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CSEC Treatment Courts: An Opportunity for Positive, Trauma-Informed, and Therapeutic Systems Responses in Family and Juvenile Courts

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CSEC TREATMENT COURTS: AN OPPORTUNITY FOR POSITIVE,
TRAUMA-INFORMED, AND THERAPEUTIC SYSTEMS RESPONSES IN
FAMILY AND JUVENILE COURTS

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I. INTRODUCTION AND BACKGROUND

Human trafficking² is a \$150 billion industry annually worldwide, with at least \$99 billion in profits in commercial and sexual exploitation alone.³ An estimated 70% of women involved in prostitution are first exploited under the age of eighteen, and estimates put the average age of entry into exploitation between eleven and fourteen.⁴ At least one-third of sexual exploitation cases in the United States involve minors.⁵ In the United States alone, an estimated 244,000 to 325,000 youth are at risk for sexual exploitation, with nearly 200,000 incidents of sexual exploitation of minors occurring each year.⁶ Under the Trafficking Victims

² Human trafficking is an umbrella term covering both labor and sex trafficking of both adults and children. See U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 24 (June 2021), <https://www.state.gov/wp-content/uploads/2021/09/TIPR-GPA-upload-07222021.pdf> [<https://perma.cc/B626-CVNZ>] (defining “human trafficking”). This article will focus on the commercial and sexual exploitation of children, or “CSEC.”

³ INT’L LAB. OFF., PROFITS AND POVERTY: THE ECONOMICS OF FORCED LABOUR 13–15 (2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf [<https://perma.cc/885T-839M>].

⁴ Kimberly Kotrla, *Domestic Minor Sex Trafficking in the United States*, 55 SOC. WORK 181, 182 (2010).

⁵ *Id.*

⁶ U.S. DEP’T HEALTH AND HUM. SERVS., HUMAN TRAFFICKING INTO AND WITHIN THE UNITED STATES 4 (2009),

Protection Reauthorization Act (TVPRA), “sex trafficking” is defined as “the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.”⁷ A “commercial sex act” is defined as “any sex act on account of which anything of value is given to or received by any person.”⁸ Importantly, under the TVPRA, if the victim is under eighteen, the element of “force, fraud, or coercion” required for cases involving adult victims is not necessary, and status as a minor under eighteen is sufficient to prove victimization.⁹ The commercial and sexual exploitation of children (CSEC)—defined as “a range of crimes and activities involving the sexual abuse or exploitation of a child for the financial benefit of any person or in exchange for anything of value (including monetary and non-monetary benefits) given or received by any person”¹⁰—is an umbrella term commonly used to describe sex trafficking involving children, also known as domestic minor sex trafficking (DMST).

The full extent of CSEC is unknown due to (1) a lack of training of law enforcement, child welfare agencies, and service providers; (2) law enforcement, child welfare agencies, and service providers failing to identify victims; and (3) victims being hesitant to come forward due to fear of incarceration, shame, lack of self-identification as victims, and fear of and loyalty to their traffickers.¹¹ Survivors¹² of CSEC are too often treated like

https://aspe.hhs.gov/sites/default/files/migrated_legacy_files/43241/index.pdf [<https://perma.cc/DFP6-VW8A>].

⁷ 22 U.S.C. § 7102(12) (2021).

⁸ 22 U.S.C. § 7102(4) (2021).

⁹ OFF. FOR VICTIMS OF CRIME, AN ONGOING COMMITMENT TO VICTIMS OF HUMAN TRAFFICKING 2 (2021),

<https://ovc.ojp.gov/sites/g/files/xyckuh226/files/media/document/ovc-tims-report-508.pdf> [<https://perma.cc/XJD7-793U>] [hereinafter OVC].

¹⁰ *Sexual Exploitation of Children*, OFF. OF JUV. JUST & DELINQ. PREVENTION, https://www.ojjdp.gov/programs/csec_program.html [<https://perma.cc/DDN9-E6FT>] (last visited Sept. 23, 2021).

¹¹ Amanda West, *Child Trafficking and Child Welfare*, 3 J. Human Trafficking, 125–135 (2017).

¹² A note on “victim” versus “survivor”: This article uses “victim” and “survivor” interchangeably. Much debate persists over which term is preferred when referring to a person who has experienced CSEC. The common consensus is that the proper term to use depends on what system one is working within and the preference of the survivor/victim.

criminals rather than victims of trafficking, which contributes to state and federal agencies' inability to capture the actual extent of CSEC.¹³ Instead of being identified as victims and receiving therapeutic and other rehabilitative services, survivors are often arrested on status crimes or for behaviors directly related to their exploitation and are treated as prostitutes taking part in their own exploitation.¹⁴ Creating additional barriers to identifying victims, the language often used to refer to CSEC survivors reinforces stereotypes and may designate a survivor's status as a criminal rather than victim. For example, a common misconception about CSEC is that victims are more likely to be non-U.S. citizens, and so "U.S. child victims may be referred to as "prostitutes" [while] foreign national child victims may be referred to as "sex trafficking victims.""¹⁵ However, most victims of CSEC in the United States are U.S. citizens, not immigrant children.¹⁶ Referring to victims of CSEC as "prostitutes" increases the likelihood that victims will face delinquency or criminal charges rather than be provided with protection and rehabilitative services.¹⁷

Despite the holes in identifying victims of CSEC, researchers and experts have been able to pinpoint common characteristics and risk factors for this population. Children in the child welfare and juvenile justice systems are at a high risk of CSEC victimization.¹⁸ Multiple studies have found a correlation between

¹³ See Malika Saada Saar et al., GEO. L. CTR. ON POVERTY & INEQ., THE SEXUAL ABUSE TO PRISON PIPELINE: THE GIRLS' STORY 5 (2015), <https://www.law.georgetown.edu/poverty-inequality-center/wp-content/uploads/sites/14/2019/02/The-Sexual-Abuse-To-Prison-Pipeline-The-Girls%E2%80%99-Story.pdf> [<https://perma.cc/B2QP-RKNQ>].

¹⁴ *Id.*

¹⁵ STEPHEN GIES ET AL., OFF. JUST. PROGRAMS, SAFE HARBOR LAWS: CHANGING THE LEGAL RESPONSE TO MINORS INVOLVED IN COMMERCIAL SEX, PHASE 1. THE LEGAL REVIEW 2–3 (2018), <https://www.ncjrs.gov/pdffiles1/ojjdp/grants/253146.pdf> [<https://perma.cc/5SZN-TZXM>] (internal citation omitted).

¹⁶ MEREDITH BAILEY & JENNIFER WADE, GA. BUREAU OF INVESTIGATION, HUMAN TRAFFICKING IN GEORGIA: A SURVEY OF LAW ENFORCEMENT 4 (2014), https://gbi.georgia.gov/sites/gbi.georgia.gov/files/related_files/document/2014%20Human%20Trafficking%20Report.pdf [<https://perma.cc/GV6Y-6NBK>].

¹⁷ *Id.* at 3.

¹⁸ Kotrla, *supra* note 4, at 183.

CSEC and poverty, substance abuse, a history of abuse and neglect, a history of homelessness, a history of running away from home, and other social, economic, community, and familial factors.¹⁹ While girls are often identified as the most common CSEC victims, boys are victims as well.²⁰ Children who identify as lesbian, gay, bisexual, transgender, queer/questioning, intersex, or asexual (LGBTQIA) are victimized at a higher rate than their cisgender peers, as are children of racial or ethnic minorities, particularly Black and American Indian children.²¹ This disproportionality is commonly due to racial bias against children of color, who are more likely to be seen as participants in their own exploitation rather than as victims in need of services.²² LGBTQIA youth, children of racial or ethnic minorities, African American children, and American Indian children are also disproportionately represented in the child welfare and juvenile justice systems, and thus are at an even greater risk of exploitation once they have entered those systems.²³

¹⁹ Elizabeth Barnert et al., *Commercial Sexual Exploitation and Sex Trafficking of Children and Adolescents: A Narrative Review*, 17 ACAD. PEDIATRICS 825, 826 (2017).

²⁰ RACHEL SWANER ET AL., CTR. FOR CT. INNOVATION, YOUTH INVOLVEMENT IN THE SEX TRADE: A NATIONAL STUDY 76 (2016), <https://www.ojp.gov/pdffiles1/ojdp/grants/249952.pdf> [<https://perma.cc/A44T-KBOY>].

²¹ See, e.g., SAAR ET AL., *supra* note 13, at 7 (discussing the disproportionality of girls of color, particularly Black girls and American Indian girls, in the juvenile justice system, as well as the disproportionate number of girls in the juvenile justice system who have experienced sexual abuse and exploitation); see also NAT'L CONG. OF AM. INDIANS POL'Y RSCH. CTR., HUMAN & SEX TRAFFICKING: TRENDS AND RESPONSES ACROSS INDIAN COUNTRY (2016), <https://www.ncai.org/policy-research-center/research-data/prc-publications/TraffickingBrief.pdf> [<https://perma.cc/6C2X-SMFK>] (describing the disproportionality and impact of CSEC and other forms of human trafficking in American Indian populations, with roots as far back as colonialism).

²² 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, 1594 (2015) (explaining the “adultification” of Black girls, who are “viewed as dependent, limited rights-bearing subjects while at the same time imbued with adult characteristics such as sexual maturity, individual agency, and criminal responsibility”).

