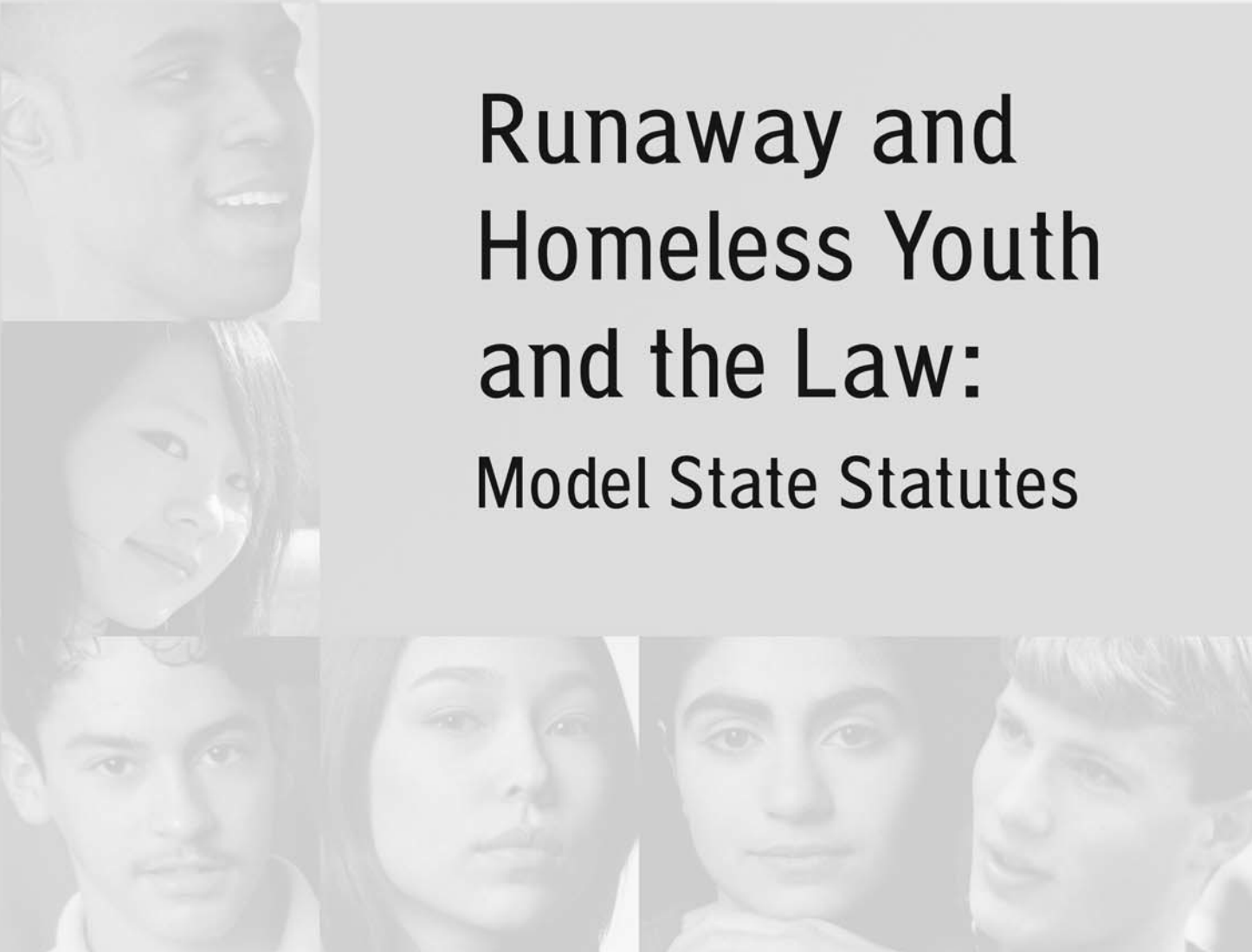




Runaway and Homeless Youth and the Law: Model State Statutes

ABA Commission on Homelessness and Poverty
AMERICAN BAR ASSOCIATION

nn4y
The National Network for Youth



Runaway and Homeless Youth and the Law: Model State Statutes

Edited by
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 **Commission on
Homelessness and Poverty**
AMERICAN BAR ASSOCIATION

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INTRODUCTION

It is easy to forget about homeless youth. Often on the run from parents and from systems which have failed them, these youth know all too well that few are eager to take responsibility for them.

Since the development of laws which specifically address children and youth, the specific needs of *homeless* youth have rarely been taken into account. Even when homeless youth come into contact with traditional youth systems, such as the foster care or juvenile justice system, laws still have not addressed the particular circumstances of their lives. Recognizing this historical gap, the American Bar Association Commission on Homelessness and Poverty and the National Network for Youth (NN4Y) began planning for the first National Conference on Homeless Youth and the Law. The fact that no such conference had ever been held underscored the fact that homeless youth had long been overlooked by our state policymakers.

For two days in June 2008 over 160 invited individuals from throughout the country gathered at the University of Washington School of Law in Seattle, Washington, to work on drafting model state laws to address the needs of these youth. Prior to the conference, a number of experts created drafts of model laws in 11 areas. The experts circulated these drafts, along with an issue brief and a hypothetical (tools to help guide the discussion) to the attendees. During the conference, the attendees and the experts spent two days working through the drafts to revise and refine and worked to ensure that they took into account regional best practices. The fact that the conference attendees included lawyers, service providers, federal and state policymakers, advocates, formerly homeless youth, and others, certainly assisted in incorporating broad perspectives into the model laws. Recognizing the import of this project, philanthropic organizations such as Casey Family Programs, the Bill & Melinda Gates Foundation, the Center for Children and Youth Justice, Family and Youth Services Bureau, Administration on Children, Youth, and Families, Administration for Children and Families, U.S. Department of Health and Human Services and law firms, including Garvey Schubert Barer, Ron and Janice Pery of the Pery Law Group, and Foster Pepper graciously contributed funds to support the conference and this publication. Generous funding and in-kind donations were also provided by the University of Washington School of Law, the William H. Gates Public Service Law Program, and the Seattle University School of Law.

After the conference, the experts revised their model laws based on the sessions. In January, 2009, at NN4Y's Annual Symposium in Washington D.C., many of the model laws were again presented. The experts solicited the input of the attendees and revised their models once again based on that input. The models went through two rounds of edits following the Symposium.

The models are unquestionably well-thought out and have been subject to significant review. The models reflect the laws that the experts thought would be best implemented in the states. The models are not individually endorsed by the American Bar Association, but are presented as a way to hopefully ensure that policymakers are not only considering homeless youth when they craft laws, but are taking into account the breadth of the issues that such laws should address.

It is our hope that this publication will ultimately encourage and equip states to address the needs of homeless youth in a way that is comprehensive and helpful, not narrow and punitive. A positive approach is good for all of us, and is generally fiscally responsible. But most importantly, the youth we work with deserve no less than to be assisted by laws that touch their lives, as opposed to being driven deeper into lives of hopelessness and despair.

Casey Trupin

Chair
ABA Commission on
Homelessness and Poverty

Victoria Wagner

President and Chief Executive Officer
National Network for Youth

EDUCATION¹



For homeless youth, schools are vexing problems with which youth struggle instead of harbors of safety, encouragement and growth.² Homeless youth desire to succeed in education but often feel isolated and marginalized by schools.³ Many jurisdictions offer geographically defined schools, and access to “good” schools is often denied to youth with issues of school instability, previous poor school performance, discipline concerns, poverty or displacement.

Borders of school districts are seen by municipalities as crucial for many reasons and schools seem eager to advise when there is a living arrangement change that students are no longer “residents” and must start anew somewhere else. Displacement from school disrupts valuable connections and makes youth feel as though they have little or no value as a member of the school. A readiness to suspend, expel and discipline adolescents with behavior problems defines many high school systems, particularly those in urban settings.⁴ Response to truancy is delayed and punitive. Risk-taking behaviors which are typical of adolescence but lead to contact with law enforcement foster feelings of shame and humiliation that can encourage criminal and defiant behavior in homeless youth.⁵ Supportive interventions and even basic mental health services which could prevent and obviate these problems are simply unavailable to most of the students who need it at the time they need it.⁶

¹ Laurene Heybach, Director, The Law Project of the Chicago Coalition for the Homeless, Chicago, IL; Debbie Staub, Education Advisor, Casey Family Programs, Seattle, WA.

² Paul Toro et al., *Homeless Youth in the United States: Recent Research Findings and Intervention Approaches 6-5* (2007), available at <http://www.huduser.org/publications/pdf/p6.pdf> (last visited March 29, 2009).

³ See, e.g., Timothy P. Johnson and Ingrid Graf, Survey Research Laboratory, University of Illinois at Chicago, *Unaccompanied Homeless Youth in Illinois* 33 (noting 91% of homeless youth not in school planned to return at sometime in the future) (2005), available at <http://www.srl.uic.edu/Publist/StdyRpts/youthreport.pdf> (last visited March 29, 2009).

⁴ Elizabeth Sullivan, National Economic and Social Rights Initiative, *Deprived of Dignity: Degrading treatment and abusive discipline in New York City and Los Angeles Public Schools* (2007), available at http://www.nesri.org/programs/Deprived_of_Dignity_07.pdf (last visited March 29, 2009).

⁵ John Hagan and Bill McCarthy, “Homeless Youth and the Perilous Passage to Adulthood”, *On Your Own without a Net: The Transition to Adulthood for Vulnerable Populations* (2005), available at www.nhchc.org/homelessyouthperilouspassage.pdf (last visited March 29, 2009).

⁶ Toro, *supra* at 6-6 (citing studies and noting the elevated risk for mental health problems for homeless youth, including suicide and post traumatic stress disorder).

Once a youth has “exited” the high school system, the chances for return are restricted both by compulsory education laws which have an age cut-off or other limits to re-entry as well as a youth’s sense of disconnect and fear of returning or failing as the youth grows older. State law should make re-entry to secondary education services available through age 24 and should offer several high quality options.

There is also a disconnect for youth between going to school from day-to-day and knowing what it takes to gain access to college or employment.⁷ Schools should implement a meaningful planning process for homeless youth that offers guidance and intervention which, under other circumstances, would be provided by an involved parent. Financial resources remain a formidable obstacle to homeless youth accessing college. In addition, many homeless youth continue to struggle with the lack of housing and related issues while attending college and especially during periods of time when school is not in session.

Not every problem is solved in the language proposed, but many important problems are effectively addressed. In each jurisdiction, varying opportunities are presented to improve the public education system. Resources, skill and the political will to make these changes are not constant, but creating a vision of what a good educational system for homeless youth looks like is a necessary first step.

Model State Constitutional Provision—Right to Education

A fundamental right of the People of this State is the educational development of all of this State’s children and youth from birth through the completion of a secondary education. Such right is accorded regardless of race, ethnicity, gender, sex, sexual orientation, gender identity, parental status, economic or housing status, physical and mental disabilities or other impairments. The State shall provide for an efficient system of high quality public educational institutions and services tailored to the needs of its students, including post-secondary education, to ensure full development of the capabilities of the people of this State. Education and services in public schools through the secondary level shall be free and shall be provided in respect of the dignity of the students and families served.

Model State Statute—The Equitable Education Act

CHAPTER I. SHORT TITLE; LEGISLATIVE FINDINGS; PURPOSE; DEFINITIONS

Section 101. Short Title.

This Act may be known as the Equitable Education Act.

⁷ William G. Tierney *et al.*, USC Center for Higher Education Policy Analysis, *Transitions to Adulthood for Homeless Adolescents: Education and Public Policy* 21 (2008), available at www.usc.edu/dept/cheпа/pdf/Homeless_Youth_final.pdf (last visited March 29, 2009).

Section 102. Legislative Findings.

The Legislature of this State hereby finds that no youth in the 21st century can attain economic, civic or social fulfillment without an education that includes at least some successful post-secondary education. Education is a powerful determinant of quality of life in terms of economic, social, civic, and personal benefits. Every youth possesses dignity and inherent, legally-established human rights and has the ability to achieve no matter how impoverished, impaired or how dire a life circumstance. Positive school experiences enhance the well-being of students, help facilitate successful transitions to adulthood and provide young people with the ability to contribute to society in meaningful ways. The high incidence of trauma, sexual exploitation and violence to which youth experiencing housing instability in our State may be exposed or subjected requires particular attention by our schools and requires timely, comprehensive and appropriate supportive services.

Section 103. Purpose.

Accordingly, it is the purpose of this Equitable Education Act to ensure that education in our State reflects those realities, for all students including those as vulnerable as those experiencing housing instability. Further, it is the policy of this State that each youth of this State be encouraged and supported to successfully achieve a quality secondary education. All provisions hereinafter shall be applied and interpreted consistent with these principles and purposes.

Section 104. Definitions.

In this act, unless a different meaning plainly is required:

1. "Services" includes
 - a. A full range of competent mental health-related services including counseling, therapy, family therapy, substance abuse services, sexual assault treatment services, psychiatric or psychological assessment and services;
 - b. Vocational testing, counseling and training;
 - c. Tutoring or other academic support, including sufficient support to enable a student who lacks necessary credits to earn such credits or complete credited courses;
 - d. Referral for case management to assist the student and his or her family;
 - e. Referral for health and health-related services for prevention, diagnosis and treatment;
 - f. Linkage to housing and employment, as appropriate, throughout the calendar year; and
 - g. Other services, as necessary, including legal services to reduce barriers to the student's enrollment, attendance or success in school including services for pregnant and parenting students.
-

2. “Youth Experiencing Housing Instability” means a child or youth age 24 or younger whether accompanied by an adult or unaccompanied who lacks a fixed, regular and adequate nighttime residence and includes
- a. Children and youth who share the housing of other persons due to loss of housing, economic or other hardship; are living in motels, hotels, trailer parks or camp grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; are runaways or turned away by their parents or legal guardians, or those students in foster care experiencing placement change or recent family reunification;
 - b. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;
 - c. Children and youth living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
 - d. Migratory children and youth who are living in circumstances similar to (a) through (c).

