

# DISMANTLING THE SEXUAL ABUSE-TO-PRISON PIPELINE: TEXAS'S APPROACH

JEREMY THOMPSON\* & CHANELLE ARTILES\*\*

## ABSTRACT

*The United States now has more than \$19 trillion debt. With over 2.2 million people incarcerated, the United States has the highest prison population in the World. With over 1.6 million people incarcerated, China has the second highest prison population in the World. As the country with the highest prison population, the United States spends billions of dollars each year on prison cost, which continues to contribute to the United States debt. As a result of the United States debt and its relation to money spent on incarceration, Republicans and Democrats are working together in the federal government and state governments to decrease the prison population. Since 2007, several states have passed comprehensive, data-driven reforms designed to reduce recidivism and incarceration rates and to reduce new spending on prisons. For example, state governments are giving school districts the option to eliminate zero-tolerance policies in school discipline because of the recent research showing that zero-tolerance policies create a "School-to-Prison Pipeline." In October 2015, the federal government took an unprecedented step by releasing 6,000 prisoners due to sentencing disparities in drug laws. On November 2, 2015, the National Bar Association partnered with the White House using funds from the Office of Juvenile Justice and Delinquency Prevention to help expunge or seal residents'*

---

\* Jeremy Thompson is a recent graduate of Florida International University College of Law. Jeremy served as the National Director of Education and Career Development for the National Black Law Students Association. He holds a Bachelor of Science in Justice Administration from the University of Louisville and a Master of Science in Criminal Justice from Florida International University. Jeremy has over seven years of experience supervising federal inmates in halfway houses located in Miami, FL; Fort Lauderdale, FL; and Louisville, KY. Jeremy is now an Honors Attorney for the United States Department of Justice.

\*\* Chanelle Artiles is a third-year law student at Florida International University College of Law. Chanelle serves as an Education Specialist for the National Black Law Students Association's executive board. She holds a Bachelor's Degree in Finance and International Business from Florida International University College of Business. Chanelle has over 8 years of experience working in the Miami, Florida business sector. Currently, Chanelle is a research assistant for two law professors at Florida International University.

Jeremy and Chanelle would like to thank Professor H.T. Smith, Professor Ediberto Roman, Reginald Clyne, the National Black Law Students Association, the Kozyak Minority Mentoring Foundation, the Gwen S. Cherry Black Women Lawyers Association and the Wilkie D. Ferguson, Jr. Bar Association for their guidance and support.

records who are under the age of 24. Another equally important, comprehensive data driven reform that the United States can use to decrease the prison population is by stopping the criminalization of girls who have been victims of sexual abuse. One way of doing this is by recognizing that “gender neutral” laws fail to take into account social norms among genders. Despite the fact that most laws in the United States are “gender neutral” on its face, sexually abused females represent a small fraction of the United States population while representing a disproportionately higher rate of the United States incarcerated population than their male counterparts and females who have not been sexually abused.

Ignoring gender differences under the law, especially for females who have been sexually abused, has led to the Sexual Abuse-to-Prison Pipeline. Because experiencing sexual abuse often time leads to prostitution and other behavior that violates the law, sexually abused girls are more likely than girls who have not been sexually abused to end up in the juvenile justice system. By recognizing that females are treated different from males socially and under the law, some states are decreasing arrests rates by choosing alternatives to arrest for sexually abused victims. Texas, for example, has implemented laws that require law enforcement to recognize potential victims of sexual violence. Texas has also implemented laws that treat children who are victims of sex trafficking as victims, instead of prostitutes. If states collectively recognize that females are treated different from males socially and under the law, the United States can decrease the prison pipeline even more than it currently has done.

Adopting Feminist Theory, this Article offers insight into some of the causes of gender inequality in the United States and in the criminal justice system specifically. Adopting Restorative Justice Theory, this article argues that alternatives policies to the current “gender neutral” policies that criminalize victims of sexual abuse are more efficient at decreasing the prison population than the current laws that are in place in most states.

In this Student Note, we will examine Texas’s response to sex trafficking and prostitution as a potential model for other juvenile justice systems. After adopting alternatives for juveniles involved in prostitution and sex trafficking, Texas significantly reduced prostitution related arrests and referrals to the juvenile justice system. Therefore, Texas has taken a step in the right direction of not re-victimizing sexual abuse victims and decreasing the future prison population. Juvenile justice systems can play their part in eliminating gender disparities in the criminal justice system while also saving taxpayers money by shutting off the Sexual Abuse-to-Prison Pipeline.

## I. INTRODUCTION

“Abused by her uncle at a young age, Paz had difficulty telling her family and instead mostly ran away. At 16, an encounter with law enforcement re-triggered that trauma, resulting in a charge for resisting arrest. ‘In my mind what the police did wasn’t much different than what my uncle did,’ explained Paz when describing the manner in which she was detained.”<sup>1</sup>

### A. Policies that contribute to the Sexual Abuse-to-Prison Pipeline

“Gender neutral” policies are a popular feature of the United States Criminal Justice System. Because “gender neutral” criminal justice policies are seen from a male perspective, “gender neutral” policies in the criminal justice system result in high incarceration rates for girls who have been physical or sexually abused, which disproportionately affects Blacks, Latinas, poor Whites and Native American girls. Sexually abused girls who have been arrested are more likely to end up in the prison system than girls who have not been sexually abused. The issue with “gender neutral” laws is that “gender neutral” laws fail to consider how social norms subordinate females, making females vulnerable to sexual, physical, and domestic abuse. The federal government and some state governments are increasingly implementing laws to protect abused females instead of funneling them into the justice system.

### B. Adopting Feminist and Restorative Justice Theories

As a result, “gender neutral” policies that criminalize victims of sexual abuse in the criminal justice system have created a pipeline from Sexual Abuse-to-Prison, which results in double victimization for females. Based on Feminist Theory, Part I offers insight into the causes of gender inequality in America and in the criminal justice system specifically, and how it relates to increasing incarceration rates for females. Part II, examines gender-neutral policies in the criminal justice system and the cost of those policies on society by examining the incarceration rate in the United States. Part III examines restorative justice theory as an alternative to the criminalization of sexually abused girls. Lastly, Part IV argues that the restorative justice models, such

---

1. Ronda Racha Penrice, *Ending the Sexual Abuse to Prison Pipeline for Black and Brown Girls*, NBC NEWS (July 17, 2015, 10:18am), <http://www.nbcnews.com/news/nbcblk/ending-sexual-abuse-prison-pipeline-n393581>.

as Texas's, provide a better outcome for female sexual abuse victims than treating sexually abused victims like criminals.

### *1. History of Gender Discrimination*

Gender discrimination is not only prevalent in the United States but also around the world. In the United States, females are paid less than males, physically abused more than males, encouraged to pursue inferior professions, and are disproportionately encouraged to be caretakers.<sup>2</sup> Particularly in the United States, there are four major areas that have contributed to the subordination of minority females: 1) the male perspective of the law; 2) the denigration of female sexuality, particularly Black female sexuality during slavery; 3) “the criminalization of Black women for moral offenses in the post-Civil War era”; and 4) “the discriminatory operation of the early juvenile reform institutions.” These four areas established “the framework for the discriminatory treatment of [B]lack girls” that has caused today’s disproportionate incarcerations numbers.<sup>3</sup>

### *C. The Male Perspective*

Because only men were (and still are) historically presidents, lawyers, lawmakers, doctors, police officers, priests, and CEOs, today’s society is viewed from a male perspective, including the law.<sup>4</sup> As a result of the male view of the world, “socially, politically, economically, and legally, women have been historically, and still are, subordinated, diminished, devalued, and ignored.”<sup>5</sup> Despite the present and historical subordination of women and girls, many people “equate legal treatment of sex with that of race and deny that there are in fact any significant natural difference between women and men” under the law and consider “the two sexes symmetrically located with regard to any issue, norm, or rule.”<sup>6</sup> By ignoring female subordination, the legal

---

2. Robert L. Hayman, Jr., et al, JURISPRUDENCE CLASSICAL AND CONTEMPORARY: FROM NATURAL LAW TO POSTMODERNISM, 542 (Jean Stefancic ed., 2d ed. 2002).

3. Priscilla A. Ocen, *(e)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1614 (2015).

4. See Hayman, Jr. et al, *supra* note 2, at 541.

5. *Id.* at 543.

6. Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1279-83, 1291, 1299-1302, 1326 (1987) reprinted in Jurisprudence Classical and Contemporary: From Natural Law to Postmodernism, 545 (Jean Stefancic ed., 2d ed. 2002).

system overwhelming adopts a symmetry approach to males and females.<sup>7</sup> The legal system's approach would be great if males and females were historically equal. However, because males and females and Blacks and Whites have not historically been treated as equals socially and under the law, the law re-victimizes females, especially minority females, despite its attempt to be "race neutral" and "gender neutral." For example, in the 1855 case called *Missouri v. Celia*, Slave, a nineteen-year-old Black slave was convicted of killing her owner despite the fact that she killed him in self-defense, because her owner sexually abused her since the age of 14.<sup>8</sup> More recently, Marissa Alexander of Jacksonville, Florida was denied a Stand Your Ground defense for firing warning shots at her abusive husband and faced the possibility of a sixty year prison sentence.<sup>9</sup>

#### *D. Black Female Sexuality During Slavery*

During slavery, the Black female childhood was racialized and gendered. As a result, Black girls were sexually and physically exploited.<sup>10</sup> The sexual and physical exploitations separated Black girls from their girlhood; therefore, they were not socially seen as innocent children.<sup>11</sup> Similar to Black women, Black girls were socially "denied access to the notions of femininity and womanhood."<sup>12</sup> Therefore, Black girls were viewed as "seductresses, labeled prostitutes and blamed by White mistresses for their husbands' infidelity."<sup>13</sup> The jezebel image resulted from the stereotype of the hypersexual Black female.<sup>14</sup> White men used the jezebel image to rationalize their widespread rape of Black females.<sup>15</sup> Therefore, Black females were viewed as inherently hypersexual property, not capable of withholding consent to sex.<sup>16</sup> Legalized rape of Black women, "normalized sexual violence and reinforced the construction of Black femininity as sexual[ly]

---

7. *See Id.*

8. Ocen, *supra* note 3, at 1608.

9. Irin Carmon, *Marissa Alexander denied new Stand Your Ground Hearing*, MSNBC, (Jan. 27, 2015, 11:52 PM), <http://www.msnbc.com/msnbc/marissa-alexander-denied-new-stand-your-ground-hearing>.

10. Ocen, *supra* note 3, at 1607.

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.* at 1608.

deviant.”<sup>17</sup> As a result of justified sexual assault on Black females, Black females gained the stereotype of being sexually mature and promiscuous.<sup>18</sup>

*E. Black Youth Criminalization in the Jim Crow Era*

In the late 1800s after slavery was no longer “legal”, states drafted the “Black Codes.” The “Black Codes” criminalized Blacks for several types of “crimes” such as “vagrancy, absence from work, the possession of firearms, insulting gestures or acts, familial neglect, reckless spending, and disorderly conduct.”<sup>19</sup> Black girls were also subjected to these laws.<sup>20</sup> These laws contributed to their subordination through criminalization of Black children.<sup>21</sup> As a result of such criminalization, Black children were placed outside of the childhood protections given to Whites.<sup>22</sup> Because of the notion of innocence and dependency of White children, laws began to protect White children from exploitative labor conditions in the 1800s.<sup>23</sup> While notions of innocence and dependency protected White children, Black children’s dependency justified their criminalization during this period.<sup>24</sup> During this period, Black girls experienced “both racialized and gendered punishment that reinforced their marginalization not only within the category of child, but also within the category of female.”<sup>25</sup> As a result, stereotypes of the need to police the Black female sexual deviant grew stronger.<sup>26</sup> Around the 1900s, White females suspected of prostitution were viewed as victims; therefore, efforts were used to direct White females out of the criminal justice system.<sup>27</sup> However, during this time period, Black females between the ages of fifteen to twenty were arrested more than Whites as a group combined.<sup>28</sup>

---

17. *Id.*

18. Priscilla A. Ocen, *(e)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1609 (2015).

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. Priscilla A. Ocen, *(e)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors*, 62 UCLA L. REV. 1586, 1609 (2015).

27. *Id.*

28. *Id.*

*F. Discriminatory Operation of the Early Juvenile Reformatories*

While White women began to gain more rights, reformers started protecting children. In early American history, juvenile offenders were housed with adult offenders; however, after some reforms, children were separated from adults.<sup>29</sup> As a result, the juvenile justice system was created, which created many reformatories that consisted of mostly poor children.<sup>30</sup> The then newly formed juvenile justice system was created to help provide, educate, guide, supervise, and rehabilitate juveniles.<sup>31</sup> The new juvenile justice system also recognized the need to protect girls because it seen girls as vulnerable to sexual exploitation.<sup>32</sup> The juvenile justice system was influenced by the time period, which consisted of anti-prostitution efforts and sexual education campaigns.<sup>33</sup> There, the new juvenile justice system was reformed to protect girlhood.<sup>34</sup> Overtime, the juvenile justice system's efforts to protect girlhood evolved into "a mechanism to control the sexuality of wayward girls."<sup>35</sup> The first reform stage of "protective laws" increased the consent age of having sex with girls; therefore, it criminalized sex with girls.<sup>36</sup> The focus to protect girls' sexuality decriminalized girls' behavior. As a result, girls were charged with "morality offenses."<sup>37</sup> Morality offenses consisted of sex acts and "signs in her appearance, conversation and bearing that she probably had intercourse in the past or might do so in the future."<sup>38</sup> Girls convicted of morality offenses were sent to reformatories.<sup>39</sup> During this period, Black girls were overrepresented in reformatories because of their stereotype as being hypersexual, which influenced those who enforced the law.<sup>40</sup> While inside of reformatories, officials segregated Black girls from White girls to protect White girls from "corruptive influences" because Black

---

29. *Id.* at 1611.

30. *Id.*

31. *Id.*

32. *Id.* at 1612.

33. *Id.*

34. Priscilla A. Ocen, (*e*)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors, 62 UCLA L. REV. 1586, 1612 (2015).

35. *Id.* at 1613.

36. *Id.*

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

girls were viewed as hypersexual.<sup>41</sup> As a result, these “practices of racialized punishments within female institutions reinforced the marginal status of Black girls within the broader category of childhood.”<sup>42</sup> The history of Black female marginalization combined with today’s TV shows that reinforce the Black female as hypersexual, such as “The Real House Wives of Atlanta”, Americans, law enforcement in particular, have developed an implicit bias towards Black females as being sexual deviants.<sup>43</sup> Therefore, law enforcement officers often times use their discretion to arrest young Black girls for sexual offenses that they may not arrest a young White girl for under similar circumstances, thus explaining the large gaps in arrest rates among Black, Latina, and White girls. Latina girls also face a similar stigma. The past’s explicit marginalization of females combined with today’s implicit marginalization of females, specifically Black females, illustrate the old saying, “The more things change, the more they remain the same.”

### G. *The Sexual Abuse-to-Prison Pipeline*

#### 1. *Current policies that influence the pipeline from sexual abuse-to-prison.*

The Sexual Abuse-to Prison Pipeline is a collection of social punitive laws, policies and practices influenced by gender social norms that push young girls, particularly African-Americans, Latinas, Native Americans, and girls from lower socioeconomic statuses who have been sexually abused, into the criminal justice system.<sup>44</sup> The Sexual Abuse-to-Prison Pipeline is a prison pipeline for minority girls.<sup>45</sup> Despite the United States’ recent attempts to lower the incarceration rate, females generally have been ignored despite the fact that females continue to have the fastest growing incarceration rate in the United States.<sup>46</sup> Although women’s incarceration rate continues to increase, women are not becoming more violent than in the past decade nor are they engaging in more criminal activity in the past

---

41. *Id.* at 1614.

42. Priscilla A. Ocen, (*e*)racing Childhood: Examining the Racialized Construction of Childhood and Innocence in the Treatment of Sexually Exploited Minors, 62 UCLA L. REV. 1586, 1614 (2015).

43. *See id.* at 1628.

44. *See* Malika Saada Saar et al., The Sexual Abuse to Prison Pipeline: The Girls' Story 7 (2015), [http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf).

45. *See id.*

46. *See id.*

decade.<sup>47</sup> The Justice Department's Office of Juvenile Justice and Delinquency Prevention studied the increased arrests rates for juvenile girls.<sup>48</sup> The Justice Department's report suggested that the following relevant factors that are likely causing the increase arrests rates for girls:

Law enforcement policies that lower the threshold for reporting an assault or for classifying an assault or for classifying an assault as aggravated may create the appearance of a "crime wave" when the underlying behavior remains relatively stable

Heightened sensitivity to domestic violence has led many States and localities to implement "mandatory arrest" policies in response to domestic disturbances. Behaviors once considered "ungovernable" (a "status offense") may, in a domestic situation, result instead in an arrest for simple assault- possibly in response to the Juvenile Justice and Delinquency Prevention Act of 2002, which requires States to decriminalize and deinstitutionalize status offenses.