²³ HANNAN, M., MARTIN ET AL., CHILDREN AT RISK: FOSTER CARE AND HUMAN TRAFFICKING IN HUMAN TRAFFICKING IS A PUBLIC HEALTH ISSUE 105–121 (CHISOLM-STRAKER ET AL. 2017).

However, a child's status as LGBTQIA or as a racial or ethnic minority does not innately make them more likely to be victims. Importantly, any child can be a victim of CSEC.

There is no single profile of a trafficking victim. Victims of human trafficking can be anyone—regardless of race, color, national origin, disability, religion, age, gender, sexual orientation, gender identity, socioeconomic status, education level, or citizenship status. However, data indicates that traditionally underserved populations are highly represented; traffickers frequently prey on individuals who are impoverished, vulnerable, living in an unsafe situation, or are in search of a better life.²⁴

Survivors of CSEC are at risk of negative mental health, medical, social, educational, and other outcomes that will affect them throughout their lives. For example, survivors of CSEC are more likely to experience posttraumatic stress disorder, suicidal ideations, high blood pressure, obesity and eating disorders, substance abuse, and teen pregnancy.²⁵ Survivors of CSEC are also more likely to engage in behavior that can lead to child welfare and juvenile justice involvement, such as running away and truancy, and to display behaviors that are associated with delinquency, such as alcohol and drug use and aggression.²⁶ Research has shown that the behavioral reactions seen in survivors of CSEC are common responses to trauma, which are likely to worsen absent therapeutic interventions, thus leading to a greater likelihood of systems involvement.²⁷

The Trafficking Victims Protection Act of 2000 (TVPA) drew national attention to trafficking, but did not address the issue

²⁴ OVC, *supra* note 9, at 2.

²⁵ See, e.g., Barnert et al., *supra* note 19, at 826 (describing the various negative health effects experienced by victims of CSEC).

²⁶ *Id.*; SAAR ET AL., *supra* note 13, at 9.

²⁷ SAAR ET AL., *supra* note 13, at 12.

of CSEC youth specifically.²⁸ In response to federal legislation, combined with a 2013 study that found CSEC has “immediate and long-term adverse [effects for victims,] families, communities, and society as a whole,”²⁹ most states enacted safe harbor laws to implement survivor-focused responses in the field.³⁰ Specifically, the study recommended developing and implementing survivor-focused training, increasing awareness and understanding of CSEC, and enacting laws that hold exploiters and buyers accountable while treating CSEC survivors as victims, and not criminals.³¹ The study also recommended the development of survivor-focused, multidisciplinary interventions aimed at better identifying CSEC youth and improving immediate and long-term outcomes.³²

Safe harbor laws vary from state to state, but, in general, most decriminalize prostitution for youth, implement diversion programs for youth who committed crimes as a result of their exploitation, provide services for identified youth, and contain provisions emphasizing that CSEC survivors are victims and not criminals.³³ Limited research exists examining the implementation and impact of safe harbor laws, and at least one major study is currently in the second phase of its project.³⁴ Results of Safe Harbor impact studies are mixed. For example, one study found that CSEC victims continued to be arrested on delinquency charges despite the law’s prescribed immunity.³⁵ Another study found that the passage

²⁸ See generally Charles Hounmenou & Caitlin O’Grady, *A Review and Critique of the U.S. Responses to the Commercial Sexual Exploitation of Children* 98 CHILD & YOUTH SERVS. REV. 188 (2019) (explaining the adequacy of the government’s policy responses to CSEC through the TVPA); GEIS ET AL., *supra* note 15, at 5.

²⁹ INST. OF MED. & NAT’L RSCH. COUNCIL, *CONFRONTING COMMERCIAL SEXUAL EXPLOITATION AND SEX TRAFFICKING OF MINORS IN THE UNITED STATES* 5, 8 (Ellen W. Clayton et al. eds., 2013) (ebook).

³⁰ GEIS ET AL., *supra* note 15, at 3.

³¹ INST. OF MED. & NAT’L RSCH COUNCIL, *supra* note 29, at 6, 8.

³² *Id.* at 9.

³³ Darren Geist, *Finding Safe Harbor: Protection, Prosecution, and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POL’Y. BRIEF 67, 71 (2012).

³⁴ GEIS ET AL., *supra* note 15.

³⁵ Jennifer Cole & Ginny Sprang, *Post-Implementation of a Safe Harbor Law in the U.S.: Review of State Administrative Data* 101 CHILD ABUSE & NEGLECT 1, 2 (2020).

of Safe Harbor provisions strengthening criminal prosecution led to an upward trend in the number of adult perpetrator arrests.³⁶ This study and others have found that safe harbor laws may correlate with an increase in other victim-focused responses, such as reporting more CSEC victims to child welfare agencies and increasing general awareness.³⁷ However, studies have also found that child welfare agencies struggle to implement effective screening techniques for youth and that inter-agency coordination and cooperation continue to be a challenge.³⁸

Researchers recommend a variety of multidisciplinary, survivor-focused responses for CSEC victims. One study recommended increased support for local and statewide multidisciplinary task forces through the development of guidelines and provision of technical assistance.³⁹ Recommendations for survivor-focused responses and victim identification typically highlight the need for collaboration between law enforcement and trafficking task forces.⁴⁰

In an effort to improve outcomes for CSEC youth and to facilitate accurate identification of survivors through the implementation of multidisciplinary, survivor-focused responses, jurisdictions have increasingly looked towards treatment courts to serve as a model for prevention, intervention, diversion, and treatment. Juvenile and family courts are uniquely positioned to

³⁶ See, e.g., VANESSA BOUCHE ET AL., IDENTIFYING EFFECTIVE COUNTER-TRAFFICKING PROGRAMS AND PRACTICES IN THE U.S.: LEGISLATIVE, LEGAL, AND PUBLIC OPINION STRATEGIES THAT WORK 18, 20, 2 (2015), <https://www.ojp.gov/pdffiles1/nij/grants/249670.pdf> [<https://perma.cc/W9GV-ZVG6>]; and see LAURA SCHAUBEN, ET AL., WILDER RESEARCH, SAFE HARBOR: EVALUATION REPORT 16 (2017), https://www.wilder.org/sites/default/files/imports/SafeHarbor_EvaluationReport_10-17.pdf [<https://perma.cc/L6Q9-3SAT>] (prepared for the Minnesota Department of Health and the Women’s Foundation of Minnesota).

³⁷ Cole & Sprang, *supra* note 35, at 6; SCHAUBEN ET AL., *supra* note 36, at 13.

³⁸ Dawn Bounds et al., *Commercial Sexual Exploitation of Children and State Child Welfare Systems*, 16 POL’Y, POL., & NURSING PRAC. 17, 4 (2015); SCHAUBEN ET AL., *supra* note 36, at 18–20.

³⁹ INST. OF MED. & NAT’L RSCH. COUNCIL, *supra* note 29, at 383.

⁴⁰ See, e.g., Kimberly Mehlman-Orozco, *Safe Harbor Policies for Juvenile Victims of Sex Trafficking: A Myopic View of Improvements in Practice*, 3 SOC. INCLUSION 52, 60 (2015).

intervene in cases involving CSEC. Several jurisdictions have already created treatment courts to specifically address the needs of survivors and those at risk of CSEC, particularly those who are involved in the child welfare or juvenile justice systems. The goal of treatment courts for survivors of CSEC centers on the idea that the court process can be therapeutic for participants and produce improved outcomes. With proper training on trauma-informed systems and CSEC, the actors within the court process can help further therapeutic outcomes for survivors.

Part I of this article describes therapeutic jurisprudence and trauma-informed court systems. Part II explores the history of treatment courts, the emergence of “prostitution” and human trafficking treatment courts for adults, and the efficacy of treatment courts in general.⁴¹ Part III examines the emergence of CSEC treatment courts within juvenile and family courts over the past decade, specifically looking at program eligibility, goals, structure, mission, and underlying philosophy. Finally, Part IV suggests a model structure for CSEC treatment courts, investigates the therapeutic and antitherapeutic effects, or potential effects, of CSEC treatment courts, and identifies areas for further study to ensure the purposes of CSEC treatment courts—namely, the therapeutic prevention and intervention of CSEC—can be realized.

II. PART I: THERAPEUTIC JURISPRUDENCE AND TRAUMA-INFORMED SYSTEMS

A. Therapeutic Jurisprudence

With roots in mental health commitment proceedings, “therapeutic jurisprudence” (TJ) posits that the justice system has the potential to produce therapeutic or antitherapeutic effects for litigants or participants within the system.⁴² TJ researchers and

⁴¹ For the purposes of this article, “efficacy” refers to whether a court process and the actors within the system are helping to produce therapeutic or antitherapeutic effects in participants.

⁴² Emma Hetherington, *Considering the Therapeutic Consequences of Recent Reforms to Civil Statutes of Limitations for Child Sexual Abuse Claims*, 15 CHARLESTON L. REV. 639, 647 (2021).

scholars seek to study the effects the legal system, legal processes, and legal actors have on the mental health of participants.⁴³ While the legal system may have some antitherapeutic effect on participants, TJ seeks to “minimize antitherapeutic effects, and when it is consistent with other legal goals, to increase law’s therapeutic potential.”⁴⁴ “TJ examines ‘(1) the role of law in producing psychological dysfunction, (2) therapeutic aspects of legal rules, (3) therapeutic aspects of legal procedures, and (4) therapeutic aspects of judicial and legal roles.’”⁴⁵ In examining the role of treatment courts in working with survivors of CSEC in juvenile and family courts, this article will focus on the third and fourth areas of TJ—the therapeutic aspects of legal procedures and judicial and legal roles.

