

Youth Rights and the Troubled Teen Industry

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SW-687 Leadership, Advocacy, and Policy Practice

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November 7, 2023

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The Troubled Teen Industry, a loosely regulated and often opaque sector of the child welfare system, is under scrutiny for how it bypasses and, at times, violates the fundamental human rights of youth in its care. This paper aims to investigate the intricate landscape of American youth rights and the Troubled Teen Industry (TTI), shedding light on the ongoing dialogue surrounding these issues, ultimately aiming to propose a path forward that prioritizes the rights and safety of the young people who need care and support within this complex system.

Problem

Under constitutional law in the United States, children should be recognized as fully formed human beings with similar basic constitutional rights as adults.¹ However, the law identifies that children are not physically or emotionally mature and, therefore, restricts several constitutional rights that are extended to adults. As such, the age of majority was instituted to define when a person, by law, becomes of age as an adult and has the capacity to exercise their rights in totality responsibly.² The age of majority varies from state to state but is widely accepted by most states as the age of 18, with few exceptions extending the age to 18 and 19.³

An International treaty recognizing the rights of children under the age of 18, The Conventions on The Rights of the Child, establishes international law ensuring that children shall, “without discrimination in any form – benefit from special protection measures and assistance; have access to services such as education and health care; can develop their

¹Legal Information Institute. (2022). *Children's rights*. Legal Information Institute. https://www.law.cornell.edu/wex/Children's_Rights

²Legal Information Institute. (2021). *Age of majority*. Legal Information Institute. https://www.law.cornell.edu/wex/age_of_majority

³*legal age*. (n.d.). LII / Legal Information Institute. https://www.law.cornell.edu/wex/legal_age

personalities, abilities and talents to the fullest potential; grow up in an environment of happiness, love and understanding; and are informed about and participate in, achieving their rights in an accessible and active manner.”⁴ This is regarded as one of the most ratified human rights treaties and is monitored by the Committee on the Rights of the Child, which is comprised of independent experts to monitor implementation. As of 2015, 196 countries have adopted the treaty. The United States has not.

The United States does not currently have a unified framework in place outlining children’s rights. Before the year 2000, the Supreme Court upheld the principle that parents held a fundamental right to oversee the upbringing and education of their children.⁵ The Courts traditionally presumed that parents were the primary and most suitable caretakers for their children unless proven otherwise. The United States consistently affirmed the belief that parents possess an essential right to nurture and raise their children according to their own judgment.

Impact

A central tension in this issue is the imbalance of youth and parental rights and the lack of oversight for placement in the TTI. Three significant legal gaps contribute to the occurrence of institutionalized child abuse: no legal documents definitively outlining youth rights in America, the repercussions of parental rights relinquishment, and insufficient oversight by the state regulatory process. State statutes highlight the conflict between safeguarding a minor's entitlement to confidential treatment for substance use or mental health issues and a parent's

⁴ UNICEF. (n.d.) *Frequently asked questions on the Convention on the Rights of the Child.* (n.d.-b). UNICEF. <https://www.unicef.org/child-rights-convention/frequently-asked-questions>

⁵ Parentalrights.org. (2018). *The Supreme Court’s parental rights doctrine.* Parental Rights. https://parentalrights.org/understand_the_issue/supreme-court/

responsibility to ensure their child's well-being.⁶ This conflict leads to intricate state laws dictating whether consent from the minor, the parent, either one, or both are necessary for specific treatments. According to a summary of state laws found in the Journal of the American Academy of Pediatrics, state regulations concerning consent and confidentiality for adolescents exhibit significant inconsistency, and a considerable portion does not align with established pediatric healthcare standards.⁷ The AAP underscores its dedication to safeguarding privacy, as evident in Bright Futures: Guidelines for Health Supervision of Infants, Children, and Adolescents; the guidelines emphasize that pediatricians should undergo training to uphold the clinical setting as a 'safe space,' particularly focusing on confidentiality. This disparity challenges implementing a uniform and fair approach to delivering evidence-based medical care while safeguarding adolescents. Individual state laws do not transcend state lines; what applies to one state can be disregarded in another as parents can simply transport their children across state lines where consent is not required by law.⁸

Research and Funding

Human Rights Watch (HRW) assessed each state within the United States to gauge how each state's laws meet international child rights standards. One of the four core issues assessed was corporal punishment; individual state laws were specifically analyzed surrounding corporal

⁶ Kerwin, M., Kirby, K., Speziali, D., Duggan, M., Mellitz, C., Versek, B., & McNamara, A. (2015). What can parents do? A review of state laws regarding decision making for adolescent drug abuse and mental health treatment. *Journal of Child & Adolescent Substance Abuse*, 24(3), 166–176. <https://doi.org/10.1080/1067828x.2013.777380>

⁷ Sharko, M., Jameson, R., Ancker, J. S., Krams, L., Webber, E. C., & Rosenbloom, S. T. (2022b). State-by-State variability in adolescent privacy laws. *Pediatrics*, 149(6). <https://doi.org/10.1542/peds.2021-053458>

