

## Trafficking and the Child Welfare System Link: An Analysis

by  
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Undercover investigators arranged a meeting with Kerry Rodriguez at the Garbaldi's Mexican Restaurant near Florida Mall in Orlando.<sup>1</sup> At thirty-four years of age, Rodriguez was not particularly menacing, but he was running a heinous illegal business and he was about to give these prospective buyers everything they needed to prove it.<sup>2</sup> "If you want them young," he explained, "normally those we have to take by force." "The key is to keep them drugged, and locked up, and at gunpoint," referring to the young girls he kidnaps and sells to customers for \$10,000.<sup>3</sup> According to the police report, Rodriguez explained that he "normally get[s] working girls on the streets" by luring them into his car.<sup>4</sup> In April 2013, authorities discovered several young girls being held and sold out of his Orlando apartment and issued warrants for sixteen members of his crew.<sup>5</sup> Rodriguez was convicted for using coercion to commit commercial sexual activity in violation of Florida Statute 787.06(3)(B).<sup>6</sup> He was sentenced to a mere two-and-a-half-years in prison for sex trafficking and drug charges.<sup>7</sup>

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<sup>1</sup> *Man Arrested, Accused of Offering to Sell Woman for \$10,000*, WFTV.COM 9 (June 5, 2013, 4:47 PM), <http://www.wftv.com/news/news/local/man-arrested-accused-offering-sell-woman-10000/nYCtB/>.

<sup>2</sup> *Kerry D. Rodriguez*, Florida Department of Law Enforcement – Sexual Offender / Predator Flyer, (Aug. 16, 2013), <http://offender.fdle.state.fl.us/offender/flyer.do?personId=84294>.

<sup>3</sup> *Man Arrested, Accused of Offering to Sell Woman for \$10,000*, *supra* note 1.

<sup>4</sup> Trymaine Lee, *Staggering Report Exposes US Sex Trafficking*, MSNBC (last updated Nov. 22, 2013, 7:55 PM), <http://www.msnbc.com/msnbc/sex-trafficking-america-0>.

<sup>5</sup> *Id.*

<sup>6</sup> *Kerry D. Rodriguez*, *supra* note 2.

<sup>7</sup> Lee, *supra* note 4.

The Rodriguez case and others like it shed light on an alarming trend affecting the most vulnerable citizens in this country. Human trafficking is now the second largest criminal industry in the world, exploiting one million children a year; 300,000 in the United States.<sup>8</sup> The first largest is the illegal drug trade, but the sex trafficking industry is more troubling because drugs can be sold one time, but sex trafficking involves the sale of a human being for sex over and over.<sup>9</sup> This notion of a renewable human resource has become an incentive to look for even younger victims in an effort to expand the number of years a child can be exploited.

Many Americans are unaware that domestic sex trafficking is occurring because they believe that sex trafficking is a problem that only occurs in other countries.<sup>10</sup> The problem is that Americans are unlikely to recognize domestic trafficking when they see it. Often trafficked children and youth are “referred to as criminals, child prostitutes, runaways, throwaways, addicts, or juvenile delinquents” and the public fails to recognize that traffickers are also “pimps, perpetrators, or criminals.”<sup>11</sup> In reality, American children are being kidnapped or lured from their homes or foster care placements and prostituted every day.<sup>12</sup>

More often than not, the sex trafficking (ST) of children is linked with the burgeoning foster care system.<sup>13</sup> The FBI reported that more than 60% of U.S. children recovered from ST incidents in 2013 had previously been living in foster care or group homes.<sup>14</sup> A startling “85% of girls involved in sex trades”

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<sup>8</sup> Bridgette Carr, *Sex Trafficking: An American Problem too*, CNN OPINION (Nov. 25, 2009, 6:58 AM), <http://www.cnn.com/2009/OPINION/11/25/carr.human.trafficking/>.

<sup>9</sup> *In Focus: Foster Youth Fall Prey to Traffickers*, CHILDRENS' RTS (Dec. 4, 2014), <http://www.childrensrights.org/newsletter-article/in-focus-foster-youth-fall-prey-to-traffickers/>.

<sup>10</sup> *Domestic Human Trafficking: An Internal Issue*, HUMAN SMUGGLING & TRAFFICKING CENT. 1, 2 (Dec. 2008), <http://www.state.gov/documents/organization/113612.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Stopping the Foster Care to Child Trafficking Pipeline*, HUFFPOST POL. (Oct. 29, 2013, 6:59 PM), [http://www.huffingtonpost.com/malika-saada-saar/stopping-the-foster-care-\\_b\\_4170483.html](http://www.huffingtonpost.com/malika-saada-saar/stopping-the-foster-care-_b_4170483.html).

<sup>14</sup> *Id.*

were previously in homes “involved in the child welfare system.”<sup>15</sup> California’s Attorney General, Kamala Harris, revealed that “59% of children arrested on prostitution-related charges in L.A. county spent time in the foster care system.”<sup>16</sup> Connecticut reported in 2012 that 86 of the 88 minors identified as ST victims were involved in the child welfare system and most reported that they suffered abuse while in foster care placements or residential facilities.<sup>17</sup> In 2007, New York City reported that 75% of the 2,250 identified victims of ST were children previously involved in the state’s child welfare system.<sup>18</sup> These facts are startling revelations, especially considering that the role of foster care is to provide safe places for children who are often abused or neglected by their own parents.

This article will first attempt to define human trafficking in general and more specifically the domestic sex trafficking of minors. Part II will explain the current federal anti-trafficking legislation, including the newest changes and state efforts to adopt anti-trafficking statutes. Part III will identify the key areas of concern for children, specifically children in foster care, that make them uniquely vulnerable to sex traffickers. Part IV will identify the weaknesses within the foster care system that contribute to the vulnerability of children to the sex trafficking industry. Finally, part V will identify options for future efforts to prevent sex trafficking of children and will suggest ways for legal professionals and other practitioners to assist with this problem.

## I. Defining Sex Trafficking

The National Human Trafficking Resource Center (NHTRC) defines human trafficking as “a form of modern-day

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<sup>15</sup> Deborah A. Gibbs et al., *Services to Domestic Minor Victims of Sex Trafficking: Opportunities for Engagement and Support*, 54 CHILD & YOUTH SERV. REV. 1, 1 (2015).

<sup>16</sup> Marisa Gerber, *State Official Links Troubled Foster Care System to Human Trafficking*, L.A. TIMES (Jan. 30, 2015, 7:10 PM), <http://www.latimes.com/local/lanow/la-me-ln-foster-care-human-trafficking-20150130-story.html>.

<sup>17</sup> Dawn Post, *Why Human Traffickers Prey on Foster-Care Kids*, CITYLIMITS.ORG (Jan. 23, 2015), <http://citylimits.org/2015/01/23/why-traffickers-prey-on-foster-care-kids/>.

<sup>18</sup> *Id.*

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slavery.”<sup>19</sup> When a person uses force, fraud, or coercion to control another person in order to profit from their labor or commercial sexual activity, that person is trafficking human beings.<sup>20</sup> Thus, the inducement of a child to perform sexual acts in exchange for money is a transaction that treats the child’s body “as a commodity” devoid of any human element.<sup>21</sup>

Traffickers<sup>22</sup> can be compared to entrepreneurs looking for a readily available and renewable resource that meets a demand in the market. Many traffickers are part of an organized criminal network that is motivated by high demand and significant profits.<sup>23</sup> The human trafficking industry yields as much as \$32 billion in annual proceeds.<sup>24</sup> Approximately 80% of trafficked persons worldwide are being sold for sex and half of them are children.<sup>25</sup> It is not uncommon for traffickers to target children<sup>26</sup> in public places, focusing primarily on minors who have run away, lack job skills, or have a history of abuse.<sup>27</sup> Perpetrators commonly groom their victims by offering a romantic relation-

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<sup>19</sup> Courts & Human Trafficking Bench Card, NAT’L. HUMAN TRAFFICKING RESOURCE CTR. 1, 1 (2014), <https://traffickingresourcecenter.org/sites/default/files/Courts%20and%20Human%20Trafficking%20Bench%20Card%202014.pdf>.

<sup>20</sup> *Id.*

<sup>21</sup> Karen Countryman-Roswurm & Brien L. Bolin, *Domestic Minor Sex Trafficking: Assessing and Reducing Risk*, 31 CHILD & ADOLESCENT SOC. WORK J. 521, 525 (2014).

<sup>22</sup> The term “traffickers” will be used to indicate a person who is participating in sex trafficking of another person as defined by the Trafficking Victims Protection Act of 2000; Trafficking Victims Protection Act, 22 U.S.C. §§ 7101-7113 (2000).

