

MORE THAN TROUBLING: THE ALARMING ABSENCE OF 'TROUBLED TEEN INDUSTRY' REGULATION AND PROPOSALS FOR REFORM

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INTRODUCTION

“Parent-approved kidnapping”¹—what sounds like an unreal oxymoron, unfortunately, is not. Instead, it often plays out like this: at sixteen years old, you are abruptly awoken in the middle of the night by two men with handcuffs.² These men ask if you want to go “the easy way or the hard way” before restraining you and carrying you out of your home, as you scream for help.³ They take you to the airport, eventually transporting you to an isolated facility for rebellious teenagers.⁴ All of this occurs with the permission, and at the express request, of your parents.⁵ Once at this facility, you are subject to a multitude of physical and mental abuse—you endure long hours of physical labor, are forced to take medication without a proper diagnosis, and get slapped, verbally assaulted, and locked in solitary confinement for misbehaving.⁶

This is the testimony of Paris Hilton, who, in 2020, spoke publicly for the first time about being sent to four different congregate treatment facilities as a child.⁷ These residential treatment facilities make up what is referred to as the “troubled teen industry” (TTI)—“a network of private youth programs, therapeutic boarding schools, residential treatment centers, religious academies, wilderness programs, and drug rehabilitation centers” owned and operated by private companies, nonprofits, or faith-based groups.⁸ While these programs are typically marketed to the parents of defiant children,⁹ minors are also pipelined into the TTI system “through the child welfare and juvenile justice systems, school district’s individualized education programs, by refugee resettlement agencies, [and] mental health providers.”¹⁰ These facilities purport to offer a variety of services to chi-

¹ Paris Hilton, Opinion, *America’s ‘Troubled Teen Industry’ Needs Reform So Kids Can Avoid the Abuse I Endured*, WASH. POST (Oct. 18, 2021, 1:26 PM), <https://www.washingtonpost.com/opinions/2021/10/18/paris-hilton-child-care-facilities-abuse-reform/> [https://perma.cc/D94K-YEY9].

² See *id.*; see also Yasmin L. Younis, *Institutionalized Child Abuse: The Troubled Teen Industry*, 2021 ST. LOUIS U. L.J. ONLINE 1, 1 (opening with the story of Joe, a teenager sent to Élan School—a behavior modification program similar to that which Hilton endured).

³ Hilton, *supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ See Paris Hilton, *The Real Story of Paris Hilton: This is Paris Official Documentary*, YOUTUBE, at 1:09:55–1:38:00 (Sept. 14, 2020), <https://www.youtube.com/watch?v=wOg0TY1jG3w&t=4195s> [https://perma.cc/QV2L-TS8V] (describing Paris Hilton’s multi-year stay at residential treatment facilities).

⁷ *Id.* See also Anya Zoledziowski, *Paris Hilton Says She Was Sexually Abused in ‘Troubled Teen’ Industry*, VICE NEWS (Oct. 12, 2022, 3:34 PM), <https://www.vice.com/en/article/5d3kad/paris-hilton-sexual-abuse-provo-canyon-school> [https://perma.cc/N6AR-ARDA].

⁸ Catherine E. Krebs, *Five Facts About the Troubled Teen Industry*, AM. BAR ASS’N (Oct. 22, 2021), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/practice/2021/5-facts-about-the-troubled-teen-industry/> [https://perma.cc/89SR-GA58].

⁹ U.S. GOV’T ACCOUNTABILITY OFF., GAO-08-713T, RESIDENTIAL PROGRAMS: SELECTED CASES OF DEATH, ABUSE, AND DECEPTIVE MARKETING 1 (2008) [hereinafter SELECTED CASES OF DEATH].

¹⁰ *Federal Legislative Change*, BREAKING CODE SILENCE, <https://www.breakingcodesilence.org/acca/> [https://perma.cc/KD9J-SFT9] (last visited Mar. 26, 2024).

ldren including drug and alcohol rehabilitation, treatment for mental illnesses like anxiety and depression, and behavioral counseling.¹¹ While this type of programming seems beneficial for youth, in practice, congregate care facilities have historically become breeding grounds for sexual assault and physical and medical neglect.¹² Because of this, many of the juveniles that enter congregate care facilities, who already suffer from previous trauma, leave even further traumatized.

And other children do not get the chance to leave at all. Take, for instance, Cornelius Frederick, a 16-year-old who, in 2020, was a resident at Lakeside Academy in Kalamazoo, Michigan—a treatment center that housed 125 boys who had been abused and neglected.¹³ After a lunchtime incident where Frederick threw a sandwich across the cafeteria, he was physically restrained by seven staffers who collectively placed their weight on Frederick until he muttered “I can’t breathe.”¹⁴ Frederick tragically died as a result of that restraint, and three facility employees were ultimately charged with his homicide.¹⁵ Frederick’s death prompted the state to reexamine its congregate care facility policies, which led to a Michigan Health and Human Services investigation that uncovered ten discipline-related violations at Lakeside Academy.¹⁶

While Hilton and Frederick’s stories may be two of the more well-known and widely publicized, they are, unfortunately, not an anomaly. In fact, there are currently an estimated 120,000 to 200,000 juveniles in congregate care institutions across the United States.¹⁷ Thus, despite the TTI’s national reputation of abuse, neglect, and deceptive marketing, the industry persists—in large part due to its severe under-regulation.

While a handful of states have passed laws to try and bolster protections for young people in congregate care over the past eight years,¹⁸ that legislation does not reach far enough. Today, on the federal level, there is no legislation surrounding youth residential facilities.¹⁹ In fact, “[e]fforts to pass federal legisla-

¹¹ SELECTED CASES OF DEATH, *supra* note 9, at 1.

¹² *Federal Legislative Change*, *supra* note 10.

¹³ Alice Hines, *Dangerous Restraints Were Routine at This Youth Home. Then a Black Teen Died*, VICE (July 24, 2020, 12:05 PM), <https://www.vice.com/en/article/n7w4pk/dangerous-restraints-were-routine-at-youth-home-where-7-staffers-fatally-held-down-a-black-teen> [https://perma.cc/4NN3-QHGX].

¹⁴ *Id.*

¹⁵ Christine Hauser & Michael Levenson, *Three Charged in Death of Michigan Teenager Restrained at Youth Academy*, N.Y. TIMES (June 24, 2020), <https://www.nytimes.com/2020/06/24/us/cornelius-frederick-lawsuit-lakeside-academy.html> [https://perma.cc/2UAK-6FXR].

¹⁶ *See id.*

¹⁷ BREAKING CODE SILENCE, <https://www.breakingcodesilence.org/> [https://perma.cc/2E2N-VBSL] (last visited Mar. 26, 2024).

¹⁸ Cameron Evans, *State Laws Aim to Regulate ‘Troubled Teen Industry,’ but Loopholes Remain*, KFF HEALTH NEWS (Jan. 21, 2022), <https://kffhealthnews.org/news/article/state-laws-aim-to-regulate-troubled-teen-industry-but-loopholes-remain/> [https://perma.cc/NMU2-4LHU].

¹⁹ *Id.*

tion that would regulate [youth residential facilities] failed every year for more than a decade.”²⁰

This Note will advocate for immediate and wide-reaching legislative action on juvenile residential treatment. Part I will provide a brief history of the origins of the TTI and the most common types of facilities operating today. Part II will analyze some of the limited state legislation on the TTI, along with the Stop Institutional Child Abuse Act pending before Congress. Finally, Part III will lay out the most pressing injustices and abuses that arise out of the TTI and argue that an integrated framework of local and federal legislation, including the adoption of state bills of rights for youth in residential treatment, is needed to begin combating this institutionalized child abuse.

I. FUNDAMENTALS OF THE TTI

A. *Brief History: The TTI's Rise to Popularity*

The origins of the TTI are often traced back to 1958 when Charles Dederich founded Synanon—a drug addiction rehabilitation program.²¹ Synanon prided itself on a “tough love” treatment philosophy—using “attack therapy, isolation, and rigid restrictions” to force reform, and “gradually restoring limited freedom and positive affirmation to those who complied.”²² The program viewed drug dependence as an innate flaw, and thus believed that residents could “brutally confront” and “verbally humiliate” each other into recovery.²³ While the program began as a small community in California, over the years, it transformed into a multi-million dollar nonprofit with over 1,300 members.²⁴ Naturally, with such radical and restrictive practices at the core of its program, Synanon soon found itself the subject of numerous lawsuits and allegations of abuse.²⁵ The program ultimately shut down in 1991²⁶—yet, not before copycat programs emerged that adopted Synanon’s methods to specifically “treat” defiant children.

One such program was CEDU Educational Services, Inc., which formed in California in 1967.²⁷ Regarded as the first “therapeutic boarding school” in the

²⁰ *Id.*; see also Search Results for “Stop Child Abuse in Residential Programs for Teens Act,” U.S. CONG., <https://www.congress.gov/search?q=%7B%22source%22%3A%22legislation%22%2C%22search%22%3A%22%5C%22Stop%20Child%20Abuse%20in%20Residential%20Programs%20for%20Teens%20Act%5C%22%22%7D> [https://perma.cc/77K9-5LMA] (last visited Mar. 26, 2024).

²¹ Lewis Yablonsky, *Whatever Happened to Synanon? The Birth of the Anticriminal Therapeutic Community Methodology*, 13 CRIM. JUST. POL’Y REV. 329, 329 (2002).

²² MAIA SZALAVITZ, *HELP AT ANY COST: HOW THE TROUBLED-TEEN INDUSTRY CONS PARENTS AND HURTS KIDS* 7 (2006).

²³ *Id.*; Wanda K. Mohr, *Still Shackled in the Land of Liberty: Denying Children the Right to Be Safe from Abusive “Treatment”*, 32 ADVANCES IN NURSING SCI. 173, 175 (2009).

²⁴ *The Cult of Synanon*, WESTPORT HIST. SOC’Y, <https://virtualhistorywestport.org/exhibit/s/cure/cult/> [https://perma.cc/G65Z-65XP] (last visited Jan. 2, 2024).

²⁵ Maia Szalavitz, *The Cult That Spawned the Tough-Love Teen Industry*, MOTHER JONES, Sept.–Oct. 2007.

