

**HEALING SEX-TRAFFICKED CHILDREN: A DOMESTIC FAMILY
LAW APPROACH TO AN INTERNATIONAL EPIDEMIC**

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ABSTRACT

Children who have been trafficked into and within the United States for commercial sexual exploitation endure significant psychological and physical trauma. Because there is a salient nexus between the inherent violence of trafficking and that of family violence and childhood sexual abuse, this Article explores how the United States might assist victimized children by utilizing governmental systems that are already in existence. Specifically, the therapeutic foster care (“TFC”) model is an established model of care that is flexible enough to meet the numerous and complicated issues associated with the reintegration and treatment needs of child sex-trafficking survivors. This Article recommends that TFC be adapted and expanded to heal sex-trafficked children in a safe, nurturing, and culturally competent manner. Particularly in tandem with specialized programs or non-governmental organizations (“NGOs”), the TFC model may be another avenue in healing the sex-trafficked children within our borders.

I. INTRODUCTION

It is appropriate that 21st-century trafficking of human beings has been referred to as modern day slavery.¹ Although many erroneously believe that child sex trafficking only happens in countries outside of the United States, children are routinely sex-trafficked into the United States from other countries and even within the United States itself. The psychological and physical trauma endured by these children is incalculable and often untold.

Some researchers have estimated that every minute, two children are sexually enslaved across the globe.² Even if these children eventually escape their traffickers, the children continue to suffer from the severe traumatic psychological and physical effects of being trafficked and are in need of rehabilitation and reintegration services.³ This Article posits that the United

¹ *Human Trafficking*, POLARIS PROJECT, <https://polarisproject.org/human-trafficking> (last visited Mar. 31, 2016).

² Nathan Harden, *Eight Facts You Didn't Know About Child Sex Trafficking*, HUFFPOST IMPACT (Nov. 11, 2013), http://www.huffingtonpost.com/nathan-harden/eight-facts-you-didnt-know_b_4221632.html; *Run for Love*, LOVE 146 (July 7, 2010), <https://love146.org/run-for-love/>. Though determining a precise number is difficult for a number of reasons, between 14,500 and 17,500 individuals are sex-trafficked into the United States each year, approximately 50% of which are children. U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 6* (2005), <http://www.state.gov/documents/organization/47255.pdf>; Angela D. Giampolo, *The Trafficking Victims Protection Reauthorization Act of 2005: The Latest Weapon in the Fight Against Human Trafficking*, 16 TEMP. POL. & C.R.L. REV. 195, 198, 215 (2006); Julie Krüger, Comment, *Empowering Victims, Opening Borders Preventing Human Trafficking by Adjusting Immigration Laws to Accommodate the Supply and Demand of Migrant Workers*, 17 BUFF. J. GENDER L. & SOC. POL'Y 105, 105 (2009). In terms of trafficking globally, some sources suggest that at least one million children are trafficked and exploited by the global sex industry every year, while others argue that the number is actually two to three million children per year. See CLAYTON ET AL., INST. MED. & NAT'L RESEARCH COUNCIL, *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES* 71 (2013), <http://www.ojjdp.gov/pubs/243838.pdf> (stating that estimates of the actual prevalence for this crime are difficult to measure accurately due to various reasons including the nature of the crime and definitional differences); cf. UNITED NATIONS CHILDREN'S FUND, *CHILD PROTECTION INFORMATION SHEET: TRAFFICKING 1* (2006), <http://www.unicef.org/protection/files/Trafficking.pdf> (noting that approximately 1.2 million children are trafficked each year globally).

³ See Jill Laurie Goodman, *What We Know About Human Trafficking: Research and Resources*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING* 1, 11 (Jill Laurie Goodman & Dorchen A. Leidholdt eds., 2013) ("One writer, describing the effects of traffickers' psychological abuse, said of trafficking victims: 'Their frame of reference for understanding the world is deeply altered . . . [and] they are left physically, emotionally, and spiritually shattered.'" (quoting Elizabeth Hopper & Jose Hidalgo, *Invisible Chains: Psychological Coercion of Human Trafficking Victims*, 1 INTERCULTURAL HUM. RTS. L. REV. 185 (2006))). As one author asserts: "[T]he sexual exploitation of children through prostitution is an insidious form of commercialized violence against the world's most vulnerable citizens. A childhood spent in prostitution can have serious, lifelong, even life-threatening consequences for the physical, psychological, spiritual, and social development of children." EVA J. KLAIN, *NAT'L CTR. FOR MISSING & EXPLOITED CHILDREN, PROSTITUTION OF CHILDREN AND CHILD-SEX TOURISM: AN*

States has the capacity to offer such services to those children who have been rescued inside the borders of the United States. Specifically, this Article recommends a course of action to adapt or expand current therapeutic foster care (“TFC”) to heal sex-trafficked children in a safe, nurturing, and culturally competent manner.

One trafficked child may be “sold” up to 30 times a day, subjecting the child each time to sexual assault that is often accompanied by physical violence.⁴ The child is typically relocated to new cities and states in order to prevent his or her detection or escape and to provide “fresh faces” to “customers.”⁵ Arguably, each and every time a child victim is sold to a “customer,” that child experiences yet another assault on the body, the mind, and the soul.

Even if a child is able to overcome the seemingly insurmountable obstacles to escaping his or her situation, the child may not have a safe place to reside after rescue. Another challenge for trafficked children is that too often the child victim is charged criminally with solicitation or prostitution.⁶ Additionally, if the child is a foreign national, law enforcement will commonly call federal immigration officers, placing the child into a potentially harrowing trajectory of detention and deportation.⁷ Yet, that child is being victimized and

ANALYSIS OF DOMESTIC AND INTERNATIONAL RESPONSES 1 (1999), <https://www.ncjrs.gov/pdf/files1/Digitization/189251NCJRS.pdf>.

⁴ A recent study found that the “customers” or “johns” are the most “frequently identified perpetrators of violence.” JODY RAPHAEL & DEBORAH L. SHAPIRO, CTR. FOR IMPACT RESEARCH, SISTERS SPEAK OUT: THE LIVES AND NEEDS OF PROSTITUTED WOMEN IN CHICAGO 19 (2002), <http://www.healthtrust.net/sites/default/files/publications/sisterssspeakout.pdf>.

⁵ SHARED HOPE INT’L, REPORT FROM THE U.S. MID-TERM REVIEW ON THE COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN IN AMERICA 23 (2006), http://sharedhope.org/wp-content/uploads/PIC/US_MTR_of_CSEC.pdf. Traffickers remain on the move to avoid detection and evade law enforcement. The young children can easily be identified as minors to law enforcement or service providers, so their traffickers will keep moving them from hotels and motels to avoid detection. See Erika R. George & Scarlet R. Smith, *In Good Company: How Corporate Social Responsibility Can Protect Rights and Aid Efforts to End Child Sex Trafficking and Modern Slavery*, 46 N.Y.U. J. INT’L L. & POL. 55, 67 (2013).

⁶ See POLARIS PROJECT, HUMAN TRAFFICKING ISSUE BRIEF: SAFE HARBOR 1 (2015), <https://polarisproject.org/sites/default/files/2015%20Safe%20Harbor%20Issue%20Brief.pdf> (“A trafficked child may be compelled to engage in illegal activities such as prostitution or the selling of drugs, and instead of being treated as victims, many are treated as criminals and are prosecuted accordingly.”); see, e.g., Katherine Mullen & Rachel Lloyd, *The Passage of the Safe Harbor Act and the Voices of Sexually Exploited Youth*, in LAWYER’S MANUAL ON HUMAN TRAFFICKING, *supra* note 3, at 129, 129 (anecdotally reporting on a child victim of sex trafficking charged with prostitution); see also Chitra Raghavan & Kendra Doychak, *Trauma-Coerced Bonding and Victims of Sex Trafficking: Where Do We Go from Here?*, 17 INT’L J. EMERGENCY MENTAL HEALTH & HUM. RESILIENCE 583, 584 (2015) (discussing that victims of sex trafficking frequently either bear the legal consequences of their abusers’ actions due to failure to testify or are prosecuted for actions against others due to coercive tactics).

⁷ 8 U.S.C. § 1225(b)(1)(A)(i) (2014) (“If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States or is

abused on American soil regardless of his or her country of origin. Therefore, this Article argues that the United States has a concomitant duty to protect and assist children within its borders. Rather than being routed to jail cells, child victims of sex trafficking who have been assaulted inside the United States should be re-routed to child protection agencies and foster care systems that can accommodate and provide safe homes for them. To that end, this Article explores the potential short and long-term rehabilitation of trafficked children when placed in the state foster care system.⁸ Because the United States has a developed foster care system with beds and services already available, as well as a robust model of therapeutic foster care, it can accommodate these children in our existing infrastructure. Until resources are available to create and implement specialized rehabilitation services to care for every child victim of sex trafficking, such children would be best served in therapeutic foster homes.

Children who are foreign born victims and who cannot or do not wish to return to their countries of origin⁹ are faced with the additional obstacle of

described in clause (iii) is inadmissible under section 1182(a)(6)(C) or 1182(a)(7) of this title, the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution.”); see Sally Terry Green, *Protections for Victims of Child Sex Trafficking in the United States: Forging the Gap Between U.S. Immigration Laws and Human Trafficking Laws*, 12 U.C. DAVIS J. JUV. L. & POL’Y 309, 356 (2008) (“The reality is that if a child or adult is in [the United States] illegally, then they are subject to deportation unless he obtains an immigrant classification allowing for his lawful entry into the United States.”).

⁸ When I refer to “children” in this Article, I am referring to anyone under 18 years of age, even though some states will only define children up to age 15 or 16. Although this Article primarily pertains to children who are sexually exploited through prostitution, it is critical to understand that pernicious and more subtle forms of sex trafficking include children who are sold as mail-order brides or for purposes of pornography. Though not addressed in particular here, these child victims are also included in the population of sex-trafficked individuals who can benefit from the proposals laid out in this Article. For more information on these topics, see, for example, PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS xvii (Melissa Farley ed., 2003); Melissa Farley et al., *Online Prostitution and Trafficking*, 77 ALB. L. REV. 1039 (2014); Victoria I. Kusel, *Gender Disparity, Domestic Abuse, and the Mail-Order Bride Industry*, 7 ALB. GOV’T L. REV. 166 (2014).

⁹ Many victims of sex-trafficking are sold to their traffickers by their own families for monetary resources or due to financial inequities. Therefore, these children may not wish to reunite with their families or return to their home countries and instead choose to remain in the United States. Benjamin Lawrence, Address at Albany Law School Law Review Symposium: Voiceless Cargo: Symposium on Human Trafficking and Sex Slavery (Feb. 28, 2013). The abject poverty of a child’s family in his or her country of origin is one of the most common causes of trafficking. See Sara Birkenenthal, *Human Trafficking: A Human Rights Abuse with Global Dimensions*, 6 INTERDISC. J. HUM. RTS. L. 27, 29 (2012). Also, when speaking about human trafficking, the terms “feeder country” or “source country” are used to refer to the country of origin—for example, the country where the trafficking victims are trafficked from. The term “destination country” is used to refer to the country where the trafficking victims end up—for example, the country they are taken to and where their labor is performed. This Article is not focused on any specific feeder country, although many such feeder countries have a low level of economic development. The Article, however, will specifically focus on a particular destination country—the United States.

integrating into a society where they may not know the local language, culture or customs. Navigating language and cultural gaps may become insurmountable when processing and dealing with the significant trauma they already have endured.

The trauma of repeated sexual assaults is linked to a heightened prevalence of dissociative and post-traumatic symptoms. Studies have found that a significant number of sex-trafficked children fit the psychological profile of an individual suffering from Post-Traumatic Stress Disorder (“PTSD”).¹⁰ This is not dissimilar from the rate of PTSD suffered by sexually abused children, which studies estimate occurs in the majority of survivors.¹¹ Because there are poignant similarities between the traumas experienced by other vulnerable populations of children, especially those who have endured child sexual abuse or family violence, this Article proposes that sex-trafficked children be placed where those vulnerable children are often placed: in our foster care system, preferably therapeutic foster care.¹²

In Part II of this Article, I will expound upon the epidemic of child trafficking, providing definitions and current legal options in the United States. In Part III of this Article, I will introduce the concept of therapeutic foster homes. In Part IV, I will discuss the similarities in trauma between sex-trafficked children and sexually abused children, supporting my thesis that because therapeutic foster care is an appropriate model for child victims of family and sexual abuse, it may also be an appropriate model for child victims of sex trafficking. In Part V of this Article, I will address the distinctions between these two groups of child victims and potential obstacles to my proposal. Ultimately, I conclude in Part VI that while therapeutic foster care is not a perfect solution, it is one that can be implemented now as a stopgap measure or first step until adequate funding is available to develop and implement intensive specialized services for all sex-trafficked children rescued in our country.

This Article focuses on the recovery and integration—or reintegration—into American society for children who are rescued from sex trafficking. This Article addresses both children who were United States citizens when they were first trafficked and whose exploitation occurred in the United States, as well as children who have been trafficked into the United

¹⁰ OFFICE FOR VICTIMS OF CRIME TRAINING & TECH. ASSISTANCE CTR., HUMAN TRAFFICKING (2012) http://www.ncdsv.org/images/OVCTTAC_HumanTraffickingResourcePaper_2012.pdf; Erin Williamson, Nicole M. Dutch & Heather J. Clawson Caliber, *Evidence-Based Mental Health Treatment for Victims of Human Trafficking*, OFF. ASSISTANT SECRETARY FOR PLAN. & EVALUATION (Apr. 15, 2010), <https://aspe.hhs.gov/basic-report/evidence-based-mental-health-treatment-victims-human-trafficking>; *Facts and Figures*, NAT'L CHILD TRAUMATIC STRESS NETWORK, www.nctsn.org/resources/topics/facts-and-figures (last visited Mar. 31, 2016).

¹¹ See Julie Kaplow et al., *Pathways to PTSD, Part II: Sexually Abused Children*, 162 AM. J. PSYCHIATRY 1305, 1305 (2005).

¹² Rachel Lev-Wiesel, *Child Sexual Abuse: A Critical Review of Intervention and Treatment Modalities*, 30 CHILD. & YOUTH SERVS. REV. 665, 668 (2008).

States from their country of origin for sexual exploitation, but who wish to remain in the United States once rescued.¹³ This Article specifically focuses upon rehabilitation services appropriate for child victims of sex trafficking who are rescued from trafficking while they are still minors, rather than delving deeply into programs for victims who reach the age of majority while they are being trafficked.

II. THE EPIDEMIC OF CHILD SEX TRAFFICKING IN THE UNITED STATES

Internationally, it is estimated that the human trafficking industry generates \$32 billion in profits each year.¹⁴ Some sources suggest that between 600,000 to 800,000 children are trafficked and exploited by the global sex industry every year, while others argue that the number is actually two to three million children per year.¹⁵ In some parts of the globe, a human slave costs a

¹³ This Article will not address the issue of whether individuals, trafficked as children, have “consented” to the sex trade. When I employ the word “trafficked” in this Article, I am not necessarily mirroring the ways that various states or countries define “trafficked children,” but instead, like the U.S. government, assume that any child who has been sexually exploited is legally incapable of consenting and is therefore per se a victim of trafficking. For instance, the Palermo Protocol defines a child as any individual under the age of 18 and specifically provides that child’s consent to trafficking is not an available defense to trafficking. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, art. 3(c), (d), *opened for signature* Dec. 12, 2000, 2237 U.N.T.S. 319, www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf [hereinafter Palermo Protocol]. Similarly, the United States has prohibited consent as a defense in trafficking a child, stating that “a child [is] incapable of giving meaningful consent” to trafficking. Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, § 108(a)(2), 114 Stat. 1464. In contrast, the issue of consent for adults is a determining factor as to whether an individual is the victim of sexual trafficking. However, the “consent” that an adult victim may provide should be considered skeptically. The conditions under which consent is given often make clear that this consent was in fact a victim’s only viable option. *See* Michèle Alexandre, *Sex, Drugs, Rock & Roll and Moral Dirigisme: Toward a Reformation of Drug and Prostitution Regulations*, 78 UMKC L. REV. 101, 110 (2009) (“Sexual trafficking is a form of slavery where individuals are forced into sexual service either knowingly or through trickery. Sexual trafficking is brutal and involves no agency on the part of the individuals who are forced into it.”); Stacey Antimone, *Sexual Trafficking: The United States’ Response to a Growing International Problem*, 24 SUFFOLK TRANSNAT’L L. REV. 149, 154–55 (2000) (“The Coalition to Abolish Slavery and Trafficking defines trafficking as: ‘[T]he recruitment and or transportation of persons by others using violence or the threat of violence, abuse of authority or dominant position, deception or other forms of coercion, for the purpose of exploiting them sexually or economically for the profit or advantage of others, such as recruiters, procurers, traffickers, intermediaries, brothel owners and other employers, customers, or crime syndicates.’”).

¹⁴ POLARIS PROJECT, HUMAN TRAFFICKING STATISTICS, http://timmsui.com/docs/Polaris_Stats.pdf (last visited Mar. 31, 2016) [hereinafter POLARIS PROJECT].

¹⁵ UNITED NATIONS CHILDREN’S FUND, *supra* note 2 (noting that there are approximately 1.2 million trafficked children each year globally); Giampolo, *supra* note 2, at 198, 215; Krüger, *supra* note 2.

mere \$90.¹⁶ Unlike finite commodities that can only be sold once, human victims can be sold and re-sold multiple times over, making human victims a more profitable “commodity” than drugs or weapons.¹⁷

Domestically in the United States, from the time when the Trafficking Victims Protection Act (“TVPA”) passed in 2000 through 2007, only 1,379 foreign national victims of trafficking were certified by the United States Department of Health and Human Services as trafficking victims.¹⁸ Of those, only about 10% (131) were minors.¹⁹ Yet, today it is estimated that approximately 50% of the foreign born victims trafficked into the United States are minor children, and the numbers are growing.²⁰ This Article will discuss

¹⁶ 10 Facts About Human Trafficking Everyone Should Know, LIVE 58, <http://www.live58.org/10-facts-about-human-trafficking-everyone-should-know> (last visited Mar. 31, 2016).