Family dynamics may also contribute to gender differences in juvenile arrests for assault. Parents have different expectations about their sons' and daughters' obedience to parental authority, and these expectations may affect how the justice system responds to a girl's behavior when she "acts out" within the home. (Krause and McShane, 1994). Research indicates that girls fight with family members or siblings more frequently than boys, who more often fight with friends or strangers (Bloom et al., 2002). Some research suggests that girls are three times as likely as boys to assault a family member (Franke, Huynh-Hohnbaum, and Chung, 2002).

Policies of mandatory arrest for domestic violence, initially adopted to protect victims from further attacks, also provide parents with another method of attempting to control their "unruly" daughters. Regardless of who initiates a violent domestic incident, law enforcement first responders may consider it more practical and efficient to identify youth as the offender, especially when the parent is the caretaker for other children in the home (Gaarder, Rodriguez, and Zats, 2004).

---

47. *Id.*

48. U.S. DEP'T OF JUSTICE, GIRLS STUDY GROUP: UNDERSTAND RESPONDING TO GIRLS' DELINQUENCY, (2008), <https://www.ncjrs.gov/pdffiles1/ojjdp/218905.pdf>.

It is possible that school officials' adoption of zero-tolerance policies toward youth violence may increase the number of youth referred to police for schoolyard tussles that schools previously handled internally.<sup>49</sup>

Recent "evidence suggests that one cause is more aggressive enforcement of non-serious offenses that are rooted in the experience of abuse and trauma" such as truancy and running away.<sup>50</sup> Despite the fact that most girls commit such status offenses because of trauma, social norms and stereotypes of feminine behavior have contributed to their arrest and detainment.<sup>51</sup> In addition to more aggressive enforcement of truancy and running away, most states prosecute juveniles for prostitution despite the fact that juveniles cannot consent to having sex with adults.<sup>52</sup> As a result of the punitive approach to juvenile prostitution, thousands of children are arrested and prosecuted for prostitution.<sup>53</sup>

The most common crimes for which girls are arrested relate to substance abuse, running away, and truancy.<sup>54</sup> These offenses are also the most common symptoms of someone who has been sexually abused.<sup>55</sup> Experts view these "behaviors as warning signs that an adolescent has been abused and needs therapeutic intervention."<sup>56</sup> The United States Department of Health and Human Services reported the following in terms of abuse: "46 percent of runaway and homeless youth report being physically abused; 38 percent report being emotionally abused, and 17 percent report being forced into unwanted sexual activity by a family or household member."<sup>57</sup> The National Child Traumatic Stress Network explained that for many "adolescent females, there appears to be a link between the experience of abuse and neglect, the lack of appropriate treatment, the behaviors that led to arrest."<sup>58</sup> When states arrest female victims of sexually abuse instead of treating them, it not only double victimizes them, but it also "sets in motion a cycle of abuse and imprisonment that has harmful consequences for victims of trauma."<sup>59</sup>

---

49. *Id.* at 7

50. Saar et al., *supra* note 44, at 5.

51. *Id.*

52. Ocen, *supra* note 3, at 1621.

53. *Id.*

54. Saar et al., *supra* note 44, at 9.

55. *Id.*

56. *Id.* at 10.

57. *Id.* at 12.

58. *Id.*

59. *Id.*

#### H. Childhood Sexual Abuse Often Leads to Prostitution

"I still feel the breeze when my dress was lifted over my face and them smothering me with a pillow. And then after I got done they gave me a sucker and told me not to tell anybody. I held that secret for a very long time in my secret garden," said Ms. Renfro, who was first victimized at age three.<sup>60</sup> Ms. Renfro was forced into prostitution when she nine years old.<sup>61</sup> She was a mother before the age of 13.<sup>62</sup> "I didn't get to do what normal kids do, (like) play with [B]arbie dolls," she said.<sup>63</sup> Ms. Renfro says pimps easily lure in young girls.<sup>64</sup> "They charmed me with nice clothes, every once in a while fed me and until I got caught up in the way of addiction, that's how they enslaved me: with drugs," Ms. Renfro explained.<sup>65</sup>

Research has shown that there is a close relationship with prostitution and childhood sexual exploitation.<sup>66</sup> Some studies estimate as many as 70 percent of women and girls who are prostitutes have a history of sexual abuse by a male family member or friend.<sup>67</sup> The reasons women and girls become prostitutes are "profoundly gendered."<sup>68</sup> Pimps easily "turn-out" abused women and girls who often times have low esteem by eradicating their identities, erasing their sense of self, especially any belief that they are entitled to dignity.<sup>69</sup> As a result, prostitution is a system of gender-based domination and gender-totalitarianism.<sup>70</sup> Despite the fact that prostitution is a system of gender-based domination and gender-totalitarianism, women and girls are arrested for prostitution.

---

60. Rachel Collier, *Special investigations monitor hotspots for Human Trafficking in Louisville*, WDRB (Nov. 19, 2015, 11:01 PM), <http://www.wdrb.com/story/30562267/special-investigations-monitor-louisville-hot-spots-for-human-trafficking-in-louisville>.

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. DORCHEN A. LEIDHOLDT, PROSTITUTION AND TRAFFICKING IN WOMEN: AN INTIMATE RELATIONSHIP. 167, 173 (In M. Farley ed., *Prostitution, Trafficking and Traumatic Stress*, New York: Routledge) (2003), <http://www.prostitutionresearch.com/Leidholdt%20Prostitution%20and%20Trafficking%20in%20Women.pdf>.

67. *Id.*

68. *Id.* at 171.

69. *Id.*

70. *Id.*

*I. The United States Prison population statistics and how it relates to sexually abused victims.*

Because of the long history of female domination and racial stereotypes, minority women and girls are disproportionately arrested and confined for prostitution. Black girls constitute 14 percent of the population but represent 33.2 percent of girls detained and committed.<sup>71</sup> Native Americans constitute “1 percent of the youth population but 3.5 percent of detained and committed girls.”<sup>72</sup> 179 per 100,000 Native American girls are in residential placements.<sup>73</sup> 123 per 100,000 Black girls are in residential placements.<sup>74</sup> 47 per 100,000 Latinas are in residential placements.<sup>75</sup> However, only 37 per 100,000 White girls are confined.<sup>76</sup> Recent studies show that girls who are funneled into the juvenile justice system “typically experienced overwhelmingly high rates of sexual violence.”<sup>77</sup> The following state studies revealed alarming numbers regarding confined girls:

In a 2006 study of girls involved in Oregon’s juvenile justice system, 93 percent had experienced sexual or physical abuse; 76 percent had experienced at least one incident of sexual abuse by the age of 13; and 63 percent had experienced both physical and sexual abuse.

[I]n a 2009 study of delinquent girls in South Carolina, 81 percent reported a history of sexual violence, and 42 percent reported dating violence.

[A] 1998 study of juvenile justice involved girls in California found that 81 percent of girls had experienced one or more incident of physical or sexual abuse; 56 percent reported one or more forms of sexual-abuse; and 45 percent reported being beaten or burned at least once.

In a 2014 study of the abuse histories of more than 60,000 youth in Florida’s juvenile justice system, girls reported having experienced higher rates than boys in all 10 categories of trauma and abuse analyzed. 45

---

71. Saar et al., *supra* note 44, at 7.

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

percent of the girls experienced five or more forms of trauma and abuse, compared to less than 27 percent of boys.<sup>78</sup>

Within these studies, the details are even more shocking. The California study revealed that 40 percent of the girls reported being raped at least once and 17 reported being abused on multiple occasions.<sup>79</sup> The South Carolina study revealed that sexual violence was a risk to girls throughout their lives, while the California study revealed that girls were more likely to be molested at age five years old.<sup>80</sup> The Oregon study revealed that the average age of girls' first sexual abuse occurs around age 7.<sup>81</sup> Recent studies have shown that "sexual abuse is one of the strongest predictors" of recidivism.<sup>82</sup> However, the same is not true for boys who have been sexually abused.<sup>83</sup> Therefore, sexual abuse clearly has influenced girls' incarceration rates.

#### *J. Sex Trafficked Kids in U.S. Jails*

In 2000, Congress passed the Trafficking Victims Protection Act (TVPA) to "combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims."<sup>84</sup> The Inter-American Commission on Human Rights (IACHR) also requires children who are sex trafficked to be treated as victims, not as prostitutes.<sup>85</sup> Despite federal and international law, most states treat traffickers as criminals by arresting them for prostitution even though it double traumatizes them.<sup>86</sup> As of March 2015, only 15 states adopted "safe harbor" laws designed to protect sex trafficked children from incarceration.<sup>87</sup> Girls who are incarcerated after being sexually and physically abused, "their ability to

---

78. *Id.* at 7-9.