²⁶ *Id.*

²⁷ *CEDU Educational Services, Inc.*, UNSILENCED, <https://www.unsilenced.org/timeline/cedu-educational-services-inc/> [https://perma.cc/2K4G-J4GP] (last visited Jan. 2, 2024).

country,²⁸ CEDU targeted parents with their advertisements and used scare-tactics to garner enrollment.²⁹ Similar to Synanon, the schools relied on “hard labor, isolation, [and] attack group sessions” to reform noncompliant children.³⁰ In fact, CEDU condemned the use of medicine and traditional therapy and did not employ licensed clinicians until 1998.³¹ Given the allure of this novel approach to treatment, CEDU schools were particularly attractive to high-income families “who either had an aversion to or didn’t qualify for community-based services.”³² CEDU schools, thus, raked in substantial profits, charging anywhere from \$30,000 to \$80,000 for a year of treatment.³³ What was worse, the average child spent two-and-a-half years in CEDU custody.³⁴ Ultimately, CEDU faced a similar fate to Synanon, closing their doors in 2005³⁵ “amid lawsuits and state regulatory crackdowns.”³⁶

Two more of the most infamous troubled teen programs emerged in the 1970s and 1980s. In 1971, the federal government provided a grant to a Florida organization, The Seed, which alleged to treat teenagers involved with drugs.³⁷ Yet, years later, when Congress opened an investigation into behavior modification facilities, it found that The Seed “had used methods ‘similar to the highly refined “brainwashing” techniques employed by the North Koreans.’”³⁸ With the rise of the Reagan administration’s anti-drug platform, “tough love” and Alcoholics Anonymous practices became popular, and in 1981, a new juvenile drug reform program known as the “granddaddy” of the TTI—Straight, Inc.—opened numerous facilities across the United States.³⁹ Straight, Inc. acquired a great deal

²⁸ Olivia A. Stull, *An Exploratory Study on Adult Survivors of the Troubled Teen Industry’s Therapeutic Boarding Schools and Wilderness Programs* (May 15, 2020) (Ph.D. dissertation, University of Kansas) (ProQuest).

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Stull, *supra* note 28.

³⁴ *CEDU Educational Services, Inc.*, *supra* note 27.

³⁵ *Id.*

³⁶ Erik Hawkins, *California School For ‘Troubled Teens’ Had Roots in A Notorious, Militant Cult*, OXYGEN (June 8, 2020, 4:19 PM), <https://www.oxygen.com/crime-news/lost-kids-cedu-school-daniel-yuen-disappearance-synanon-cult> [https://perma.cc/ZJU7-D7PM].

³⁷ SZALAVITZ, *supra* note 25.

³⁸ *Id.* (quoting STAFF OF S. SUBCOMM. ON CONST. RTS., 93D CONG., INDIVIDUAL RTS. & FED. ROLE BEHAV. MODIFICATION 15 (Comm. Print 1974)).

³⁹ Mohr, *supra* note 23; SURVIVING STRAIGHT INC., <http://survivingstraightinc.com/> [http://perma.cc/9VAX-5PU3] (last visited Mar. 27, 2024) (discussing “positive peer pressure” practices) (“[Straight Inc.] used coercive thought reform (aka mind control, brainwashing), public humiliation, sleep & food deprivation, extremely harsh confrontational tactics, kidnapping, isolation, and emotional, mental, psychological, verbal and physical abuse. . . .”); Cyndy Etler, *I Spent 16 Months Trapped in a Troubled Teen Program. Now I Help Kids Recover From Them*, TODAY (Mar. 15, 2024 1:44 PM), <https://www.today.com/popculture/essay/troubled-teen-program-experience-rcna143623> [https://perma.cc/58SC-9398] (“What *was* Straight Inc.? Throughout my silent decades, I had no answer. I typed the words into a search bar and read an ACLU director’s description of Straight Inc.: ‘a concentration camp for throwaway kids.’ That sounded right to me.”). See also Michael McGrath, *Nancy Reagan and the Negative Impact of the ‘Just Say No’ Anti-drug Campaign*, THE GUARDIAN (Mar. 8, 2016, 2:23 PM), <https://www.theguardian.com/soc>

of publicity and enrollment with Nancy Reagan even publicly referring to it as her “favorite” program for teenagers.⁴⁰ Yet, after “facing seven-figure legal judgments” and allegations of human rights abuses, the program ultimately disbanded in 1993.⁴¹

B. TTI Rebrand: Today's Types of Facilities

As teenage drug and alcohol recovery programs started to shut down one-by-one, the TTI was forced to evolve and rebrand itself through new genres of residential treatment programs. Thus, today, the TTI persists through three main types of programs.

1. Juvenile Boot Camps

Juvenile boot camps are modeled after military basic training camps, centered around rigid discipline, physical conditioning, and strict schedules.⁴² Some boot camp programs also prioritize uniformity and uncomfortable living conditions.⁴³ Boot camps were originally designed as an alternative to traditional correctional facilities for juvenile offenders.⁴⁴ Now, there also exist boot camps more akin to schools “designed for children who have broken school rules.”⁴⁵ Juvenile boot camps claim to have two main goals: “provide cost-effective sentencing alternatives to incarceration” and “reduce recidivism by modifying participa-

ity/2016/mar/08/nancy-reagan-drugs-just-say-no-dare-program-opioid-epidemic [https://perma.cc/FK8Q-4YDM] (describing the rise in popularity of Nancy Reagan’s “Just Say No” anti-drug message).

⁴⁰ Stull, *supra* note 28, at 5 (quoting SZALAVITZ, *supra* note 25 (“Nancy Reagan declared [Straight Inc.] her favorite antidrug program.”)).

⁴¹ SZALAVITZ, *supra* note 25; see also *Straight, Inc. and Child Abuse in Residential Treatment Centers*, MED. WHISTLEBLOWER ADVOC. NETWORK, <http://medicalwhistleblower.org/straight-inc-child-abuse-in-residential-treatment-#:~:text=teen%20rehabilitation%20centers%20found%20themselves,employment%20with%20their%20tarnished%20reputations> [https://perma.cc/54CV-GK5W] (last visited Mar. 27, 2024) (discussing cases that survivors have brought against Straight Inc. and mentioning that even after the program’s disbandment, spin-offs still continue to exist).

⁴² *A Closer Look into Juvenile Boot Camp’s Effectiveness*, TEEN BOOT CAMPS, <https://teenbootcamps.org/boot-camps/a-closer-look-into-juvenile-boot-camps-effectiveness/> [https://perma.cc/M4JR-FHNX] (last visited Mar. 27, 2024); *Boot Camps & Military Schools in Indiana*, HELP YOUR TEEN NOW, <https://helpyourteennow.com/boot-camps-military-schools-in-indiana/> [https://perma.cc/XMM8-Z794] (last visited Mar. 27, 2024).

⁴³ U.S. GOV’T ACCOUNTABILITY OFF., GAO-08-146T, RESIDENTIAL TREATMENT PROGRAMS: CONCERNS REGARDING ABUSE AND DEATH IN CERTAIN PROGRAMS FOR TROUBLED YOUTH 8 (2007) [hereinafter CONCERNS REGARDING ABUSE AND DEATH].

⁴⁴ Mohr, *supra* note 23.

⁴⁵ *Practice Profile: Juvenile Boot Camps*, NAT’L INST. OF JUST.: CRIME SOLS. (Sept. 10, 2013), <https://crimesolutions.ojp.gov/ratedpractices/6#ar> [https://perma.cc/52DA-LM86].

nts' problem behaviors.”⁴⁶ These camps, most of which are privately owned,⁴⁷ are primarily marketed to parents with children who have a history of bad behavior or delinquency. The average length of stay for a child is 90 days, and the average cost of a program is between \$2,000 and \$10,000.⁴⁸ While programs of this type may sound promising on their face to hopeless parents, the empirical literature on boot camps' effectiveness shows otherwise. Generally, studies reveal that “participants . . . have high rates of recidivism” after leaving boot camps and reoffend more quickly compared to those not subjected to boot camps.⁴⁹ And, beyond just the physical and psychological abuse from the rigid program structure, participant-on-participant violence is also frequent due to children as young as twelve being grouped with older juveniles.⁵⁰

2. Wilderness Camps

Youth wilderness camps claim to “provide participants with a series of physically challenging outdoor activities designed to prevent or reduce delinquent behavior and recidivism.”⁵¹ These camps are marketed for children with “underlying emotional and behavioral problems” and are often viewed as a first step to “get a child ready” to be more receptive to a traditional residential program.⁵² Wilderness therapy puts participants in survivalist mode while outdoors to detach them from distractions so that they can concentrate on behavioral reform.⁵³ The typical wilderness therapy program can last from thirty days to multiple months.⁵⁴ Further, from a survey of 28 different wilderness therapy programs, the average cost was found to be \$558 per day, with an additional enrollment fee of approximately \$3,100.⁵⁵ Yet, notably, experts claim that youth wilderness

⁴⁶ *Id.* See also *Boot Camps & Military Schools in Indiana*, *supra* note 42 (“While boot camps are designed to scare kids into respecting authority, the long-term success rate has been very low.”).

⁴⁷ See, e.g., *Teen Wilderness Programs*, TEEN BOOT CAMPS, <https://teenbootcamps.org/teen-wilderness-programs/#:~:text=How%20much%20does%20it%20cost,camps%20today%20are%20privately%20owned> [https://perma.cc/QMU4-DJTT] (last visited Mar. 27, 2024).

⁴⁸ *Id.*

⁴⁹ Mohr, *supra* note 23.

⁵⁰ Jerry Tyler et al., *Juvenile Boot Camps: A Descriptive Analysis of Program Diversity and Effectiveness*, 38 SOC. SCI. J. 445, 456 (2001).

⁵¹ *Wilderness Camps*, OFF. JUV. JUST. & DELINQUENCY PREVENTION 1 (Mar. 2011), https://ojdp.ojp.gov/sites/g/files/xyckuh176/files/media/document/Wilderness_Camp.pdf [https://perma.cc/F7P6-G5QH].