Much debate persists as to whether a legal proceeding can produce therapeutic effects. Prior research indicates civil commitment hearings may produce antitherapeutic effects due to a number of factors, including public exposure of embarrassing material such as mental health diagnoses; re-traumatization of participants as they are forced to listen to potentially traumatic information about themselves during lengthy, public proceedings; and testimony by therapists revealing information the participants believed to be confidential.⁴⁶ Conversely, commitment hearings have the potential to produce therapeutic effects by way of providing a “therapeutic community” involving “(1) a face-to-face confrontation involving all major participants in the crisis situation; (2) occurring as soon as possible after the crisis arises; (3) under skilled neutral leadership; (4) allowing for open communication without fear of reprisal; and (5) with an appropriate level of feeling,

⁴³ See Bruce J. Winick, *Therapeutic Jurisprudence and Problem Solving Courts*, 30 *FORDHAM URB. L.J.* 1055 (2003).

⁴⁴ *Id.* at 1063.

⁴⁵ David B. Wexler & Bruce J. Winick, *An Introduction to Therapeutic Jurisprudence*, in *ESSAYS IN THERAPEUTIC JURISPRUDENCE* 17, 19 (David B. Wexler & Bruce J. Winick eds., 1991).

⁴⁶ John J. Ensminger & Thomas D. Liguori, *The Therapeutic Significance of the Civil Commitment Hearing: An Unexplored Potential*, in *THERAPEUTIC JURISPRUDENCE: THE LAW AS A THERAPEUTIC AGENT* 245, 256–57 (David B. Wexler ed., 1990).

neither too little nor too much.”⁴⁷ Legal proceedings involving survivors of sexual abuse or exploitation also have the potential to produce therapeutic effects. Limited studies have indicated that survivors who are able to access civil legal proceedings in which their voices can be heard may experience therapeutic results.⁴⁸ Various aspects of the proceeding can make it less or more therapeutic, such as the physical set-up of a courtroom, with more informal settings being more therapeutic.⁴⁹ While some negative effects are felt by survivors involved in civil legal proceedings, many survivors have found the therapeutic effects outweigh any antitherapeutic consequences.⁵⁰

Actors within the judicial system, such as judges and attorneys, can also greatly contribute to the therapeutic or antitherapeutic effects of a legal proceeding. In the context of civil commitment proceedings, a defense attorney can minimize the antitherapeutic effects of the proceeding by objecting to the public release of potentially embarrassing mental health records, explaining the legal process to the client thoroughly, and ensuring the client’s express wishes are conveyed to the court.⁵¹ Judges and juries can also help minimize antitherapeutic effects of a judicial proceeding. For example, in the context of civil lawsuits involving child sexual abuse, survivors reported more positive experiences when they felt heard and believed by judges.⁵² With an increasing number of treatment courts emerging for CSEC survivors, further examination of the therapeutic and antitherapeutic effects of legal proceedings and the actors within those proceedings can help inform courts seeking to maximize therapeutic effects.

B. Trauma-Informed Systems

Although legal proceedings and the actors within the system can aid in ensuring a more therapeutic experience for participants,

⁴⁷ *Id.* at 257–58.

⁴⁸ Hetherington, *supra* note 42, at 653–54.

⁴⁹ *Id.* at 654.

⁵⁰ *Id.* at 654–55.

⁵¹ Ensminger & Liguori, *supra* note 46, at 253.

⁵² Hetherington, *supra* note 42, at 654.

participants may be re-traumatized and experience antitherapeutic effects absent the use of “trauma-informed” approaches.

A program, organization, or system that is trauma-informed realizes the widespread impact of trauma and understands potential paths for recovery; recognizes the signs and symptoms of trauma in clients, families, staff, and others involved with the system; and responds by fully integrating knowledge about trauma into policies, procedures, and practices, and seeks to actively resist re-traumatization.⁵³

Trauma-informed systems should utilize the Substance Abuse and Mental Health Services Administration’s six principles to maximize the therapeutic effects on participants: (1) safety; (2) trustworthiness and transparency; (3) peer support; (4) collaboration and mutuality; (5) empowerment, voice, and choice; and (6) cultural, historical, and gender issues.⁵⁴

The principles underlying trauma-informed systems mirror the ways in which legal proceedings and actors can produce therapeutic outcomes and provide specific guidance for courts seeking to maximize therapeutic outcomes of participants. When a participant feels safe in their physical environment, trusts their attorney to advocate for their stated and best interests, and their voice is heard in court, they are more likely to experience therapeutic effects through participation in the system. Within a legal setting and in combination with the six core principles of a trauma-informed system, a trauma-informed approach requires that attorneys, judges, and other system participants identify symptoms of trauma in litigants, adjust their relationship with litigants, and adapt the litigation and procedural strategies and structures in order to minimize re-traumatization and maximize the opportunities for therapeutic outcomes.⁵⁵ By identifying trauma, attorneys and judges

⁵³ SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., SAMHSA’S CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 9 (2014), <https://store.samhsa.gov/sites/default/files/d7/priv/sma14-4884.pdf> [<https://perma.cc/T9PH-U5FW>] [hereinafter SAMHSA].

⁵⁴ *Id.* at 10.

⁵⁵ Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLINICAL L. REV. 359, 363 (2016).

can better understand litigants and recognize the signs of re-traumatization, such as anxiety, avoidance, or defensiveness.⁵⁶ Once trauma is identified, actors within a legal proceeding can adjust how they interact with litigants by offering more frequent breaks, taking more time to explain complex legal issues, and ensuring that a litigant has a meaningful opportunity to be heard during a proceeding.⁵⁷ Finally, courtroom participants can adapt the litigation process itself to reduce trauma and maximize therapeutic effects by changing the physical set-up of a courtroom or by altering how a litigant tells their side of the story.⁵⁸

The following sections will explore the history of treatment courts and how the principles of therapeutic jurisprudence and trauma-informed systems have been, and can be, utilized within the context of treatment courts for survivors of CSEC.

III. PART II: TREATMENT COURTS AND THEIR THERAPEUTIC AND ANTITHERAPEUTIC EFFECTS

A. Therapeutic Jurisprudence, Trauma-Informed Systems, and Treatment Courts

Courts have increasingly sought to reduce antitherapeutic or re-traumatizing effects of the legal system by utilizing the theories behind therapeutic jurisprudence and trauma-informed systems. In fact, the core theoretical framework behind treatment courts can be traced to the emergence of TJ scholarship in the 1980s.⁵⁹ Treatment courts, often referred to as problem-solving courts, go beyond simply resolving a legal issue; they seek to address the underlying causes of participation in the legal system—mental health, substance use, domestic violence, and other social or psychological challenges.⁶⁰ Treatment courts engage multidisciplinary teams (MDTs) to address the underlying reasons for entry into the legal system to “achiev[e] a variety of tangible outcomes associated with

⁵⁶ *Id.* at 366–67.

⁵⁷ *Id.* at 383–84.

⁵⁸ *Id.* at 390; Hetherington, *supra* note 42, at 654.

⁵⁹ Winick, *supra* note 43, at 1062.

⁶⁰ *Id.* at 1064–65.

avoiding reoccurrence of the problem” by using creative means to improve the lives of participants.⁶¹ Principles of trauma-informed systems are commonly utilized in treatment courts. For example, a drug court participant may attend substance abuse treatment, work with a mentor with lived experience, and meet weekly with court staff and social workers to address emerging challenges. Instead of finding someone guilty of drug possession and handing down a sentence, treatment courts divert litigants from purely punitive outcomes towards a more solutions-based, therapeutic model to improve their lives and reduce recidivism.⁶²

The concept of treatment courts has grown over the last several decades. While originally seen in the context of mental health criminal courts, treatment courts are now designed to address a variety of underlying needs, and they sometimes extend outside criminal contexts.⁶³ Treatment courts have expanded to address substance use, domestic violence, and issues specific to veterans, among other areas.⁶⁴ The foundation of the juvenile courts can be seen as a type of treatment court, with the creation of the first juvenile court in Chicago during the late nineteenth century that was designed to rehabilitate rather than punish juvenile offenders.⁶⁵ Within juvenile courts, various treatment courts have emerged, such as family treatment courts, juvenile mental health courts, and, more recently, human trafficking courts.⁶⁶ With an eye to treatment and rehabilitation over punishment, juvenile courts are uniquely qualified to address the therapeutic needs of children involved in the child welfare or juvenile justice systems, particularly those who have experienced or are at risk of CSEC victimization.

⁶¹ *Id.* at 1060.

⁶² *Id.* at 1056–57.

⁶³ *Id.* at 1055–60.

⁶⁴ *Id.*; and *see infra* Part II.c. (discussing veterans treatment courts).

⁶⁵ Winick, *supra* note 43, at 1056.

