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Are Juvenile Gang Members Victims of Labor Trafficking?

By Cristina M. Rizen*

I. INTRODUCTION

Domestic child trafficking, while prevalent, often receives less attention than international child trafficking.¹ Within domestic child trafficking, cases of sex trafficking are more prevalent than labor trafficking.² Although labor trafficking remains the most “hidden” form of trafficking, in general, its effects are just as damaging as the more recognized sex trafficking.³ In addition to being exploited for labor, victims of labor trafficking are subjected to dangerous work in unsafe conditions and may also be sexually and physically abused.⁴ Although domestic, agricultural, and restaurant work are the most widely-recognized venues for forced labor, applicable laws do not limit labor trafficking to these industries.⁵ “Services” is not narrowly defined and can describe any number of activities that may be exploited for the economic gain of a trafficker.⁶

The way the law looks at child perpetrators of crimes induced by adults who control those children has changed dramatically since the United States increased its attention on human trafficking.⁷ Prosecutors once saw children who were induced to commit crimes by virtue of being trafficked as nothing but juvenile delinquents in need of correction and rehabilitation rather than as victims who need to be made whole.⁸ Since Congress passed the Trafficking Victims Protection Act of 2000 (“TVPA”),⁹ child trafficking victims, particularly those who have been prostituted, are increasingly recognized as victims of the criminal acts of their traffickers and not as criminals themselves.¹⁰ The “safe harbor” laws that are appearing across the country are a reflection of this shift in how the law reacts to these child victims of trafficking.¹¹

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¹ Travis Johnson, *All Children Are Created Equal Too: The Disparate Treatment of Youth Rights in America*, 15 CUNY L. REV. 173, 175–81 (2011).

² U.S. DEP’T OF JUSTICE, CIVIL RIGHTS DIV., REPORT ON THE TENTH ANNIVERSARY OF THE TRAFFICKING VICTIMS PROTECTION ACT, 4–8 (2010), http://www.justice.gov/crt/about/crm/trafficking_newsletter/tpvaanniversaryreport.pdf; see Kevin Bales et al., *Hidden Slaves Forced Labor in the United States*, 23 BERKELEY J. INT’L L. 47, 57 (2005) [hereinafter *Hidden Slaves*]; see also Trafficking Resource Center, Hotline Statistics, <http://www.traffickingresourcecenter.org/states> (including yearly national and state-by-state statistics of human trafficking reports).

³ *Hidden Slaves*, supra note 2, at 52–53.

⁴ *Id.* at 61–66.

⁵ See *infra* Part II.

⁶ See *Hotline Statistics*, NAT’L HUMAN TRAFFICKING RES. CTR., <http://www.traffickingresourcecenter.org/states> (last visited Feb. 4, 2015) (recognizing services in which individuals have reportedly been trafficked); see also Jill E.B. Coster van Voorhout, *Human Trafficking for Labour Exploitation: Interpreting the Crime*, 3 UTRECHT L. REV. 44, 59–65 (2007) (discussing the definitions and elements of labor trafficking in a European context).

⁷ Hon. Toko Serita, *In Our Own Backyards: The Need For A Coordinated Judicial Response To Human Trafficking*, 36 N.Y.U. REV. L. & SOC. CHANGE 635, 637–39 (2012); see also HEATHER J. CLAWSON ET AL., ICF INT’L, PROSECUTING HUMAN TRAFFICKING CASES: LESSONS LEARNED AND PROMISING PRACTICES 12–27 (2008), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/223972.pdf> (discussing the status of state and federal human trafficking prosecution and issues with implementation); see generally Johnson, supra note 1, at 180–82 (discussing the problems involved in addressing delinquency with respect to the minor’s history of abuse).

⁸ Serita, supra note 7, at 652.

⁹ Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended at 22 U.S.C. §§ 7101–7113 (2012)).

¹⁰ 22 U.S.C. § 7105(c); 325 ILL. COMP. STAT. ANN. 5/3(h) (West 2015) (including child victims of trafficking in the definition of abused and neglected child); 720 ILL. COMP. STAT. ANN. 5/11-14(d) (West 2015) (permitting evidence that a child was a victim of

But while child victims of commercial sexual exploitation are seeing these barriers to their recovery begin to weaken, victims of other forms of child trafficking may not. Victim identification is a problem for all forms of child trafficking, including domestic trafficking.¹² Thanks to increased public awareness of the issue of sex trafficking, including the introduction of safe harbor laws, a child arrested for engaging in commercial sex can be identified as a victim of trafficking and thereby be immune from prosecution.¹³ However, children carrying out other illegal activities, such as performing criminal acts on behalf of a street gang, do not fall under safe-harbor-type laws and have so far not been considered victims of anything but poor judgment, much less trafficking.¹⁴ Children compelled into service to a gang may participate in illegal activities from the prosaic (drug offenses) to the horrific (murder), but all such juveniles have only an adjudication to anticipate.¹⁵

This tendency to view juvenile misconduct as purely offense and disposition may be changing. In 2013, a United Kingdom Court of Appeal decision quashed one conviction and allowed the appeals of two others in cases where the individuals convicted were juveniles at the times of their arrests for drug production.¹⁶ This case, read in conjunction with U.S. Supreme Court case law on the developmental limits of criminal culpability of young offenders, strongly suggests that juveniles who commit gang-related crimes cannot unilaterally be treated as though these recognized safeguards of children's rights do not exist.¹⁷

A juvenile's criminal culpability for delinquent acts, while not expressly covered by such a presumption of unwillingness as the trafficking laws contain, still is not identical to the culpability of an adult.¹⁸ American juvenile courts operate under the belief that children, due to their still-developing cognitive abilities, generally cannot be held to the same criminal standard as adults.¹⁹ However, even this is not entirely true: waiver or transfer to adult court may be permissive, mandatory, or presumed, and one factor affecting transfer is gang involvement.²⁰ In light of this, the "hows and whys" of juvenile gang membership must be carefully examined to avoid unnecessary and potentially harmful adjudication of those youths who are more reluctant

trafficking in a prostitution adjudication); Polaris Project, *Introduction to the Illinois' Safe Children Act*, 1, END DEMAND ILL. (2010), <http://g.virbcdn.com/f/files/98/FileItem-147964-ILSafeChildrenActSummaryNov2010FINAL.pdf>.

¹¹ *Overview of State Legislative Policy to Address the Commercial Sexual Exploitation of Children*, POLARIS PROJECT (2008), http://www.polarisproject.org/storage/documents/policy_documents/model%20laws/model%20safe%20harbor%20law%20overview%20final-1.pdf.