COMMENT. (2) “Experiencing housing instability” is an alternative, less stigmatizing definition of “homeless”. The categories described in this subsection are used by the McKinney-Vento Homeless Assistance Act.⁸ Here, youth “awaiting foster care placement” (now considered homeless) is broadened to include “and those students in foster care experiencing placement change or recent family reunification.”

CHAPTER II. ESTABLISHMENT OF A QUALITY EQUITABLE PUBLIC SCHOOL SYSTEM

Section 201. Right to Continuous Educational Services.

1. High quality public education and the services necessary to support such education, achievement and success shall be provided to each child and youth from birth through the secondary level in an integrated setting. No child or youth shall be denied access to high quality education or services, including during any period of suspension or expulsion from a mainstream school environment. Students unable to attend school, particularly during periods of long-term illness, temporary disability, detention, or hospitalization, shall be provided alternative but equivalent instruction where they are located.
2. Students experiencing housing instability are a high priority for school engagement. It is the policy of this State that, whenever possible, school personnel skilled in working with at-risk youth be the first response to inappropriate student behavior. As necessary, timely, comprehensive and appropriate supportive services, including a full range of mental health services and referral and linkage to appropriate housing, shall

⁸ 42 U.S.C. § 11434a(2)(2002).

be provided. Accordingly, no student may be threatened with disciplinary action, including suspension or expulsion from school for behavior which occurs prior to the provision of all appropriate services and until all reasonable efforts have been made to address problematic behaviors.

3. Any disciplinary policies or practices adopted by a school must be consistent with and reflective of an understanding of adolescent development and needs and must allow for consideration of the circumstances affecting the youth. No disciplinary rules imposed may contain zero-tolerance policies or practices.
4. In any disciplinary proceeding, a youth experiencing housing instability shall be provided legal representation at no cost by the federally funded civil legal service program serving the school's geographic community. The legal service program shall be compensated by the state for the representation.

Section 202. Immediate and Continuous Enrollment for Students Experiencing Housing Instability.

1. In accordance with the provisions set forth in this Act, all secondary schools throughout this State that receive state, federal or local assistance shall develop the capacity to, and shall immediately enroll and serve any youth found within the State who:
 - a. Is experiencing housing instability;
 - b. Seeks admission after completion of an elementary education or its equivalent; and
 - c. Actually resides within a reasonable distance of the school, not to exceed fifty (50) miles.Any such student shall be afforded the opportunity to earn and complete his or her high school degree.
2. Transportation assistance shall be provided when necessary for a student to attend school and school-related extracurricular activities or when such transportation will reduce absenteeism and tardiness. Such transportation may include, as needed, traditional school bus transportation, use of public transportation or private transportation services, and transportation secured through coordination agreements with other agencies, school districts or social service providers.
3. No student experiencing housing instability may be denied access to any sport, club, program or activity affiliated with the school for which he or she is otherwise eligible for failure to meet any durational residency requirement.
4. No school employee shall refuse or delay enrollment to any student experiencing housing instability.

COMMENT. Frequent school changes are associated with an increased risk of failing a grade in school and of repeated behavior problems.⁹ A University of

⁹ D. Wood et al., *Impact of family relocation on children's growth, development, school function, and behavior*, 270 J. Am. Med. Assoc. 1134-1338 (1993).

Chicago study found that by the sixth grade, students who had changed school four or more times had lost approximately one year of educational growth.¹⁰

Section 203. Professional Development and Staff Requirements.

Each public school throughout the State shall assign a trained, skilled employee whose full time position shall be dedicated to ensuring high quality service delivery to students experiencing housing instability. This employee shall:

1. Train all teachers, social workers, counselors and administrative staff to understand the requirements of this Act and to sensitively identify and serve youth and their families experiencing housing instability;
2. Coordinate services within the school system and in the community for youth experiencing housing instability;
3. Collect and report data on the numbers of such youth in the community, the numbers served by the school, and the needs of such youth including academic, health, social, housing and economic needs; and
4. Recommend the hiring of such other staff as necessary to enable the school to competently fulfill the requirements of this Act.

Section 204. Student Records.

1. All secondary schools throughout the state shall maintain permanent and temporary student records in an electronic format readily transmittable to any other educational institution and shall respond to any authorized request for such information from another school district within 24 hours. Information contained in such records shall be kept confidential and released only upon signed authorization by the youth or parent or guardian of the youth.
2. No school may deny admission to a youth experiencing housing instability for failure to produce any records normally required for enrollment.
3. After admission, it shall be the responsibility of the school to obtain prior school records, birth certificate, immunization records and any other documentation needed to ensure appropriate education and services to such youth.

Section 205. Educational Advocacy for Students.

1. Whenever a youth experiencing housing instability is admitted to a secondary school covered by this Act, he or she shall receive the services of an educational advocate to assist him or her in identifying and achieving academic and vocational goals, including

¹⁰ David Kerbow, Center for Research on the Education of Children Placed at Risk, *Patterns of urban student mobility and local school reform*, Technical Report No. 5 (1996), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/14/d2/ca.pdf (last visited March 29, 2009).

acquiring the appropriate courses, transferring credit from previously attended schools, receiving appropriate services including special education services and planning for college, employment or other post-secondary education.

2. The advocate may be an employee of the school assigned such responsibility, a volunteer selected by the youth, or an employee of a social service provider selected by the youth. No person may act as an educational advocate without the express written consent of the student and unless trained to do so pursuant to regulations adopted in accordance with this Act.
3. Primary responsibility for providing the student with appropriate courses, credits, services and post-secondary planning rests with the faculty and administration of the school. The responsibilities of the advocate include receiving training, communicating weekly with the student and with administrative and teaching staff about the attendance, progress and needs of the student, and providing assistance to the student in decision-making.
4. The advocate or the student may request a case study evaluation to determine whether the student is eligible for special education instruction and services. Such evaluation must be completed no later than 30 calendar days after the request.

Section 206. Special Education Needs.

1. For secondary students experiencing housing instability receiving special education services under the Individuals with Disabilities Education Act (“IDEA”)¹¹, their Individualized Education Plan (“IEP”) transition plan must include a statement of how the student’s subsistence needs will be addressed as well as housing options for the student and identification of appropriate resources for affordable housing.
2. For youth experiencing housing instability who are receiving services under IDEA and who do not have an identified education decision-maker (e.g., biological, adoptive or foster parent), the school district shall appoint a qualified surrogate parent for the student. Furthermore, the juvenile court may appoint a qualified surrogate parent for a student who is in the custody of a child welfare agency but does not have a foster parent who is permitted by state law to act as an IDEA parent.
3. Every child must have a named individual who can advocate and make decisions for the child in the special education system.

Section 207. Waiver of Fees.

All fees shall be waived for any student experiencing housing instability, including but not limited to fees related to extracurricular activities, school social events, summer school or other academic opportunities, college admission examinations and the cost of college applications.

¹¹ 20 U.S.C. § 1400 *et seq.*

Section 208. Students in Foster Care.

1. When a youth experiencing housing instability is also in the care of the child welfare agency, the agency shall retain primary responsibility for ensuring the youth's daily attendance at school, timely access to all appropriate education and related services, including timely advocacy for special education, transportation, records transmission and other needed services.
2. The child welfare agency and the school shall develop cooperation agreements and shall cooperate and facilitate expeditious and comprehensive services for the youth.

Section 209. Alternative School Options.

1. Prior to age twenty-five, any youth who has completed elementary school or its equivalent is eligible to receive and complete a free appropriate public education through the secondary level. Youth older than the age typical for students at their credit level shall be provided an assessment to determine the most appropriate setting in which to receive instruction and services.
2. In cooperation with the student, a plan for completion of secondary education shall be devised and implemented.
3. Alternative school options shown to be effective in reducing barriers to the academic success of older youth are appropriate, provided such services or settings do not segregate and do offer a fully equivalent educational experience.
4. In appropriate circumstances, whole or partial course credit may be awarded by a school to any student in recognition of experiential learning provided that such credit is approved by the State Board of Education.

Section 210. Civil Action to Enforce the Equitable Education Act.

1. A student or parent of a student experiencing housing instability may bring a civil action to enforce any educational right afforded to such student under the Constitution or laws of this State.
2. In any civil action, the court may award any appropriate relief. A prevailing student or parent in such action is entitled to seek fees and costs, including expert costs, from the defendant.

Section 211. Postsecondary Educational Opportunities.

1. In order to receive funding from this State, an institution for higher education must submit a plan for approval by the State Board of Higher Education which sets forth how such institution shall promote and support the admission, education and maintenance
-

of students found within the State who are graduates of this State's secondary schools and are experiencing housing instability.

2. Such plan shall include:

- a. Provision for streamlined and flexible admission procedures;
- b. Financial support for the student and the program;
- c. Housing support;
- d. Living expenses; and
- e. Assistance to be provided in accessing federal financial aid.

3. The plan must also include how the institution will publicize the availability and types of support it will provide to such students throughout schools in this State and in other venues.

Section 212. *Funding.*

The costs of implementation of this Act, including transportation services, shall be fully funded by the State and shall be specifically appropriated annually by the State Legislature.

Section 213. *Coordination.*

It is the intent of the State Legislature that all State agencies serving children, youth and families cooperate and collaborate with schools throughout the State to implement the goals of this Act. The State shall, therefore, establish regional consortiums of such agencies throughout the State which shall meet no less than quarterly to devise and implement a plan to ensure that resources are shared and coordinated to achieve the goals of this Act.

STATUS OFFENSES¹²



A status offender is a juvenile charged with or adjudicated for conduct that would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.¹³ The most common examples of status offenses are chronic or persistent truancy, running away, being ungovernable or incorrigible, violating curfew laws, or possessing alcohol or tobacco. In 2007, over 400,000 youth were arrested or held in limited custody by police because of a status offense. This number represented approximately eighteen percent of all juvenile arrests that year.¹⁴

The most recent national estimates regarding all status offense court petitions were collected in the mid-1990s. In 1996, approximately 162,000 status offense cases were formally judicially processed. From 1985 to 2004, the total number of court petitioned juvenile status offense cases doubled.¹⁵ The 2003 Census of Juveniles in Residential Placement indicates that on any given day that year, approximately 4,800 status offenders were in the custody of a juvenile justice facility, accounting for five percent of juveniles in residential placement.¹⁶ When including juvenile offenders in residential placement due to a technical violation (typically a violation of a valid court order), the number increases to nearly 19,000 (or twenty percent of youth in custody).¹⁷

The majority of states have a legislative category for status offenders, often referred to as children or juveniles in need of supervision, services, or care. However, a minority of state laws designate some or all status offenders as dependent or neglected children.

¹² Mishaela Durán, M.Ed., Director of Government Affairs, PTA National Office of Programs & Public Policy, Washington, DC; Jessica Kendall, Assistant Staff Director, American Bar Association Center on Children and the Law, Washington, DC.

¹³ 28 C.F.R. § 31.304(h) (West 2006).

¹⁴ U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *OJJDP Statistical Briefing Book* (2007), available at <http://ojjdp.ncjrs.gov/ojstatbb/crime/qa05101.asp?qaDate=2007&text> (last visited March 29, 2009).

¹⁵ Charles Puzzanchera, U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, *Trends in Justice System's Responses to Status Offending: OJJDP Briefing Paper* (2007), available at http://www.trc.eku.edu/jj/docs/conf33/status_briefingpaper.pdf (last visited March 29, 2009).

¹⁶ National Center for Juvenile Justice, *Census of Juveniles in Residential Placement Databook* (defining residential placement as any publicly or privately operated facility, excluding those exclusively for mental health or drug treatment)(2005), available at <http://ojjdp.ncjrs.org/ojstatbb/Cjrp> (last visited March 29, 2009).

¹⁷ *Id.*

There are significant variations in how states approach status offense cases, despite a commonly expressed goal—to preserve families, ensure the safety of the public, and prevent youth from entering the delinquency or criminal system. Some state legislatures have increased the upper age by which youth may be brought into the status offense system, others have increased the use of out-of-home placements, including secure detention for alleged status offenders, while several states have reduced involvement in a more formal court process by emphasizing the provision of community-based and in-home services for families and youth prior to any court involvement.

Each state is also different in the penalties a court may impose on a juvenile who has been found to be a status offender. Many states allow courts to impose sanctions on youth such as suspending their driver's license or requiring them to pay monetary restitution. Most states allow courts to place youth out of their home in relative or substitute care (which may include foster or group home settings) and most allow for the provision of services to youth, which may include education services, mental health treatment or counseling. However, even in those states that do offer community-based services, few fully target the specific needs of status offenders and their families or offer a more robust continuum of care to prevent youth from falling deeper into the juvenile justice system. A majority of states also allow courts to place youth in a secure or locked facility if they violate a valid court order. Finally, some states allow courts to order parents to comply with certain services, such as counseling or parenting, which may help alleviate the causes of a youth's behaviors.

There are numerous possible causes of status offense behaviors. These noncriminal behaviors are often caused by poor family functioning or dynamics, school problems, youth characteristics or community problems.¹⁸ For example, research indicates that risk factors for potential truancy include domestic violence, academic problems, substance abuse, lack of parental involvement in education, and chronic health problems. Research also indicates that many youth who run away were physically or sexually abused at home in the year prior to their runaway episode. Family dysfunction and drug use in the company of the child are also endangerment factors for youth who run away.¹⁹

Moreover, research has clearly linked status offense behavior to later delinquency. For example, truancy accounts for the majority of status offense cases that come to the attention of juvenile courts and continues to be a major problem that negatively influences the future of our youth. Truancy has been clearly identified as one of the strongest early warning signs

¹⁸ National Center for School Engagement, *What is Truancy?*, available at <http://www.schoolengagement.org/TruancyPreventionRegistry/Admin/Resources/Resources/40.pdf> (last visited March 29, 2009).