<sup>23</sup> Kimberly Kotrla, *Domestic Minor Sex Trafficking in the United States* 55 SOCIAL WORK 181, 182 (Apr. 2010), <https://www.fosterclub.com/sites/default/files/Domestic%20Sex%20Trafficking%20in%20the%20United%20States%20Paper.pdf>.

<sup>24</sup> *Child Sex Traffickers Target California Foster Children*, 32 ABA CHILD L. PRAC. 108, 108 (July 2013).

<sup>25</sup> *Human Trafficking Facts*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE 1,1, [http://www.ncdsv.org/images/NCADV\\_HumanTraffickingFacts.pdf](http://www.ncdsv.org/images/NCADV_HumanTraffickingFacts.pdf) (last visited on Jan. 15, 2016).

<sup>26</sup> References to children will include children and youth under the age of eighteen unless indicated otherwise, although it should be noted that some states have different age requirements for determining the age of majority.

<sup>27</sup> Kotrla, *supra* note 23, at 182-83.

ship and promising to provide for them.<sup>28</sup> The trafficker may also force or coerce the victim into performing sexual acts in exchange for drugs, money, or food and shelter.<sup>29</sup>

## II. Legislation Summary

### A. *Trafficking Victims Protection Act of 2000*

While governments have become increasingly aware that human trafficking exists in its various forms throughout the world, the gravest form of trafficking, sex trafficking, has slipped under the radar within our local towns and cities. The problem of trafficking is still a relatively new phenomenon. The first federal legislation dealing with this problem, the federal Trafficking Victims Protection Act (TVPA),<sup>30</sup> was not enacted until 2000. Congress has made several attempts to revamp the law since then, and officials continue to create new programs to deal with this growing problem. However, there has been a 259% increase in calls to the National Human Trafficking Resource Center (NHTRC) hotline since 2008 and the NHTRC recorded 9,298 potential cases of human trafficking between 2007 and 2012.<sup>31</sup>

Congress defines the various forms of human trafficking in the Trafficking Victims Protection Act of 2000 as prohibiting both labor and sex trafficking, but the focus of this article will be sex trafficking of children in the United States.<sup>32</sup> The TVPA defines sex trafficking in terms of control over the actions of another person that is asserted by force, fraud, or coercion for the purpose of exploitation.<sup>33</sup> The TVPA includes “recruitment, harboring, transportation, provision, or obtaining of a person.”<sup>34</sup> This kind of exploitation does not require that the person be

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<sup>28</sup> *Id.* at 184.

<sup>29</sup> *Id.*

<sup>30</sup> 22 U.S.C. §§ 7101-7113 (2000).

<sup>31</sup> *Human Trafficking Trends (2007-2012)*, POLARIS (Nov. 2013), <https://polarisproject.org/resources/human-trafficking-trends-2007-2012>.

<sup>32</sup> Heather J. Clawson et al., *Human Trafficking into and Within the United States: A Review of the Literature*, U.S. DEPT. HEALTH & HUM. SERVS. 1, 1 (Aug 30, 2009), <https://aspe.hhs.gov/basic-report/human-trafficking-and-within-united-states-review-literature#Introduction>.

<sup>33</sup> *Id.* at 3.

<sup>34</sup> 22 U.S.C. § 7102(9)(b).

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moved across state lines, as the term “trafficking” might suggest.<sup>35</sup>

For prosecution of traffickers there must be evidence of force, fraud, or coercion, unless the victim is a child under the age of eighteen.<sup>36</sup> In cases involving children, the presumption is that a child cannot consent to participating in commercial sex acts where “anything of value is given to or received by any person.”<sup>37</sup> The law does not require force, fraud, or coercion for a child under the age of eighteen because Congress recognized that children are unable to consent to sex.<sup>38</sup> Sex acts, as defined under the TVPA, can include “prostitution, pornography, stripping, live-sex shows, mail-order brides, military prostitution, and sex tourism.”<sup>39</sup> Thus, a child participating in prostitution should be considered a victim of ST and protected from criminal prosecution.<sup>40</sup> Rather than convicting these children for prostitution, the law considers them a “person in need of supervision.”<sup>41</sup>

The TVPA definition of trafficking includes coerced or forced sexual acts when there is an exchange or promise for something of value such as money, drugs, food, clothing, shelter, etc.<sup>42</sup> In the 2015 Missouri case, *United States v. Cook*,<sup>43</sup> the court further defined what constitutes a “thing of value.”<sup>44</sup> This case involved a substantial amount of abuse and torture of a sixteen year-old girl who was forced to become a sex slave and later trafficked by her captors.<sup>45</sup> Cook participated in sex acts with the victim, received videos and photographs from the initial perpetrators of the abuse, and, in return, offered advice and exam-

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<sup>35</sup> Clawson, et al., *supra* note 32, at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> Michelle Tomes, *A Child Is Not a Commodity: Stopping Domestic Child Sex Trafficking*, 24 U. FLA. J.L. & PUB. POL'Y 213, 216 (2013).

<sup>39</sup> Clawson, et al., *supra* note 32, at 3.

<sup>40</sup> Tomes, *supra* note 38.

<sup>41</sup> Courtney Bryan, *Representing and Defending Victims of Commercial Sexual Exploitation in Criminal Court*, LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS 183, 185 (2013), <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>.

<sup>42</sup> Countryman-Roswurm & Bolin, *supra* note 21.

<sup>43</sup> 782 F. 3d 900 (8th Cir. 2014).

<sup>44</sup> *Id.* at 989.

<sup>45</sup> *Id.* at 985-86.

ples in the form of videos and photographs to suggest ways of further exploiting her.<sup>46</sup> He argued that the law was too vague in its definition of “a thing of value” to find that he had exchanged something of value for the purposes of trafficking.<sup>47</sup> The court found that “sexual acts, photographs, and videos” could be considered things of value because “many people spend significant time, money, and effort pursuing and acquiring” them.<sup>48</sup> The *Cook* case is an example of how broadly a court can interpret the statutory language “a thing of value.” *Cook* also shows how an individual who assists in the exploitation of another person with knowledge that they are being trafficked can be convicted as a trafficker as well.

#### B. *Preventing Sex Trafficking and Strengthening Families Act*

On September 29, 2014, President Obama signed into law the Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980).<sup>49</sup> The Preventing Sex Trafficking and Strengthening Families Act (PSTSFA) recognizes the significance of the foster care element within the ST industry.<sup>50</sup> U.S. Representative Dave Reichert, a Republican from Washington, co-sponsored the bill in an effort to address what he identifies as deficiencies in the foster care programs that encourage children to run from their homes and into the arms of traffickers.<sup>51</sup> Reichert admits that even he did not understand that many of the young girls he viewed as criminals were actually trafficking victims.<sup>52</sup> He argues that, “[W]e have unintentionally isolated kids in foster care from their families, peers and communities . . . [and] . . . [w]e must do

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<sup>46</sup> *Id.* at 989.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919-1950 (2014).

<sup>50</sup> *Id.*

<sup>51</sup> Dave Reichert, *Foster Care Kids too Vulnerable to Sex Traffickers*, NEWS TRIB. (Jan. 15, 2014) (This news report is no longer available electronically); *See also* Reichert Floor Statement on the Preventing Sex Trafficking and Strengthening Families Act, YOUTUBE (Jul. 24, 2014), <https://www.youtube.com/watch?v=gruxaR5auA0&feature=youtu.be>.

<sup>52</sup> Joel Connelly, *Child Sex Trafficking: Where Congress Should Work Together*, SEATTLEPI (Feb. 13, 2014), <http://blog.seattlepi.com/seattlepolitics/2014/02/13/child-sex-trafficking-where-congress-should-work-together/>.

everything in our power to prevent these children from becoming victims of the horrific crime of sex trafficking.”<sup>53</sup> Unfortunately, previous anti-trafficking legislation and various departmental efforts have not been enough to combat this problem. The PSTSFA seeks to address some of the gaps in the child welfare system by addressing three key areas: protection for at risk youth, incentives for adoption, and improvements to child support.

1. *Title I: Protecting Children and Youth at Risk of Sex Trafficking*

First, Title I of the PSTSFA lays out specific protections for youth at risk for sex trafficking. State agencies are required to identify, document and determine services for children and youth who are at risk for being a victim of ST as defined by the Trafficking Victims Protection Act of 2000.<sup>54</sup> This requirement applies to all children for whom the state has obtained jurisdiction for placement, care, or supervision.<sup>55</sup> Thus, the requirements extend to children still living at home and children who have run away from their placement because the child does not have to be in the state’s physical custody.<sup>56</sup> The states are required to consult with experienced organizations to create policies and procedures that fulfill this requirement.<sup>57</sup>

The PSTSFA also spells out a plan, that takes effect in intervals over a period of four years, for requiring state agencies to report data on sex trafficking.<sup>58</sup> By September of 2016, states will be required to report to law enforcement and the National Center for Missing and Exploited Children within 24 hours of identifying any child who may be a victim of ST and is under the state’s supervision.<sup>59</sup> Law enforcement will also be required to

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<sup>53</sup> Reichert, *supra* note 51.