¹² Susan Crile, Comment, *A Minor Conflict: Why the Objectives of Federal Sex Trafficking Legislation Preempt the Enforcement of State Prostitution Laws Against Minors*, 61 AM. U. L. REV. 1783, 1821–22 (2012); *Hidden Slaves*, *supra* note 2, at 74–75; Kathleen Kim, *Coercion of Trafficked Workers*, 96 IOWA L.R. 409, 450–64 (2011) (arguing for use of situational coercion analysis based on constitutional and statutory definitions and applications); *see generally* Samuel Vincent Jones, *Human Trafficking Victim Identification: Should Consent Matter?*, 45 IND. L. REV. 483 (2012) (arguing that the consent of the alleged victim may remove victim status even if the alleged victim suffers harm in certain circumstances).

¹³ Johnson, *supra* note 1, at 186–88.

¹⁴ Jones, *supra* note 12, at 497, 499–500.

¹⁵ Michael Tapia, *Gang Membership and Race as Risk Factors for Juvenile Arrest*, 48 J. RES. CRIME & DELINQ. 364, 376–78 (2011).

¹⁶ L., H.V.N., T.H.N., & T. v. R., [2013] EWCA (Crim) 991 (U.K.), available at <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html> (allowing an appeal by a Ugandan woman who was an adult victim of sex trafficking); *see discussion infra* Part III.

¹⁷ *See discussion infra* Part III.

¹⁸ Tracy Rightmer, *Arrested Development: Juveniles' Immature Brains Make Them Less Culpable than Adults*, 9 QUINNIPIAC HEALTH L.J. 1, 3–5 (2005); Elizabeth N. Jones, *Questioning a Juvenile's Capacity for Criminal Liability in Street Gangs Post-J.D.B. v. North Carolina*, 32 CHILD. LEGAL RTS. J. 1, 1, 3–5 (2012).

¹⁹ Rightmer, *supra* note 18, at 7; Jones, *supra* note 18, at 4–5, 11.

²⁰ Rightmer, *supra* note 18, at 9; *see* 705 ILL. COMP. STAT. ANN. 405/5-805 (West 2015); *see also Automatic Transfer to Adult Court*, JUVENILE JUSTICE INITIATIVE, <http://justice.org/resources/juvenile-transfer-to-adult-court/> (last visited Feb. 4, 2015) (summarizing criticism of and collecting recent commentary on juvenile transfer laws).

criminals due to the coercive effect of their home and community environments and gang culture.²¹

This Article examines the issue of juvenile gang member delinquency in the context of labor trafficking. Part II discusses the laws that define labor trafficking and child labor, both domestically and internationally. This analysis includes relevant international case law holding that juveniles forced to commit crimes by a gang should not be held liable as delinquents for these crimes. Part III addresses whether these children meet the statutory definition for a victim of labor trafficking. This discussion involves a brief overview of American street gang activity, with a focus on the current state of gang crime in Chicago, Illinois, which has lately been described as a hotbed of gang violence. This atmosphere is analogous to that faced by child soldiers, a class of child victims recognized under trafficking and child labor laws and treaties. Part IV suggests next steps based on the position that juvenile gang members are victims of labor trafficking. These suggestions are sensitive to the law enforcement impulse to contain criminal activity and punish criminals (and rehabilitate delinquents) appropriately, while also offering potential solutions that would support the restoration of juvenile gang members to more socially-beneficial roles in their communities without the stigma of a criminal record.

II. LABOR TRAFFICKING AND CHILD LABOR DEFINED

A. Human Trafficking in International and Domestic Law

The United Nations Office on Drugs and Crime defines human trafficking as requiring three elements: act, means, and purpose.²² The “act” is the transporting, recruiting, harboring, or receiving of another person.²³ The “means” are the use of force, fraud, coercion, or abuse of some power over the other person and can include threats of turning the person over to authorities for real or trumped-up transgressions.²⁴ The “purpose” is exploitation, whether sexual exploitation or for the exploitation of the person for labor or services the person can provide.²⁵ This definition, adopted by the United Nations in 2000, has been echoed in every anti-trafficking law around the world.²⁶

The “act” and “motive” elements are usually not in doubt, and force and fraud are relatively straightforward in terms of general knowledge of what the words mean. Transporting or harboring a person—the physical act of trafficking—is typically clear from a victim’s demonstrable presence in the alleged trafficker’s care or on the alleged trafficker’s property. Similarly, force and fraud are clear where victims are subjected to lies and threatened or actual physical force are used to induce cooperation or participation. Coercion, however, is less clearly defined and more difficult to apply in practice.²⁷

²¹ Jones, *supra* note 18, at 5.

²² *Human Trafficking*, U.N. OFFICE ON DRUGS & CRIME, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (last visited on Feb. 4, 2015).

²³ United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime art. 3(a), Nov. 15, 2000, 2237 U.N.T.S. 319 [hereinafter Palermo Protocol], *available at* http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf.

²⁴ *Id.*

²⁵ *Id.*

²⁶ See 22 U.S.C. §§ 7101–03 (2012); Eur. Consult. Ass. Convention on Action Against Trafficking in Human Beings art. 4, May 16, 2005, C.E.T.S. No. 197.

²⁷ Where mere persuasion becomes coercion is not an easy question to answer. See discussion *infra* Part III; see Jones, *supra* note 12, at 500–10.

The primary international instruments that relate to human trafficking of children are the United Nations Convention on the Rights of the Child ("CRC") and the United Nations Convention against Transnational Organized Crime ("CTOC") and their subsequent related protocols.²⁸ The CRC is a unifying document on international expectations for child welfare, setting forth, among other things, rights that attach to the child (rather than the parents) to education, health care, protection, and civil liberties.²⁹ The CRC has been signed by all nations in the world except for two, one of which is the United States.³⁰ There are many arguments as to why the United States refuses to sign the CRC,³¹ but the significance of this refusal is that the provisions of the CRC are not binding in any way on the United States.

While the CRC fails as a basis for asserting what legal rights U.S. children have for protection at a federal or state level, the United States has signed and ratified a number of optional protocols that are relevant to the issue of child trafficking. These include the CRC's Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict.³² The United States has also signed the CTOC's Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (often referred to as the "Palermo Protocol").³³ These protocols identify and outlaw the commercial sexual exploitation of children as well as dangerous forms of child labor, including participation in armed combat and forced labor,³⁴ and provide for protection of victims, prosecution of traffickers, and prevention of new trafficking incidents.³⁵ Because the United States has signed and, most importantly, *ratified* these Optional Protocols, unlike the CRC, they are as controlling as an internally-generated federal law.³⁶

In addition to these United Nations conventions, the International Labor Organization has issued conventions against child labor that relate to trafficking. Of these, the Worst Forms of Child Labour Convention ("Convention 182"),³⁷ which has been ratified by the United States,³⁸

²⁸ United Nations Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3 [hereinafter CRC]; United Nations Convention Against Transnational Organized Crime, Nov. 15, 2000, 2225 U.N.T.S. 209 [hereinafter CTOC].