¹⁹ Heather Hammer et al., *NISMART: National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children, Runaway/Thrownaway Children: National Estimates and Characteristics* (2002), available at <http://www.ncjrs.gov/pdffiles1/ojdp/196469.pdf> (last visited March 29, 2009).

that youth are headed for potential delinquency or educational failure. A twenty year longitudinal study found that truant youth were eight times as likely to become delinquent as non-truant youth.²⁰

Research also demonstrates that placing youth in secure detention has a profoundly negative impact on their physical and mental well-being. Youth are often left to languish in overcrowded, understaffed facilities that breed violence and neglect. Studies conducted by the Annie E. Casey Foundation and state agencies have shown that status offenders and non-violent offenders are often incarcerated longer than youth with more severe offenses.²¹ The Indiana Department of Corrections reported that in fiscal year 2003, the average length of stay for juvenile status offenders was 229 days, ranging from a low of 35 days to a high of 964 days.

In addition, the commingling of non-criminal youth with delinquent youth results in increased delinquent behaviors among non-criminal youth, increasing the odds of recidivism and further compromising public safety. Studies have shown that prior incarceration was a greater predictor of recidivism than gang membership, carrying a weapon, or poor parental relationships.²² Researchers at the Oregon Social Learning Center found that congregating youth together resulted in “peer deviancy training”²³ whereby youth learn delinquent behaviors from youth with more serious offenses resulting in higher rates of future delinquency, violence, school difficulties, substance use, and other poor outcomes.

Secure detention does not help resolve the issues that led to the status offense. In fact, incarcerating youth who commit status offenses further impedes school engagement and family functioning. A Department of Education study showed that forty-three percent of incarcerated youth receiving remedial education services in confinement did not return to school after release, and another sixteen percent enrolled in schools dropped out after only five months.²⁴ Secure confinement severely limits a youth’s contact with his family, creating significant barriers to resolving family conflict and to preventing youth from running away in the future. Incarcerating status offenders often results in future runaway episodes as well as school disengagement and truancy.

Despite the causes of status offense behavior and the negative outcomes associated with placing status offenders in secure detention, many state and county status offense systems lack programs, services, or resources to help youth and their families in critical need of

²⁰ K. Henry and D. Huizinga, “Effect of Truancy on Onset of Drug Use and Delinquency”, Presented at Annual Meeting of American Society of Criminology (November 2005).

²¹ Casey Strategic Consulting Group, Annie E. Casey Foundation, *Analysis of the Committed Youth Population at Oak Hill Youth Center Between July 1, 2004 and June 30, 2005* (2005).

²² Barry Holman and Jason Zeidenberg, The Justice Policy Institute, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and other Secure Facilities* (2007), available at www.justicepolicy.org/images/upload/06-11_REP_DangersOfDetention_JJ.pdf (last visited March 29, 2009).

²³ *Id.*

²⁴ *Id.*

assistance. Judges sometimes have few options but to remove the child from the home, and if he violates a court order, to place him in secure detention when posing no threat to public safety and being in serious need of treatment or services. This leads to negative outcomes, including victimization, increased family tension, reduced involvement in school, and an increased likelihood of becoming more deeply involved in the juvenile justice and criminal justice system.

In 2002, New York State contracted with Vera Institute of Justice's Center on Youth Justice to help the State and its counties improve systems and services for status offenders and their families.²⁵ Vera provided technical assistance and strategic planning support to twenty-three New York counties. As a result, several counties took steps to refine their intake processes to incorporate more immediate crisis intervention, develop programmatic alternatives to non-secure detention and foster care placement, and provide more supportive services to status offenders and their families in lieu of court intervention. Momentum generated from these local reforms prompted the state to pass amendments to New York's Family Court Act in 2005 that enhance diversion requirements for status offenders and narrow the circumstances under which status offenders may lawfully be detained.²⁶

The excerpts below are intended neither to provide states with the exact language they should use to develop state law on juvenile status offenses nor to represent a comprehensive statute on handling these matters. Rather, they suggest some concepts for how jurisdictions can take a more family-focused approach to help families and children at risk.

Model State Statute—Juvenile Status Offenses

Section 101. Legislative Intent; Definition of Populations Served.

1. It is the intent of the Legislature to address the problems of families in need of assistance by providing them with a broad spectrum of voluntary services designed to preserve the family, emphasize parental responsibility for the behavior of their children and prevent children from entering the juvenile justice and child welfare systems. Services shall be provided on a continuum of increasing intensity and participation by the parent and child. Judicial intervention to resolve the problems and conflicts that exist within a family will be limited to situations in which a resolution to the problem or conflict has not been achieved through voluntary services, treatment, and family intervention after all available less restrictive resources have been exhausted.

²⁵ For more information, visit <http://www.vera.org/cyj/cyj.html>.

²⁶ NY Ann. Fam. Court Act § 712 *et. seq.* Other resources, such as the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI), provide states and communities with tools to reduce reliance on secure confinement and provide appropriate community-based detention alternatives. There are approximately 75 JDAI sites in 19 states and the District of Columbia. For more information, visit <http://www.aecf.org/MajorInitiatives/JuvenileDetentionAlternativesInitiative.aspx>.

2. A “family in need of assistance” is one in which a child under the age of eighteen is a child in need of assistance.
3. A “child in need of assistance” is one who is chronically truant, is beyond the lawful control of a parent or other person legally responsible for the child’s care, who runs away without good cause, or who engages in acts that would not be an offense but for their status as a child.

COMMENT.(3) States should define in this statute or elsewhere how many unexcused absences constitute truancy.

Section 102. Process; Services.

1. All reports or complaints alleging a family is in need of assistance shall be directed to the designated local social service agency. A parent or legal custodian, child, local school district or law enforcement may make a report or complaint.
 2. If a law enforcement officer reasonably determines that a child is in immediate physical danger, the officer may take the child into limited custody pursuant to the following limitations:
 - a. The officer must immediately contact the local social service agency responsible for handling families in need of assistance matters.
 - b. If the child consents, the officer shall transport the child to his home or other appropriate residence.
 - c. If the child does not consent, the officer must coordinate with the local social service agency to identify a temporary nonsecure placement for the child. The officer must inform the child that they have a right not to return home. Under no circumstances may the child be placed in a secure detention or correctional facility.
 - d. Limited custody shall not extend beyond six hours from the time of initial contact.
 3. The local social service agency shall respond immediately to all families in need of assistance referrals. If a family meets the criteria for being a “family in need of assistance” the social service agency shall immediately provide case management and other services to the child and family. If during the intake process the social service agency has reasonable grounds to believe that the child has been abandoned, abused, or neglected, it shall proceed pursuant to the requirements outlined in [the relevant abuse/neglect statute].
 4. Services and treatment to families in need of assistance shall be delivered by voluntary agreement of the parent or guardian and child after the family is informed of the process and their rights. A broad spectrum of services should be provided that are reasonably designed to assist the family and may include, but not be limited to, nonresidential and temporary residential services, such as:
 - a. Intensive crisis counseling;
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- b. Mental health treatment;
 - c. Family and individual counseling;
 - d. Parenting skills;
 - e. Respite care;
 - f. Special education services;
 - g. Tutoring;
 - h. Vocational and job training services;
 - i. Substance abuse treatment;
 - j. Housing assistance; and
 - k. Transportation to and from other services.
1. If the family refuses to engage in services offered, the local social services agency may hold a team meeting with the immediate family and service providers to review the case and discuss the development and implementation of a case plan. A case manager will assist the family in implementing the plan. The case manager will work with the family and review the progress towards achieving the objectives of the plan.

COMMENT.(2)(c) For an example of statutes that provide effective alternatives to secure detention, see Fl. Stat. Ann. § 984.04 et. seq. and NY Ann. Fam. Court Act § 712 et. seq.

Section 103. Family In Need of Services Petition; Procedural Safeguards.

1. A family in need of assistance petition can only be filed if the local social service agency reasonably believes that the family requires additional oversight and assistance from the court and has either refused services or is unable to successfully complete the case plan.
 2. At any time after the filing of a family in need of assistance petition, the court may hold the petition in abeyance pending the provision of additional services or treatment to the family. If the court is satisfied that these services or treatments are meeting or have met the family's needs, the court may dismiss the petition sua sponte.
 3. If the court finds that the services or treatment were not successful in helping the family, the court shall direct the next appropriate disposition and order the parent, guardian and/or child to participate in additional services, a community service program, or order the parent or guardian to pay a fine.
 4. The court may only place a child under the temporary supervision and custody of the local social service agency after a hearing, at which the child is represented by legal counsel, during which the court determines that all less restrictive community-based interventions and placements have been attempted, exhausted and determined to have no substantial likelihood of success.
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5. If the court determines that the child is in imminent danger of death or serious bodily harm, as determined by a competent mental health or medical professional, the child shall not be placed in a secure correctional facility, but may be placed in an appropriate mental health, substance abuse or other residential treatment facility for a time determined by a competent mental health or medical professional, subject to later review by the court.

Section 104. Prohibition of Use of Secure Detention for Juvenile Status Offenders. Under no circumstances can a child be placed or detained in a secure detention or correctional facility because the child is or is alleged to be in need of assistance or because the child has violated an order of the court in a family in need of assistance matter.

COMMENT. Research demonstrates that placing youth in secure detention has a profoundly negative impact on their physical and mental well-being, particularly for status offenders, as it greatly increases their risk of victimization, abuse, and suicide.²⁷

Section 105. Funding.

The State, making maximum use of available federal reimbursement of costs incurred, shall reimburse counties for ___% of the cost of services and treatment resources designed to keep families in need of assistance intact, including nonresidential, community-based services and temporary nonsecure residential services, such as respite care and, in limited circumstances, short-term foster or group home settings. Lower reimbursement rates will be afforded to counties for longer term residential services and secure residential services. Other appropriations may be made from the State general assembly, and moneys realized from avoiding costs related to out-of-home placement shall be redistributed to enhance community-based non-residential services and treatment resources.

Section 106. Reporting and Evaluation.

1. The State social service agency responsible for overseeing families in need of assistance matters shall monitor and provide technical assistance to local service systems and develop minimum standards of practice for local providers. It shall test alternative service delivery models and evaluate intake and ongoing screening instruments and services to ensure they are outcome-based.
2. Every fiscal year, the State social service agency shall provide data to the State that includes, disaggregated by age, gender, race, family income, and basis for designation as a family in need of assistance:
 - a. The number of family in need of assistance cases referred to all designated social service agencies;

²⁷ Holman and Zeidenberg, *supra*.

- b. The number of family in need of assistance referrals accepted by the designated social service agencies;
- c. The percentage of family in need of assistance cases opened by designated social service agencies;
- d. The percentage of family in need of assistance cases that include a child with a diagnosed mental health issue or disability;
- e. The percentage of cases that receive nonresidential services and the average length of services;
- f. The percentage of cases that receive residential services and the average length of stay;
- g. The percentage of families whose cases close successfully after completing a majority of case plan goals;
- h. Of those families whose cases have closed, the percentage who re-enter the family in need of assistance system;
- i. Of those families whose cases have closed, the percentage of youth who enter the juvenile justice system, both while participating in services and within six and twelve months of case closure;
- j. The percentage of family in need of assistance referrals that are transferred to the child welfare system;
- k. The number of family in need of assistance cases petitioned to court;
- l. The number of children held in secure detention or correctional facilities through family in need of assistance proceedings, the reason the secure facility was used, and the associated average lengths of stay; and
- m. The number of children placed in both secure and non-secure mental health, substance abuse or other residential treatment facilities through family in need of assistance proceedings and the associated average lengths of stay.

COMMENT. In drafting status offense laws, states may wish to consider other issues, including: provisions to address the needs and capacities of rural communities versus urban, specific timeframes for intake, service delivery and other actions. States will also need to draft an enabling statute for the state agency to delineate responsibilities and develop guidance for courts on what should occur at different court hearings, standards of proof, frequency of hearings, rights of appeal, standing and notice issues.

FAMILY LAW



Custodial Petitions and Homeless Youth as Parents²⁸

The primary cause of homelessness among youth is family conflict. Youth are forced from their homes by physical, sexual, or emotional abuse. In fact, studies show that seventy percent of all homeless youth experienced some form of abuse—often severe—before leaving home.²⁹

Surveys have found that between thirty and fifty percent of all homeless youth were not wards of the state when they became homeless, or were never part of the “system” at all.³⁰ This begs the question: What recourse or permanency can the court system offer to homeless youth and those at risk of homelessness who are not part of the juvenile justice or child welfare systems? Non-parental custodial petitions including custody, guardianship of the person (hereinafter “Guardianship”), power of attorney and parental consent agreements can be vital tools to prevent or at least stay homelessness for some youth.

Many youth are able to identify adults other than their parents—including relatives and nonrelatives—with whom they could safely reside. Sometimes lack of legal authority to care for the youth and fear of “harboring a runaway” prevent these potential caregivers from providing safety and even permanency to these youth, while other times financial burdens are the hindrance.

Without parental consent, statutes across the country generally set a high bar for non-parental caregivers to get legal custody. A strong preference for parental rights must be overcome before most courts will consider the best interests of the child in non-parental custody disputes. For homeless youth, the parents from whom they flee still have legal custody of them. The right of parents to raise their children is a fundamental right guaranteed by the

²⁸ Melissa Parent, Staff Attorney, Rocky Mountain Children’s Law Center.

²⁹ U.S. Department of Health and Human Services, *National Evaluation of Runaway and Homeless Youth: Final Report* (1997).

³⁰ Administration on Children, Youth, and Families, *Promising Strategies to End Youth Homelessness - Report to Congress* (2007), available at www.acf.hhs.gov/programs/fysb/content/docs/reporttocongress_youthhomelessness.pdf (last visited April 19, 2009).