<sup>54</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, CHILD. DEF. FUND 1, 1 (Oct. 2014), <http://www.childrensdefense.org/library/data/fact-sheet-on-hr-4980.pdf>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 1–2.



record the information in the National Crime Information Center database.<sup>60</sup>

The PSTSFA further provides for annual reporting to the Secretary of Health and Human Services (HHS) beginning in September of 2017 and to Congress beginning in September of 2018 in addition to making the information available on the HHS website.<sup>61</sup> The state must also report the information to the Adoption and Foster Care Analysis and Reporting System along with a breakdown of the number of children who were identified as victims of ST before entering foster care and those who became victims while in foster care.<sup>62</sup> This information will provide essential data to inform research and determine the effectiveness of state programs by providing real statistics on the extent of ST of children within the state child welfare systems.

To address the number of children who have run away from their placements while in the care of a state, the PSTSFA requires the states to develop and implement a plan.<sup>63</sup> First each state must “develop and implement plans to expeditiously locate” all the children who are determined to be missing from their foster care placements.<sup>64</sup> Then the state must determine the factors that contributed to the child running away and what the child experienced while absent, including ST screening to determine if the child has been exploited and if the incident should be reported.<sup>65</sup> The requirements reflect the recognition that children who run away from their foster care placement are at risk for exploitation and this risk is lessened if they can be quickly located and returned.

In addition to the requirements for state reporting, the PSTSFA requires HHS to report the number of children who have run away from foster care, the risk of their exploitation, their characteristics, the likely factors associated with their running away, any information regarding what has happened to them while absent, and a yearly comparison representing trends for

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<sup>60</sup> *Id.* at 2.

<sup>61</sup> *Id.* at 1.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 1-2.

<sup>65</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 2.

children in foster care and their risk for ST.<sup>66</sup> The report must further detail the state's efforts to provide specialized services, to provide placements options, and to "ensur[e] children in foster care form and maintain long-lasting connections to caring adults."<sup>67</sup>

To support normalcy for children in foster care and prevent isolation from their communities, the PSTSFA requires the implementation of a new standard for foster parents and designated officials from child care institutions.<sup>68</sup> Prior to the enactment of PSTSFA, only some states had legislation addressing standards for foster care parents, but as of September 2015, the law requires the "reasonable and prudent parent standard" to be used in the evaluation of decisions made by a child's placement provider.<sup>69</sup> This enables caregivers to make more decisions regarding the child's care, including their involvement in extracurricular activities or events that provide enrichment and social interaction.<sup>70</sup> By increasing or maintaining community involvement, caregivers can create or improve a child's or youth's sense of belonging to the community and decrease their vulnerability to traffickers. The requirement also allows for changes in liability policies and additional funds to expand the Title IV-E Independent Living program by providing additional activities for foster care youth.<sup>71</sup>

In addition, the law requires specialized training for caregivers on how to apply the reasonable and prudent parent standard and requires HHS to provide assistance in the development of best practices for implementation of training.<sup>72</sup> The training must address the weight a caregiver should give to the preference of biological parents and how to protect the child by

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<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* See also *Reasonable and Prudent Parent Standards*, CHILD. ADVOC. ALLIANCE 1, 2 (Sep. 2014), <http://caanv.org/wp-content/uploads/2014/08/Prudent-Parent-Laws-NV-Final.pdf>.

<sup>70</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 2.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

creating normalcy and by providing age and developmentally appropriate activities.<sup>73</sup>

The PSTSFA calls for improvements to the Another Planned Permanent Living Arrangement (APPLA). APPLA provides a permanency option for youth unlikely to be adopted or reunited with their biological families. The option is eliminated for children under the age of sixteen and includes new requirements for case plans and case reviews when APPLA is the goal.<sup>74</sup> The state agency is required to make detailed documentation of efforts to locate a child's family members and to provide a relative placement.<sup>75</sup> The law even asks for agencies to locate family by using search technology such as social media.<sup>76</sup> For each permanency hearing the agency is required to document its efforts, including efforts to ensure the application of the reasonable and prudent parent standard and "regular, ongoing opportunities to engage in age or developmental appropriate activities," and to ask the child what he or she would like for a permanency outcome.<sup>77</sup> In addition, a judicial determination must be made "explaining why APPLA is still the best permanency plan" and why another goal is not in the best interest of the child.<sup>78</sup>

In addition to the ability to submit their preference for a permanency outcome, youth fourteen years of age and older are given more say in the development of their own case plans.<sup>79</sup> Youth are allowed to select up to two adults, not the foster parents or the caseworker, to join the case planning team, with one to act as an "advisor and advocate" in regard to the reasonable and prudent parent standard, so long as the state finds the child's choice of adult team members is not in conflict with the child's best interest.<sup>80</sup> The agency must also include in the case plan a List of Rights document that details the youth's rights and includes the youth's signature indicating that they were given the document and "that it was explained to them in an age appropri-

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<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 2.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 2-3.

<sup>79</sup> *Id.* at 3.

<sup>80</sup> *Id.*

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ate manner.”<sup>81</sup> Youth aged eighteen to twenty-one who have been in state care for at least six months must also receive “an official or certified copy of their birth certificate, a social security card, health insurance information, medical records, and a driver’s license or identification card.”<sup>82</sup> The Department of Health and Human Services is directed to report to Congress yearly beginning in 2016 about the enactment of these procedures, the best practices developed to administer them, and detailed information regarding all children and youth in the state’s care.<sup>83</sup>

To ensure state compliance with PSTSFA, the law requires the establishment of a twenty-one-member committee called the National Advisory Committee on the Sex Trafficking of Children and Youth in the United States.<sup>84</sup> Membership must include a victim of ST, two governors, one Democrat, and one Republican.<sup>85</sup> The Committee is tasked with advising the Secretary and Attorney General regarding policy recommendations for local, state, and federal efforts to combat ST.<sup>86</sup> The Committee is also required to provide best practices recommendations to states on a quarterly basis and meet biannually.<sup>87</sup> Beginning in 2017, the Committee must “report on state implementation to the Secretary, Attorney General, Health and Human Services, Department of Justice, Senate Finance Committee, and House Ways and Means Committee.”<sup>88</sup> The Committee will terminate in 2019, but information regarding state progress in combating ST can be provided online through the Department of Health and Human Services.<sup>89</sup>

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<sup>81</sup> *Id.*

<sup>82</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 3-4.

<sup>85</sup> *Id.* at 4.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 4.

<sup>89</sup> *Id.*

## 2. Title II - Improving Adoption Incentives and Extending Family Connection Grants

Second, Title II of the PSTSFA provides more incentives for states to facilitate adoptions through the fiscal year ending in 2016.<sup>90</sup> The law changes the structure for calculating incentive payments to more accurately affect “improvements in the *rates* of adoptions and guardianships.”<sup>91</sup> In addition, the law increases incentives for “timely adoptions.”<sup>92</sup> This designation is achieved by a state when the average length of stay for children and youth in foster care before adoption is less than twenty-four months.<sup>93</sup> The incentive payments can only be used to supplement other federal funds and are available for expenditures for thirty-five months.<sup>94</sup> States are required to report on savings and given limitations for use of these funds.<sup>95</sup> Minors who have no hope of reunification with family can only gain permanency through an adoption or a guardianship. An increase in adoptions also means children and youth will be less vulnerable to sex trafficking because adoption provides a permanent home.

The PSTSFA also provides greater protection for children and youth in relative placements by extending eligibility for kinship guardianship assistance payments.<sup>96</sup> Eligibility now includes a successor guardian when a relative guardian passes away or is no longer able to provide for the child’s care.<sup>97</sup> A successor guardian can be named in the kinship guardianship assistance agreement or included in an amendment to the agreement to ensure that a child continues to be cared for by a legal guardian.<sup>98</sup>

Title II of the PSTSFA further protects children by ensuring that parents of siblings receive information about the removal of the child within thirty days.<sup>99</sup> This requirement applies to any

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<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> *Id.* at 5.

<sup>93</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 4.