⁵² Adiel Kaplan, *Does Science Support the ‘Wilderness’ in Wilderness Therapy?*, UNDARK (Jan. 29, 2020), <https://undark.org/2020/01/29/does-science-support-the-wilderness-in-wilderness-therapy/> [https://perma.cc/536K-C8NC].

⁵³ See *id.*

⁵⁴ *The Truth About Teen Wilderness Therapy*, NEWPORT ACAD. (Jan. 10, 2024), <https://www.newportacademy.com/resources/treatment/wilderness-therapy/> [https://perma.cc/26CF-NFLT].

⁵⁵ Jenney Wilder, *How Much Does Wilderness Therapy Cost?*, ALL KINDS OF THERAPY (Aug. 1, 2017), <https://www.allkindsoftherapy.com/how-much-does-wilderness-therapy-cost> [https://perma.cc/WMP9-SVMM].

camps “remain at best an unproven experiment.”⁵⁶ While there is no strong evidence of substantial benefits of wilderness therapy,⁵⁷ there is evidence that these programs foster abuse, which likely leads to further harm and even death. For instance, in 2008, the US Government Accountability Office (GAO) released a report that “examin[ed] allegations of abuse, death, and deceptive marketing practices at residential programs nationwide.”⁵⁸ The report disclosed several deaths that occurred at youth wilderness camps, including that of a fourteen-year-old who died from cardiopulmonary arrest after his hiking group got lost in severe heat.⁵⁹

3. Therapeutic Boarding Schools

Therapeutic boarding schools are residential facilities that provide both “academic and clinical” services to juveniles.⁶⁰ “Young people may be sent to a therapeutic boarding school for a variety of reasons, some as a last resort intervention in a young person’s life-threatening self-destructive behaviours, others due to transgressing parental expectations, such as having low grades, dressing in a subcultural style or having same-gender sexual attraction.”⁶¹ Participants at these schools are often under constant supervision.⁶² Therapeutic boarding school “contracts can require stays of 21 months or more”⁶³ and usually cost between \$30,000 and \$100,000 annually.⁶⁴ Thus, these schools are particularly popular amongst wealthy families.⁶⁵ Further, some schools incorporate a faith-based curriculum and treatment philosophy while marketing themselves as religious

⁵⁶ Kaplan, *supra* note 52.

⁵⁷ *Id.*

⁵⁸ Sam Myers, *Dark Forest: A Look Inside Controversial Wilderness Therapy Camps*, THE DAILY YONDER (Aug. 1, 2023), <https://dailyyonder.com/wilderness-therapy-camps-troubled-teens/2023/08/01/> [https://perma.cc/X4H2-4DBS]; see SELECTED CASES OF DEATH, *supra* note 9.

⁵⁹ SELECTED CASES OF DEATH, *supra* note 9, at 8; see also Sara M. Moniuszko & Leora Arnowitz, *A 12-Year-Old-Boy Died at a Wilderness Therapy Program. He’s Not the First*, USA TODAY, <https://www.usatoday.com/story/life/health-wellness/2024/02/20/north-carolina-wilderness-therapy-death-12-year-old-boy/72669232007/> [https://perma.cc/FV2X-L24M] (Feb. 20, 2024 12:47 PM) (“In 1990, 16-year old Kristen Chase died of heatstroke three days after arriving at her wilderness program. In 2000, 15-year-old William Edward Lee died from a head injury after being restrained by staff; [in 2002] 14-year-old Ian August died of hyperthermia at his wilderness therapy program . . . [and] Charles Moody, 17, died of asphyxiation after being restrained. In 2005, Anthony Haynes, 14, died while being punished at a wilderness boot camp. In 2007, Caleb Jensen, 15, died while at a wilderness camp, his body found bundled in a feces and urine-soaked sleeping bag. In 2011, Daniel Huerta, 17, died while being driven by a staff member. In 2016, 19-year-old Lane Lesko died during an escape attempt at a hybrid wilderness-residential treatment center.”).

⁶⁰ Wilder, *supra* note 55.

⁶¹ Sarah Golightley, *Troubling the ‘Troubled Teen’ Industry: Adult Reflections on Youth Experiences of Therapeutic Boarding Schools*, 10 GLOB. STUDS. CHILDHOOD 53, 54 (2020).

⁶² Christian Brancato, *When Private Industry Meets Public Policy: Navigating the Complexities of State and Federal Regulation Within the Troubled Teen Industry*, 2023 SETON HALL L. STUDENT WORKS 1, 12.

⁶³ SELECTED CASES OF DEATH, *supra* note 9, at 6.

⁶⁴ Golightley, *supra* note 61.

⁶⁵ *Id.*

non-profits.⁶⁶ Anguish and abuse appears to fester in these facilities as a survey of adults who survived therapeutic boarding schools shows that ninety percent of those participants reported having either “negative” or “very negative” experiences.⁶⁷

C. TTI Placements

Children can end up in these TTI programs through several avenues. As mentioned, parents often voluntarily elect to send their misbehaving child to a facility.⁶⁸ However, state authorities also play a hand in perpetuating the TTI, as state and local governments can pay TTI facilities to house children from the foster care and juvenile justice systems.⁶⁹ Additionally, school districts can refer children to TTI programs in certain scenarios, and refugee resettlement agencies and mental health providers also have the ability to route children into these programs.⁷⁰

II. THE CURRENT REGULATORY LANDSCAPE

A. Federal Legislation (or the Lack Thereof)

For over a decade, Congress has ultimately been unsuccessful in passing any form of legislation aimed at regulating the TTI despite multiple attempts.⁷¹ It all began in 2008, when the Stop Child Abuse in Residential Programs for Teens Act was first introduced in the House.⁷² The bill required residential centers including wilderness programs, boot camps, and therapeutic boarding schools to meet a series of minimum standards.⁷³ It prohibited child abuse and neglect; certain disciplinary practices such as withholding food, water, or shelter; the use of certain restraints and seclusion practices; and acts of humiliation and degradation.⁷⁴ The bill also required that children at residential treatment facilities have telephone access and mandated facility employees to undergo intensive training and background checks.⁷⁵ Additionally, the bill enforced measures through the threat of monitoring the TTI by publicly disseminating facility violations through a public website that reported the names, locations, and violation history of residential care facilities.⁷⁶ It required that facilities be

⁶⁶ *Id.*; see, e.g., *Timothy Hill Academy*, THERAPEUTIC BOARDING SCHS., <https://therapeuticboardingschools.org/new-york/timothy-hill-academy/> [https://perma.cc/HZG2-FCL4] (last visited Mar. 27, 2024).

⁶⁷ Golightley, *supra* note 61, at 56.

⁶⁸ Krebs, *supra* note 8.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ See Search results for “Stop Child Abuse in Residential Programs for Teens Act”, *supra* note 18.

⁷² H.R. 6358, 110th Cong. (2008).

⁷³ *Id.* § 3.

⁷⁴ *Id.* §§ 3(a)(1)(A)–(D).

⁷⁵ *Id.* §§ 3(a)(1)(E)–(K).

⁷⁶ *Id.* § 3(c)(1).

monitored for any violations of the minimum standards to impose civil penalties for failure to conform.⁷⁷ While the bill eventually passed in the House with 318 votes, it ultimately died at the close of the 110th Session of Congress when no further action was taken.⁷⁸

An identical bill was reintroduced in the House in 2009, where it, again, passed the House before dying at the end of session in the Senate.⁷⁹ In 2011, 2013, and 2015, the bill was reintroduced again in both the House and the Senate, where it continued to die each time.⁸⁰ Then, in 2017, this bill was introduced in the House for the final time, dying after being referred to the House Committee on Education and the Workforce.⁸¹

While a variety of individuals and organizations have been calling for increased TTI regulation for years,⁸² perhaps the movement's strongest push for action and mainstream visibility came from Paris Hilton.⁸³ Beginning in 2020 with the release of the documentary *This is Paris*, where Hilton spoke out about her experience in congregate care,⁸⁴ and continuing through 2022, when she released the *Trapped in Treatment* podcast which examines and exposes the TTI,⁸⁵ Hilton has become an outspoken advocate for TTI legislation, even appearing on Capitol Hill with lawmakers to garner attention and petition for change.⁸⁶

In April 2023, a new attempt at reforming the TTI, the Stop Institutional Child Abuse Act, was introduced in both the House and the Senate.⁸⁷ This bill, which—as of a year later at the publication of this Note—is still pending before Congress, takes a more analytical approach in attempting to legislate the TTI. If enacted, it would first establish a Federal Work Group on Youth Residential Programs consisting of nine representatives from relevant agencies such as the Administration for Children and Families, the Substance Abuse and Mental

⁷⁷ *Id.* §§ 3(b)(1)(2).

⁷⁸ H.R. 6358 - *Stop Child Abuse in Residential Programs for Teens Act of 2008: Actions*, CONGRESS.GOV, <https://www.congress.gov/bill/110th-congress/house-bill/6358/all-actions> [https://perma.cc/3GU4-4ZG6] (last visited Mar. 28, 2024) (showing that House passed this bill but no further action was taken after the House sent it to the Committee on Health, Education, Labor, and Pensions on June 26, 2008).

⁷⁹ H.R. 911, 111th Cong. (2009).

⁸⁰ H.R. 3126, 112th Cong. (2011); S. 1667, 112th Cong. (2011); H.R. 1981, 113th Cong. (2013); S. 2054, 113th Cong. (2014); H.R. 3060, 114th Cong. (2015); S. 3031, 114th Cong. (2016).

⁸¹ H.R. 3024, 115th Cong. (2017).

⁸² See, e.g., *About Us*, BREAKING CODE SILENCE, <https://www.breakingcodesilence.org/about-us/> [https://perma.cc/MJF8-WJ9J] (last visited Mar. 28, 2024). Cited many times in this Note, Breaking Code Silence is a California-based nonprofit that works to investigate wrongdoing, educate and provide research, promote and track legislation, and advocate for victims of the TTI.

⁸³ See *Paris' Impact Work*, PARIS HILTON, <https://parishilton.com/paris-impact-work/> [https://perma.cc/C65W-6JWX] (last visited Mar. 28, 2024) (sharing a timeline of Hilton's philanthropic work regarding the TTI).

