[260] In one example, a Minnesota mother who placed her autistic and sometimes violent son at the Sequel program at Lakeside Academy in Michigan was troubled by the facility's policies denying her son the ability to speak with her on the phone.[261] That was, "in spite of a law in [the child's] home state of Minnesota guaranteeing residents in such facilities the 'right to reasonable communication' with their parents and other important adults in their lives."[262] It took three weeks and a firm call from his father for the facility to allow the parents to speak with their son.[263] American Public Media published several investigative reports, specifically about Sequel, stating the issues affecting oversight:

> Because it operates in so many states, Sequel is overseen by a dizzying array of government agencies: state departments of human services, corrections, health and education, county probation, social services and courts, local police and sheriff's offices, and the federal Centers for Medicare and Medicaid Services, to name just a few. However, each agency regulates only a sliver of the company's operations. The full picture is visible to none of them. In a sense, the company had become too big for any single government agency to regulate it.[264]

Meanwhile, in addition to raking in federal funding, states regularly pay programs like Sequel up to $800 per child per day.[265]. For example, in Alabama , "Sequel received nearly $25 million in Medicaid payments from 2018 to [August 2020]."[266] Companies like Sequel rely on governmental reluctance and lack of capability to

257. Behar et al., *supra* note 255.
258. *Id.*
259. *Id.*
260. Gilbert & Dake, *supra* note 243.
261. *Id.*
262. *Id.* In this particular case, the son claimed a staff member had punched him in the ribs. *Id.* A state investigation followed and was unable to confirm the allegation. *Id.* Two weeks later, the Sequel evicted the patient who complained. *Id.*
263. *Id.*
264. *Id.*
265. *Id.*
266. Rappleye, Kingkade & Snow, *supra* note 240.

care for the most vulnerable children.[267] In addition, "[l]ax billing indexes often keep the same Medicaid reimbursement levels for services provided by less experienced, untrained employees[, which] creates an environment ripe for abuse, neglect, and investor profit."[268]

In 2018, disability rights advocates began to raise red flags that Sequel operations were at best, mishandling disabled children at its facilities, and at worst, abusing and denying these children the care they required.[269] Disability Rights Washington, a private advocacy group, produced its own report that focused on the Sequel facility, Clarinda Academy.[270] Clarinda Academy,located in Clarinda, Iowa, was considered one of Sequel's flagship operations.[271] Clarinda drew scrutiny due to its reliance on restraint and its use of facilities that were "in disrepair[,] . . . missing sink handles, showers that had no hot water, moldy food, chairs with arms ripped off and nails exposed from torn upholstery on several couches."[272]

The state of Washington had been sending foster and disabled youth to Clarinda.[273] Disability Rights Washington's report was blistering, recommending Washington remove not just disabled youth but *all* youth "from this institution, and to eliminate the practice of sending foster youth out-of-state, where they are separated from their loved ones and are at increased risks of abuse and neglect."[274] In 2020, Washington State's Department of Children, Youth & Families produced its own report, "Review of Sequel Programs," recommending the state cease sending children to Sequel facilities.[275] While Washington was able to prevent foster children from contact with Sequel programs, private families could still privately engage Sequel.[276] Meanwhile, in June 2018, Minnesota's most populous county removed all of their children from Clarinda because "the facility wasn't meeting 'safety and well-

267. Gilbert & Dake, *supra* note 243.

268. DISABILITY RIGHTS WASHINGTON, *supra* note 254, at 58 (citing Rappleye, Kingkade & Snow, *supra* note 240).

269. DISABILITY RIGHTS WASHINGTON, *supra* note 254.

270. *Id.*

271. Gilbert & Dake, *supra* note 243.

272. Rappleye, Kingkade & Snow, *supra* note 240.

273. *Id.*

274. DISABILITY RIGHTS WASHINGTON, *supra* note 254.

275. WASHINGTON STATE DEPARTMENT OF CHILDREN, YOUTH & FAMILIES REVIEW OF SEQUEL PROGRAMS (2020), www.dcyf.wa.gov/sites/default/files/pdf/DCYF_Review_of_Sequel_Programs_Report.pdf [perma.cc/Z66C-RFEU].

276. *Id.*; *see generally* DISABILITY RIGHTS WASHINGTON, *supra* note 254 (recommending the state of Washington cease sending children to Sequel facilities).

being requirements for clients.'"[277] Clarinda has since ceased operation, though its licensure remained in good standing at the time of closure.[278]

Clarinda was only one of the dozen Sequel facilities nationwide, and by no means the most controversial. In Kansas, Sequel facility Riverside Academy "had been cited 38 times by Kansas officials for problems including excessive force by staff, poor supervision, under-qualified medical personnel, neglect and bullying by residents, according to state licensing records."[279] Though the state did not intervene, Riverside Academy eventually closed voluntarily.[280]

As recently as May 2021, Illinois pulled all children that were under state care from Northern Illinois Academy, a Sequel facility, after a report from child advocacy group Equip for Equality detailed abuse and neglect.[281] The government sanctions that followed the report were hardly the Academy's first brush with authorities. In 2019, staffer Darius Jones was convicted of criminal sexual assault of a minor after sexually assaulting a child assigned to his care.[282] The assaults occurred over a period of more than four months.[283] While criminal charges are available as an interventional method, relief can take years.[284] Moreover, survivors who eventually wish to press charges may not fully comprehend the extent of their injuries until after statutes of limitations have run.[285]

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277. Gilbert & Dake, *supra* note 243.

278. Hannah Rappleye et al., *After Years of Abuse Allegations, Iowa Youth Home to Close*, NBC NEWS (Feb. 5, 2021, 5:19 PM), www.nbcnews.com/news/us-news/after-years-abuse-allegations-iowa-youth-home-close-n1256890 [perma.cc/PC9X-74DR].

279. Gilbert & Dake, *supra* note 243.

280. *Id.*

281. *State Pulling All Students in Its Care from Northern Illinois Academy Following Reports of Abuse*, WCIA (May 18, 2021, 10:28 AM), www.wcia.com/news/state-pulling-all-students-from-northern-illinois-academy-following-reports-of-abuse/ [perma.cc/24BD-KKBL]; *see also* STACEY ASCHEMANN & ZENA NAIDITCH, NORTHERN ILLINOIS ACADEMY REPORT 1 (2021), www.equipforequality.org/wp-content/uploads/2021/05/NIA-Final-Report-5-4-21.pdf [perma.cc/APR9-XD5Z] (explaining how the Equip for Equality report emphasizes that Sequel is a for-profit operation and notes that Sequel had already "announced closures of 12 facilities since 2019 amid decreasing enrollment that followed pressure from state regulators and disability rights groups, and national media attention for abuse."). "Presently, the States of California, Maryland, Minnesota, Oregon, and Washington no longer send their youth to Sequel facilities." *Id.*

282. *Worker at Juvenile Mental Health Facility in Aurora Gets 10 Years for Sex Assault of Child*, CHI. TRIB., www.chicagotribune.com/2019/02/23/worker-at-juvenile-mental-health-facility-in-aurora-gets-10-years-for-sex-assault-of-child/ [perma.cc/3WH8-KBXS] (May 22, 2019, 9:17 PM).

283. *Id.*

284. *The Troubled Teen Industry*, *supra* note 189.

285. Robert, *supra* note 157.

It was not until the 2020 death of Cornelius Frederick, Jr. at Lakeside Academy, the aforementioned Michigan Sequel facility, that Sequel facilities began to shut down in earnest, with several states pulling their foster children from Sequel programs.[286] Frederick died after being restrained for 12 minutes, a death that many commentators compared to the killing of George Floyd.[287] The county medical examiner ruled the death a homicide.[288] In a rare example of accountability, following an investigation by the Michigan Department of Health and Human Services ("MDHHS"), three Lakeside Academy employees were criminally charged with involuntary manslaughter.[289] As of 2021, MDHHS terminated its contracts with Lakeside, and initiated the process to revoke Lakeside's license to operate in the state.[290] MDHHS's investigation ultimately revealed ten violations, "including a failure to follow rules related to resident restraint and discipline."[291] Frederick's

286. Curtis Gilbert, *Under Scrutiny, Company That Claimed to Help Troubled Youth Closes Many Operations and Sells Others*, APM REPS. (Apr. 26, 2022), www.apmreports.org/story/2022/04/26/sequel-closes-sells-youth-treatment-centers [perma.cc/7KWS-XD5C] (noting Cornelius Frederick was a foster care placement, not private).

287. Gilbert & Dake, *supra* note 243.

288. Marie Weidmayer, *Family Settles Second Wrongful Death Lawsuit After Student Killed at Lakeside Academy*, M LIVE (Jan. 3, 2022, 2:55 PM), www.mlive.com/news/kalamazoo/2022/01/family-settles-second-wrongful-death-lawsuit-after-student-killed-at-lakeside-academy.html [perma.cc/AH75-H995].

289. Taylor Romine & Anna Sturla, *Three Staff Members Charged in Death of 16-year-old Who Went Into Cardiac Arrest After Being Restrained at Facility*, CNN, www.cnn.com/2020/06/25/us/teen-restraint-death-staff-charged-michigan-trnd/index.html [perma.cc/N4B7-7EKQ] (Oct. 7, 2021, 10:23 PM).

290. *Id.*

291. *Id.* (internal quotations omitted); *see also* Press Release, Gretchen Whitmer, Governor, Michigan, Governor Whitmer Statement on Youth Death at Lakeside for Children in Kalamazoo (June 20, 2020), www.michigan.gov/whitmer/news/press-releases/2020/06/20/governor-whitmer-statement-on-youth-death-at-lakeside-for-children-in-kalamazoo [perma.cc/SG5K-BYRH] (describing Governor Gretchen Whitmer's official statement in reaction to Frederick's death). Whitmer's statement declared:

> Protecting our most vulnerable is a top priority of my administration, and the senseless death of a youth at Lakeside for Children in Kalamazoo is intolerable and heartbreaking. We will take steps to prevent tragedies like this from occurring in the future and make sure there is accountability. Today I directed MDHHS Director Robert Gordon to take every step necessary to ensure Sequel Youth and Family Services — the company that provided staffing for Lakeside for Children where the 16-year-old died — no longer provides services for facilities licensed by the department.

Id. Governor Whitmer's directive follows MDHHS's announcement that it will eliminate the use of restraints against youth in its care, and review and reform its policies to prevent future tragedies. *Id.* The MDHHS Division of Child

family eventually settled two separate wrongful death lawsuits.[292]

The fallout from Frederick's death was swift. California cut ties with Sequel, announcing its intention to bring all children within California's care home from Sequel facilities by the end of January 2021.[293] This was a heavy blow to Sequel; California had been one of Sequel's largest and most consistent customers, though Sequel had no facilities within the state itself.[294] California sent "more than 1,000 children to Sequel facilities since 2014—more than it sent to any other single provider."[295] According to American Public Media, "[m]ore than 40 percent of California children sent out of state for treatment during those years went to Sequel … despite a state law requiring such providers to operate as nonprofits."[296]

Hours after California made its announcement, Ohio threatened to revoke Sequel Pomegranate's operating license, reacting to multiple reports of physical abuse, neglect, and peer violence.[297] Police were summoned to Sequel Pomegranate in March 2020 "following allegations of a riot among the residents … [where] at least 16 reports were submitted of juveniles who had harmed themselves with implements such as pieces of broken toilets and by swallowing batteries."[298] Franklin County of Columbus, Ohio ceased sending children there.[299] According to an investigative report, the move "essentially crippled Sequel Pomegranate."[300] The facility "relinquished its license in December of 2020 … [and t]hat same week, it filed paperwork with the Ohio Secretary of State's office to rename Sequel Pomegranate Torii Behavioral Health."[301] A Utah Sequel facility, Red Rock Canyon School, received more than $13 million in government money from six states until it closed following a riot, allegations of child abuse, and reports of sexual

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Welfare investigated the facility in coordination with other department investigators and local law enforcement. *Id.*

292. Weidmayer, *supra* note 288. One lawsuit settled in Kalamazoo County Circuit Court, another in the U.S. District Court for the Western District of Michigan. *Id.* Details of the settlements are not public. *Id.*

293. Curtis Gilbert, *California Hands Sequel a Major Setback*, APM REPS. (Dec. 14, 2020), www.apmreports.org/ story/2020/12/14/california-hands-sequel-a-major-setback [perma.cc/TQ3X-A95Z].

