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INSTITUTIONALIZED CHILD ABUSE: THE TROUBLED TEEN INDUSTRY

Yasmin L. Younis*

Imagine you are sixteen years old, fast asleep and dreaming about tomorrow's third period biology exam. Suddenly you hear, "BOOM" and hazily see two large, dark figures stalking towards you until you are snatched. You are told, "get up, you are coming with us. We can do this the easy way, or the hard way." Shaken up and confused, you see handcuffs and zip-ties, and although you do not know what is going on, you know these two burly figures are taking you away against your will. You cry for your parents, but they do nothing. They stare blankly as you are hauled into a large van, driven away into the night.

You are a sixteen-year-old boy named Joe. Joe is now an adult, alive, and a survivor of the Élan School.¹ Joe represents one of the estimated fifty thousand children who are currently funneled into the "troubled teen industry."² The "troubled teen industry" encompasses a variety of facilities such as boot camps, wilderness therapy programs, therapeutic treatment centers, and conversion therapy centers.³ In fact, children in the child-

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¹ *Joe v. Elan School: A True Cult Classic, Chapters 1–5*, JOE V. ELAN SCHOOL (2021), <https://elan.school/chapter-1-5/>.

² Kenneth R. Rosen, *The trouble with the 'troubled teen' label and the behavioral modification industry behind it*, INSIDER (Feb. 20, 2021, 9:51 AM), <https://www.businessinsider.com/trouble-with-troubled-teen-label-and-behavioral-modification-industry-2021-2#:~:text=The%20trouble%20with%20the%20'troubled,behavioral%20modification%20industry%20behind%20it&text=More%20than%2050%C000%20teenagers%20are,across%20the%20country%20each%20year.>

³ *The "Troubled Teen" Industry*, NATIONAL YOUTH RIGHTS ASSOCIATION, <https://www.youthrights.org/issues/medical-autonomy/the-troubled-teen-industry/>.

welfare or juvenile system are placed into these facilities as well.⁴ While these programs market different “therapeutic” techniques, they are all advertised to parents and guardians as behavior modification centers that will fix anything a parent deems problematic.⁵ Children are taken away from their families across the country for a minimum of a few months and up to several years, with limited, heavily monitored contact to the outside world.⁶

Although such programs claim to be a success, they increase recidivism unlike counseling intervention.⁷ What is more troubling is these programs continue to thrive even with an increase in lawsuits and reports exposing the physical, emotional, and sexual abuse occurring behind these facilities’ closed doors.⁸ How does institutionalized child abuse thrive? By legal loopholes. The reality is some children need treatment; however, such treatment must be heavily regulated, individualized, and quick.

⁴ American Bar Association, *Youth in Congregate Care: Far from Home, Far from Safe*, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/diversity/sexual_orientation/events_cle/youth-in-congregate-care/.

⁵ NATIONAL YOUTH RIGHTS ASSOCIATION, *supra* note 3.

⁶ *Id. See also* Sundance Canyon Academy, *What Determines the Length of Stay in a School for Troubled Teens*, SUNDANCE CANYON ACADEMY (May 14, 2018), <https://www.sundancecanyonacademy.com/%E2%80%8Bwhat-determines-the-length-of-stay-in-a-school-for-troubled-teens/> (a troubled teen school recommending a minimum six month stay and stating the average stay is twelve to eighteen months).

⁷ *Id.*

⁸ See Tyler Kinkade et. al., *Legal loopholes allow abuse to go undetected at religious boarding schools, advocates say*, NBC NEWS (Feb. 12, 2021, 1:33 PM), <https://www.nbcnews.com/news/us-news/legal-loopholes-allow-abuse-go-undetected-religious-boarding-schools-advocates-n1257203>. See also New Missouri law enables state officials to shut down abuse boarding schools, NBC NEWS (Jul. 14, 2021, 3:42 PM), <https://www.nbcnews.com/news/us-news/new-missouri-law-enables-state-officials-shut-down-abusive-boarding-n1273861>.

There are two major legal loopholes allowing institutionalized child abuse to occur: the consequences of signing over parental rights and inadequate state regulation.

Deciding to send a child to one of these facilities is no easy decision. Behavior modification programs often are the last option after parents consult with mental health professionals, counselors, juvenile probation officers, and judges.⁹ These parties all fall victim to the deceptive marketing techniques of “educational consultants” employed by the facilities.¹⁰ Parents are provided brochures with images and testimonies of happy, healthy, transformed children.¹¹ Desperate for help and comforted by the promise of specialized treatment, once set on sending their child to a facility, parents sign over their parental rights to the facility.¹² In the eyes of the law, the facilities decide on the child’s medical care, education, custody, and visitation rights.¹³ Parents are immediately told not to believe claims of abuse and that any interference will disrupt their child’s treatment.¹⁴ Meanwhile, the facilities garner absolute control over the child, leaving children at the mercy of unlicensed, unregulated staff.¹⁵

⁹ Lenore Behar et. al., *Protecting Youth Placed in Unlicensed, Unregulated Residential “Treatment” Facilities*, FAMILY COURT REVIEW 399, 400 (2007).