<sup>94</sup> *Id.* at 5.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 5.

parent with custody of a child's sibling regardless of whether a parent's rights have been terminated.<sup>100</sup> Further, the law extends the Family Connection Grant program by removing limitations on use of funds for kinship navigator programs.<sup>101</sup> The Grant funds activities that support families and promote connections between children and their relatives.<sup>102</sup> All of the changes in Title II are intended to help children and youth maintain healthy connections to their families and communities. Healthy connections to caring adults reduce the risk that a minor will be susceptible to sex trafficking.

### *3. Title III – Improving International Child Support Recovery*

Finally, Title III of the PSTSFA makes improvements to child support enforcement and recovery. The law gives “Central Authorities for child support enforcement” from other countries and Tribal governments access to the Federal Parent Locator Service.<sup>103</sup> Likewise, the Department of Health and Human Services is required to create data exchange standards so that state and federal agencies can share data with each other.<sup>104</sup> In addition, the law requires HHS to report on application of these provisions and effectiveness of state child support enforcement programs.<sup>105</sup> These changes more directly assist agencies in child support enforcement, but also assist the state in locating family members for relative placement by improving communication between federal and state agencies.

### *C. Safe Harbor Laws*

In 2014, as many as thirty-one U.S. states enacted new anti-trafficking legislation to address sex trafficking and provide services

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Preventing Sex Trafficking and Strengthening Families Act (H.R. 4980)*, *supra* note 54, at 5.

to assist victims.<sup>106</sup> Many of these new statutes address ST of children and specifically the treatment of children as victims in need of services, instead of processing them through the justice system as criminals.<sup>107</sup> These types of laws are often referred to as safe harbor laws because they create a process of diversion for children who are identified as victims of ST through their contact with the justice system.<sup>108</sup>

At least twenty-eight U.S. states have created statutes that specifically address safe harbor issues and most of those laws focus on protecting children who are victims of ST and creating stronger and more appropriate penalties for traffickers.<sup>109</sup> The reason for this focus is centered around the recognition that the TVPA protects children who participate in sexual acts by identifying them as victims regardless of whether they give consent.<sup>110</sup> These laws typically “provide immunity from prosecution for certain offenses by minors,” such as prostitution, and “creat[e] an affirmative defense to criminal charges for trafficked victims, provid[e] for the pretrial diversion of trafficked youth and creat[e] procedures to clear trafficking related criminal convictions from victim’s records.”<sup>111</sup>

Unfortunately, in states without safe harbor laws, children who are victims of ST are arrested for prostitution and placed in detention centers or in protective custody.<sup>112</sup> In the 2014 California case, *In re M.V.*,<sup>113</sup> the court determined that it was in the youth’s best interest to be deemed a ward of the state because the only way the court could guarantee a safe and secure placement was through the delinquency system.<sup>114</sup> M.V. had a history of mental health issues and suffered sexual abuse and neglect

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<sup>106</sup> *Human Trafficking Overview*, NAT. CONF. FOR STATE LEG. (May 9, 2014), <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-overview.aspx#SafeHarbor>.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> Rowena Fong & Jodie Berger Cardoso, *Child Human Trafficking Victims: Challenges for the Child Welfare System*, 33 EVALUATION & PROGRAM PLAN. 311, 314 (2010).

<sup>113</sup> 255 Cal. App. 4th 1495 (Cal. App. 1st Dist. 2014).

<sup>114</sup> *Id.* at 1514.

before coming into state custody.<sup>115</sup> She was effectively abandoned by her parents to the child welfare system by the age of fourteen.<sup>116</sup> The court was concerned about her safety because she frequently ran away from placements and was being prostituted by someone she identified as her pimp.<sup>117</sup> When she was fifteen, M.V.'s arrest for prostitution and loitering resulted in her delinquent status.<sup>118</sup> Many law enforcement officers and NGO advocates still believe that the criminal justice system offers the only form of protection for minor victims of ST because there are not enough options to assist them and provide safety outside of secure detention facilities.<sup>119</sup>

In many states, the justice system, child welfare system, and other programs continue to treat minor victims of ST as criminals.<sup>120</sup> As a result, minor victims are not receiving the treatment and services that they need.<sup>121</sup> Often the first place of entry for minors who are victims of sex trafficking is through the justice system because they are first profiled by police investigating prostitution or trafficking operations.<sup>122</sup> When the system treats a minor arrested for prostitution as an offender, that minor is likely to experience re-victimization in the form of punishment instead of offering them the help they need.<sup>123</sup> The mislabeling of victims also fails to deter traffickers and their customers from purchasing sex with children and wastes police resources.<sup>124</sup>

As a result of being deemed a criminal or juvenile delinquent, child and youth victims of ST will end up serving a minimal sentence and then be released to return to the streets and

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<sup>115</sup> *Id.* at 1502-03.

<sup>116</sup> *Id.* at 1503.

<sup>117</sup> *Id.* at 1502.

<sup>118</sup> *Id.* at 1501-02.

<sup>119</sup> Jennifer Musto, *Domestic Minor Sex Trafficking and the Detention-to-Protection Pipeline*, 37 *DIALECTICAL ANTHROPOLOGY* 257, 267 (2013), <http://link.springer.com/article/10.1007%2Fs10624-013-9295-0>.

<sup>120</sup> *Human Trafficking Intersection with Child Welfare*, NAT. CONF. FOR STATE LEG., <http://www.ncsc.org/Services-and-Experts/Government-Relations/Child-Welfare/Human-Trafficking-Intersection-with-Child-Welfare.aspx> (last visited Jan. 15, 2016).

<sup>121</sup> *Id.*

<sup>122</sup> Musto, *supra* note 119, at 258.

<sup>123</sup> *Id.* at 268.

<sup>124</sup> Lenora C. Babb, *Utah's Misguided Approach to the Problem of Sex Trafficking: A Call for Reform*, J.L. & FAM. STUD. 277, 283 (2012).



their traffickers. Even if they wanted to leave, they are usually not able to because of the coercive control that traffickers maintain over their victims.<sup>125</sup> Likewise, the threat of prosecution through the justice system and previous negative experiences with the courts can lead children to rely on the trafficker to help them avoid incarceration or undesirable placements in foster care.<sup>126</sup> Even if services are eventually offered to assist a minor identified as a victim of ST, the services are usually offered after the child or youth has been negatively affected by, and already distrusts, the justice system process.<sup>127</sup> Children and youth who learn to distrust and resent the justice system are unlikely to seek help or self-identify as victims.<sup>128</sup>

In addition, other cases recognize that processing a child or youth through the justice system further traumatizes victims of ST who are identified for prostitution crimes. In the 2011 New York case, *People v. Samantha R.*,<sup>129</sup> the court moved to dismiss the case charging a sixteen year-old girl with loitering for the purposes of prostitution.<sup>130</sup> The court noted that recent safe harbor laws were intended to protect youth charged with prostitution from being re-traumatized in the justice system by requiring them to be referred to family court for treatment services.<sup>131</sup> Yet, in many states, children and youth continue to be processed through the justice system because they are viewed as criminals and not as victims of ST.

The Honorable Fernando Comacho expressed his concern after years of processing youth through the court system as an assistant district attorney and later as a judge.<sup>132</sup> He believes that society has been unwilling to confront the reality of childhood prostitution.<sup>133</sup> Judge Camacho helped to change the way

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<sup>125</sup> Fernando Comacho, *Sexually Exploited Youth: A View from the Bench*, *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 141, 143 (2013), <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>.

<sup>126</sup> Musto, *supra* note 119, at 271.

<sup>127</sup> *Id.*

<sup>128</sup> *Id.*

<sup>129</sup> 33 Misc. 3d 1235(A) (N.Y. City Crim. Ct. 2011).

<sup>130</sup> *Id.*

<sup>131</sup> *Id.*

<sup>132</sup> Comacho, *supra* note 125, at 141.

<sup>133</sup> *Id.* at 145.

children in New York City were processed through the criminal court by diverting them to programs that provide services instead of giving them jail time.<sup>134</sup> The state of New York has developed protections for minors by enacting the Safe Harbor for Exploited Children Act,<sup>135</sup> but too many states still need to provide more comprehensive protection for victims of sex trafficking.<sup>136</sup>

### III. Vulnerability to Sex Trafficking

#### A. *The Unique Vulnerability of Minors*

Many of the victims of sex trafficking are children or were children when they were recruited by traffickers.<sup>137</sup> Children are more vulnerable than adults to traffickers because they are easier to exploit and control. They are usually less mature and more likely to believe that they have more freedom and control of their lives outside of the child welfare system.<sup>138</sup> In the United States, there are high incidences of prostituted children in most of the major cities, Atlanta, Chicago, Dallas, Detroit, Las Vegas, Los Angeles, Miami, Minneapolis, New York, San Diego, San Francisco, St. Louis, Tampa, and Washington DC.<sup>139</sup> Seventy percent of the children involved in human trafficking in the United States are sex trafficked and the average age of introduction into ST is between twelve and fourteen for girls and eleven to thirteen for boys.<sup>140</sup>

Children and youth in the United States are increasingly becoming the target of sex traffickers and this trend often appears

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<sup>134</sup> *Id.*

<sup>135</sup> This law amends several New York state statutes. For more information, see Sheldon Silver, *Press Release: Assembly Passes Safe Harbor Legislation*, N.Y. ST. ASSEMB. (Jun. 19, 2008), <http://assembly.state.ny.us/Press/20080619/>.