⁸ Kerwin, M., Kirby, K., Speziali, D., Duggan, M., Mellitz, C., Versek, B., & McNamara, A. (2015). What can parents do? A review of state laws regarding decision making for adolescent drug abuse and mental health treatment.

punishment in alternative care settings.⁹ In the United States, corporal punishment within alternative care settings, including the TTI, residential treatment facilities (RTFs), and group homes, has a deep-rooted history of being extensive and severe. Most U.S. states have taken action to restrict or prohibit corporal punishment in alternative care settings; specifically, 39 states have implemented strict bans on corporal punishment in these environments. Ten states have taken a somewhat less comprehensive approach by imposing restrictions on corporal punishment without completely prohibiting it. However, it is worth noting that South Carolina is the only state that has not provided any legal guidelines or regulations concerning corporal punishment within alternative care settings.¹⁰

The Government Office of Accountability (GAO) published a report in January of 2022, following news media reports of numerous instances where youth at RTFs were being abused by staff.¹¹ The GOA conducted a study by speaking to state officials from four states: Arkansas, California, Massachusetts, and Washington, D.C.. The purpose of the study was to gather the facts for congressional requests since there is a lack of public information regarding maltreatment in federally funded RTFs for youth, largely because states have oversight and often contract with private entities. The GAO examined three areas: how the states inhibit and address maltreatment, how they collect and report maltreatment, stakeholder suggestions on how to combat maltreatment, and how federal agencies support state efforts. GOA recommended that

⁹ King-Guffey, C., & Becker, J. (2023, September 7). *How Do US States Measure Up on Child Rights?* Human Rights Watch.

<https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights>

¹⁰ Kerwin, M., Kirby, K., Speziali, D., Duggan, M., Mellitz, C., Versek, B., & McNamara, A. (2015). What can parents do? A review of state laws regarding decision making for adolescent drug abuse and mental health treatment.

¹¹ GAO (2022). *Child welfare: HHS should facilitate information sharing between states to help prevent and address maltreatment in residential facilities*. Child Welfare: HHS Should Facilitate Information Sharing Between States to Help Prevent and Address Maltreatment in Residential Facilities | U.S. GAO. <https://www.gao.gov/products/gao-22-104670>

the Health and Human Services guide the Administration for Children and Families, in collaboration with Education, to enable information sharing “on promising practices for preventing and addressing maltreatment in residential facilities for youth.”

Counterarguments

The TTI is a profitable industry that promises rehabilitation in many residential settings. A systematic review from 2020 reveals that close to 700 RTCs and 384 Psychiatric Residential Treatment Facilities for Centers for Medicare and Medicaid Services in the United States home more than 23,000 youth in their facilities with an average cost of \$55,000 per year per resident.¹² Involuntary placement of youth into a program with a lack of rights to safeguard them from the experience or the ability to discharge, the industry stands to make a profit at the cost of youth’s autonomy.

Alternatively, some parents are put in unfathomable positions when children who need more intensive mental health services have been referred to residential treatment by medical providers but get denied service coverage by insurance. In one instance, when the family could not afford RTF placement costs, the state Department of Children and Family Services interjected and threatened the parents with child endangerment charges for failure to protect others from the child.¹³ They were left with no other alternative but to leave the child at the hospital and be charged with neglect. Ultimately, the families are left in peril to DCF by

¹² Lanier, P., Jensen, T., Bryant, K., Chung, G., Rose, R., Smith, Q., & Lackmann, L. (2020). A systematic review of the effectiveness of children’s behavioral health interventions in psychiatric residential treatment facilities. *Children and Youth Services Review*, *113*, 104951. <https://doi.org/10.1016/j.chilyouth.2020.104951>

¹³ Herman, C. (2021). Out Of Options, Parents Of Children With Mental Illness Trade Custody For Treatment. *Side Effects | Health and Medical News*. <https://www.sideeffectspublicmedia.org/access-to-healthcare/2018-07-31/out-of-options-parents-of-children-with-mental-illness-trade-custody-for-treatment>

relinquishing custody of their child so that DCF will cover the RTF placement costs and treatment the child desperately needs. In another instance, the family was denied insurance coverage of medically necessary treatment and was forced for safety reasons to place and pay out of pocket for their child to attend an “out-of-state therapeutic school that specialized in teaching children with behavioral disorders.”¹⁴

Proposed Solution

In the absence of youth rights for placement into institutions aimed at treating mental illness, addiction, or behavior modification to be suitable for return into society and the home environment, the proposed solution is regulating the factions that advertise such services to youth and adolescents. This includes any place or agency promoting to parents, state agencies, and insurance providers offering therapeutic treatment, including boarding schools, RTFs, camps, PRTFs, group homes, and wilderness therapies. Centers for Medicare and Medicaid Services (CMS) have general requirements and conditions of participation for PRTFs that regulate key aspects of the structure and characteristics of facilities providing services to recipients under the age of 21.