²⁹ See CRC, *supra* note 28 arts. 1–16, 23–25, 28–29, 32, 39; see HUMAN RIGHTS WATCH, UNITED STATES RATIFICATION OF HUMAN RIGHTS TREATIES 1, 5–6 (2009), available at http://www.hrw.org/sites/default/files/related_material/Treaty%20Ratification%20Advocacy%20document%20-%20final%20-%20Aug%202009.pdf.

³⁰ Status of Convention on the Rights of the Child, 1577 U.N.T.S. 3, available at <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf> (showing current signatories and parties to the CRC); HUMAN RIGHTS WATCH, *supra* note 29, arts. 1–2, 5–6.

³¹ Lawrence J. Cohen & Anthony T. DeBenedet, *Why is the U.S. Against Children's Rights?*, TIME (Jan. 24, 2012), <http://ideas.time.com/2012/01/24/why-is-the-us-against-childrens-rights>.

³² United Nations Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, Mar. 16, 2001, 2171 U.N.T.S. 227 [hereinafter Optional Protocol on the Sale of Children]; United Nations Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, May 25, 2000, 2173 U.N.T.S. 222 [hereinafter Optional Protocol on Children in Armed Conflict]; HUMAN RIGHTS WATCH, *supra* note 29, at 6.

³³ *Status of Ratification for the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, U.N. TREATY COLLECTION DATABASE, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en (last visited Feb. 4, 2015).

³⁴ Optional Protocol on Children in Armed Conflict, *supra* note 32, at arts. 3–4; Optional Protocol on the Sale of Children, *supra* note 32, at art. 3.

³⁵ Palermo Protocol, *supra* note 23, at arts. 2, 5–13.

³⁶ *Flores v. S. Peru Copper Corp.*, 414 F.3d 233, 256 (2d Cir. 2003) (“[O]nly States that have ratified a treaty are legally obligated to uphold the principles embodied in that treaty . . .”).

³⁷ International Labor Organization (ILO) Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour art. 3, June 17, 1999, S. Treaty Doc. No. 106-5 [hereinafter ILO Convention 182].

³⁸ *International Labor Standards and the ILO*, U.S. DEP'T OF LABOR, <http://www.dol.gov/ilab/diplomacy/PC-ILO-page2.htm> (last visited Feb. 4, 2015).

most clearly prohibits the exploitation of children for gang-related services. Convention 182 states:

For the purposes of this Convention, the term **the worst forms of child labour** comprises:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.³⁹

The types of services performed by juvenile gang members, from selling and transporting drugs to engaging in crimes against persons and weapons crimes,⁴⁰ fall under at least one of the enumerated “worst forms of child labor,” particularly those at (c) and (d).

The TVPA⁴¹ closely resembles the international treaties regarding human trafficking. In addition to this federal legislation, states and municipalities typically have their own human-trafficking laws that may differ from the TVPA in some small respects.⁴² For instance, the Illinois Safe Children’s Act⁴³ includes a provision permitting wiretapping,⁴⁴ which allows local law enforcement to more easily investigate and prosecute trafficking cases by increasing access to evidence. These anti-trafficking acts allow for prosecutions at state and federal levels, providing prosecutors with every possible opportunity to go after traffickers. For example, the Cook County Human Trafficking Taskforce works closely with state and federal prosecutors, leading to prosecutions of individuals in the same trafficking scheme in one or the other venue, depending on whether the federal or state case was strongest.⁴⁵

United States labor regulations are based on and interpret the Fair Labor Standards Act (“FLSA”).⁴⁶ This statute covers a wide range of labor-related topics, including child labor.⁴⁷ On that subject, the FLSA prohibits employers from using “oppressive child labor.”⁴⁸ This is

³⁹ ILO Convention 182, *supra* note 37, at art. 3.

⁴⁰ Elizabeth Braunstein, *Are Gang Members, Like Other Child Soldiers, Entitled to Protection from Prosecution Under International Law?*, 3 U.C. DAVIS J. JUV. L. & POL’Y, 75, 77–78 (1999).

⁴¹ See Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as amended at 22 U.S.C. §§ 7101–7113 (2012)).

⁴² Sarah Murillo, *21st Century Slaves: Children Reduced to Products—Captured in the Business of Supply and Demand*, 6 PHOENIX L. REV. 695, 712, 714–18 (2013).

⁴³ Pub. Act. No. 96-1464, 2010 Ill. Laws 6931 (codified as amended in scattered chapters of ILL. COMP. STAT.).

⁴⁴ 725 ILL. COMP. STAT. ANN. 5/108B-3 (West 2015).

⁴⁵ United States v. Sawyer, 733 F.3d 228, 229 (7th Cir. 2013); see also Press Release, U.S. Attorney’s Office, Chicago Man Convicted of Sex Trafficking Minors (Nov. 21, 2011), available at <http://www.fbi.gov/chicago/press-releases/2011/chicago-man-convicted-of-sex-trafficking-minors> (referencing two co-defendants who pleaded guilty to felony pandering charges in state court for participating in Sawyer’s sex trafficking operation as drivers and enforcers).

⁴⁶ Fair Labor Standards Act of 1938, ch. 676, 52 Stat. 1060 (codified as amended at 29 U.S.C. §§ 201–219 (2012)); see 29 C.F.R. §§ 570.1–570.72 (2015) (discussing employment of minors and their employment in particularly hazardous occupations).

⁴⁷ 29 U.S.C. § 212(a), (c).

⁴⁸ *Id.*

expanded upon by federal regulations that stipulate that child labor must “not interfere with their schooling or with their health and well-being,”⁴⁹ and expressly forbids youth from engaging in peddling, “which entails the selling of goods or services to customers at locations such as . . . public places such as street corners and public transportation stations.”⁵⁰ Particular guidelines and limits on industries and work time are applied to fourteen and fifteen year olds,⁵¹ while children between sixteen and eighteen years old may work with less freedom than adults but fewer restrictions than younger children.⁵²

Safe harbor laws are a new addition to the range of laws affecting child trafficking victims.⁵³ Only fifteen states currently have enacted these laws, which reinforce the TVPA's direction to not prosecute trafficking victims by extending the federal provision in a more intentional way to the state level.⁵⁴ The Illinois statute applies to investigations of forced servitude and labor trafficking and specifically mentions “any ‘streetgang related’ or ‘gang-related’ felony.”⁵⁵ The application of these laws to any non-sex trafficking gang servitude investigations or prosecutions is yet to be tested.