United States Constitution.³¹ The government will only interfere with this parental right upon demonstration of a “compelling state interest,” which is to prevent harm or future harm. In many homeless youth cases, this standard is often easily met but having the case heard is more difficult. Several jurisdictions provide an avenue for nonparental caregivers to secure legal authority, but the process still can be prohibitively burdensome. A balance must be struck to ease the process for older youth who should have a say in their future while still protecting parents’ constitutional rights.

Non-parental custody in several different forms can offer a permanent safe home to many homeless youth. Procedural requirements already in place in several jurisdictions make guardianship a very attractive option. Adding a subsidy and limited liability for guardians would increase the amount of potential caregivers and the chance for homeless youth to find one. The Constitutional protections offered to parents should not be compromised, but youth, including homeless youth who are parents, should have better access to the court system.

Model State Statute—Custodial Petitions and Homeless Youth as Parents

CHAPTER I. POWER OF ATTORNEY

Section 101. Delegation of Power by Parent or Guardian.

A parent or guardian of a minor, by a power of attorney, may delegate to another person, for a period not exceeding one year, any power regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption.

COMMENT. Procedurally, the simplest methods for obtaining legal authority to care for the youth can be the most difficult to secure. Powers of attorney involve parental consent and generally require no court involvement. Surprisingly, only a minority of jurisdictions provide for a Power of Attorney or a Parental Authorization, where a parent can delegate certain authority over their child to a third-party.³² Twenty-two jurisdictions have adopted the Uniform Probate Code (UPC) provision for Power of Attorney in some form. These delegations are valid for anywhere from six months to two years but are renewable. They also can be revoked at any time by the parent. Most often, however, the consent from the parents of homeless youth is very difficult to obtain. Either their whereabouts are unknown or they are just unwilling to consent.

³¹ See, e.g., *Troxel v. Granville*, 530 U.S. 57, 64 (2000); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Ginsberg v. New York*, 390 U.S. 629 (1968); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

³² More jurisdictions offer a health care delegation only. See Unif. Probate Code §5-105 (“A parent or guardian of a minor or incapacitated person, by a properly executed power of attorney, may delegate to another person, for a period not exceeding 6 months, any power regarding care, custody or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward.”).

CHAPTER II. GUARDIANSHIP

COMMENT. Guardianship is a permanent option that provides a non-parent authority to make virtually all decisions for the youth. Guardianship was recognized by the Adoption and Safe Families Act as an appropriate permanency option.³³ In general, guardianship does not require the termination of parental rights. However, a few jurisdictions do not allow third party guardianship when parental rights have not already been terminated or relinquished.³⁴ In most jurisdictions, several courts have authority over guardianship procedures, although they typically occur in the probate court.

Section 201. Venue.

1. Venue for a guardianship proceeding for a minor is in the county of this State in which the minor resides or is present at the time the proceeding is commenced.
2. Venue for a guardianship proceeding for an incapacitated person is in the county of this State in which the respondent resides and, if the respondent has been admitted to an institution by order of a court of competent jurisdiction, in the county in which the court is located. Venue for the appointment of an emergency or a temporary substitute guardian of an incapacitated person is also in the county in which the respondent is present.

COMMENT. Some jurisdictions have adopted procedural requirements that help make guardianship more accessible to homeless youth including the following: residence for venue is where the child is actually found as opposed to where the parents live,³⁵ ability to publish notice to parents whose whereabouts are unknown,³⁶ emergency guardianship that is in effect before the hearing can take place,³⁷ and the appointment of counsel to youth involved in guardianship proceedings.³⁸ Representation by counsel is particularly helpful when the youth is the petitioner thereby preventing the potential guardian from having to obtain counsel. Most jurisdictions require the appointment of the minor's nomination for guardian if the minor is of sufficient age and it is not contrary to the best interests of the child.³⁹

³³ Pub. L. 105-89.

³⁴ See, e.g., *Robison v. Robison*, 29 Ga.App. 521, 116 S.E. 19 (1922).

³⁵ *In re Fore*, 168 OhioSt 363, 155 NE2d 194 (1958).

³⁶ 750 Ill. Comp. Stat. 36/108.

³⁷ Colo. Rev. Stat. § 15-14-204.

³⁸ Cal. Prob. Code § 1470(a).

³⁹ Ala. Code § 26-2A-76.

Section 202. *Appointment and Status of Guardian.*

A person becomes a guardian of a minor by parental appointment or upon appointment by the court. The guardianship continues until terminated, without regard to the location of the guardian or minor ward.

Section 203. *Judicial Appointment of Guardian: Conditions for Appointment.*

1. A minor or a person interested in the welfare of a minor may petition for appointment of a guardian.
 2. The court shall appoint a guardian for a minor if the court finds the appointment is in the minor's best interest, and
 - a. the parents consent;
 - b. all parental rights have been terminated; or
 - c. the parents are unwilling or unable to exercise their parental rights such that there has been a fundamental breakdown of the parent-child relationship resulting in the parental home no longer being a safe or effective environment for the minor.
 3. If necessary and on petition or motion and whether or not the conditions of subsection (2) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists and that the appointment would be in the best interest of the minor. Notice in the manner provided in Section 205 must be given to the parents and to a minor who has attained fourteen years of age. Except as otherwise ordered by the court, the temporary guardian has the authority of an unlimited guardian, but the duration of the temporary guardianship may not exceed six months. Within five days after the appointment, the temporary guardian shall send or deliver a copy of the order to all individuals who would be entitled to notice of hearing under Section 204.
 4. If the court finds that following the procedures of this section will likely result in substantial harm to a minor's health or safety and that no other person appears to have authority to act in the circumstances, the court, on appropriate petition, may appoint an emergency guardian for the minor. The duration of the guardian's authority may not exceed thirty days and the guardian may exercise only the powers specified in the order. Reasonable notice of the time and place of a hearing on the petition for appointment of an emergency guardian must be given to the minor, if the minor has attained fourteen years of age, to each living parent of the minor, and a person having care or custody of the minor, if other than a parent. The court may dispense with the notice if it finds from affidavit or testimony that the minor will be substantially harmed before a hearing can be held on the petition. If the guardian is appointed without notice, notice of the appointment must be given within forty-eight hours after the appointment and a hearing on the appropriateness of the appointment held within five days after the appointment.
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COMMENT. The greatest advantage to guardianship is the ability of the youth to petition the court. Several jurisdictions allow a youth over fourteen years old or in some cases over twelve years old to petition the court for guardianship and to nominate their potential guardian. In fact, most jurisdictions allow any person interested in the welfare of the child standing to petition the court for guardianship. The majority of jurisdictions allow the appointment of a guardian over the objection of the parents. Some of these jurisdictions still require an overcoming of the strong parental preference before best interests will be considered. This usually requires a finding of “parental unfitness.” Several jurisdictions have made it clear that guardianship does not terminate parental rights and therefore does not require the heightened standard of proof - clear and convincing evidence - used in termination proceedings.⁴⁰ They require a finding that the parents are “unable or unwilling” to carry out their duty as a parent and that a guardianship is in the child’s best interest by a preponderance of the evidence. Courts have also made it clear that guardianship can run parallel to legal custody and therefore can be granted even if there are prior custody orders between the parents.⁴¹

Section 204. Procedure.

1. After a petition for appointment of a guardian is filed, the court shall schedule a hearing, and the petitioner shall give notice of the time and place of the hearing, together with a copy of the petition, to:
 - a. the minor, if the minor has attained fourteen years of age and is not the petitioner;
 - b. any person alleged to have had the primary care and custody of the minor during the sixty days before the filing of the petition;
 - c. each living parent of the minor or, if there is none, the adult nearest in kinship that can be found;
 - d. any person nominated as guardian by the minor if the minor has attained fourteen years of age;
 - f. any appointee of a parent whose appointment has not been prevented or terminated; and
 - g. any guardian or conservator currently acting for the minor in this State or elsewhere.
2. The court, upon hearing, shall make the appointment if it finds that a qualified person seeks appointment, venue is proper, the required notices have been given, the conditions of Section 203(2) have been met, and the best interest of the minor will be served by the appointment. In other cases, the court may dismiss the proceeding or make any other disposition of the matter that will serve the best interest of the minor.

⁴⁰ See, e.g., *In re John Doe*, 106 Hawai‘i 75, 101 P.3d 684 (2004).

⁴¹ See, e.g., *Erika K. v. Brett D.*, 161 Cal.App.4th 1259 (2008).

3. The court shall appoint a lawyer, at no cost to the minor, to represent the minor, giving consideration to the choice of the minor if the minor has attained fourteen years of age.

Section 205. Notice; Method and Timing.⁴²

1. If notice of a hearing on any petition is required, and except for specific notice requirements as otherwise provided, the petitioner shall cause notice of the time and place of hearing on any petition to be given to any interested person or to the interested person's attorney of record or the interested person's designee. Notice shall be given:
 - a. By mailing a copy thereof at least ten days before the time set for the hearing by certified, registered, or ordinary first-class mail addressed to the person being notified at the post-office address given in any demand for notice, or at the person's office or place of residence, if known; or
 - b. By delivering a copy thereof to the person being notified personally at least ten days before the time set for the hearing; or
 - c. If the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing once a week for three consecutive weeks, a copy thereof in a newspaper having general circulation published in the county where the hearing is to be held, the last publication of which is to be at least ten days before the time set for the hearing. In case there is no newspaper of general circulation published in the county of appointment, said publication shall be made in such a newspaper in an adjoining county. A motion for court permission to publish the notice of any hearing shall not be required unless otherwise directed by the court.
2. The court for good cause shown may provide for a different method or time of giving notice for any hearing.
3. Proof of the giving of notice shall be made on or before the hearing and filed in the proceeding. If notice is given by publication, at the time the party who issued the notice by publication files proof of publication, that party shall also file an affidavit verified by the oath of such party or by someone on his or her behalf stating the facts that warranted the use of publication for service of the notice of the hearing and stating the efforts, if any, that have been made to obtain personal service or service by mail. The affidavit shall also state the address, or last known address, of each person served by publication or shall state that the person's address or identity is unknown and cannot be ascertained with reasonable diligence.
4. "Publication once a week for three consecutive weeks" means publication once during each week of three consecutive calendar weeks with at least twelve days elapsing between the first and last publications.

⁴² Notice may also be the statutory notice required for general civil cause of actions.

Section 206. Judicial Appointment of Guardian; Priority of Minor's Nominee.

1. The court shall receive a report from the competent county department evaluating the potential guardian's fitness to assume the role of guardian. The report shall include but not be limited to a criminal background check, court records check, and a social services records check in all states the proposed guardian has lived since reaching the age of majority.
2. The court shall appoint as guardian a person whose appointment will be in the best interest of the minor. The court shall appoint the person nominated by the minor, if the minor has attained fourteen years of age, unless the court finds the appointment will be contrary to the best interest of the minor.

Section 207. Rights and Immunities of Guardian.

1. A guardian is entitled to reasonable compensation for services as guardian and to reimbursement for room, board, and clothing provided by the guardian to the ward, but only as approved by the court.
2. A guardian need not use the guardian's personal funds for the ward's expenses. A guardian is not liable to a third person for acts of the ward solely by reason of the guardianship. A guardian is not liable for injury to the ward resulting from the negligence or act of a third person providing medical or other care, treatment, or service for the ward except to the extent that a parent would be liable under the circumstances.

COMMENT. (1) A recent trend in foster care reform is subsidized guardianships. These statutes make guardianship more feasible by providing for the youth's financial support during the guardianship. Of the thirty-nine jurisdictions that have adopted some form of subsidized guardianships, most require that the ward of the guardianship be in foster care prior to the guardianship. Several statutes also require that the ward reside with the guardian for a specific period of time before the subsidy can begin and that the guardian must be related to the ward. Three jurisdictions currently provide a subsidy for non-relative guardians whose ward was never in the custody of the state.⁴³ Statutes such as these could greatly benefit the homeless youth population by easing the financial burden on potential guardians.

(2) Often prospective guardians are afraid of potential financial liability to which taking in a ward could expose them. The UPC and several jurisdictions statutorily limit a guardian's liability and in some cases make them immune.⁴⁴

⁴³ See, e.g., Minn. Stat. § 257.85; N.J. Rev. Stat. § 30: 4C-88; N.J. Admin. Code § 10: 90-19.

⁴⁴ Unif. Probate Code § 5-209.

Section 208. Termination of Guardianship; Other Proceedings after Appointment.

1. A guardianship of a minor terminates upon the minor's death, adoption, emancipation or attainment of majority or as ordered by the court.
2. A ward or a person interested in the welfare of a ward may petition for any order that is in the best interest of the ward. The petitioner shall give notice of the hearing on the petition to the ward, if the ward has attained fourteen years of age and is not the petitioner, the guardian, and any other person as ordered by the court.

CHAPTER III. CUSTODY

COMMENT. There is no clear line that differentiates "custody" from "guardianship." In fact, several jurisdictions and their courts use the terms interchangeably. In every jurisdiction, guardianship and custody are authorized by different statutes and venue is usually in different courts. Most jurisdictions, however, use the same standards to analyze both. In these jurisdictions non-parents seeking custody or guardianship must overcome a preference for parents to care for their children. Although parental rights are not terminated by either non-parental custody or guardianship, these rights are severely limited and, therefore, this heightened standard, of parental preference, might be necessary to avoid any constitutional challenges.

Section 301. Commencement of Proceedings Concerning Allocation of Parental Responsibilities; Jurisdiction.