79. See Malika Saada Saar et al., *The Sexual Abuse to Prison Pipeline: The Girls' Story* 9 (2015), [http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015\\_COP\\_sexual-abuse\\_layout\\_web-1.pdf](http://rights4girls.org/wp-content/uploads/r4g/2015/02/2015_COP_sexual-abuse_layout_web-1.pdf).

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. 22 U.S.C. § 7101(a) (2006).

85. Stella Dawson, *U.S. jails sex-trafficked kids in human rights abuse group say*, REUTERS, (March 16, 2015, 11:39), <http://www.reuters.com/article/2015/03/17/us-trafficking-us-children-idUSKBN0MD0AJ20150317#114XLeTwQqcxFgo5.97>.

86. *Id.*

87. *Id.*

return to family, community and school is less likely, which only serves to tighten the traffickers' control."<sup>88</sup> According to the FBI, around 300,000 American children are "at risk for commercial sexual exploitation and sex trafficking each year."<sup>89</sup> According to the United States Justice Department, more than 1,000 children are arrested every year.<sup>90</sup> In 2014, there were over 2,000 reports of human trafficking in Texas.<sup>91</sup>

### K. *Financial Incentives for Reform*

While there are several of reasons to reform law enforcement's approach to girls who have been sexual abused, the cost on society for incarcerating sexual abused girls is one of them. The United States federal incarceration rate increased 518 percent between 1980 and 2013.<sup>92</sup> During the same period, the federal prison cost rose 595 percent from \$970 million to more than \$6.7 billion.<sup>93</sup> During that same period, States also increased their prison population rate.<sup>94</sup> Every state spends more money per year keeping an inmate imprisoned than spent to educate an elementary/secondary school student.<sup>95</sup> In a study conducted by CNN Money that examined the United States Census and the Department of Justice data, Texas spends approximately \$20,000 per year to keep an inmate imprisoned.<sup>96</sup> Florida spends approximately \$19,000 a year to keep an inmate imprisoned.<sup>97</sup> New York spends approximately \$58,000 per year to keep an inmate imprisoned.<sup>98</sup> In a study conducted in 2012 on the full cost of prisons on tax payers in 40 states, taxpayers spent \$39 billion a year on prison related costs, which was \$5.4 billion more than

---

88. *Id.*

89. *Id.*

90. *Id.*

91. Kristian Hernandez, *Identifying human trafficking in Texas schools*, THE MONITOR, (May 18, 2015, 9:49pm), [http://www.themonitor.com/news/local/identifying-human-trafficking-in-texas-schools/article\\_d5f99c4c-fdd1-11e4-94f0-6b3908cfd217.html](http://www.themonitor.com/news/local/identifying-human-trafficking-in-texas-schools/article_d5f99c4c-fdd1-11e4-94f0-6b3908cfd217.html).

92. The Pew Charitable Trusts, *Growth in Federal Prison System Exceeds States*, (Jan. 22, 2015), <http://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2015/01/growth-in-federal-prison-system-exceeds-states>.

93. *Id.*

94. *Id.*

95. *Education v. Prison Costs*, CNN MONEY, <http://money.cnn.com/infographic/economy/education-vs-prison-costs/>. (Last visited on November 25, 2015).

96. *Id.*

97. *Id.*

98. *Id.*

the \$33.5 billion budgeted for prison related cost.<sup>99</sup> The study revealed that Texas taxpayers spent \$3,306,358 in 2010 on its state prisons.<sup>100</sup> Florida taxpayers spent \$2,082,531 on state prison costs in 2010.<sup>101</sup> New York taxpayers spent \$3,558,711 on state prison costs in 2010.<sup>102</sup> Unfortunately, these statistics show that more resources are allocated to incarcerate youth than allocated to educate them.<sup>103</sup>

Imprisoning children “limits their accumulation of human and social capital during an essential development stage, setting them up for failure in the future.”<sup>104</sup> A Florida manual showed an overview of the collateral consequences of being incarcerated in Florida.<sup>105</sup> The Florida manual examined the consequences of being convicted of sex offenses and found the following issues to be substantially affected: housing restrictions<sup>106</sup> parental rights<sup>107</sup>, required sex offender registration<sup>108</sup>, immigration status<sup>109</sup>, and the ability to obtain professional licenses.<sup>110</sup> These collateral consequences prevent ex-offenders convicted of sexual offenses to live productive lives. As a result of not being able to live productive lives, those same ex-offenders recidivate, rely on taxpayer dollars to making a living, or both. Thus, taxpayers will eventually pay to keep them confined or pay for their welfare benefits. Childhood preventative measures will not only help victims of sexual abuse with their traumatization, but it will also prevent taxpayers from paying their confinement or state welfare benefits.

---

99. Vera Institute of Justice, *The Price of Prisons: What Incarceration Costs Taxpayers*, (July 20, 2012), <http://www.vera.org/sites/default/files/resources/downloads/price-of-prisons-updated-version-021914.pdf>.

100. *Id.* at 8.

101. *Id.*

102. *Id.*

103. *See id.*

104. Chloe Della Costa, *What Are America's Prisons Costing Taxpayers?*, CHEATSHEET (March 23, 2015), <http://www.cheatsheet.com/personal-finance/what-are-americas-prisons-costing-you.html?a=viewall>.

105. Carlos J. Martinez, *What You Don't Know Can Hurt You: The Collateral Consequences of a Florida Conviction in Florida*, 16, (2015), <http://www.pdmiami.com/What%20You%20Don't%20Know%20Can%20Hurt%20You%20-%20The%20Collateral%20Consequences%20of%20a%20Conviction%20in%20Florida.pdf>.

106. *Id.* at 26.

107. *Id.* at 43.

108. *Id.* at 48.

109. *Id.* at 49.

110. *Id.* at 66.

### *L. Alternative Disciplinary Policies: Restorative Justice*

Restorative justice focuses on reducing recidivism rates. Restorative justice is a board set of procedures that focus on the including victims in the criminal justice process and it focuses on the view that criminal acts injure the state, individual victims and their communities.<sup>111</sup> Restorative justice discipline is a punishment method that focuses on rehabilitation instead of punishment.<sup>112</sup> One common form of restorative justice discipline is the use of juvenile specialty courts. Juvenile specialty courts seek to address the underlying problem that “caused or contributed to the youth’s delinquent behavior.”<sup>113</sup> Children and families benefit from specialty courts by receiving family counseling and therapeutic treatment.<sup>114</sup>

## II. TEXAS’S APPROACH

In response to being ranked second in the nation in number of calls to the National Human Trafficking Hotline, the Texas Legislature has implemented a vigorous policy reform by enacting a number of anti-human trafficking laws.<sup>115</sup> One of the major causes of Texas’s relationship with human trafficking is the high number of visitors to major cities such as Houston, Dallas, Austin and San Antonio, creating a high demand for illicit sex.<sup>116</sup> Texas’s approach to human trafficking involves a comprehensive strategy to handling juveniles who are involved in human trafficking operations. This approach underlines the importance of decriminalizing sex-related offenses in the juvenile justice system, and properly classifying victims of sexual abuse as victims and not perpetrators.<sup>117</sup> By decriminalizing juvenile offenses and seeking alternatives to incarceration

---

111. Darren Bush, *Interdisciplinary Perspectives on Restorative Justice: Law and Economics of Restorative Justice: Why Restorative Justice Cannot and Should Not Be Solely About Restoration*, 2003 Utah L. Rev. 439, 458. (2003).

112. *See Id.*

113. ROBERT SANBORN, ED.D. ET AL., *JUVENILE SPECIALTY COURTS: AN EXAMINATION OF REHABILITATIVE JUSTICE IN TEXAS AND ACROSS THE NATION*, 97, (2014), <http://childrenatrisk.org/wp-content/uploads/2013/05/Juvenile-Specialty-Courts-2014.pdf>.

114. *Id.* at 22.

115. *Id.* at 96.

116. *Id.*

117. In the Matter of B.W., 313 S.W.3d 818 (Tex. 2010) (the Texas Supreme Court stated that “[c]hildren are the victims, not the perpetrators, of child prostitution.”).

for victims of sexual abuse, Texas has dramatically decreased the number of arrests for minor girls and adult women.<sup>118</sup>

### *A. Texas's Policy & Legislative Overhaul*

#### *1. Texas's Legislative Changes*

Texas's approach to dismantling the sexual-abuse-to-prison pipeline began with the state's focus on combating human trafficking.<sup>119</sup> In 2003, Texas became one of the first states to enact human trafficking laws, which began with House Bill 2096.<sup>120</sup> The law prohibited human trafficking and categorized the offense as a second-degree felony.<sup>121</sup> The law also included a sentencing enhancing provision that allows the offense to be upgraded to a first-degree felony if the trafficking involves a child younger than 14 years old.<sup>122</sup>

Numerous legislative efforts focusing on decreasing human trafficking in Texas have been enacted since House Bill 2096's inception in 2003.<sup>123</sup> This paper discusses the bills Texas has enacted that focus on guaranteeing rehabilitative services for sexual abuse victims, training for law enforcement officials to help identify sexual abuse victims, building task forces, and creating programs designed to assist victims of sexual assault. Other bills worth noting are those that involve harsher penalties for offenders who sexually exploit children.