⁶⁶ *See, e.g.,* Suzanna Fay-Ramirez, *Therapeutic Jurisprudence in Practice: Changes in Family Treatment Court Norms Over Time*, 40 L. & SOC. INQUIRY 205 (2015) (providing an overarching review of the history of treatment courts generally and, more specifically, family treatment courts).

B. Adult Prostitution and Human Trafficking Treatment Courts

While human trafficking or CSEC-specific treatment courts for juveniles are relatively new within the history of treatment courts in general, adult treatment courts addressing human trafficking or prostitution lay some of the groundwork for similar models for victims under eighteen. As discussed above, minors under eighteen are not “prostitutes,” and under the TVPA, the element of force, fraud, or coercion is unnecessary to show that a child is a victim of trafficking.⁶⁷ However, we do know that a majority of adults engaging in “prostitution” were first exploited as minors, and that some of the activities involved are similar. The stereotyping and labeling of a child as a “prostitute” leads to a lack of victim identification, lack of interventions and therapeutic services, and can lead a child to further systems involvement, including the adult criminal justice system.⁶⁸

The TVPA recognizes the inclusion of “pimping” or “prostituting” of a minor as a synonym for the sex trafficking of a minor.⁶⁹ Child victims of sex trafficking who are arrested on prostitution charges find themselves within the “sexual abuse to prison pipeline,”⁷⁰ where being labeled a “prostitute” rather than a “victim” causes significant barriers to leaving the juvenile justice, child welfare, and, eventually, criminal justice systems. Without adequate identification as victims (in addition to factors such as “trauma, abuse, and drug addiction”), the systems meant to protect women, girls, and other victims prevent survivors from finding an exit from “the life of prostitution,” where they continue to live into adulthood.⁷¹ As a result, prostitution is characterized as “a

⁶⁷ OVC, *supra* note 9, at 2.

⁶⁸ GIES ET AL., *supra* note 15, at 2–3.

⁶⁹ Kotrla, *supra* note 4, at 181.

⁷⁰ SAAR ET AL., *supra* note 13, at 5.

⁷¹ SARAH SCHWEIG ET AL., CTR. FOR CT. INNOVATION, PROSTITUTION DIVERSION PROGRAMS 2, 7 (2012),

https://www.courtinnovation.org/sites/default/files/documents/CI_Prostitution%207.5.12%20PDF.pdf [<https://perma.cc/WSD6-PE2L>].

revolving-door offense” due to the repeat cycle of arrests and unaddressed underlying causes of recidivism.⁷²

The failures of the criminal justice system to respond to the root causes of prostitution warranted another approach, leading to the creation of “prostitution” or human trafficking treatment courts for adult offenders.⁷³ Currently, the most popular means by which states are attempting to eliminate prostitution is by creating human trafficking and prostitution courts (HTPCs)⁷⁴ and diversion programs,⁷⁵ inspired by the problem-solving court movement.⁷⁶ HTPCs take various forms, including court-monitored diversion, pre-sentencing, and community-based outpatient programs.⁷⁷ Some HTPCs are embedded within other treatment courts, or they may be stand-alone courts with their own docket.⁷⁸ Despite different approaches, all of these courts “try to balance punishment and treatment with the goal of addressing underlying causes that make it difficult for women to desist prostitution.”⁷⁹

TJ and trauma-informed principles play a significant role in HTPCs. Like other problem-solving courts, “HTPCs typically adopt a collaborative and interdisciplinary approach,” which aims to consider and address the needs of individuals to ultimately prevent further trafficking.⁸⁰ This approach consists of “(1) identify[ing]

⁷² Joan M. Blakey et al., *Strengths and Challenges of a Prostitution Court Model*, 38 JUST. SYS. J. 364, 364 (2017).

⁷³ *Id.*

⁷⁴ See Becca Kendis, *Human Trafficking and Prostitution Courts: Problem Solving or Problematic?*, 69 CASE W. RES. L. REV. 805, 806 n.6 (2019) (specifying that although some specialty court programs explicitly identify their participants as human trafficking victims or individuals engaged in prostitution, most of the programs encapsulate both voluntary sex workers and sex trafficking victims).

⁷⁵ Blakey et al., *supra* note 72, at 365.

⁷⁶ Chrysanthi S. Leon & Corey S. Shdaimah, *JUSTifying Scrutiny: State Power in Prostitution Diversion Programs*, 16 J. POVERTY 250, 252 (2012); see also Kendis, *supra* note 74, at 806 (explaining that HTPCs “adopt key principles from the popular problem-solving court model”).

⁷⁷ Blakey et al., *supra* note 72, at 365.

⁷⁸ Teresa C. Kulig & Leah C. Butler, *From “Whores” to “Victims”: The Rise and Status of Sex Trafficking Courts*, 14 VICTIMS & OFFENDERS 299, 304 (2019).

⁷⁹ Blakey et al., *supra* note 72, at 365.

⁸⁰ Kendis, *supra* note 74, at 806–07.

and divert[ing] potential trafficking victims out of the traditional justice system, (2) deliver[ing] appropriate trauma-informed responses, and (3) address[ing] the underlying root causes of vulnerability to prevent future victimization.”⁸¹ While HTPCs vary in their specific underlying framework, structure, and implementation, the U.S. Department of Justice’s Office for Victims of Crime (OVC) sets forth six “characteristics” that HTPCs should utilize within their structure:

- (1) specify who will be responsible for the identification and assessment of potential victims;
- (2) use trauma-informed courtroom protocols;
- (3) establish referrals to community-based services (e.g., counseling, housing, legal, substance use);
- (4) monitor judicial compliance to ensure regular updates;
- (5) collaborate with local task forces and service providers; and
- (6) evaluate the court, create performance indicators to monitor, and assess goal achievement of the court.⁸²

A 2019 review of human trafficking problem-solving courts and dockets in the United States located thirty-four HTPCs nationwide across ten states and in the District of Columbia.⁸³ These states included California, Delaware, Florida, Illinois, Michigan, New York, Ohio, Pennsylvania, Tennessee, and Texas.⁸⁴ HTPCs were not equally distributed throughout these ten states, but rather were concentrated within New York, California, Ohio, and Texas.⁸⁵ Of these HTPCs, nine courts served adults, thirteen served both adults and juveniles, and twelve served only juveniles.⁸⁶ While some HTPCs were created for “human trafficking” generally, most focused on serving survivors of sex trafficking.⁸⁷ And although the review found HTPCs lacked uniformity or consistency in structure

⁸¹ Kulig & Butler, *supra* note 78, at 303.

⁸² *Id.* at 304.

⁸³ *Id.* at 305–06 (discussing the results of its national review and analysis of trafficking-related courts).

⁸⁴ *Id.*

⁸⁵ *Id.* at 308.

⁸⁶ *Id.*

⁸⁷ *Id.* at 309.

and underlying framework, it noted that some commonalities existed, such as leadership through an individual judge seeking to preside over trafficking cases; the utilization of multidisciplinary teams addressing an array of issues, such as housing, mental health, and substance abuse; and a focus on individualized, survivor-centered case planning and service implementation.⁸⁸ Most, if not all, HTPCs worked with criminal defendants or juveniles facing delinquency charges, with few addressing other common entry points into trafficking, such as the child welfare system.⁸⁹

C. *Efficacy of Treatment Courts*

Various studies have evaluated the efficacy of different treatment court models. However, these studies are limited, and the results vary. For example, in a study of three Veterans Treatment Courts (VTCs), while recidivism rates and jail time appeared to decrease, researchers believed strict eligibility requirements skewed the results.⁹⁰ Additionally, while researchers found that jail time decreased, they also found that participation time in the VTC was longer than the average length of what would have been the participant's criminal sentence.⁹¹ Other efficacy studies show more promise, particularly with treatment court models that have existed for longer periods of time, such as mental health treatment courts (MHTCs).⁹² In one study of 235 participants randomly assigned to "treatment as usual" (TAU) or "assertive community treatment" (ACT) through a MHTC, researchers found both groups of participants demonstrated "improved psychosocial functioning"

⁸⁸ *Id.* at 306.

⁸⁹ *Id.* The scope of the review focused on treatment or problem-solving courts working with survivors facing criminal or delinquency charges and did not include any reference to youth involved in the child welfare system.

⁹⁰ John W. Erickson, Jr., *Veterans Treatment Courts: A Case Study of Their Efficacy for Veterans' Needs*, 49 INT'L J.L. & PSYCHIATRY 221, 223 (2016).

⁹¹ *Id.*

⁹² See Merith Cosden et al., *Evaluation of a Mental Health Treatment Court with Assertive Community Treatment*, 21 BEHAV. SCIS. & LAW 415 (2003).

and spent less time in jail.⁹³ Participants receiving ACT and case management through the MHTC experienced a slight advantage over those receiving TAU.⁹⁴ Further, the study found that even though some participants were not officially receiving services through the MHTC, the existence of the treatment court created a “change in community practices toward mentally ill offenders result[ing] in higher levels of engagement in available services for offenders assigned to TAU as well as those in MHTC.”⁹⁵

Due to the scarcity of HTPC evaluations, the lack of a consistent theory of trafficking victimization, and a dearth of empirical data, the efficacy of treatment courts remains unclear.⁹⁶ Of the thirty-four HTPCs in the 2019 review discussed above, only ten courts had completed some sort of evaluation.⁹⁷ The ten courts that had conducted evaluations “focus[ed] very little on the outcomes of [the HTPC’s] initiatives.”⁹⁸ The failure to report therapeutic outcomes makes it burdensome to determine whether the HTPCs are actually serving their purpose.⁹⁹

Evaluation studies on the efficacy of HTPCs vary, utilizing either quantitative, qualitative, or mixed-method analyses.¹⁰⁰ Quantitative studies demonstrate some reduction in detention time and recidivism,¹⁰¹ as well as improvement in knowledge and

⁹³ *Id.* at 416, 417. The study defines “treatment as usual” as the services available in a community other than the intervention of interest. TAU in this study consisted of less intensive case management and adversarial criminal processing. The study defines “assertive community treatment” as intensive case management with the key features of a team approach to case management with low client-to-case-manager ratio, a focus on meeting basic needs, and persistent engagement of clients with low motivation.