294. *Id.*

295. *Id.*

296. *Id.*

297. Bennett Haeberle, *Embattled Psychiatric Facility for Teens Formerly Known as Sequel Pomegranate Tells State It Will Close*, 10 WBNS (Sept. 16, 2021, 5:30 PM), www.10tv.com/article/news/investigations/10-investigates/sequel-pomegranate-tells-state-it-will-close/530-5ec3694d-29af-46c5-92c7-d06e4310e85a [perma.cc/RC5D-K3A8].

298. NDRN, *supra* note 194.

299. Haeberle, *supra* note 297.

300. *Id.*

301. *Id.*

assault.[302]

It was not until a local reporter notified State Senator Sara Gelser that Oregon had been sending children out-of-state that Oregon began to change direction.[303] Throughout 2019, "because of Gelser and a number of people who raised alarms, Sequel began to face greater accountability for conditions inside its facilities."[304] Finally, in 2020, following Washington's lead, Oregon ceased sending children to Sequel facilities.[305] Additionally, Gelser "helped pass legislation that mandates if Oregon places a child in an out-of-state facility, it needs to be licensed as a child-caring agency with the state's Department of Human Services and comply with the same regulations as a facility actually located in Oregon."[306] This helps protect foster children under state care in Oregon; however, privately-placed kids do not benefit from this legislation.

Not all states engage in such scrutiny, however. Some states are only too enthusiastic to send their own children to other states for behavioral intervention and the equivalent of foster care.[307] In addition to Alabama's regulatory inaction and generous public funding, Glenda Marshall, "a program coordinator for Oregon's state child welfare agency," sent an email to [a Sequel marketing agent] expressing how Alabama had been struggling to find placements for foster youth.[308] "'We have been lucky to have Sequel programs available to serve our kids,' Marshall wrote. Two years later, Marshall sent cookies to other Sequel employees as a gift, emails show."[309]

C. Local Oversight and Entrenchment

At the local level, TTI programs develop a relationship with their host communities similar to that of so-called "prison towns."[310] They employ local citizens and contribute to the local economy.[311]

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302. Miller, *Canyon School*, supra note 251.

303. Gilbert & Dake, *supra* note 243.

304. *Id.*

305. *Id.*

306. Robert, *supra* note 157.

307. Rappleye, Kingkade & Snow, *supra* note 240.

308. *Id.*

309. *Id.*

310. Tanvi Misra, *The Economics of Prison Boomtowns*, BLOOMBERG (May 2, 2017, 10:51 AM), www.bloomberg.com/news/articles/2017-05-02/inside-the-prison-towns-of-the-rural-south [perma.cc/F3Y6-8TMF]; *see also The Program*, *supra* note 74 (describing Ogdensburg, New York, home of the former WWASP program, The Academy at Ivy Ridge as well as two state prison facilities, as having a local economy based on "institutionalization").

311. Jessica Miller, *How Utah Became the Leading Place to Send the Nation's Troubled Teens*, APM REPS. (Apr. 5, 2022), www.apmreports.org/story/2022/04/05/how-utah-leads-nation-troubled-teens

Clarinda Academy was actually located on the same property as an Iowa state prison, and officials ran it in a similar manner, albeit with less state and federal oversight than that over the actual prison.[312] To wit, one WWASP survivor compared his subsequent time in jail as the equivalent of "a five-star Hilton hotel" compared to The Academy at Ivy Ridge.[313] As the New York Times recently reported, "[a]ccording to lawsuits, government reports and the testimonies of former patients and employees, children are often abused, assaulted, sedated and placed in solitary confinement. Sometimes they are treated in ways that are illegal to treat prisoners, let alone kids seeking mental health treatment."[314]

Meanwhile, local staffers may have a vague sense they are giving back to the community by helping kids turn their lives around.[315] TTI programs purposefully "choose places where there is very high unemployment so then, suddenly, they are the biggest employer . . . and nobody wants to complain about them because otherwise the entire economy of the town will be destroyed."[316] Ken Stettler, a former Utah regulator, explains that Mormons in particular "believe their role and responsibility on Earth is to help one another and to help others that need help. So, the idea of working in a facility where you can help a kid turn their life around is appealing."[317] In multiple different states, local officials have been accused of inaction despite more than enough cause to intervene.[318] Locals typically feel a sense of protectiveness for each other; however, because the youth in these facilities are not local, the lessened sense of community may play a factor in local officials' lack of inclination to look out for red flags. Moreover, states that host such facilities financially benefit from families coming in from out-of-state.[319] In Utah alone, parents and families of TTI kids net

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[perma.cc/69GG-UH8U].

312. DISABILITY RIGHTS WASHINGTON, *supra* note 254.

313. *The Program*, *supra* note 74 (featuring the survivor stating, "I loved jail. Jail was freedom [compared to his time at The Academy at Ivy Ridge].").

314. Alexander Stockton, *Can You Punish a Child's Mental Health Problems Away?*, N.Y. TIMES OP. (Oct. 11, 2022), www.nytimes.com/interactive/2022/10/11/opinion/teen-mental-health-care.html [perma.cc/3AF4-ZD8S].

315. Miller, *How Utah Became*, *supra* note 120.

316. *The Program*, *supra* note 74.

317. Miller, *How Utah Became*, *supra* note 120.

318. Tyler Kingkade, Liz Brown & Keith Morrison, *Legal Loopholes Allow Abuse to Go Undetected at Religious Boarding Schools, Advocates Say*, NBC NEWS [hereinafter Kingkade, *Advocates Say*], www.nbcnews.com/news/us-news/legal-loopholes-allow-abuse-go-undetected-religious-boarding-schools-advocates-n1257203 [perma.cc/9AVC-7B53] (Feb. 12, 2021, 1:33 PM).

319. Wendy Leonard, *Troubled Teen Treatment Brings Hundreds of Millions to Utah Economy*, DESERET NEWS (Aug. 7, 2016, 5:30 PM), www.deseret.com/2016/8/7/20593487/troubled-teen-treatment-brings-

the state around $16 million in tourist dollars just by visiting.[320]

Sequel Youth and Family Services serves to illustrate not only federal and state regulatory loopholes, but also the power of public pressure to close these types of facilities. Still, although Sequel has shut down the bulk of its operations, it is important to note that these shutdowns were not federally- or state-mandated ones, but rather, decisions made by Sequel itself.[321] In other words, Sequel operations have generally ceased, but it was not government intervention that led to the closure but rather public pressure and private equity concerns.[322] In short, the market spoke, but the government was silent.

In addition, while the closure of Sequel facilities looks like a victory, Sequel survives under a different name, Vivant Behavioral Healthcare.[323] This is a common practice within TTI. Malcolm Harsch, an attorney who is coordinating an ABA committee devoted to reforming the industry, explained that "[w]hen programs get shut down because of allegations of abuse, they tend to disappear and then pop up again with new names, as if they were new facilities."[324] In other words, Sequel's second act demonstrates how lack of oversight empowers such entities to shut down in one jurisdiction and arise, virtually unscathed, in another to continue their abuse.

D. Religious Exemption

To further complicate inconsistent state regulatory schemes, "many states exempt religious boarding schools from licensing requirements entirely, in addition to not requiring any oversight by education or child welfare authorities."[325] In Florida, for example, once programs are deemed exempt from government regulation, they are "instead overseen by the Florida Association of Christian Child Caring Agencies, a private body whose leadership is filled with people who run Christian schools."[326] Florida's Department of Children and Families only has the authority to intervene if there are claims of abuse or neglect.[327] Religious exemptions "[protect] the programs from inspections by the state's department of children and families, which means students can be imprisoned or shackled and, unlike with licensed youth programs, can be denied contact

hundreds-of-millions-to-utah-economy [perma.cc/TX2Q-8MKY].

320. *Id.*

321. Gilbert & Dake, *supra* note 243.

322. *Id.*

323. *Id.*

324. Aviv, *supra* note 1.

325. Robert, *supra* note 157.

326. Aviv, *supra* note 1.

327. *Id.*

with their parents and prevented from accessing child abuse hotlines."[328] It is from religious programs like these that some of the most egregious and bizarre reports of abuse stem.[329] Moreover,

> [c]hildren can be coerced in this way into participating in nearly all varieties of illiberal indoctrination, from ex-gay movement conversion camps to reactionary political or religious programs, to more seemingly innocuous activities like sports, music lessons, or compelled social bonding with relatives that would nonetheless be degrading to an unwilling participant.[330]

Teen Challenge, "a network of nonprofits that has received tens of millions of dollars in state and federal grants, has more than a thousand centers in the United States and abroad."[331] Affiliated with the Pentecostal Assemblies of God denomination, Teen Challenge programs use a supposedly Bible-based curriculum.[332] Although Teen Challenge expressly claims to be religious in nature, "[m]any people are sent there by courts, as an alternative to juvenile detention or jail."[333] In religiously-based TTI programs, queer children are particularly at risk.[334] At Teen Challenge, queer girls

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328. Maia Szalavitz, *Investigative Report Reveals Some Religious Reform Schools Are Havens for Child Abuse*, TIME (Nov. 13, 2012) [hereinafter Szalavitz, *Child Abuse*], healthland.time.com/2012/11/13/investigative-report-reveals-some-religious-reform-schools-are-havens-for-child-abuse/ [perma.cc/3X86-EHWW].