On January 1, 2008, House Bill 1751 became effective.<sup>124</sup> The purpose of House Bill 1751 is to provide grants to fund support programs for sexual assault victims, human trafficking victims, human trafficking investigations

---

118. Crime in Texas, Texas Department of Public Safety, in 2009, the total number of juvenile female arrests in Texas was 43,461. By 2014, the total number of juvenile female arrests in Texas decreased to 18,295. In 2009, the total number of adult women arrests in Texas was 244,637, by 2014 the total number of adult women arrests in Texas was 207,360. [http://www.txdps.state.tx.us/administration/crime\\_records/pages/crimestatistics.htm](http://www.txdps.state.tx.us/administration/crime_records/pages/crimestatistics.htm)

119. Dawn Lew, Presentation on Children at Risk's Human Trafficking Initiative at University of Houston Law Center (Dec. 5, 2013).

120. The first state to enact a criminal statute for human trafficking was Washington when it passed substitute H.B. 2381 (Veloria) in 2002. Texas followed in 2003 with House Bill 2096 (Pickett).

121. TEX. PENAL CODE § 20A.02.

122. *Id.*

123. Center for Public Policy Studies, *Texas Human Trafficking Legislation*, <http://www.htcourts.org/wp-content/uploads/HT-TX-Legislation-8.1.12.pdf?Legislation=TX-Legislation>.

124. *Id.* at 1.

and prosecution projects.<sup>125</sup> The Bill provides that the first \$25 million collected from an entrance fee imposed on sexually oriented businesses will fund the state's sexual assault program.<sup>126</sup> The Texas Attorney General then uses the funds for projects benefiting sexual assault and human trafficking victims.<sup>127</sup>

On September 1, 2009, Texas introduced House Bill 4009 (H.B. 4009), which established the Texas Human Trafficking Prevention Task Force.<sup>128</sup> Part of H.B. 4009's Task Force's initiatives were to create a victim assistance program for United States human trafficking victims (hereinafter "domestic trafficking victims") that provided services for the victims and specialized training for law enforcement officials on how to handle domestic victims.<sup>129</sup> The victim assistance program includes a database used to locate assistance programs for domestic trafficking victims.<sup>130</sup> It also provides grants to nonprofit organizations that support domestic victims by creating public awareness, conducting community outreach and training, helping identify victims, and/or offering legal services.<sup>131</sup> Additionally, H.B. 4009 focuses on increasing awareness of the needs of domestic victims in the legal system through statutorily required training programs for judges, prosecutors, and law enforcement personnel.<sup>132</sup> Finally, the Bill requires the Health and Human Services Commission ("HHSC") to research and locate additional sources of revenue for the victim assistance program.<sup>133</sup>

Subsequent amendments to H.B. 4009 include the implementation of a statewide human trafficking task force to improve data collection.<sup>134</sup> The amendments seek to align existing state resources to combat human trafficking, and mandate training of law enforcement officers to identify human trafficking victims.<sup>135</sup> In addition, the amendments raise the age of

---

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.* at 2.

129. *Id.*

130. *Id.*

131. *Id.*

132. Center for Public Policy Studies, *Texas Human Trafficking Legislation*, <http://www.htcourts.org/wp-content/uploads/HT-TX-Legislation-8.1.12.pdf?Legislation=TX-Legislation>.

133. *Id.*

134. *Id.* Part of H.B. 4009's provision included measures to ensure accountability. The Task Force is required to submit periodic reports to Texas legislators listing policy recommendations and updates in efforts against human trafficking.

135. *Id.*

minors from under 17 to under 18, making the Compelling Prostitution statute consistent with the Human Trafficking statute.<sup>136</sup> The amendments also created a defense to prostitution for victims of human trafficking.<sup>137</sup> As a punitive measure, the amendments make the trafficker criminally liable regardless of whether he knew the victim was a minor. One of the most critical amendments of H.B. 4009 requires the executive director of the Texas Juvenile Probation Commission (“TJPC”) to form a committee whose emphasis is to evaluate alternatives to the juvenile justice system for children who are accused of engaging in prostitution.<sup>138</sup>

The 82nd Texas State Legislature made Senate Bill 24 (S.B. 24) effective on September 1, 2011.<sup>139</sup> The Legislature used S.B. 24 to close loopholes in the Texas Penal Code that allowed individuals accused of sexually exploiting minors to go free based on a technicality. S.B. 24 lowers the prosecutorial burden through relaxed evidentiary standards and imposes harsher penalties against individuals convicted of human trafficking or compelling prostitution.<sup>140</sup> Additionally, the Bill requires the termination of parental rights for parents who have been convicted of or placed on community supervision for harming a child as a result of a trafficking or compelling prostitution.<sup>141</sup> The Bill helps victims of trafficking and compelling prostitution seek a remedy by extending the civil statute of limitations for personal injury from 2 years to 5 years.<sup>142</sup> House Bill 8 (H.B. 8) further enhances penalties against traffickers and offenders for exploiting

---

136. *Id.*

137. *Id.*

138. POLICY STUDIES, *supra* note 9, at 2.

139. *Id.* at 3.

140. Senate Bill 24 expands the definition of trafficking in the Penal Code by including child trafficking. The law implements enhanced penalties and eliminates the statute of limitations when child victims are involved in the trafficking of persons or compelling prostitution. Punitive measure included in SB 24 include a lower prosecutorial burden that allows the admittance of evidence of extraneous offenses, and prohibits eligibility for community supervision for persons convicted of human trafficking or compelling prostitution. SB 24 also requires life imprisonment for convicted child traffickers.

141. *Id.*

142. *Id.*

children.<sup>143</sup> H.B. 8 also reconciles existing conflicts in human trafficking laws and reimburses human trafficking survivors for relocation expenses.<sup>144</sup>

*B. Treating Sexual Abuse Victims, Not Criminals*

One of the most important bills that the Texas Legislature created to dismantle the sexual abuse to prison pipeline is Senate Bill 92 (S.B. 92). The Bill is one of the primary tools the state used to decriminalize sexual abuse victims. S.B. 92 gave juvenile probation departments the power to create diversion programs that provide treatment and services for minors who may be victims of sex trafficking.<sup>145</sup> Similar to the Texas Supreme Court's decision *In the Matter of B.W.*, S.B. 92 was the legislation's effort to shift victims of sexual abuse from being classified as perpetrators of sexual offenses to victimized children in need of help.<sup>146</sup>

Other Texas bills enacted to help human trafficking victims are House Bill 1272 (H.B. 1272) and House Bill 2725 (H.B. 2725).<sup>147</sup> H.B. 1272 extended the 2009 Human Trafficking Prevention Task Force for another two years. H.B. 2725 protects victims by allowing human trafficking shelters and child-placing agencies to be exempt from certain public information requests, which includes staff and victims' contact information.<sup>148</sup> The law also requires the development of minimum standards for human trafficking shelters and for key family service agencies to work together to develop a standardized curriculum that helps educators, health professionals, and DFPS personnel on how to identify a victim of human trafficking.<sup>149</sup>

---

143. The law requires that those convicted of human trafficking and/or compelling prostitution must serve either half or 30 years of their sentence, whichever is less, before becoming eligible for parole. The law also increases the penalty for the offenses of promotion of prostitution, aggravated promotion of prostitution, and solicitation of a minor. Along with strict penalties, the law provides important victim protections — it resolves conflicting human trafficking protective order statutes, allows survivors of human trafficking to receive reimbursements for relocation expenses under the Crime Victim's Compensation Act, and survivors become eligible to participate in the Address Confidentiality Program.

144. *Id.*

145. Sanborn Ed. D., et al, *supra* note 111, at 97; *see generally*.

146. H.B. 2725 (Thompson). *Children At Risk, 83rd Texas Legislature Report on Human Trafficking Legislature*, available at <http://childrenatrisk.org/wp-content/uploads/2013/08/83rd-Texas-Human-Trafficking-Legislative-Report.pdf>.

147. *Id.* at 1. H.B. 1272 (Thompson).

148. H.B. 2725 allows shelters to be exempt from reporting the location and physical layout of the shelter and the contact information of their staff and victims residing in the shelter.