⁸⁴ Hilton, *supra* note 6.

⁸⁵ *Episodes*, TRAPPED IN TREATMENT, <https://www.trappedintreatment.co/> [https://perma.cc/URN7-WQU7] (last visited Apr. 12, 2024).

⁸⁶ See The Hill, *Paris Hilton Takes to Capitol Hill to Advocate for Troubled Teen Care Reform*, YOUTUBE (Oct. 20, 2021), <https://www.youtube.com/watch?v=6eqcxSbLCXY> [https://perma.cc/3LHS-DQQL].

⁸⁷ H.R. 2955, 118th Cong. (2023); S. 1351, 118th Cong. (2023).

Health Services Administration, and the Department of Education.⁸⁸ This group would work to “develop and publish recommendations regarding a national database” that aggregates data on children in residential treatment facilities including the length of their stays, any use of restraints and seclusion, and “outcome-orientated data” like whether they have reintegrated safely into their school and community at least six months after discharge.⁸⁹ Additionally, this group would be required to submit a report every two years containing policy recommendations designed to improve the conditions inside these facilities and implement best practices regarding their licensing, accreditation, and monitoring.⁹⁰ Further, if enacted, this bill would instruct the Secretary of Health and Human Services to enter a contract with the National Academies of Sciences, Engineering, and Medicine “to conduct a study to examine the state of youth in youth residential programs and make recommendations.”⁹¹ In particular, this study must indicate the federal and state funding sources for youth residential programs, identify all existing federal and state regulation of youth residential programs, and notate the existing standards of care that national accreditation entities use in certifying youth residential programs.⁹²

B. A Sampling of State Legislation

While the Stop Institutional Child Abuse Act would be a good first step in cracking down on the TTI, we must not forget that it remains pending. Thus, with no currently enacted federal legislation regulating the TTI, states have largely been left to their own devices. Generally, states have only begun placing regulations on residential facilities within the last decade, and even then, state legislation is fairly limited and varies greatly.

1. California

On September 30, 2016, California passed S.B. 524 into law.⁹³ Under this legislation, all congregate care facilities in the state must be licensed as group homes operating on a non-profit basis. Therefore, these facilities are now required to comply with a variety of regulations—including maintaining a written plan of operation, providing each prospective youth and their guardian with an accurate written description of the services to be provided, prohibiting restraints, and submitting detailed staff training plans.⁹⁴

2. Montana

⁸⁸ S. 1351 § 596.

⁸⁹ *Id.* § 596(d)(1).

⁹⁰ *Id.* § 596(d)(2).

⁹¹ *Id.* § 3(a).

⁹² *Id.* § 3(b).

⁹³ S.B. 524, 2015–2016 Leg., Reg. Sess. (Cal. 2016).

⁹⁴ CAL. HEALTH & SAFETY CODE §§ 1502.2(a), (b)(5) (West 2024).

On April 18, 2019, Montana passed H.B. 282 into law.⁹⁵ In outlining what constitutes sexual assault in the state, this law makes explicit that individuals cannot consent when they are participants in any form of private residential treatment program and the perpetrator is a worker affiliated with the program.⁹⁶ Thus, this law works to protect the vulnerable populations within residential treatment programs from being abused.

On May 3, 2019, Montana passed S.B. 267 into law.⁹⁷ From 2007 to 2019, there had been fifty-eight unaddressed complaints against residential care facilities.⁹⁸ As a response, this law transferred regulating and licensing of residential care facilities to the Department of Public Health and Human Services with the goal of increasing oversight.⁹⁹

Further, on May 17, 2023, Montana amended this law with the passage of H.B. 218.¹⁰⁰ This amendment was influential in limiting inappropriate discipline methods in licensed facilities, as it both banned the threat or use of physical discipline as a “punishment, deterrent, or incentive” and required programs to report the use of any restraints within one business day.¹⁰¹ In an attempt to make submitting complaints against infracting facilities more accessible, and perhaps to encourage it, this amendment also required that “each licensed program publicly post information” on how to submit a report to law enforcement or the Department of Public Health and Human Services.¹⁰² And, finally, this amendment both increased the frequency and modified the procedure for licensed facility inspections, now requiring semiannual, unannounced government inspections, where at least fifty percent of the youth enrolled at each facility be interviewed outside the presence of facility staff.¹⁰³

3. Utah

On March 21, 2021, Utah passed S.B. 127 into law.¹⁰⁴ This piece of legislation marked the first time in fifteen years that the state increased oversight on its nearly hundred youth residential treatment centers.¹⁰⁵ Under this law, residential treatment centers in the state may no longer engage in any “cruel, severe, unusual, or unnecessary” practices including strip searches, discipline designed to frighten or humiliate, physical restraints, or seclusion, without a

⁹⁵ H.B. 282, 66th Leg., Reg. Sess. (Mont. 2019).

⁹⁶ MONT. CODE ANN. § 45-5-501(1)(b)(vi) (West 2023).

⁹⁷ S.B. 267, 66th Leg., Reg. Sess. (Mont. 2019).

⁹⁸ *Timeline: S.B. 267 in Montana*, UNSILENCED, <https://www.unsilenced.org/timeline/sb-267-in-montana/> [https://perma.cc/SL8J-PLXM] (last visited Jan. 3, 2024).

⁹⁹ MONT. CODE ANN. § 52-2-803 (West 2023).

¹⁰⁰ H.B. 218, 68th Leg., Reg. Sess. (Mont. 2023).

¹⁰¹ MONT. CODE ANN. § 52-2-805(3).

¹⁰² § 52-2-805(2)(d).

¹⁰³ § 52-2-810.

¹⁰⁴ S.B. 127, 2021 Gen. Sess. (Utah 2021).

¹⁰⁵ Jessica Miller, *Effort to Stop Abuse at Utah's 'Troubled-Teen' Centers is Sailing Through the Legislature*, THE SALT LAKE TRIB. (Feb. 23, 2021, 7:51 PM), <https://www.sltrib.com/news/politics/2021/02/24/effort-stop-abuse-utahs/> [https://perma.cc/GG6U-X4WW].

showing of absolute necessity or direct authorization.¹⁰⁶ Further, the law requires residential youth facilities to report to the Utah Office of Licensing the use “of a restraint or seclusion within one business day after the day on which the use of the restraint or seclusion occurs,” as well as “a critical incident within one business day after the day on which the incident occurs.”¹⁰⁷ The law also mandates quarterly inspections of all youth residential facilities by the Office of Licensing, with two of those inspections being unannounced.¹⁰⁸ Finally, while children in congregate care are often times prohibited from having any contact with the outside world, S.B. 127 requires programs to “facilitate weekly confidential voice-to-voice communication between a child and the child’s parents, guardian, foster parents, and siblings as applicable.”¹⁰⁹

4. Missouri

On July 14, 2021, Missouri passed two bills into law.¹¹⁰ This law was written after “women who had been placed at the Circle of Hope Girls’ Ranch in rural Missouri came forward with allegations that they’d been hit, restrained, starved, and sexually abused at the unregulated facility.”¹¹¹ Under this legislation, though private congregate care facilities in the state can continue to operate without a license, they must now inform the Missouri Department of Social Services of their existence.¹¹² Additionally, all employees of these facilities must submit fingerprints and undergo stringent background checks.¹¹³ Further, the law allows a number of individuals and agencies to petition the court to remove a child they believe to have been abused or neglected inside a residential care facility.¹¹⁴

5. Oregon

On July 14, 2021, Oregon passed S.B. 749 into law.¹¹⁵ Under this legislation, “referral agents” who work with parents or schools to match children into residential facilities must now disclose the types of licenses a program holds; “[t]he number of substantiated allegations of abuse, deaths and serious injuries at the program in the prior [twenty-four] months”; and what they are receiving in

¹⁰⁶ UTAH CODE ANN. § 26B-2-123 (West 2023).

¹⁰⁷ § 26B-2-104(1)(1)(x).

¹⁰⁸ § 26B-2-107(1).

¹⁰⁹ § 26B-2-123(6)(a).

¹¹⁰ H.B. 557 & 560, 101st Gen. Assem., 1st Reg. Sess. (Mo. 2021) (both bills passed as one act).

¹¹¹ *Timeline: H.Bs. 557, 560 in Missouri*, UNSILENCED, <https://www.unsilenced.org/timeline/hbs-557-560-in-missouri/> [https://perma.cc/VR4B-DHLX] (last visited Jan. 3, 2024).

¹¹² MO. ANN. STAT. § 210.1262 (West 2024).

¹¹³ § 210.493(4).

¹¹⁴ § 210.143.

¹¹⁵ S.B. 749, 81st Leg., Reg. Sess. (Or. 2021).

exchange for their referral.¹¹⁶ With this enactment, Oregon became the first state to regulate the “education consultant” industry.¹¹⁷

Further, on August 5, 2021, Oregon passed S.B. 710 into law.¹¹⁸ This law outlines new regulations regarding what types of restraint and seclusion are permitted in licensed child-care agencies.¹¹⁹ Specifically, a residential treatment facility is only permitted to restrain or seclude a child if their behavior “poses a reasonable risk of imminent serious bodily injury” to themselves or others and “less restrictive interventions” would not suffice.¹²⁰ In that case, the agency is further required to give immediate notice to the child’s guardian.¹²¹ Facilities are also required to submit to the Department of Human Services (DHS) a quarterly report detailing any use of restraint and involuntary seclusion for that quarter.¹²² In addition, the law mandates that any secured transportation service that transports children to or from a residential center along a route that begins or ends in Oregon must be licensed by the DHS.¹²³

While these state laws are steps in the right direction toward reforming the TTI, together, they make up a rather messy patchwork of regulation. This lack of standardization and uniformity is concerning as it only widens the gaps for potential oversight.¹²⁴

¹¹⁶ OR. REV. STAT. § 418.353(1)(a)(C) (West 2022).

¹¹⁷ *Timeline: S.B. 749 in Oregon*, UNSILENCED, <https://www.unsilenced.org/timeline/sb-749-in-oregon/> [https://perma.cc/MP7K-J4TK] (last visited Mar. 30, 2024).