329. *Military School 'Cadet' Exercised to Brink of Death*, TAMPA BAY TIMES (May 15, 2013), www.tampabay.com/news/publicsafety/military-school-cadet-exercised-to-brink-of-death/1258376/ [perma.cc/6RRB-MASX]; *see generally* Heather Vogell, *Unrestrained*, PROPUBLICA (Dec. 10, 2015), www.propublica.org/article/advoserv-profit-and-abuse-at-homes-for-the-profoundly-disabled [perma.cc/YH58-SYSN] (noting this comment does not cover residential facilities that treat adults and children). However, it should be noted that the state of Florida refrained from intervening at Carlton Palms, a for-profit group home for disabled children and adults. *Id.* The home was owned and operated by a powerful conservative lobbyist who took advantage of Florida's weak oversight, similar to TTI business models. *Id.*

330. Samantha Godwin, *Against Parental Rights*, 47 COLUM. HUMAN RIGHTS L. REV. 1, 18 (2015).

331. Aviv, *supra* note 1.

332. *Id.*

333. *Id.* (explaining that Teen Challenge has been praised by former president, George W. Bush as "one of the really successful programs in America."). As governor of Texas, Bush also stepped in to provide funding and create an exemption for faith-based programs to save Teen Challenge from regulators. Ronald Reagan endorsed Teen Challenge as well, stating, "I speak from more than twenty years of knowledge of the organization when I tell you that the Teen Challenge program works . . . The government can't do it alone, no matter how hard it tries." *Id.* In 1984, as part of her "Just Say No" campaign, Nancy Reagan visited a Teen Challenge center in Tennessee and posed for pictures with the residents. *Id.*

334. Getting Curious with Jonathan Van Ness, *Who Does America's "Child Welfare System" Serve? with Professor Dorothy Roberts*, EARWOLF (Sept. 28,

were told that homosexuality is "a detestable sin" and would be given "preemptive strikes" just for being outwardly queer.[335]

Teen Challenge requires parents to sign a contract "unconditionally giving Teen Challenge control of their child. According to a 2020 version of the form, parents agreed 'not to interfere with the custody or management of said minor in any way.'"[336] The contract also waives any right to sue.[337] "Instead, the contract says that their 'sole remedy' for any dispute will be 'Biblically based mediation' or Christian conciliation, a type of legal arbitration."[338] In 2015, the New York Times published an investigation of religious arbitration clauses.[339] Citing Teen Challenge specifically, the piece describes "an alternate system of justice … impervious to legal challenges."[340] Such clauses "[obstruct] families not only from suing but from gathering facts."[341] Teen Challenge was known to force adult residents into unpaid labor.[342] One former employee said he was asked to resign after speaking up about the forced labor. "It sickened me, the way the men were being used as cheap labor—doing car washes, getting contracts to work with different companies … It was labor

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2022), jonathanvanness.com/wp-content/uploads/2022/09/GC-284-Dorothy-Roberts.pdf [perma.cc/VFZ4-LS9F].

335. Aviv, *supra* note 1.

336. *Id.* (explaining many Teen Challenge students are not only not addicted to drugs, some haven't even tried them. Professor Joseph Spillane of the University of Florida, an expert in addiction history, describes these teens as "pre-delinquent"). He additionally emphasizes, "Teen Challenge does not get enough credit, if that's the word, for really developing the foundations of the troubled teen industry." *Id.*

337. *Id.*

338. Michael Corkery & Jessica Silver-Greenberg, *In Religious Arbitration, Scripture Is the Rule of Law*, N.Y. TIMES (Nov. 2, 2015), www.nytimes.com/2015/11/03/business/dealbook/in-religious-arbitration-scripture-is-the-rule-of-law.html [perma.cc/F9L8-Z8YP] (explaining that courts have been reluctant to declare such clauses unenforceable). "Few courts have intervened, saying the terms of arbitration are detailed in binding contracts signed by both parties." *Id.* "Some judges are also reluctant to risk infringing the First Amendment rights of religious groups, according to a review of court decisions and interviews with lawyers." *Id.* "Some plaintiffs counter that it is their First Amendment rights being infringed because they must unwillingly participate in what amounts to religious activity." *Id.*

339. *Id.* (describing the language of one Teen Challenge contract). "The undersigned parties accept the Bible as the inspired Word of God." *Id.* "They believe that God desires that they be reconciled in their relationships in accordance with the principles stated in First Corinthians 6:1-8, Matthew 5:23-24 and Matthew 18:15-20." *Id.*

340. *Id.*

341. Aviv, *supra* note 1.

342. *See id.* ("Some work at thrift stores operated by the organization. Others do landscaping, wash cars, or work at warehouses or call centers.").

trafficking."[343]

Even with Florida's lack of oversight, the Florida Department of Children and Families "has conducted five investigations into the Lakeland Teen Challenge, after allegations of abuse including 'bizarre punishment,' 'mental injury,' and 'physical injury, asphyxiation.'"[344] At Teen Challenge-affiliated Gateway Christian Military Academy, a boy named Samson Lehman was forced to exercise at an extreme level and withstand such brutal treatment, that shortly after arriving, he nearly died from the abuse.[345] He urinated blood and vomited.[346] Then, "for more than 72 hours, Samson said he went without a healthy night's sleep, and in that time, was dragged with his cheek scraping the ground, tossed in a corner and called 'useless,' made to sleep in his sweaty jumpsuit and allowed to change only after he defecated himself."[347] Eventually, he was taken to the emergency room, where his condition was deemed so serious as to require him to be airlifted to a more advanced hospital.[348] Not only had severe dehydration resulted in nearly fatal kidney failure, but the ibuprofen administered to him by Teen Challenge staff had worsened his condition.[349] He remained on dialysis for four months before his kidneys recovered.[350] Although the state of Florida established there had been "verified medical neglect," Florida did not press charges.[351] Gateway remains open, although the program claims that it does not utilize the more brutal methods it did in the past, including the extended, intense exercise sessions that resulted in Samson's life-threatening injuries.[352]

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343. *Id.*; *see also* Corkery & Silver-Greenberg, *supra* note 338 (noting how one Teen Challenge participant who was sent to the programs for drug addiction and alleged gay conversion therapy said his experience "consisted of doing manual labor for many hours a day.") "Local landscaping companies, carwashes and a fish market employed the men, former participants and their families said. Teen Challenge said money from the 'work assignments' helped cover some expenses and the men were not entitled to compensation, according to a participant consent form." Angie Helms, a mother whose son attended alongside the other participant stated, "[t]his wasn't treatment, this was free labor." *Id.*; *see also* Prince v. Massachusetts, 321 U.S. 158 (1944) (holding parental authority, particularly as motivated by religion, can be restricted in order to protect a child's welfare).

344. *Id.*

345. *Military School 'Cadet' Exercised to Brink of Death*, *supra* note 329.

346. *Id.*

347. *Id.*

348. *Id.*

349. SZALAVITZ, *supra* note 7, at 317.

350. *Military School 'Cadet' Exercised to Brink of Death*, *supra* note 329.

351. SZALAVITZ, *supra* note 7, at 317.

352. Aviv, *supra* note 1 (noting that before Governor Bush stepped in, Texas regulators sought to require counselors at programs that used restraint to meet certain training, safety and education standards). "Reports of abuse at the

The state of Alabama does not require religiously-affiliated schools to obtain licenses to operate, nor are there any regulations or agencies to oversee such programs.[353] In fact, Alabama does not even require these schools to inform the state of their existence.[354] Until recently, Missouri did not require religious schools to register with the state, nor were they required to obtain a license.[355] However, in response to pressure from TTI survivors, parents, and activists, Missouri enacted a law that now requires private residential facilities to register with the Missouri Department of Social Services.[356] Additionally, the law empowers social services greater power to investigate alleged abuses, requires facilities to pass fire and health department inspections, and provides a more concrete procedure for removing children from such programs in violation.[357]

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exempted facilities began surfacing, including one in which a girl was found bound in duct tape, but without the licensing rules, the state couldn't act." *Id.* Once Bush left office, and Texas officials rescinded the exemption, "programs simply moved to other states, including Florida, where religion was still used as a buffer to protect such abuses." *Id.*

353. *Alabama State Regulations*, U.S. DEPT. OF EDUC., www2.ed.gov/about/inits/ed/non-public-education/regulation-map/alabama.html [perma.cc/UGX3-8E9R] (Apr. 30, 2013).

354. Anna Claire Vollers, *3 Convicted For Child Abuse at Religious Alabama Private School*, AL.COM (Jan. 24, 2017, 1:51 PM), www.al.com/news/birmingham/2017/01/three_convicted_for_child_abus.html [perma.cc/UH3M-V53C]; s*ee also* Art Levine, *The Harrowing Story of Life Inside Alabama's Most Sadistic Christian Bootcamp*, NEWSWEEK (Mar. 2, 2017, 8:00 AM), www.newsweek.com/ 2017/03/10/saving-youth-foundation-alabama-christian-school-beatings-nudity-562257.html [perma.cc/3LYG-WNVJ] (illustrating how Alabama's lack of oversight created the perfect climate for Pastor John David Young to open Saving Youth Foundation which would come to be known as "Alabama's most sadistic Christian bootcamp.").

355. Tyler Kingkade, *New Missouri Law Enables State Officials to Shut Down Abusive Boarding Schools*, NBC NEWS (July 14, 2021, 3:42 PM) [hereinafter *Boarding Schools*], www.nbcnews.com/news/us-news/new-missouri-law-enables-state-officials-shut-down-abusive-boarding-n1273861 [perma.cc/4VHW-HHNY].

356. *Id.*

357. *Id.*; *see also* Judy L. Thomas & Laura Bauer, *New Allegations in Agape Lawsuits Include Sexual Abuse, 'Pandemic' of Suicide Attempts*, ST. LOUIS POST-DISPATCH (Nov. 15, 2022), www.stltoday.com/news/local/crime-and-courts/new-allegations-in-agape-lawsuits-include-sexual-abuse-pandemic-of-suicide-attempts/article_e6fe250e-f6f8-520b-8058-e22c1e0c8e2e.html [perma.cc/9QES-6BMT] (detailing brutal allegations of physical and sexual abuse at Agape School for Boys in Missouri); *see also* Adam Piore, *Inside the Christian Reform School from Hell*, ROLLING STONE (Jan. 5, 2023, 9:58 AM), www.rollingstone.com/culture/culture-features/troubled-teen-industry-abuse-agape-school-1234645835/ [perma.cc/QN2E-REZM] (explaining that, in addition to the closure of Circle of Hope, Missouri's Attorney General recommended charges against staff members from Agape Ranch School for Boys).

The TTI is a big business in Utah. Utah's industry brings in "hundreds of millions of dollars in government money. A research brief from the University of Utah's Kem C. Gardner Policy Institute estimated the industry pulled in $328 million in revenue in 2015 alone and accounted for 6,400 jobs."[358] Buoyed by the "squeaky clean" reputation of the LDS Church, the state is "home to almost 100 youth residential treatment centers, and in the past five years, they have seen nearly 12,000 children come through their doors, with some of those young people bouncing from one facility to another."[359] Out-of-state officials often choose Utah facilities over their own in-state ones because "they don't have enough resources or specialized programming to care for these young people, or they've had trouble finding a facility" that isn't burdened by lengthy waiting period.[360] The state's Office of Licensing "conducts yearly inspections to make sure facilities are following the rules, such as having the proper number of staff and ensuring residents are being fed proper meals."[361] The Office of Licensing's inspection team only consists of thirty members. Still, it is responsible for oversight "to more than 3,000 licensed facilities, everything from treatment centers for both kids and adults to foster care facilities."[362] License revocation is exceedingly rare. In the past five years, "the licensing agency has revoked just two licenses—neither of which was a youth treatment facility."[363]

Despite Utah's long history of lax oversight and large number of programs (the most programs of any state in the nation), recent reform efforts in the state have gained traction.[364] The state passed a law regulating the industry. However, loopholes remain.[365] Programs still restrain, medicate, and isolate children; they are

358. Miller, *supra* note 119 (explaining that "Provo Canyon School . . . netted more than $37 million in government funding during a five-year period from seven states). "It's owned by Universal Health Services, which also owns two other Utah facilities . . . . Benchmark Behavioral Health received more than $29 million from eight states, [and] Copper Hills Youth Center got $26.3 million." *Id*.; *see also* Jessica Miller, *Paris Hilton Urges Federal Oversight After Revealing She Was Sexually Abused at a Utah Teen Treatment Center*, THE SALT LAKE TRIB. [hereinafter Miller, *Treatment Center*], www.sltrib.com/news/2022/05/11/i-remember-crying-while/ [perma.cc/SC3B-4RVW] (May 11, 2022, 3:17 PM).