1. A proceeding concerning the allocation of parental responsibilities is commenced in the district court, or as otherwise provided by law,
 - a. By a parent:
 - i. By filing a petition for dissolution or legal separation; or
 - ii. By filing a petition seeking the allocation of parental responsibilities with respect to a child in the county where the child permanently resides or where the child is found; or
 - b. By a person other than a parent, by filing a petition seeking the allocation of parental responsibilities for the child in the county where the child permanently resides or where the child is found, but only if the child is not in the physical care of one of the child's parents;
 - c. By a person other than a parent who has had the physical care of a child for a period of six months or more, if such action is commenced within six months of the termination of such physical care; or
 - d. By a parent or person other than a parent who has been granted custody of a child or who has been allocated parental responsibilities through a juvenile court order,
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by filing a certified copy of the court order in the county where the child permanently resides. Such order shall be treated in the court of appropriate jurisdictions as any other decree issued in a proceeding concerning the allocation of parental responsibilities.

2. Notice of a proceeding concerning the allocation of parental responsibilities shall be given to the child's parent, guardian, and custodian or person allocated parental responsibilities, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

COMMENT. The inability of non-parents to obtain standing to petition the court for custody and to be awarded custody are the biggest barriers to non-parental custody orders. In some jurisdictions, a non-parent cannot get custody under the Family Law Code until the youth has been found dependent and neglected.⁴⁵ In other jurisdictions, only non-parents who are relatives can be awarded custody. Finally, some jurisdictions can award custody to a non-parent but the parents are the only parties with standing to file for custody.⁴⁶ In the jurisdictions that allow non-parents standing to petition for custody, almost all of them allow it only if the child is not in the custody of either parent.⁴⁷ Courts have typically interpreted this to require the voluntary relinquishment of legal custody by the parents, not merely the physical custody. A few jurisdictions have enacted statutes authorizing "de facto custodians" standing in custody disputes.⁴⁸ These statutes typically act to provide standing and parental status to a non-parent who has exclusively cared for the child for a statutorily set time period. This time frame is typically at least one year. Because of the length of time involved, these statutes are probably of little benefit to most homeless youth. Another barrier to non-parental custody is that it must be filed in the proper jurisdiction, which is usually defined as the child's home state and may not always be where the homeless youth is found.

CHAPTER IV. YOUTH AS PARENTS

COMMENT. Youth often feel overwhelmed by the responsibilities of parenthood. Homelessness intensifies this feeling. Homeless girls get pregnant at a rate of two to three times higher than their housed peers.⁴⁹ Their babies tend to be premature more often, and even when full term, have significant health problems.⁵⁰ Children of homeless youth are often removed and placed into foster

⁴⁵ 13 Del. Code Regs. § 712.

⁴⁶ *E.g., Fish v. Fish*, 285 Conn. 24 (2008).

⁴⁷ 750 Ill. Comp. Stat. § 5/601.

⁴⁸ Ky. Rev. Stat. Ann. § 403.270.

⁴⁹ Canadian Broadcasting Corporation, *No Way Home* (2004), available at http://www.cbc.ca/fifth/main_nowayhome_hazards.html (last visited April 21, 2009).

⁵⁰ Marcela Smid *et al.*, *Help me and leave me alone! The pregnancy experiences of homeless youth in Berkeley* (2007).

care. On a smaller scale, several statutes can make a large difference in improving the lives of homeless parents and their children, including those involving voluntary consent to paternity, child support, and who can bring an action affecting the child.

In theory, homeless youth as parents are awarded the same Constitutional protections as their parents. However, homeless youth are at a significant disadvantage in custodial disputes using the “best interests of the child” standard—the standard used in most jurisdictions.⁵¹ Because the interests of the parent and the child are not considered together, problems the parent is coping with can be viewed as risks to the child. Although courts should consider only the conduct of the parent as it currently affects his or her relationship to the child, a homeless youth’s history of delinquent behavior, substance use, mental health problems and instable living arrangements may cause the court to question the youth’s fitness as a parent. If any of these problems are ongoing, the likelihood that the homeless youth will be awarded custody is substantially diminished. Homeless youth are often unable to provide their child reliable access to food, clothing, medical care, or housing. These youth will have difficulty obtaining custody in a dispute with the other parent or a non-parent. Despite concerns about the best interests standard, maintaining the needs of the child as paramount in custody disputes is widely supported. Changes can be made in how this standard is implemented by adding or amending the factors a court must consider in deciding best interests including only allowing a court to consider the conduct of the parent as it affects his or her relationship to the child.

Section 401. Child Support.

In a proceeding for the support of a child or a minor parent the court may order the parent(s) of each minor parent to pay an amount reasonable or necessary for the support and education of the child born to the minor parent(s) until the minor parent is eighteen (18) years of age, after considering all relevant factors which may include:

1. The financial resources of the child;
2. The financial resources of the minor parent;
3. The financial resources, needs and obligations of the parent of the minor parent;
4. The physical and emotional condition and needs of the child and his or her educational needs; and
5. The availability of medical coverage for the child at reasonable cost.

⁵¹ The relevant factors include the wishes of the child’s parents; the wishes of the child; the interaction and interrelationship of the child with his parents, siblings or other significant persons; the child’s adjustment to home, school and community; and the mental and physical health of all the persons involved.

⁵² Alaska Stat. § 90.3(4) (Michie 2007).

COMMENT. In order to enhance support to minor parents, several jurisdictions have recently sought to make grandparents liable for child support. At least thirteen jurisdictions have statutes authorizing courts to require grandparents to pay child support to their minor child's children.⁵²

Section 402. Proceeding by Minor Parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

COMMENT. In some jurisdictions, statutes prohibit a minor parent from petitioning the court for paternity, custody or child support for their child, requiring their parents' to serve as co-petitioners and appear at all proceedings.⁵³ Most jurisdictions do not specify who can petition or respond in a family court proceeding, and the general civil procedure statutes that limit a minor's rights to be parties in a case apply. Some jurisdictions specifically allow for minor parents to act on behalf of their children.

Section 403. Voluntary Acknowledgment of Paternity.

1. A statement acknowledging paternity that is on file with the state registrar after the last day on which a person may timely rescind the statement is a conclusive determination of paternity, which shall be of the same effect as a judgment of paternity.
2. A minor may sign a statement acknowledging paternity and it shall have the same effect as a judgment of paternity.

COMMENT. The father of the child can play a vital role in the success of a parenting homeless youth. Most jurisdictions allow a minor father to voluntarily acknowledge the paternity of his child. Some of these jurisdictions require that the minor father consult with an attorney before that acknowledgment is valid, while a few jurisdictions hold any acknowledgment invalid until the minor father reaches majority.⁵⁴ The inability to acknowledge paternity voluntarily can limit the role a minor father can have or can be required to have in his child's life.

Section 404. Relinquishment by Minor Parent; Separate Legal Counsel.

1. A parent who is a minor has the right to relinquish all rights to that minor parent's child and to consent to the child's adoption. The relinquishment is not subject to revocation by reason of minority.
2. In a direct parental placement, or an agency adoption, a relinquishment and consent to adopt executed by a parent who is a minor is not valid unless the minor parent has been advised by an attorney who does not represent the prospective adoptive parent or

⁵³ See, e.g., Ohio R. Hamilton Juv. Rule 26.

⁵⁴ See, e.g., Wis. Stat. § 767.805.

agency. Legal fees charged by the minor parent's attorney are an allowable expense that may be paid by prospective adoptive parents.

3. If in the court's discretion it is in the best interest of justice, the court may order the office of the state public defender to assign counsel to represent the minor parent.

COMMENT. For youth considering adoption, most jurisdictions are moving away from the requirement that the parents of minor parents must sign the consent for adoption. Those that still require it allow for a judge to appoint a guardian ad litem who can consent instead.⁵⁵ Some jurisdictions are requiring that as part of the adoption fee, agencies provide the minor parent with an independent attorney to consult with before the adoption.⁵⁶ Other jurisdictions, however, do not require independent consultation before the consent is valid. Massachusetts does not require any court involvement at all.⁵⁷

CHAPTER V. SAFE HAVEN FOR NEWBORN INFANTS

COMMENT. Forty-seven jurisdictions have enacted Safe Haven Laws which allow any parent to leave their newborn child at a statutorily set location and relinquish their rights anonymously without fear of prosecution.⁵⁸

Section 501. Definitions.

1. For the purposes of this section:
 - a. "Newborn infant" means an infant who is seven days old or younger.
 - b. "Safe haven provider" means any of the following:
 - i. A firefighter who is on duty;
 - ii. An emergency medical technician who is on duty;
 - iii. A staff member at a health care institution that is classified by the department of health services as a hospital or an outpatient treatment center; or
 - iv. A staff member or volunteer at any of the following that posts a public notice that it is willing to accept a newborn infant pursuant to this section:
 - 1). A private child welfare agency licensed by the state;
 - 2). An adoption agency licensed by the state; or

⁵⁵ R.I. Gen. Laws § 15-7-10 (West 2008).

⁵⁶ See, e.g., Mont. Code Ann. § 42-2-405.

⁵⁷ See *Adoption of Thomas*, 559 N.E.2d 1230, 408 Mass. 446 (1990).

⁵⁸ See, e.g., Ariz. Rev. Stat. § 13-3623.01.

- 3). A church. For the purposes of this item, “church” means a building that is erected or converted for use as a church, where services are regularly convened, that is used primarily for religious worship and schooling and that a reasonable person would conclude is a church by reason of design, signs or architectural or other features.

Section 502. Immunity from Prosecution; Procedures.

1. A person is not guilty of abuse of a child solely for leaving an unharmed newborn infant with a safe haven provider.
2. If a parent or agent of a parent voluntarily delivers the parent’s newborn infant to a safe haven provider, the safe haven provider shall take custody of the newborn infant if both of the following are true:
 3. The parent did not express an intent to return for the newborn infant; and
 4. The safe haven provider reasonably believes that the child is a newborn infant.
5. The safe haven provider shall report the receipt of a newborn infant to child protective services [or other appropriate agency] as soon as practicable after taking custody of the newborn infant. Child protective services shall report the number of newborn infants delivered to safe haven providers.
6. A parent or agent of a parent who leaves a newborn infant with a safe haven provider may remain anonymous, and the safe haven provider shall not require the parent or agent to answer any questions. A safe haven provider shall offer written information about information and referral organizations.
7. A safe haven provider who receives a newborn infant pursuant to this section is not liable for any civil or other damages for any act or omission by the safe haven provider in maintaining custody of the newborn infant if the safe haven provider acts in good faith without gross negligence.
8. This section does not preclude the prosecution of the person for any offense based on any act not covered by this section.

Access to Civil Protection Orders⁵⁹

A significant number of youth experience homelessness because of violence in their homes. In one federal study of homeless youth in shelter, 47% cited intense conflict with their parent or guardian as a major reason for being homeless, 46% were physically abused and 17% were sexually abused by a family or household member.⁶⁰ Many homeless youth who are fleeing

⁵⁹ Brandy Davis, Policy Coordinator, Labor Project for Working Families; Colleen T. Gallopin, Policy and Technical Assistance Manager, Break the Cycle.

⁶⁰ U.S. Department of Health and Human Services, *National Evaluation of Runaway and Homeless Youth: Final Report* (1997).

violence in their homes are then vulnerable to experiencing violent and exploitive intimate relationships on the streets. In a 2004 survey of homeless youth in Los Angeles, over one third of youth reported involvement in an abusive relationship.⁶¹

The criminal justice and child welfare systems can offer protection and support to youth experiencing abuse, but these are involuntary processes that can be punitive to victims and are often perceived with distrust by homeless youth. Although the family law system can offer an alternative process for protection from abuse, these laws consistently offer inadequate protection for homeless youth. Because state laws often fail to address their unique needs, homeless youth may be denied access or receive insufficient remedies through the family law system. The following model law addresses the potential benefits of the family law system as an access point for protection from abuse, including current barriers that must change for homeless youth to have meaningful access.

TYPES OF CIVIL PROTECTION ORDERS

Civil protection orders are the most common civil remedy for abuse victims. These orders can provide restitution for past abuse and deter future abuse by providing civil contempt and criminal penalties for violations. Typical civil protection orders require perpetrators of abuse to stay a prescribed distance from the victim and prohibit any direct or indirect contact with the victim. Civil protection orders fall into two general categories: domestic violence protection orders and anti-harassment or stalking protection orders. Additionally, the State of Washington provides a separate protection order process for victims of sexual assault.⁶² In other states, victims of sexual assault must apply for protection through either the domestic violence or anti-harassment statutes. Access to civil protection orders for sexual assault victims outside of domestic relationships is not addressed in this model law.

Domestic violence protection orders offer the most comprehensive protection but are only available to victims who have a particular relationship to their perpetrator as defined by state statute. Victims who fall outside of their state's domestic violence statute must apply for anti-harassment or stalking protection orders. Definitions in the federal Violence Against Women Act ("VAWA")⁶³ provide guidance for states and impact funding for domestic violence services. However, because each state separately defines domestic violence in their own statutes, there is great variety among states regarding who has access to domestic violence protection orders.

⁶¹ M. Desai, *Hollywood Homeless Youth Partnership, Violence Collaborative: 2004 Needs Assessment Summary Survey* (Unpublished Data 2004).

⁶² Wash. Rev. Code Ann. § 7.90.005 et. seq.

⁶³ 42 U.S.C. § 13925.

LIMITATIONS OF ANTI-HARASSMENT OR STALKING PROTECTION ORDERS

Generally, anti-harassment or stalking protection orders provide fewer remedies and present greater procedural obstacles to victims of abuse. While VAWA requires courts to provide domestic violence protection orders free of charge, many states charge fees in anti-harassment cases. The Lautenberg Amendment to the federal Gun Control Act bans firearm possession by any person restrained by a domestic violence protection order.⁶⁴ This important provision doesn't apply to perpetrators in anti-harassment cases. Anti-harassment protection orders also typically require a *course of conduct* of threatening or harassing behaviors, an additional evidentiary burden for victims. Some states specify a minimum number of harassing behaviors during a specific period of time to qualify for an anti-harassment protection order. Anti-harassment protection orders generally don't include orders about residence exclusion, property control, batterer's treatment, custody and visitation, and child support – all of which are typically available in domestic violence protection order cases. Minor victims are also likely to be required to apply for an anti-harassment protection order through a parent, guardian or guardian ad litem. As discussed below, exceptions that permit minors in certain states to independently request protection orders only apply in domestic violence cases.