¹¹⁸ S.B. 710, 81st Leg., Reg. Sess. (Or. 2021).

¹¹⁹ OR. REV. STAT. § 418.523.

¹²⁰ § 418.523(1).

¹²¹ § 418.526(3).

¹²² § 418.528 (outlining the minimum required details including the total number of incidents involving both restraint and involuntary seclusion, the dimensions within and number of rooms in which seclusion takes place, and the number of individual children restrained or secluded with their demographic characteristics).

¹²³ § 418.215.

¹²⁴ For example, Utah declined to renew Diamond Ranch Academy’s license in July 2023 after teenager Taylor Goodridge died in their care in December 2022. A new treatment center called Hope Circle seeks to take its spot. Though they attempt to be seen as different, the website is the same as Diamond Ranch’s, the location is the same (though they renamed the street) and they share some of the same directors. Because their former license was not renewed, it was also technically not revoked, thus the state law does not prevent them from obtaining licensure again. Jessica Miller, *After a Girl’s Death, Utah Closed Diamond Ranch Academy. A New Program May Open in the Same Spot with Some of the Same Employees*, THE SALT LAKE TRIB. (Mar. 12, 2024 8:00 AM), <https://www.sltrib.com/news/2024/03/12/after-girls-death-utah-closed/> [https://perma.cc/QR46-H6XY]. Relatedly, “rebranding” for facilities that get into too much trouble is a common practice for TTI facilities. Sam Myers, *Survivors of Wilderness Therapy Camps Describe Trauma, Efforts to End Abuses*, ARK. ADVOC. (Aug 7, 2023 5:55 AM), <https://arkansasadvocate.com/2023/08/07/dark-forest-a-look-inside-controversial-wilderness-therapy-camps/> [https://perma.cc/H3RQ-L3CL] (“[W]hat they usually do is rebrand under a new LLC—even if they’re in the same building and do the exact same things.”).

III. WHERE DO WE GO FROM HERE? A NEW APPROACH TO TTI REGULATION

A. *A Note on the Lack of Data on the TTI*

After conducting just minimal research on youth residential facilities, perhaps the most frustrating problems surrounding the TTI become clear: the overwhelming lack of research on the number of residential treatment centers, their location, the number of children currently in congregate care, and how these centers are run. This lapse in research is likely due to a lack of federal mandatory reporting for residential treatment facilities.¹²⁵ Further, as explained, most states have their own distinct set of licensing requirements that facilities must follow to operate.¹²⁶ In some states, certain facilities including privately-run institutions¹²⁷ and religious boarding schools,¹²⁸ are exempt from having to obtain a license all together. Without any standardization of licensing, accreditation, or identification, advocates and governmental bodies are largely left in the dark about what really happens inside the TTI and what might demand regulation.

There are truly only two reliable sources of information on the TTI. The first is a series of reports on residential treatment facilities created in 2007 and 2008 by the United States Government Accountability Office (GAO)—an independent, non-partisan government agency.¹²⁹ The GAO was commissioned by Congress to investigate residential treatment facilities after allegations of maltreatment, abuse, and death of youth emerged.¹³⁰ In one study, the GAO surveyed state child welfare, health and mental health, and juvenile justice agencies regarding maltreatment at both public and private residential facilities.¹³¹ It also visited California, Florida, Maryland, and Utah—states selected because of their diverse “licensing and monitoring policies for residential programs, reports of child maltreatment, and geographic location[s]”—to interview relevant officials.¹³² In a second study, the GAO was once again commissioned by Congress to specifically examine the circumstances surrounding cases of death or abuse in private residential programs, along with cases of deceptive marketing.¹³³

¹²⁵ Evelyn Tsisin, *The Troubled Teen Industry's Troubling Lack of Oversight*, THE REGUL. REV. (June 27, 2023), <https://www.theregreview.org/2023/06/27/tsisin-the-troubled-teen-industrys-troubling-lack-of-oversight/#:~:text=In%202007%2C%20the%20Government%20Accountability,This%20remains%20true%20today> [https://perma.cc/8ZNN-8HD6] (noting the GAO “lamented that exact figures were impossible to ascertain because no comprehensive, national data existed”).

¹²⁶ See U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-696T, RESIDENTIAL FACILITIES: STATE AND FEDERAL OVERSIGHT GAPS MAY INCREASE RISK TO YOUTH WELL-BEING 3 (2008) [hereinafter STATE AND FEDERAL OVERSIGHT GAP].

¹²⁷ *Id.*

¹²⁸ Krebs, *supra* note 8.

¹²⁹ See CONCERNS REGARDING ABUSE AND DEATH, *supra* note 43; STATE AND FEDERAL OVERSIGHT GAP, *supra* note 126; SELECTED CASES OF DEATH, *supra* note 9. *About*, U.S. GOV'T ACCOUNTABILITY OFF., <https://www.gao.gov/about> [https://perma.cc/VE3V-Z4PS] (last visited Mar. 30, 2024).

¹³⁰ CONCERNS REGARDING ABUSE AND DEATH, *supra* note 43.

¹³¹ STATE AND FEDERAL OVERSIGHT GAP, *supra* note 126.

¹³² *Id.* at 2.

¹³³ See SELECTED CASES OF DEATH, *supra* note 9.

While various empirical findings of these reports are discussed here, it is important to highlight that as of 2024, these studies are between fifteen and sixteen years old. Thus, one can only imagine how the conditions of the TTI have worsened and the rates of neglect, abuse, and death have changed, and likely increased, as more children enter the system.

The second source of information on the TTI consists of the testimony and anecdotes of individuals who were previously enrolled in congregate care. As mentioned, most famously is Paris Hilton, who has published op-eds, testified in front of state legislatures, campaigned on Capitol Hill, and spoken with advocacy groups regarding their time inside the TTI.¹³⁴ She has inspired others—celebrities and non—to come out with their stories against the TTI.¹³⁵

B. The Most Pressing Issues Within the TTI to Tackle

Before formulating an effective legislative framework for regulating the TTI, it is necessary to synthesize the GAO reports and survivors' stories to identify what aspects of residential treatment centers turn them into environments of abuse.

1. Staffing Concerns

First, regardless if individuals are enrolled in the TTI by their parents or placed there by the state, there is, or should be, an expectation that these residents—all *children* eighteen or under—will be looked after by trustworthy adults. However, that is often not the case. It has been reported that many program officials do not have the credentials to operate youth residential programs.¹³⁶ In fact, there are no national standards for training or background checks for TTI

¹³⁴ See Hilton, *supra* note 1; Jessica Miller, "This Ain't Utah": Advocates Led by Paris Hilton Urge Lawmakers to Pass Reforms for "Troubled-Teen" Treatment Centers, THE SALT LAKE TRIB., <https://www.sltrib.com/news/politics/2021/02/08/new-rules-utahs-troubled/> [<https://perma.cc/F6U9-CDEB>] (Sept. 1, 2021, 6:22 PM) (testifying at a Utah senate hearing, Hilton inspires other victims of the TTI to come forward and give their accounts in support of legislation); IV Hendrix, *Paris Hilton Takes to Capitol Hill to Advocate for Troubled Teen Care Reform*, THE HILL (Oct. 20, 2021, 12:51 PM), <https://thehill.com/blogs/in-the-know/in-the-know/577596-paris-hilton-takes-to-capitol-hill-to-advocate-for-troubled/> [<https://perma.cc/HXR6-KDUK>] (detailing Hilton's experience in the TTI, which she discusses on the steps of the Capitol to rally support for reform); Alyssa Newcomb, *Paris Jackson Speaks Out in Support of Paris Hilton, Opens Up About PTSD Diagnosis*, TODAY (Oct. 4, 2020, 6:36 PM), <https://www.today.com/popculture/paris-jackson-supports-paris-hilton-opens-about-ptsd-diagnosis-t193239> [<https://perma.cc/C8J5-VGH4>] ("As a girl who also went to a behavior modification 'boarding school' for almost two years as a teenager, and has since been diagnosed with PTSD because of it, and continue to have nightmares and trust issues, I stand with Paris Hilton and the other survivors.");

¹³⁵ Etler, *supra* note 39; Alyssa Newcomb, *Paris Jackson Speaks Out in Support of Paris Hilton, Opens Up About PTSD Diagnosis*, TODAY (Oct. 4, 2020, 6:36 PM), <https://www.today.com/popculture/paris-jackson-supports-paris-hilton-opens-about-ptsd-diagnosis-t193239> [<https://perma.cc/C8J5-VGH4>].

¹³⁶ Catherine Kushan, *The Troubled Teen Industry: Commodifying Disability and Capitalizing on Fear* (May 21, 2017) (B.A. thesis, George Washington University) (on file with George Washington University).

employees.¹³⁷ Thus, while some programs might require a certain degree or certifications, others simply require employees to be over eighteen years old.¹³⁸

Because many youth facilities market themselves as “treatment” programs, it is especially concerning that these facilities often do not employ staff with the appropriate medical credentials. Staff are likely not trained on how to recognize signs of serious illness or injury in youth that might occur during more physical programs like wilderness or boot camps. In fact, this lack of qualifications for staff has directly led to a number of deaths within the industry. In one case, “[a] 16-year-old male who suffered from asthma and chronic bronchitis complained of chest pain and had difficulty breathing for several weeks.”¹³⁹ However, a program nurse at the Arizona boot camp he was enrolled at told him these breathing problems were all “in [his] head,” and the staff required him to do push-ups and carry cinder blocks as punishment.¹⁴⁰ This child tragically ended up dying from an infection in his chest.¹⁴¹ In another instance, “a 16-year-old male with a history of asthma became unresponsive while being restrained at a Pennsylvania treatment facility.”¹⁴² Even though the facility had records that this child suffered from asthma, the staff claimed that they were unaware of his medical condition.¹⁴³ This child, too, tragically died as a result of this neglect.¹⁴⁴

Beyond this lack of training, the staff at residential treatment facilities are also often the ones effectuating abuse. Survivors have stated that TTI employees have verbally ridiculed them or blatantly discriminated against them due to their sexuality or race.¹⁴⁵ Others have highlighted the physical abuse that staff invoke, including various physical restraints, “being ‘sat on[,]’ and being ‘chased’ by []staff member[s].”¹⁴⁶

Ultimately, this abuse can fester due to a severe lack of oversight.¹⁴⁷ That is why it is essential for legislation to lay out strict hiring criteria for TTI staff and a more in-depth screening process for those who will work with residents in a medical or counseling capacity. Additionally, to account for the cases where distrustful staff slip through the cracks and ultimately get hired, there must be

¹³⁷ Nicolle Okoren, *The Wilderness ‘Therapy’ That Teens Say Feels Like Abuse: ‘You Are On Guard At All Times’*, GUARDIAN (Nov. 14, 2022, 3:00 PM), <https://www.theguardian.com/us-news/2022/nov/14/us-wilderness-therapy-camps-troubled-teen-industry-abuse> [https://perma.cc/X88L-ZLCE].