<sup>136</sup> *2015 Trafficking in Persons Report*, U.S. DEPT. STATE 1, 7 (2015), <http://www.state.gov/documents/organization/245365.pdf>; See also Comacho, *supra* note 125, at 146.

<sup>137</sup> Clawson et. al., *supra* note 32, at 9.

<sup>138</sup> Richard J. Estes & Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U. S., Canada and Mexico*, U. Pa. Sch. Soc. Work Ctr. for Stud. Youth Pol'y. 1, 59 (Sep. 10, 2001), [http://www.thenightministry.org/070\\_facts\\_figures/030\\_research\\_links/060\\_homeless\\_youth/Commercial-SexualExploitationofChildren.pdf](http://www.thenightministry.org/070_facts_figures/030_research_links/060_homeless_youth/Commercial-SexualExploitationofChildren.pdf).

<sup>139</sup> Fong & Cardoso, *supra* note 112, at 312.

<sup>140</sup> Clawson et al., *supra* note 32, at 10; Tomes, *supra* note 38, at 214-15.

in the form of child prostitution.<sup>141</sup> Child prostitution is merely another form of sex trafficking and pimps who prostitute minors are traffickers in violation of U.S. federal law.<sup>142</sup> Law enforcement reported in a recent survey that they encounter more U.S. born youth who are victims of ST than adult or immigrant born victims of ST.<sup>143</sup> They also indicated that these victims are becoming increasingly younger, with ages ranging between ten to seventeen years of age.<sup>144</sup>

Children exploited by sex traffickers come from every aspect of life, including children who were runaways, homeless or delinquent.<sup>145</sup> A twelve-year-old child can be convinced to participate in prostitution for survival with a simple offer of friendship, food, and shelter.<sup>146</sup> This is more likely if that child is running away from a foster care placement as in the case of Carissa Phelps.<sup>147</sup> She allowed a man to traffic her to countless men in order to survive after she ran away from her foster care home.<sup>148</sup> Children or youth who leave their placement may believe that living on the streets is no more dangerous than staying home.<sup>149</sup> Yet, children who run away are more likely to be approached by traffickers and solicited for prostitution or other forms of exploitation within the first forty-eight hours.<sup>150</sup>

#### B. *The Unique Vulnerability of Minors in Foster Care*

Children and youth in foster care are targets for exploitation because of their unique physiological needs due to their previous exposure to trauma.<sup>151</sup> Exposure to traumatic events causes psychic trauma and can result in traumatic bonding when victims

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<sup>141</sup> Musto, *supra* note 119, at 265.

<sup>142</sup> *2015 Trafficking in Persons Report*, *supra* note 136.

<sup>143</sup> Musto, *supra* note 119, at 265.

<sup>144</sup> *Id.*

<sup>145</sup> Fong & Cardoso, *supra* note 112, at 313.

<sup>146</sup> Tomes, *supra* note 38, at 214.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> Clawson et al., *supra* note 32, at 12.

<sup>150</sup> *Id.*

<sup>151</sup> Margolin Cecka, *The Civil Rights of Sexually Exploited Youth in Foster Care*, 117 W. VA. L. REV. 1225, 1242-43 (2014-15).

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view their abusers as protectors.<sup>152</sup> The trauma they typically experience is caused by exposure to physical, emotional, and sexual abuse, and this type of trauma is a significant predictor in a child's susceptibility to ST.<sup>153</sup> One reason for this is that children who experience abuse suffer from "affective, behavioral and cognitive problems" as a result of exposure to trauma.<sup>154</sup> Victims of childhood sexual abuse experience psychological distress, including "sadness, distrust, lack of confidence, and low self-esteem, [that] makes a certain number vulnerable to revictimization and high-risk sexual behavior," and the risk is even higher if complicated by substance abuse.<sup>155</sup>

Other risk factors for vulnerability to sex trafficking are poverty, relationship violence, problematic relationships with caregivers, and drug and alcohol abuse, all of which can result in the loss of connections to caring and trustworthy adults.<sup>156</sup> The physiological needs created by these risk factors increase the likelihood that children will imitate risky behavior and be vulnerable to manipulation by traffickers. Studies have found a relationship between childhood sexual abuse and high-risk sexual behavior, including prostitution.<sup>157</sup> In a study of forty youth with a history of running away, homelessness and living on the streets, 90% reported previous experiences of "physical abuse and one-third had experienced sexual abuse."<sup>158</sup> Similar studies found that most victims of ST were previously subjected to "childhood sexual molestation, rape, and/or incest."<sup>159</sup> According to a study covering thirty-six states, victims of abuse are 96% more likely to be abused again.<sup>160</sup> Thus, children who have been involved with

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<sup>152</sup> Dorchen A. Leidholdt, *Interviewing and Assisting Trafficking Survivors*, *LAWYER'S MANUAL ON HUMAN TRAFFICKING: PURSUING JUSTICE FOR VICTIMS* 169, 170 (2013), <https://www.nycourts.gov/ip/womeninthecourts/pdfs/LMHT.pdf>.

<sup>153</sup> Countryman-Roswurm & Bolin, *supra* note 21, at 526.

<sup>154</sup> Fong & Cardoso, *supra* note 112, at 313.

<sup>155</sup> Kevin Lalor & Rosaleen McElvaney, *Child Sexual Abuse, Links to Later Sexual Exploitation/High-Risk Sexual Behavior, and Prevention/Treatment Programs*, 11 *TRAUMA, VIOLENCE & ABUSE* 159, 168 (2010).

<sup>156</sup> Countryman-Roswurm & Bolin, *supra* note 21.

<sup>157</sup> Lalor & McElvaney, *supra* note 155, at 164.

<sup>158</sup> Countryman-Roswurm & Bolin, *supra* note 21, at 526.

<sup>159</sup> *Id.*

<sup>160</sup> Fong & Cardoso, *supra* note 112, at 313.

the child welfare system are at a higher risk for exploitation because of their unique physiological needs.

#### **IV. Weaknesses Inherent in the Child Welfare System**

The risk of being trafficked is much higher for children who are homeless, runaways, previously abused, or in the child welfare system.<sup>161</sup> Child Protective Services will remove a child from his or her home if there is a finding that the person responsible for the child's care and custody abused the child.<sup>162</sup> Thus, a large majority of children in foster care are already victims of neglect or abuse, suffer from low self-esteem, and lack social supports.<sup>163</sup> These characteristics make children and youth in foster care easy targets for traffickers.<sup>164</sup> According to the U.S. Department of Health and Human Services Administration for Children, Youth and Families, traffickers recruit children and youth in "public places (e.g., around shopping malls, bus stops, or fast-food restaurants), 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."<sup>165</sup> Estimates from the National Center on Missing and Exploited Children indicate that sixty percent of children who are victims of ST have previously been in foster care.<sup>166</sup>

##### *A. Lack of Family Resources*

Susceptibility to abuse is affected by a family's access to services after a child has been found to be abused. Older children, children who experienced sexual abuse, and children who are

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<sup>161</sup> Kotrla, *supra* note 23, at 183.

<sup>162</sup> Fong & Cardoso, *supra* note 112, at 313.