¹⁰ Rosemary Donahue, *Paris Hilton Won’t Give Up Until She’s Shut Down the Entire Troubled Teen Industry*, ALLURE (Oct. 13, 2020), <https://www.allure.com/story/paris-hilton-troubled-teen-industry-interview>.

¹¹ Behar et. al., *supra* note 9, at 400.

¹² Ira P. Robbins, *Kidnapping Incorporated: The Unregulated Youth-Transportation Industry and the Potential for Abuse*, AM. CRIM. L. REV. 563, 568–70, (2014).

¹³ *Parental Rights and Liability*, FINDLAW, <https://www.findlaw.com/family/parental-rights-and-liability.html>.

¹⁴ Behar et. al., *supra* note 9, at 399.

¹⁵ Retired attorney Phil Elberg litigated many “troubled teen industry” civil lawsuits. In a deposition for one of his cases, he deposed Willa Bundy, one of the operators of Thayer Learning Center, a military school. In the deposition, Elberg asked Bundy if she had a license to teach and operate the school, she replied she had a “four-year college degree and PhD in Motherhood.” She also explained Thayer always had one licensed teacher

States oversee these facilities; however, there are limitations to how much states can intervene. Many of these facilities are privately owned institutions that do not accept public funding, making it difficult for governmental intervention.¹⁶ State officials often are unable to visit the facilities unannounced.¹⁷ Senator Sara Gelser recounted her announced visit to a behavior treatment facility, stating she suspected the day of her visit was one of its few “good days.”¹⁸ With inadequate legislative oversight, lawmakers are unable to accurately determine the depth of the abuse, allowing facilities to circumvent child protection laws. Additionally, some programs are affiliated with religious organizations, making it difficult for states to regulate without amended legislation in fear of violating religious freedom laws.¹⁹ Other programs market themselves as outdoor programs, boarding schools, or other forms of nontreatment programs to avoid additional regulation.²⁰ With a lack of legislative oversight, the “troubled teen industry” runs rampant with child abuse.

The Child Abuse Prevention and Treatment Act (CAPTA) provides states guidance on child protection.²¹ CAPTA defines child abuse as “any recent act or failure to act on the part of a parent or caretaker, which results in

which was not required by the state of Missouri. Phil Elberg, BRIGHTCOVE, https://players.brightcove.net/1866680404001/default_default/index.html?videoId=6227107643001

¹⁶ Behar et. al., *supra* note 9, at 400.

¹⁷ Jessica Miller, *Utah faces criticism for its light oversight of ‘troubled teen’ treatment centers*, THE SALT LAKE TRIBUNE (Sep. 1, 2021), <https://www.sltrib.com/news/2020/11/22/utahs-troubled-teen/> (trying to make unannounced visits allowed).

¹⁸ AMERICAN BAR ASSOCIATION, *supra* note 4.

¹⁹ Behar et. al., *supra* note 9, at 401.

²⁰ *Id.* at 402

²¹ *Federal Laws*, U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, <https://www.childwelfare.gov/topics/systemwide/laws-policies/federal/>.

death, serious physical or emotional harm, sexual abuse or exploitation" or "an act or failure to act which presents an imminent risk of serious harm."²²

Joe's traumatic transport is a commonly shared experience by "troubled teen" survivors, many of whom liken the transport to kidnapping.²³ Generally, most state laws define kidnapping as "the taking of a person from one place to another against their will, or the confinement of a person to a controlled space."²⁴ Transported youths are taken in the middle of the night, without their consent, and are confined, zip-tied or hand-cuffed in a vehicle, typically crossing state borders.²⁵ Not only does this experience meet the required elements for kidnapping, but by crossing state lines, the act becomes a federal cause of action. However, the youth-transport industry is protected by the fact that parents sign over their parental rights to the facilities and to the third party transporters.²⁶ Yet, as Ira P. Robbins argues, parental delegation to transporters (and facilities) is inconsistent with the purpose of Power-of-Attorney statutes because "those statutes were originally designed to enable a parent who was temporarily unavailable to empower a close relative to take any emergency action regarding the child during the parent's absence."²⁷

Further, lawsuits expose physical, mental, and sexual abuse at these facilities. In the winter of 2020, a class-action lawsuit was filed against Trinity Teen Solutions and Triangle Cross Ranch on charges of human trafficking and abuse. Class members allege two counts of forced labor,

²² 42 U.S.C.A. § 5106g (2018).