359. Miller, *Inside Utah*, *supra* note 119 (noting Utah is home to around 30% of NATSP member facilities).

360. *Id.*

361. *Id.*

362. *Id.*

363. *Id.*

364. *Id.*

365. Cameron Evans, *State Laws Aim to Regulate 'Troubled Teen Industry,' But Loopholes Remain*, KFF HEALTH NEWS (Jan. 21, 2022), www.khn.org/news/article/state-laws-aim-to-regulate-troubled-teen-industry-but-loopholes-remain/ [perma.cc/4AHS-BFXN].

simply required to report the practices to the State.[366]

E. Children's Rights

Because so many of the documented abuses occur without the consent of children, this section examines the rights children possess. "Children in the United States have many of the same constitutional rights as adults—for example, rights to privacy, due process, and free expression."[367] Yet critics argue that industry practices skirt due process protections.[368] Disability Rights Washington explains that under Washington law, to ensure the Fourteenth Amendment right to be free from involuntary confinement without due process:

> [Y]oung people at and over the age of thirteen have the right to leave treatment to which they initially gave consent. Even if a young person's parent initiates involuntary treatment, Washington law protects the right of young people age [sic] thirteen and older to have a clinician who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment to conduct a review of whether the admission is medically necessary and to file a petition requesting release. Absent further detention proceedings under RCW 71.34, minors age [sic] thirteen and older cannot be held for more than 30 days after their need for treatment was reviewed or they petitioned for release.[369]

In general, however, children enjoy their constitutional rights with far more restrictions than their adult counterparts.[370]

Establishing that a program or program official is liable for denying a child its constitutional rights is a steep legal hill to climb. The plaintiff must first establish that there was state action.[371] While this has generally been difficult to establish, the Tenth Circuit did find a private school to be a state actor in *Milonas v. Williams*.[372] Like many TTI facilities, the school in *Milonas* was

366. *Id.*

367. Amy Rothschild, *Is America Holding Out on Protecting Children's Rights?*, THE ATLANTIC (May 2, 2017), www.theatlantic.com/education/archive/2017/05/holding-out-on-childrens-rights/524652/ [perma.cc/5JT8-LBNT].

368. NDRN, *supra* note 194.

369. DISABILITY RIGHTS WASHINGTON, *supra* note 254.

370. *What Are Youth Rights?,* NAT'L YOUTH RTS. ASSOC., www.youthrights.org/about/what-are-youth-rights/ [perma.cc/KQ8M-LD6P] (last visited Oct. 30, 2022).

371. *See generally* Emily Chiang, *No State Actor Left Behind: Rethinking Section 1983 Liability in the Context of Disciplinary Alternative Schools and Beyond*, 60 BUFF. L. REV. 615 (2012) (arguing the current jurisprudence that schools are not state actors should be revisited).

372. *Milonas*, 691 F.2d at 939.

privately owned and operated, "but received public monies and also operated as a correctional and detention facility, and as a mental health facility."[373] In addition, the plaintiff's mother enrolled the child in the school against his will.[374] However, "the commitment was a condition of probation imposed by a juvenile court."[375] The court suggested that because the plaintiffs were students and not employees of the private school, the state action argument was more compelling: "some [of the plaintiffs] have been involuntarily placed in the school by state officials who were aware of, and approved of, certain of the practices which the district court has now enjoined."[376]

Since the 1982 *Milonas* case, privatization of correctional practices has increased exponentially.[377] Whether or not courts would view states' outsourcing of formerly public responsibilities as supporting or detracting from finding state action has yet to be tested. Professor Emily Chiang points out that "[a] series of §1983 cases in the late 1990s and into 2000 that challenged conditions at a number of juvenile detention facilities in Louisiana … are instructive."[378] These facilities provided educational as well as correctional and rehabilitation services.[379] Louisiana outsourced daily operations to a number of private corporations.[380] The parties eventually settled.[381] There was "no apparent discussion of state action."[382]

The Supreme Court has not addressed the specific question of whether therapeutic boarding schools, congregate care facilities, or other behavior-modification programs qualify, at least in some circumstances, as state action. The Court weighed in on a narrow question involving when public school systems were obligated to reimburse parents for private school tuition if the public school could not provide services a child allegedly required.[383] Specifically,

373. Chiang, *supra* note 371, at 657.

374. *Id.*

375. *Id.*

376. *Milonas*, 691 F.2d at 940.

377. Mackenzie Buday & Ashley Nellis, *Private Prisons in the United States*, THE SENT'G PROJECT (Aug. 23, 2022), www.sentencingproject.org/publications/private-prisons-in-the-united-states/ [perma.cc/U2JR-ETQP].

378. Chiang, *supra* note 371, at 657.

379. *Id.*

380. *Id.*; *see also* Williams v. McKeithen, 121 F. Supp. 2d 943 (M.D. La. 2000) (illustrating one of several §1983 cases citing the conditions of Louisiana's privately run prisons).

381. Chiang, *supra* note 371.

382. *Id.*

383. Maia Szalavitz, *An Oregon School for Troubled Teens Is Under Scrutiny*, TIME (Apr. 17, 2009, 12:00 AM) [hereinafter Szalavitz, *Under Scrutiny*], www.time.com/archive/6933378/an-oregon-school-for-troubled-

in *Forest Grove v. T.A.*, the Court addressed whether "a federal district court could order a school district to reimburse its former student for his tuition at a private school when the student unilaterally withdrew from school, never received special education services while enrolled, and withdrew for reasons unrelated to his learning disability."[384] The Court answered yes.[385]

The outcome of the case had little practical effect on oversight of the TII.[386] However, the private school involved in the case was under investigation at the time the Court heard oral argument for allegations of abuse and possible licensing violations.[387] According to several students, parents, and a part-time employee, "[the school] regularly [used] intensely humiliating tactics as treatment."[388] In one example, during "required seminars that the school calls Lifesteps, students say staff members of the residential program have instructed girls, some of whom say they have been victims of rape or sexual abuse, to dress in provocative clothing—fishnet stockings, high heels, and miniskirts—and perform lap dances for male students as therapy."[389] The high court's decision *did* have a financial impact on school districts throughout the nation; suddenly they were responsible for private school tuition.[390] Mount Bachelor (the private school in question) "[charged] $6,400 per month."[391] Aspen Education Group, which owns the facility and is one of the largest chains of residential facilities for problem students, netted $132 million in 2008 alone.[392]

Recently, the ABA passed a resolution "urging all federal, state, local, territorial, and tribal governments to adopt policies and contractual provisions that prohibit conducting strip searches of children and youth, except in exceptional circumstances."[393]

F. Parental Rights

Parents enjoy "significant rights" when seeking behavioral

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teens-is-under-scrutiny/ [perma.cc/N979-EENC]; *see also* Forest Grove Sch. Dist. v. T.A., 557 U.S. 230 (2009).

384. Szalavitz, *Under Scrutiny*, *supra* note 383.

385. *Id.*

386. *Id.*

387. *Id.*

388. *Id.* (noting that several of Mount Bachelor's top employees formerly worked at a now-defunct chain of troubled-teen programs known as CEDU, founded by former Synanon members).

389. *Id.*

390. Szalavitz, *Under Scrutiny*, *supra* note 383.

391. *Id.*

392. *Id.*

393. Simmons, *supra* note 11.

intervention for their children.[394] Generally, "it is not necessary for the teen to consent to such services."[395] As Yale Law Professor Samantha Godwin points out, "while aspects of parenting are highly politicized, parental power over children is largely immune from criticism in mainstream political and legal discourse."[396] In *Troxel v. Granville,* the Supreme Court declared, "it cannot be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children."[397]

Parents have the right to direct their children's education.[398] Regardless of whether these programs educate children or not, facilities are labelled as "schools."[399] Some facilities require parents to sign over their parental rights to the facility temporarily.[400] These agreements may or may not be enforceable, but it depends on the state.[401] Corporal punishment is legal in schools in nineteen states.[402] Although all U.S. states generally permit spanking in the home, the law is unclear when permissible spanking turns into child abuse.[403] "In every American jurisdiction, parents have a privilege

394. Anna Green, *Parental Rights with Troubled Teens*, LAW FOR FAMILIES, www.lawforfamilies.com/5562733-parental-rights-troubled-teens.html [perma.cc/RX5A-T5BB] (last visited Oct. 30, 2022).

395. *Id.*

396. Godwin, *supra* note 330.

397. Troxel v. Granville, 530 U.S. 57, 66 (2000). *Troxel* involved an unmarried couple with two children. *Id.* When one parent died by suicide, the remaining parent restricted the decedent's parents (the children's grandparents) from seeing the children any more than once a month. *Id.* The grandparents brought suit. *Id.* The Court found the grandparents had standing to sue under a state statute but ruled the statute was unconstitutional because it infringed on the fundamental rights of the parents. *Id.*

398. Pierce v. Soc'y of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

399. C. Jamie Mater, *The Troubled Teen Industry and Its Effects*, N.H. INQUIRY J. (Spring 2022), www.unh.edu/inquiryjournal/ spring-2022/troubled-teen-industry-and-its-effects-oral-history [perma.cc/VUM6-VJCK].

400. Robbins, *supra* note 19.

401. Danya Shakfeh, *Are Waivers Of Liability For Minor Children Enforceable? (No)*, PATCH (Oct. 23, 2018, 3:57 PM), www.patch.com/illinois/hinsdale/are-waivers-liability-minor-children-enforceable-no [perma.cc/V6XR-5YFU].

402. *Corporal Punishment in Schools*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, www.aacap.org/aacap/Policy_Statements/ 1988/Corporal_Punishment_in_Schools.aspx [perma.cc/4MXD-FBWY] (last visited Oct. 30, 2022) (noting states that allow corporal punishment include Alabama, Arizona Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas and Wyoming).

403. Samantha-Rae Tuthill, *When Does Discipline Become Abuse?*, LAWINFO, www.lawinfo.com/resources/criminal-defense/when-does-discipline-become-abuse.html#is_spanking_your_child_legal [perma.cc/5KQU-8XQS] (Dec. 21, 2023).

to commit assault and battery against their children under the parental discipline exception that would otherwise be prosecutable as domestic violence, and their children lack the protection from law enforcement that adults enjoy when attacked."[404] Parents, and presumably TTI staff acting *in loco parentis*,[405] "may legally hit … children for violating ad hoc rules, … so long as they plausibly believe this to be necessary to control, train[,] or educate their child. Parents can also confine their children and commit what would otherwise be kidnapping against them."[406]

TTI-heavyweight Utah is considered "a 'parent's rights state,' which means that parents get to make medical decisions on behalf of their children."[407] Effectively, if a child is sent to Utah for treatment, it cannot leave the facility unless its parents agree.[408] State law is inconsistent in this regard. For example, California requires children twelve or older to consent to mental health treatment, while Washington requires consent beginning at age thirteen.[409] Missouri's Cedar County's prosecuting attorney defended embattled Agape School for Boys' use of corporal punishment, stating, "[i]n Missouri, parents are allowed to discipline their children."[410] He continued, "[p]eople who have care, custody, and control of those children have that right, as well. In other words, grandmother can spank the children or discipline the children—as can Agape."[411] The troubled teen industry exists in these muddy waters and takes advantage of the lack of clarity when it comes to disciplining children.[412]

In *Parham v. J.R.*, the Supreme Court described the legal justification for parental rights: "[t]he law's concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions."[413] The Court emphasized that even "[m]ore important, historically it has recognized that natural bonds of affection lead parents to act in the best interest of their

404. Godwin, *supra* note 330.

405. *In loco parentis*, BLACK'S LAW DICTIONARY (11th ed. 2019).