<sup>163</sup> *Guidance to States and Services on Addressing Human Trafficking of Children and Youth in the United States*, U.S. DEP. HHS ACYF 1, 4 (Sep. 13, 2013), [https://www.acf.hhs.gov/sites/default/files/cb/acyf\\_human\\_trafficking\\_guidance.pdf](https://www.acf.hhs.gov/sites/default/files/cb/acyf_human_trafficking_guidance.pdf).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> Rhonda McMillion, *Answering the Alarm*, 100 ABA J. (Aug. 1, 2014), [http://www.abajournal.com/magazine/article/aba\\_addresses\\_the\\_impact\\_of\\_sex\\_trafficking\\_on\\_foster\\_youths/](http://www.abajournal.com/magazine/article/aba_addresses_the_impact_of_sex_trafficking_on_foster_youths/).

abused by more than one caregiver or by someone not a caregiver are less likely to receive preventative and post-investigative services.<sup>167</sup> These services are more often directed to children who are victims of neglect, children who experience multiple forms of abuse, and younger children.<sup>168</sup> Thus, children's access to preventative and post-investigative services will likely affect their ability to overcome these problems and contribute to the likelihood of future exploitation. These children lack the protective skills to avoid ST on their own and the services they need to provide those skills are unavailable because many service providers do not provide treatment that addresses sexual exploitation.<sup>169</sup> The agencies that do provide appropriate treatment cater to victims of trafficking in order to receive federal funding. Children in foster care are unlikely to receive preventative services when appropriate treatment is available because they must first be classified as a victim of trafficking to be eligible for funding.<sup>170</sup>

#### B. *Lack of Supervision and Safe Placement Options*

The child welfare system does not adequately prevent traffickers from gaining access to children in foster care due to a lack of adequate supervision. Victims of sex trafficking have reported that traffickers have access to them while they are living in foster care and group homes.<sup>171</sup> Traffickers have sent girls to live in a group home solely for the purpose of recruiting children and youth to leave by promising financial security and acceptance into the trafficker's "family."<sup>172</sup> Children who are placed in foster care homes may be just as susceptible to traffickers. The following is an account from Withelma "T" Ortiz Walker Pettigrew, a survivor of child sex trafficking who testified before the House Ways and Means Committee about her experience.

I spent for the most part, the first 18 years of my life in the foster care system. Seven of those years I was a child being sexually trafficked on the streets, Internet, strip clubs, massage parlors and even in the back

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<sup>167</sup> Fong & Cardoso, *supra* note 112, at 313-14.

<sup>168</sup> *Id.* at 313.

<sup>169</sup> *Id.* at 314.

<sup>170</sup> *Id.*

<sup>171</sup> Post, *supra* note 17.

<sup>172</sup> *Id.*

of express papers. Many children, like myself, come from various traumas previously to entering into foster care, and many times, are further exposed to trauma throughout their experience in the foster care system . . . Youth within the system are more vulnerable to becoming sexually exploited because youth accept and normalize the experience of being used as an object of financial gain by people who are supposed to care for us, we experience various people who control our lives, and we lack the opportunity to gain meaningful relationships and attachments.

In addition, traffickers/pimps/exploiters have no fear of punishment because they rely on the lack of attention that occurs when these young people go missing . . . Many children, myself included, who grow up in foster care express how it is common household knowledge that many caregivers take them in primarily for the paycheck in which they are provided for the purpose of caring for the child . . . These caregivers will make statements like “you’re not my child, I don’t care what’s going on with you, as long as you’re not dead, I’ll continue to get my paycheck.” This “nothing but a paycheck” theory objectifies the youth and the youth begin to normalize the perception that their presence is to be used for financial gain. This creates a mind frame for the youth that their purpose is to bring income into a household . . . Therefore, when youth are approached by traffickers/pimps/exploiters, they don’t see much difference between their purpose of bringing finances into their foster home and bringing money to traffickers/pimps/exploiters’ ‘stable’ . . .

Like me, any youth in foster care, becomes accustomed to adapting to multiple moves from home to home which allows us to easily then adapt to when traffickers/pimps/exploiters move us multiple times, from hotel to hotel, city to city, and/or state to state. For myself, as unfortunate as it is to say, the most consistent relationship I ever had in care was with my pimp and his family.<sup>173</sup>

### *C. Children and Youth Missing from Placement*

Not only has the child welfare system lacked the ability to provide adequate supervision, but it has also failed to address the problem of children running away from their foster care homes. Federal legislation, until recently, has not “specifically address[ed] the prevention, response to, or resolution of missing” children.<sup>174</sup> States have different methods for categorizing which children are considered runaways from the foster care system

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<sup>173</sup> Malika Saada Saar, *Stopping the Foster Care to Child Trafficking Pipeline*, HUFFPOST POLITICS (updated Jan. 23, 2014, 6:58 PM), [http://www.huffpost.com/malika-saada-saar/stopping-the-foster-care-\\_b\\_4170483.html](http://www.huffpost.com/malika-saada-saar/stopping-the-foster-care-_b_4170483.html).

<sup>174</sup> Cecka, *supra* note 151, at 1229-30.

and caseworkers were not mandated to report them to the National Center for Missing and Exploited Children.<sup>175</sup> Thus, estimates of the number of children in foster care who have run away in the United States are seriously understated.

State governments admitted that 4,973 children were unaccounted for within the foster care system in 2012 and “in the vast majority of cases, no one even looks for these children.”<sup>176</sup> Many children who turn up later as victims of ST are never reported missing by the child welfare system.<sup>177</sup> These children are lost from the only system of protection they have and this creates an incentive for traffickers to target these children because no one is looking for them.<sup>178</sup> These child abductors are also sure to use that fact to gain loyalty and submission from their victims by assuring them that they will have no hope of rescue. In addition, they typically have no money, job skills, or support system to help them survive on their own.<sup>179</sup> Traffickers need a resource that is both easily accessible and renewable and children who run away are uniquely vulnerable for this purpose.

In addition, the child welfare system is not motivated to find or return these children to custody because they know that these youths do not want to be found, that they are likely to run away again, that finding another foster care home will be difficult, and that these children are the least likely to be adopted.<sup>180</sup> The Vera Institute’s research indicated that after running away from foster care, children are likely to avoid returning because they are aware that the bed at their previous placement will be filled in their absence and they will have to move again.<sup>181</sup> Many children who experience abuse at home or in the child welfare system run away because they believe it is their best option.<sup>182</sup>

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<sup>175</sup> *Id.* at 1230-31.

<sup>176</sup> Conna Craig, *Protect Foster Children from Sex Trafficking: Column*, USA TODAY (Oct. 23, 2013, 12:17 PM), <http://www.usatoday.com/story/opinion/2013/10/23/children-sex-trade-foster-care-column/3153537/>.

<sup>177</sup> Tracy Connor, *FBI Rescues 1168 of ‘America’s Children’ from Sex Traffickers*, NBC NEWS (Jun. 23, 2014, 10:03 PM), <http://www.nbcnews.com/news/us-news/fbi-rescues-168-americas-children-sex-traffickers-n138616>.

<sup>178</sup> *Id.*

<sup>179</sup> Clawson et al., *supra* note 32, at 12.

<sup>180</sup> Cecka, *supra* note 151, at 1231.

<sup>181</sup> *Id.* at 1233.

<sup>182</sup> Connor, *supra* note 177.



These adolescents find more stability on the streets where they believe they have control of their environment rather than taking their chances with the foster care system. Once youths have run away from their placement, they have few options to ensure their survival. Without a permanent home, children in foster care are more likely to become victims of ST because they “are highly susceptible to manipulation and false promises.”<sup>183</sup> Their mistrust of the system to provide structure and security and their desire for independence leave them vulnerable to exploitation and less likely to recognize or report that they have been trafficked.

#### *D. Isolation from Community*

Exacerbating this issue is the child’s isolation from his or her community once placed in the child welfare system. While in the foster care system these children are often cut off from their family, friends, and community.<sup>184</sup> They may be placed in a new school and removed from their old familiar neighborhoods, making participation in extra curricular activities more difficult, if not impossible.<sup>185</sup> In addition to the sense of loss they feel, they are not given adequate support.<sup>186</sup> Many complain that they do not feel their caseworkers give their case the attention it deserves and report feeling as though they have no one to talk to or help them work through problems.<sup>187</sup> If the system fails to provide healthy bonding opportunities, children or youth will look elsewhere to fill their needs.

These children are looking outside the system for someone to provide a home and some sense of security and they have no idea what it should look like.<sup>188</sup> Traffickers are highly motivated by profits and foster children are an easily accessible renewable resource that is in high demand. This culture of treating children as commodities, coupled with a demand for deviant sexual gratification, has spawned a special breed of criminal behavior that is quickly filling the gap left by a failing system.

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<sup>183</sup> McMillion, *supra* note 166.

<sup>184</sup> Cecka, *supra* note 151, at 1233.

<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Stopping the Foster Care to Child Trafficking Pipeline*, *supra* note 13.