¹⁷ Christian Sabyan et al., *The Number: Average Price of Slave Has Decreased*, CNN FREEDOM PROJECT (Apr. 6, 2011), <http://thecnnfreedomproject.blogs.cnn.com/2011/04/06/bales-average-price-of-slave-has-decreased/>; see also Geneva Brown, *Women and Children Last: The Prosecution of Sex Traffickers as Sex Offenders and the Need for a Sex Trafficker Registry*, 31 B.C. THIRD WORLD L.J. 1, 7–8 (2011) (“[T]he sexual exploitation of children is a lucrative business that has ties to organized crime and local profiteers. Child traffickers can earn as much as \$30,000 per trafficked child. Sex tourists travel globally to gain access to young girls and boys and are willing to pay premium prices for access to them. The thriving child sex industry is based on several factors including poverty and the use of ‘runaway’ and ‘throwaway’ children. Like trafficked women, children trafficked into and out of the United States are financially beholden to their traffickers. Often, they are required to pay their traffickers for the services received such as transportation, shelter, employment, and false identity papers. Additionally, children in the sex industry suffer exposure to HIV/AIDS and other sexually transmitted diseases. Indeed, younger children are targeted and procured to protect clients from HIV exposure. Human Rights Watch reports that ‘[p]rostituted children can be raped, beaten, sodomized, emotionally abused, tortured, and even killed by pimps, brothel owners, and customers.’ According to UNICEF, one million children enter the global sex trade each year.”); *Human Trafficking: FAQs*, UNODC, http://www.unodc.org/unodc/en/human-trafficking/faqs.html#What_is_human_trafficking (last visited Mar. 31, 2016) (“Trafficking victims have become another commodity in a larger realm of criminal commerce.”). A pimp can make \$150,000 to \$200,000 per child each year. *Trafficked Teen Girls Describe Life in “The Game,”* NPR (Dec. 6, 2010), <http://www.npr.org/2010/12/06/131757019/youth-radio-trafficked-teen-girls-describe-life-in-the-game>.

¹⁸ POLARIS PROJECT, *supra* note 14.

¹⁹ *Id.*

²⁰ *Id.*; U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 8 (2007)* [hereinafter TIP REPORT 2007], <http://www.state.gov/documents/organization/82902.pdf>. These numbers are only estimates. As one report explains:

It is difficult to precisely measure the exact number of children affected by sex tourism. Estimates by governments and non-governmental organizations (NGOs) vary widely, while unsubstantiated numbers are often recycled without attribution or confirmation. As the former United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography emphasizes, however, “even if one child is exploited sexually, it is a serious matter.”

KLAIN, *supra* note 3, at 33.

both the importance of facilitating recovery and rehabilitation and the current options for placement of victims who are rescued in the United States.

A. *The First Step: Identifying the Need for Recovery and Rehabilitation*

Focusing on recovery and rehabilitation is of paramount importance when addressing children who have been sex trafficked because the psychological, physical, and emotional traumas affect victims in deep, complex ways that are not easily addressed, healed, or mitigated.²¹

Both the United Nations²² and the United States Department of State²³ agree that although rehabilitation of child victims of sex trafficking is critical, it remains challenging. The Department of State has set forth what it calls the “three R’s” platform to restore trafficking victims: Rescue, Rehabilitate, and Reintegrate.²⁴ This approach recognizes that rescuing child victims from a cycle of exploitation is only the first step—rehabilitating the physical and mental traumas faced by these victims and then reintegrating them into society are key steps on a victim’s journey to recovery.²⁵ The United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons, a 2011 Directive from the European Union, and the Council of Europe Convention, similarly conclude that victim care and support are essential to rehabilitation.²⁶ “[A]ppropriate housing; legal advice in the victim’s language; medical, psychological and material assistance; and employment, educational, and training opportunities” are some of the services that should be provided to trafficking victims to help aid in their recovery.²⁷ Additionally, child victims’ special needs must be taken

²¹ See *infra* Part IV.A.

²² Joy Ngozi Ezeilo (Special Rapporteur on Trafficking in Persons, Especially Women and Children), *Report on Trafficking in Persons, Especially Women and Children*, ¶ 64, U.N. Doc. A/HRC/17/35 (Apr. 13, 2011), <http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A-HRC-17-35.pdf> [hereinafter Report of the Special Rapporteur].

²³ U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT 6 (2009)* [hereinafter TIP REPORT 2009], <http://www.state.gov/j/tip/rls/tiprpt/2009/>; see also Lydia Butler, *Modern-Day Slavery Eclipsing the Sunshine State Compels Safe Harbor Legislation in Florida*, 7 *INTERCULTURAL HUM. RTS. L. REV.* 191, 219 (2012).

²⁴ TIP REPORT 2009, *supra* note 23, at 6; see also Butler, *supra* note 23, at 219.

²⁵ As the Special Rapporteur on Trafficking in Persons asserts, “Recovery is a crucial form of reparation for trafficked persons, which includes medical and psychological care, as well as legal and social services.” Report of the Special Rapporteur, *supra* note 22, at 7; see also *infra* Part III (focusing on rehabilitation).

²⁶ Palermo Protocol, *supra* note 13, at art. 6(3); May Li, *Did Indiana Deliver in Its Fight Against Human Trafficking?: A Comparative Analysis Between Indiana’s Human Trafficking Laws and the International Legal Framework*, 23 *IND. INT’L & COMP. L. REV.* 277, 315 (2013).

²⁷ Li, *supra* note 26, at 315; see also G.A. Res. 54/263, *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography*, art. 8 (Jan. 18, 2002), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

into account when considering the rehabilitative services best suited to assist in their recovery.²⁸

B. The Next Step: Where Are Sex-Trafficked Children Currently Placed Once Rescued in the United States?

As mentioned in the Introduction of this Article, child victims of sex trafficking are commonly routed through immigration or criminal justice systems. This next section of the Article will outline tools currently available in the United States to help redirect these children into existing systems that are more appropriate for their needs. Those options include Safe Harbor Acts that provide judges discretion when dealing with children accused of prostitution, special visas or immigration statuses, and programs specially devoted to housing and rehabilitating victims of child sex trafficking.

1. Safe Harbor Acts

We need to be mindful that although a child victim of sex trafficking may appear to be soliciting or consensually engaging in prostitution, the child—by virtue of her age—is typically considered trafficked and coerced.²⁹

In some ways, we can conceptualize child sex trafficking as one subset of a larger epidemic of child sexual abuse. Put another way, commercial sexual exploitation of children is an organized method of child sexual abuse.³⁰ Because children are vulnerable and typically dependent upon adults for basic needs, and because traffickers control the actions and movements of child victims, it is almost as if the trafficker's assaults are being carried out by someone assuming the role of a "caretaker" (although no further irony can be imagined). If this assertion is accepted, and child victims of sex trafficking are viewed as just that—victims—then arresting, incarcerating, or deporting them is an illogical response to aiding in their rescue or escape from trafficking.

²⁸ Li, *supra* note 26, at 315. Due to the similarity in the power and control dynamic experienced by trafficking, sexual abuse, and family abuse survivors, many would argue that there is a similar need to classify these children as survivors, not victims. Compare OHIO CHILD WELFARE TRAINING PROGRAM, HUMAN TRAFFICKING: CARING FOR YOUTH WHO HAVE BEEN TRAFFICKED (2014), with Catalleya Storm, *TEDxDayton: Human Trafficking – Stop the Silence*, YOUTUBE (Jan. 20, 2015), <https://www.youtube.com/watch?v=hSum6Xe64C4>. Though subtle, this terminology speaks volumes about the tone and structure of the helping relationship needed by both groups following a trauma.

²⁹ See *supra* note 13 for a fuller discussion and reference to the Palermo Protocol's assertion that a child cannot "consent to being trafficked." Raghavan & Doychak, *supra* note 6, at 583 (discussing the idea of trauma-coerced bonding—where coercive tactics are used to break down the sense of self of the victim to the point where the victim's perspective is completely shattered and will do whatever the trafficker or abuser wishes to please or appease them).

³⁰ See CLAYTON ET AL., *supra* note 2, at xi–xii, 32; Rowena Fong & Jodi Berger Cardoso, *Child Human Trafficking Victims: Challenges for the Child Welfare System*, 33 EVALUATION & PROGRAM PLAN. 311, 313 (2010).

Instead, these children should be sheltered, healed, and protected. This Article urges that upon rescue, victims of sex trafficking within the United States should be routed to child protection agencies and the foster care system.

Fortunately, there is a growing movement on the federal and state level to decriminalize these victimized youth. State “Safe Harbor Acts” shift the status of trafficking victims by decriminalizing their participation in child prostitution. States from Nebraska to Illinois to New York have enacted such Acts, and in some states, these principles are outlined within case law.³¹ For example, an extension³² to the Safe Harbor for Exploited Children Act,³³ signed into New York law in January 2014, provides protection to teenagers 17 years

³¹ For information on the various state safe harbor laws, see POLARIS PROJECT, *supra* note 14, at 34–36; ECPAT USA, *STEPS TO SAFETY: A GUIDE TO DRAFTING SAFE HARBOR LEGISLATION TO PROTECT SEX-TRAFFICKED CHILDREN* (2015), <http://www.ecpatusa.org/wp-content/uploads/2016/01/Steps-to-Safety.pdf>; *see also* An Act Providing a Safe Harbor for Exploited Children, Pub. Act No. 10-115 (codified as CONN. GEN. STAT. §§ 53a-82, -86, -87 (2012)); Florida Safe Harbor Act, ch. 105, 2012 Fla. Laws 1199 (codified at amended at FLA. STAT. ANN. §§ 39.001, 39.01, 39.401, 39.524, 409.1678, 796.07, 960.065, 985.115 (West 2010)); 4 Massachusetts Safe Harbor Act, ch. 178, § 23, 2011 Mass. Acts 723, 736–37 (codified at MASS. GEN. LAWS ch. 265, § 57 (2011)); Safe Harbor for Sexually Exploited Youth, MINN. STAT. § 145.4716 (2015); NEB. REV. STAT. § 28-801 (2015); Human Trafficking, Prevention, Protection and Treatment Act, N.J. STAT. ANN. § 52:13B-6 (West 2013); New York State Safe Harbour for Exploited Children Act, N.Y. SOC. SERV. LAW § 447 (McKinney 2013); N.C. GEN. STAT. § 14-204(c) (2013); *In re B.W.*, 313 S.W.3d 818, 822 (Tex. 2010) (“Because a thirteen-year-old child cannot consent to sex as a matter of law . . . [the minor] cannot be prosecuted as a prostitute.”). Under the New York State Safe Harbor for Exploited Children Act, the term “sexually exploited child” means

any person under the age of eighteen who has been subject to sexual exploitation because he or she: (a) is the victim of the crime of sex trafficking as defined in section 230.34 of the penal law; (b) is an abused child [as defined in paragraph (iii) of subdivision (e) of section ten hundred twelve of the family court act;] (c) engages in any act as defined in section 230.00 or 240.37 of the penal law; (d) is a victim of the crime of compelling prostitution [as defined in section 230.33 of the penal law]; (e) engages in acts or conduct described in article two hundred sixty-three of the penal law.

N.Y. SOC. SERV. LAW § 447. Illinois amended the necessary statutes to decriminalize children engaged in prostitution in 2010:

Notwithstanding the foregoing, if it is determined, after a reasonable detention for investigative purposes, that a person suspected of or charged with a violation of this Section is a person under the age of 18, that person shall be immune from prosecution for a prostitution offense under this Section, and shall be subject to the temporary protective custody provisions of Sections 2–5 and 2–6 of the Juvenile Court Act of 1987.

720 ILL. COMP. STAT. ANN. 5/11-14(d).

³² N.Y. SOC. SERV. LAW § 447-a (altering the definition to include children under the age of 18, rather than children under the age of 16).

³³ *Id.* § 447-a, -b (originally enacted in 2008, effective as of April 2010). Now any child under the age of 18 who violates prostitution laws or “who appears to be sexually exploited” can avoid prosecution in the criminal court or juvenile delinquency proceedings by being declared as a Person In Need of Supervision (“PINS”).

of age and younger arrested in New York for prostitution by routing their case to Family Court as a juvenile civil case instead of an adult criminal case. Rather than re-traumatizing the victims with adult criminal prosecution, the children have access to a variety of services in Family Court.³⁴ If a child is brought before a Family Court Judge instead of a Criminal Court Judge in New York, for example, the Family Court Judge is able to order child welfare agencies to investigate the situation, to convert the delinquency action to another type of action, and has the authority to place the child in foster care. Undoubtedly, treating children who have been sexually enslaved and who are deserving of rescue and treatment like criminals is a critical mistake. As one author explains: “[W]e cannot expect these children to heal while we treat them like criminals or release them back onto the streets.”³⁵

2. Options for Foreign-Born Survivors

Foreign-born children who have been trafficked into the United States and wish to remain in the United States once rescued may have opportunities to do so through a number of legal mechanisms. The mechanisms include U-, S-, or T-visas; Special Immigrant Juvenile Status; and Unaccompanied Refugee Minors status. An in-depth description of the federal statutory frameworks from which these options are available is outside the scope of this Article, but the following sections provide a brief summary.³⁶

³⁴ *Human Trafficking*, N.Y. ST. OFF. CHILD. & FAM. SERVS., [http://ocfs.ny.gov/main/human traffic/](http://ocfs.ny.gov/main/human%20traffic/) (last visited Mar. 31, 2016).

³⁵ Emily K. Harlan, *It Happens in the Dark: Examining Current Obstacles to Identifying and Rehabilitating Child Sex-Trafficking Victims in India and the United States*, 83 U. COLO. L. REV. 1113, 1142 (2012); see Tamar R. Birckhead, *The “Youngest Profession”: Consent, Autonomy, and Prostituted Children*, 88 WASH. U. L. REV. 1055, 1069 (2011) (“To further the policy goal of deterring sex that could be considered coercive or not truly voluntary, a number of states set the age of consent at eighteen when the minor has sexual intercourse with someone deemed to be ‘in a position of familial or custodial authority.’”). Birckhead argues that legislation should be passed to prevent the continued prosecution of these juveniles and instead focus on intervention and prevention. *Id.* at 1114–15. Leaders of the American Bar Association have advocated for legislation that would prevent minors from being prosecuted for prostitution and other crimes “that involve acts to which they are too young legally to consent.” *Id.* at 1077.

³⁶ “The T Nonimmigrant Status (“T visa”) specifically protects victims of human trafficking and allows victims to remain in the United States to assist in an investigation or prosecution of human trafficking.” *Victims of Human Trafficking: T Nonimmigrant Status*, USCIS.GOV, <http://www.uscis.gov/humanitarian/victims-human-trafficking-other-crimes/victims-human-trafficking-t-nonimmigrant-status> (last visited Apr. 1, 2016) [hereinafter *T Nonimmigrant Status*]. To qualify for a T visa, an individual must meet certain qualifications: the applicant must (1) be a victim of a “severe form of trafficking,” (2) have a physical presence in the United States as a result of being trafficked, (3) cooperate with federal, state, or local investigations of the trafficking crimes when reasonably asked, and (4) demonstrate that he or she would face “extreme hardship . . . upon removal.” 8 U.S.C. § 1101(a)(15)(T)(i) (2014); see also Erin Bistricher, Note, “U” Stands for Underutilization: *The U Visa’s Vulnerability for Underuse in the Sex Trafficking Context*, 18 CARDOZO J.L. & GENDER 449, 457 (2012).

i. Programs Addressing Unaccompanied Refugee Minors

Like T visas, U Nonimmigrant Visas (“U visas”) were products of the Victims of Trafficking and Violence Prevention Act of 2000. U.S. DEP’T OF LABOR, DEPARTMENT OF LABOR U VISA PROCESS AND PROTOCOLS QUESTION-ANSWER (2011) [hereinafter U VISA PROCESS AND PROTOCOLS]. While human trafficking victims can benefit from U visas, victims of other types of criminal activities can also receive help under this program. *Id.* The U visa is for victims of a variety of crimes, including domestic violence, sexual assault, human trafficking, involuntary servitude, and other serious offenses. Bistricher, *supra*, at 451, 464 n.138. An individual must be a victim of a particular qualifying criminal activity who suffered substantial physical or mental abuse, and be willing to assist law enforcement personnel with investigating or prosecuting the crimes. U VISA PROCESS AND PROTOCOLS, *supra*. A federal law enforcement agency or official must complete a certification on behalf of the victim that shows the victim was helpful in the investigation or prosecution of the perpetrator. *Id.* “Individuals who receive U visas may remain in the United States for up to four years, and may eventually apply for permanent residency.” *Id.*

“[T]rafficking victims may be eligible for relief under the S-visa classification. Trafficking victims’ advocates employed the S-visa prior to the creation of the specialized visa categories” Ivy C. Lee & Mie Lewis, *Human Trafficking from a Legal Advocate’s Perspective: History, Legal Framework and Current Anti-Trafficking Efforts*, 10 U.C. DAVIS J. INT’L L. & POL’Y 169, 185 (2003). To be eligible under this classification, the victim must possess reliable information about the crime and be willing to help law enforcement with the prosecution of this crime by testifying in court. *Id.* at 186 (“In addition, the Attorney General must determine that the applicant’s presence in the United States is necessary to the success of the criminal investigation or prosecution. The main obstacle posed by the S-visa is that it cannot be applied for by the trafficking victim directly. The petitioner for the S-visa is the law enforcement agency with which the victim is cooperating. Thus the advocate must persuade the law enforcement official, generally the U.S. Attorney, that relief under the S classification is appropriate.”).