406. Godwin, *supra* note 330.

407. Miller, *How Utah Became*, *supra* note 120.

408. *Id.*

409. *Id.*

410. Kathryn Skopec, *Gaither Responds to House Speaker's Allegation of "Undeniable Corruption"*, CEDAR CNTY. REPUBLICAN & STOCKTON J. (Oct. 4, 2022, 3:15 PM), www.cedarrepublican.com/stories/gaither-responds-to-house-speakers-allegation-of-undeniable-corruption,57089 [perma.cc/4CAR-SLKV].

411. *Id.*

412. NDRN, *supra* note 194.

413. Parham v. J.R., 442 U.S. 584 (1979) (finding that Georgia's mental health statutory scheme that allowed parents to consent to "voluntary" hospitalization in a behavioral health facility on behalf of their children was constitutional and did not deny underage children their due process rights).

children."[414] The present issue, however, is that some parents tend to engage the TTI when desperate and may no longer be capable of acting in the best interest of their children. Coupled with deceptive marketing practices and facilities located far from parents' watchful eyes, the TTI preys on the American understanding of a protective parent-child relationship and exposes children to emotional trauma, physical injury, or death.[415]

IV. PROPOSAL

The Troubled Teen Industry arose to fill a gap in adolescent mental healthcare and parental-support. To prevent the harm perpetrated by TTI actors, this comment proposes filling these gaps holistically to protect youth at risk of private placement in these facilities and programs. While states have begun to intervene on behalf of publicly-placed children, private families remain in the dark, due to "insufficient and largely absent oversight."[416]

The most effective way to protect children, teens, and families from TTI abuses would be to swiftly pass both the Stop Child Abuse in Residential Programs for Teens Act ("SCARPTA") and Stop Institutional Child Abuse Act ("SICAA") (formerly, Accountability for Congregate Care/ACCA) bills.[417] In lieu of these stalled pieces of legislation, however, there are preventative measures and remedies presently available. This section lists preventative measures available to keep children out of the TTI, remedies that already exist for victims, remedies that *should* exist for victims, and suggestions for regulatory actions and oversight schemes that have

414. *Id.*

415. Getting Curious with Jonathan Van Ness, *supra* note 334 (critiquing the foster care or "family policing" system, as scholar Dorothy Roberts coins the term). Once parents, guardians, or the State have engaged congregate care facilities of an individual child, the experience is indiscernible. *Id.* No matter how the child came to be placed at such a facility, whether through public or private action, a treatment that places punishment above rehabilitation has been empirically shown to be ineffective at best treatment that places punishment above rehabilitation has been empirically shown to be ineffective at best and catastrophic at worst. *Id.* Roberts advocates total abolition of the current system. *Id.*

416. *Id.*

417. *The Stop Institutional Child Abuse Act (SICAA)*, UNSILENCED, www.unsilenced.org/the-stop-insitutional-child-abuse-act-sicaa/ [perma.cc/T647-JPJQ] (last visited Nov. 20, 2022); *see also* Judy Kurtz, *Paris Hilton, Michael Phelps and Randy Travis to Meet with Lawmakers — on 3 Different Causes*, THE HILL (June 21, 2024, 1:34 PM), www.thehill.com/blogs/in-the-know/4733459-paris-hilton-michael-phelps-randy-travis-foster-care-abuse-anti-doping-olympics/ [perma.cc/FL7X-2G94] (reporting Paris Hilton's plans to lobby for SICAA the week of June 23, 2024). As of this comment, SICAA has yet to pass.

yet to be created.

A. Prevention

1. Improve Access to Mental Healthcare

In the United States, "most children in need of mental health services are not getting them, and those served are often placed in excessively restrictive settings."[418] In fact, lack of access to appropriate behavioral healthcare is one of the main contributing factors for children placed in TTI programs.[419] This is because desperate parents (and states, for that matter) feel they have nowhere else to turn. The lack of availability of mental healthcare is a massive problem in the U.S. and one that has consequences far beyond creating troubled teens. According to the National Alliance on Mental Illness, "[n]early half of the 60 million adults and children living with mental health conditions in the United States go without any treatment. People who seek treatment must navigate a fragmented and costly system full of obstacles."[420] It is beyond the scope of this comment to fully address potential reforms for mental healthcare, but it is a significant contributing factor when parents engage in the TTI.

2. Vigorously Enforce and Strengthen State Licensure Requirements

As established above, many states do not have any comprehensive licensing schemes for private, behavioral modification programs, and particularly, religious ones. Every state should immediately establish rigorous licensing and oversight requirements that include disclosure of staff member training, financial kickbacks, previous employment, criminal background checks, and past complaints. Staffing is a particular area of concern because institutions that service children, by their very nature, will always attract pedophiles.[421] To wit, in a lengthy report, the Chicago Tribune revealed a troubling history of sexual abuse in

418. Yael Zakai Cannon, *There's No Place Like Home: Realizing the Vision of Community-based Mental Health Treatment for Children*, 61 DEPAUL L. REV. 1049, 1056 (2012).

419. *Id.*

420. *The Doctor Is Out*, NAT'L ALL. ON MENTAL ILLNESS, www.nami.org/support-education/publications-reports/public-policy-reports/the-doctor-is-out [perma.cc/H4ME-RGVN] (last visited Nov. 20, 2022).

421. Maia Szalavitz, *Oprah's School and Tough Love*, HUFFPOST [hereinafter Szalavitz, *Tough Love*], www.huffpost.com/entry/oprahs-school-and-tough-l_b_71639 [perma.cc/C6Q5-86GX] (Nov. 17, 2011).

Illinois youth residential facilities, explicitly stating, "some are preyed on sexually by the adults paid to care for them."[422] The TTI, in particular, provides an environment ripe for abusers because programs regularly "encourage parents to ignore claims of abuse," insisting that their children will try to manipulate their feelings.[423] Ken Stettler, a Utah regulator, explained to a reporter, "[i]f I were a child molester and wanted to get in a situation where I have access to kids, this is perfect."[424] For instance, a former female resident of The Academy at Ivy Ridge revealed her intake strip search was conducted by a man, and involved jumping up and down while naked, coughing, and being forced to urinate into a cup.[425]

States that already have licensing requirements must improve enforcement against those programs that violate regulatory requirements. Caroline Lorson, an advocate who supports federal legislation, explains, "[w]e've seen facilities in many different states that have been cited again and again and again for noncompliance for dangerous practices, for children dying at their facilities, but if the state doesn't revoke their license or shut them down, then it's pointless."[426] This lack of enforcement can result from corruption.[427] In 2019, for example, Montana's oversight board was dominated by TTI industry actors, naturally creating a conflict of interest between what was best for the children versus what would ensure a healthy bottom line for the business.[428]

3. Regulate Deceptive Marketing

Desperate parents are prime targets for deceptive marketing practices. Met with images of happy teens, breathing in fresh air, working in collaborative spaces, and engaging in what looks like targeted therapy, they believe they are enrolling their children in programs that will eventually help them thrive.[429] By cracking down on deceptive marketing, states and regulators could prevent

422. David Jackson, Gary Marx & Duaa Eldeib, *Instead of Therapy, Violence and Chaos*, CHI. TRIB. (Dec. 3, 2014), www.pulitzer.org/files/2015/investigative-reporting/chicagotribune/01chicagotribune2015.pdf [perma.cc/96EN-DMJU].

423. *Id.*

424. *Id.*

425. *The Program*, *supra* note 74.

426. DISABILITY RIGHTS WASHINGTON, *supra* note 254, at 60.

427. Evans, *supra* note 365.

428. *Id.*

429. *See Wilderness Therapy*, EMBARK BEHAV. HEALTH, www.embarkbh.com/wilderness-therapy/ [perma.cc/3967-KXSG] (last visited Aug. 30, 2024) (illustrating an example of such marketing practices). *see also The Program*, *supra* note 74 (describing how one WWASP operation would hold an annual "fun day" to capture photos of children having fun outdoors in order to obscure their actual daily experience in which they were prohibited from even looking out a window").

abuses before they begin. In general, the Federal Trade Commission ("FTC") oversees deceptive marketing practices writ large.[430] However, the FTC has special practices in place to protect children from manipulative online marketing as consumers themselves.[431]

When it comes to TTI, however, parents may not become aware of the deception until real harm has been done to their children. The FTC oversees marketing claims regarding health.[432] However, the focus of the agency is on physical dangers and effects, as opposed to mental health and effects.[433] Certainly, as established above, TTI can have significant effects on a child's physical health, but these harms tend to fall under the purview of criminal law. Still, the FTC could step in and demand empirical evidence before allowing programs to recruit new clients via the Internet or the mail.

During the COVID-19 pandemic, for example, the FTC regularly sent warning letters to marketers making false claims as to the effectiveness of remedies or other products.[434] The FTC has even cracked down on internet influencers, suggesting the agency is up to facing fluid and crafty marketing practices.[435] The agency recently began to investigate an Internet behavioral healthcare provider, Cerebral.[436] While Cerebral is not an inpatient facility but rather an online service, the investigation shows the FTC is paying attention to the mental health space.[437]

The FTC has issued warnings regarding teen boot camps, but the last press release dates back to 2008.[438] Although SCARPTA does not address deceptive marketing directly, it would require programs to disclose qualifications, roles, responsibilities, and training of current staff members to parents, as well as require parental notification of substantial reports of health and safety, as

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430. *Children*, F.T.C., www.ftc.gov/business-guidance/advertising-marketing/children [perma.cc/TH3V-DKDK] (last visited Nov. 20, 2022).

431. *Id.*

432. *Health Claims*, F.T.C., www.ftc.gov/business-guidance/advertising-marketing/health-claims [perma.cc/NTL9-XHMW] (last visited Nov. 20, 2022).

433. *Id.*

434. *FTC Coronavirus Warning Letters to Companies*, F.T.C., www.ftc.gov/news-events/features/coronavirus/enforcement/warning-letters [perma.cc/6QPH-D4VB] (last visited Nov. 20, 2022).

435. *Id.*

436. Heather Landi, *FTC Investigating Mental Health Startup Cerebral's Business Practices*, FIERCE HEALTHCARE (June 15, 2022, 11:45 AM), www.fiercehealthcare.com/health-tech/ftc-investigating-mental-health-startup-cerebrals-business-practices-media-report [perma.cc/QR4K-4WWC].

437. *Id.*

438. *Evaluating Private Residential Programs for Troubled Teens*, F.T.C. (June 8, 2008), www.ftc.gov/news-events/news/press-releases/2008/07/evaluating-private-residential-treatment-programs-troubled-teens [perma.cc/N2G2-XC38].

well as abuse violations.[439] The bill would additionally establish the Department of Health and Human Services to provide a dedicated database with information on all private programs.[440] While the database would be helpful, accessing and interpreting the information puts a burden on parents. In short, the FTC has the regulations and systems in place; it merely needs to turn its gaze toward behavioral modification programs and residential treatment facilities.