Facilities providing PRTF services for CMS must be accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities (CARF), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), the Certification and Accreditation Services for Educational Institutions (CASFC), the Council on Accreditation of Services for Families and Children, or another state-approved accrediting organization. Additionally, they must meet the Code of Federal Regulations under Title 42:¹⁵

¹⁴ Noguchi, Y. (2022). *Paying for mental health care leaves families in debt and isolated*. NPR. <https://www.npr.org/sections/health-shots/2022/10/19/1125446666/debt-mental-health-care-u-s-families>

¹⁵ National Archives. (2023). *The Federal Register*. Title 42 of the CFR. <https://www.ecfr.gov/current/title-42>

Beneficiary & Accreditation Requirements (§41.151)
 Certification of need for services (§441.152,
 Team certifying need for services (§441.153)
 Active treatment (§441.154)
 Individual plan of care (§441.155)
 Interdisciplinary team (§441.156)
 Protection of Residents (§483.356)
 Orders for the use of restraint or seclusion (§483.358)
 Monitoring of the resident in restraint or seclusion (§483.362)
 Notification of parent(s) or legal guardian(s) (§483.366)
 Application of time out (§483.368)
 Post intervention debriefings (§483.370)
 Medical treatment for injuries from emergency safety intervention (§483.372)
 Facility Reporting (§483.374)
 Educating and training (§483.376)

Conclusion

Uniform standards in evidenced-based practices, accreditation, and federal regulation within these programs must be mandated by the federal government to ensure youth protection is preserved where the lack of youth rights leaves children vulnerable. Criteria must be established for the least restrictive therapeutic environment with evidence, such as multiple licensed providers' signatures outlining medical and therapeutic intervention over a prescribed period, prior to consideration of placement into a program that is federally regulated with oversight. Sadly, I think there is a greater chance of getting the federal government to regulate a multi-billion-dollar industry before it is willing to establish youth rights beyond the rights of the parents at the state level.

References

- GAO (2022). *Child welfare: HHS should facilitate information sharing between states to help prevent and address maltreatment in residential facilities*. Child Welfare: HHS Should Facilitate Information Sharing Between States to Help Prevent and Address Maltreatment in Residential Facilities | U.S. GAO. <https://www.gao.gov/products/gao-22-104670>
- Herman, C. (2021). *Out of options, parents of children with mental illness trade custody for treatment*. Side Effects | Health and Medical News. <https://www.sideeffectspublicmedia.org/access-to-healthcare/2018-07-31/out-of-options-parents-of-children-with-mental-illness-trade-custody-for-treatment>
- Kerwin, M., Kirby, K., Speziali, D., Duggan, M., Mellitz, C., Versek, B., & McNamara, A. (2015). What can parents do? A review of state laws regarding decision making for adolescent drug abuse and Mental Health Treatment. *Journal of Child & Adolescent Substance Abuse*, 24(3), 166–176. <https://doi.org/10.1080/1067828x.2013.777380>
- King-Guffey, C., & Becker, J. (2023, September 26). *How do us states measure up on child rights?*. Human Rights Watch. <https://www.hrw.org/feature/2022/09/13/how-do-states-measure-up-child-rights>
- Lanier, P., Jensen, T., Bryant, K., Chung, G., Rose, R., Smith, Q., & Lackmann, L. (2020). A systematic review of the effectiveness of children’s behavioral health interventions in psychiatric residential treatment facilities. *Children and Youth Services Review*, 113, 104951. <https://doi.org/10.1016/j.chilyouth.2020.104951>

Legal Information Institute. (2021). *Age of majority*. Legal Information Institute.

https://www.law.cornell.edu/wex/age_of_majority

Legal Information Institute. (2022). *Children's rights*. Legal Information Institute.

https://www.law.cornell.edu/wex/Children's_Rights

Legal Information Institute. (2020). *Legal age*. Legal Information Institute.

https://www.law.cornell.edu/wex/legal_age

National Archives. (2023). *The Federal Register*. Title 42 of the CFR.

<https://www.ecfr.gov/current/title-42>

Noguchi, Y. (2022, October 19). *Paying for mental health care leaves families in debt and isolated*. NPR.

<https://www.npr.org/sections/health-shots/2022/10/19/1125446666/debt-mental-health-care-u-s-families>

Parentalrights.org. (2018). *The Supreme Court's parental rights doctrine*. Parental Rights.

https://parentalrights.org/understand_the_issue/supreme-court/

Sharko, M., Jameson, R., Ancker, J., Krams, L., Webber, E., & Rosenbloom, T. (2022).

State-by-state variability in Adolescent Privacy Laws. *Pediatrics*, 149(6).

<https://doi.org/10.1542/peds.2021-053458>

UNICEF. (n.d.). *Frequently asked questions on the convention on the rights of the child*.

<https://www.unicef.org/child-rights-convention/frequently-asked-questions>