The Unaccompanied Refugee Minors (“URM”) program exclusively assists refugee and migrating youth. *Unaccompanied Refugee Minors*, OFF. OF REFUGEE RESETTLEMENT (Aug. 12, 2012), <http://www.acf.hhs.gov/programs/orr/resource/unaccompanied-refugee-minors>. The Lutheran Immigration Refugee Service (“LIRS”) and the United States Conference of Catholic Bishops (“USCCB”) are the lead voluntary agencies that help the Office of Refugee Resettlement. *Id.* Twenty cities have URM foster care programs: Phoenix, AZ; Southern California; San Jose, CA; Denver, CO; Washington, DC; Miami, FL; Boston and Worcester, MA; Lansing, MI; Grand Rapids, MI; Jackson, MS; Fargo, ND; Rochester, NY; Syracuse, NY; Philadelphia, PA; Dallas/Fort Worth, TX; Houston, TX; Salt Lake City, UT; Richmond, VA; Tacoma, WA; and Seattle, WA. *Id.*

Certain children can receive “Special Immigrant Juveniles (SIJ)” status. The purpose of the Special Immigrant Juvenile program is to help foreign, unmarried children under the age of 21 residing in the United States who have been abused, abandoned, or neglected by one or both of their parents and for whom it is in the best interests of the child to remain in the United States. *Eligibility Status for SIJ*, USCIS, <https://www.uscis.gov/green-card/special-immigrant-juveniles/eligibility-sij-status/eligibility-status-sij> (last visited Apr. 1, 2016). “Children who get a green card through the SIJ program can live and work permanently in the United States.” *Special Immigrant Juveniles (SIJ) Status*, USCIS, <https://www.uscis.gov/green-card/special-immigrant-juveniles/special-immigrant-juveniles-sij-status> (last visited Apr. 1, 2016). Eligibility factors are outlined in 8 USC § 1101(a)(27)(J), INA § 101(a)(27)(J), 8 CFR § 204.11; Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044 (2008). See 8 USC § 1255(a), INA § 245(a), regarding adjustment of status.

Foreign-national child trafficking victims³⁷ can be eligible to be placed in foster care homes in the United States. For example, the Unaccompanied Refugee Minor (“URM”) Program includes specialized resettlement and foster care services for foreign-born children who are in the United States.³⁸ The URM program is responsible for, *inter alia*, foreign national children under the age of 18 who have been trafficked into the United States and are not currently accompanied by a parent or guardian. The URM program places these children into foster homes through the Office of Refugee Resettlement (“ORR”). These homes are hosted by specially trained families who can provide support in a culturally appropriate manner. Some children are placed in other settings such as group homes, residential treatment centers, and independent living programs.³⁹ While URM therapeutic foster care programs would certainly serve some of the same goals as the state therapeutic foster care options I propose in this Article, the URM placements are not available in every United States city.⁴⁰

ii. Programs Offering Pathways to United States Citizenship

If a rescued child wishes to earn United States citizenship, there are some programs that would allow trafficked foreign-national youth to remain in the United States with a potential path to citizenship. Some of these programs are outgrowths of anti-human trafficking legislation at the state or federal level.⁴¹

³⁷ According to the Palermo Protocol, a child is trafficked if the child has been transported for the purpose of exploitation. Palermo Protocol, *supra* note 13, at art. 3. Because children under the age of 18 cannot consent to exploitation, there is no need for force or deception technically. A child is trafficked if in fact he or she is brought over to the United States for the purposes of being prostituted, and the circumstances of how that happened become less relevant once they are here in the United States though they might be very relevant to the resulting trauma to the child.

³⁸ Bridgette Carr, *Examining the Reality of Foreign National Child Victims of Human Trafficking in the United States*, 37 WASH. U. J.L. & POL'Y 183, 190 (2011).

³⁹ *Unaccompanied Refugee Minors*, *supra* note 36.

⁴⁰ See FRANCIS T. MIKO & GRACE PARK, CONG. RESEARCH SERV., RL30545, TRAFFICKING IN WOMEN AND CHILDREN: THE U.S. AND INTERNATIONAL RESPONSE (2002), <http://fpc.state.gov/documents/organization/9107.pdf>; see also *In Our Own Backyard: Child Prostitution and Sex Trafficking in the United States: Hearing Before the Subcomm. on Human Rights and the Law of the S. Comm. on the Judiciary*, 111th Cong. 72 (2010) (testimony of Rachel Lloyd) (“Currently there are less than 50 beds specifically for victims of commercial sexual exploitation and domestic trafficking”); CLAYTON ET AL., *supra* note 2, at 260–61 (referring to multiple studies that cite victim housing as a primary and unmet need).

⁴¹ At least 35 states and the federal government have enacted anti-human trafficking legislation. See Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, § 103(8), 114 Stat. 1464, 1470 (2000); 22 U.S.C. §§ 7101–7112 (2014); 2014 State Ratings on Human Trafficking Laws, POLARIS PROJECT (Sept. 2014). <https://polarisproject.org/resources/2014-state-ratings-human-trafficking-laws>; see also Preventing Sex Trafficking and Strengthening Families

The Department of State's "three R's platform"—outlined above—is primarily implemented through the TVPA, which provides refugee-like protections to immigrant victims of human trafficking, brought to the United States with no documented immigration status, or whose status expired during their trafficking experiences.⁴² Immigrant victims may obtain U-, S-, or T-visas from the federal government.⁴³ A trafficking victim may be eligible for a trafficking visa—or T-visa—regardless of age.⁴⁴ The services available to victims through the TVPA and similar state legislation include housing, health care, mental health care, drug treatment, language and translation services, as well as job training.⁴⁵

Moreover, certain children might be eligible for Special Immigrant Juvenile Status ("SIJS"). The purpose of the Special Immigrant Juvenile program is to aid in citizenship for foreign unmarried children under the age of 21 residing in the United States, for whom reunification with one or both parents is not viable due to abuse, abandonment, or neglect under state law, and for whom it is in their best interest to remain in the United States.⁴⁶

Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014). See generally Xin Ren, *Legal Protection and Assistance for Victims of Human Trafficking in the United States: A Harm Reduction Approach*, in JUSTICE FOR VICTIMS 140, 146 (Inge Vanfraechem et al. eds., 2014); *Prevention of and Remedies for Human Trafficking Summary*, UNIFORM L. COMM., <http://www.uniformlaws.org/ActSummary.aspx?title=Prevention%20of%20and%20Remedies%20for%20Human%20Trafficking> (last visited Apr. 1, 2016); *US Federal and State Prostitution Laws and Related Punishments*, PROCON.ORG, <http://prostitution.procon.org/view.resource.php?resourceID=000119> (last updated Mar. 15, 2010) (summarizing criminal punishments for pimping in each state).

⁴² Butler, *supra* note 23, at 219.

⁴³ See *supra* note 36 and accompanying text.

⁴⁴ "CAIR Coalition staff . . . ha[ve] achieved impressive results by winning status for many of its unaccompanied immigrant children in the form of a 'T visa.'" Ashley Ham Pong, *The T Visa: Protection for Young Victims of Narco-Human Trafficking*, CAIR COALITION (Nov. 4, 2013), <http://www.caircoalition.org/2013/11/04/the-t-visa-protection-for-young-victims-of-narco-human-trafficking/>. According to the CAIR Coalition, unlike adult trafficking victims who must cooperate with law enforcement officials in the investigation and prosecution of the perpetrators, child applicants for T visas are not required to do so. *Id.* T visas are also

particularly beneficial to children, because certain "derivatives"—specifically, the child's parents, children, and unmarried siblings under the age of 18—may be included in the application and thereby granted T nonimmigrant status. The T visa thus confers an immediate immigration benefit to both the victim and his or her family.

Id.

⁴⁵ N.Y. SOC. SERV. LAW § 10-D (McKinney 2015); see U.S. DEP'T OF HEALTH & HUMAN SERVS., SERVICES AVAILABLE TO VICTIMS OF HUMAN TRAFFICKING 2–4 (2012), https://www.acf.hhs.gov/sites/default/files/orr/traffickingservices_0.pdf; U.S. DEP'T OF JUSTICE ET AL., FEDERAL STRATEGIC ACTION PLAN ON SERVICES FOR VICTIMS OF HUMAN TRAFFICKING IN THE UNITED STATES 2013–2017 (2014), <http://www.ovc.gov/pubs/FederalHumanTraffickingStrategicPlan.pdf>.

⁴⁶ See *T Nonimmigrant Status*, *supra* note 36 ("Children who get a green card though the SIJ program can live and work permanently in the United States.").

3. Specialized Trafficking Programs

There are successful and long-standing rescue and rehabilitation programs and NGOs that are specifically tailored to sex-trafficked children in New York City, Los Angeles, Europe, Israel, and Asia—just to name a few.⁴⁷

⁴⁷ The NGO Global Network defines an NGO as follows:

A non-governmental organization (NGO) is any non-profit, voluntary citizens' group which is organized on a local, national or international level. Task-oriented and driven by people with a common interest, NGOs perform a variety of service and humanitarian functions, bring citizen concerns to Governments, advocate and monitor policies and encourage political [participation] through provision of information. Some are organized around specific issues, such as human rights, environment or health. They provide analysis and expertise, serve as early warning mechanisms and help monitor and implement international agreements. Their relationship with offices and agencies of the United Nations system differs depending on their goals, their venue and the mandate of a particular institution.

Definition of NGOs, <http://www.ngo.org/ngoinfo/define.html> (last visited April 4, 2016); *see also Civil Society*, UNITED NATIONS, <http://www.un.org/en/sections/resources/civil-society/index.html> (last visited April 4, 2016).

Examples, by no means an exhaustive list, include: CAST in Los Angeles, GEMS in New York City, My Life My Choice in Boston, and Covenant House in New York City. CAST, <http://www.castla.org/homepage> (last visited Mar. 31, 2016); COVENANT HOUSE N.Y., <https://ny.covenanthouse.org/> (last visited Mar. 31, 2016); MY LIFE MY CHOICE, <http://www.fightingexploitation.org/> (last visited Mar. 31, 2016). One example of a stellar program out of Connecticut that focuses upon domestic trafficking child survivors:

Love146 strives to establish holistic aftercare for child survivors of DMST by way of strategic program development and community collaboration. In order to accomplish this, a new Love146 Recovery Center, based in Connecticut, will be opened and provide comprehensive, individualized care to child survivors of DMST, their caregivers, and professionals. A centralized, accessible, and relevant safe space for survivors, caregivers, and professionals will most easily facilitate this process. Love146's mission is this: Abolition and Restoration! We combat child trafficking and exploitation with the unexpected, and restore survivors with excellence. This objective is the leading motivation for providing excellent, empowering, and necessary survivor care in the organization's home base of Connecticut with an aim of closing the gap in service provision.

LOVE146, CONNECTICUT LOVE146 RECOVERY CENTER PROJECT PROPOSAL APPLICATION (2013), <http://love146.org/wp-content/uploads/2013/06/US-Suivivor-Care-Project-Proposal-Web-Version.pdf>. A new program working to address sex trafficking starting in Albany, New York, is Eyes Wide Open. EYES WIDE OPEN NENY, INC., <http://www.eyeswideopeneny.org> (last visited Mar. 31, 2016). Government Organizations on this issue just in the State of New York can be found at *Resources*, N.Y. ST. ANTI-TRAFFICKING COALITION, <https://stophumantraffickingny.wordpress.com/human-trafficking-manual/> (last visited March 31, 2016). At the time of publication of this piece, this Author was alerted to an exciting new NGO-TFC development. *See THE HUNDRED MOVEMENT*, <http://www.thehundredmovement.com/> (placing a trafficking victim with a therapeutic foster family in 2016) (last visited March 31, 2016).

Internationally, there are wonderful programs as well. For example, Childreach, a program working in Nepal, works to rescue girls from brothels and return them home, where they receive safe housing, health care, counseling, training and jobs. ROISIN STALLARD, CHILDREACH INT'L, CHILD TRAFFICKING IN NEPAL: CAUSES AND CONSEQUENCES 24–26 (2013), <https://www.child>

Designing programs to address the special traumas faced by trafficked children would undoubtedly be the ideal method for rehabilitating victims of sex trafficking. Yet, funding and access to such highly specialized programs—particularly in rural or remote places—can be limited and may not always be possible.⁴⁸

Because there is the salient nexus between the inherent sexual violence of trafficking and the sexual violence prevalent in family violence and childhood sexual abuse,⁴⁹ this Article posits that we should adapt current infrastructures and services as the first step to work toward rehabilitation of sex-trafficked children. Certainly, it would be ideal to additionally link these specialized agencies and NGOs with the program proposed in the balance of this Article, namely, the option of Therapeutic Foster Care.

III. THE THERAPEUTIC FOSTER CARE MODEL IN THE UNITED STATES

The United States has a state governmental program already in place that can be modified to assist trafficked children—specifically, a sophisticated and long-running foster care system. Within that system, there are specialized options for children with special needs called Therapeutic Foster Care (“TFC”). Therapeutic Foster Care provides a higher level of intense, specialized care for the child being served. The therapeutic foster family is provided extensive training on the needs of the child and offered additional supportive services not typically available to other types of foster homes and foster parents. Therapeutic foster parents are also teamed with various mental health professionals, who are trained to assist special needs youth.

In the sections that follow, I will discuss how the Therapeutic Foster Care model is defined, its characteristics, its strengths and weaknesses, and reasons why it is a sensible stop-gap measure for the rehabilitation of child

reach.org.uk/sites/default/files/imce/Child%20Trafficking%20Nepal-Causes%20and%20Consequences.pdf. Childreach International has a specific program dedicated to decreasing the spread of child trafficking in Nepal. *Id.* The program focuses on prevention and targets systemic problems such as poverty and lack of education in their efforts to improve the opportunities for Nepali girls at high risk for trafficking. *Id.* In addition to improving schools and curricula, Childreach designed an outreach campaign to inform the community of the risks of trafficking. *Id.* Finally, they conducted skills classes for parents to combat poverty, which has been identified as a key factor in many parents becoming susceptible to traffickers. *Id.* La Strada International is also well known in addressing sex trafficking. LA STRADA INT’L, <http://lastradainternational.org/> (last visited Apr. 1, 2016). There are scores of other programs in other countries and states—too numerous to list. It is this Author’s hope that one day, there will be at least one specialized group or NGO in every United State and every country.

⁴⁸ CLAYTON ET AL., *supra* note 2, at 260 (stating that shelter or housing is one of the most needed resources for this population, but it is also the most limited).

⁴⁹ This concept of shared trauma will be addressed more comprehensively in this Article but has been written about by other scholars. *See, e.g.*, Dorchen A. Leidholdt, *Human Trafficking and Domestic Violence: A Primer for Judges*, JUDGES’ J., Winter 2013, at 16, 18; Hopper & Hidalgo, *supra* note 3, at 198.

victims of sex trafficking in the United States, especially when trafficking-specific service programs are not otherwise available. As needed, the state foster care system could borrow from other models, partner with such specialized service programs, or work in tandem with NGOs as many URM programs do, in order to enhance its own rehabilitation services for child victims of sex trafficking. Therapeutic Foster Care is one of the subsets of general foster care, and thus it is important to understand the overarching organization and theory of the overall foster care system more broadly.

A. *The Foster Care System Generally in the United States*

Foster care in the United States is provided through the social services system and offers temporary care to children whose parents cannot care for them.⁵⁰ Foster care systems, while often funded in part federally, are generally run within the state system.⁵¹ Almost all foster care systems include general foster care, kinship care, specialized foster care, and therapeutic foster care, along with group homes and other organized group living situations.⁵²

The foster care system began in the United States in the late 19th century, when Americans became aware of the deplorable conditions that orphans were experiencing in institutional housing, colloquially referred to as orphanages.⁵³ As a solution to this problem, a system of “free foster homes”

⁵⁰ See, e.g., DOUGLAS T. GURAK, DAVID ARRENDER SMITH & MARY F. GOLDSON, *THE MINORITY FOSTER CHILD: A COMPARATIVE STUDY OF HISPANIC, BLACK AND WHITE CHILDREN* xi (1982).

⁵¹ See 45 C.F.R. §§ 400.112, .115, .116 (2015); Roger J.R. Levesque, *The Failures of Foster Care Reform: Revolutionizing the Most Radical Blueprint*, 6 MD. J. CONTEMP. LEGAL ISSUES 1, 13–14 (1995) (noting that foster care systems are largely run by individualized states while receiving funding and incentives from federal sources for providing services to families). One theory about funding streams offers that federal money can be diverted to reimburse the states. Generally, the federal government provides foster care and child welfare services to unaccompanied refugee minors in the same manner as other foster youth, and they have to do so according to the state’s child welfare standards, practices, and procedures.

⁵² See Jane Waldfogel, *Prevention and the Child Protection System*, 19 FUTURE CHILD 195 (2009) (referring to the myriad child welfare systems, including foster care that serve children and stating that child protective systems differ between states, however their primary goals in each are the overall protection of children whether in homes or in placement and keeping a focus on permanency and reunification); see also CLAYTON ET AL., *supra* note 2, at 237 (stating that the overarching mission of the child welfare system, including foster care, is to promote safety, permanency, and strengthening families); Margaret Zukoski, *Foster Parent Training*, in YOUNG CHILDREN AND FOSTER CARE 473, 473–90 (Judith A. Silver et al. eds., 1999).

⁵³ See Eve P. Smith, *Bring Back the Orphanages? What Policymakers of Today Can Learn from the Past*, 74 CHILD WELFARE 115, 117–22 (1995). Others find origins of foster families forming informally in the early 1800s surrounding the story of the Orphan Trains, where youth were placed on trains from New York City to be placed in Midwestern families. Robert P. Hawkins, *The Nature and Potential of Therapeutic Foster Care*, in THERAPEUTIC FOSTER CARE: CRITICAL ISSUES 5, 6–7 (Robert P. Hawkins & James Breiling eds., 1989); Jeanne F. Cook, *A History of Placing-Out: The Orphan Trains*, 74 CHILD WELFARE 181 (1995). Still others dispute

was developed. Foster homes were intended to provide full-time services and homes to children who were unable to remain with their birth families.⁵⁴

Foster homes and the foster care system are based upon a trauma-informed level of care, and it is presumed that children entering foster care have experienced some level of trauma or significant neglect.⁵⁵ Not all children who have been routed to foster care experience exactly the same type of trauma. There are two types of trauma commonly experienced by children within the foster care system: acute trauma and complex trauma.⁵⁶ Acute trauma is caused by a single traumatic event.⁵⁷ Complex trauma is the result of multiple traumatic incidents and experiences by an individual.⁵⁸ Though acute trauma can certainly have long-lasting effects upon an individual, the effects of complex trauma, especially on children, are even more devastating.⁵⁹

Foster parents, especially therapeutic foster parents, need to understand trauma effects. In fact, the success of the foster care system is dependent on the strengths of the foster parents who care for these children. As author Margaret

the intentions and origins of orphanages and orphan trains. For a detailed work on the topic, see, for example, Rebecca S. Trammell, *Orphan Train Myths and Legal Reality*, 5 MOD. AM. 3 (2009).