⁹⁴ Merith Cosden et al., *Efficacy of a Mental Health Treatment Court with Assertive Community Treatment*, 23 BEHAV. SCIS. & LAW 200, 200 (2005). Note: This article served as a two-year follow up to the above cited study, Cosden et al., *supra* note 92.

⁹⁵ *Id.* at 211.

⁹⁶ Kulig & Butler, *supra* note 78, at 313–16.

⁹⁷ *Id.* at 308–09.

⁹⁸ *Id.* at 314.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 309.

¹⁰¹ *Id.* at 310 (citing Susie Baldwin & Gayle Haberman, L.A. Cnty. Dep’t of Pub. Health, Am. Pub. Health Ass’n Ann. Meeting: *Commercial Sexual*

attitudes towards prostitution.¹⁰² Qualitative evaluations indicate positive and even therapeutic outcomes in courts with strong and consistent MDT members, trauma-informed training, and participant trust; however, outcome measures across and within individual court evaluations varied and were not always based on therapeutic versus antitherapeutic effects.¹⁰³ Mixed-method evaluations have shown promising results with limitations based on MDT member attitudes towards participants and programs. While one mixed-method evaluation of a HTPC showed a reduction in recidivism and jail time, an increased likelihood of participants gaining employment or obtaining employment, and therapeutic outcomes such as increased self-esteem and improved interpersonal and familial relationships, an evaluation of another HTPC found that the program was undermined by attitudes and behaviors of individual MDT members.¹⁰⁴ “For example, one evaluation noted that ‘dehumanizing language or conduct on the part of judges or court staff frequently undermine the broader mission of the [New York’s Human Trafficking Intervention Courts] such as one court officer’s disclosure that ‘other court officers ... would refer to HTIC court dates as “‘hoe day.’””¹⁰⁵ Other factors contributing to dysfunction in the New York human trafficking courts “included the volume of cases, disagreement on the definition of consent, and whether there should be trafficking identification protocols.”¹⁰⁶ The New York courts were, however, “commended for having ongoing trainings, successful collaborations, proportionality in ensuring that the participant’s responsibility to the court did not outweigh

Exploitation of Children: The Los Angeles County Response from a Public Health Perspective (Nov. 2014), https://www.researchgate.net/profile/Susie-Baldwin-3/publication/266786644_Commercial_sexual_exploitation_of_children_The_Los_Angeles_County_approach_from_a_public_health_perspective/links/55f0778208aedecb68ffb1eb/Commercial-sexual-exploitation-of-children-The-Los-Angeles-County-approach-from-a-public-health-perspective.pdf.

¹⁰² *Id.* (citing Mary Parker & Chelsea Pizzio, *Effectiveness of a Prostitution Diversion Program: RESET* (2017) (unpublished thesis, California State University, Sacramento).

¹⁰³ *Id.* at 310–12.

¹⁰⁴ *Id.* at 312–13.

¹⁰⁵ *Id.* at 312 (internal citation omitted).

¹⁰⁶ *Id.*

alternative sanctions, and making victim cooperation with prosecution voluntary instead of a condition of non-criminal dispositions.”¹⁰⁷

While evaluation studies looking at the efficacy of treatment courts (and HTPCs in particular) are few in number and limited in scope and application, some evidence of therapeutic outcomes for participants support the development of treatment courts for survivors of CSEC. Importantly, the existing evaluation studies can be used to inform courts and MDTs seeking to create CSEC treatment courts within juvenile and family courts to better identify survivors and disrupt the sexual-abuse-to-prison-pipeline.

IV. PART III: THE EMERGENCE OF CSEC TREATMENT COURTS IN JUVENILE AND FAMILY COURTS

As described above, as of 2019, at least twelve treatment courts addressed the human trafficking of juveniles. However, not all of them held specialized dockets; several were housed within other treatment courts and many focused on working with survivors within the criminal or juvenile justice systems. Since 2019, additional CSEC treatment courts have emerged that provide a more concentrated focus on and specialized dockets for CSEC survivors. These courts address not only youth involved in the juvenile justice system but also those involved in the child welfare system. This section will discuss CSEC treatment courts with specialized, separate dockets. While some of the courts discussed focus primarily on juvenile-justice-involved youth, others include dependency- or child welfare-involved youth on their dockets. As with other forms of treatment courts, CSEC treatment courts vary in structure and implementation, and therefore this section will look at each identified court’s program eligibility, goals, and program structure, mission, and underlying philosophy.

¹⁰⁷ *Id.* at 313.

A. CSEC Treatment Court Models

In 2005, Clark County, Nevada, created a specialized docket for youth charged with prostitution.¹⁰⁸ Such a charge is generally identified as the precursor to human trafficking courts within family and juvenile courts. Currently, at least six states (and the District of Columbia) have at least one jurisdiction with a specialized juvenile court serving survivors of CSEC.¹⁰⁹ There currently is no centralized listing of all the juvenile CSEC treatment courts, and therefore this list may not include all juvenile treatment courts that are serving CSEC survivors. Additionally, this article focuses on courts working exclusively with juveniles and does not include courts that have both juveniles and adults on their dockets. The following is an overview of some of the known models.

1. California Girls' Courts

Throughout California, there are eleven courts identified as girls' courts, some of which specifically target survivors or those at risk of CSEC victimization (Alameda County, Fresno County, and Los Angeles County).¹¹⁰ Girls' courts engage in a non-adversarial approach and use a collaborative model that includes targeted

¹⁰⁸ Sue DiBella, *Changing the Way Courts Treat Youths Exploited by Trafficking*, UNIV. OF NEV. LAS VEGAS: NEWS CTR. (Apr. 18, 2018), <https://www.unlv.edu/news/article/changing-way-courts-treat-youths-exploited-trafficking> [<https://perma.cc/M4CT-B9U8>].

¹⁰⁹ California (including, *inter alia*, Girls' Court in Alameda County; Friday Court in Fresno County; Succeeding Through Achievement and Resilience (STAR) Court in Los Angeles County); Florida (Growth Renewed Through Acceptance, Change, and Empowerment (G.R.A.C.E.) Court in Miami-Dade County); Ohio (Safe Harbor Docket in Cuyahoga County; Empowerment Program in Franklin County; Restore Court in Summit County); Pennsylvania (Working to Restore Adolescents Power (WRAP) Court in Philadelphia County); Texas (Restore Court in Bexar County; Creating, Advocacy, Recovery, and Empowerment (CARE) Court in Harris County); Georgia (Healing Opportunities through Positive Empowerment (HOPE) Court in Chatham County); and District of Columbia (Here Opportunities Prepare you for Excellence (HOPE) Court).

¹¹⁰ *Girls' Courts/CSEC Courts Overview*, JUD. COUNCIL OF CAL., <https://www.courts.ca.gov/37353.htm> [<https://perma.cc/K4RH-KENR>] (last visited Sept. 24, 2021).

intensive services for participants and a multidisciplinary team with representatives from child welfare, mental health, and educational systems.¹¹¹ Despite operating within the same state and sharing a similar overall structure, California’s girls’ courts differ widely in scope and targeted participants.¹¹² The Los Angeles Succeeding Through Achievement and Resilience (STAR) Court, which began in 2012, focuses specifically on youth who are CSEC victims.¹¹³ An American Public Health Association presentation from 2014 described outcome results from a quantitative evaluation of 222 youths who participated in STAR Court between 2012 and 2014.¹¹⁴ Positive results reported included that “time spent in detention decreased from an average of 35 days to 25 days, 73% of participants had not been re-arrested since starting the program, and of the girls with closed cases, 25% still communicated with someone from the STAR Court team.”¹¹⁵ A 2021 analysis of STAR Court found a reduction in recidivism, improved education outcomes, and a reduction in incidences of running away for youth participating in the program.¹¹⁶

2. Philadelphia Working to Restore Adolescent Power (WRAP) Court

¹¹¹ CTR. FOR FAMS., CHILD. & THE CTS., JUD. COUNCIL OF CAL., JUVENILE COLLABORATIVE COURT MODELS: GIRLS’ COURT AND CSEC COURT (2020), https://www.courts.ca.gov/documents/JCJC_Models_Girls_and_CSEC_courts.pdf [<https://perma.cc/F6XZ-QBA2>] (providing an overview of girls’ and CSEC court models in California with recommendations for best practices).

¹¹² *See id.* There is no universal theoretical approach to girls’ courts, so there are jurisdictional differences in the use of detention as a sanction and when to seal records of exploited youth. *Id.* at 4.