²³ Serena Solomon, *The Legal Industry for Kidnapping Teens*, VICE (Nov. 29, 2016, 11:00 PM), <https://www.vice.com/en/article/jm5ng4/the-legal-industry-for-kidnapping-teens>.

²⁴ *Kidnapping*, FINDLAW (Mar. 15, 2019), <https://www.findlaw.com/criminal/criminal-charges/kidnapping.html>.

²⁵ Solomon, *supra* note 23.

²⁶ Robbins, *supra* note 12, at 569–70.

²⁷ *Id.* at 588.

trafficking, racketeering, negligence and negligent infliction of emotional distress.²⁸ Class members stated the abusive treatment included: forced silence for weeks at a time; heavily restricted bathroom access; food and sleep deprivation; unqualified therapists; and unheated living quarters; and forced labor.²⁹ Just last year, sixteen year old Cornelius Fredrick, a student at Lakeside Academy, which houses children in the child-welfare system, died after being physically restrained by staff for throwing a piece of bread.³⁰ The assault was caught on camera. Viewers are shocked, not just by the assault but by the blank reactions of the surrounding children, indicating the normalcy of such abuse.³¹ Since parents sign over their rights to these facilities, any act on behalf of the facility amounting to “death, serious physical or emotional harm, sexual abuse or exploitation” violates CAPTA. It is clear by lawsuits, photographic and video evidence, and victims’ testimonies that these facilities violate CAPTA on a regular basis.

While the “troubled teen industry” continues to function heavily unregulated, reform is possible. In an American Bar Association webinar, Senator Gelser shared legislative initiatives needed in order to reform the “troubled teen industry” into rehabilitative programs actually providing the care needed to address adolescent behavioral issues.³² Her state of Oregon drafted model legislation to regulate these programs.³³ Regulations

²⁸ Leo Wolfson Cody, *Federal case filed against Park Country teen centers*, WYOMING NEWS (Dec. 1, 2020), https://www.wyomingnews.com/rocketminer/news/state/federal-case-%20led-against-park-county-teencenters/%20article_2c4df815-3aaa-552b-911a-8fcd409cdc7a.html.

²⁹ *Id.*

³⁰ Tyler Kingkade, *Video shows fatal restraint of Cornelius Frederick, 16, in Michigan foster facility*, NBC NEWS (July 7, 2020, 7:52 PM) <https://www.nbcnews.com/news/us-news/video-shows-fatal-restraint-cornelius-fredericks-16-michigan-foster-facility-n1233122>.

³¹ *Id.*

³² AMERICAN BAR ASSOCIATION, *supra* note 4.

³³ LC 2161, 2021 Reg. Sess. (Or. 2021).

include banning of physical restraints and isolation, procedural measures for reporting, and informing each child of their rights within these facilities.³⁴ Additionally, state legislatures with the most relaxed “troubled teen” oversight are responding to the public outcry demanding reform.³⁵ In April 2021, Utah Senate Bill 127 was signed, requiring more governmental oversight and documentation of abuse.³⁶ Missouri Governor Mike Parsons signed HB 557 on July 14, 2021, requiring private residential care facilities “to notify the Missouri Department of Social Services that they exist, and all employees and volunteers have to undergo background checks.”³⁷ While these initiatives are very new, it is the first step to protect children in need of rehabilitative treatment. Ultimately, it is possible for the industry to serve the needs of parents and children alike but only if legal loopholes are abolished through reformative regulation through legislative initiatives.

Edited by Alex Beezley

³⁴ *Id.*

³⁵ Heather E. Mooney, *Activists, state authorities and lawsuits filed by survivors are putting pressure on the ‘troubled teens’ industry to change its ways*, TODAY@WAYNE (Apr. 5, 2021), <https://today.wayne.edu/news/2021/04/05/activists-state-authorities-and-lawsuits-filed-by-survivors-are-putting-pressure-on-the-troubled-teens-industry-to-change-its-ways-42152>.

³⁶ Ethan Bauer, *can the \$300 million ‘troubled teen’ therapy sector be reformed by legislation and public pressure?*, DESERET NEWS (July 12, 2021, 10:00 PM), <https://www.deseret.com/2021/7/12/22565911/can-the-300-million-teen-therapy-sector-be-reformed-by-legislation-and-public-pressure-paris-hilton>. See also Ashley Imlay, *After Paris Hilton testimony, Utah Senate poised to pass bill to regulate troubled-teen centers*, DESERET NEWS (Feb. 11, 2021, 5:42 PM), <https://www.deseret.com/utah/2021/2/11/22279033/2021-legislature-senate-poised-to-pass-troubled-teen-center-bill-restrictions-paris-hilton>.

³⁷ Kingkade et. al., *supra* note 8.