⁵⁴ See, e.g., Zukoski, *supra* note 52, at 476–77.

⁵⁵ See Johanna K. P. Greesen et al., *Complex Trauma and Mental Health in Children and Adolescents Placed in Foster Care: Findings from the National Child Traumatic Stress Network*, 90 CHILD WELFARE 91, 92 (2011) (citing that over 70% of children in the system within the research sample reported experiencing complex trauma). See generally JUDITH HERMAN, *TRAUMA AND RECOVERY: THE AFTERMATH OF VIOLENCE* (1992).

⁵⁶ See John Briere, Stacey Kaltman & Bonnie L. Green, *Accumulated Childhood Trauma and Symptom Complexity*, 21 J. TRAUMATIC STRESS 223, 223–26 (describing that a discrete traumatic event, or acute trauma, can lead to an individual presenting with Post-Traumatic Stress Disorder).

⁵⁷ See ALEXANDRA COOK ET AL., NAT'L CHILD TRAUMATIC STRESS NETWORK COMPLEX TRAUMA TASK FORCE, *COMPLEX TRAUMA IN CHILDREN AND ADOLESCENTS* (2003) [hereinafter NAT'L CHILD TRAUMATIC STRESS NETWORK]; see also Alexandra Cook et al., *Complex Trauma in Children and Adolescents*, FOCAL POINT, Winter 2007, at 1, 4 [hereinafter *Focal Point Complex Trauma*], http://www.traumacenter.org/products/pdf_files/Complex_Child_Trauma.pdf.

⁵⁸ *Focal Point Complex Trauma*, *supra* note 57, at 4.

⁵⁹ *Id.*; NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 57 (explaining that complex trauma is a term that denotes not only the experience of multiple incidents of traumatic events for an individual, but also the myriad effects of these experiences on the individual). For children, the introduction of traumatic experiences into the developmental process typically impedes growth and development, especially when the child lacks a consistent and loving caregiver. NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 57. Unfortunately, for many children who are the victims of complex trauma, there is not only a lack of such a caregiver, but for those children who are trafficked, caregivers are also typically placed in the role of the abuser. See *id.* at 8–9. The effects of complex trauma span all areas of child development, causing problems and delays in physical, emotional, social, behavioral, and educational domains. *Id.* at 5–16. Due to the broad array of issues that can arise from complex trauma, there is no one all-inclusive diagnosis nor treatment to help to alleviate the daily and sometimes lifelong struggles faced by these children. *Id.* at 23–27.

Zukoski explains, “Foster parents are the backbone of the foster care system.”⁶⁰ Even after certification, foster parents are typically required to take a certain number of training hours related to youth and children on a yearly basis.⁶¹

Foster parents in many states are provided with a Bill of Rights during their foster parent training; foster children are then provided with this Bill of Rights upon entering foster care.⁶² The Bill of Rights for Children in Foster Care was ratified in 1973 and then reaffirmed in 1983.⁶³ The preamble to the Bill states, “Even more than for other children, society has a responsibility along with parents for the well-being of children in foster care. Citizens are responsible for acting to ensure their welfare.”⁶⁴ Article 2 of the Bill of Rights specifically addresses the right of each foster child to be nurtured by the foster parents selected to meet the child’s individualized needs, who are subsequently provided with services and support to enable the child to reach his or her potential.⁶⁵ Even though the Bill of Rights is not specifically binding on states or the federal government, governmental agencies often afford great deference to the document created by child welfare professionals, which emphasizes the importance of nurturing environments for children as well as appropriate

⁶⁰ Laura M. Mauro, *Child Placement: Policy and Issues*, in *YOUNG CHILDREN AND FOSTER CARE*, *supra* note 52, at 261, 278; Zukoski, *supra* note 52, at 478.

⁶¹ Zukoski, *supra* note 52, at 482. The number of training hours depends on the level of care and the agency or state requirements. Therapeutic foster parent requirements are higher than other levels and are generally an extra 12 hours per year after initial certification. Telephone Interview by Kelly Busch, employee of Parsons Child and Family Center, M.A. and J.D. candidate, Albany Law School, with Damarise Alexander Mann, Dir. of Foster Care, Parsons Child & Family Ctr. (July 6, 2015). Typically, each foster parent candidate gets an initial 24 to 26 hours of training and an equal number of assessment or observation hours by agency staff. Agencies with TFC components exist nationwide, including Kennedy Krieger Institute and Devereux. See DEVEREUX, <http://www.devereux.org/site/PageServer> (last visited Apr. 1, 2016); KENNEDY KRIEGER INST., <http://www.kennedykrieger.org/> (last visited Apr. 1, 2016).

⁶² See DEP’T OF CHILDREN & FAMILY SERVS., ILLINOIS FOSTER CHILD AND YOUTH BILL OF RIGHTS (2015), <http://www.ilga.gov/legislation/ilcs/ilcs4.asp?DocName=002005200HArt.+1&ActID=245&ChapterID=5&SeqStart=100000&SeqEnd=900000>; STATE OF MICH., DEP’T OF HUMAN SERVS., A HANDBOOK FOR YOUTH IN FOSTER CARE, https://www.michigan.gov/documents/dhs/DHS-Pub-0089_353116_7.pdf (describing the rights that youth in foster care have and the responsibilities that the youth have associated to these rights); *Foster Care Bill of Rights*, NAT’L CONF. ST. LEGISLATURES (Oct. 21, 2015), <http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx#Children>.

⁶³ The Bill of Rights for Children in Foster Care was ratified in Congress Hall, Philadelphia, April 28, 1973, and reaffirmed during the National Foster Care Conference in Norfolk, Virginia, on May 4, 1983. See *Foster Child Bill of Rights*, NAT’L FOSTER PARENT ASSOC., <http://nfpaonline.org/page-1105707> (last visited Apr. 1, 2016); CTR. FOR DEV. OF HUMAN SERVS., RESEARCH FOUNDATION OF SUNY BUFFALO STATE COLLEGE, DECIDING TOGETHER: A PROGRAM TO PREPARE PROSPECTIVE FOSTER AND ADOPTIVE FAMILIES 128 (2008) [hereinafter DECIDING TOGETHER] (on file with author); see also *Foster Care Bill of Rights*, *supra* note 62.

⁶⁴ *Foster Child Bill of Rights*, *supra* note 63.

⁶⁵ See, e.g., SUSAN DOUGHERTY, RIGHTS OF CHILDREN IN FOSTER CARE (2005), <http://www.hunter.cuny.edu/socwork/nrcfcp/downloads/rights-children-foster-care.pdf>.

training and support to the foster parents who house those children.⁶⁶ As the Preamble of the Child's Bill of Rights notes, our society has a responsibility to children as a whole.⁶⁷

Ultimately, the premise of the foster care system is that when it is not safe for children to reside with their own birth families, the ideal setting for most children is in a family-like setting.⁶⁸ A foster family cares for the child temporarily with the ultimate goal that the child will return to the birth family.⁶⁹ If the courts find it is not safe for the child(ren) to reunite with the birth family, or it is not possible to reunite with the birth family, the foster parents are often given the option to adopt the children in their homes.⁷⁰

Ultimately, a child in foster care is entitled to the least restrictive level of care that is available, and if a child is unable to function in a regular foster home, there are other options. Those options include more specialized or therapeutic foster care, which would offer a more structured or specialized therapeutic component.⁷¹

⁶⁶ *Id.*

⁶⁷ *See, e.g., The Children's Bill of Rights*, NEWCIV.ORG (Apr. 20, 1996), <http://www.newciv.org/ncn/cbor.html>.

⁶⁸ *See, e.g., TRACY VERICKER ET AL., URBAN INST., FOSTER CARE PLACEMENT SETTING AND PERMANENCY PLANNING: PATTERNS BY CHILD GENERATION AND ETHNICITY* (2007), <http://www.americanhumane.org/assets/pdfs/children/pc-cwam-ui-fostercarepdf.pdf>.

⁶⁹ *See, e.g., SONJA T. LENZ-RASHID, DEVELOPING PERMANENT, SUPPORTIVE CONNECTIONS WHILE IN CARE: FOSTER YOUTH'S PERSPECTIVES* 7 (2009), <http://www.cfpic.org/pdfs/Permanency-Report-Lenz-Rashid092009.pdf>; U.S. DEP'T OF HEALTH & HUMAN SERVS., CHILD WELFARE INFORMATION GATEWAY, FAMILY REUNIFICATION: WHAT THE EVIDENCE SHOWS (2011), https://www.childwelfare.gov/pubPDFs/family_reunification.pdf. Governmental bodies often pay great deference to standards crafted by child welfare groups such as Child Welfare League of America ("CWLA"). *See, e.g., Frequently Asked Questions*, CWLA, <http://www.cwla.org/our-work/cwla-standards-of-excellence/frequently-asked-questions/> (last visited Apr. 1, 2016) ("[A]s a basis for evaluating services and developing federal regulations that direct practice nationally and internationally.").

⁷⁰ *FAQ, INNER CIRCLE FOSTER CARE & ADOPTION SERV.*, <http://www.fosterfamily.org/faq/> (last visited Mar. 31, 2016); *see also* GA. DEP'T OF HUMAN SERVS., FOSTER CARE IN GEORGIA, http://dfcs.dhs.georgia.gov/sites/dfcs.dhs.georgia.gov/files/related_files/site_page/DFCS.Foster%20Care.5.12.pdf (last visited Mar. 31, 2016).

⁷¹ NAT'L RES. CTR. FOR FAMILY-CENTERED PRACTICE & PERMANENCY PLANNING, INFORMATION ON LEVELS OF CARE (2006), http://www.hunter.cuny.edu/socwork/nrcfcpp/downloads/Levels_of_Care.pdf. In Albany, New York, one such program can be found at Parsons Child and Family Center. According to the Agency Manual (version 2007), the program provides youth with structure and continuity in a family-based setting, utilizing a team of professionals to ensure that the youth receives the treatment needed while in the setting, while striving at all times to achieve permanency through thoughtful planning. Therapeutic foster parents are provided with more intensive training through the agency than regular foster care. The program also includes access to licensed clinicians, psychologists, and psychiatrists who provide therapy, case management services, and consultation. *Foster Care*, TEX. DEP'T FAM. & PROTECTIVE SERV., http://www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care/ (last visited Mar. 31, 2016).

B. The Specifics of the Therapeutic Foster Care Model in the United States

TFC is a family-based form of treatment for children who need a higher level of care. Typically, these homes are tailored to children with emotional challenges and can be less costly than other forms of treatment, such as residential group treatment.⁷² States differ in the nomenclature (some refer to therapeutic homes as specialized homes or some other title) and states also differ in the delivery and set-up of therapeutic foster homes. Generally speaking, however,

[y]outh who cannot live at home are placed in a foster home in which foster parents are trained to provide a structured environment for learning, social, and emotional skills. Youth in the program are monitored at home, in school, and in leisure activity; program personnel work closely with foster parents, and may collaborate with teachers, probation officers, employers, and others in the youth's environment to ensure prosocial learning and behavior.⁷³

As one author describes it, the TFC approach “has been conceived to combine all of the best, family-centered features of traditional foster care with the most current and vigorous youth treatment methods available.”⁷⁴ Another author explains that TFC programs generally have seven primary features. These include:

1. care that is provided in a family setting;
2. a focus on children who have special needs, who would otherwise be placed in more restrictive settings;

⁷² UTA M. WALTER & CHRIS PETR, REPORT #15: THERAPEUTIC FOSTER CARE (2005), <https://kuscholarworks.ku.edu/bitstream/handle/1808/3883/bestpracticesreport15.pdf?sequence=1>; Robert A. Hahn et al., *The Effectiveness of Therapeutic Foster Care for the Prevention of Violence: A Systematic Review*, 28 AM. J. PREVENTATIVE MED. 72, 72 (2005). TFC has been termed Therapeutic Foster Care in many states, but also as specialized foster care or treatment foster care. Christopher B. Estep, *The Relationship Between Therapeutic Foster Parenting Style and Placement Longevity* 24 (2008) (unpublished Ph.D. dissertation, Capella University) (on file with author). The TFC modality started in the United States in the 1950s, but it was not until the 1960s and 1970s when institutionalization of children was widely criticized that TFC became a more robust option for children. *Id.* at 27. In 1974, child welfare advocates won a federal case named *Gary W. v. Louisiana*, 437 F. Supp. 1209 (E.D. La. 1976), which then spurred the State of Louisiana to create a large-scale TFC program as the least restrictive treatment option for those children with emotional and behavioral special needs. Estep, *supra*, at 28. Then the rest of the nation followed Louisiana's lead and began implementing TFC models nationwide. *Id.*

⁷³ Hahn et al., *supra* note 72.

⁷⁴ JOHN CARENEN, SON-UP, SON-DOWN iii (1990).

3. a commitment to individualized and community-based treatment;
4. special and ongoing support and training for foster care parents, who are considered to be members of the treatment team;
5. restriction on the number of foster children placed in the family, generally limiting placement to one or two children;
6. limiting caseworker's caseloads to 10–15 children; and
7. higher reimbursement for foster parents.⁷⁵

TFC is typically a foster home with a family-like setting, but one which includes highly trained foster parents working with mental health professionals.⁷⁶ When these models were initially devised, they were targeted towards children with behavioral disturbances.⁷⁷ Yet, in the preface of the seminal book trilogy about TFC,⁷⁸ the authors state that they aim to “both motivate and guide professionals in the development of state-of-the-art therapeutic foster care programs for not only disturbed and conduct-disordered

⁷⁵ WALTER & PETR, *supra* note 72, at 3; UTA M. WALTER ET AL., BEST PRACTICES IN THERAPEUTIC FOSTER CARE: REVIEW OF NATIONAL LITERATURE AND LOCAL PRACTICES IN THE STATE OF KANSAS i (2003), <https://childrenandfamilies.ku.edu/sites/childrenandfamilies.drupal.ku.edu/files/docs/best%20practices%20in%20therapeutic%20foster%20care.pdf>.

⁷⁶ See, e.g., GA. DIV. OF FAMILY & CHILDREN SERVS., FOSTER PARENT MANUAL 5 (2003), http://dfcs.dhs.georgia.gov/sites/dfcs.dhs.georgia.gov/files/imported/DHR-DFCS/DHR-DFCS_CommonFiles/16875120FosterParentManual2.pdf; 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, 1123–24 (2012) (“Although there are several types of TFC, all programs share similar core qualities, using specially trained foster parents as the primary intervention. Children are usually placed in TFC for about six to nine months, and the TFC parents join a group of professionals who engage in a collaborative individualized plan for the juvenile. Throughout the placement, children and TFC parents receive consistent support from clinicians and other mental health professionals. The families are provided with counseling every week and receive daily contact regarding the child’s progress. An individualized plan allows each youth and family to have clear expectations throughout the program. Furthermore, TFC is a highly structured program that provides consistent monitoring of the child to ensure that the child does not interact with negative influences and that she instead begins participating in pro-social activities. Youth are also provided with skill training, school-based intervention, and academic support.”).

⁷⁷ See generally THERAPEUTIC FOSTER CARE: CRITICAL ISSUES, *supra* note 53. Other countries have developed TFC systems as well, such as England and Australia, with similar theoretical underpinnings. See, e.g., LISA MCCLUNG, THERAPEUTIC FOSTER CARE: INTEGRATING MENTAL HEALTH AND CHILD WELFARE TO PROVIDE CARE FOR TRAUMATISED CHILDREN 20 (2007).

⁷⁸ See THERAPEUTIC FOSTER CARE: CRITICAL ISSUES, *supra* note 53.

youngsters, but also for youngsters and oldsters with other problems.⁷⁹ The TFC model was created to be replicated and expanded.

When we are addressing sex-trafficked children, TFC programs⁸⁰ might be a closer fit than traditional standard foster care programs to start the healing process. The goal of TFC and the desired outcome is for the child to achieve permanency within a family-based living situation where the child is safe, has his or her needs met, and has the opportunity to grow and achieve his or her potential.⁸¹ Children are placed in a therapeutic foster home, while collaborative treatment is provided by a team of professionals and caregivers typically consisting of a mental health counselor, a psychiatrist or a psychologist, the foster parents, and the agency caseworker.⁸² Individual therapy can be provided to the child in order to focus on healing issues from any sexual, emotional, and physical abuse, as well as issues of loss and separation.⁸³ Therapeutic foster parents are given intensive training on helping children cope with trauma, coupled with supportive supervision by trained professionals to help children work on traumatic issues.⁸⁴ The collaborative team fosters an atmosphere where the child can acknowledge feelings, develop self-esteem, and practice open communication.⁸⁵ If NGOs that are already focused upon child sex trafficking could be linked in with these service teams that would be even more ideal.

Studies that examined TFC homes found that even where the child's stay with the therapeutic foster family was short-lived, if the quality of the

⁷⁹ *Id.* at vi.

⁸⁰ Some states utilize different terminology—referring to TFC as “specialized foster care.” For other nomenclature, see, for example, ILL. DEP’T OF CHILD & FAMILY SERVS., FOSTER FAMILY HANDBOOK, ch. 9, at 1 (2014), http://www.illinois.gov/dcf/lovinghomes/fostercare/Documents/FP_Handbook_Section_9_2014.pdf.

⁸¹ See Janet Mann et al., *Critical Issues in Foster Care: Lessons the Children’s Ark Learned from Barbara and Nathan*, 28 ZERO TO THREE 41 (2008).

⁸² See LAURA W. BOYD, STATE POLICY ADVOCACY & REFORM CTR., THERAPEUTIC FOSTER CARE: EXCEPTIONAL CARE FOR COMPLEX, TRAUMA-IMPACTED YOUTH IN FOSTER CARE 1 (2013), <https://childwelfareparc.files.wordpress.com/2013/07/therapeutic-foster-care-exceptional-care-for-complex-trauma-impacted-youth-in-foster-care.pdf>; *Foster Care*, *supra* note 71.

⁸³ See Dannia G. Southerland et al., *What’s the Relationship Got to Do with It?: Understanding the Therapeutic Relationship in Therapeutic Foster Care*, 26 CHILD & ADOLESCENT SOC. WORK J. 49, 50 (2009).