¹³⁸ *Id.*

¹³⁹ SELECTED CASES OF DEATH, *supra* note 9.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 4.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ See C. Jamie Mater, *The Troubled Teen Industry and its Effects: An Oral History*, 2022 U. N.H. INQUIRY J. <https://www.unh.edu/inquiryjournal/blog/2022/04/troubled-teen-industry-its-effects-oral-history> [https://perma.cc/BL7X-W7AR].

¹⁴⁶ *Id.*

¹⁴⁷ See Myers, *supra* note 124 (“‘Let’s say a case of sexual abuse happens. What they’ll do is just fire that person and then tell the authorities they took care of it...but that facility isn’t held accountable for having had that person there. So, that person will go and work at a different facility.’”).

more frequent, intensive, and unannounced government inspections of facilities and a standardized process for residents to report abusive employees.

2. Deceptive Marketing Practices

Parents who enroll defiant children in residential programs often do so as a last resort. Many state that they feel frustrated, fearful, and exhausted¹⁴⁸—willing to do anything to get treatment for their children. However, it is important not to forget the fact that a large number of residential treatment facilities operate for-profit and are run by large corporations.¹⁴⁹ Thus, these facilities are equipped with marketing teams who know exactly how to profit off desperate parents by selling the promise of modifying troubling behavior. As the co-founder and CEO of advocacy group Unsilenced said, “[y]ou look at [TTI program] websites, you see horses and animals, and you get to go hiking, boating, skiing, rock climbing, and all this stuff. And they really make it look amazing. [Yet], what you think is going on really isn’t.”¹⁵⁰

For instance, many parents who seek to enroll their child into a residential treatment facility take advantage of the help of an “educational consultant”—tasked with assisting families with finding the best program for their child and providing references.¹⁵¹ However, these consultants are usually under no duty to disclose any financial relationships they may have with residential centers to prospective families.¹⁵² Underneath the façade, consultants are often receiving cash or other non-monetary bonuses for securing a new placement in specific programs.¹⁵³ Thus, there is no incentive for a consultant to actually listen to the specific needs of a family and recommend the most suitable program for a child facing specific challenges. In fact, in one GAO study, individuals posing as interested parents contacted a referral service that promised to “look at [the family’s] special situation and help [them] select the best school for [their] teen with individual attention.”¹⁵⁴ However, the posing parents called the same service three separate times inquiring about three very different fictitious children, and each time, were recommended the same Missouri boot camp.¹⁵⁵ It was later uncovered that the owner of this referral service was married to the owner of that boot camp.¹⁵⁶

¹⁴⁸ See *Deceptive Marketing in the “Troubled Teen” Business*, ALL. FOR THE SAFE, THERAPEUTIC, & APPROPRIATE USE OF RESIDENTIAL TREATMENT, Oct. 2011, at 2, <http://astartforteens.org/assets/files/ASTART-Deceptive-Marketing-Oct-2011.pdf> [<https://perma.cc/95CJ-ZU66>].

¹⁴⁹ See *id.* at 1.

¹⁵⁰ Myers, *supra* note 58.

¹⁵¹ *Deceptive Marketing in the “Troubled Teen” Business*, *supra* note 148, at 3.

¹⁵² See *id.*

¹⁵³ *Id.*; *What Professionals Need to Know About an Independent Educational Consultant*, MORGAN GUIDANCE (May 7, 2022), <https://morganguidance.com/what-professionals-need-to-know-about-an-independent-educational-consultant/#:~:text=There%20are%20consultants%20who%20are,a%20client%20to%20the%20program> [<https://perma.cc/XAE8-7Q9U>].

¹⁵⁴ SELECTED CASES OF DEATH, *supra* note 9, at 4.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 5.

Additionally, it has been discovered that TTI facilities often misrepresent critical information to prospective families. First, residential programs are often not staffed as advertised. For example, one program advertised that it had a licensed psychiatrist “on staff.”¹⁵⁷ In reality, the psychiatrist only worked on site once a month for four hours, during which they needed to see over fifty children.¹⁵⁸ Second, generally, residential treatment programs are not tax deductible or reimbursable under major insurance plans.¹⁵⁹ However, parents have reported being told differently by program representatives, at times even being prompted to engage in fraudulent behavior to make the required payments.¹⁶⁰ And, finally, residential programs often advertise short-term stays as the norm. This timeline likely makes families feel more comfortable sending their children away from home. Yet, the reality is that once a child is in a program, that program retains a great deal of control over them. Inquiring parents have reported being told that they just “need to be patient,” as effective treatment will take a few more months—which can turn into a year or more.¹⁶¹

It is crucial to crackdown on these misleading marketing practices so parents and guardians who still choose to send their children to residential treatment facilities will be fully informed about that facility’s practices and the risks of behavior modification treatment. Further, the education consultant and referral agency industry must be investigated more thoroughly to ensure that those who are meant to serve as guides to prospective parents are not doing so under nefarious means.

3. Methods of Discipline

Residential programs are also sharply criticized for their disciplinary practices, including improper use of restraints and seclusion. Federal regulations define three main types of restraints in residential treatment facilities: personal restraints, mechanical restraints, and drugs used as a restraint.¹⁶² Critically, while federal regulations state that restraints are meant to only be used as a last resort, and, even then, only in an emergency to prevent a resident from harming themselves or another,¹⁶³ that evidently does not hold true in practice.

Personal restraints are defined as “the application of physical force without the use of any device, for the purposes of restraining the free movement of a resident’s body,”¹⁶⁴ yet it was a personal restraint that ultimately led to Cornelius Frederick’s death at a Michigan residential facility in 2021.¹⁶⁵ Ultimately, this

¹⁵⁷ *Deceptive Marketing in the “Troubled Teen” Business*, *supra* note 148, at 4.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 5.

¹⁶¹ *Id.* at 6.

¹⁶² 42 C.F.R. § 483.352 (2023).

¹⁶³ § 483.356.

¹⁶⁴ § 483.352.

¹⁶⁵ Hannah Rapple, *Michigan to Ban Restraints in Youth Facilities After Cornelius Frederick’s Death*, NBC NEWS (Apr. 2, 2021, 4:30 AM), <https://www.nbcnews.com/news/us-news/michigan->

devastating incident led to a total ban on the use of restraints against youth in Michigan group homes, except in the most extreme circumstances.¹⁶⁶ Further, mechanical restraints are defined as “any device attached or adjacent to the resident's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.”¹⁶⁷ Yet, there are numerous reports that mechanical restraints including handcuffs, blindfolds, and hoods, have been used when transporting youth to residential facilities during their forced kidnappings.¹⁶⁸ Drugs are also administered as a restraint to manage behavior and temporarily restrict freedom of movement.¹⁶⁹ Reports indicate that residential facilities severely overmedicate residents, often with antipsychotics and sedatives and even when not prescribed by a facility physician.¹⁷⁰

Relatedly, federal regulations define seclusion as “the involuntary confinement of a resident alone in a room or an area from which the resident is physically prevented from leaving.”¹⁷¹ Seclusion, too, is meant to only be utilized in extreme and emergency circumstances.¹⁷² However, like the use of restraints, a number of past TTI participants have alleged staff placing them in solitary confinement for long periods of time, ranging from days to weeks, as punishment for bad behavior.¹⁷³

The use of restraints and seclusion can cause serious physical and psychological trauma to minors, and there is “no evidence that using restraint or seclusion is effective in reducing the occurrence of the problem behaviors that frequently precipitate the use of such techniques.”¹⁷⁴ That is why, as some states have started doing, the use of restraints and seclusion as discipline should have to be reported and documented, and eventually outlawed.

C. An Integrated Federal and State Framework to Combat Institutionalized Child Abuse

As previously explored, today's TTI regulatory framework is solely composed of patchwork legislation from a number of states. This comes with some obvious drawbacks. First, with different states having their own sets of rules, there is a lack of consistency and uniformity in standards across the TTI.

ban-restraints-youth-facilities-after-cornelius-frederick-s-death-n1262756 [https://perma.cc/W6UH-SKTD].

¹⁶⁶ *Id.*

¹⁶⁷ 42 C.F.R. § 483.352.

¹⁶⁸ Jessica Miller et al., *'Blindfolds, Hoods, and Handcuffs': How Some Teenagers Come to Utah Youth Treatment Programs*, THE SALT LAKE TRIB. (Mar. 8, 2022, 8:00 AM), <https://www.sltrib.com/news/2022/03/08/blindfolds-hoods/> [https://perma.cc/NZA7-9VFN].

¹⁶⁹ 42 C.F.R. § 483.352.

¹⁷⁰ Jessica Miller, *Utah 'Troubled Teen' Centers Have Used 'Booty Juice' to Sedate Kids, a Practice Outlawed in Other States*, SALT LAKE TRIB., <https://www.sltrib.com/news/2021/02/04/utah-troubled-teen/> [https://perma.cc/56QD-7WTL] (Sept. 1, 2021, 6:22 PM).

¹⁷¹ 42 C.F.R. § 483.352.

¹⁷² *Id.*

¹⁷³ See Brancato, *supra* note 62, at 25.

¹⁷⁴ U.S. DEP'T OF EDUC., RESTRAINT AND SECLUSION: RES. DOCUMENT 2 (2012), <https://sites.ed.gov/idea/files/restraints-and-seclusion-resources.pdf> [https://perma.cc/RG28-XR6Z].