B. Trafficking Victim Culpability in Recent Case Law

On June 21, 2013, the United Kingdom Court of Appeal, in England and Wales, reversed the convictions of three minors and one adult who had been convicted of crimes while they were victims of human trafficking.⁵⁶ In addition to their own national laws, the justices relied particularly on European Union,⁵⁷ Council of Europe,⁵⁸ and United Nations instruments⁵⁹ in analyzing whether the convictions could or should be appealed. Each minor defendant was a foreign national working for a gang and made to grow marijuana.⁶⁰ These cases revolved primarily around issues of age determination for the defendant youths as well as determining “reasonable grounds” that indicated that the youth had been trafficked.⁶¹ However, the justices also discussed the relation between victimization and perpetration.⁶²

The question of whether a child should be prosecuted for a crime that was allegedly induced by trafficking, according to the Court of Appeal, is fact-specific.⁶³ After the child is determined to be a trafficked minor, the next crucial question is “the extent to which the crime alleged against him was consequent on and integral to the exploitation of which he was the

⁴⁹ 29 C.F.R. § 570.31.

⁵⁰ 29 C.F.R. § 570.33(j).

⁵¹ 29 C.F.R. §§ 570.31–570.39, 570.70–570.72.

⁵² 29 C.F.R. §§ 570.50–570.68.

⁵³ Johnson, *supra* note 1, at 186–88; Crile, *supra* note 12, at 1818–24.

⁵⁴ 2014 *State Ratings on Human Trafficking Laws*, POLARIS PROJECT (2014), http://www.polarisproject.org/storage/2014SRM_pamphlet_download.pdf (including states: Connecticut, Delaware, Hawaii, Illinois, Louisiana, Minnesota, Mississippi, New Jersey, Ohio, Pennsylvania, Vermont, and Washington); Crile, *supra* note 12, at 1791–92, 1798–1806 (discussing federal preemption of state laws criminalizing child prostitution).

⁵⁵ 720 ILL. COMP. STAT. ANN. 5/14-3(g) (West 2015).

⁵⁶ L., H.V.N., T.H.N., & T. v. R, [2013] EWCA (Crim) 991 [19], [33]–[67] (U.K.) (describing the three juvenile cases).

⁵⁷ *Id.* at [4]–[7] (citing Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on Preventing and Combating Trafficking in Human Beings and Protecting Its Victims and Replacing Council Framework Decision 2002/629/JHA, recs. 8, 14, art. 8, 2011 O.J. (L 101/1–101/11)).

⁵⁸ *Id.* at [8], [24]–[26] (citing Council of Europe Convention on Action Against Trafficking in Human Beings arts. 10, 26, *opened for signature* May 16, 2005, C.E.T.S. No. 197 (entered into force Feb. 1, 2008)).

⁵⁹ *Id.* at [5] (noting that the European Union Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims requires that “the child’s best interest must be of primary consideration, in accordance with the Charter of Fundamental Rights of the European Union and the 1989 United Nations Convention on the Rights of the Child”).

⁶⁰ *Id.* at [1]–[2], [19], [33]–[67].

⁶¹ *Id.* at [13].

⁶² *Id.* at [10], [13], [20].

⁶³ *Id.* at [19].

victim.”⁶⁴ The court suggests a range of possibilities, from children who were sufficiently exploited “that in reality culpability was extinguished,” to situations particularly involving older youth offenders who are now adults whose “culpability [is] diminished but nevertheless . . . significant,” to situations where “the fact that the defendant was a victim of trafficking will provide no more than a colourable excuse for criminality which is unconnected to and does not arise from their victimisation.”⁶⁵ While engaging in the fact-specific analysis in each of the appealed matters, the court also offers its rationale as a general guide for determining whether to prosecute in similar circumstances.⁶⁶ Among the specifics of the age and trafficking determinations, the Court of Appeal affirmed the primary importance of the best interests of the children at issue.⁶⁷

The difference in circumstances between the minors in the United Kingdom case and gang-involved minors in the United States is comparable to the difference between international and domestic victims of commercial sexual exploitation. While the plight of a child who is held in sexual slavery in a foreign country where she is linguistically and socially isolated is more striking (and marketable) than that of a poor minority child who is commercially sexually exploited in her own neighborhood, it is no less horrific and violative of the child’s human rights and best interests. We have a legal framework—the statutory incompetence of children under a certain age to consent to sexual contact—that asserts that sexually-exploited children are not willing participants.⁶⁸ We have a similar legal framework that adjusts a minor’s criminal capacity, the *mens rea*, in light of developmental and experiential immaturity.⁶⁹

This United Kingdom decision, taken with the U.S. Supreme Court’s most recent series of cases relating to juvenile capacity and culpability,⁷⁰ calls into question how we parse juvenile misconduct with respect to both the legal infirmity of age and the related vulnerability to exploitation. The Supreme Court has been instrumental in changing the course of juvenile justice in the United States, recognizing juvenile due process rights that had previously been ignored.⁷¹ Most recently, in the course of striking down the juvenile death penalty⁷² and rejecting mandatory life without parole for juveniles,⁷³ the Court established legal reasoning that relies heavily on a scientific understanding of adolescent cognition and the resulting knowledge that the behavioral products of the still-developing brain of an adolescent cannot be considered as blameworthy as

⁶⁴ *Id.* at [20]; see also Jones, *supra* note 18, at 11 (“Each child’s capacity for understanding the *mens rea* requirement in each crime charged must be individually evaluated.”).

⁶⁵ *Id.* at [33].

⁶⁶ *Id.* at [34].

⁶⁷ *Id.* at [14]. While the court here bases this on the mandate of the CRC, to which the United Kingdom is bound, U.S. courts can similarly recognize the best interest standard based upon common practice and state statutes.

⁶⁸ Murillo, *supra* note 42, at 717–18.

⁶⁹ Jones, *supra* note 18, at 1; Rightmer, *supra* note 18, at 5–8.

⁷⁰ *Roper v. Simmons*, 543 U.S. 551, 568–75 (2005) (holding that execution of individuals who were juveniles at time of their crimes is prohibited by the Eighth and Fourteenth Amendments and discussing developmental reasons behind states’ outlawing of capital punishment for juvenile offenders); *Miller v. Alabama*, 132 S. Ct. 2455, 2463–68 (2012) (holding that sentencing juvenile offenders to life imprisonment without possibility for parole violates the Eighth Amendment and relying on juvenile’s developmental immaturity per *Roper*); see also *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2406 (2011) (“[W]e hold that so long as the child’s age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, its inclusion in the custody analysis is consistent with the objective nature of [the voluntariness of a juvenile’s *Miranda* waiver] test.”).