Because anti-harassment protection orders are less protective, homeless youth who are experiencing abuse in their familial or intimate relationships should have improved access to domestic violence protection orders. Domestic violence statutes can be improved to provide independent access to minor victims, include relationships that reflect the real experiences of homeless youth, and offer remedies that are enforceable in their everyday lives.

DOMESTIC VIOLENCE PROTECTION ORDERS AGAINST PARENTS

In the vast majority of states, domestic violence protection orders can be obtained against a person related to the petitioner by blood, marriage or adoption. Parents are either explicitly or implicitly included in this category of relationships. However, several states require the victim to be an adult to obtain a protection order against a parent. For example, Utah permits children to obtain protection orders against their parents only if they are over eighteen years old.⁶⁵ Amending state laws to eliminate these requirements would provide better access to homeless youth seeking protection from an abusive parent through the family law system.

Even if procedural hurdles are removed, judges often express concern about issuing protection orders against parents through the family law system. Because abuse by a parent

⁶⁴ 18 U.S.C. 922(g)(8).

⁶⁵ Utah Code Ann. § 78B-7-102(3).

is alleged and parents' rights affected, courts may choose instead to report the abuse to child protective services and/or deny the request because the issues are better addressed by the child welfare system. Judges may also view the minor's request for protection as an issue best suited for a custody case between the minor's parents. Explicit statutory language permitting certain minors to obtain protection against a parent in family court may be necessary to making the protection order process viable for homeless youth.

Additionally, in states that define domestic relationships to include persons related by legal marriage, victims can obtain protection against a step-parent. A handful of domestic violence laws explicitly enumerate the child/step-parent relationship as a domestic relationship that qualifies for protection. But homeless youth may also fear abuse from a former step-parent, the current or former romantic partner of a parent, or a current or former legal custodian. Domestic violence statutes should recognize that familial relationships extend beyond relationships determined by blood, legal marriage or adoption. Domestic violence statutes should be expanded to provide protection to homeless youth experiencing abuse from certain parental figures.

DOMESTIC VIOLENCE PROTECTION ORDERS AGAINST INTIMATE PARTNERS

While all states allow current or former marital partners to apply for protection, thirty-eight states and the District of Columbia allow a victim to obtain a protection order against a dating partner. Although the definitions of dating violence vary in each state, dating violence is generally defined to include current or former partners in a social relationship of a romantic or intimate nature. In determining if a dating relationship exists, courts may consider many factors including the length and type of relationship and the frequency of interaction between the persons involved in the relationship. Nearly all states define domestic relationships to include victims who have cohabitated with or have a child in common with their perpetrator. Five states exclude or restrict same-sex partners from applying for a domestic violence protection order.

Because homeless youth have non-traditional dating relationships impacted by their life on the streets, their relationships may not qualify them for protection. Domestic violence statutes should be amended to provide protection to youth in a variety of non-traditional dating relationships, including relationships with shorter durations or sporadic contacts. States can also better protect homeless youth by allowing victims who are experiencing abuse from a sexual partner to apply for a domestic violence protection order, whether or not the relationship would qualify as a dating relationship. Lastly, to provide protection to all homeless youth, state domestic violence statutes must allow access to protection orders regardless of sexual orientation or gender identity.

MINORS AS PARTIES IN DOMESTIC VIOLENCE PROTECTION ORDER CASES

One of the most critical issues affecting a minor's decision to apply for a protection order is whether they can apply independent of a parent, guardian or guardian ad litem. New Hampshire is the only state that allows any minor to apply for a domestic violence protection order without a parent or other adult applying on their behalf.⁶⁶ In Missouri, domestic violence protection orders are only available to adults.⁶⁷ All of the remaining states limit minors' access to domestic violence protection orders by allowing only certain minors to apply based on age or relationship to the perpetrator, by requiring a parent or adult to apply on behalf of a minor, or by being silent about whether and how a minor can apply. These restrictions negatively impact all minor victims, but particularly homeless youth who often lack supportive relationships with parents or other responsible adults. All state statutes should allow minors to apply for a domestic violence protection order without parental permission or adult involvement.

The majority of states are also silent on whether a domestic violence protection order can be obtained against a minor perpetrator. Eight states explicitly address minor perpetrators, typically by limiting what minors can be subject to a domestic violence protection order. For example, in Missouri and Nevada, a domestic violence protection order can't be issued against a minor.⁶⁸ In North Carolina, protection can be obtained against a minor 16 years or older.⁶⁹ Despite common perceptions, not all minor victims are being abused by a significantly older adult partner. Department of Justice statistics show that 90% of 12-14 year olds are being abused by a minor partner and 50% of 15-17 year olds are being abused by a minor partner.⁷⁰ Homeless youth being abused by a minor partner should be able to obtain protection orders to address their safety. States should explicitly permit victims to obtain domestic violence protection orders against their minor perpetrators.

ENFORCING DOMESTIC VIOLENCE PROTECTION ORDERS

The types of orders available in a protection order case often assume an adult victim in a marital or cohabitating relationship. For example, victims applying for a protection order can request that their abusive partner be ordered to vacate a shared residence or be restricted from accessing shared assets. Although state statutes contain catch-all provisions permitting judges to make any necessary orders for a victim's protection, the types of relief enumerated in the statutes are often included in standardized court forms, are more widely known to

⁶⁶ N.H. Rev. Stat. Ann. § 173-B:3 (II)(b).

⁶⁷ Mo. Rev. Stat. §30-455.020(1).

⁶⁸ Mo. Rev. Stat. §30-455.010(9); Nev. Rev. Stat. § 33.400(1).

⁶⁹ N.C. Gen. Stat. §50B-1(b)(3),(5).

⁷⁰ Shannan Catalano, Bureau of Justice Statistics, *Intimate Partner Violence in the United States*, available at <http://www.ojp.usdoj.gov/bjs/intimate/ipv.htm#contents> (last visited May 19, 2009).

victims, and are more commonly issued by courts. Typical protection orders include stay-away provisions from a victim's home, car, place of work, school or place of worship. Homeless youth may be better protected by a stay-away order from a particular shelter or drop-in center, or an agency where the victim routinely receives health services. Homeless youth are more likely to request and receive appropriate relief if these types of provisions are enumerated in state statutes.

Protection orders are only effective if the victim is willing to enforce the order by reporting violations. Because many homeless youth have negative histories with law enforcement or have outstanding warrants, they may not contact the police to report a violation. Victims must feel safe to contact police to enforce their protection order without worrying about their own vulnerability to harassment or arrest. States should limit law enforcement responding to domestic violence incidents or protection order violations from arresting the victim for warrants for certain offenses.

Model State Statute—Access to Civil Protection Orders

Section 101. Eligible Petitioners for Domestic Violence Protection Orders; Age.

1. Any minor or adult who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking in an intrafamily or intimate partner relationship may file a petition for an order of protection.
2. If the petitioner is twelve years old or older, the petitioner may petition the court for an order of protection on their own behalf.
3. If the petitioner is under twelve years old, a parent, guardian, or other adult representative may file a petition for an order of protection on the petitioner's behalf.
4. If the petitioner is a minor and has filed the petition on their own behalf, the court shall not require the petitioner's parent or legal guardian to receive notice of the petition or participate in the proceeding.

Section 102. Eligible Respondents to Domestic Violence Protection Orders; Age; Notice.

1. An order of protection can be issued against any minor or adult person who is twelve years old or older.
 2. If the respondent is a minor under eighteen years old, the respondent may appear in the proceeding on his/her own behalf.
 3. Notice of the petition must be made to the minor respondent and his/her parent or legal guardian.
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Section 103. Qualifying Relationships for Domestic Violence Protection Orders; Definitions.

1. An intrafamily relationship shall include:
 - a. Relatives by blood, marriage, domestic partnership or adoption;
 - b. Parents, current or former step-parents, current or former intimate partners of a parent, or current or former legal custodians, whether or not they have cohabitated with the child;
 - c. Persons who are or have been cohabitating;
 - d. Current or former marital partners.
 - e. An intimate partner relationship shall include:
 - i. Persons who have a child in common;
 - ii. Persons who have engaged in or are engaging in a sexual relationship;
 - iii. Persons who are dating or who have dated, whether or not the relationship is of a sexual nature.
 - 1). In determining if a dating relationship exists, courts shall consider the entirety of the relationship, including but not limited to the following factors:
 - a). The beliefs and expectations of the parties;
 - b). The frequency, nature, and number of interactions between the parties, whether or not the interactions were in person;
 - c). Romantic feelings or sentiments expressed between the parties, whether or not these were made public or shared with a social group.
2. An intimate partner relationship includes persons in a same-sex relationship and relationships with transgendered persons.

Section 104. Jurisdiction to Issue Domestic Violence Protection Orders; Domestic Relations Court.

1. The court that has jurisdiction over domestic relations has jurisdiction to issue orders of protection for minors and adults experiencing domestic violence, dating violence, sexual assault, and stalking in intrafamily or intimate partner relationships.
 2. A petition for an order of protection may be filed in the county or district where the petitioner resides, where the respondent resides, or where the abuse occurred. There is no minimum time requirement of residency to petition for an order of protection. If the petitioner or respondent is transient, the place of residency may be where the party currently or primarily resides.
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3. If a petitioner is a minor and a ward of a juvenile dependency court, requests for orders of protection against an intrafamily member will be transferred to the juvenile dependency court with existing jurisdiction. Petitions for orders of protection by a minor who is a ward of a juvenile dependency court against an intimate partner may be heard by the domestic relations court.
4. A petitioner who is a minor may petition the domestic relations court for an order of protection against a parent or current legal custodian in the following circumstances:
 - a. The petitioner is not a ward of a juvenile dependency court; and
 - i. The petitioner is residing with a non-abusive parent with no custody order and that parent has petitioned or will petition the domestic relations court for an order granting custody;
 - ii. The petitioner is residing with a non-custodial parent and that parent has petitioned or will petition the domestic relations court for an order changing custody; or
 - iii. The domestic relations court finds that the petitioner has a safe and suitable living arrangement, including:
 - 1). The petitioner is residing with an adult who has parental authorization to provide care for the petitioner as permitted by state law or;
 - 2). The petitioner is residing with an adult who has applied for legal guardianship or;
 - 3). The petitioner has another safe and suitable living arrangement known to child protective services.

Section 105. Domestic Violence Protection Orders; Type of Relief.

1. An order of protection, whether issued *ex parte* or after a hearing, may include, in addition to the standard relief, the following:
 - a. Order the respondent to stay away from a drop-in or residential program frequented by the petitioner.
 - b. Order the respondent to stay away from a facility where the petitioner routinely receives health services.
 - c. Enjoin the respondent from harassing, annoying, contacting or otherwise communicating with an intrafamily member or intimate partner of the petitioner, whether or not the petitioner is currently cohabitating with this person.
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- d. Order the respondent to stay away from an intrafamily member or intimate partner of the petitioner, whether or not the petitioner is currently cohabitating with this person.
2. A court shall not grant a mutual order of protection to opposing parties unless the court finds by clear and convincing evidence that both parties are equally responsible for abuse against the other party.

Section 106. Enforcement of Domestic Violence
Protection Orders; Law Enforcement Response.

1. A law enforcement officer who responds to a domestic violence incident or an allegation that an order of protection has been violated shall use all reasonable means to protect the victim and enforce any orders of protection.
2. When responding to a domestic violence incident or an allegation that an order of protection has been violated, officers shall not inquire whether the victim has any outstanding warrants.
3. If, in the course of responding, an officer discovers
 - a. That the victim has committed a status offense or has a warrant for a status offense, the officer will not take the victim into custody;
 - b. That the victim has committed a minor offense or has a warrant for a minor offense, the officer will exercise discretion and not take the victim into custody;
 - c. That the victim has committed a serious offense or has a warrant for a serious offense, the officer will only take the victim into custody after the victim's safety has been addressed and the perpetrator of domestic violence has been cited or taken into custody as permitted by state law.

HEALTH⁷¹



Homeless youth represent a vulnerable population with serious health concerns and limited access to health care.⁷² Youth experiencing chronic homelessness have particularly high rates of physical and mental illness, and these conditions are exacerbated by the multiple barriers they face to accessing health care.⁷³ These barriers are similar to those facing the general homeless populations, including limited financial resources and social disconnectedness, but homeless youth under age 18 also face additional barriers due to their status as minors and lack of an adult caregiver. Addressing these compounding barriers requires recognition of the unique characteristics of this vulnerable population.

Although many homeless youth under age 19 likely do meet income eligibility criteria for Medicaid⁷⁴ or the State Children's Health Insurance Program ("SCHIP"),⁷⁵ many lack health insurance. In 1992, an estimated 43% of homeless youth were uninsured⁷⁶ and it is likely that a very significant proportion remain so, although more recent data are not available. Uninsured homeless youth rarely apply for coverage for several reasons, including the perception of ineligibility,⁷⁷ complex enrollment forms, and an inability or hesitancy to provide proper identification or contact information.⁷⁸ Once homeless youth reach age 19, they are no longer eligible for Medicaid or SCHIP in most states (unless they are pregnant or disabled), thus joining the 46.5% of all poor young adults ages 19-24 who lack health insurance.^{79, 80}

⁷¹ Abigail English and Meghan Halley, Center for Adolescent Health & the Law, Chapel Hill, NC; Judith Clark, Hawaii Youth Services Network, Honolulu, HI.