This can create gaps and loopholes, where certain facilities in certain jurisdictions can operate differently and possibly escape regulation altogether. This leads to forum shopping of sorts,¹⁷⁵ where TTI facilities actively seek out states with lax regulations and operate more abusive, unwieldy facilities there to make a greater profit.

Additionally, it is important to note that the United States is the only UN Member State that has failed to ratify the Convention on the Rights of the Child (CRC)—“an international treaty that aims to protect the rights of children worldwide.”¹⁷⁶ First introduced over thirty years ago,¹⁷⁷ the CRC calls on countries to ensure that children’s rights, including freedom of speech and thought, access to healthcare and education, and freedom from exploitation, torture, and abuse, are uniformly upheld.¹⁷⁸ Despite general support for the CRC’s mission and goals, policymakers have “raised concerns as to whether it is an effective mechanism for protecting children’s rights.”¹⁷⁹ For instance, some critics argue that the CRC would “undermine U.S. sovereignty by giving the United Nations authority to determine the best interests of U.S. children.”¹⁸⁰ Further, critics allege that ratifying the CRC “could interfere in the private lives of families, particularly the rights of parents to educate or discipline their children.”¹⁸¹ However, as supporters counter, the CRC aims not to displace the role of parents in childrearing as they so choose, but instead to protect children against governmental and institutional abuse—which the TTI has promulgated for years and will continue to promulgate as we sit in a state of complacency and under-regulation.

1. Federal Reform

The first step necessary in regulating the TTI is ensuring that Congress does not stall and let the Stop Institutional Child Abuse Act die at the end of this term, as has occurred for over a decade. While even the bill’s House sponsor, Rep. Ro Khanna, admits that the bill is just a “first step”¹⁸² to begin resolving the problems that arise from the lack of data on the TTI, Congress must step up, act in a bipartisan fashion, and guarantee its passage. It is both a practical route and an essential one.

By establishing the Federal Work Group on Youth Residential Programs,¹⁸³ Congress can finally compile a database detailing the number of

¹⁷⁵ See Brancato, *supra* note 62, at 29.

¹⁷⁶ CONG. RSCH. SERV., R40484, THE UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (2015) [hereinafter UNCRC].

¹⁷⁷ Sarah Mehta, *There’s Only One Country That Hasn’t Ratified the Convention on Children’s Rights: US*, ACLU (Nov. 20, 2015), <https://www.aclu.org/news/human-rights/theres-only-one-country-hasnt-ratified-convention-childrens> [https://perma.cc/ZDT3-3EPQ].

¹⁷⁸ UNCRC, *supra* note 176.

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Maia Szalavitz, Opinion, *The Troubled-Teen Industry Offers Trauma, Not Therapy*, N.Y. TIMES (Oct. 19, 2023), <https://www.nytimes.com/2023/10/19/opinion/troubled-teens-industry-regulation.html> [https://perma.cc/75CN-PA7N].

¹⁸³ H.R. 2955, 118th Cong. § 2 (2023); S. 1351, 118th Cong. § 2 (2023).

participants in TTI programs, the length of these programs, the location of TTI facilities, and TTI program operations. This is critical for a few reasons. A comprehensive database would increase transparency for the congregate care industry because making this data publicly accessible will hold these institutions accountable to actually provide treatment-based practices and sustainable outcomes. Additionally, a routinely-updated database would aid local policymakers and researchers in crafting local legislation apt at tackling TTI issues in their states. And finally, because voluntary enrollment by parents is one of the main ways children enter the TTI,¹⁸⁴ a national database would equip parents to make more informed, health- and safety-first choices regarding the best treatment options for their children.

The Stop Institutional Child Abuse Act also proposes that the Work Group shall consult with individuals and organizations most well-situated to offer insight into the realities of the TTI—including survivors, juvenile justice legal professionals, health professionals, and parents.¹⁸⁵ This ensures that a more direct voice will finally be given to those with first-hand knowledge about actions that need to be taken.

Perhaps most importantly, the Stop Institutional Child Abuse Act proposes that the Work Group shall “improve accessibility and development of community-based alternatives to youth residential programs” and provide resources that “assist in preventing the need for out-of-home placement of youth in youth residential programs.”¹⁸⁶ Research indicates that institutionalization like that of the TTI can have negative consequences on mental health and physical well-being¹⁸⁷ and increase recidivism rates by up to eight percent.¹⁸⁸ Thus, investing in other forms of behavioral intervention keeps the hope alive that the United States can eventually work to fully dismantle the TTI as it exists today.

However, even with these benefits, it is clear that the Stop Institutional Child Abuse Act would not provide adequate regulation of the TTI in and of itself. As author and advocate Maia Szalavitz puts it, “[t]he Stop Institutional Child Abuse Act is far from enough to corral a billion-dollar industry that profits from harming kids.”¹⁸⁹ Fortunately, Congress likely *has* the constitutional authority to do *more*.¹⁹⁰

2. Constitutional Basis for Federal Reform

¹⁸⁴ See Krebs, *supra* note 8.

¹⁸⁵ See H.R. 2955 § 2; S. 1351 § 2.

¹⁸⁶ H.R. 2955 § 2; S. 1351 § 2.

¹⁸⁷ See Heather E. Mooney, *Why It's Unclear Whether Private Programs For 'Troubled Teens' Are Working*, THE CONVERSATION (Jan. 27, 2020, 7:19 AM), <https://theconversation.com/why-its-unclear-whether-private-programs-for-troubled-teens-are-working-128612> [<https://perma.cc/SN5J-NKFM>].

¹⁸⁸ *The “Troubled Teen” Industry*, NAT’L YOUTH RTS. ASS’N, <https://www.youthrights.org/issues/medical-autonomy/the-troubled-teen-industry/#:~:text=Discipline%20interventions%20like%20these%20programs,decreases%20recidivism%20by%20approximately%2013%25> [<https://perma.cc/2YWE-SCBW>] (last visited Apr. 1, 2024).

¹⁸⁹ Szalavitz, *supra* note 182.

¹⁹⁰ See Brancato, *supra* note 62, at 31–33.

The Commerce Clause, a key constitutional provision guiding federal action, grants Congress the power to regulate commerce among the several states.¹⁹¹ Congress may regulate three broad categories of commerce under this power; channels of interstate commerce, instrumentalities of interstate commerce, and activities having a substantial relation to interstate commerce.¹⁹² As any further regulation of the TTI under the Commerce Clause would clearly fall under the third category, it is important to note that to be regulated, the interstate activity must be *economic* in nature.¹⁹³

The Supreme Court has upheld a variety of regulated activity as interstate and thus, under congressional authority including coal mining,¹⁹⁴ extortionate credit transactions,¹⁹⁵ restaurants using interstate supplies,¹⁹⁶ inns and hotels,¹⁹⁷ and (in)famously, growing wheat.¹⁹⁸ When it comes to criminal activity, however, the Court has shown more restraint. For example, in *United States v. Lopez* the Court held that the regulation of gun possession within a school zone did not adequately involve economic activity for purposes of the Commerce Clause due to lack of legislative intent to regulate an economic activity but rather, a crime.¹⁹⁹ Similarly, in *United States v. Morrison*,²⁰⁰ the Court held that gender-based violent crimes are not “in any sense of the phrase, economic activity” and thus too attenuated for Commerce Clause congressional authority.²⁰¹

The TTI, however, has risen to become a multi-billion industry in this country,²⁰² and seems to fit squarely into the confines of an interstate, economic activity that Congress has the power to regulate.

For starters, youth are often transported across state lines to residential treatment facilities in other jurisdictions,²⁰³ perhaps for price reasons or simply because different states have more lax regulations regarding the operation of TTI facilities in the first place. The most popular state to send children to for treatment is Utah. In part, this is because of its religious reputation, ideal vistas for wilderness retreats.²⁰⁴ From 2015 to 2020, thirty-four percent of all US teens

¹⁹¹ U.S. CONST. art. I, § 8, cl. 2.

¹⁹² *United States v. Lopez*, 514 U.S. 549, 558 (1995).

¹⁹³ *Id.* at 559.

¹⁹⁴ *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U.S. 264 (1981).

¹⁹⁵ *Perez v. United States*, 402 U.S. 146 (1971).

¹⁹⁶ *Katzenbach v. McClung*, 379 U.S. 294 (1964).

¹⁹⁷ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964).

¹⁹⁸ *Wickard v. Filburn*, 317 U.S. 111, 128 (1942).

¹⁹⁹ *United States v. Lopez*, 514 U.S. 549, 560–62 (1995) (“Even *Wickard*, which is perhaps the most far-reaching example of Commerce Clause authority . . . involved economic activity in a way that the possession of a gun in a school does not. The act [prohibiting guns in school zones], is a criminal statute that by its terms has nothing to do with ‘commerce’ or any sort of economic enterprise, however broadly one might define those terms.”).

²⁰⁰ 529 U.S. 598 (2000).

²⁰¹ *Id.* at 613–15.

²⁰² See Krebs, *supra* note 8.

²⁰³ See, e.g., Miller et al., *supra* note 168.