¹¹³ *Succeeding Through Achievement and Resilience (STAR) Court - Los Angeles Superior Court*, JUD. COUNCIL OF CAL., <https://www.courts.ca.gov/27693.htm> [<https://perma.cc/9HAX-CK58>] (last visited June 3, 2022).

¹¹⁴ Kulig & Butler, *supra* note 78, at 310.

¹¹⁵ *Id.* at 310.

¹¹⁶ JUD. COUNCIL OF CAL., AN EVALUATION OF THE SUCCEEDING THROUGH ACHIEVEMENT AND RESILIENCE (STAR) COURT (2021), <https://www.courts.ca.gov/documents/STAR-court-evaluation-report-final.pdf> [<https://perma.cc/5EYB-WDU7>].

The WRAP Court, which started in 2015, is a pre-trial diversion court that serves youth with dependency and/or delinquency cases who are identified as CSEC survivors.¹¹⁷ This trauma-informed, collaborative court provides targeted services and treatment to participants with the understanding that upon successful completion of the program, cases will be discharged and will be deemed eligible for early expungement.¹¹⁸

3. Miami Growth Renewed through, Acceptance, Change, and Empowerment (GRACE) Court

GRACE Court was established in 2016 and targets all youth survivors of human trafficking who are before the court for dependency, family, Marchman Act, domestic violence, or juvenile delinquency matters¹¹⁹ using a collaborative multidisciplinary team model with service providers and representatives from stakeholder systems. GRACE Court requires all service providers and staff to be fully trained in human trafficking,¹²⁰ and the court is rooted in trauma informed practices. The GRACE Court Benchbook provides the MDT and judges with information on individualized case planning, services for parents and children, case management flow charts, suggestions on how to engage with survivors, information about CSEC generally and its effects on survivors, trauma-informed

¹¹⁷ THE FIRST JUD. DIST. CT. OF PA., 2016 ANNUAL REPORT 59 (2016), <https://www.courts.phila.gov/pdf/report/2016-First-Judicial-District-Annual-Report.pdf> [<https://perma.cc/62Z8-25P3>].

¹¹⁸ *Juvenile Diversion Policy and Juvenile Justice Programs*, PHILADELPHIA OFF. DIST. ATT'Y, <https://phillyda.org/juveniles/diversion-policy-programs/> [<https://perma.cc/32WY-HYKQ>] (last visited Apr. 29, 2022).

¹¹⁹ Delinquency, Dependency, Family, Marchman Act Petitions, and Domestic Violence matters are all eligible to participate in GRACE Court. ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, G.R.A.C.E. COURT BENCHBOOK [1] 2017, (Miami Dade, FL: Eleventh Judicial Court) (2017), https://www.flcourts.org/content/download/217037/1968168/GRACE_Court_Benchbook.pdf (last visited Sept. 24, 2021) [hereinafter “GRACE COURT BENCHBOOK”].

¹²⁰ Mari Sampedro-Iglesia, *Florida’s GRACE Court* 20, NAT’L CTR. FOR STATE CTS., <https://ncsc.contentdm.oclc.org/digital/api/collection/spcts/id/317/download> [<https://perma.cc/GY4U-KZYG>] (last visited Sept. 23, 2021).

questions judges can use when speaking with participants, and statutory and policy requirements for both delinquency and dependency cases that specifically apply to cases involving CSEC.¹²¹ MDT members include the judge, a court administrative case manager, the attorney for the child, child protective services, a guardian ad litem, a child advocacy center representative, and the public defender.¹²²

4. Washington D.C. Here Opportunities Prepare You for Excellence (HOPE) Court

Started in 2018, HOPE Court identifies as a strength-based and youth-driven court for youth of all genders who have experienced exploitation or are identified as at risk of being exploited. HOPE Court accepts both delinquency and Persons in Need of Supervision (PINS) matters. A Trauma-informed, multidisciplinary team approach is taken in HOPE Court with targeted services provided to all participants.¹²³

5. Chatham County Healing Opportunities for Positive Empowerment (HOPE) Court

Chatham County's HOPE Court was established in 2021 to serve any youth who have been identified as being at risk for or confirmed to be a survivor of CSEC. This trauma-informed, multidisciplinary approach accepts dependency, delinquency, and Child in Need of Supervision (CHINS) matters. The HOPE Court MDT includes representatives from multiple systems and non-profits serving CSEC survivors, including the judge, the attorney for the child, a guardian ad litem, public defender, local child advocacy center representative, mental health advocate, education

¹²¹ See generally GRACE COURT BENCHMARK, *supra* note 119.

¹²² *Id.* at 17.

¹²³ HOPE Court Information Sheet, OFF. ATTORNEY GENERAL FOR D.C., <https://oag.dc.gov/sites/default/files/2020-04/HOPE-Court-Info-Sheet.pdf> [<https://perma.cc/S23V-XYDB>] (last visited Sept. 23, 2021).

advocate, child protective services, probation, and Court-Appointed Special Advocates (CASA).¹²⁴

6. Texas

a) Bexar County RESTORE Court

Bexar County developed RESTORE Court in response to a growing number of youth identified as victims of DMST. RESTORE Court employs a three-pronged assessment approach wherein juvenile probation officers, the gang unit, and the Rape Crisis Center all assess potential participants to identify female youth who are eligible for RESTORE Court. Bexar County also developed a 12-bed residential treatment program for female youth who have been victims of sexual trauma.¹²⁵

b) Harris County Creating, Advocacy, Recovery, and Empowerment (CARE) COURT

CARE Court, in Harris County, Texas serves youth of all genders through a multidisciplinary team that creates and implements an individualized treatment plan for every youth. CARE Court identifies as trauma-informed and takes a strengths-based approach to working with youth who have been identified as being involved in or at risk of CSEC. Youth who successfully complete CARE Court may be able to be terminated early from probation and have their records sealed.¹²⁶

7. Ohio

a) Empowerment Program, Franklin County

¹²⁴ H.O.P.E. Court, Healing Opportunities through Positive Empowerment Policy and Procedure Manual, Chatham County Georgia Juvenile Court (March 9, 2021) (unpublished manual).

¹²⁵ Paul Flahive, Texas Public Radio, *County Helping Sex Trafficking Victims Become Survivors*, TEXAS PUBLIC RADIO (April 10, 2015), <https://www.tpr.org/community/2015-04-10/county-helping-sex-trafficking-victims-become-survivors> [<https://perma.cc/S83W-RHVF>] (last visited Sept. 24, 2021).

¹²⁶ *Health Services*, HARRIS COUNTY JUVENILE PROBATION DEPARTMENT, <https://hcjpd.harriscountytexas.gov/Pages/HealthServices.aspx> [<https://perma.cc/7JW8-3BJX>] (last visited Sept. 24, 2021).

Started in 2012¹²⁷, the Empowerment Program is a court-centered diversion program for youth who have experienced human trafficking that includes a multi-stakeholder committee that determines a youth's eligibility for the Safe Harbor docket. Eligible youth are given an individualized Empowerment Plan with ninety days to complete the included services and tasks, with the possibility of up to two additional ninety-day periods. For youth who complete the Empowerment Plan within the timeframe, the initiating complaint will be dismissed.¹²⁸

b) Restore Court, Summit County

Restore Court, is the first and as of 2018, and only certified juvenile human trafficking court in Ohio.¹²⁹ Restore Court, which started in 2015, utilizes intensive case management, counseling, mentoring, and supervision for each eligible youth.¹³⁰ Youth may be eligible either through their initiating charge (Safe Harbor Track) or through having experienced or being at risk of human trafficking.¹³¹ This three-phase court engages in a collaborative approach with the stated goal of empowering youth participants.¹³²

c) Safe Harbor Docket, Cuyahoga County

Cuyahoga County's Safe Harbor Docket, which began in 2015, is a specialized docket for any youth identified as survivors

¹²⁷ Kulig & Butler, *supra* note 78, at 304.

¹²⁸ Franklin County, Ohio, Division of Domestic Relations, Juvenile Branch, Court of Common Pleas, *Safe Harbor and Empowerment Program*, http://law.capital.edu/uploadedFiles/Law_School/NCALP/MVHTEmpowermentProgramPolicyProcedures.pdf [<https://perma.cc/U5EV-UD2Z>] (last visited Sept. 24, 2021).

¹²⁹ Jeff Kretschmar and Linda Tucci Teodosio, *How Ohio's Restore Court Focuses on Helping Sex Trafficked Youth*, JUVENILE JUSTICE INFORMATION EXCHANGE (Nov. 28, 2018), <https://jjie.org/2018/11/28/how-ohios-restore-court-focuses-on-helping-sex-trafficked-youth/> [<https://perma.cc/4MBE-V2KZ>].

¹³⁰ *Id.*

¹³¹ Restore Court Brochure, SUMMIT COUNTY JUVENILE COURT, <https://juvenilecourt.summitoh.net/images/restorecourt/brochure.pdf> [<https://perma.cc/DQ2Y-VWZ5>] (last visited Sept. 24, 2021).