⁸⁴ UTA M. WALTER & CHRIS PETR, *supra* note 72; Hahn et al., *supra* note 72; *Gateway Therapeutic Foster Care*, GATEWAY, <http://www.gway.org/therapeutic-foster-care> (last visited Mar. 31, 2016). New York provides foster parents with what is called MAPP classes, which involve specialized training on issues such as childhood trauma and sexual abuse. TFC parents need to undergo additional training. See *MAPP Programs Instructional Overview*, CTR. DEV. HUM. SERV., <https://www.bsc-cdhs.org/TrainingResources/MAPP/MAPPOverview.aspx> (last visited Mar. 31, 2016).

⁸⁵ See sources cited *supra* note 84.

connection was strong, the foster child still experienced significant benefits.⁸⁶ Because child victims of sex trafficking have endured immense trauma and have such specialized recovery needs, and because therapeutic foster homes are designed to provide a heightened level of care and support to treat such trauma, it follows that this intensive home-like setting would likewise greatly benefit children rescued from sex trafficking.

Predictably, TFC is more expensive than regular foster care placements,⁸⁷ and there are fewer foster parents who are trained and willing to care for special-needs children.⁸⁸ Yet, TFC is still less expensive than residential care, institutionalization, and incarceration.⁸⁹ If funding were increased on both the state and federal levels, and if recruitment for appropriate therapeutic foster parents were prioritized, then the capacity of the TFC system could expand to an adequate level to accommodate child victims of sex trafficking.⁹⁰

⁸⁶ Southerland et al., *supra* note 83, at 60–61.

⁸⁷ New York State Office of Children and Family Service’s (“OCFS”) rates for foster care as of December 2014 show that the costs for regular foster care range from \$22.44 to \$52.99, while therapeutic foster care ranges from \$17.25 to \$100.40. N.Y. OFFICE OF CHILDREN & FAMILY SERVS., STATEWIDE STANDARDS OF PAYMENT (2016), <http://ocfs.ny.gov/main/Rates/FosterCare/Rates/150930-1415-MSAR-Rate-Chart%207-1-2014-to-12-31-2014.pdf/>.

⁸⁸ If the issue of funding is central to a state treating this child as a ward of the state perhaps federal Title IX and IV money can be diverted to reimburse the states. Generally, the federal government provides foster care and child welfare services to unaccompanied refugee minors in the same manner as other foster youth, and they have to do so according to the state’s child welfare standards, practices, and procedures. *See* 45 C.F.R. §§ 400.112, .115, .116 (2015).

⁸⁹ *See id.*; *see also* OFFICE OF CHILDREN & FAMILY SERVS., 15-OCFS-ADM-07, ADMINISTRATIVE DIRECTIVE, MAXIMUM STATE AID RATES (MSARs) FOR FOSTER CARE PROGRAMS AND RESIDENTIAL PROGRAMS FOR COMMITTEE ON SPECIAL EDUCATION PLACEMENTS (2015), http://ocfs.ny.gov/main/policies/external/OCFS_2015/ADMs/15-OCFS-ADM-07%20Commissioners%20of%20Social%20Services%20Executive%20Directors%20of%20Voluntary%20Authorized%20Agencies.pdf (comparing the MSARs for Voluntary Foster Care Agencies Licensed by OCFS for the 2014–2015 Rate Year). The OCFS Administrative Directive lists that the cost of a placement at Berkshire Farm Center and Services for Youth for a Therapeutic Family Boarding Home is \$66.11 versus \$253.60 for a Regular Group Home placement. *Id.* at 12.

⁹⁰ For some background on funding streams, see Note, *The Policy of Penalty in Kinship Care*, 112 HARV. L. REV. 1047, 1051 (1999) (“Relatives may seek maintenance payments through *formal kinship care* by way of the federal foster care program (‘Federal AFDC-FC’). As a condition of receiving federal child welfare funds, each state is required to establish a foster care system for children who are removed from their parents’ homes as a result of abuse or neglect. While each state operates both state and federal foster care programs, the federal program is dually funded. When children who meet federal foster care eligibility requirements are placed in foster homes, the foster care maintenance payments are funded partially by the state government. The federal government matches these funds or pays the remainder.” (emphasis added)). *See also* Levesque, *supra* note 51 (noting that foster care systems are largely run by individualized states while receiving funding and incentives from federal sources). Roger J.R. Levesque states the following:

C. *How Therapeutic Foster Care Can Aid Sex-Trafficked Children*

With a therapeutic foster parent, sex-trafficked children can experience physical safety, emotional safety, patience, and consistency. In terms of physical safety, foster parents can teach children how to avoid placing themselves in positions of danger going forward, and help children work through challenging behaviors that may be a reaction to the trauma. In terms of emotional safety, therapeutic foster parents can model healthy relationships and interactions.⁹¹ In their new environment, children can feel secure in the care of their therapeutic foster parents, free from chaos, violence, and abuse.⁹² Furthermore, the foster parents can act as role models and help these children

Federal legislation directly aimed at supporting and protecting children in foster care is a recent phenomenon. Federal initiatives began with what was to be called the Flemming Rule, which prohibited states from denying Aid to Dependent Children (ADC) benefits to otherwise eligible children if the homes in which they lived were found to be “unsuitable.” The Flemming rule was adopted by the Department of Health, Education and Welfare (HEW) in 1961. That rule mandated that States were either to continue assistance payments while making reasonable efforts to improve the children’s home conditions, or provide the children with alternative living arrangements. Congress encouraged the states to comply with its new mandates by authorizing a program of Federal matching funds for ADC payments for children placed in foster care.

Subsequent amendments, particularly those of the late 1960s, greatly expanded the reach of the program. Major reforms included making the program mandatory for all states, extending payments to children in private, nonprofit institutions, and broadening general eligibility requirements. One result of the legislation was the rapid growth in the number of children being served by the program.

During the 1970s, a number of concerns were raised about the increasing use of foster care. To address these problems, the Adoption Assistance and Child Welfare Act of 1980 was enacted.

Id.

⁹¹ See NAT’L CHILD TRAUMATIC STRESS NETWORK, *supra* note 57 (explaining that a vital role of clinicians is to foster the development of healthy relationships with primary caregivers through the teaching of co-emotional regulation skills); see also Laura A. Rains & Marion S. Forgatch, *Trauma-Informed PMTO: An Adaptation of the Oregon Model of Parent Management Training*, CW360, Winter 2013, at 24, 24 (describing how both the child and the primary caregiver are taught the skills and caregivers reinforce the skills in the home); Joseph Spinazzola et al., *The Heart of the Matter: Complex Trauma in Child Welfare*, CW360, Winter 2013, at 8, 8 (explaining that for children who are placed in programs such as therapeutic congregate care placements, the consistency in the trauma informed response skill set of the caregivers provides daily rehearsals and repetitions of healthy interactions); cf. *Focal Point Complex Trauma*, *supra* note 57, at 6 (stating that without caregivers modeling healthy interactions, sexually abused children may develop the world view that sex is the way to gain intimacy).

⁹² OHIO CHILD WELFARE TRAINING PROGRAM, *supra* note 28, at 2 (instructing foster homes to “Provide Emotional Safety and Promote Well-Being”). Of course, abuse can and does occur in foster care settings as well, but again this Article is focusing upon carefully selected, extensively trained therapeutic foster parents as a model.

learn independent living skills.⁹³ In terms of consistency, therapeutic foster parents, like any other foster parents, would typically have the option of adopting their foster children or serving as their permanent guardians, if the child requests such permanency.⁹⁴

One way that the TFC model has been described underscores why it is appropriate for sex-trafficked youth who have been rescued. Consider this definition of TFC: “A model of care and treatment . . . to meet the needs of children who require the structure that characterizes an institutional program but who could benefit from the richness and normalizing influence of a family environment.”⁹⁵ Psychological research shows that a stable adult figure is key in healing the wounds of traumatized children and ensuring that the children are not re-traumatized.⁹⁶ Consistent and healthy adult role models and support systems also dramatically reduce the long-term effects of childhood violence,⁹⁷ allowing these children to grow into well-adjusted adults.

Child victims of sex trafficking may distort their view of their traffickers seeing them as parental figures or guardians who are taking care of their physical and emotional needs.⁹⁸ This belief on the part of the child victims informs their understanding of relationships, authority, and family. Trafficked children need to be re-taught healthy relationships, and thus the foster child-foster parent relationship can make a unique impact on a child’s life.

⁹³ *Id.* (instructing foster homes of trafficking survivors to be patient).

⁹⁴ See sources cited *supra* note 70.

⁹⁵ Brad Bryant & Robert D. Snodgrass, *Therapeutic Foster Care: Past and Present*, in *TROUBLED YOUTH IN TREATMENT HOMES: A HANDBOOK OF THERAPEUTIC FOSTER CARE 1* (Pamela Meadowcroft & Barbara A. Trout eds., 1990); see also Robert D. Snodgrass & Brad Bryant, *Therapeutic Foster Care: A National Program Survey*, in *THERAPEUTIC FOSTER CARE: CRITICAL ISSUES*, *supra* note 53, at 37, 37; T.J. Kadela, *The Efficacy of Two Service Delivery Models of Therapeutic Foster Care* (2005) (unpublished Ph.D dissertation, University of Texas at Arlington) (on file with author).

⁹⁶ See *Focal Point Complex Trauma*, *supra* note 57, at 5 (stating that supportive relationships are vital to combating complex trauma); Sara Younge, *Treating Child Traumatic Stress: Bearing Witness to Healing*, CW360, Winter 2013, at 31, 31 (stating that the relationship between a traumatized youth and their caregiver is vital to healing); Estep, *supra* note 72, at 1 (citing JUDITH S. RYCUS & RONALD C. HUGHES, *FIELD GUIDE TO CHILD WELFARE* (1998)). “In attachment-focused therapies, the aim is to help children use their carer as a secure base from which they can explore the unhappy and painful aspects of their past and of their present.” McC Lung, *supra* note 77, at 6.

⁹⁷ See *supra* notes 95–96 and accompanying text; see also *Nicholson v. Williams*, 203 F. Supp. 2d 153 (E.D.N.Y. 2002). For a corollary to prostituted women, see Ulla-Carin Hedin & Sven-Axel Mansson, *The Importance of Supportive Relationships in Leaving Prostitution*, 2 J. TRAUMA PRACTICE 223 (2004).

⁹⁸ See *supra* Part II.B.1.

IV. HOW SEX-TRAFFICKED CHILDREN AND ABUSED CHILDREN ARE SIMILAR IN THE TRAUMA ENDURED AND REHABILITATION NEEDED

As asserted earlier, there is a significant overlap and salient nexus between the violence inherent in sex trafficking and family violence or childhood sexual abuse.⁹⁹ It is also important to note that child victims of sex trafficking and child victims of family violence and/or sexual abuse are often one and the same.¹⁰⁰ In other words, sexually abused children often become victims of sex trafficking, and sex-trafficked children are sexually abused by various perpetrators.¹⁰¹ The following sections address the nexus between these victim groups. Part IV.A will survey the similarities in the trauma experienced by both trafficked and abused children. Parts IV.B and IV.C will discuss how foster homes can be adapted to meet the particular needs of sex-trafficked children and special considerations that accompany providing care for victims of sex trafficking or trauma.

A. *Similarities in Trauma*

There are significant similarities in trauma between children who have witnessed or experienced family violence or childhood sexual abuse, and those children who have been trafficked for purposes of prostitution.¹⁰² These similarities include the way in which the perpetrator establishes and exerts his or her control over the child victim, as well as the ways in which the child victim's trauma may manifest.

1. The Perpetrator's Control and Abuse

Scholars, practitioners, and survivors have documented and drawn similarities between the relationships victims of family violence and sex trafficking have with their abusers and perpetrators. These similarities include the perpetrator's isolation of the victim from the victim's family and friends, while normalizing threats, intimidation, and emotional, physical, and sexual

⁹⁹ See *supra* note 49 and accompanying text.

¹⁰⁰ See CLAYTON ET AL., *supra* note 2, at 80 (citing various studies where large percentages of juveniles involved in the sex trade or prostitution reported that a significant contributing factor for their entrance into the trade was sexual abuse).

¹⁰¹ *Id.*

¹⁰² Although this Article is focused solely upon children who have been trafficked and does not enter the debate of whether prostitution overall is violence against women, it is interesting to note that theorists have considered childhood sexual abuse as a precursor to prostitution. PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS, *supra* note 8, at xvi, 172–73. In fact, in 1997, Andrea Dworkin writes that incest serves as a “boot camp” for prostitution as a prelude of male domination. *Id.* at xvi.

abuse. When the abuse is of a child living in a home with a parent who has hurt the child and/or the other parent, severe trauma typically will ensue.¹⁰³

To begin, the tactics of power, control, and violence used by the perpetrators of family and/or sexual violence and traffickers are notably very similar.¹⁰⁴ Perpetrators of violence seek to dominate their victims by asserting power and control over them.¹⁰⁵ Asserting power and control over a victim often times involves a multifaceted approach; child sex abusers, batterers, and traffickers all use various tactics to exert and maintain dominance over their victims.

One foundational tactic frequently used by child abusers, batterers and traffickers alike, is isolation, which may be accomplished by persuading the victim to refrain from disclosing the abuse. When the victim is a child, this tactic has the added effect of fostering within the child victim a sense of hopelessness and helplessness, encouraging dependence on the perpetrator.¹⁰⁶ Another tactic used by both child abusers and child traffickers to reinforce the child victim's subjugation and decrease the likelihood of the victim's escape is to control the child victim's finances and movement (sometimes in the form of transportation).¹⁰⁷ The psychological effects of these tactics on the child victim

¹⁰³ LUNDY BANCROFT ET AL., *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* (2011); KLAIN, *supra* note 3, at 5.

¹⁰⁴ Amy Barasch & Barbara C. Kryszko, *The Nexus Between Domestic Violence and Trafficking for Commercial Sexual Exploitation*, in *LAWYER'S MANUAL ON HUMAN TRAFFICKING*, *supra* note 3, at 83, 84; Dorchen A. Leidholdt, *Prostitution and Trafficking in Women: An Intimate Relationship*, in *PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS*, *supra* note 8, at 167, 174–75.

¹⁰⁵ See, e.g., Christine Stark & Carol Hodgson, *Sister Oppressions: A Comparison of Wife Battering and Prostitution*, in *PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS*, *supra* note 8, at 17.

¹⁰⁶ Hopper & Hidalgo, *supra* note 3, at 193 (“Captivity creates a unique relationship of coercive control between the perpetrator and victim. Perpetrators utilize ‘the organized techniques of disempowerment and disconnection . . . to instill terror and helplessness and to destroy the victim’s sense of self in relation to others.’ As victims become more isolated they grow ‘increasingly dependent on the perpetrator, not only for survival and basic bodily needs, but also for information and even for emotional sustenance.’ The purpose of such psychological coercion is to increase control over other persons. Traffickers provoke feelings of fear, disconnection, dependency, and helplessness in their victims. This supports their ability to exploit others for personal and financial gain.”); Raghavan & Doychak, *supra* note 6, at 583–86.

¹⁰⁷ Ryan Dalton, *Abolishing Child Sex Trafficking on the Internet: Imposing Criminal Culpability on Digital Facilitators*, 43 U. MEM. L. REV. 1097, 1105 (2013) (“Human traffickers depend on a variety of methods to control their victims. Coercive tactics used by traffickers range from incisive psychological manipulation to brutal physical violence. Traffickers develop sophisticated systems of control and isolation to construct a relationship with the victim that leaves no option for escape. These trafficking tactics include withholding the victim’s passport, teaching the victim to fear law enforcement and deportation, and intimidating the victim with physical violence.”).

are so profound that even if the child victim is able to escape the abuser or trafficker, they too often return to the perpetrator.¹⁰⁸

Additionally, abusers and traffickers commonly use both physical and psychological violence to maintain power and control.¹⁰⁹ As addressed above, sex-trafficked children may be raped up to 30 times a day and moved to new locales so that the buyers can have so-called variety with fresh faces.¹¹⁰ Both the buyers and the traffickers routinely employ violence as a means to control their victims.¹¹¹

2. Effects on the Child Victim

Some researchers posit that children who have been sexually abused or witness family violence are not unlike children living in countries at war because their environment is so unpredictable and dangerous.¹¹² As noted

¹⁰⁸ Melissa Dess, *Walking the Freedom Trail: An Analysis of the Massachusetts Human Trafficking Statute and Its Potential to Combat Child Sex Trafficking*, 33 B.C. J.L. & SOC. JUST. 147, 174–75 (2013) (“Proponents of the decriminalization and diversion model commend its provision of social services to victims as well as its recognition of prostituted youth as victims rather than offenders. Critics argue, however, that the law does not go far enough because juveniles can still be criminalized if they do not comply with discretionary judicial standards. Compliance can prove especially difficult for victims because of the psychological control traffickers have over victims. This may lead victims to return to their traffickers on numerous occasions before the cycle is broken, which could lead to the reestablishment of a criminal conviction.”).

¹⁰⁹ Sarah Primrose, Note, *Killing the Messenger: The Intersection Between Sex Trafficking, Planned Parenthood & the Marginalization of Youth Victims*, 22 U. FLA. J.L. & PUB. POL’Y 299, 316–17 (2011) (“Notably, the tactics utilized by pimps bear a striking resemblance to those employed by domestic abusers. Furthermore, females are the most popular target for both domestic abusers and sex traffickers. The relationship between a domestic abuse victim and that of a pimp and his captor include similar ‘tactics of power and control,’ along with methods ‘use[d] to recruit and keep a woman trapped in prostitution.’ The intersection between sex trafficking and domestic violence is particularly notable in the context of ‘mail-order brides.’ In both forms there is an informational inequality along with a lucid power struggle.”); see *Domestic Violence & Human Trafficking*, INTERFACE CHILD. FAM. SERVS., <http://www.icfs.org/assets/pdf/DVandHumanTraffickingFactSheet.pdf> (last visited Mar. 31, 2016).