⁷² Meghan Halley and Abigail English, *Health Care for Homeless Youth: Policy Options for Improving Access*, Center for Adolescent Health & the Law (2008), available at www.cahl.org.

⁷³ Paul Toro et al., *Homeless Youth in the United States: Recent Research Findings and Intervention Approaches*, 6-5 (2007), available at <http://www.huduser.org/publications/pdf/p6.pdf> (last visited March 29, 2009).

⁷⁴ 42 U.S.C. §§ 1396 *et seq.*

⁷⁵ 42 U.S.C. §§ 1397 *et seq.* SCHIP was reauthorized in early 2009 in the Children's Health Insurance Program Reauthorization Act of 2009, Pub. L. No. 111-3, 111th Cong. 1st Sess. (2009).

⁷⁶ Jonathan D. Klein et al., *Homeless and runaway youths' access to health care*, *J Adolesc Health* 27:331-9 (2000).

⁷⁷ Josephine Ensign, *Quality of care: the views of homeless youth*, *Health Serv Res.*, 39:695-707 (2004).

⁷⁸ Patricia A. Post, *Casualties of Complexity: Why Eligible Homeless People are Not Enrolled in Medicaid*, National Health Care for the Homeless Council (2001), available at <http://www.nhchc.org/Publications/CasualtiesofComplexity.pdf> (last visited March 30, 2009).

⁷⁹ U.S. Census Agency, Current Population Survey, 2005 Annual Social and Economic Supplement, available at http://www.census.gov/hhes/www/cpssc/cps_table_creator.html (last visited March 30, 2009).

⁸⁰ Abigail English, *Health Insurance for Older Adolescents and Young Adults: Policy Options to Expand Coverage*, Center for Adolescent Health & the Law (2006), available at <http://www.cahl.org/PDFs/CAHLYoungAdultInsuranceIssueBrief.pdf> (last visited March 30, 2009).

Additionally, there are publicly funded programs designed to address the health care needs of the uninsured and medically underserved, including the Health Care for the Homeless Program⁸¹ and the Runaway and Homeless Youth Act programs,⁸² but these programs suffer from chronic underfunding and cannot adequately serve the specific health care needs of homeless youth. Nevertheless, they do provide important services and supports. Addressing the financial barriers to health care faced by homeless youth requires both improving their access to insurance and strengthening safety-net programs that serve them.

When unaccompanied youth do find their way to a health care provider or site and can overcome the financial barriers, additional obstacles associated with consent and confidentiality may impede their access to comprehensive services.⁸³ Depending on their age, unaccompanied youth may or may not be legally authorized to give consent for their own care, and limitations on the confidentiality of that care often exist. Due to the nature of the reasons why youth become homeless, it may be particularly problematic for them to obtain the consent of a parent when they need health care and they may also have particularly pressing concerns about protecting their privacy and preventing disclosure of confidential information. Therefore, understanding and expanding the laws that allow homeless youth to consent for their own care and that provide confidentiality protection has special importance for this population.

Model State Statute—Access to Health Care for Homeless Youth Act

CHAPTER I. SHORT TITLE; FINDINGS

Section 101. Short Title.

This Act may be known as the Access to Health Care for Homeless Youth Act.

Section 102. Findings.

The Legislature of this State hereby finds that homeless youth and unaccompanied minors are a vulnerable population with serious health problems and limited access to health care. The Legislature further finds that it is in the interest of the health of these vulnerable young people to increase their access to health care and that doing so will further the health of the young people and the public health.

⁸¹ 42 U.S.C. 254b(h) (2000 & Supp. III 2004).

⁸² 42 U.S.C. 5701 (2000).

⁸³ Halley and English, *supra* note 2.

CHAPTER II. CONSENT FOR MEDICAL CARE AND SERVICES FOR UNACCOMPANIED MINORS AND DISCLOSURE OF MEDICAL INFORMATION⁸⁴

Section 201. Definitions.

For the purposes of this Part, the following terms shall be defined as follows:

1. "Licensed health care practitioner" includes dentists, physicians, physician assistants, and advanced practice registered nurses licensed under the laws of this state.
2. "Unaccompanied minor" means a person who is under eighteen years of age who is not living under the care, supervision, or control of a parent, custodian, or legal guardian, without regard to the length of time the minor has not been living under such care, supervision, or control.
3. "Medical care and services" means health services that include but are not limited to screening, diagnosis, counseling, immunizations, medications, and treatment of illnesses and conditions customarily provided by licensed health care practitioners.

Section 202. Consent to Medical Care and Services.

1. A licensed health care practitioner may provide medical care and services to a minor who consents to the medical care and services if the practitioner has a reasonable belief that:
 - a. The minor understands the significant benefits and risks of the proposed medical care and services and is giving an informed consent;
 - b. The medical care and services are for the minor's benefit; and
 - c. The minor is an "unaccompanied minor" as defined in Section 201.
2. Any consent given under this section shall be valid and binding as if the minor had reached the age of majority. The minor shall be deemed to have, and shall have, the same legal capacity to act and the same legal obligations with regard to the giving of informed consent as a person of full legal age and capacity, the minor's age and legal status as a minor and any contrary provisions of law notwithstanding.
3. The consent given under this section shall not be subject to later disaffirmance by reason of the patient's minority.
4. The consent of any other person, including a parent, custodian, guardian, or spouse shall not be necessary to authorize a licensed health care practitioner to provide medical care and services to an unaccompanied minor under this section.
5. Any licensed health care practitioner who in good faith renders medical care and services to an unaccompanied minor in accordance with the requirements of subsection (1) shall have immunity from civil or criminal liability based on the practitioner's determination that the requirements of subsection (1) have been satisfied. A licensed

⁸⁴ See, e.g., Haw. Rev. Stat. §§ 577D-1, 577D-2.

health care practitioner who has relied in good faith on the minor's representation of being an unaccompanied minor shall not be liable for any misrepresentations of the minor with respect to that status.

6. If an unaccompanied minor has consented to receive medical care and services pursuant to subsection (1), the parent, custodian, or guardian of the minor shall not be financially responsible for the medical care and services.

COMMENT. Generally, the consent of a parent is required for health care that is provided to a minor child, including an adolescent under age eighteen. However, every state has laws that allow one or more of the following groups of minors to consent for their own health care: emancipated minors, minors living apart from their parents, married minors, minors in the armed services, pregnant minors, minor parents, high school graduates, or minors who have attained a certain age. Of particular importance for homeless youth, slightly less than one half of states have enacted statutes that enable minors who are living apart from their parents to consent for their own health care. Of these, about one third permit minors to consent for their own care based on a characteristic such as age, the unavailability of a parent, or having sufficient intelligence to comprehend the risks and benefits of the care. The other two thirds expressly authorize minors who are "living apart from their parents," "separated from parents," or "homeless" to consent for their own care. Some of these states limit the authority to consent based on the length of time the minor has been living apart from parents (e.g. thirty or sixty days) or require the minor to be "managing his or her own financial affairs." In addition, every state has laws that allow minors of varying ages to give their own consent for one or more of the following types of health care: general medical care, emergency care, family planning or contraceptive services, pregnancy related care, diagnosis and treatment for sexually transmitted infections, HIV/AIDS care, diagnosis and treatment for reportable infectious or communicable disease, care for sexual assault, counseling or treatment for drug and alcohol problems, and outpatient mental health services.⁸⁵

Section 203. Confidentiality.

1. Information about medical care and services provided to an unaccompanied minor pursuant to Section 202 shall be confidential, including the sending of a bill for such services, and shall not be disclosed without the permission of the minor, except for disclosures to comply with child abuse reporting requirements or to comply with requirements regarding the control and treatment of sexually transmitted infections, or unless the licensed health care believes in good faith that disclosure of information to the minor's parent, custodian, or guardian is essential to protect the life or health of the minor.

⁸⁵ Abigail English and Kirsten E. Kenney, *State Minor Consent Laws: a Summary*, Center for Adolescent Health & the Law (2d ed. 2003).

2. If a claim for medical care or services provided under Section 202 is filed with a managed care plan or health insurance plan in which an unaccompanied minor is enrolled, and the minor does not want the plan to disclose information regarding the claim to a spouse, parent, custodian, or guardian, the minor, or the licensed health care practitioner rendering the medical care or services on behalf of the minor, shall so notify the plan prior to submitting the claim. The plan may require that the request for confidential communication be made in writing and that it contain a statement that disclosure of all or part of the information to which the request pertains could endanger the minor. The plan may accommodate requests by the minor or the licensed health care practitioner to receive communications related to the medical care or services by alternative means or at alternative locations.

COMMENT. Numerous state and federal laws affect the confidentiality of patients' health care information and records. These include the state minor consent laws (which sometimes address confidentiality and disclosure issues), other medical records laws, the confidentiality regulations for the federal Title X Family Planning Program,⁸⁶ and the federal drug and alcohol confidentiality regulations.⁸⁷ In particular, the federal medical privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act (known as the "HIPAA Privacy Rule") contain important provisions that affect medical privacy for both adults and minors.⁸⁸ The HIPAA Privacy Rule and other federal and state laws determine the confidentiality of health care that is provided to an adolescent who is a minor based in part on whether the minor can give consent for his or her own care. Thus, there is an important link between the minor consent laws and confidentiality protections. It is important to note, however, that even when the law authorizes a minor to give consent for care, it may also grant discretion to a physician to share information with the minor's parents. The specifics in this regard vary significantly from state to state.

CHAPTER III. ELIGIBILITY AND ENROLLMENT OF HOMELESS YOUTH IN MEDICAID ("MEDICAL ASSISTANCE") AND THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Section 301. Definitions.

1. "Homeless youth" means a person twenty-four years of age or younger, who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to

⁸⁶ 42 U.S.C. § 300 *et seq.*; 42 C.F.R. Part 59.

⁸⁷ 42 C.F.R. § 2.11 *et seq.*

⁸⁸ See Abigail English and Carol A. Ford, *The HIPAA Privacy Rule and Adolescents: Legal Questions and Clinical Challenges*, Perspectives on Sexual and Reproductive Health 36:80-86 (2004).

provide shelter and care, or who lacks a fixed, regular, and adequate nighttime residence. The following are not fixed, regular, or adequate nighttime residences:

- a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - b. An institution or a publicly or privately operated shelter designed to provide temporary living accommodations;
 - c. Transitional housing;
 - d. A temporary placement with a peer, friend, or family member that has not offered permanent residence, a residential lease, or temporary lodging for more than 30 days; or
 - e. A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.
 - f. Homeless youth does not include persons incarcerated or otherwise detained under federal or state law.
2. "Qualified entities" include service providers eligible for payments under the state Medicaid plans, entities authorized to determine a child's eligibility for Head Start, WIC, or Child Care and Development Block Grant assistance, an elementary or secondary school, a state or tribal child support enforcement agency, and agencies providing emergency food and shelter under the McKinney-Vento Homeless Assistance Act, or any entity that determines eligibility or benefits for federally assisted housing.
 3. "Unaccompanied minor" means a person who is under eighteen years of age who is not living under the care, supervision, or control of a parent, custodian, or legal guardian, without regard to the length of time the minor has not been under such care, supervision, or control.

Section 302. Eligibility.

1. Age and income. The following individuals shall be eligible for Medical Assistance:
 - a. Individuals who have not yet reached their twenty-fifth birthday with incomes at or below one hundred percent of the federal poverty level and who meet other financial eligibility requirements specified in state statutes and regulations shall be eligible for the Medical Assistance Program.
 - b. Individuals who meet the financial eligibility requirements of the Aid to Families with Dependent Children Program in effect in this state in April 1996 shall be eligible for Medical Assistance until their twenty-first birthday.
 - c. Individuals who qualify as "independent foster care adolescents" as defined in 42 U.S.C. § 1396d(w) shall be eligible for Medical Assistance until their twenty-first birthday.
-

2. Presumptive eligibility. A qualified entity may enroll a youth under age nineteen who appears to meet the eligibility requirements for Medical Assistance or the Children's Health Insurance Program to allow the youth to begin receiving coverage immediately, consistent with the requirements of federal law. During this period of presumptive eligibility, the youth may receive any services covered under the state plan for Medical Assistance or the Children's Health Insurance Program, including Early and Periodic Diagnostic and Treatment services if the youth is presumptively eligible for Medical Assistance.
3. Continuous eligibility. Youth under age nineteen who are determined to be eligible for Medical Assistance or the Children's Health Insurance Program shall remain eligible for a period of twelve months without renewal or reapplication and such eligibility shall not be affected by any changes in income during such twelve month period.

COMMENT. (1) Under current law, at minimum, all youth up to age nineteen living at or below the federal poverty level are eligible for Medicaid, referred to as "Medical Assistance" in this statute, in all states.⁸⁹ Moreover, in every state, youth up to age nineteen are eligible for either Medicaid or CHIP (formerly SCHIP) up to higher income levels.⁹⁰ In both Medicaid and CHIP, eligibility options are significantly restricted by federal law once a youth reaches age nineteen. Originally enacted in 1997, SCHIP was due for reauthorization in 2007 and attempts were made during the reauthorization process, albeit unsuccessfully, to expand eligibility for older youth. An early version of the SCHIP reauthorization bill, passed by the U.S. House of Representatives in the summer of 2007, contained an option for states to expand Medicaid and SCHIP eligibility to include individuals up to age twenty-five on a phased in basis⁹¹ but subsequent SCHIP reauthorization bills passed by both the House of Representatives and the Senate did not contain this option, and were ultimately vetoed by President George W. Bush.⁹² SCHIP was reauthorized in the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) and the program is now referred to as CHIP.⁹³ The new law does not contain an option for states to expand Medicaid or CHIP eligibility to individuals up to age twenty-five. States could choose to do so, as provided for in Section 302(1)(a) above, by using state funds.