⁷¹ Ashley A. Hughes, *The Evolution of Youth as an Excuse: Striking a Balance Between the Interest of Public Safety and the Principle that Kids are Kids*, 29 *TOURO L. REV.* 967, 978–93 (2013) (providing an overview of juvenile justice from a federal perspective); see *Kent v. United States*, 383 U.S. 541, 557 (1966) (granting juveniles due process rights generally); see *In re Gault*, 387 U.S. 1, 57 (1967) (recognizing that juveniles have the specific due process rights of notice of charges, opportunity to be heard and confront witnesses, representation by counsel); see *In re Winship*, 397 U.S. 358, 368 (1970) (requiring proof beyond a reasonable doubt of all elements if charged with an offense that would result in criminal prosecution if committed by an adult).

⁷² *Roper*, 543 U.S. at 578–79.

⁷³ *Miller*, 132 S. Ct. at 2475.

those of a fully grown adult.⁷⁴ The already complex issues regarding the validity of consent in light of the allegedly consenting person's agreement to a course of action⁷⁵ are made more complex by the developmental impediments explored in these Supreme Court decisions.⁷⁶ This tension between juvenile culpability and juvenile capacity is perhaps most uncomfortable when addressing the question of this Article.

III. ARE JUVENILE GANG MEMBERS VICTIMS OF LABOR TRAFFICKING?

A. Identification of Trafficking Victims

One of the perennial problems in trafficking is victim identification. While children trafficked for sex must necessarily encounter non-traffickers in their servitude, victims of labor trafficking can be completely concealed.⁷⁷ Additionally, labor trafficking victims may hide in plain sight, because the work they do may not be illegal or unusual in and of itself.⁷⁸ Agricultural workers and domestic workers perform work that looks "normal," should any non-traffickers happen to pass by.⁷⁹ Even in the context of sex trafficking, when illegal acts are witnessed, the first impression is one of discovering a perpetrator and not uncovering a victim.⁸⁰ In the case of juvenile gang members, the services they are most likely to perform involve coordinating and participating in drug sales and purchases and providing assistance to other gang members in the commission of other crimes, such as driving others to or from a crime scene, keeping a lookout, providing backup, or illegally possessing weapons.⁸¹ These blatant crimes are more likely to be noticed than activities that have a more legitimate appearance, particularly by law enforcement, by the simple fact of their illegality.⁸² This puts juvenile gang members closer to child victims of sex trafficking in terms of their potential for being identified as victims of trafficking through interaction with law enforcement.

A further complication to the issue of identification is that most victims do not see themselves as victims.⁸³ Domestic sex trafficking victims may reject the victim label due to their traffickers' emotional manipulations and because the victims may be in love with their traffickers as a result of these manipulations.⁸⁴ These individuals may be difficult to discover because of their attachment to their traffickers and their unwillingness, whether based in fear of or affection for them, to cause problems for their traffickers.⁸⁵ There may also be compelling safety reasons for victims to resist that label, as they may fear retaliation from their traffickers if the abuse is acknowledged.⁸⁶ Juvenile gang members, some of whom may have joined their gangs to fill a

⁷⁴ See Jones, *supra* note 18, at 2–5 (summarizing the cognitive research basis for the findings in *J.D.B.*, *Roper*, and *Miller*).

⁷⁵ Jones, *supra* note 12, at 510–11.

⁷⁶ *Roper*, 543 U.S. at 570; *Miller*, 132 S. Ct. at 2475; see Ian P. Farrell & Justin F. Marceau, *Taking Voluntariness Seriously*, 54 B.C. L. REV. 1545, 1548–55 (2013); see Sarah A. Kellogg, *Just Grow Up Already: The Diminished Culpability of Juvenile Gang Members after Miller v. Alabama*, 55 B.C. L. REV. 265, 267 (2014).

⁷⁷ *Hidden Slaves*, *supra* note 2, at 51–52.

⁷⁸ See generally *id.*

⁷⁹ See generally *id.*

⁸⁰ Johnson, *supra* note 1, at 183.

⁸¹ Braunstein, *supra* note 40, at 77–78.

⁸² A child participating in an armed robbery is more likely to interact with police investigating the crime than a child working in a large agricultural operation or as a domestic worker who is not only actively hidden by his or her trafficker but to the untrained eye is performing legitimate labor.

⁸³ Patricia K. Kerig et al., *America's Child Soldiers: Toward a Research Agenda for Studying Gang-Involved Youth in the United States*, 22 J. AGGRESSION, MALTREATMENT & TRAUMA 773, 775–76 (2013).

⁸⁴ Crile, *supra* note 12, at 1823.

⁸⁵ *Id.*

⁸⁶ *Id.*

familial void in their lives, may face similar problems stemming from loyalty to their gang and fear of retaliation if they are seen to betray it.⁸⁷

B. Child Soldiers: International and Local

Impoverished urban neighborhoods are often compared with war zones, due to their higher levels of violence than in other parts of the country.⁸⁸ Even if the comparison is tenuous in some respects, the relationship between young gang members in the United States and child soldiers in the rest of the world is striking. Estimates show more than 700,000 youth gang members as opposed to more than 300,000 child soldiers.⁸⁹ It can be argued that fighting in a standing army presents more of what we would commonly consider combat experience and that no U.S. locale can approximate this. But while it is true that our urban violence is on a smaller scale (between rival gangs and not rival governments), the comparison is nonetheless warranted in terms of how these children view the conflicts they enter into and what effect this violence has on their lives beyond the time of fighting.⁹⁰

A growing number of researchers have considered the similarities between child soldiers and children who join gangs and have suggested turning to the plentiful research on former child soldiers to guide researchers aiming to fill gaps in current research on gang-involved youth.⁹¹ This is a significant comparison for this analysis because use of children for soldiers in armed forces is internationally recognized as an egregious form of child labor.⁹² Both child soldiers and juvenile gang members are drawn from economically-depressed areas that are rife with violence.⁹³ These circumstances make the economic and protective advantages of joining a “side” in the local conflict (whether an army or a gang) attractive to poor, vulnerable children who may have already witnessed harm done to loved ones and feel a strong need to protect relatives or contribute financially to their welfare.⁹⁴ Community and family bonds draw children into joining both gangs and armed forces.⁹⁵ Traumatic histories are commonly found in children who join gangs and armed conflicts,⁹⁶ and both groups may experience perpetrator-trauma as a result of their conflict experiences after joining the group.⁹⁷ It is generally easier for children to leave a gang than for children to leave an army; while child soldiers may not be demobilized until a formal peace treaty or military restructuring occurs, juvenile gang members are more free to define the length of their involvement,⁹⁸ but child soldiers (who are often disarmed en masse at

⁸⁷ Braunstein, *supra* note 40, at 78–79; Kerig et al., *supra* note 83, at 781; *cf.* Jones, *supra* note 12, at 494–99 (discussing the boundaries of consent and victimization for migrants who consented to being smuggled into the United States and those who then became trafficked after giving such consent).