The lack of supervision, isolation, and the structure of the child welfare system give traffickers easy access to children in state custody. Almost half of the children in foster care are eleven or older and most of them will age out of the system without being adopted.<sup>189</sup> This means nearly 30,000 young people in the United States must fend for themselves each year.<sup>190</sup> But traffickers do not have to wait for these children to age out. They have easy access to them from the moment they enter the system and already may have had access to them through family or due to their parent's neglect. Traffickers can easily take advantage of the lack of supervision and isolation for children who are living on the streets or in the foster care system and residential placements.<sup>191</sup> This means that the number of children at risk for exploitation in the United States is closer to 244,000 each year.<sup>192</sup>

## V. Solutions and Suggestions

### A. Awareness and Training Efforts

Awareness is the first step to combating sex trafficking in the United States. Professionals who have frequent contact with children should have knowledge about how to prevent ST of children and youths involved in the child welfare system and how to assist children who are already being exploited in the sex industry. The ABA has emphasized a need for legal professionals to educate themselves about legal issues affecting ST victims.<sup>193</sup> Training is a key to ensuring professionals know how to identify victims, how to access appropriate services, and how to gain their trust so that they will confide in people trained to help them recover and seek relief.<sup>194</sup> Creating an environment of trust for children and youth to share their experiences and values will create an opportunity for professionals to redirect risky behavior and identify areas of concern.

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<sup>189</sup> Cecka, *supra* note 151, at 1227.

<sup>190</sup> *Id.* at 1228.

<sup>191</sup> Fong & Cardoso, *supra* note 112, at 311.

<sup>192</sup> *Id.* at 312.

<sup>193</sup> McMillion, *supra* note 166.

<sup>194</sup> Bryan, *supra* note 41.

Awareness in the United States has increased with the passage of new legislation and continued states' efforts to comply with the TVPA. However, many law enforcement officers and service providers continue to incorrectly identify victims as criminals rather than victims of ST.<sup>195</sup> A 2013 study of "personnel in agencies that provide services to at-risk youth or crime victims" found a significant difference between awareness within metropolitan areas versus rural areas.<sup>196</sup> Professionals working in metropolitan areas were more likely to view ST as a serious problem, to have received training in human trafficking, and to report knowledge and understanding of state and federal laws on human trafficking.<sup>197</sup> Service providers in rural areas are less likely to have training or experience with victims of ST and have less infrastructure to respond to ST within their communities.<sup>198</sup> Training for professionals should be consistent across counties because studies indicate that ST occurs in rural areas as well.<sup>199</sup>

The study also found that most professionals did not perceive parents or relatives as potential perpetrators for sex trafficking of children in the family.<sup>200</sup> This was in contrast to the fact that only 16.9% of these professionals indicated one of the three most recent victims they spoke to were exploited by strangers. In addition, providers from all ten sites contacted indicated that they knew of cases where parents or guardians had trafficked their own children.<sup>201</sup> The majority of traffickers in the sample were "relatives, intimate partners, acquaintances/friends, or partners of parents."<sup>202</sup> Increased understanding of this dynamic would greatly assist in the prevention of ST among children and youth in the child welfare system because professionals can routinely assess these relationships for signs of coercion and grooming behavior.<sup>203</sup> The results of this study indicate that state

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<sup>195</sup> Jennifer Cole & Ginny Sprang, *Sex Trafficking of Minors in Metropolitan, Micropolitan, and Rural Communities*, 40 CHILD ABUSE & NEGLECT 113, 114 (2015).

<sup>196</sup> *Id.* at 115-16.

<sup>197</sup> *Id.* at 117-18.

<sup>198</sup> *Id.* at 119.

<sup>199</sup> *Id.*

<sup>200</sup> *Id.*

<sup>201</sup> Cole & Sprang, *supra* note 195, at 119-120.

<sup>202</sup> *Id.* at 120.

<sup>203</sup> *Id.*

agencies need to provide more training across professions and within agencies to better identify and provide services for potential victims of ST.

#### B. *Community Involvement in Identification of Potential Victims*

Community involvement in identifying sex trafficking victims or children vulnerable to traffickers is essential. Early identification of victims is important because victim relief is limited if the person is not identified as a ST victim until post-conviction.<sup>204</sup> To effectively identify children who are being exploited this way, it is important to be aware that any person arrested for prostitution may be a victim of ST.<sup>205</sup> In addition, legal professionals should understand the dynamics of childhood prostitution and its role in ST.

A trafficker can exploit a minor by assuming the role of friend or love interest to gain trust and to groom that minor for ST. Later they will impose harsh discipline through violence and threats to ensure compliance.<sup>206</sup> If the child attempts to leave, the trafficker will react with harsher punishments and threats of harm to the child's family or friends.<sup>207</sup> Similar to domestic violence, once a trafficker has conditioned a child, the child will not feel that he or she can leave.<sup>208</sup> It is important to recognize when a child is being groomed or controlled by an adult so that a safety plan can be put in place to protect the child.

Screening tools should be provided to medical professionals, school personnel, social workers, parent aides, legal professionals, therapists, and other service providers to assist in identifying the risk factors for and signs of ST.<sup>209</sup> The ABA recommends that screening and risk assessment occur at the point when a child enters the child welfare system.<sup>210</sup> Some signs of possible

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<sup>204</sup> Bryan, *supra* note 41.

<sup>205</sup> *Id.*

<sup>206</sup> Comacho, *supra* note 125.

<sup>207</sup> *Id.* at 143-44.

<sup>208</sup> *Id.* at 143.

<sup>209</sup> Donna Kaplan & Kathleen Kemp, *Domestic Minor Sex Trafficking: An Emerging Health Crisis*, 31 BROWN U. CHILD & ADOLESCENT BEHAV. LETTER 3, 5 (July 2015).

<sup>210</sup> McMillion, *supra* note 166.

exploitation are children who “run away from home for long periods of time, have large amounts of unexplained money, obtain new tattoos that the youth is unwilling to discuss the meaning or origin of, receive gifts such as a smartphone or teddy bear, and begin using alcohol and other drugs.”<sup>211</sup> Other indicators may be a controlling or abusive romantic relationship, especially with an older male, traveling with an adult other than a caretaker, or testing positive for multiple sexually transmitted diseases.<sup>212</sup> Preventative assessments can be helpful for identifying children with a history of sexual abuse, risky behavior, and other risk factors for exploitation.

Screening tools include education about risk factors and questions for identifying possible victims. Questions should address whether the child has ever been asked to participate in sexual activities, especially if in exchange for money, drugs, or essentials such as food and shelter.<sup>213</sup> Many children and youth involved in the child welfare system will have negative feelings about dealing with professionals due to their experiences with juvenile court.<sup>214</sup> Creating an environment of trust for children and youth to share their experiences and values will create an opportunity for professionals to redirect risky behavior.

### *C. Access to Early and Effective Services*

Some experts have attempted to employ preventative measures to teach minors self protection skills and help them identify unhealthy relationships.<sup>215</sup> The high correlation between childhood sexual abuse and other forms of exploitation indicates the continued need to provide children and youth involved in the child welfare system with preventative treatment.<sup>216</sup> Researchers have studied the use of group psychoeducational treatment to counteract the risk factors that make minors more vulnerable to ST.<sup>217</sup> Psychoeducational treatment provides targeted therapy in a group setting and has been used to treat “runaway, homeless

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<sup>211</sup> Kaplan & Kemp, *supra* note 209.

<sup>212</sup> *Id.*

<sup>213</sup> *Id.*

<sup>214</sup> Bryan, *supra* note 41, at 186.

<sup>215</sup> Countryman-Roswurm & Bolin, *supra* note 21, at 521.

<sup>216</sup> Lalor & McElvaney, *supra* note 155, at 172.

<sup>217</sup> Countryman-Roswurm & Bolin, *supra* note 21, at 526.

and street youth.”<sup>218</sup> Psychoeducational groups are used to empower victims by providing a safe environment to discuss the dynamics of exploitation, to offer and receive support from peers, and to “reinterpret their experiences within a broader social context.”<sup>219</sup> In a study by Karen Countryman-Roswurm and Brien Bolin published in May of 2014, researchers evaluated the Lotus Psychoeducational Group’s effectiveness in reducing the vulnerability of youth at risk for exploitation by sex traffickers.<sup>220</sup> The study found that 82% of participants were better equipped to identify an unhealthy relationship, 71% improved their ability to set relational boundaries, 88% improved their “understanding [of] what to do if in [an] abusive relationship and/or [if] being sex trafficked, and 71%” were better equipped to “help themselves or someone else” if they were to be victimized by a trafficker.<sup>221</sup> Overall, the study noted that participants improved their ability to evaluate their own values and beliefs and to protect themselves from exploitation.<sup>222</sup>

One example of self-protection is the ability to recognize an abusive relationship. “Teen relationship violence” is a major risk factor for victimization by a trafficker.<sup>223</sup> Traffickers often use relationships to establish control over an adolescent victim by forcing or coercing a young person into exploitation through violence and manipulation.<sup>224</sup> A study of female trafficking victims found that 28% of the perpetrators were boyfriends of the victim.<sup>225</sup> These relationships are often viewed as prostitution arrangements and victims are not readily identifiable when they are loyal to the trafficker.<sup>226</sup> Considering the dynamics of such a relationship, the estimates are likely inaccurate because many victims of trafficking are not even counted.