¹¹⁰ See Stark & Hodgson, *supra* note 105, at 26 (“These women may be forced to ‘sexually service’ up to twenty men a day, which is equivalent to being raped twenty times a day.”); see also SHARED HOPE INT’L, *supra* note 5, at 23. Note that I am using the common but euphemistic term “customer” and “buyer” to refer to a john, and the term “trafficker” to describe any number of pimps who may be involved in the trafficking trade.

¹¹¹ See, e.g., SHARED HOPE INT’L, *supra* note 5, at 23 (“Not only are prostituted women battered by pimps, they are also battered and sexually assaulted by the men who buy them for sex.”).

¹¹² *Id.* at 27; see also KATHLEEN J. MOROZ, UNDERSTANDING THE CURRENT MENTAL HEALTH NEEDS OF CHILDREN EXPERIENCING DOMESTIC VIOLENCE IN VERMONT: RECOMMENDATIONS FOR ENHANCING AND IMPROVING RESPONSES 15 (2005), <http://www.vtnetwork.org/wp-content/uploads/DV-and-Child-Protection-Pub7-Understanding-The-Current-Mental-Health-Needs.pdf>;

earlier in this Article, the revolving door of new abusers in the form of buyers and the constant movement of the child victims of sex trafficking can similarly result in unstable or uncertain environments and circumstances, which in turn leaves the child victims feeling insecure about his or her safety. These traumas can often lead child victims of sex trafficking to experience PTSD, as well as other physical ailments and anxiety disorders, which are all discussed in the following sections.

i. Post-Traumatic Stress Disorder and Its Disproportionate and Profound Impact on Child Victims of Both Abuse and Sex Trafficking

Because a substantially large percentage of sex-trafficked children suffer from PTSD,¹¹³ it is important that any treatment model implemented to help these children is capable of identifying and treating the disorder. PTSD is prevalent among child victims of both sexual abuse and sex trafficking.¹¹⁴ In today's psychological and social science literature, PTSD is commonly associated with both rape trauma and family violence.¹¹⁵ The symptoms of PTSD are serious and may include severe depression, anxiety, phobias, hyper-vigilance, suicidal ideation, and suicide attempts.¹¹⁶

Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 YALE J.L. & FEMINISM 47, 71–73 (1992).

¹¹³ DEAN G. KILPATRICK & BENJAMIN E. SAUNDERS, MED. UNIV. S.C., PREVALENCE AND CONSEQUENCES OF CHILD VICTIMIZATION: RESULTS FROM THE NATIONAL SURVEY OF ADOLESCENTS, FINAL REPORT 27–28 (1997), <https://www.ncjrs.gov/pdffiles1/nij/grants/181028.pdf>; Melissa Farley et al., *Prostitution and Trafficking in Nine Countries: An Update on Violence and Posttraumatic Stress Disorder*, 2 J. TRAUMA PRAC. 33, 56 (2003) (finding that 68% of women in the study met the criteria for PTSD); Mazeda Hossain et al., *The Relationship of Trauma to Mental Disorders Among Trafficked and Sexually Exploited Girls and Women*, 100 AM. J. PUB. HEALTH 2442 (2010).

¹¹⁴ Megan Anitto, *Consent, Coercion, and Compassion: Emerging Legal Responses to the Commercial Sexual Exploitation of Minors*, 30 YALE L. & POL'Y REV. 1, 10–11 (2011); Judith A. Cohen, Lucy Berliner & Anthony Mannarino, *Trauma Focused CBT for Children with Co-occurring Trauma and Behavior Problems*, 34 CHILD ABUSE & NEGLECT 215 (2010) (asserting that both children of abuse and sex trafficking suffer from PTSD). PTSD is a term which was typically associated with and began as a syndrome based on the post-combat experiences of combat veterans. Williamson, Dutch & Clawson Caliber, *supra* note 10.

¹¹⁵ See, e.g., Loring Jones et al., *Post-Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence*, 2 TRAUMA, VIOLENCE, & ABUSE 99, 99 (2001).

¹¹⁶ See AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (5th ed. 2013) (describing the necessary criteria for a mental health professional to make a diagnosis of PTSD and common co-occurring disorders and conditions); see also Judith A. Cohen et al., *Treating Traumatized Children: Clinical Implications of the Psychobiology of Posttraumatic Stress Disorder*, 3 TRAUMA, VIOLENCE, & ABUSE 91, 101 (2002); Hopper & Hidalgo, *supra* note 3, at 206; Jones et al., *supra* note 115, at 112. See generally Rachel Shigekane, *Rehabilitation and Community Integration of Trafficking Survivors in the United States*, 29 HUM. RTS. Q. 112, 127 (2007); *PTSD: Statistics, Causes, Signs & Symptoms*, THE

Studies comparing the experiences of child victims of sexual abuse in relation to victims of other types of trauma have highlighted a heightened prevalence of dissociative and PTSD symptoms in victims of sexual violence and abuse.¹¹⁷ For example, one study found that child victims of rape, torture, and molestation are more likely to sustain a chronic, life-long PTSD diagnosis.¹¹⁸ Other research has revealed that three of the most prominent features of PTSD have been found in both child victims of sex trafficking as well as child victims of sexual abuse, including (1) intrusive re-experiencing of the traumatic event; (2) numbing and avoidance; and (3) hyper-arousal, such as being hyper-vigilant, easily startled, and unable to sleep.¹¹⁹ To cope with these symptoms, it is not uncommon for children of both sex trafficking and sexual abuse to self-medicate with drugs or alcohol, or to detach, disassociate, become numb, or have temporary mental lapses.¹²⁰

ii. Resulting Physical and Psychological Ailments

Trauma affects each person uniquely, but when comparing sex-trafficked children and sexually abused children, much can be learned from the similarities in the physical and psychological effects as a result of their victimization. Many of these children experience what is termed complex trauma or poly-victimization, discussed earlier, which can be described as multiple forms of maltreatment.¹²¹ Because 70% of youth who are already in foster care are characterized as experiencing multiple forms of maltreatment,¹²² and child victims of sex trafficking are abused by multiple individuals and

REFUGE, <http://www.therefuge-ahealingplace.com/ptsd-treatment/effects-symptoms-signs/#Effects-of-PTSD> (last visited Mar. 31, 2016).

¹¹⁷ Lev-Wiesel, *supra* note 12. Children, especially young female children, are at the highest risk of developing PTSD. See MOROZ, *supra* note 112, at 12; BELLERUTH NAPARSTEK, *INVISIBLE HEROES: SURVIVORS OF TRAUMA AND HOW THEY HEAL* (2004).

¹¹⁸ A study conducted with children in the foster care system found that the rates of PTSD diagnosis were 39.7% for rape, 45.2% for being tortured or a victim of terrorists, and 32.8% for molestation. Amy M. Salazar et al., *Trauma Exposure and PTSD Among Older Adolescents in Foster Care*, 48 *SOC. PSYCHIATRY & PSYCHIATRIC EPIDEMIOLOGY* 545, 547 (2012).

¹¹⁹ Lev-Wiesel, *supra* note 12.

¹²⁰ See generally COLIN A. ROSS & NAOMI HALPERN, *TRAUMA MODEL THERAPY: A TREATMENT APPROACH FOR TRAUMA, DISSOCIATION AND COMPLEX COMORBIDITY* (2009). Disassociation is a mechanism that can allow individuals to deal with certain experiences, especially traumatic experiences, and results when sensory information is not perceived in a typical manner. See NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 57.

¹²¹ Lisa Goldblatt, Regina Musicaro & Joseph Spinazzola, *The Commercial Sexual Exploitation of Girls & Young Women*, Webinar PowerPoint Presentation for the National Child Traumatic Stress Network (Sept. 12, 2013), http://www.nctsn.org/nctsn_assets/pdfs/mediasite/09122013_slides.pdf [hereinafter NCTSN Webinar]. It is important to remember that often times sexually abused children and sexually trafficked children are one and the same in that many trafficked children have *also* been abused by a family member.

¹²² *Id.*

endure physical, psychological, and emotional abuse, the parallels can easily be drawn between the already existing foster care population and child victims of sex trafficking.

Medically, children who have been sexually trafficked face many of the same physical health obstacles as a result of their victimization as do children who have been sexually abused. These health issues include sexually transmitted diseases, exhaustion, unwanted pregnancy, miscarriages, and bodily injury such as broken bones and improperly mended injuries.¹²³

Psychologically, both survivors of abuse and sexual enslavement often suffer from depression, obsessive-compulsive disorder, suicidal ideation, and self-harm or self-mutilation.¹²⁴ Children who witness or experience violence or sexual abuse can also experience anxiety manifested by social withdrawal, behaviors indicative of “acting out,” bedwetting, and elimination disorders.¹²⁵ Arguably, this is true of many children undergoing repetitive trauma, including trafficked children.¹²⁶

¹²³ TIP REPORT 2007, *supra* note 20, at 28 (“The commercial sexual exploitation of children has devastating consequences for minors, which may include long-lasting physical and psychological trauma, disease, including HIV/AIDS, drug addiction, unwanted pregnancy, malnutrition, social ostracism, and possibly death.”); Stark & Hodgson, *supra* note 105, at 24 (“Like battered women, prostituted women seek emergency care for broken bones, burns, fractured skulls, and other physical injuries.”).

¹²⁴ See Williamson, Dutch & Clawson Caliber, *supra* note 10 (“While victims of human trafficking can suffer from a range of mental health problems, the most prominent and those for which there is significant research documenting their presentation tend to be anxiety disorders, mood disorders, dissociative disorders, and substance-related disorders.”).

¹²⁵ The technical names are enuresis and ecropesis. See *Child Abuse – Sexual*, N.Y. TIMES, www.nytimes.com/health/guides/disease/child-abuse-sexual/overview.html (last visited Apr. 1, 2016).

¹²⁶ Trafficking victims are very often living in a state of fear, which can leave them in a chronic state of anxiety. This state of fear often leads to PTSD in victims who can then develop dissociative disorders, anxiety disorders, depression and substance abuse. It is the repetitive exposure to being sexually trafficked, especially at a young age that attributes to these complications. See Angela A. Jones, *Post-Traumatic Stress Disorder and Victims of Human Sex Trafficking: A Perpetuation of Chronic Indignity*, 4 INTERCULTURAL HUM. RTS. L. REV. 317, 327–28 (2009); Hussein Sadruddin, Natalia Walter & Jose Hidalgo, *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL’Y REV. 379, 405 (2005). One especially horrific story illustrates this point:

The average age of a trafficked victim now still is 12 to 14 years old. There was a trafficker, he is one of the head of the Mexican cartels in prison in San Antonio, I believe, it is Texas. And he was saying that they prefer children between the ages of 12 and 14 because it only takes—rather than taking 2 weeks to break their spirit, it only takes about a week of gang rape and sodomy before their—and these are his words, “Their eyes go blank and you know they’re good to go, there’s nothing left. And you’ve destroyed somebody for the rest of their lives. There’s no way to put that back together.”

Kate Transchel, *Human Trafficking IS Modern-Day Slavery: Slavery in the U.S. and Around the World*, CAL. ST. U., CHICO 49, <http://rce.csuchico.edu/sites/default/files/professional-development/connect-learn->

The overlapping effects of trauma experienced by victims of sex trafficking and victims of family violence and/or sexual abuse suggest that programs already in place for child victims of family violence may serve as an effective treatment for child victims of sex trafficking. The underlying principles of a therapeutic, trauma-informed level of foster care is a viable alternative for the rehabilitation of trafficked children. Additional training could prepare existing therapeutic foster care parents to effectively handle the unique challenges faced by child victims of sex trafficking.

B. Enhancing Therapeutic Foster Homes to Serve Child Victims of Sex Trafficking

In order to accommodate trafficking survivors in the current therapeutic foster care system, foster parents need to be carefully selected, trained, and prepared. Part of this preparedness is raising awareness about the issues of child sex trafficking.¹²⁷ Along with the usual challenges of preparing foster caregivers, many people are uninformed or poorly informed about the issue of sex trafficking, its dynamics, and its effects on victims.¹²⁸ There are specific issues inherent in sex trafficking that should be addressed with the caregivers in addition to the host of regular recommendations common to all foster care preparation.

These additional considerations include the serious and severe physical and psychological effects trafficking has had on the victim,¹²⁹ a heightened risk of substance abuse as a means of self-medicating,¹³⁰ as well as a myriad of social and emotional disorders discussed in Part IV.A.¹³¹

In addition to techniques or skills that can be taught to foster parents taking in child victims of sex trafficking, the perceptions and feelings of the foster family itself will have an impact on the child victim's healing. Empathy is a human response which benefits any child in need. In the case of the trafficked child, it is crucial. Research suggests that training techniques such as training videos or small group training sessions may help foster parents empathize with a child who has endured sex trafficking.¹³²

engage/MediasiteMaterials/Human%20Trafficking%20IS%20Modern%20Day%20Slavery.pdf (last visited Mar. 31, 2016).

¹²⁷ OHIO CHILD WELFARE TRAINING PROGRAM, *supra* note 28, at 1–2.

¹²⁸ *Id.*

¹²⁹ *See supra* Part IV.A.2.

¹³⁰ *See* Williamson, Dutch & Clawson Caliber, *supra* note 10 (“The most common presentations for victims of child sexual exploitation are substance-related disorders . . .”).

¹³¹ *See supra* Part IV.A; Stark & Hodgson, *supra* note 105.

¹³² Mindy Loiselle et al., *Care for Trafficked Children*, BRIDGING REFUGEE YOUTH CHILD. SERVS. 3 (Apr. 2006), <http://www.brycs.org/documents/upload/CareForTraffickedChildren.pdf> (“Preparation of foster care-givers for response to the particular heartache, fear, and hope of a trafficked child can occur through the use of videos about human trafficking, both for sexual

C. Special Considerations for Families Considering Foster Children Who Have Experienced Sexually Based Trauma

While not unique to sex-trafficked children, the combination of behaviors exhibited post-rescue is generally related to trauma. Among the common behaviors exhibited are numbing, denial, flooding, isolating, somatic complaints, eating disorders, irritability, excessive fear, inability to articulate needs, dependency issues, and aggression.¹³³

Potential foster parents might fear that a child victim of sex trafficking could be hyper- or over-sexualized or may sexually abuse other children in the home.¹³⁴ Some researchers have noted that trafficking victims often convert their feelings of powerlessness to feelings of being powerful by playing the role

exploitation and labor. It can also occur by sharing general education about human trafficking, or by bringing in resource people who have experience with trafficked children. Cultivating empathy based on the particulars of human trafficking will be an asset in effective foster care.”).

¹³³ See AM. PSYCHIATRIC ASS’N, *supra* note 116 (describing the necessary criteria for a mental health professional to make a diagnosis of PTSD and common co-occurring disorders and conditions); see also U.S. DEP’T OF HEALTH & HUMAN SERVS., GUIDANCE TO STATES AND SERVICES ON ADDRESSING HUMAN TRAFFICKING OF CHILDREN AND YOUTH IN THE UNITED STATES 6 (2013), <http://www.acf.hhs.gov/programs/cb/resource/human-trafficking-guidance> [hereinafter GUIDANCE TO STATES] (follow “Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States” hyperlink) (“In turn, victimization in sexual exploitation increases the likelihood that one will experience symptoms of trauma. Longer and more severe experiences with trafficking can lead to higher levels of mental health problems, including symptoms of posttraumatic stress disorder (PTSD), that youth exhibit post-trafficking. Importantly, symptoms of PTSD remain high regardless of the amount of time since trafficking, indicating that the traumatic impacts of trafficking can endure over time for victims if untreated.”); Charles A. Phipps, *Children, Adults, Sex and the Criminal Law: In Search of Reason*, 22 SETON HALL LEGIS. J. 1, 83–84 (1997) (“It has long been intuitively understood that sexual violation of children has devastating immediate psychological consequences. Modern scientific researchers identify a long list of potential negative consequences of abuse, such as: ‘fears, anxiety, phobias, sleep and eating disturbances, poor self-esteem, depression, self-mutilation, suicide, anger, hostility, aggression, violence, running away, truancy, delinquency, increased vulnerability to revictimization, substance abuse, teenage prostitution, and early pregnancy.’ Because this list is generic, and nearly half of abused children may display none of these symptoms, researchers are justifiably hesitant to identify any behavior as diagnostic of abuse. Nonetheless, many outcomes are found to be consistently more prevalent in abused than non-abused children.”).

¹³⁴ See KLAIN, *supra* note 3, at 27 (“[P]rostitution-involved youth . . . often try to recruit other children into prostitution while in the shelter.”). *But see* U.S. DEP’T OF HEALTH & HUMAN SERVS., EMERGING PRACTICES WITHIN CHILD WELFARE RESPONSES (May 2013), https://www.acf.hhs.gov/sites/default/files/assets/briefing_spotlight_b.pdf. For an explanation of “oversexualization,” see *infra* note 137. Connecticut has a program in which it trains the foster care parents skills and ways to detect issues with the children in order to help them. Specifically, “The Connecticut Department of Children and Families, trains foster care parents and caseworkers in care facilities and other therapeutic settings on warning signs of trafficking, its dangers and risks, and ways to facilitate engagement with youth.” *Id.*; DECIDING TOGETHER, *supra* note 63, at 143.

of seducer.¹³⁵ In this role, these children may not envision themselves as needing a nurturing home, but instead they may desire to control their own situation.¹³⁶ It is not uncommon for these children to be hyper- or over-sexualized,¹³⁷ presenting a danger of sexual abuse to other children in the home.¹³⁸ Yet, potential foster parents' concerns that a foster child will be hyper-sexual is not unique to situations involving child victims of sex trafficking: hyper-sexualization is also a common concern of foster parents who are thinking about fostering any sexually traumatized child. Thus, there may be no distinction between the two groups in this regard. That said, concerns that child victims of sex trauma might exhibit hyper-sexual or seductive behavior within foster homes should be treated seriously and sensitively when considering whether or not to place a child victim of any sexual trauma within a home where other vulnerable children are placed.¹³⁹

Even though the two sets of children (sex-trafficked children and sexually abused children) exhibit similar behavior as a result of their trauma,

¹³⁵ See NAT'L CHILD TRAUMATIC STRESS NETWORK, *supra* note 57, at 14 (describing the potential for sexually abused youth who have both witnessed and experienced sex as a method of gaining control over another individual and potentially lack the understanding and experience of true and honest intimacy, to use sex as a method to gain a sense of control or love); see also Alexandra Cook et al., *Complex Trauma in Children and Adolescents*, 35 PSYCHIATRIC ANNALS 390, 394 (2005); Mark A. Ownbey et al., *Behavior-Specific Effects of a Foster Family Treatment Program for Children with Serious Sexual Behavior Problems*, 18 CHILD & ADOLESCENT SOC. WORK J. 417, 418–19 (2001).