¹³² *Id.*

of or at risk of human trafficking.¹³³ This trauma-informed court utilizes a multi-stage assessment protocol that includes identification and evaluation of survivors by the Cleveland Rape Crisis Center with subsequent assessment by probation staff.¹³⁴ The Safe Harbor Docket monitors youth for up to 270 days.¹³⁵ During this time, participants are referred to intensive, individualized services.¹³⁶ At or before 270 days of supervision, youth either successfully complete the Safe Harbor Docket and have their initiating charge dismissed or they are transferred out of the Safe Harbor Docket and adjudicated.¹³⁷

B. An Opportunity to Realize the Purpose of Safe Harbor Laws Through CSEC Treatment Courts

CSEC treatment courts, in theory, can aid states in meeting the purposes of Safe Harbor laws, such as better identification of survivors, multidisciplinary collaboration, and victim-focused services. In addition to jurisdictions that have already created CSEC treatment courts, multiple states, including Hawaii,¹³⁸ Iowa,¹³⁹ and Mississippi¹⁴⁰ have undertaken a comprehensive assessment of human trafficking needs at the state level and are considering

¹³³ See generally MISTY LUMINAIS & RACHEL LOVELL, PROCESS AND OUTCOME EVALUATION OF CUYAHOGA COUNTY’S SAFE HARBOR PROJECT (2018), <https://case.edu/socialwork/begun/sites/case.edu/begun/files/2018-09/Safe-Harbor-Report-Final-5-22-18-FINAL.pdf> [<https://perma.cc/S2YL-5POV>].

¹³⁴ *Id.* at 3.

¹³⁵ *Id.* at 6.

¹³⁶ *Id.* at 18.

¹³⁷ *Id.* at 5–6.

¹³⁸ See generally CENTER FOR COURT INNOVATION, HAWAII FAMILY COURT: COMMERCIAL SEXUALLY EXPLOITED CHILDREN INITIATIVE (2017), <https://ncsc.contentdm.oclc.org/digital/collection/famct/id/1466/rec/1> [<https://perma.cc/BA66-VK6J>].

¹³⁹ See generally SARAH JOHNSON, IOWA DEP’T HUM. RIGHTS, AN ANALYSIS OF HUMAN TRAFFICKING IN IOWA (2016), https://humanrights.iowa.gov/sites/default/files/media/CJJP_January_2016_Task_Force_Report_Human_Trafficking.pdf [<https://perma.cc/HX5A-58GE>].

¹⁴⁰ See generally STEVE WELLER & JOHN A. MARTIN, JUDICIARY OF MISSISSIPPI, MISSISSIPPI JUDICIARY HUMAN TRAFFICKING STRATEGIC AGENDA (2017), <https://ncsc.contentdm.oclc.org/digital/collection/spcts/id/315> [<https://perma.cc/7TE9-RULM>].

implementation of multidisciplinary task force or court-based solutions. Currently, there is no national accounting of the prevalence of specialized courts for survivors or those at risk of CSEC, and programs remain inconsistent in structure, program eligibility, and underlying philosophy. In the ten years since the implementation of the first juvenile human trafficking court, there is only one publicly available program evaluation of these treatment courts,¹⁴¹ and other evaluations are limited in scope and application and not fully and publicly available. However, given the information presented in even limited evaluations, the goals set forth in safe harbor laws, and research studies considering best practices in survivor responses, CSEC treatment courts may have the potential to improve outcomes for survivors and to produce therapeutic effects on participants.

C. Evaluation of CSEC Treatment Courts

To date, only Cuyahoga County's Safe Harbor Docket has engaged in an evaluation that is publicly available, at least in part.¹⁴² This evaluation, completed in conjunction with Case Western Reserve University, identified gaps in services as an area of concern.¹⁴³ The evaluators further found that there were questions as to whether or not the assessment tool, the Loyola Child Trafficking Rapid Screening Instrument, was the best assessment tool to use in identifying youth who have experienced or are at risk of human trafficking.¹⁴⁴ Evaluators provided the following recommendations for the Safe Harbor Docket that are relevant to any court-based response to DMST:

1. Clearly define the aims of the Court.
2. Further examine whether the Loyola tool is sufficient for identification.
3. If possible, reassess[] youth who were not deemed as eligible for the Safe Harbor Project after youth have had a

¹⁴¹ LUMINAIS & LOVELL, *supra* note 133

¹⁴² *Id.*

¹⁴³ *Id.* at 1.

¹⁴⁴ *Id.* at 3, 11.

chance to develop a rapport with some member of the Safe Harbor Project or the larger Juvenile Court, whether that be through Cleveland Rape Crisis Center, their probation officer, or someone else.

4. Continue to secure extensive resources on a variety of short and long-term placement options, as housing/placement is a key issue with this population.
5. Consider developing a parent advocacy component of the program to assist in addressing placement issues.
6. Engage the larger community to assist in providing an array of services for youth who are no longer under the supervision of the Court, for youth identified by the Court as “at-risk,” and for youth who chose not to participate.
7. Continue to refine a “disenrollment” plan for youth, including providing coordinated care services when youth are terminated from the Safe Harbor Project (either successfully or unsuccessfully).
8. Regularly analyze collected data on the youth, including outcome data and data on when and why youth proceed or fail to proceed in the process
9. Diversify key outcomes by capturing measurable *milestones* of success instead of “result” outcomes, such as graduation rates. In other words, the outcomes should be able to capture “any positive change.” Relatedly, in dialogue with youth and caregivers, create and share a definition of success that meets family’s needs.
10. Continue to strengthen collaboration with DCFS and possibly develop Court/DCFS liaisons to coordinate efforts for youth placed in foster care.
11. Expand outreach to boys and young men who may be trafficked and educate law enforcement and staff on the signs of trafficking that may differ from girls and young women.
12. Expand outreach with the LGBT Center of Greater Cleveland to create and distribute culturally appropriate outreach materials, particularly for transgender youth.

13. Continue to explore what is working in other Safe Harbor dockets in the state. . . .
14. Continue the successful collaboration with agencies and individuals that comprise the advisory board. . . .
15. Continue to collect data related to the social networks on human trafficking. . . .¹⁴⁵

In addition, the evaluators recommended expanding outreach to community partners, in particular LGBTQIA service providers and agencies. Although the report on the Safe Harbor Docket was made publicly available, no outcomes were presented, and no specific efficacy data was made public.

V. PART IV: POTENTIAL THERAPEUTIC AND ANTITHERAPEUTIC EFFECTS OF CSEC TREATMENT COURTS

Over the last fifteen years, multiple jurisdictions have turned to court-based responses for CSEC survivors. Court structures and underlying frameworks vary, and, at times, responses have not occurred in a coordinated fashion even within a single jurisdiction. For example, a report out of Florida found that despite the presence of a state-wide task force and early intervention and prevention programming, a lack of residential placements with the needed therapeutic approach persisted as a critical barrier.¹⁴⁶ Further, the report found that while ancillary services like substance abuse treatment, counseling, and legal assistance are present in the state, the service providers at the agency and individual level do not have the necessary training and support to adequately provide specialized services to CSEC survivors.¹⁴⁷

One reason for the inconsistent responses to CSEC survivors lies in the lack of consensus that a court-based response is best. In fact, a competing approach to treatment courts for CSEC survivors

¹⁴⁵ *Id.* at 11–12.

¹⁴⁶ FLA’S CTR. CHILD WELFARE, HUMAN TRAFFICKING RESPONSE IN FLORIDA 46 (2016), <http://www.centerforchildwelfare.org/kb/humantraf/2016HumanTraffickingResponseinFL.pdf> [<https://perma.cc/NDC5-PT85>].

¹⁴⁷ *Id.*

puts the responsibility to respond to trafficking on child welfare and/or community-based services.¹⁴⁸ What is agreed upon is that large gaps exist in available services, community responses, and an absence of rigorous research on and evaluation of system responses.¹⁴⁹ The paucity of research indicates that state and local responses to the needs of CSEC survivors are not always guided by evidence, or even promising practices.

A. A Suggested Approach for CSEC Treatment Courts

Although a thorough and rigorous review of CSEC treatment courts does not currently exist, a review of current models, limited studies, studies evidencing the benefits of survivor-focused interventions, and the core principles behind safe harbor laws can serve as an outline for a model approach.

1. Multidisciplinary Teams

MDTs should be a critical component of any successful CSEC treatment court. No one person, profession, or service can provide a “one size fits all” solution to survivors of CSEC. Multidisciplinary teams should consist of judges, attorneys for participants, child welfare agencies, departments of juvenile justice, social workers, child advocacy centers, therapists, mentors with lived-experience, mental health coordinators/advocates, law enforcement, and education advocates/coordinators. Other members of an MDT may include life coaches, parents (in limited circumstances, and only when the parent has not participated in the child’s exploitation), teachers, sports coaches, and other trusted adults who can provide support for individual participants. Certain

¹⁴⁸ FRANCINE SHERMAN & ANNIE BALCK, B.C. L. SCH, GENDER INJUSTICE: SYSTEM-LEVEL JUVENILE JUSTICE REFORM FOR GIRLS 41, 42 (2015), https://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?referer=https://scholar.google.com/scholar?hl=en&as_sdt=0%2C11&q=sherman+and+black+2015+humantrafficking&btnG=&httpsredir=1&article=1987&context=lsfp [<https://perma.cc/5SBP-J9ME>] (arguing that the Preventing Sex Trafficking and Strengthening Families Act includes language that supports the child welfare and/or community service services response approach).

¹⁴⁹ *Id.* at 41.

MDT members should remain consistent to ensure quality control of knowledge, training, and service provision. However, additional MDT members should be considered in each individual case, in consideration with the needs and stated preferences of each survivor.