Youth are easy targets for traffickers masquerading as a love interest because they are less likely to recognize the signs of an abusive relationship or controlling behavior. Teen relationship

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<sup>218</sup> *Id.* at 521.

<sup>219</sup> *Id.* at 526.

<sup>220</sup> *Id.* at 529.

<sup>221</sup> *Id.* at 533.

<sup>222</sup> *Id.* at 534.

<sup>223</sup> Countryman-Roswurm & Bolin, *supra* note 21, at 526.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*

violence is dependent on the same risk factors as ST of children and is “closely tied to the signs of someone being groomed for and/or involved in [domestic minor sex trafficking].”<sup>227</sup> If youths are given tools to recognize the signs of an abusive relationship, it would make a significant impact on the number of youths victimized by traffickers through teen relationship violence.

#### D. *Improvements in Data Collection*

Research provides a vital tool for evaluating the effectiveness of programs and services to children vulnerable to sex trafficking. However, estimates about how many children are victims of ST has not been reliable or forthcoming and actual numbers may be much higher because various federal, state, and local agencies are not uniformly reporting their data.<sup>228</sup> Researchers note that “[t]here is a lack of quantitative peer-reviewed research regarding risk factors and health consequences for [child sex trafficking victims].”<sup>229</sup> The PSTSFA mandates new reporting requirements that will provide new opportunities for research and training about the operation of domestic sex trafficking.<sup>230</sup> To protect children in foster care from traffickers, researchers will need to continue to evaluate the services provided to these children and service providers will need to react with the necessary improvements.

#### E. *Collaboration: Inter-Agency Efforts*

To stop the sex trafficking of children, stakeholders will need to make a coordinated effort. Legal professionals and social workers can facilitate the use of more effective services for children in foster care by recommending appropriate preventative services to the court. These professionals will first need to educate themselves about the specific local services that provide effective protection and how to identify children and youth at risk for, or involved in, ST.

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<sup>227</sup> *Id.*

<sup>228</sup> Cole & Sprang, *supra* note 195.

<sup>229</sup> Selina Varma et al., *Characteristics of Child Commercial Sexual Exploitation and Sex Trafficking Victims Presenting for Medical Care in the United States*, 44 CHILD ABUSE & NEGLECT 98, 99 (2015).

<sup>230</sup> Pub. L. No. 113-183, 128 Stat. 1919.

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Collaboration between these groups can greatly assist their efforts in providing preventative services. Children in foster care are often receiving ongoing evaluations by professionals or may be represented by a guardian ad litem. Professionals in contact with children in the custody of the state or under court jurisdiction should utilize screening tools to identify children at risk for ST as part of their routine assessment process. Those found to be at risk for exploitation should be identified early and recommended for preventative treatment services and increased monitoring. Collaboration can greatly assist professionals who identify victims who need services they cannot provide. For example, many of the methods used to interview and help victims of domestic violence are useful for assisting victims of ST.<sup>231</sup> Thus, collaboration with domestic violence victim's advocates can be useful for safety planning and understanding how to effectively address victim needs.<sup>232</sup>

By collaborating with other agencies in the community, professionals can identify other resources and increase their ability to provide necessary treatment and resources through referrals to other providers.<sup>233</sup> For instance, both victims of domestic violence and victims of ST need safety planning and require assistance with basic necessities since they were likely to be reliant on their abuser to meet their material needs.<sup>234</sup> Identifying potential victims and knowing the appropriate resources to provide assistance is crucial for protection of children and the prosecution of offenders.<sup>235</sup>

Minors involved in the child welfare system invariably have contact with a variety of agencies and professions. Coordinated efforts between these contacts can create more opportunities to identify risks and monitor vulnerable children and youth.<sup>236</sup> International and European guidelines emphasize cooperation by recommending coordinated assistance to victims and also empha-

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<sup>231</sup> Leidholdt, *supra* note 152, at 180.

<sup>232</sup> *Id.*

<sup>233</sup> Gibbs et al., *supra* note 15, at 4.

<sup>234</sup> Leidholdt, *supra* note 152, at 179-80.

<sup>235</sup> Patsy Sorensen & Gert Nuyts, *Case of Child Trafficking*, 8 ERA FORUM 481, 493 (Nov. 16, 2007), <http://link.springer.com/article/10.1007%2Fs12027-007-0036-1#page-1>.

<sup>236</sup> Jill Reyes, *Federal Guidance to Address Child Trafficking: What Advocates Should Know*, 33 ABA CHILD L. PRAC. 17, 22 (Feb. 2014).



size the importance of identification of victims and referrals.<sup>237</sup> Collaboration between professionals is also useful for sharing data and furthering research on domestic ST. Some examples of coordinated efforts are the Innocence Lost National Initiative, the Arizona League to End Regional Trafficking, and the Cook County Human Trafficking Task Force.<sup>238</sup> Shared data can help to improve preventative and post-investigative services and greatly assist in necessary interventions.<sup>239</sup>

#### F. *Support and Supervision*

In addition, steps should be taken to counteract the effect of isolation created by the removal of children from their community upon entering state custody. This can be accomplished by maintaining the child's ties to the community and providing community supports for future employment and living accommodations after the age of eighteen. Often children are placed in foster care outside of their community and may experience multiple placements while in state custody. Greater efforts should be made to place children inside or near their existing communities to maintain their ties to school and extracurricular activities that they were involved in before coming into care.

Unfortunately, many states do not allow children to stay in foster care once they reach the age of majority. The best approach for addressing the problem "involves looking at victims and their futures."<sup>240</sup> Missouri is among the states that currently allow young people the option of staying in foster care or even re-entering foster care until the age of twenty-one.<sup>241</sup> Staying in foster care instead of aging out of the system creates additional support opportunities for young people who would otherwise have little to no support. Studies recognizing the continuation of brain development in individuals between the ages of fourteen and twenty-five stress that community support of this age group

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<sup>237</sup> Sorensen & Nuyts, *supra* note 235.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.* at 494.

<sup>241</sup> Mary Sanchez, *Sex Trafficking Raids Highlight Special Dangers for Foster Children*, KC STAR (updated July 31, 2013, 11:40 PM), <http://www.kansas.com/opinion/opn-columns-blogs/mary-sanchez/article324315/Sex-trafficking-raids-highlight-special-dangers-for-foster-children.html>.

is essential in combating ST.<sup>242</sup> Without continued support, youths are more likely to become homeless, a significant risk factor for exploitation.

In support of safe and secure housing for youths leaving foster care, ABA Governmental Affairs Director Thomas M. Susman said, “Too many youth are discharged from foster care and quickly become homeless . . . making them easy targets for traffickers.”<sup>243</sup> A study involving young people who received services after being sex trafficked indicated that a majority of the participants needed educational support, employment services, transitional and long-term housing, and essentials such as food and clothing.<sup>244</sup> This conclusion is supported by the studies finding that the main reason a young person became engaged in a sex trade was either a romantic or sexual involvement with the trafficker or the need for money, shelter, or food.<sup>245</sup>

Trafficking victims lack the same resources for self-sufficiency that a young person aging out of the system would require without the assistance of child welfare services. Children in foster care do not usually have the advantage of family support once they age out of the system and this can limit their options significantly in the realm of employment and financial independence. Continued support for young people after the age of eighteen is essential to help them achieve stability and provide more opportunities for learning self-protection skills.

## **Conclusion:**

To provide hope and security for children and youth involved in the child welfare system, states will need to increase awareness and training, improve screening tools for identifying possible victims of sex trafficking, implement more preventative services, improve collaboration between professionals, and extend support for older youth. In addition, state statutes will need to be enacted to align with federal legislation and to provide more protection for children and youth through the use of Safe Harbor laws that ensure children and youth will be processed

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<sup>242</sup> *Id.*

<sup>243</sup> McMillion, *supra* note 166.

<sup>244</sup> Gibbs et al., *supra* note 15.

<sup>245</sup> *Id.* at 3-4.

through the family court system as victims and receive the appropriate services. Although there will still need to be many more improvements the development of recent legislative changes and increased awareness across the country creates hope that children, especially those in foster care, will be less vulnerable in the future. Understanding the unique psychological needs of children and youth involved in the child welfare system and the community's role in providing support and supervision can turn the tide.