⁸⁸ *Chicago Homicides Outnumber U.S. Troop Killings in Afghanistan*, HUFFINGTON POST (Aug. 16, 2012, 4:24 PM), http://www.huffingtonpost.com/2012/06/16/chicago-homicide-rate-wor_n_1602692.html; *cf.* Whet Moser, *Chicago: More Deadly Than Kabul, Or Not?*, CHI. MAG. (Aug. 16, 2012), <http://www.chicagomag.com/Chicago-Magazine/The-312/August-2012/Chicago-More-Dangerous-Than-Kabul-Or-Not>.

⁸⁹ Kerig et al., *supra* note 83, at 774.

⁹⁰ Christopher Blattmann & Jeannie Annan, *Consequences of Child Soldiering*, 92 REV. ECON. & STAT., 882, 883 (2010); M.D. Krohn et al., *The Cascading Effects of Adolescent Gang Involvement Across the Life Course*, 49 CRIMINOLOGY 991, 1016 (2011); Braunstein, *supra* note 40, at 78–79.

⁹¹ *See* Kerig et al., *supra* note 83, at 785–86; *see* Braunstein, *supra* note 40, at 78.

⁹² Optional Protocol on Children in Armed Conflict, *supra* note 32, at art. 3; ILO Convention 182, *supra* note 37, at art. 3.

⁹³ Kerig et al., *supra* note 83, at 775; *see* Kathryn Kizer, *Behind the Guise of Gang Membership: Ending the Unjust Criminalization*, 5 DEPAUL J. SOC. JUST. 333, 343–44 (2012); *see* Mike Tapia, *U.S. Juvenile Arrests: Gang Membership, Social Class, and Labeling Effects*, 43 YOUTH & SOC'Y 1407, 1410–11, 1418–22 (2011) (describing socioeconomic status as a factor in gang participation).

⁹⁴ Braunstein, *supra* note 40, at 78–79.

⁹⁵ *Id.*

⁹⁶ Kerig et al., *supra* note 83, at 779.

⁹⁷ *Id.* at 778–79.

⁹⁸ *Id.* at 785–87 (“[M]ost gang members report having walked away without ritual violence or ceremony [But] for [child soldiers], reintegration into civilian life often begins with a political process, one that encompasses the entire community if not nation.”) (citations omitted); James C. Howell, *Menacing or Mimicking? Realities of Youth Gangs*, 58 JUV. & FAM. CT. J. 39, 44

the end of hostilities) receive superior, relatively well-organized reintegration services that directly address the trauma of conscription and fighting.⁹⁹

Child soldiers and juvenile gang members share another point in common: the question of how voluntary their joining of a gang or armed force may be and how that may affect their being held to a more adult standard of accountability.¹⁰⁰ While many child soldiers are forced into their fighting careers, many others do volunteer.¹⁰¹ Similarly, young gang members may not see themselves as having been forced or even coerced.¹⁰² Both populations describe their own agency in their activities within their respective organizations as well.¹⁰³ Former child soldiers receive the care they do based on the societal focus on recovering from the conflict and reintegrating into communities where the former child soldier must live and work.¹⁰⁴ Research on child soldiers in Uganda has shown that the voluntariness of the participation does not necessarily indicate a lesser risk of psychological harm from participation in the conflict, and instead, the amount of violence experienced is what correlates most closely with lasting distress and decreased earning power.¹⁰⁵ This research, taken together with research on trauma and juvenile delinquency, urges a response to juvenile gang members that, like the internationally-accepted response to child soldiers, aims to heal rather than punish.¹⁰⁶

IV. SUGGESTIONS FOR RECOGNIZING AND RESPONDING TO JUVENILE GANG MEMBERS AS VICTIMS OF LABOR TRAFFICKING

A. Delayed Adjudication Pending Services and Other Incentives to Testify Against Accused Traffickers

One benefit former child soldiers receive under international law is immunity from prosecution as adults for acts committed in the course of the conflict in which they were compelled to fight.¹⁰⁷ This encourages reintegration of former child soldiers into their communities without fear of being punished for actions of which they may not have been fully in

(2007) (discussing ease of exit for gang members); Beth Verhey, *Child Soldiers: Preventing, Demobilizing and Reintegrating* 9 (World Bank Grp., Working Paper No. 23, 2001), available at <http://www.worldbank.org/afr/wps/wp23.pdf> (discussing demobilization issues for child soldiers).

⁹⁹ *Id.* at 785–86.

¹⁰⁰ Farrell & Marceau, *supra* note 76, at 1545, 1548–55 (2013); Jones, *supra* note 12, at 497–99 (discussing economic coercive factors of trafficking victims involved in criminal activity with respect to victim accountability); see Kathleen Kim, *The Coercion of Trafficked Workers*, 96 IOWA L. R. 409, 436–64 (2011) (examining “situational coercion” in labor trafficking as a factor in determining accountability).

¹⁰¹ Braunstein, *supra* note 40, at 79.

¹⁰² *Id.* at 78–79; Kerig et al., *supra* note 83, at 775–76.

¹⁰³ Kerig et al., *supra* note 83, at 775–76.

¹⁰⁴ *Id.* at 785–87; Theresa S. Betancourt et al., *High Hopes, Grim Reality: Reintegration and the Education of Former Child Soldiers in Sierra Leone*, 52 COMP. EDUC. REV. 565, 567 (2008).

¹⁰⁵ Blattmann & Annan, *supra* note 90, at 893–95.

¹⁰⁶ See Anjana Madan et al., *Brief Report: Do Delinquency and Community Violence Exposure Explain Internalizing Problems in Early Adolescent Gang Members?*, 34 J. ADOLESC. 1093, 1094 (2011); see Dawn Delfin McDaniel, *Risk and Protective Factors Associated with Gang Affiliation Among High-Risk Youth: A Public Health Approach*, 18 INJ. PREVENTION 253, 257–58 (2012).