²⁰⁴ Jessica Miller, *Inside Utah’s Troubled Teen Industry: How it Started, Why Kids are Sent Here and What Happens to Them*, THE SALT LAKE TRIB. <https://www.sltrib.com/news/2020/08/30/inside-utahs-troubled/> [https://perma.cc/6SEB-G9V3] (Sept. 1, 2021 6:21 PM); see also Kate

who went out of state for a residential treatment facility, ended up in Utah.²⁰⁵ In fact, in 2015, over 50 residential treatment facilities in Utah brought in 6,400 jobs and \$269 million in earnings into the state.²⁰⁶ Utah's lack of effective oversight has allowed its facilities to prosper financially, with the bigger entities that own many of the centers having out-of-state contracts.²⁰⁷

Similarly, in 2017, Sequel Youth & Family Services, a popular US chain of residential treatment facilities, operated thirty-five facilities in over fifteen different states.²⁰⁸ It, too, generated unthinkable profits and was, at one point, valued by investors to be worth more than \$400 million.²⁰⁹ These numbers make clear that the TTI is surely an economic activity that has a substantial relation under the Commerce Clause. The 2007 and 2008 GAO reports resulted in government commissioned findings that further substantiate the applicability of the Commerce Clause.²¹⁰

With this authority under the Commerce Clause, Congress could regulate several aspects of the TTI. First, Congress could regulate the licensing and accreditation of residential treatment facilities on a national level, ensuring a set of minimum standards for a program to continue to operate. Next, Congress could establish federal standards for TTI staff, helping to ensure that the personnel tasked with caring for these youth meet the requisite professional qualifications and training to actually help treat them. Additionally, Congress could enact legislation to protect parents and guardians, the main consumers who seek out the

Rodriguez, *From Tough Love to Torture: Wilderness Therapy Rehabilitation Programs Leave Teenagers Traumatized*, THEBLACK&WHITE (Oct. 4, 2023), <https://theblackandwhite.net/76071/feature/from-tough-love-to-torture-wilderness-therapy-rehabilitation-programs-leave-teenagers-traumatized/> [https://perma.cc/R87V-3EDV] ("Utah's status as the epicenter of the industry is also due to the specific state-level laws that dictate the way such programs can operate. In Utah, the age of medical consent is 18. Minors do not have control over what medical treatments they're subjected to.") Other states have lower consent ages, which would restrict these facilities from forcing drugs upon teenagers. California's age of consent is twelve. Washington's is thirteen. *Id.*

²⁰⁵ Jessica Miller, *How Utah Became the Leading Place to Send the Nation's Troubled Teens*, THE SALT LAKE TRIB. (Apr. 5, 2022, 8:00 AM), <https://www.sltrib.com/news/2022/04/05/how-utah-became-leading/> [https://perma.cc/6VEU-79N4]. It is unknown how many facilities there are in Utah. One source has been diligently crowdsourcing information from the state government, in order to put a record of abuses at each facility on their website. *Read the Violation Reports and Inspections for Utah's Troubled Teen Treatment Centers*, KUER (Mar. 4, 2021 8:32 AM), <https://www.kuer.org/news/2021-03-04/read-the-violation-reports-and-inspections-for-utahs-troubled-teen-treatment-centers> [https://perma.cc/22JM-CF8S].

²⁰⁶ Juliette Tennert, *Economic Impact of Utah's Family Choice Behavioral Healthcare Interventions Industry* (May 2016) (unpublished research brief) (on file with author).

²⁰⁷ Miller, *supra* note 204; Will Craft & Jessica Miller, *New Data Underscores Utah's Lax Oversight of Youth Treatment Programs*, APM REPS. (Mar. 10, 2021), <https://www.apmreports.org/story/2021/03/10/new-data-underscores-utahs-lax-oversight-of-youth-treatment-programs> [https://perma.cc/737H-6AF7].

²⁰⁸ Curtis Gilbert, *Under Scrutiny, Company That Claimed to Help Troubled Youth Closes Many Operations and Sells Others*, APM REPS. (Apr. 26, 2022), <https://www.apmreports.org/story/2022/04/26/sequel-closes-sells-youth-treatment-centers> [https://perma.cc/RF3S-VYDT] (explaining these numbers, but also further revealing that the chain has since languished due to deaths of teenagers, some of which were described *supra* Part III.B.)

²⁰⁹ *Id.*

²¹⁰ See CONCERNS REGARDING ABUSE AND DEATH, *supra* note 43; STATE AND FEDERAL OVERSIGHT GAP, *supra* note 126; SELECTED CASES OF DEATH, *supra* note 9.

services of residential treatment facilities, from fraudulent or deceptive marketing practices. This legislation could require facilities to make mandatory reports to a national database regarding both the fees charged for program services and any financial relationships with third-party referral agents or education consultants, but also the criteria for admission and discharge from a program. Finally, Congress could enact national safety protocols that residential treatment facilities must follow in terms of banning the use of restraints and seclusion, requirements for emergency preparedness, reporting on critical incidents, and measures to prevent abuse by staff or other residents.

3. State Reform

There may be federalist critics who will counter this proposed constitutional authority to regulate the TTI.²¹¹ The argument is likely that because there is no explicit power granted to the federal government to regulate residential programs, this instead falls within the reserve powers of the states. Further, because residential programs purport to treat child welfare, historically speaking, state police powers have “long been recognized to include the authority to make laws for public health and safety.”²¹²

Therefore, to be prepared for any obstacles of the sort being raised against federal TTI regulation, it is also necessary for state legislatures to devise a plan to regulate the TTI more uniformly.²¹³ One such proposal is to create a state-based bill of rights for children in residential treatment programs, using the Foster Children’s Bill of Rights—which has been enacted, thus far, in fifteen states and Puerto Rico—as a guide.²¹⁴ Working as a coalition, many of these state-enacted bills of rights mandate that the bill of rights “must be posted in a place where children will see [it] and include provisions requiring foster children to be informed about why they are in foster care and how the process will proceed.”²¹⁵ Further, many of these state statutes include shared provisions for “participation in extracurricular or community activities, efforts to maintain educational stability, access to guardians ad litem, access to mental, behavioral and physical health care, [and] access to or communication with siblings and family members.”²¹⁶

²¹¹ See U.S. CONST. amend. X.

²¹² Ilya Shapiro, *State Police Powers and the Constitution*, CATO INST. (Sept. 15, 2020), <https://www.cato.org/pandemics-policy/state-police-powers-constitution> [https://perma.cc/A GD9-V298]. See, e.g., *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) (upholding state authority to enforce vaccine mandates); *Hillsborough Cnty. v. Automated Med. Lab'ys, Inc.*, 471 U.S. 707 (1985) (upholding local authority to control plasma donation practices as a matter of health and safety). Note, however, that by virtue of constitutional federal supremacy, the federal government’s authority to regulate interstate commerce may be a key into preempting state law governing the TTI.

²¹³ See, e.g., Chaim Steinberger, *Collecting Child Support: The Uniform Interstate Family Support Act and How It Helps Parents*, AM. BAR ASS’N (Aug. 10, 2022) (illustrating the idea that the adoption of more uniform laws across different states on a single issue can help avoid inconsistency, contradiction, and the need for federal intervention).

²¹⁴ *Foster Care Bill of Rights*, NAT’L CONF. OF STATE LEGIS., <https://www.ncsl.org/human-services/-foster-care-bill-of-rights> [https://perma.cc/46HG-A8VD] (Oct. 29, 2019).

²¹⁵ *Id.*

²¹⁶ *Id.*

Likewise, a states' rights framework for children in residential treatment programs would spell out a minimum set of assurances for these youth, along with parents or guardians looking into residential facility options.

While we must continue to listen to survivors, advocates, and health professionals to formulate this framework most effectively, it seems necessary to include a few key provisions. First, every child in a residential program should be entitled to dignity, respect, and an environment free from abuse and harm of any sort. Next, every child in a residential program should have a right to adequate care and supervision, manifested through trained and qualified staff, medical treatment, and mental health care. Similarly, every child in a residential program must be provided an education adequately tailored to their individualized needs. Additionally, every child in a residential program should have the right to an avenue to express their grievances without fear of retribution and access to legal services and proceedings in the case that their rights are violated. Lastly, every program must undergo multiple strict, mandatory reviews every year to ensure that they are following all applicable rules and regulations or else face the appropriate investigations and sanctions.

However, unlike the way that states ultimately handpicked which specific provisions of the Foster Children's Bill of Rights to adopt, here, it would be essential to advocate that the states adopt *all* recommended provisions in full.²¹⁷ That seems like an increasingly likely possibility the broader and more bipartisan this framework remains. Otherwise, the United States will, once again, just be stuck with a fragmented framework of TTI laws that allow for gaps, loopholes, and lack of oversight from jurisdiction to jurisdiction.

CONCLUSION

Ultimately, there has never been a more opportune (and critical) time to regulate and reform the troubled teen industry. The concerning number of abuse and neglect allegations and rising reports of injury and death occurring at residential treatment facilities reflect the sheer urgency.²¹⁸ Thus, by establishing a comprehensive legislative framework, beginning with the passage of the Stop Institutional Child Abuse Act, continuing with further federal legislation under the Commerce Clause and the implementation of a uniform states' rights framework for children in residential treatment programs, we have the opportunity to finally protect some of the most vulnerable youth.

²¹⁷ See Jill Reyes, *Child Welfare Bills of Rights for Foster Children*, AM. BAR ASS'N (Dec. 1, 2012), https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practice_online/child_law_practice/vol_31/december_2012/child_welfare_bills_of_rights_for_foster_children0/ [https://perma.cc/K6EZ-9J5J].

²¹⁸ See, e.g., Dominic Yeatman, *'They Ruined my Life': Inside America's Harrowing 'Wilderness Therapy' Camps for 'Troubled Teens' Where Over a Dozen Kids Have DIED and Survivors are Left Traumatized from 'Torturous Abuse in Filthy, Freezing Conditions'*, DAILY MAIL, <https://www.dailymail.co.uk/news/article-13110721/troubled-teen-camps-wilderness-therapy-death-abuse.html> [https://perma.cc/PM7C-ABD8] (Feb. 25, 2024 2:17 PM); Sara Tiano, *Federal Watchdogs Find Abuse at For-Profit Youth Residential Programs in 18 States*, THE IMPRINT (Nov. 2, 2021, 6:56 PM), <https://imprintnews.org/top-stories/federal-watchdogs-find-widespread-abuse-at-youth-residential-programs/60071> [https://perma.cc/B9YG-VFZR].

Troubled teen programs have not just popped up overnight. We must recognize the decades of allowing and even empowering these treatment program corporations to evade even the most minimal regulations, shuffle to states with more gaps in oversight, and continue preying on desperate families and juveniles to rake in substantial profits. Fortunately, momentum and mainstream publicity revolving around the injustices of TTI appear to be at an all-time high, thanks to the many survivors who have bravely shared their stories of abuse. Therefore, complacency is no longer an option. With every passing day, more and more children are stripped from their homes and placed against their will into residential facilities—left to be maltreated, exploited, and profited off of. It is now up to all of us to advocate for them.