4. States Should Stop Placing Children in For-Profit Congregate Care

Alternatively, states should cease placing children in for-profit congregate care facilities, and statutorily prevent their private citizens from doing so as well. Because profit motives are the driving force behind these facilities, "they are incentivized to not properly screen children to ensure that residential treatment for addiction and mental health conditions is necessary, or even appropriate."[441] A for-profit model will always prioritize cost-cutting measures, staff reduction, and revenue optimization. By design, this limits the hiring of highly trained and qualified caregivers in favor of less expensive staff. A for-profit model incentivizes admitting children who may not require in-patient treatment or any treatment at all. According to the Disability Rights Network, "[l]arge for-profit companies are able to evade accountability by closing down facilities when investigations begin to interfere with administration or operation."[442] Sequel Youth and Family Services regularly followed this practice.[443] As discussed above, California, Minnesota, Maryland, Oregon, and Washington stopped placing children in Sequel facilities.[444] This is a good start, but states should be generally wary of for-profit facilities and consider disengaging from such programs entirely. Additionally, the Securities and Exchange Commission ("SEC") could prevent companies that profit from residential care of children from initial public offerings.

As a template for such action, some states have recently begun to ban entirely the parallel for-profit prison industry.[445]

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439. *GAO Reports*, WWASP SURVIVORS, wwaspsurvivors.com/gao-reports/ [perma.cc/L3EL-2F3N] (last visited Nov. 20, 2022).

440. *Id.*

441. Levi & Barry, *supra* note 118.

442. DISABILITY RIGHTS WASHINGTON, note 254, at 59.

443. *See* discussion *supra* Part III.

444. *See* discussion *supra* Section III.B.

445. Catherine Kim, *Private Prisons Face an Uncertain Future as States Turn Their Backs on the Industry*, VOX (Dec. 1, 2019, 2:53 PM), www.vox.com/policy-and-politics/2019/12/1/20989336/private-prisons-states-bans-califonia-nevada-colorado [perma.cc/HKX4-KYW7].

Assemblyman Rob Bonta explained California's rationale in banning for-profit prisons: "[b]y ending the use of for-profit, private prisons and detention facilities, we are sending a powerful message that we vehemently oppose the practice of profiteering off the backs of Californians in custody, that we will stand up for the health, safety and welfare of our people."[446] Certainly, therapeutic boarding schools and congregate care are not the same as prisons, but privately profiting from the residential behavioral intervention of children is equally as troubling as privately profiting from incarcerated adults. At the very least, "the federal government should mandate that behavioral treatments for kids be proven safe and effective before they can be sold."[447]

5. Increase Scrutiny for Private Equity

A recent report by the Private Equity Stakeholder Project revealed that private equity firms are increasingly attracted to investing in TTI operations.[448] According to Luke Johnson, an industry executive, private equity "is probably at the opposite extreme from public services in terms of motivations. Attention is not directed towards the commonwealth, but enriching the management, buyout partners, and their institutional backers."[449] When it comes to the welfare of children, these priorities bring up a myriad of concerns. The report, "The Kids Are Not Alright: How Private Equity Profits Off of Behavioral Health Services for Vulnerable and At-Risk Youth," confirms what victims can already attest to: "private equity's 'troubling' track record in youth services" is a direct consequence of "a reliance on unlicensed staff, inadequate training and failure to maintain facilities" leading to "abuse, neglect, and unsafe living conditions for youth under the care of those companies."[450] Sequel Youth and Family Services, was owned for a time by private equity firm, Alaris Royalty.[451] The firm's investment in Sequel reportedly generated a $71 million profit, or a 23% annual return, on its investment in the company.[452] More recently, "[t]he Mentor Network, which rebranded in September

446. *Id.*

447. SZALAVITZ, *supra* note 7, at 316.

448. Michelle Conlin, *Private Equity's Latest Play: The Troubled Kids Industry*, KFGO (Feb. 17, 2022, 7:04 AM), www.kfgo.com/2022/02/17/private-equitys-latest-play-the-troubled-kids-industry/ [perma.cc/YM5T-WNYK].

449. DISABILITY RIGHTS WASHINGTON, *supra* note 254, at 56 (citing Luke Johnson, *Private Equity To Presidency Is a Leap*, FIN. TIMES (July 24, 2012), www.ft.com/content/467567ce-d4dd-11e1-9444-00144feabdc0 [perma.cc/9ZH7-SGNK]).

450. Conlin, *supra* note 448.

451. *Id.*

452. *Id.*

[2021] as Sevita Health, has come under fire for numerous allegations of widespread abuse, neglect, and deaths at its foster care and residential programs."[453]

6. Ban the Youth Transportation Industry

Parents often engage the "Youth Transportation Industry," a TTI-adjacent network of third-party transportation providers, when sending youth to behavior-modification facilities.[454] This description may sound more professional and credentialed than the actual reality of the services provided. Like Emma's experience,[455] typically, a couple of burly men show up at a home in the middle of the night to "consensually kidnap," i.e., kidnap with parental permission, children and teens, and transport them to behavior modification programs.[456] Shockingly, this industry is almost entirely unregulated.[457] According to law professor, Ira. P. Robbins,

> [m]ost state laws make no mention of this industry at all. Thus, there are no legal requirements regarding personnel or procedures through which companies take, maintain, or transfer custody of a child. Not surprisingly, there are many documented—and who knows how many undocumented—examples of physical and emotional injury occurring during these transactions.[458]

States should immediately prohibit the transfer of children to behavior modification facilities or therapeutic boarding schools by third parties.

Alternatively, Professor Robbins proposed federal legislation that requires a neutral non-profit fact-finder to conduct an inquiry on the transportation provider and the destination facility to determine the potential for harm to the child.[459] Additionally, the proposed legislation requires pre-employment screening, employee training, maximum-allowed driving time, specific transporter-to-transportee ratios, provisions for use of restraint, safety standards for vehicles, insurance requirements, and provides for a civil cause

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453. *Id.*

454. USA GUIDES: INDUSTRY LEADER IN YOUTH TRANSPORTS, www.youthtransports.com/ [perma.cc/R2Q6-VQT5] (last visited March 4, 2023); *see also* Jim Salter, *Rules Sought for 'Gooning,' Taking Troubled Kids to Care*, ASSOCIATED PRESS (Sept. 27, 2022, 8:55 AM), www.apnews.com/article/charles-dickens-94038022dc9af71dd9f73158cd53e945 [perma.cc/5KVW-9WQ2] (describing the practice referred to as "gooning"). Only Oregon has instituted any regulation over the practice. *Id.* Oregon's law "prohibits the use of hoods, blindfolds and handcuffs, among other things." *Id.*

455. *See* discussion *supra* Part I.

456. *Id.*

457. Robbins, *supra* note 19.

458. *Id.*

459. *Id.*

of action.[460] While a civil cause of action is a deterrent, specific child transport licensure, as well as criminal liability for abuses, would boost the effectiveness of the proposed legislation. In addition, the legislation should provide for punitive damages. Federal regulations, "at the very least … should require criminal background checks and bar admitted violent criminals and sex offenders. Regulations should specify what types of techniques can be used for restraint and how teens can complain of maltreatment and of being falsely seized."[461]

7. Ban the Use of Restraint and Isolation

In addition to being inherently dangerous, or even deadly, "[r]estraint and seclusion should be utilized only as a last resort."[462] Additionally, it can be "traumatic for children with significant abuse histories."[463] Ideally, "[t]he use of restraint and isolation should be eliminated in all programs which do not have qualified, on-site 24/7 psychiatric staff, and even then must be tightly regulated."[464] Many adult addiction programs have already abandoned such practices.[465] Restraint is not limited to physical or mechanical restriction. TTI programs use chemical restraint as well as corporal punishment.[466]

Prohibiting the physical restraint of children has the potential to benefit children outside the TTI who are in traditional school systems. As of 2021,

> 101,990 students were subjected to seclusion or restraint in the United States during the 2017-18 school year, 78 percent of whom were students with disabilities and disproportionately Black boys. In response to these practices, there has been some promising legislative movement. Senators Chris Murphy (D-Conn.) and Patty Murray (D-Wash.), Chair of the Senate Committee on Health, Education, Labor, and Pensions (HELP), and U.S. Representatives Don Beyer (D-Va.), Robert C. "Bobby" Scott (D-Va.), and A. Donald McEachin (D-Va.) reintroduced the Keeping All Students Safe Act (KASSA), legislation to protect students from dangerous seclusion and restraint discipline practices in school.[467]

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460. *Id.*

461. SZALAVITZ, *supra* note 7, at 266-67.

462. DISABILITY RIGHTS WASHINGTON, *supra* note 254, at 8.

463. *Id.*

464. SZALAVITZ, *supra* note 7, at 26.

465. *Id.*

466. *See supra* notes 194-202 and accompanying text.

467. Press Release, Chris Murphy, Senator, Senate, *What They're Saying: The Keeping All Students Safe Act* (May 27, 2021), www.murphy.senate.gov/newsroom/press-releases/what-theyre-saying-the-keeping-all-students-safe-act [perma.cc/X3BH-MJGJ].

In fact, TTI survivor, child advocate, and celebrity Paris Hilton have been a vocal advocate of the bill, stating, "[r]estraint and seclusion are incredibly traumatic practices. Ending the use of restraint and seclusion would save lives, prevent abuse, and make our schools safer and more equitable. I support and urge Congress to pass KASSA."[468] The Act "would make it illegal for any school receiving federal taxpayer money to seclude children and would ban dangerous restraint practices that restrict children's breathing, such as prone or supine restraint."[469] While KASSA has been introduced, however, it has yet to receive a vote.[470] Of course, many TTI programs do not take in federal funding and would be outside the bill's reach. States should fill this gap by passing companion legislation that would cover state-level funding.

As currently worded, the bill defines "program" as follows:

> [t]he term 'program' means– (A) all of the operations of a local educational agency, system of vocational education, or other school system; (B) a program that serves children who receive services for which financial assistance is provided in accordance with the Head Start Act (42 U.S.C. 9831 et seq.); or (C) an elementary school or secondary school that is not a public school that enrolls a student who receives special education and related services under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).[471]

Private TTI programs would fall outside the purview of this definition. [472]

While their investigation focuses on publicly placed children, NDRN makes the compelling suggestion for residential treatment facilities to apply nursing home regulations to youth behavioral health facilities.[473] Policies that improve conditions at nursing homes "would similarly improve oversight of their youth behavioral counterparts."[474] These recommendations include: (1) creating a federal, searchable database based on facility owners; (2) including

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468. *Id.*

469. Press Release, U.S. Senate Committee on Health, Education, Labor & Pensions, *Murray, Murphy, Beyer, Scott, Mceachin Reintroduce Legislation To Protect Students From Dangerous Seclusion And Restraint Practices* (May 26, 2021), www.help.senate.gov/chair/newsroom/press/murray-murphy-beyer-scott-mceachin-reintroduce-legislation-to-protect-students-from-dangerous-seclusion-and-restraint-practices [perma.cc/RZM4-NXDC].

470. Keeping All Students Safe Act, S. 1858, 117th Cong. (2021).

471. *Id.*

472. *Id.* Moreover, under Section 305 of the bill, private schools explicitly fall outside its purview: "[n]othing in this Act shall be construed to affect any private school that does not receive, or does not serve students who receive, support in any form from any program or activity supported, in whole or in part, with Federal funds." *Id*.