¹⁰⁷ United Nations Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) arts. 4.3, 6.5, June 8, 1977, 1125 U.N.T.S. 609. The United States is a signatory to Protocol II, but has never ratified it. *But cf. Q&A on LRA Commander Dominic Ongwen and the ICC*, HUMAN RIGHTS WATCH (Jan. 9, 2015), <http://www.hrw.org/news/2015/01/09/qa-lra-commander-dominic-ongwen-and-icc>, and Gregory Warner, *A Former Child Soldier Will Stand Trial In The Hague For War Crimes*, NPR (Jan. 23, 2015, 4:35 PM), <http://www.npr.org/2015/01/23/379419891/international-criminal-court-to-try-former-child-soldier-with-war-crimes> (both describing the January 2015 and anticipated criminal trial of former child soldier Dominic Ongwen, the only former child soldier ever indicted by the International Criminal Court). See also Braunstein, *supra* note 40, at 82–86 (discussing applicability of Geneva Conventions to the classification of gang warfare as cognizable belligerents).

control.¹⁰⁸ Some psychologists feel that having endured life as a child soldier is punishment enough for any acts the child committed while soldiering; indeed, these researchers have noted the far-ranging effects of being a child soldier that extend on into the next generation even in the absence of ongoing armed conflict.¹⁰⁹

A total freedom from prosecution for gang-related crimes that may have been compelled is unlikely to ever be employed in the United States. First, it runs counter to the core principle of personal accountability for personally-intended actions that our juvenile justice system addresses with an eye toward rehabilitation.¹¹⁰ Second, current trends toward restorative justice have led some courts to favor probation with services over detention dispositions for delinquency adjudication.¹¹¹ After all, a court cannot order supervision unless there is a recognized reason to do so, such as an adjudication of delinquency or a guilty plea. Because the child, though adjudicated delinquent with a record as such, remains free and has access to services (at least in theory), legislators may not see any reason to remove the adjudication from the picture. Third, the youths most often adjudicated for gang-related offenses represent minorities that continue to face discrimination either from law enforcement, the juvenile court system, or both.¹¹²

It is unlikely that any of these factors will change enough in the near future, and while it is far beyond the scope of this Article to resolve the racial element of gang-related juvenile adjudications, questions of culpability and means of providing services are more easily addressed. We have already looked at the issue of juvenile culpability in the context of gang activity.¹¹³ As to the issue of hanging the ability to monitor a minor's behavior and access to services on a delinquency adjudication, this author suggests creating a mandatory interim step that allows the child to interact with the juvenile court system enough to access services and receive supervision, but without the need to adjudicate and assign a disposition that would follow the child.¹¹⁴ This would provide an appropriate officer of the court to make a non-adversarial inquiry into the minor's situation, which the officer could then present to the court. The court could then either retain the case at the dispositional supervision level or permit it to move toward adjudication. Juvenile courts operate under an intention to execute dispositions in the least restrictive manner possible.¹¹⁵ This author suggests that a juvenile court record is unnecessarily restrictive in situations where the child is adjudicated solely or primarily to provide the court with the legal justification to provide supervision or care that is not being provided by a parent or guardian.

In addition to this interim level of court involvement, this author suggests provisional immunity from prosecution, contingent on the youth's cooperation with any pre-adjudication assessments or services. Rather than total immunity from prosecution, provisional immunity may have similar beneficial effects for the minor without completely upsetting the current system.

¹⁰⁸ Daniel Ryan, Case Comment, *International Law And Laws Of War And International Criminal Law — Prosecution Of Child Soldiers — United States v. Omar Ahmed Khadr, (Military Comm'n, Referred Apr. 24, 2004)*, 33 SUFFOLK TRANSNAT'L L. REV. 175, 177–82 (2010).

¹⁰⁹ Kerig et al., *supra* note 83, at 776; see Blattmann & Annan, *supra* note 90, at 883–84, 893–95.

¹¹⁰ Rightmer, *supra* note 18, at 5–10; Grace E. Shear, Note, *The Disregarding of the Rehabilitative Spirit of Juvenile Codes: Addressing Resentencing Hearings in Blended Sentencing Schemes*, 99 KY. L.J. 211, 213–18 (2010–2011).

¹¹¹ Judy C. Tsui, *Breaking Free of the Prison Paradigm: Integrating Restorative Justice Techniques into Chicago's Juvenile Justice System*, 104 J. CRIM. L. & CRIMINOLOGY 635, 641–53 (2014).

¹¹² See generally Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383 (2013) (regarding racial disparities in juvenile prosecutions).

¹¹³ See discussion *supra* Part II.

¹¹⁴ In Illinois, this would be to amend the statute regarding minors in need of authoritative intervention to include gang-involved minors receiving services and supervision. See 705 ILL. COMP. STAT. ANN. 405/3-1 (West 2015).

¹¹⁵ See, e.g., 705 ILL. COMP. STAT. ANN. 405/5-750 (West 2015) (“[T]he court may commit [the minor adjudicated delinquent] to the Department of Juvenile Justice, if it finds that . . . commitment to the Department of Juvenile Justice is the least restrictive alternative . . .”).

Provisional immunity would allow youths to avoid prosecution in exchange for immediate participation in services with the goal of eventual cooperation with authorities in any investigation into adult criminal activity the child has been involved with or, if that is not feasible, participating at a mentor level upon successful completion of a rehabilitation program.

Eliciting a minor's cooperation with a criminal investigation would require that any statements made by a child for the purpose of securing a conviction of an adult could not then be used against the child to secure the child's delinquent adjudication. It would also require that law enforcement have some mechanism in place to help protect these child witnesses from retaliation by their former gang. Attending to trafficking victims' needs, particularly their need to feel safe, improves the cooperation of victim witnesses in sex trafficking cases.¹¹⁶ This suggests that a similar tactic will encourage juvenile gang members to be more open to participating as witnesses in prosecution.

B. Services Targeted Toward Resolving Core Psychological and Environmental Issues that Constitute the Greatest Risk Factors for Gang Involvement

Post-conflict recovery for all child combatants is a complex issue, with psychological, economic, and educational components interwoven.¹¹⁷ Common services juveniles may receive during probation are behavior monitoring by a probation officer, life skills and job training, and psychiatric care.¹¹⁸ Juveniles with probation dispositions often must make restitution for their delinquent acts.¹¹⁹ School attendance is also required, but a court may not have the authority to order educational services that would be most appropriate for the child's particular needs.¹²⁰ These are essentially conditions or rules that the youth must adhere to in order to avoid detention.¹²¹ "Probation is not punishment,"¹²² but any disposition imposed after adjudication cannot avoid the appearance of punishment entirely. The programs former child soldiers participate in are not presented as a form of punishment or a pre-punishment alternative.¹²³ The focus is not only on psychologically specific trauma recovery, but also community support, which is more financially sustainable for a government and contributes to the individual's resilience.¹²⁴

The difference between discouraging delinquency and encouraging successful adulthood is not merely semantic. Ensuring that a child follows the probation requirements will certainly contribute to the child's chances of reaching adulthood as a functional individual, but that alone will not provide children steeped in violence with all they need to remain productive citizens. Specialized economic and social services are necessary to activate gang-involved children's

¹¹⁶ Derek Pennartz, *The Irony of the Land of the Free: How Texas is Cleaning Up Its Human Trafficking Problem*, 12 TEX. TECH ADMIN. L.J. 367, 376–80 (2011); Terry Cooney, *Anatomy of a Sex Trafficking Case*, 5 INTERCULTURAL HUM. RTS. L. REV. 313, 342–43 (2010); Hussein Sadruddin et al., *Human Trafficking in the United States: Expanding Victim Protection Beyond Prosecution Witnesses*, 16 STAN. L. & POL'Y REV. 379, 406–11 (2005).