2. Comprehensive and On-Going Training for All Court Personnel, Judges, Attorneys, Service Providers, Stakeholders, and Participants

All MDT members, whether they are regular members or members assigned to specific cases, should be required to complete comprehensive and on-going training related to CSEC, including, but not limited to, understanding CSEC; trauma-informed systems of care; new trends in evidence-based practices and interventions; and training specific to identifying, preventing, and addressing secondary or vicarious trauma and burnout.¹⁵⁰ Training should not only occur prior to MDT participation, but should be required as a regular, ongoing component of MDT membership. As trends and research on CSEC responses change, MDTs may be required to change or shift practices and philosophies, and ongoing training will ensure that MDTs stay up to date on best practices.

3. Comprehensive and On-Going Training on Cultural Competency, Racial and Ethnic Bias, LGBTQ+ Youth, and Socioeconomic Disparities

¹⁵⁰ “Vicarious traumatization refers to harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to the graphic or traumatic experiences of their clients. As psychologist Mark Evces has written, ‘[s]econdary, or indirect, traumatic exposure is not limited to mental health providers. Anyone who repeatedly and empathically engages with traumatized individuals can be at risk for distress and impairment due to indirect exposure to others’ traumatic material.’ Vicarious trauma is distinct from ‘burnout,’ which refers to the toll that work may take over time. Burnout can usually be remedied by taking time off, by moving to a new job. Vicarious trauma is a state of tension or preoccupation with clients’ stories of trauma. It may be marked by either an avoidance of clients’ trauma histories (almost a numbness to the trauma) or by a state of persistent hyperarousal.” Katz & Haldar, *supra* note 55, at 368 (internal citation omitted).

In order to ensure that CSEC courts and system responses produce therapeutic effects and operate in a trauma-informed manner, MDTs and courts must “actively move[] past cultural stereotypes and biases ... ; offer[] access to gender responsive services; leverage[] the healing value of traditional cultural connections; incorporate[] policies, protocols, and processes that are responsive to the racial, ethnic and cultural needs of individuals serviced; and recognize[] and address[] historical trauma.”¹⁵¹ Ensuring that cultural, historical, and gender issues are adequately addressed will help MDTs better identify victims, accurately assess survivor needs, and help gain trust and respect from survivors, which will in turn encourage survivors to fully participate in treatment courts. If MDT members better understand and recognize not only systemic biases but also individual ones, then MDT responses can be more trauma-informed and therapeutic, which will improve MDT functioning and survivor experience.

4. Use of Consistent, Trauma-Informed Language

Although MDT members may receive regular training on CSEC and trauma-informed systems, implementation of survivor-focused, trauma-informed approaches are not guaranteed. CSEC treatment courts should include “use of trauma-informed language” within their manuals and enforce the use of trauma-informed language. For example, terms such as “prostitute” can be prohibited from being used in CSEC treatment courts. Additionally, if participants are not comfortable with being labeled a “CSEC victim,” the label can be excluded from that participant’s court proceeding. Other terms that could be altered to be more trauma-informed include the use of “elopement” instead of “runaway” and “friend” instead of “associate.”

5. Separation From Sanction-Based Judicial Proceedings and a De-Emphasis on the Use of Detention as a Sanction

In order to further the shift away from treating survivors of CSEC as criminals rather than victims, CSEC treatment courts

¹⁵¹ SAMHSA, *supra* note 53, at 11.

should separate treatment court proceedings from sanction-based proceedings such as delinquency hearings. Although a participant may have pending delinquency or probation matters, the CSEC treatment court should be conducted in a trauma-informed manner that does not utilize punitive measures and criminalization. The inclusion of dependency-involved youth into CSEC treatment courts may help emphasize that the treatment court is not part of delinquency proceedings and that youth involved are not viewed as “criminals.” Importantly, the use of detention as a sanction should be avoided altogether in the context of CSEC treatment courts, and survivors should be given the opportunity to participate in therapeutic and other trauma-informed services within the community to the greatest extent possible.

6. Survivor-Led and Survivor-Centered Case Planning and Services

An important tenet of a trauma-informed system is one that provides a survivor with empowerment, choice, and voice. Rather than an MDT telling a survivor what their goals and services should be, each survivor should be engaged in the creation of their individualized case plans. Although children may be seen as immature or incapable of making rational and informed decisions, the opportunity to be part of the conversation about their own life goals and the solutions to those goals will ensure survivor buy-in, while also ensuring that the survivor’s voice is heard in each case. Services should also be survivor-focused. For example, not all survivors identify as victims of CSEC and may not be ready at the beginning of treatment to directly address their exploitation. Rather than force a survivor to engage in services that may cause re-traumatization and require them to address traumatic experiences before they are emotionally and mentally ready, service providers can work with survivors on other self-identified goals and outcomes to build trust, encourage self-empowerment, and prepare the survivor for further recovery and development.

7. A Safe, Survivor-Friendly Environment

Courtrooms are intimidating spaces for adults, let alone children. To see a judge in a robe behind a large, risen bench can be frightening and may prevent survivors from feeling safe and trusting in a CSEC treatment court proceeding. Survivors may feel a greater sense of safety and security if treatment courts can take place in an alternative setting, such as a conference room with comfortable chairs, calming art on the walls, and participants placed around a table on a more equal level with judges, attorneys, and other MDT members. If treatment courts must take place in a courtroom, measures could be taken to brighten the courtroom, rearrange seating, and make the environment feel more inviting to participants. Physical safety can go a long way in encouraging meaningful participation in the process, which could contribute to more positive, therapeutic outcomes.

8. Routine, Rigorous Evaluation of Services and Outcomes

CSEC treatment courts that do not engage in regular, evidence-based program evaluations will have no way of knowing whether their programs are effective and are producing positive, therapeutic outcomes. Programs that do not evaluate themselves will have no way of knowing whether improvements are needed, or whether they have created a successful program that could be used by other jurisdictions. Evaluations of services and outcomes should be evidence-based, relying on consistent and meaningful data, and should have specific and measurable outcome goals.

B. Potential Antitherapeutic Effects of the Suggested Approach

As with any well-meaning treatment court or other legal process with promising therapeutic effects, CSEC treatment courts may produce antitherapeutic consequences that can worsen outcomes for survivors, leading them into the criminal justice system as adults and towards further victimization.

First, the process involved in CSEC treatment courts could potentially produce antitherapeutic effects. A CSEC treatment court that runs on sanction-based principles, fails to set trauma-informed standards of language to be used when referring to survivors, and

fails to allow participants to meaningfully contribute to the goals and solutions of their programs may yield antitherapeutic results. If a CSEC treatment court fails to incorporate the six core principles of trauma-informed systems or fails to adapt the courtroom process to meet the needs of survivors, survivors may be re-traumatized, lack trust in the process, and lack motivation to complete programs. Importantly, if CSEC treatment courts fail to implement evaluation practices as part of their processes, the intended therapeutic outcomes may never be realized, and the process could perpetuate antitherapeutic effects.

Second, the judicial, legal, and other actors within CSEC treatment courts can also produce antitherapeutic effects. If MDT members are not adequately and regularly trained on trauma-informed care and systems, CSEC, and evidence-based responses, they will fail to provide trauma-informed, survivor-focused services and responses. MDT members may use inappropriate or harmful language when referring to survivors, and the inclusion of members who are not regularly part of the MDT may introduce individuals who lack the necessary training and understanding of CSEC. Attorneys who fail to fully explain the treatment court process to participants or who fail to object to the blurring of lines between treatment court and more punitive processes will lessen the likelihood that survivors will feel true empowerment, choice, and voice. Survivors may also lose trust in the people who are meant to represent their stated or best interests within the proceedings and may feel that the MDT is against them.

C. A Call for Further Study

Research on prevention and intervention services has developed promising practices and treatment approaches for survivors of CSEC. However, considerably less is known about court-based responses and their impacts on survivors of CSEC. The need for further investigation into judicial system responses should include a comprehensive accounting of all coordinated state and local court-based programming for survivors of CSEC, including specialized courts, dockets, and services. In addition, court-based programming for survivors of CSEC should engage in rigorous and

ongoing evaluation that is publicly available so that promising approaches can be identified, replicated, and further studied. These steps are needed to ensure that the court-based responses for the vulnerable population of survivors of CSEC are achieving their stated goals and improving the lives of youth who have experienced or are at-risk of human trafficking.

VI. CONCLUSION

Although antitherapeutic effects are possible in any legal proceeding, CSEC treatment courts present a unique opportunity to address the needs of survivors and meet therapeutic and systemic goals to improve outcomes for systems-involved survivors. CSEC treatment courts can provide safety, empowerment, choice, voice, and therapeutic treatment to survivors. Limited evaluations of CSEC treatment courts show promise and opportunity. However, for CSEC treatment courts to be successful and effective in producing therapeutic effects for survivors, courts must create trauma-informed and survivor-focused processes with legal actors and stakeholders who are well-trained and willing to engage in rigorous self-assessment. CSEC treatment court models vary, but, with more consistency in program structure and philosophy, more comprehensive evaluations can aid in CSEC treatment court creation, implementation, and improvement. Most importantly, CSEC treatment courts have the potential to treat survivors as survivors and empower them to leave the sexual abuse-to-prison pipeline.