473. DISABILITY RIGHTS WASHINGTON, *supra* note 254, at 64.

474. *Id.*

owners of distinct facilities in multiple states and chain operations that include reports regarding the quality of care provided by a particular ownership entity; (3) creating a similar database of facility financial and utilization information, either federally or by individual states; (4) increasing governmental oversight of acquisitions by publicizing information on proposed transfers of a three percent or greater stake in facility ownership; (5) reviewing sub-contracted parties providing services within the facility in order to avoid conflicts of interest in ownership transfers; (6) requiring that prospective owners submit a three-year budget proposal with relevant government agencies, which must meet patient loss ratios and staffing level requirements; (7) scrutinizing facility expenditures for its first three years in relation to the pre-acquisition budget proposal; and (8) restricting prospective owners from purchasing facilities if they have previously made capital distributions.[475]

Illinois, for example, passed a law called the Nursing Home Care Act that provides a possible model for privately placed youth in residential facilities.[476] The Act emphasizes the importance of medical necessity, appropriate training, and consent.[477] It provides, in relevant part, a restriction on using restraint for punishment or convenience.[478] The legislation also requires that the patient or patient's guardian give consent before any restraint is used.[479] There is also a provision that requires a *post facto* investigation following use of restraint.[480] Although nursing home residents are presumably legal adults, instituting this type of legislation at the state level for children under residential care would ensure that children are informed of their rights and benefit from licensed medical expertise, rather than being subjected to dubious experimental behavioral-modification techniques.

8. Spread the Word

Although media attention has recently increased, and in spite of "overwhelming costs to both taxpayers and many of the children who are sent there by public agencies, the overuse of [residential treatment facilities] is not a widely-known or discussed problem among policymakers, courts, or scholars."[481] One confusing aspect

475. *Id.* at 64-65.
476. 210 ILL. COMP. STAT. 45/2-106 (1979).
477. *Id.*
478. *Id.*
479. *Id.*
480. *Id.*
481. Cannon, *supra* note 418.

of TTI is the litany of terms used to refer to these programs.[482] The "terminology used to describe these facilities as 'centers' or 'homes' that provide 'care,' rather than 'institutions' or 'hospitals,' may contribute to the invisibility of the problem by making it seem more benign."[483] Still, no matter what terms are used, "the societal costs that can result from a child's continued instability, policymakers, courts, attorneys, and the general public should all be concerned about the overuse of residential treatment for children with mental health needs. In short, members of the legal community have an obligation to educate themselves and others on the TTI. The ABA implores lawyers from all sectors "to put together class action lawsuits, to give legal advice to a parent who might be fighting a custody battle where the other parent has full custody[,] and is trying to send their kid to one of these schools."[484]

9. Foster Care and Child Protective Services Reform

While this comment specifically focuses on children that are privately-placed into congregate care, they are often placed alongside state-placed children. State foster care and child protective services within the United States are deeply in need of reform.[485] By reforming the state relationship with congregate care and other TTI programs, there may be holistic benefits to any children within these facilities, whether placed there privately or publicly.

B. Remedies

Below are some currently-existing remedial actions, which besides medical malpractice suits, would be novel to apply to TTI victims.

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482. *Id.*

483. *Id.*; *see also* SZALAVITZ*, supra* note 7, at 264 (arguing "[d]efinitions of these programs must be strictly written into the regulations so that programs cannot avoid oversight by labeling themselves as 'schools.'"). "If they advertise as residential 'programs' for troubled teens, have a rigid behavior-modification system, and require participation in 'emotional growth' groups or seminars, they should be at least as regulated as psychiatry." *Id.*

484. Robert, *supra* note 157; *see also* SZALAVITZ, *supra* note 7, at 266 (arguing that, in addition to legal professionals, "[g]uidance counselors and school psychologists also need to be educated about the dangers associated with tough love and the teen treatment industry in general – so that they don't' feed kids into abusive programs as alternatives to suspensions or expulsion.").

485. Dorothy Roberts, *I Have Studied Child Protective Services for Decades. It Needs to Be Abolished.*, MOTHER JONES (Apr. 5, 2022), www.motherjones.com/crime-justice/2022/04/abolish-child-protective-services-torn-apart-dorothy-roberts-book-excerpt/ [perma.cc/FU65-JURH].

1. Medical Malpractice Suits

Most lawsuits against TTI actors never make it to trial.[486] One notable exception was Philip Elberg's victory in *Lulu Corter v. KIDS of North Jersey*.[487] While other plaintiffs had attempted to bring suit against these organizations to varying degrees of success, attorney Elberg "recognized it as a [medical] malpractice case, not a case of simple injury."[488] While this strategy may not always be appropriate if programs "pitch themselves as treatments for accepted medical diagnoses—e.g., addictions, depression, bipolar disorder, attention-deficit disorder, eating disorders, conduct disorder, and oppositional-defiant disorder"—they must "meet professional standards of care for diagnosis, ongoing evaluation, patient care, or evidence of efficacy.[489] In short, under a medical malpractice action, if these programs cannot establish empirical evidence that the practice is good medicine, "they do not fare well in a court of law."[490]

2. Suit Under 42 U.S.C. § 1983

Even though the scope of this comment focuses on children privately placed into the TTI by parents or guardians, the industry is deeply intertwined with law enforcement, the foster system, and taxpayer dollars.[491] For privately placed children, establishing state action in order to sue for a constitutional violation can be difficult.[492] However, "[t]he foster care system, the criminal justice system, the mental health system[,] and the public school system provide the industry with children—and revenue. Many states use taxpayer dollars from some of these systems to send their kids across the country for treatment. As stated above, states paid one program as much as $800 per day to treat a single child."[493] The prospect of liability may encourage some programs to clean up their practices independently. Admittedly, for privately-placed children, this type of suit would be more difficult to prove than a personal injury action. A victory under a constitutional theory, however, would have far-reaching consequences for the industry as a whole.

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486. SZALAVITZ, *supra* note 7.

487. Lulu Corter v. KIDS of North Jersey, Superior Court of New Jersey, Law Division, Civil Part Hudson County, Docket No. HUD-L-3548-00.

488. SZALAVITZ, *supra* note 7, at 194.

489. *Id.*

490. *Id.* at 194-95.

491. *Id.*

492. Chiang, *supra* note 371.

493. Stockton, *supra* note 314.

3. Extend Criminal and Civil Statutes of Limitation

Criminal charges are rarely brough upon TTI facilities, because commonly, by the time victims come to terms with the nature of the abuses which they suffered, criminal statutes of limitation have long passed.[494] This is complicated further when the abuses suffered by TTI victims have been essentially prescribed to them by a program chosen by their parents. In other words, it is even more difficult for victims to identify abuse when it has been presented to them as "therapeutic" in nature.[495]

This may be changing, however. Recently, activists pushed to abolish statutes of limitation entirely for certain types of abuse and assault.[496] As a result, Maryland, North Carolina, South Carolina, Virginia, West Virginia, and Wyoming have no statutes of limitations for all felony sex crimes, including those involving adult victims.[497] In regard to child sexual abuse, specifically, all U.S. States, Territories, and the federal government eliminated statutes of limitations with the exceptions of Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, and Puerto Rico.[498] In lieu of completely eliminating statutes of limitation, other states have opted to enact a "window law" that "[revives] previously time-barred civil claims for child sex abuse and allows survivors of all ages to file suits while the window is open."[499] For abuse that is not sexual in nature, statutes of limitation vary greatly between states, but generally fall under general felony statutes of limitation.[500] Statutes of limitation should be eliminated for both sexual and non-sexual abuse, as this would afford TTI victims the opportunity to seek compensation and accountability from their perpetrators.

4. Improve Interstate Collaboration under the Interstate Compact on the Placement of Children ("ICPC")

The Interstate Compact on the Placement of Children ("ICPC")

494. SZALAVITZ, *supra* note 7; *see also Child Sex Abuse Statute of Limitations Reform*, CHILD USA, www.childusa.org/sol/ [perma.cc/5SNG-5DUX] (last visited Nov. 22, 2022) ("Most victims miss the [statutes of limitation] for obtaining justice because trauma affects them in a way that causes them to delay disclosure of their abuse until they are older.").

495. SZALAVITZ, *supra* note 7.

496. Bethy Squires, *Evan Rachel Wood's Domestic-Violence Bill Was Signed Into Law*, VULTURE (Oct. 10, 2019), www.vulture.com/2019/10/evan-rachel-woods-domestic-violence-bill-signed-into-law.html [perma.cc/7KLK-PTFM].

497. *State by State Guide on Statutes of Limitations*, RAPE, ABUSE & INCEST NAT'L NETWORK, www.rainn.org/state-state-guide-statutes-limitations [perma.cc/UPJ2-HQHE] (last visited Nov. 22, 2022).

498. *Child Sex Abuse Statute of Limitations Reform*, *supra* note 494.

499. *Id.*

500. *State by State Guide on Statutes of Limitation*, *supra* note 497.

is an agreement between all fifty states, Washington, D.C., and the U.S. Virgin Islands, which "provides for the movement and safe placement of children between states"[501] The stated purpose of the ICPC is to "ensure that children placed out-of-state are placed with caregivers who are safe, suitable, and able to meet the child's needs."[502] ICPC "requires an assessment of these factors before a child is placed out-of-state."[503] Because state statutory authority ends at the state border, the ICPC operates "[a]s a legally binding agreement between all states" and "ensures that children enjoy a uniform set of protections and benefits regardless of which state they are moving to or from."[504]

Due to a lack of familiarity, non-compliance with the ICPC is routine.[505] There is confusion as to when and if the ICPC applies to different types of programs.[506] The ICPC does not specifically govern "[t]he placement of a child into a medical facility, a psychiatric institution or a boarding school located in another state."[507] It does, however, cover "[t]he placement of a child by any individual or entity into a licensed residential treatment center located in another state."[508] Under this language, ICPC authority may depend on how the facility labels itself. If it is a psychiatric care or educational facility, the ICPC is unlikely to apply. If, however, the facility views itself as a drug rehab, ICPC protections are triggered.

The ICPC is due for reform. With courts and local officials regularly disregarding ICPC provisions, the legal community needs further education.[509] Still, the point of the ICPC is to encourage communication when children are being transferred between states.[510] State isolationism has allowed some actors within the troubled teen industry to thrive. Certainly, some communication and oversight are better than none at all.

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501. *ICPC FAQ's*, AM. PUB. HUM. SERVS. ASS'N, www.aphsa.org/AAICPC/AAICPC/icpc_faq_2.aspx#question2 [perma.cc/WJZ8-RNSD] (last visited Nov. 22, 2022).

502. *Id.*

503. *Id.*

504. *Id.*

505. C. Nneka Nzekwu, Note, *The Lost Ones of the Interstate Compact on the Placement of Children*, 44 HOFSTRA L. REV. 1001, 1024 (2016) ("Some judges, as well as attorneys, believe that attorneys, judges, and caseworkers may not be aware of the ICPC or understand it.").

506. *Id.*

507. *ICPC FAQ's*, *supra* note 501.