¹¹⁷ Cecilia Wainryb & Patricia K. Kerig, *The Person and the Social Context: Future Directions for Research on the Traumatic Effects of Child Soldiering Around the World*, J. AGGRESSION, MALTREATMENT & TRAUMA, 887, 890–92 (2013).

¹¹⁸ See, e.g., N.C. GEN. STAT. ANN. § 7B-2504 (West 2015).

¹¹⁹ See, e.g., TEX. FAM. CODE ANN. § 59.006(a)(2) (West 2015).

¹²⁰ See, e.g., *Alternative Education Q & A*, IND. DEP'T OF EDUC. (Oct. 5, 2012), <http://www.doe.in.gov/sites/default/files/cte/alt-ed-q.pdf> ("If juvenile judges want to court order placement in an alternative education program, there should be communication with the alternative education administrator prior to that decision in order to ensure that it would be an appropriate placement and that the program was not full."); see also MISS. CODE ANN. § 43-21-621(1) (West 2015) (stating that a court may order a state-funded school to enroll a juvenile offender, but not if the juvenile has been adjudicated delinquent for having a weapon on school grounds or a crime of violence).

¹²¹ *In re J.K.*, 641 N.W.2d 617, 622–23 (Minn. Ct. App. 2002).

¹²² *In re J.G.*, 993 P.2d 1055, 1058 (Ariz. Ct. App. 1999).

¹²³ See Kerig et al., *supra* note 83, at 785–87 (discussing rehabilitative tactics involved in current studies). *But c.f.* Susan Tiefenbrun, *Child Soldiers, Slavery and the Trafficking of Children*, 31 FORDHAM INT'L L.J. 415, 433–34 (2008) (discussing prosecutions and executions of child soldiers in the late 1990s in Uganda and Colombia).

¹²⁴ Wainryb & Kerig, *supra* note 117, at 891.

psychological resilience to overcome their traumatic conflict experiences.¹²⁵ Research has recognized a strong correlation between prior trauma and gang involvement.¹²⁶ To refuse to address this trauma leaves these children in the same, or conceivably worse, place they were in when they originally joined the gang and therefore more likely to continue in gang involvement. The National Child Trauma Stress Network advocates using Trauma and Grief Component Therapy (“TGCT”) for adolescents, particularly to address the trauma of community violence.¹²⁷ Studies link TGCT with decreased Post-Traumatic Stress Disorder and improved school performance.¹²⁸ Trauma-focused cognitive behavior therapy (“TF-CBT”) is also a well-validated treatment available to trafficking victims.¹²⁹

The Illinois Department of Juvenile Justice (the “IDJJ”) provides one example of preventing juvenile recidivism. The IDJJ has implemented a new approach to reintegrating detained juveniles into their communities to prevent youth from re-entering detention for merely violating a probation condition and not due to a new delinquency adjudication.¹³⁰ Rather than being monitored by traditional probation officers, members of the pilot program are under the supervision of aftercare specialists who perform the essential functions of probation officers but have smaller caseloads to allow for more attention per case.¹³¹ Rather than merely responding to the surface problem of a youth’s noncompliance with probation conditions, they will also investigate and address the underlying reasons for the noncompliance.¹³² Confidence in a minor’s own coping skills is a significant protective factor that negatively affects gang affiliation.¹³³ A similar tactic may be beneficial to getting youths to leave gangs and address the underlying risk factors, such as the immature reasoning capacity of youth and untreated trauma, which would continue to put them at risk of exploitation.

V. CONCLUSION

Whether juvenile gang members are victims of labor trafficking is a fact-intensive analysis that must involve consideration of the child’s behavior and circumstance in the context of his or her cognitive development and exposure to community violence. It is, as the United Kingdom Court of Appeal determined, a question that must be asked of each child and a determination made individually. This is especially so considering the U.S. Supreme Court case law that has continued to hold that a juvenile’s developmental capacity for criminal culpability is determined by analyzing that development and not by arbitrary age cut-offs. These children bear strong resemblances to domestic sex trafficking victims and also to international child soldiers. Drawing from the research on these populations, it is not hard to imagine that at least some young gang members are labor trafficking victims. Early intervention can interrupt the cycle of

¹²⁵ See Kerig et al, *supra* note 83, at 785–87.

¹²⁶ *Id.* at 779; Carlos A. Cuevas et al., *Children’s Exposure to Violence and the Intersection Between Delinquency and Victimization*, JUVENILE JUSTICE BULLETIN 7 (Oct. 7, 2013), <http://www.ojjdp.gov/pubs/240555.pdf> (recognizing strong link between high levels of victimization and high levels of delinquency).

¹²⁷ Christopher Layne & Bill Saltzman, *TGCT: Trauma and Grief Component Therapy for Adolescents*, NAT’L CHILD TRAUMA STRESS NETWORK, 2 (Aug. 2008), http://www.nctsn.org/nctsn_assets/pdfs/promising_practices/TGCT_General.pdf.

¹²⁸ *Id.* at 6.

¹²⁹ See Judy Bass et al., *Implementing Trauma Focused Behavioral Therapy (TF-CBT) Among Formerly Trafficked Sexually Exploited and Sexually Abused Girls in Cambodia: A Feasibility Study*, CHILD RECOVERY & REINTEGRATION NETWORK (2011), http://www.childrecovery.info/fileadmin/pdf/TF-CBT_Feasibility_Report_Cambodia_2011.pdf.

¹³⁰ *Executive Summary: 2011 Year-End Assessment of DJJ*, JOHN HOWARD ASS’N OF ILL., 17–19 (2011), http://thejha.org/sites/default/files/2011_DJJ_Assessment_.pdf.

¹³¹ *Id.*

¹³² *Id.*

¹³³ McDaniel, *supra* note 106, at 256.

victimization and save vulnerable children from misuse at the hands of traumatized and traumatizing adults, thereby preventing additional trauma among these youth. There is a way to logically read these children's struggles in the context of labor trafficking, and active anti-trafficking laws provide means of intervening in this context. It has the potential to further weaken organized crime and protect children, and so it is an approach that deserves more in-field exploration, both in terms of research that needs to be done and in terms of legislation and legal practice.