¹³⁶ *Focal Point Complex Trauma*, *supra* note 57, at 6; *Human Trafficking: What Foster Parents Should Know*, FOSTERING PERSP., May 2014, at 1, 13, <http://www.fosteringperspectives.org/fpv18n2/FPv18n2.pdf?pdf=FPv18n2.pdf> (suggesting foster parents “be ready to reframe” when dealing with trafficked children in their home who “see themselves as strong-willed survivors” and are defiant).

¹³⁷ See Jake M. Najman et al., *Sexual Abuse in Childhood and Sexual Dysfunction in Adulthood: An Australian Population-Based Study*, 34 ARCHIVES OF SEXUAL BEHAV. 517, 518 (2005) (“Oversexualization may be characterized by an increase in the frequency and number of sexual partners, lower rise of risk-reducing contraceptives, and a greater likelihood of participation in commercialized sex and prostitution.”). See generally CLAYTON ET AL., *supra* note 2, at 81.

¹³⁸ *Focal Point Complex Trauma*, *supra* note 57, at 6; Ownbey et al., *supra* note 135, at 418–19.

¹³⁹ MICHAEL A. COLLORA ET AL., A PRACTICAL GUIDE TO INTRODUCING EVIDENCE IN MASSACHUSETTS § 9.4.4(b) (2015) (“[T]here are certain behavioral symptoms that are commonly displayed by children who have been sexually abused. These include sexualized behavior, knowledge of adult sexual functions beyond one’s years, fears and anxieties relating to body parts, or people or places involved in the sexual abuse.”); see ASS’N FOR THE TREATMENT OF SEXUAL ABUSERS, REPORT OF THE TASK FORCE ON CHILDREN WITH SEXUAL BEHAVIOR PROBLEMS 26 (2006); Amy J. L. Baker et al., *Youth with Problematic Sexualized Behaviors in the Child Welfare System: A One-Year Longitudinal Study*, 17 SEXUAL ABUSE 391, 392 (2005); Thomas D. Lyon & Johnathan J. Koehler, *The Relevance Ratio: Evaluating the Probative Value of Expert Testimony in Child Sexual Abuse Cases*, 82 CORNELL L. REV. 43, 68 (1996); Lisa M. Swisher et al., *Children with Sexual Behavior Problems*, 59 JUV. & FAM. CT. J. 49, 56 (2008).

they may be perceived differently by both foster parents and society at large.¹⁴⁰ Perhaps while children who have been sexually abused are seen as victims and in need of protection, children who are prostituted could be viewed with disdain.¹⁴¹ As addressed earlier, to ensure this mindset does not prevent foster families from taking in trafficked children, we must provide foster parents with appropriate education and awareness of the effects of sexual trauma in general.

Child victims of sexual trafficking may also experience significant difficulty in adjusting to structured programs with parental figures. “The trafficked child has often led a chaotic and *unsystematic* life (for example, being moved every few weeks), or been subject to a rigid and destructive order.”¹⁴² Notably, “[t]he trafficked child has usually been displaced by very personal experiences, and, because she often attaches to her trafficker, she is not always convinced that what has happened to her is disordered. The trafficked child has often been betrayed by family, and certainly by adults she trusted.”¹⁴³ Yet this is not so distinct from a child who has been betrayed by his or her family through sexual abuse. Sexually abused children and trafficked children share a common type of trauma, a type of suffering, and both need a similar kind of healing. They both certainly need empathy, safety, shelter, consistency, medical care, and fundamental components to living.

V. POTENTIAL OBSTACLES TO HEALING SEX-TRAFFICKED CHILDREN IN THERAPEUTIC FOSTER HOMES

Despite the significant correlations between victims of sex trafficking and victims of family or sexual abuse, there are also some differences between the groups that need to be addressed when considering sex-trafficked children accessing foster care services. Some of these considerations—addressed in Sections A through E below—need to be taken into account when attempting to tailor foster care programs to the needs of trafficking victims. Even further, some would criticize the entire foster care system as failing to provide a safe place for children in general, never mind a child victim of sex trafficking. That overall critique is addressed in Section F below.

A. *Cultural and Situational Considerations*

Children who were trafficked into the United States from other countries have quite literally been displaced without anything to aid them in the

¹⁴⁰ Raghavan & Doychak, *supra* note 6, at 586.

¹⁴¹ *See id.*

¹⁴² Loisel et al., *supra* note 132, at 4.

¹⁴³ *Id.*

cultural transition inherent in moving from one culture to another.¹⁴⁴ Language barriers remain, as do issues of culture shock or disconnectedness due to a lack of familiarity with people, food, or customs. This disconnectedness can make these children feel additional isolation above and beyond traumas associated with their abuse.¹⁴⁵ Further, the fear of deportation often experienced by being undocumented may cause foreign-born trafficking victims to be fearful of seeking medical and legal assistance, which exacerbates isolation and prevents them from accessing needed services.¹⁴⁶ Because of the numerous cultural barriers that may be present, any services offered to these children need to be culturally competent and culturally sensitive. In this regard, all parents in a therapeutic foster home must be provided with specialized training and education about trafficking prior to the child's placement in their home.¹⁴⁷

In a similar vein, “the *subculture* of human trafficking should be considered. Foster parents[] should be fully briefed on the criminal and clandestine nature of trafficking. Victims of human trafficking are often conditioned to an ‘underworld’ mentality. Their understanding of survival and relationships derives from this.”¹⁴⁸

For many child victims of sex trafficking, domestic or foreign-born, the future looks bleak. Odanadi, an agency in India that works to rehabilitate victims of sexual trafficking, estimates it takes a minimum of three to four

¹⁴⁴ Linda A. Piwowarczyk, *Our Responsibility to Unaccompanied and Separated Children in the United States: A Helping Hand*, 15 B.U. PUB. INT. L.J. 263, 281 (2006) (explaining the importance of a child's culture in developmental descriptions).

¹⁴⁵ Some researchers talk about a “wall of silence” where children find it difficult to talk about the abuse and exploitation they experienced, whether because of language barriers or fear—or as a way to maintain control and agency. On the other hand, there are providers who cannot fathom the horrific experiences that the child reveals. See Jenny J. Pearce, *Working with Trafficked Children and Young People: Complexities in Practice*, 41 BRITISH J. SOC. WORK 1424 (2011).

¹⁴⁶ *Id.*

¹⁴⁷ This could apply to children who are in the United States but speak another language at home. Cultural competency is imperative in any kind of foster care—both by the foster parents and the foster care workers. As anthropologist Jill Korbin defines the concept of cultural competence, it is not “a singular entity, it is many different things. [It] most often refers to practice that is geared towards knowledge of and skills in working with cultural groups other than one's own.” Jill E. Korbin, *Culture and Child Maltreatment: Cultural Competence and Beyond*, 26 CHILD ABUSE & NEGLECT 637, 639 (2002).

¹⁴⁸ Loiselle et al., *supra* note 132. Many would argue that homeless youth who have engaged in “survival sex” also experience similar traumas and restrictions. Again, many of these children may have emerged from the foster care system, or have run away or have been “thrown away.” There is still an obligation to care for these homeless youth found on the streets. See Marya Viorst Gwadz et al., *The Initiation of Homeless Youth into the Street Economy*, 32 J. ADOLESCENCE 357, 358 (2009); see also Tatiana N. Balachova et al., *Street Children in Russia: Steps to Prevention*, 18 INT'L J. SOC. WELFARE 27, 30 (2009) (explaining that in Russia, children living on the street have little ties to supportive adults and services, learn to work to live, and are likely to become at risk for sexual abuse, criminal inclinations, substance abuse issues, and prostitution).

years to rehabilitate trafficked children.¹⁴⁹ A report for the National Center for Missing and Exploited Children stated that 71% of trafficked children have suicidal ideations.¹⁵⁰ Similarly, Dr. Kate Transchel of California State University, Chico, found that even after being rescued, a high number of trafficked children will attempt suicide.¹⁵¹

B. Methodology and Therapy Considerations

Individual psychotherapy, while common in the United States, particularly as part of a therapeutic foster care setting, may be disarming for children who are not familiar with such treatment. A trafficking victim's country of origin may reject so-called Western-style methods of therapy, such as individualized psychotherapy or group therapy, and see such services as foreign, culturally inappropriate, or even stigmatizing.¹⁵²

Similarly, group therapy is a commonly used form of therapy in conjunction with rehabilitative services for victims of family or sexual abuse.¹⁵³ Though peer support groups can have success in helping survivors of childhood

¹⁴⁹ Pritha Sen, *Combating Human Trafficking Through Social Policing* 6 (Dec. 16, 2006) (unpublished manuscript), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=981487.

¹⁵⁰ KLAIN, *supra* note 3, at 8.

¹⁵¹ Transchel, *supra* note 126, at 13.

¹⁵² “Western-style therapy” is the traditional psychotherapist-patient counselling services that we see commonly in the United States (as opposed to meditation, acupuncture, mind over matter, seen more commonly in non-Western cultural contexts). See Alexandria Argenti-Pillen, *The Discourse on Trauma in Non-Western Cultural Contexts: Contributions of an Ethnographic Model*, in *INTERNATIONAL HANDBOOK OF HUMAN RESPONSE TO TRAUMA* 87 (Arieh Y. Shalev et al. eds., 2000); Rowena Fong & Jodi Berger Cardoso, *Victims of Human Trafficking: Dealing with Issues of Culturally Competent Practices and Services*, Paper Presented at the Study of Social Problems Conference, in Boston, Mass. (Aug. 1, 2008). There are other types of services that can assist young traumatized children who may not be as comfortable with traditional therapy. Love146.com, for example, built “[a] tree house [that] is regularly the venue for therapy sessions. A volleyball court is available to play on. There’s even a punching bag for children to work out their aggression.” *Annual Report 2014–2015*, LOVE146, <https://love146.org/annual-report-2014-15/> (last visited Mar. 31, 2016).

Healthcare providers should remember that every culture has a distinct framework or perspective about mental health and, as a result, distinct beliefs about the benefits of seeking mental health services. Counseling, in general, is a predominantly western practice and in some cultures folk healing, healing rituals, and secret societies are the commonly accepted forms of healthcare provision.

Williamson, Dutch & Clawson Caliber, *supra* note 10.

¹⁵³ Caroline W. Jacobus, *Legislative Responses to Discrimination in Women’s Health Care: A Report Prepared for the Commission to Study Sex Discrimination in the Statutes*, 16 *WOMEN’S RTS. L. REP.* 153, 223 (1995) (“Treatment must emphasize empowerment of the individual and a shedding of attitudes that perpetuate victimization. The establishment of a safe and trusting therapeutic relationship may require special care with a victim whose basic trust in relationships has been brutally attacked by harassment. Group therapy has been found to be especially effective, though individual therapy may be needed to address specific personal issues.”).

violence, some researchers argue that group therapy can be counterproductive as an early intervention tool for some survivors of sex trafficking. Because sex traffickers often create an environment of competition and loyalty among their victims by using favoritism to divide them, group therapy situations can sometimes be unproductive.¹⁵⁴

In terms of therapeutic intervention, “[d]iscussions of sexuality are often foreign . . . [or] may trigger painful memories of the trafficking. Alternatively, this type of discussion can be a corrective experience which underscores the differing choices they have in the U.S.”¹⁵⁵ Many cultures would reject, stigmatize, or shame children for having sex outside of marriage or for engaging in sexual activity while being trafficked, even though the sexual behavior was hardly voluntary. Those who work with such children, including the therapeutic foster parents, need to be culturally aware and culturally sensitive to these issues.

Researchers have discovered that to combat the above-mentioned barriers, it may be best to instead utilize creative therapy such as art, music, or dance to assist youth who have been sex-trafficked.¹⁵⁶ Such therapy has proven to be especially successful with younger children.¹⁵⁷ Some programs—like the Indian agency for sex-trafficked survivors, Odanadi—find that both counseling programs and activities geared toward the self-esteem of the victims are helpful.¹⁵⁸ Survivors of sex trafficking at Odanadi are exposed to “various

¹⁵⁴ Hopper & Hidalgo, *supra* note 3, at 196–97 (“Traffickers may show favoritism, pitting victims against each other and creating infighting. This ensures that there will not be power in the group for resistance. In one case of sex trafficking, gang members ‘fell in love’ with certain victims and offered them special treatment, giving them additional food, money, and ‘privileges’ such as sitting outside in the sun. The victim group may also create pressures to conform. For instance, in some large trafficking rings, traffickers create a hierarchy within the group so that victims can rise in the ranks through compliance. In this case, some victims assert control over others who are lower in the hierarchy, acting as enforcers for the traffickers.”); Jacobus, *supra* note 153, at 151–52; Raghavan & Doychak, *supra* note 6, at 585.

¹⁵⁵ Loïselle et al., *supra* note 132, at 7.

¹⁵⁶ See OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN/SEX TRAFFICKING 10 (2014), <http://www.ojjdp.gov/mpg/litreviews/CSECSexTrafficking.pdf>; Vasile Botnaru & Liliana Barbarosie, *Helping Victims of Sexual Trafficking Find the Courage to Recover*, RADIO FREE EUR. RADIO LIBERTY (Sept. 8, 2008), http://www.rferl.org/content/Moldovan_Psychologist_Helps_Victims_of_Sexual_Trafficking_Find_Courage_To_Recover/1197143.html. See generally AM. DANCE THERAPY ASS’N, <http://www.adta.org/> (last visited Apr. 1, 2016).

¹⁵⁷ Leslie G. Eaton et al., *A Review of Research and Methods Used to Establish Art Therapy as an Effective Treatment Method for Traumatized Children*, 34 ARTS PSYCHOTHERAPY 256, 257 (2007) (“This gap in the literature is particularly unfortunate because many art therapists believe that the process of art therapy is especially successful when it is used with their youngest clients, because children are more willing to partake in imaginative articulation than adults.”).

¹⁵⁸ Neuroscience suggests expressive therapies are quite helpful for traumatized youth. See Bonnie Bernstein, *Dancing Beyond Trauma: Women Survivors of Sexual Abuse*, in DANCE AND OTHER EXPRESSIVE ART THERAPIES 41 (Fran J. Levy ed., 1995); Phoebe Dufrene, *Art Therapy and the Sexually Abused Child*, 47 ART EDUC. 6, 7 (1994) (“Children are more comfortable

therapies, like dance, theater [and] psychiatric counseling and [are] encourage[ed] . . . to think positive.”¹⁵⁹ Another unique and successful treatment model comes out of Sanctuary for Families in New York City, where trafficking survivors are offered cooking and nutrition classes to encourage independent living and self-care skills while also providing therapeutic services.¹⁶⁰ Important services offered in recovery may include those that promote the development of independent living skills and that help survivors overcome economic and educational disadvantages caused by years of being enslaved.¹⁶¹

For those survivors concerned about the stigma of therapy or for whom traditional Western-style therapy is unfamiliar or uncomfortable, some of these alternative therapies, such as dance or theater, can be delivered without such a barrier. With appropriately trained foster parents and partners, services like these could be provided to sex-trafficked youth in therapeutic foster care.

Researchers have identified an additional, fairly effective therapy for sexually abused children that is focused upon individual therapy in tandem with parent-child therapy sessions.¹⁶² This therapy, called Trauma-Focused Behavioral Cognitive Therapy, has had decent results in addressing PTSD in sexually abused children.¹⁶³ It would most likely necessitate re-tooling for child trafficking victims, who are often long estranged or distant from their birth

drawing pictures related to traumatic events than verbalizing about such experiences.”); Susan J. Kelley, *The Use of Art Therapy with Sexually Abused Children*, 22 J. PSYCHOSOCIAL NURSING & MENTAL HEALTH SERVS. 12 (1984); P. Gussie Klorer, *Expressive Therapy with Severely Maltreated Children: Neuroscience Contributions*, 22 ART THERAPY 213, 216 (2005); Terry Pifalo, *Jogging the Cogs: Trauma-Focused Art Therapy and Cognitive Behavioral Therapy with Sexually Abused Children*, 24 ART THERAPY 170 (2007); Terry Pifalo, *Pulling out Thorns: Art Therapy with Sexually Abused Children and Adolescents*, 19 ART THERAPY 12 (2002).

¹⁵⁹ Sen, *supra* note 149.

¹⁶⁰ See Erica Pearson, *Survivors of Sex Trafficking Learn Cooking and Nutrition Skills at Workshop*, N.Y. DAILY NEWS (May 12, 2014, 1:44 AM), <http://www.nydailynews.com/new-york/survivors-sex-trafficking-learn-cooking-skills-workshop-article-1.1788641>; Interview with Dorchen Leidholdt, Dir., Ctr. for Battered Women’s Legal Servs., Sanctuary for Families, at United Nations (Apr. 2014).

¹⁶¹ See, e.g., Lisa A Kramer, *Emotional Experiences of Performing Prostitution*, in PROSTITUTION, TRAFFICKING AND TRAUMATIC STRESS, *supra* note 8, at 187, 196. Yet another example of a non-traditional therapy is the use of groups to discuss immigrants’ families. This eventually allows the participants to become more comfortable speaking aloud in a group setting and can lead to further self-disclosure. Telephone Interview with Nora Cronin, Manager, N.Y. State Response to Human Trafficking Program, N.Y. State Office of Temp. & Disability Assistance (Feb. 4, 2016) (discussing the non-traditional therapeutic approaches for cultural sensitivity occurring at the New York Asian Women’s Center located in Queens, New York).

¹⁶² Fong & Berger Cardoso, *supra* note 30, at 314. Additionally, there are multiple therapeutic models which can be helpful for these children, particularly focusing upon goals such as symptom reduction, destigmatization, increasing self-esteem and self-concept, and prevention of future abuse. Lev-Wiesel, *supra* note 12, at 667.