508. *Id.*

509. Nzekwu, *supra* note 505.

510. *Id.*

5. Enforce the Federal Child Abuse Prevention and Treatment Act ("CAPTA") and Mandatory Reporting Requirements

The Federal Child Abuse Prevention and Treatment Act ("CAPTA") provides grants to states in an effort to "support the prevention, assessment, investigation, and prosecution and treatment of child abuse and neglect."[511] It seeks to "improve child protective services, including mandatory reporting of child maltreatment, intake, screening, investigations, risk and safety assessments, case management, and training."[512] To qualify for funding, states must satisfy various requirements under CAPTA, including mandatory reporting schemes.[513] For religious programs, clergy members are frequently included as mandated reporters.[514] Ohio specifically names administrators or staff of "nonprofit therapeutic wilderness camps" among their list of mandated reporters.[515] In short, most states already require people who are employed by TTI-style programs and facilities to report suspected abuse. Based on troubling hiring practices, however, it is unlikely that such programs and facilities emphasize these requirements during onboarding for new employees. Nonetheless, the duty to report remains—regardless of whether staff members are aware of the obligation or not.[516]

In 2007, a hearing took place before the Committee on Education and Labor on "Cases of Child Neglect and Abuse at Residential Treatment Facilities."[517] There, Dr. Allison Pinto, a

511. CASEY FAMILY PROGRAMS, THE CHILD ABUSE PREVENTION AND TREATMENT ACT: KEEPING CHILDREN SAFE AND STRENGTHENING FAMILIES IN COMMUNITIES 2 (2019), www.casey.org/media/CAPTA-Paper_web.pdf [perma.cc/99TR-WG9W].

512. *Id.* at 8.

513. CHILD WELFARE INFORMATION GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT (2019), www.jesuits.org/wp-content/uploads/2021/04/mandatory-reporting-of-child-abuse-and-neglect-by-state-as-of-2019.pdf [perma.cc/RAE6-62E3]; *see also* CHILD WELFARE INFORMATION GATEWAY, PENALTIES FOR FAILURE TO REPORT AND FALSE REPORTING OF CHILD ABUSE AND NEGLECT 1 (2019), cwig-prod-prod-drupal-s3fs-us-east-1.s3.amazonaws.com/public/documents/report.pdf?VersionId=L5R7xLMqtiiYYGz3jjpHmCkeIIr3ve9K [perma.cc/E8B3-JBXP] (explaining mandated reporters are "professionals and other persons who are required by State law to report suspected child abuse or neglect.").

514. CHILD WELFARE INFORMATION GATEWAY, MANDATORY REPORTERS OF CHILD ABUSE AND NEGLECT, *supra* note 513, at 2.

515. *Id.*

516. *Id.*

517. *Cases of Child Neglect and Abuse at Residential Treatment Facilities: Hearing Before the H. Comm. on Educ. & Lab.*, 110th Cong. (2007) [hereinafter *Cases of Child Neglect*].

research psychologist and assistant research professor, stated, "[i]f those of us who are mandated reporters of suspected child abuse were to learn of this type of treatment occurring in a family's home, we would be required to file a suspected child abuse report so that the concerns could be investigated."[518] Dr. Pinto implored mandated reporters to take reports originating from residential treatment programs just as seriously as any other report of abuse.[519] At the same hearing, Senator George Miller[520] also emphasized that there is an affirmative duty to report.[521] Dr. Pinto indeed followed up on this affirmative duty several times but described bureaucratic barriers that required the name of an individual to investigate.[522] Reporting a school or facility was not enough to trigger an investigation by child protection authorities.[523] As such, states should revise mandated reporter laws to ensure that they cover abuse complaints against a facility *and* an individual. Filling that loophole would expose abusive programs to more scrutiny.

The majority of states, as well as the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands, impose penalties on mandatory reporters who knowingly or willfully fail to make a report despite suspecting that a child is being abused or neglected."[524] Consequences for failing to make such reports of abuse, however, vary in severity. For instance, failure to report as a mandated reporter can result in fines, misdemeanor, or even felony charges.[525] In addition, some states provide causes of action for civil liability.[526]

Under the designation Community-Based Child Abuse Protection Grants ("CBCAP"), CAPTA even provides funding for educational efforts. The core services funded through CBCAP include the following: parent education and mutual support; respite care; and outreach and follow-up, including home visiting. Optional services include adoption services; childcare; programs supporting job readiness, education, and self-sufficiency; referrals to community services; and domestic violence services."[527]

Moreover, children admitted into therapeutic boarding schools or other TTI facilities should be given explicit and private (i.e.,

518. *Id.* at 76.

519. *Id.*

520. *See supra* text accompanying notes 165-69.

521. *Cases of Child Neglect*, *supra* note 517.

522 *Id.*

523. *Id.*

524. CHILD WELFARE INFORMATION GATEWAY, PENALTIES FOR FAILURE TO REPORT AND FALSE REPORTING OF CHILD ABUSE AND NEGLECT, *supra* note 513, at 2.

525. *Id.*

526. *Id.*

527. CASEY FAMILY PROGRAMS, *supra* note 511, at 10.

unmonitored) access to a whistleblower hotline that triggers immediate investigation and parental notification.[528]

6. Create a Congressional TTI Victims' Fund

Many of the most notorious behavior modification programs are no longer in operation, leaving victims with little recourse.[529] Moreover, some older victims are only now coming to terms with the nature of the abuses they suffered and the far-reaching consequences of childhood trauma.[530] TTI survivor, Julian C. Hersch, describes himself as an "alien on earth":

> Disconnected, introspective, and misunderstood. I watch the world pass me by from underneath my hood. I see a world filled with madness, chaos, and disarray. I inhale deeply telling myself, it'll all be okay. But I'm trapped on a planet on which I don't belong. To me, what is right is to them what is wrong. Floating along, I continue to cruise. No purpose, no passion, and nothing to lose. I stay for them, not for me.[531]

Some industry victims never fully recover from their experiences and risk dying by suicide.[532] One of the biggest bars to effective trauma treatment, aside from the general difficulties of accessing mental healthcare in the United States, is the unavoidable cost. To lessen this financial burden for TTI victims, Congress should create a fund that TTI victims may use toward therapeutic and medical treatment, remedial intervention for ineffective and unaccredited education, college tuition, private investigation, and other services that may help victims reintegrate into society. Congress previously created similar funds for crime victims, as well as victims of the September 11, 2001 attacks.[533]

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528. SZALAVITZ, *supra* note 7, at 266.

529. *See supra* Section II.B; *see also Facility Report Database*, *supra* note 154.

530. Julian C. Hersch, *Alien on Earth*, BREAKING CODE SILENCE, www.breakingcodesilence.org/alien-on-earth/[perma.cc/S3CF-B2GD] (last visited March 4, 2023).

531. *Id.*

532. Rosemary Donahue, *Paris Hilton Won't Give Up Until She's Shut Down the Entire Troubled Teen Industry*, ALLURE (Oct. 13, 2020), www.allure.com/story/paris-hilton-troubled-teen-industry-interview [perma.cc/L4QA-UW26].

533. *Crime Victims Fund*, OFF. FOR VICTIMS OF CRIME, www.ovc.ojp.gov/about/crime-victims-fund [perma.cc/MAL2-XYA6] (last visited Nov. 22, 2022); SEPTEMBER 11 VICTIM COMPENSATION FUND, www.vcf.gov/ [perma.cc/X2G7-JTTL] (last visited Nov. 22, 2022).

V. CONCLUSION

It is worth pausing for a moment to heed the words of Baily Glasser Partner Sharon Iskra, who directed the following sentiment to victims of institutional abuse:

> We come alongside you … we lift you up and empower you. And then together, we break the abuse cycle in the most effective way possible: by holding responsible institutions accountable.[534]

The abuses of the Troubled Teen Industry often comes as a shock to the average American citizen. Many of these same American citizens, however, have been complicit to this abuse by contributing to a society that prioritizes retribution over rehabilitation, pathologizes normal adolescent behavior, and indulges in the toxic lenses of misogyny, homophobia, and transphobia.[535] The onslaught of deceptive marketing, skepticism of empirical evidence, and lack of holistic accountability also contribute to the improperly regulated state of the Troubled Teen Industry."[536]

Society has the power to change, however. Individuals can choose not to further perpetuate outdated and harmful ideas about punishment, addiction, sexuality, and parenting. Americans can vote for public servants who do not financially benefit from TTI lobbyists and donors. Strikingly, while imploring state and local government to "accept their role and responsibility in loco parentis," Disability Rights emphasizes that "[i]t would never be acceptable for parents to fail to evaluate the safety of placement or to place their child in a situation they knew to be dangerous prior to placement."[537] Yet, due to deceptive marketing and false claims of efficacy, we know parents do place their children in such dangerous environments.[538] Overwhelmed, overworked, and frustrated,

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534. *Institutional Abuse and Neglect*, BAILEY GLASSER LLP, www.baileyglasser.com/services-institutional-abuse-neglect [perma.cc/NSV4-JEBM] (last visited Nov. 22, 2022).

535. Once again, many programs, particularly those that are religiously affiliated, also provide conversion therapy. Levi & Barry, *supra* note 118. In fact, the TTI has been referred to as a "dumping ground" for LGBTQIA+ youth. *Id.* Generally, placement in residential therapeutic facilities is "inappropriate and, in fact, harmful for the vast majority of youth, and they are never appropriate just because a youth is LGBTQ." *Id.*

536. *See generally* Ta-Nehisi Coates, *The Case for Reparations*, THE ATLANTIC (June 2014), argumentcenterededucation.com/wp-content/uploads/2018/04/The-Case-for-Reparations-by-Ta-Nehisi-Coates-The-Atlantic.pdf [perma.cc/SL5E-6FFT] (describing U.S. reluctance to take accountability for chattel slavery).

537. NDRN, *supra* note 194, at 60.

538. *Id.* (illustrating the lack of concern for safety in TTI facilities during the heart of the COVID-19 pandemic). "Some for-profit [facilities] have not

parents may view their adolescents not as developmentally-different, but rather, as deviants from "normal" adult human behavior.

As much as past generations have clung to the idea that one can "knock some sense into someone," it is now empirically known that physical abuse and restraint are not only ineffective, but also, deeply harmful to development.[539] The practice of "tough love" merely works to makes love into something conditional, "undermin[ing] familial affection [by] removing the one refuge where people can ordinarily assume they are loved for who they are, not what they do."[540] Programs that use tough love as a method of therapy, often accuse their teenage participants of manipulation. The irony is that these same programs deliberately use love and the possibility of its withdrawal as a bargaining chip, in order to control these teenagers—something which seems to be manipulative behavior in itself.[541] While long overdue, it is time that American society fundamentally shifts its approach to teen mental health and discipline away from retribution, and instead, toward rehabilitation. This comment proposes the very methods that can achieve this, through increased access to mental healthcare, parental education, robust oversight, and evidence-based legislation.

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adequately followed COVID-19 precautions, resulting in a large proportion of residents and many staff testing positive for the virus in those facilities." *Id.* At one point in 2020, at a single facility in New Jersey, "86% of staff tested positive." *Id.*

539. *See* Terry Levy, *Corporal Punishment in Schools Harms Children*, EVERGREEN PSYCHOTHERAPY CTR. (Sep. 1, 2022), www.evergreenpsychotherapycenter.com/corporal-punishment-in-schools-harms-children/ [perma.cc/7YF9-5APN]
(explaining "[d]ecades of research shows that spanking or any other type of corporal punishment is detrimental to children."). "Students who are hit at school, typically do not fare as well academically as their peers and suffer both physical and psychological trauma." *Id.*

540. SZALAVITZ, *supra* note 7, at 252.

541. *Id.* at 251-52; *see also id.* at 255 (describing the lasting trauma on the family unit: "[m]any, many families have great difficulty restoring trust."). "Some cope by simply agreeing never to speak of it again, leaving lingering anger." *Id.*