149. H.B. 2725 requires the Executive Commissioner of the Health and Human Services Commission to impose minimum standards for human trafficking shelters. Key family service

The harsher penalties for offenses involving minor children provided the foundation for subsequent legal reform. Once a child enters the juvenile justice system, a holistic approach which factors in the child's history of abuse is taken into consideration. This approach has led to the decriminalization of minors who commit sex-based offenses, such as prostitution, where the majority of offenders are victims of sexual abuse.<sup>150</sup>

The Texas Family Code provides that the juvenile justice courts have jurisdiction in all cases involving delinquent conduct of children between the ages of 10 and 17.<sup>151</sup> Within the Texas Family Code, the Legislature adopted the Texas Penal Code, which defines "delinquent conduct" as "conduct, other than a traffic offense, that violates a penal law of the State of Texas or of the United States punishable by imprisonment or by confinement in jail."<sup>152</sup> The Texas Penal Code's blanket implementation into the Family Code has two counteracting effects. First, it places jurisdiction in the juvenile division of the civil courts instead of the criminal courts. Second, it applies an absolute definition of delinquency to the majority of juvenile offenses. When it comes to victims of sexual abuse, labeling their offenses as delinquent conduct exacerbates their existing trauma.<sup>153</sup>

*C. In re B.W., 313 S.W.3d 818 (Tex. 2010)*

The Texas Supreme Court's landmark decision *In re B.W.*, 313 S.W.3d 818 (Tex. 2010) marks an important victory in the advocacy of sexual abuse victims.<sup>154</sup> *In the Matter of B.W.* marked the first time the Texas Supreme

---

agencies include the Texas Education Agency (TEA), the Health and Human Services Commission (HHSC), and the Department of Family and Protective Services (DFPS).

150. ALF Forged Connections to Help Create the Harris County GIRL Court and Decriminalize Girls Who are Victims of Child Sexual Abuse, Am. Leadership F. House., at 1 (last visited Dec. 09, 2015), <http://www.alfhouston.com/clientuploads/Collaborations/GIRLS%20Court.pdf>.

151. TEX. FAM. CODE §§ 51.02(2), 51.04(a).

152. TEX. FAM. CODE § 51.03(a)(1).

153. FRANCINE T. SHERMAN & ANNIE BALCK, GENDER INJUSTICE SYSTEM-LEVEL JUVENILE JUSTICE REFORMS FOR GIRLS, ("Secure facilities harm girls by re-traumatizing them and are not effective at addressing the issues underlying girls' behavior or providing positive supports to girls in need—and they are extremely expensive."), 56.

154. *In the Matter of B.W.*, 313 S.W.3d 818 (Tex. 2010), a juvenile female pled true to the allegation that she had knowingly agreed to engage in sexual conduct for a fee. The trial court found that she had engaged in delinquent conduct, a misdemeanor offense of prostitution and she was sentenced to 18 months of probation. The court of appeals upheld the judgment. On review, the Texas Supreme Court concluded that the Texas Legislature did not intend for its laws to transform a child who is the victim of adult sexual exploitation into a juvenile offender.

Court distinguished between the capacity to commit the criminal act of prostitution and the minor's lack of mental capacity to commit the act.<sup>155</sup> Although the young girl, who was 13 at the time of the incident, admitted to prostitution, the court recognized that it was the years of victimization she suffered that caused her to commit the offense, not her capacity for criminal conduct.<sup>156</sup> In this decision, the court drew a parallel between the age of consent as the Texas Penal Code states and a child's eligibility to be adjudicated for prostitution.<sup>157</sup> Ultimately, the Court held that because a 13-year-old juvenile cannot consent to sex as a matter of law, she also could not be prosecuted for a sex-based offense, such as prostitution.<sup>158</sup>

The minor girl *In the Matter of B.W.* represents the classic example of girls who are sexually abused and subsequently arrested for delinquent conduct as juveniles. Prior to trial, B.W. underwent a psychological examination, which revealed a young girl with a history of abuse and existing substance abuse issues, who was "emotionally impoverished, discouraged and dependent."<sup>159</sup> During her psychological evaluation, B.W. also discussed her sexual relationship with a 32 year-old man whom she referred to as her boyfriend and had been living with for a year and a half.<sup>160</sup> This fact alone—that a 32 year-old man was engaging in sex with a 12 year-old girl—illustrates just how vulnerable children are to being sexually exploited then criminalized as result of their exploitation.<sup>161</sup> Although the lower court's decision in *B.W.* recommended treatment and rehabilitative measures, Justice O'Neill prudently observed that the recommendation did not guarantee that other children facing similar circumstances would avoid harsh and punitive sentences in future cases.<sup>162</sup> Taking a more pragmatic approach, the Texas

---

Holding that because a child under the age of 14 does not have the capacity to consent to sex, a child under the age of 14 cannot be prosecuted for prostitution under § 43.02(a)(1).

155. *Id.* at 820-21.

156. *See Id.* at 826, ("The dissent emphasizes B.W.'s "long and sad history of delinquent behavior," presumably suggesting that her bad behavior is indicative of her mental capacity to commit this crime. The United States Supreme Court has recognized that juveniles "are more vulnerable or susceptible to negative influences and outside pressures," . . . *Roper*, 543 U.S. at 569, 573 (internal citations omitted). Notwithstanding that fact, B.W.'s behavior is sadly in keeping with many children who have been abused or neglected at home. This dysfunctional family life leads to problems with discipline . . . and often results in the child running away, just as B.W. did.")

157. *Id.* at 820-21.

158. *Id.*

159. *Id.* at 819.

160. *Id.*

161. *See* 313 S.W.3d at 826.

162. *Id.* at 825.

Supreme Court ensured that minors like B.W. would receive services in a rehabilitative setting, bypass criminal sentencing, and avoid the “permanent stigma associated with being adjudged a prostitute.”<sup>163</sup> The Texas Supreme Court’s decision set the precedent for child sexual abuse victims in cases that followed B.W.’s to be afforded the same treatment.<sup>164</sup>

### *C. Juvenile Reform and Community-Based Alternatives*

Texas leaders have demonstrated that they are dedicated to eradicating sex trafficking, assisting victims, and delivering justice by aggressively prosecuting traffickers, through numerous state laws enacted since 2003.<sup>165</sup> The Task Force created in 2009 through H.B. 4009 implements accountability measures by requiring policymakers, government agencies, and nongovernmental organizations to collaborate and submit reports detailing their policy recommendations to the legislature.<sup>166</sup> The collective efforts of the Task Force have resulted in comprehensive changes in Texas’s laws. The changes signify major victories in the state’s battle against sex trafficking and in the state’s efforts to provide necessary services to victims of sex trafficking.<sup>167</sup>

One of the major initiatives within Texas’s reform has been developing measures for providing under-age victims of sex trafficking with treatment, rehabilitative services, counseling, and access to basic needs.<sup>168</sup> The first step Texas took to provide rehabilitative services to juvenile sexual abuse victims, was to decriminalize sex-based offenses, primarily prostitution, in instances

---

163. *Id.*

164. In 2011, Texas discontinued charging minors 13 years old and under for prostitution after the Texas Supreme Court’s ruling stating that a minor that cannot consent to sex also cannot be held criminally responsible for prostitution.

165. TEXAS OFFICE OF THE ATTORNEY GENERAL, THE TEXAS HUMAN TRAFFICKING PREVENTION TASK FORCE REPORT TO THE TEXAS LEGISLATURE, 2014, *available at* [https://www.texasattorneygeneral.gov/files/agency/20142312\\_htr\\_fin.pdf](https://www.texasattorneygeneral.gov/files/agency/20142312_htr_fin.pdf).

166. *Id.* (“the collective efforts of Task Force member agencies, workgroup members, lawmakers, and other interested parties have resulted in comprehensive legislative changes to better equip Texas in the fight against traffickers and in the provision of services for victims.”)

167. *Id.* (“It also included 35 legislative recommendations, 32 of which were passed into law during the 82nd Texas Legislature in 2011. In 2012, the Task Force produced its second report for the legislature which included 13 policy recommendations. Eleven of the 13 recommendations were subsequently passed and signed into law during the 83rd Texas Legislative Session in 2013. These were major victories in the fight against human trafficking in Texas.”).