¹⁶³ Lev-Wiesel, *supra* note 12, at 667–68.

parents, although therapeutic foster parents could potentially adopt this role by attending the parent-child therapy sessions.

C. *Challenges in a Victim's Resistance to Help*

As one successful agency combating sex trafficking, Love146, explains, rescues may not always be “welcomed” due to the fact that a “‘rescue’ can be an incredibly disorienting experience for a victim.”¹⁶⁴ Many young victims who are exploited commercially fear or mistrust law enforcement and strangers.¹⁶⁵ “One girl was told by her rescuers, ‘We have a safe place for you with help and services,’ to which she responded ‘[I]ast time someone said that it didn’t turn out so well.’”¹⁶⁶ When rescued, many trafficking victims feel anxious because they are being removed from something that “has become familiar and predictable” to them.¹⁶⁷ This anxiety grows if the child does not fully comprehend or accept that he or she is indeed a victim of trafficking.¹⁶⁸ In other words, many children will not self-identify as sex-trafficked.¹⁶⁹ This may be the result of fear instilled by the relationship with the trafficker or a warped sense of self that may arise as a defense mechanism to ensure self-preservation.¹⁷⁰ Often these children experience what is termed “trauma-bonding”—similar to what we think of as Stockholm Syndrome, where the victims become bonded to their traffickers.¹⁷¹ Some victims identify themselves as consensual participants in the sex trade after years of being trafficked.¹⁷² The sex trade may have led the children to feel powerful instead of powerless, and therefore, there is a resistance to accessing help.¹⁷³ In terms

¹⁶⁴ *Common Myths*, LOVE146, <https://www.love146.org/slavery/common-myths/> (last visited Mar. 31, 2016).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ In domestic violence cases, this is actually often a hurdle as well, as survivors often do not self-identify as victims of domestic violence, or they have been told they can do nothing to access help or legal avenues.

¹⁷⁰ Raghavan & Doychak, *supra* note 6, at 583–86.

¹⁷¹ NCTSN Webinar, *supra* note 121.

¹⁷² *See* Raghavan & Doychak, *supra* note 6, at 583–85.

¹⁷³ Krystle M. Fernandez, *Victims or Criminals? The Intricacies of Dealing with Juvenile Victims of Sex Trafficking and Why the Distinction Matters*, 45 ARIZ. ST. L.J. 859, 874 (2013) (“[A] judge . . . needs to be well trained in the complexities of dealing with trafficking victims. A judge would need to expect initial resistance, stubbornness, rebellion, relapse, and potential hostility or apathy toward help or services. . . . Just because the court has decided that the minor is a victim of sex trafficking does not mean that the minor sees herself as such and is now willing and eager to participate in treatment services. Each victim comes with a specific set of needs and history. Thus, no blanket rule could be adopted that could fairly apply to every victim in regards

of foreign-national sex-trafficked children, some see themselves as adults based upon certain cultural beliefs they may hold.¹⁷⁴ Overall, because of their sexual misuse by their traffickers, many sex-trafficked children have skewed ideas about love, relationships, and sexuality.¹⁷⁵ As one rehabilitation provider explains:

Many of the girls are from cultures in which they might have children or be married earlier than would generally be considered a norm in the US. A number of the girls had been pregnant before coming to the program and/or had left children behind in their home countries, which can lead to being more sexual in either a voluntary or trauma-related manner.¹⁷⁶

D. Challenges in Identifying Victims of Trafficking

In terms of identifying victims, it is not always apparent who is a victim of sex-trafficking. There are multiple social service providers who can be trained to identify victims of trafficking, even if the victims do not self-identify.¹⁷⁷ Specifically, the Building Child Welfare Response to Child Trafficking project (the “Project”) emphasizes that social services providers are in a solid position to identify survivors of sex trafficking.¹⁷⁸ The Project, concerned with the narrow definitions of child neglect under the Federal Child Abuse Prevention and Treatment Act, began to administer human trafficking trainings for child welfare professionals.¹⁷⁹ The Project administered a pre- and post-test at each training.¹⁸⁰ The test asked the child welfare professional, “Do you think you have ever encountered a victim of human trafficking?”¹⁸¹ There was a 200% increase in affirmative answers to this question between the pre-test administered before the training and the post-test administered after the

to what ‘cooperation’ or ‘resistance’ look like, or even in terms of ‘success’ or ‘failure.’”); *see also* *Human Trafficking: What Foster Parents Should Know*, *supra* note 136.

¹⁷³ NCTSN Webinar, *supra* note 121.

¹⁷⁴ Loisel et al., *supra* note 132, at 7.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ *See* U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 13 (2013), <http://www.state.gov/documents/organization/210737.pdf>; *see also* Laura Simich et al., *Improving Human Trafficking Victim Identification—Validation and Dissemination of a Screening Tool*, VERA INST. OF JUST. 244–46 (June 2014), <http://www.vera.org/sites/default/files/resources/downloads/human-trafficking-identification-tool-technical-report.pdf>.

¹⁷⁸ *See* KATHERINE KAUFKA WALTERS ET AL., BUILDING CHILD WELFARE RESPONSE TO CHILD TRAFFICKING HANDBOOK 102–03 (2011), <http://ecommons.luc.edu/chrc/3/>.

¹⁷⁹ *Id.* at 102.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

training.¹⁸² A similar training and survey with like results was conducted in New York State.¹⁸³ By specially training and preparing case workers and foster parents to ask appropriately pointed questions early on in assessment to identify victims of sex trafficking, both will be better able to assist children in their care and also help victims self-identify as such.

E. Considerations About Anonymity of Location

In order to provide safety and security to survivors of sex-trafficking, it is critical to consider anonymity and confidentiality. Within the foster care system, addresses of foster homes are typically kept confidential from all parties, except the social service agency, for various safety reasons.¹⁸⁴

Unfortunately, with the sophisticated and well-financed criminal networks often involved in sex trafficking, anonymity can be more challenging especially if a case has attracted media attention. In such cases, the child welfare agency should be mindful that locations are not disclosed through media or other ways. In extreme cases, it might make sense to have the foster care system work in tandem with the federal witness protection program, which can be available to trafficking victims who cooperate with criminal prosecution.¹⁸⁵

Safety is a key consideration when caring for any foster child.¹⁸⁶ This need for safety and anonymity adds a special dimension to caring for the trafficked child in that the foster family may be concerned that the traffickers will approach the home. Even though “violence by traffickers toward service providers is not the norm, it should, nevertheless, be anticipated as a

¹⁸² *Id.*

¹⁸³ *Id.* at 103.

¹⁸⁴ While each state or county may have different rules, generally the address, like other information, is kept confidential from all sources for the safety of the child. The decision to divulge the address to birth parents would be made on a case by case basis. *See, e.g.*, N.Y. SOC. SERVS. L. § 372(1)(e), (3) (McKinney 2010); *see also* N.Y. STATE OFFICE OF CHILDREN & FAMILY SERVS., FOSTER PARENT MANUAL 24 (2010), <http://ocfs.ny.gov/main/publications/pub5011.pdf>; Caregiver Advocacy Network, *Caregiver Frequently Asked Questions (FAQ)*, CAL. DEP’T OF SOC. SERVS. (2007), <http://www.fosterfamilyhelp.ca.gov/PG3062.htm#A7>.

¹⁸⁵ *See* 22 U.S.C. § 7105(c)(3) (2014); *see also* UNITED NATIONS OFFICE ON DRUGS & CRIME, ANTI-HUMAN TRAFFICKING MANUAL FOR CRIMINAL JUSTICE PRACTITIONERS: MODULE 12: PROTECTION AND ASSISTANCE TO VICTIM-WITNESSES IN TRAFFICKING IN PERSONS CASES (2009), https://www.unodc.org/documents/human-trafficking/TIP_module12_Ebook.pdf; POLARIS PROJECT, TRAFFICKING VICTIMS’ PROTECTION ACT: FACT SHEET (2008), http://www.rescue.org/sites/default/files/resource-file/trafficking%20victims%20protection%20act%20fact%20sheet_0.pdf. In addition to the FBI having this program, other state and local municipalities, such as Albany, do as well. *See, e.g.*, Email from Kimberly McCoy, former Detective, Albany Police Dep’t, current Special Investigator, Albany Cty. Dist. Attorney’s Office, to Melissa Breger, Professor of Law, Albany Law Sch. (Jan. 29, 2016, 2:49 PM) (on file with author).

¹⁸⁶ OHIO CHILD WELFARE TRAINING PROGRAM, *supra* note 28, at 1–2.

possibility.”¹⁸⁷ Foster families need to be made aware of the background of the child for many reasons, and that would include issues of safety so they can quickly contact law enforcement as needed.¹⁸⁸

As the following narrative illustrates, it is often incredibly difficult for child victims to truly escape their traffickers:

Janine F., a legal permanent resident, ran away from an abusive family situation in New York when she was 17. An acquaintance invited her to California and paid for her bus ticket. On arriving in California, she was forced into prostitution. After six months she was arrested and held in the custody of child protective services for a week before being sent back to New York on a bus. However, not wanting to return home, Janine F. got off the bus when it stopped in Phoenix. She was at the bus station when the same person who had trafficked her to California pulled up in a car. He said, “You should have known better than to try to get away from me.” In Phoenix, he again forced her into prostitution.¹⁸⁹

Janine F. is not alone in her experiences; other child trafficking victims have faced similar situations. Janine’s story underscores why safety planning and anonymity are so crucial.

Safety planning . . . requires that the child as well as foster care-givers understand the dangers often inherent in trafficking. The child needs to be aware of issues affected by three factors: her contact with traffickers, her contact with her family, and the content of what she communicates to whatever outside contacts she has.¹⁹⁰

As mentioned earlier, it can be even more challenging if it is the victim who contacts or reconnects with the trafficker.¹⁹¹ At times, victims may desire to reestablish a relationship with the traffickers.¹⁹² Each child victim may view his or her trafficker in a different light, with varying degrees of insight:

[T]he child’s relationship and perception of the traffickers has ranged from total identification (“they were nice enough to me, I was paying off my smuggling debt and doing work that was fine to do”) to full comprehension of the injustice (“I hate them and I want to tell them that”). These perceptions are based on a

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Harlan, *supra* note 35, at 1141–42 (footnote omitted).

¹⁹⁰ Loïselle et al., *supra* note 132, at 4.

¹⁹¹ *See supra* text accompanying note 108.

¹⁹² *See supra* text accompanying note 108.

variety of factors including: the length of time involved altogether and the duration of mistreatment; the child's connection to the traffickers, e.g. relatives, or boyfriends, or strangers; the skill of the trafficker in manipulating the child's perceptions; the child's pre-trafficking profile, and the child's conditioning to accept treatment, which we would consider cruel, as standard for herself.¹⁹³

Traffickers often persuade their victims that they are safer to stay than to leave, or else make the victims afraid to leave.¹⁹⁴ Moreover, some victims may be allowed to leave for short periods of time, giving them the illusion that they are not truly victims or being held captive.¹⁹⁵ Trafficked children have complicated relationships with their traffickers. They are accustomed to dependence upon their traffickers at the same time they are being abused. For children who have run away from family homes, their exploiters could be promising or even providing some level of structure that the children were not finding at home.¹⁹⁶

In a way, this is not so dissimilar from any child removed from his or her birth family with the innate urge to reconnect with the family—despite abuse. Thus, again, the similarities between abused child victims and trafficked child victims make solutions for both, such as therapeutic foster care, a viable option.

F. *Critiques of the Overall Foster Care System in the United States*

Of course, any governmental system that serves as a substitute parent for children who have been neglected and abused cannot serve as a panacea for all of society's ills. Some critics argue that the United States's foster care system is already overburdened and unable to assist more children effectively.¹⁹⁷ Other critics explain that the foster care system itself serves as a major pipeline to child sexual trafficking in the United States, as many traffickers specifically target foster children because of their vulnerability and

¹⁹³ Loisel et al., *supra* note 132, at 4.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 4–5 (“In addition, their experiences may be in keeping with cultural or family expectations, e.g., working very long hours or prostituting themselves in order to meet their needs for survival. These variables color their perception of themselves (e.g., as victim or not) and their trafficker (e.g., as victimizer or caregiver).”). Again, cultural sensitivity is imperative.

¹⁹⁶ CLAYTON ET AL., *supra* note 2, at 94; see Brett M. Figlewski & Lee W. Brannon, *Trafficking and the Commercial Sexual Exploitation of Young Men and Boys*, in LAWYER'S MANUAL ON HUMAN TRAFFICKING, *supra* note 3, at 149, 153–54 (discussing self-reports of abuse and neglect in their homes of origin by male victims of sex trafficking as a precipitating factor of the trafficking).

¹⁹⁷ *Foster Care*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY, https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Foster-Care-064.aspx (last updated Feb. 2013) (“[Almost] 500,000 children in the U.S. currently reside in some form of foster care.”).

“need for love, affirmation, and protection.”¹⁹⁸ It could be argued, however, that any dysfunction of our current foster care system is due to underlying societal problems that cause our children to be placed in the foster care system at the outset, and even perhaps to underlying institutional biases that dictate which children are placed into foster care at all.¹⁹⁹ A critique of the overall foster care system should not be used as a bar to exploring the possibilities of placing sex-trafficked youth into an already robust and established system of care. Furthermore, this Article is recommending a particular kind of foster care, therapeutic foster care, which addresses many of the issues that plague the system in general, such as the need for ongoing training and support system for foster parents.

There is no question that foster children too often become runaway children who then become prone and vulnerable to child sex traffickers and other criminals.²⁰⁰ Yet, it is difficult to argue against a therapeutic foster care model that could benefit tremendously from budget increases and more finely tuned training and support. The foster care system is not a miracle cure-all for an epidemic as widespread as child sexual slavery. Yet we cannot overlook the years of research and experience that have been employed to build our foster care system, and specifically the Therapeutic Care Model. A nurturing, therapeutic environment is a step in the right direction and could be used as a stop-gap measure while other more specialized processes are instituted.

¹⁹⁸ GUIDANCE TO STATES, *supra* note 133, at 14 (outlining the overlap of children who are both survivors of human trafficking and involved in the child welfare system); *Factsheet: Foster Care and Human Trafficking*, CAS RES. & EDUC., http://www.casre.org/our_children/fcht/ (last visited Apr. 1, 2015) (“Studies were conducted in California, for example, that noted a relatively high number of sexually exploited children had involvement with the child welfare and foster care systems. The studies in California noted the following: “[B]etween 50 and 80 percent of commercially sexually exploited children . . . are or were formally involved with the child welfare system. 58% of 72 sexually trafficked girls in Los Angeles County’s STARS Court in 2012 were foster care kids. In Alameda County, 41% of 267 victims in 2011-2012 were foster care kids.”); *see also* CLAYTON ET AL., *supra* note 2, at 87–88.

¹⁹⁹ *See* MARTIN GUGGENHEIM, WHAT’S WRONG WITH CHILDREN’S RIGHTS 191–92 (2005).

²⁰⁰ *See e.g.*, GUIDANCE TO STATES, *supra* note 133, at 5 (“While there is no one common profile for victims of child trafficking, particular populations merit special consideration, as they are characterized by additional vulnerabilities. Some evidence suggests that lesbian, gay, bisexual, transgender, or questioning (LGBTQ) youth can be up to five times more likely than heterosexual youth to be victims of trafficking, due to increased susceptibility that comes with the feelings of rejection and alienation that are often experienced by LGBTQ youth. For the same reason, LGBTQ youth are overrepresented among runaway, homeless, and child welfare populations.”); *see also id.* at 4 (“[R]ecruitment of young people for trafficking commonly takes place in public places . . . around youth shelters where runaway and homeless youth are easily targeted, and in the vicinity of schools and group homes where children served by the child welfare system can be found.”).

VI. CONCLUSION

In sum, the United States should draw from its existing therapeutic foster care system to rehabilitate sex-trafficked children on an immediate basis. Therapeutic foster parents could be paired with NGOs and other specialized agencies to assist particularly with the unique challenges of sex-trafficked children. Is the alternative to detain and possibly deport innocent children who have already been victimized in the United States? Will these traumatized children become adults in our country in need of mental health services or otherwise be jailed in our adult criminal justice system? The only humane way to proceed is by placing these child victims in therapeutic and family-like settings whenever possible. The United States has a responsibility to place those children who have been raped and victimized within its own borders into safe, appropriate, and supportive foster homes. Our current therapeutic foster care system is uniquely positioned to provide care to sex-trafficked youth. It is a well-established model of care built on sensitivity and particular care to children with emotional issues.

As addressed above, the similarities between the traumatic effects of familial child abuse and the traumatic effects of child sex trafficking are striking. Therapeutic foster care with a trauma-centered approach in a home-like setting can be beneficial to all children who have been traumatized. While the current American foster care system is certainly not without its flaws, this Article contends that it is still a step in the right direction to borrow from our pre-existing programs to begin the rehabilitation process for sex-trafficked children. We should not re-invent the wheel when we have existing systems in place that can assist. Even further, funds already allocated for children in our country could be routed to foster care to protect child victims of sex trafficking as well.²⁰¹ While specialized programs designed for sex-trafficked children are incredibly successful and ideal, it is clear that with so few beds available, the United States is not keeping up with the crisis of child sexual exploitation.²⁰²

Because of these realities, this Article posits that while the United States works to develop more specialized programs to help these children heal, recover, and integrate into mainstream society, as a stop-gap measure, it should concurrently adapt current infrastructures and services in the United States as the first step to serve child victims of sex trafficking. The more overlap our country can share with already existing state child welfare systems that are funded and sophisticated, the more immediately the United States can rehabilitate sex-trafficked children. As one step in a larger process, we can

²⁰¹ Generally, the federal government provides foster care and child welfare services to unaccompanied refugee minors in the same manner as other foster youth, and they have to do so according to the state's child welfare standards, practices, and procedures. *See* 45 C.F.R. §§ 400.112, .115, .116 (2015). *See supra* note 36 for more detail. Federal money could possibly be diverted to reimburse the states as well.

²⁰² MIKO & PARK, *supra* note 40, at 8.

borrow from the Therapeutic Foster Care model as a widely established model of care that is flexible enough to meet the numerous and complicated issues associated with the treatment, cultural, and protection needs of child trafficking survivors.

And it is certainly a first step worth walking.