168. Texas acknowledges the findings of numerous studies which identify numerous risk factors that are unique to children in its 2014 Human Trafficking Task Force Report.

where the delinquent conduct is committed by a minor.<sup>169</sup> This effort requires training law enforcement, the juvenile justice department, family services, and all other interested parties, on how to identify key trauma triggers, such as sexual abuse.<sup>170</sup> It is this facet in Texas's approach to human trafficking that has proven integral to making significant progress in decreasing the number of female minors in the juvenile justice system and of women in adult prisons.<sup>171</sup> In effect, Texas's approach does not limit its focus to combating sex trafficking. Many of the services offered by the newly implemented statutory provisions also serve to address the special needs of minor females facing the sexual abuse to prison pipeline.<sup>172</sup>

Child sex trafficking victims and young girls in the juvenile detention system share a significant number of risk factors that are idiosyncratic to children who are victims of sexual abuse.<sup>173</sup> Some of the risk factors specific to children include, but are not limited to: being homeless; running away from home; having a history of physical, sexual, or emotional abuse; and residing in a foster home or other type of child welfare system-based placement.<sup>174</sup> Additionally, many cases of sexual abuse, including sex trafficking cases, involve victims who suffer abuse at the hands of a family member.<sup>175</sup> In response, several state agencies and nongovernmental organizations in Texas offer services that specifically target the treatment needs of minor sexual abuse victims.<sup>176</sup> The agencies responsible for providing services to child sex trafficking victims recognize that a comprehensive approach which extends past rescuing of the child is critical.<sup>177</sup> Rehabilitative services such as counseling, combined with providing victims with basic needs such as housing, food, and clothing are key to a child victim's successful recovery.<sup>178</sup> These services are particularly

---

169. See *In the Matter of B.W.*, 313 S.W.3d 818 (Tex. 2010).

170. *Infra* at Texas Legislature, p. 27.

171. *Id.* at 20.

172. SHERMAN & BALCK, *supra* note 152, ("Trafficking victims may be subjected to physical, sexual, and psychological abuse that requires the services of many different entities. Many victims' first concerns may be safety, a place to live, and the provision of basic necessities. Other victims may require months or years of counseling. Still others may require job skills training or extensive medical care.").

173. SHERMAN & BALCK, *supra* note 152.

174. *Id.*

175. *Id.* at 17-10. Sexual abuse is usually committed by a family member or someone the victim knows.

176. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* note 164.

177. *Id.* at 10.

178. *Id.*

crucial in cases where the parents are the perpetrators of the abuse and the child victims do not have family to return to upon completion of the program.<sup>179</sup> Notably, most of the organizations discussed in the 2014 Task Force Report offer programs that use a gender-responsive approach designed to encourage recovery for young girls.<sup>180</sup> Gender-responsive programs aim to ensure that the needs of girls are addressed in a developmentally appropriate manner with consideration specific to the girls' experiences of trauma.<sup>181</sup> Although principles of gender-responsive and trauma-informed treatment programs may vary, they generally include three major elements: 1) safety, both physical and psychological; 2) focus on relationships; and 3) shared power with girls and across systems.<sup>182</sup>

The Gender Injustice report recommends the use of community-based programs designed to serve girls as alternatives to the juvenile detention system.<sup>183</sup> Developmentally appropriate alternatives that are community-oriented and use a holistic approach to treat children are significantly less expensive than incarceration.<sup>184</sup> Because these alternatives to the juvenile detention system address girls' negative social contexts and trauma they are more effective at combating recidivism.<sup>185</sup> As a result, juvenile victims who attended community-based programs have a lower recidivism rate in comparison to those placed in secure placement.<sup>186</sup>

There are numerous community-based programs with facilities throughout Texas that provide services to child sex trafficking victims.<sup>187</sup> For example, a rehabilitation center called Freedom Place opened in 2012 in Harris County, Texas.<sup>188</sup> The center provides a safe place for children to reside for 6-18 months and has 30 beds reserved for underage female

---

179. *Id.*

180. SHERMAN & BALCK, *supra* note 152, at 10-11.

181. SHERMAN & BALCK, *supra* note 152, at 31, ("modifying many existing juvenile justice reforms to fit the needs of girls, juvenile justice systems can be redesigned to promote healthy relationships, shore up girls' social supports, and give girls agency over their lives.")

182. SHERMAN & BALCK, *supra* note 152, at 31.

183. *Id.* at 56-59.

184. *Id.* at 56, Community-based alternatives end up only costing "an average of \$75 per day, or \$27,375 per year (compared to an average institutional cost of \$407.58 per day or over \$148,000 per year)." See also, FAZAL, SAFELY HOME, 5; JUSTICE POLICY INSTITUTE, STICKER SHOCK.

185. *Id.*

186. *Id.*

187. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* note 164, at 10. The Report, Freedom Place, Refuge of Light, and the Letot Girls' Residential Treatment Center all offer out of home placement for at risk girls.

188. *Id.*

trafficking victims.<sup>189</sup> Residents of Freedom Place receive counseling, shelter, food, and other services.<sup>190</sup> In Tyler Texas, Refuge of Light, a nonprofit, established a local safe-home for female victims of domestic minor sex trafficking.<sup>191</sup> The safe-home provides shelter for female child victims of sex trafficking for up to two years and includes assessment for long-term placement options.<sup>192</sup> Refuge of Light also provides female sex trafficking victims with continued support through college enrollment and other services.<sup>193</sup> In northern Texas, an organization called Mosaic Family Services provides a safe shelter for immigrant women and children who are survivors of domestic violence, human trafficking, or both. The shelter accommodates 46 beds and its residents are provided culturally sensitive, structured services that account for the additional obstacles faced by immigrant sexual abuse victims while helping them gain independence.<sup>194</sup> Additionally, the Alamo Area Coalition Against Trafficking (“AACAT”) plans to build a high risk victims’ facility.<sup>195</sup> The organization intends to designate the facility as a “transition home,” that would serve as an alternative to the juvenile detention centers.<sup>196</sup> The transition home will serve victimized children, such as internationally and domestically trafficked youth, runaways and “throwaway youth” — a term used to describe children and teens abandoned by their parents— for up to 90 days.<sup>197</sup> During their stay, victims have access to a variety of services and programs, such as legal counsel, social services and rehabilitation care.<sup>198</sup>

Texas is also home to one of the largest gender-specific therapeutic programs available to minor female sex abuse victims, The Letot Girls’

---

189. *Id.*

190. *Id.*

191. Refuge of Light’s mission is to “provide a safe haven, redemptive rescue and restoration of female victims of domestic minor sex trafficking through advocacy, awareness, and holistic care.” The safe home consists of a 12 bed facility equipped with a kitchen, outdoor gardens, and animals to help create a home-like environment for the girls and encourage the healing process. <http://groundsforjusticecoffeeshop.com/safe-home/>, (December 10, 2015).

192. *Id.*

193. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* note 164, at 10.

194. *Id.*

195. *Id.*

196. Jesus Chavez, *Safe Haven, UTSA Architecture Students Design a Center For Human-Trafficking Victims, Runaways and Abandoned Youth*, <https://www.utsa.edu/communityconnect/2015/story/feature-safe-haven.html#.VnESr0orJD8> (last visited December 09, 2015).

197. *Id.*

198. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra*, note 164, at 10.

Residential Treatment Center.<sup>199</sup> In 2015, the Center opened its doors in Dallas County, offering services to young girls from the ages of 13-17, who have been abused, abandoned or sexually exploited.<sup>200</sup> The center works with the Dallas County Juvenile Department to prevent teen prostitution by serving runaway girls; providing 6 to 9 month residential placement in a highly structured program that has a Charter School and recreational opportunities such as yoga and sports.<sup>201</sup> Issues unique to female sex abuse victims – extreme abuse, prostitution, and abandonment – are addressed through an intensive program that serves up to 96 girls at a time.<sup>202</sup> Safety is the program’s upmost priority, and the program goes to great lengths to protect the girls from their abusers.<sup>203</sup> In addition, the Center also provides programs that focus on addressing the girls’ relational needs and families are engaged in repairing conflict through aftercare services.<sup>204</sup> This program, ran by the Dallas County Juvenile Department, is a shining example of positive reform efforts through the collaboration of community-based alternatives and the juvenile system.<sup>205</sup>

Once young girls enter the juvenile detention system, the punitive nature of the measures taken to address behavioral issues tend to ignore, and rather, exacerbate sexual abuse victims’ existing trauma.<sup>206</sup> Texas’s reform

---

199. Letot Girls’ Center, *Transforming Invisible Girls*, <http://www.letotgirlscenter.org/transforming.htm> (December 7, 2015).

200. At the time the 2014 Human Trafficking Report was released, the center was still in the development stages. Treatment plans and clinical services will address specific issues such as abuse, exploitation, anger management, parenting skills, sexually transmitted diseases and life skills for independent living, among other issues.

201. Letot Girls’ Center, *Transforming Invisible Girls*.

202. *Id.*

203. *Id.* Victims of sexual abuse many times require protection from those closest to them; including “abusive parents, boyfriends and pimps.” See also, TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* note 164, (In addition, “the 82nd Texas Legislature passed House Bill 2329, which provided victims of trafficking with a pseudonym that can be used in public records concerning the offense. That same legislation also provided victims, parents or guardians of victims under 18 years of age, or prosecuting attorneys with the ability to file a protective order without regard to the relationship between the applicant and offender.”).

204. SHERMAN & BALCK, *supra* note at 152, report states that “Girls’ family relationships are central to their healthy development and engaging families in solutions throughout the juvenile justice process is critical. The fact that many girls’ families are a source of trauma and many girl offenses are home-based actually underscores the centrality of families to girls’ development and success. Ultimately, girls in the justice system return home and their long-term success will hinge in large part on the quality of their family relationships. Viewed through this lens, family engagement for girls is both critical prevention and intervention.”

205. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* note 164, at 10-11.

206. SHERMAN & BALCK, *supra*, note 152, at 48.

addresses this issue by diverting women offenders to gender-based inmate rehabilitation programs and services for women.<sup>207</sup> For example, the Harris County Jail provides an inmate rehabilitation program called “Been There Done That” that provides counseling services to individuals incarcerated for prostitution and other sex-related offenses.<sup>208</sup> In addition to counseling, an essential component of rehabilitating sexual abuse victims that have entered the prison system is helping the victims become self-sufficient and independent. One of the recommendations the Gender Injustice committee makes in its report is for institutions to implement programs that help young women who have entered the justice system develop “psychosocial capabilities.”<sup>209</sup> A major component of developing psychosocial capabilities is receiving educational and vocational training that allows victims to become productive members of society when they reach adulthood.<sup>210</sup>

Child sex abuse victims have an increased need for access to educational services to be made available to them while they are in the juvenile detention system.<sup>211</sup> Many girls become disengaged with school due to their exposure to violence and harassment within the communities they reside in.<sup>212</sup> Victims’ disengagement with school increases the risk of delinquency and arrests for status offenses such as truancy.<sup>213</sup> Girls involved in the justice system present an array of “social costs related to decreased education, lost future earnings, lost tax revenue, and increased reliance on public benefits.” One method of counteracting this effect is providing girls with the opportunities to pursue post-secondary education.<sup>214</sup> In Texas, The Passport to Freedom Survivor Scholarship provides up to \$10,000 in financial support for up to five survivors of trafficking.<sup>215</sup> The scholarship program is “dedicated to making

---

207. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* at note 164, at 7. Since February 2013, Harris County judges have been actively diverting eligible participants to the program.

208. *Id.*

209. SHERMAN & BALCK, *supra* note at 152, at 48 (defining psychosocial abilities as “the knowledge and skills needed to navigate society, educational and vocational training that allows them to be productive members of society, and the social skills necessary to create and maintain relationships and function in groups.”).

210. *Id.*

211. *Id.*

212. *Id.*

213. SHERMAN & BALCK *supra* note 152, at 56.

214. *Id.*

215. TEXAS OFFICE OF THE ATTORNEY GENERAL, *supra* note 164, at 9, Texas Report Sabre Corporation, a company based in South Lake launched a scholarship fund for human trafficking survivors in November 2014. The first scholarship will be awarded in mid-to-late 2015.

post-secondary education and vocational training attainable” and to help “pave the way for secure and sustainable employment opportunities.”<sup>216</sup>

*D. Success from Policy Reform*

The 2014 Texas report highlights several significant accomplishments the state has made in its battle against sex trafficking.<sup>217</sup> These rankings indicate Texas’s role as a leader in child sexual exploration efforts:

- a. Shared Hope International awarded Texas some of the highest rankings in the nation in its 2013 annual Protected Innocence Challenge.<sup>218</sup> Texas received perfect scores for its efforts to criminalize domestic minor sex trafficking and provide criminal justice tools for investigation and prosecution of trafficking cases.<sup>219</sup>
- b. Additionally, the state received near perfect scores for its work related to criminal provisions addressing demand and criminal provisions for traffickers.<sup>220</sup>
- c. Polaris, an organization whose mission is to eradicate human sex trafficking, placed Texas in its highest possible tier, Tier 1, for 2013 and 2014.<sup>221</sup>

The Shared Hope scores and Polaris rankings demonstrate the effects of comprehensive policy reform implemented through the collaboration of various agencies. Texas’s success in its juvenile justice system overhaul is reflected in its significant decrease in arrest rates of minor females for prostitution from 2009-2014, the implementation of gender-based treatment for young girls in the juvenile system, and the increase of services tailored to

---

216. *Id.*

217. TEXAS OFFICE OF THE ATTORNEY GENERAL *supra*, note 164, at 9.

218. SHARED HOPE INTERNATIONAL, 2013 PROTECTED INNOCENCE CHALLENGE: A LEGAL FRAMEWORK OF PROTECTION FOR THE NATION’S CHILDREN, at 12, *available at* <http://sharedhope.org/wp-content/uploads/2014/02/2013-Protected-InnocenceChallenge-Report.pdf>. (November 14, 2015)

219. TEXAS OFFICE OF THE ATTORNEY GENERAL *supra*, note 164, at 9

220. *Id.*

221. Polaris is a Washington D.C. based nonprofit that publishes state rankings based on their approaches to human sex trafficking. POLARIS, TEXAS STATE REPORT: STATE RATINGS 2013, *available at* [http://www.polarisproject.org/storage/documents/Texas\\_State\\_Report\\_2013\\_08\\_01\\_17\\_29\\_45\\_252.pdf](http://www.polarisproject.org/storage/documents/Texas_State_Report_2013_08_01_17_29_45_252.pdf). (December 2, 2015).

address the trauma that sex abuse victims have experienced, indicate.<sup>222</sup> Through its mission to eradicate human trafficking, Texas made unprecedented legislative changes that sought to treat juvenile offenders, not criminalize them. Unfortunately, a large number of states have yet to implement similar legislative efforts designed to address the issue of minor victims of sexual exploitation being imprisoned.<sup>223</sup>

### III. CONCLUSION

Many of the suggestions for juvenile justice reform made by child advocate organizations such as Polaris and Shared Hope International, are provisions present within the recently enacted Texas laws. Through the collaborative efforts of law enforcement agencies, family services, non-profit organizations, and health officials Texas has developed a robust movement aimed at decreasing the number of girls funneled into the sex abuse to prison pipeline. The extension of the Task Force and the positive rankings from Polaris and Shared Hope are positive reinforcement for Texas to continue its pathway to decreasing the state's prison population through decriminalization of young girls who are victims of sexual exploitation. Despite the Legislature's continued efforts to combat sex trafficking, Texas remains a high-risk state for minors becoming sex trafficking victims. With a number of children being victimized daily, there is an ever-present need for continued restructuring of the Texas juvenile justice system. As the state continues emphasizing community-based treatment and services, not jail, prison costs will continue to decrease.

A definitive strategy for states to cut prison costs is to address the factors contributing to prison pipelines. For Texas, discovering the disproportionate rate at which young, female sexual abuse victims were being criminalized was incidental to its sex trafficking Legislative overhaul. Although other states may not face the same level of risk of minors becoming sex trafficking victims, the issues faced in Texas's juvenile justice system are not unique. Institutions that fail to identify and treat the trauma triggering sexual abuse

---

222. *Supra*, The Texas Approach, P 20.

223. In 2014, thirty states received a grade of C or lower for their legislative framework designed to protect child victims of sexual exploitation. SHARED HOPE INTERNATIONAL, 2014 PROTECTED INNOCENCE CHALLENGE, A LEGAL FRAMEWORK OF PROTECTION FOR THE NATION'S CHILDREN, at 14, available at <http://sharedhope.org/wp-content/uploads/2014/11/2014%20Protected%20Innocence%20Challenge%20Report.pdf>. (November 14, 2015).

victims' arrests plague adult and juvenile prison systems nationwide. Meanwhile, the sexual abuse to prison pipeline is helping to incarcerate victimized girls and prison costs continue to be a nationwide concern.

Juvenile justice reform advocates have lauded Texas's overhaul of its juvenile justice system because of its focus on reintegration. Texas's juvenile justice system's shift from punitive to rehabilitative measures has allowed taxpayers to benefit from the decrease in the social and fiscal costs associated with incarcerating our youth. In order to shut off the sexual abuse to prison pipeline, state justice systems must stop criminalizing sexual abuse victims. Treating victims as perpetrators is counterintuitive to reducing prison populations and recidivism rates. Highlighting Texas's approach serves as a means of incentivizing other states to implement their own robust, legislative reforms and eliminate policies that promote the flow sexual abuse victims into the prison population. The data reflecting the cost-savings associated with providing alternatives to imprisonment supports a telling notion- Once state criminal justice systems stop punishing victims of sexual abuse as a result of their victimization, an overall decrease in the country's prison costs will follow.