(1)(a) The Health Insurance Flexibility and Accountability ("HIFA") demonstration initiative, established in 2001 as part of the Section 1115 Research and Demonstration projects, gave states the opportunity to expand health

⁸⁹ 42 U.S.C. § 1396a(l)(1)(D).

⁹⁰ Kaiser Commission on Medicaid and the Uninsured, *Health Coverage for Children and Families in Medicaid and SCHIP: State Efforts Face New Hurdles*, (2008), available at <http://www.kff.org/medicaid/7740.cfm> (last visited March 30, 2009).

⁹¹ H.R. 3162, 110th Cong. (2007).

⁹² The Kaiser Commission on Medicaid and the Uninsured, *State Children's Health Insurance Program (SCHIP): Reauthorization History* (2008), available at <http://www.kff.org/medicaid/7743.cfm> (last visited March 30, 2009).

⁹³ Pub. L. No. 111-3, 111th Cong. 1st Sess. (2009).

insurance coverage to the uninsured within currently available Medicaid and SCHIP resources.⁹⁴ Prior to the enactment of CHIPRA, this included the option to expand eligibility to cover non-disabled childless adults, a group which would include older unaccompanied youth. States were able to apply for a HIFA waiver to expand health insurance coverage for poor youth over the current age eligibility levels regardless of federal age limits otherwise imposed on Medicaid and SCHIP eligibility. Under CHIPRA, states may no longer obtain waivers to cover childless adults under CHIP. States that have obtained waivers in the past to cover childless adults under CHIP may apply for a Medicaid waiver to transition these individuals to Medicaid coverage; and other states may apply for such waivers as well.⁹⁵

(1)(b) States also have the option to provide coverage for youth up to age 21 with very low incomes. Known as “Ribicoff” youth, these individuals are defined as those who would have met financial eligibility requirements for the Aid to Families with Dependent Children program in effect in 1996. These eligibility levels were very low, and therefore individuals qualifying as Ribicoff youth are living in extreme poverty.⁹⁶

(1)(c) The Foster Care Independence Act (“FCIA”), enacted in 1999, provides states with the option of expanding Medicaid eligibility in a targeted way to cover all youth aging out of foster care up to age twenty-one.⁹⁷ However, despite its significant potential, as of January 2008 only twenty-six states had implemented the FCIA expansion option, resulting in limited efficacy thus far.⁹⁸

(2) The presumptive eligibility option⁹⁹ allows states to authorize certain “qualified entities,” including organizations receiving federal money to provide emergency food aid and shelter to the homeless, to enroll youth under nineteen to begin receiving coverage immediately if the youth appears eligible based on information provided on a preliminary application.¹⁰⁰ Presumptive eligibility would allow homeless youth to receive coverage under Medicaid or CHIP

⁹⁴ Laura Tobler, *Health Insurance Flexibility and Accountability (HIFA) Demonstration Initiative*, National Conference of State Legislatures, available at <http://www.ncsl.org/programs/health/hifa.htm>.

⁹⁵ Families USA, *CHIPRA 101: Overview of the CHIP Reauthorization Legislation* (2009).

⁹⁶ See Abigail English et al., *Health Care for Adolescents and Young Adults Leaving Foster Care: Policy Options for Improving Access*, Center for Adolescent Health & the Law (2006), available at www.cahl.org/PDFs/FCIssueBrief.pdf (last visited March 30, 2009); Harriette B. Fox et al., *The Public Health Insurance Cliff for Older Adolescents*, Fact Sheet No. 4. (April 2007), available at <http://www.incenterstrategies.org/jan07/factsheet4.pdf> (last visited March 30, 2009).

⁹⁷ 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(XVII), 1396d(w) (2000).

⁹⁸ Kaiser Commission on Medicaid and the Uninsured, *Health Coverage for Children and Families in Medicaid and SCHIP: State Efforts Face New Hurdles* (2008) (hereinafter *Health Coverage for Children and Families*), available at <http://www.kff.org/medicaid/7740.cfm> (last visited March 30, 2009).

⁹⁹ 42 U.S.C. § 1396r-1a(b).

¹⁰⁰ See J. Perkins and S. Somers, *An Advocates Guide to the Medicaid Program*, National Health Law Program (2001).

(depending on which program they appear eligible for) immediately upon seeking medical care without the required waiting period and follow-up.¹⁰¹ But as of January 2008, only nine states had adopted the presumptive eligibility option, and three had not yet implemented the option.¹⁰²

(3) The twelve-month continuous eligibility option¹⁰³ allows states to permit youth under age nineteen who have been determined eligible for Medicaid to remain enrolled for twelve months without undergoing renewal procedures.¹⁰⁴ Because homeless youth lack a permanent address and are therefore difficult to contact for renewal of eligibility and re-enrollment,¹⁰⁵ continuous eligibility would ensure that once they are enrolled they will remain enrolled for an extended period. However, as of January 2008, only 29 states had adopted the 12-month continuous eligibility option and, of these, 12 states did so only in their SCHIP programs.¹⁰⁶

Section 303. Application and Enrollment.

1. A homeless youth who is an unaccompanied minor is eligible to apply for Medical Assistance or the Children's Health Insurance Program on his or her own behalf.
2. If a legally responsible adult is not available, a homeless youth who is an unaccompanied minor may sign the declarations on his or her own application.
3. If a minor is living alone, he or she shall be considered his or her own budgetary unit, and financial eligibility shall be determined based on standards applicable to a single person income group.
4. A homeless youth who is applying for Medical Assistance or the Children's Health Insurance Program shall not be required to provide a permanent address but shall be permitted to provide an alternative address or a description of a location.
5. If a minor is living apart from his parent, custodian, or guardian, the state of residency for the minor shall be the state in which the minor physically resides, regardless of the state of residence of the parent, custodian, or guardian.
6. The agency or agencies administering the Medical Assistance and the Children's Health Insurance Program shall develop and make available a joint application so that youth who are applying for coverage are required only to complete a single application form that will enable their eligibility for both programs to be determined based on the information in that application.

¹⁰¹ Rachel Klein, *Presumptive Eligibility*, *The Future of Children*, Vol. 13(1) 230-7 (2003).

¹⁰² *Health Coverage for Children and Families*, *supra*.

¹⁰³ 42 U.S.C. § 1396a(e)(12).

¹⁰⁴ Perkins, *supra*.

¹⁰⁵ Post, *supra*.

¹⁰⁶ *Health Coverage for Children and Families*, *supra*.

7. Individuals under age nineteen who are applying for Medical Assistance or the Children's Health Insurance Program shall be permitted to submit both application and renewal forms by mail without a face-to-face interview at a state or local office.
8. Applicants under age nineteen shall be permitted to state their income when applying for Medical Assistance or the Children's Health Insurance Program and shall not be required to provide further documentation to corroborate their statement. The Income and Eligibility Verification System shall be used for both initial enrollment applications and renewals.
9. Applicants for Medical Assistance or the Children's Health Insurance Program shall not be required to provide any documentation beyond that which is required by federal law.
10. Youth under age nineteen shall not be required to provide documentation of assets available to them beyond earnings and other income.

COMMENT. (1) States' guidelines and procedures are generally designed for low-income families with children. Thus, the guidelines often fail to acknowledge the possibility that unaccompanied minors may need to apply on their own, even though there is no real legal impediment to their doing so and federal law requires states to allow all individuals to apply for Medicaid.¹⁰⁷ However, potentially problematic requirements in many states include the signature of a parent, guardian or responsible adult on a minor's application; documentation of parents' income; and a permanent address for contacting the applicant. These are all requirements which homeless youth may be unable to meet. Wisconsin and Arizona specify that the parents' income^{108,109,110,111} and state of residence^{112,113} do not need to be considered and Arizona also explicitly allows the young person to sign his or her own application^{114,115} and does not require that a fixed or permanent address be provided.¹¹⁶ If state guidelines do not explicitly allow

¹⁰⁷ 42 U.S.C. 1396a(a)(8).

¹⁰⁸ Wisconsin Administrative Code. Department of Health and Family Services. Chapter HFS 101 Introduction and Definitions. 101.03(96), available at <http://www.legis.state.wi.us/rsb/code/hfs/hfs101.pdf>.

¹⁰⁹ Wisconsin Administrative Code. Department of Health and Family Services. Chapter HFS 103 Eligibility. H103.04(7)(c), available at <http://www.legis.state.wi.us/rsb/code/hfs/hfs103.pdf>.

¹¹⁰ Arizona KidsCare Eligibility Manual. Chapter 700: Income. 703.2 S.O.B.R.A. Budgetary Unit (A – F), available at http://www.ahcccs.state.az.us/Publications/KidsCare/Chapter700/kc_chap700.asp.

¹¹¹ Arizona KidsCare Eligibility Manual. Chapter 700: Income. 703.1 KidsCare Income Group (A – E), available at http://www.ahcccs.state.az.us/Publications/KidsCare/Chapter700/kc_chap700.asp.

¹¹² AHCCCS Eligibility Policy Manual. Section 500.00 Non-Financial Conditions of Eligibility. 529.00 Resident of Arizona. C. Definition, available at <http://www.azahcccs.gov/Publications/Eligibility/chapter500/chapter500.asp>.

¹¹³ Wisconsin Administrative Code. Department of Health and Family Services. Chapter HFS 103 Eligibility. H103.03(3)(3)(b), available at <http://www.legis.state.wi.us/rsb/code/hfs/hfs103.pdf>.

¹¹⁴ AHCCCS Eligibility Policy Manual. Section 500.00 Non-financial Conditions for Eligibility. 533.00 Valid Application Part E Who Must Sign the Application, available at <http://www.azahcccs.gov/Publications/Eligibility/chapter500/chapter500-part5.asp>.

¹¹⁵ Arizona KidsCare Eligibility Manual. Chapter 200: Application Process. 209. Triaging the Application. D. Application Signature Requirement, available at http://www.ahcccs.state.az.us/Publications/KidsCare/Chapter200/kc_chap200.asp#204_Determining_Who_is_an_Applicant.

¹¹⁶ Arizona KidsCare Eligibility Manual. Chapter 400: Arizona Residency. Section 401 Arizona Residency. C. Address, available at http://www.ahcccs.state.az.us/Publications/KidsCare/Chapter400/kc_chap400.asp.

unaccompanied minors to apply independently, they may effectively render many homeless youth ineligible for public health insurance. To facilitate enrollment of homeless youth in public health insurance programs, guidelines should specifically allow youth living apart from their parents to enroll as independent individuals, without the need for parental involvement or consideration of their parents' income or residence.^{117,118}

Other states specifically allow "emancipated minors" to apply for public insurance.^{119,120} *Although a judicial declaration of emancipation may be required in some states, in others (e.g. Pennsylvania¹²¹) meeting common law criteria for emancipation may be sufficient. It is important to note that although providing specific guidelines regarding the eligibility and enrollment of emancipated minors in public health insurance may be beneficial to a small number of youth, the complications of obtaining emancipated status may limit the applicability of these guidelines for most homeless youth.*

*(6) Additionally, states may choose to shorten their application forms for Medicaid and CHIP or utilize a joint application, allowing applicants to complete only one application for both programs, after which program administrators determine the specific program for which the individual qualifies.*¹²²

*(7) States have the option to eliminate the in-person interview requirement for both enrollment and renewal, an option which most (but not all) states have chosen to adopt.*¹²³

(9) States do not have the authority to bypass the citizenship identification requirements of the 2005 Deficit Reduction Act.^{124,125} *However, they can minimize*

¹¹⁷ *Improving the Implementation of State Children's Health Insurance Programs for Adolescents: Report of an Invitational Conference Sponsored by the American Academy of Pediatrics, Section on Adolescent Health, September 26-27, 1999.* Pediatrics, Vol. 105, 906-12 (2000).

¹¹⁸ Deirdre A. Byrne et al., *Quality Health Care for Homeless Youth: Examining Barriers to Care*, A Children's Health Fund White Paper (2005), available at <http://www.childrenshealthfund.org/publications/pubs/HmlsYouthWP0705.pdf> (last visited March 30, 2009).

¹¹⁹ See Delaware Administrative Code, Title 16: Health and Social Services, 14000 Medicaid Common Eligibility, 14100 General Application Information, available at <http://regulations.delaware.gov/AdminCode/title16/5000/5100/14000/14000%20Medicaid%20Common%20Eligibility-01.shtml>.

¹²⁰ See Kansas Family Medical Assistance Manual (KFMAM), 02000: General Eligibility Requirements, 2011 Minors, available at <http://www.khpa.ks.gov/kfmam/main.asp?tier1=02000>.

¹²¹ See Pennsylvania Medicaid Eligibility Handbook, Chapter 321 Age, 321.3 Emancipation (Updated November 2007), available at http://www.dpw.state.pa.us/oimpolicymanuals/manuals/bop/ma/321/321-02.htm#P377_5430.

¹²² *Health Coverage for Children and Families*, supra.

¹²³ *Id.*

¹²⁴ P.L. 109-171, Deficit Reduction Act of 2005, Sec. 6036, Improved Enforcement of Documentation Requirements.

¹²⁵ Peter Shin et al., *The Medicaid Documentation Requirements: An Initial Assessment of Medicaid Documentation Requirements on Health Centers and Their Patients*, Center for Health Policy Research, The George Washington University (2007), available at http://www.gwumc.edu/sphhs/departments/healthpolicy/chsrp/downloads/Medicaid_Doc_Requirements.pdf (last visited March 30, 2009).

the other official documentation that applicants are required to submit with their applications by allowing an applicant's signed declaration as proof of income, assets, residency, age, and family composition without requiring applicants to provide further documentation.^{126,127,128,129} In addition, although an applicant is required to provide a social security number, the state or local agency with which the application is filed is also required to assist the applicant in obtaining necessary identification.¹³⁰

¹²⁶ Post, *supra*.

¹²⁷ Steve Eiken and Sara Galantowicz, *Improving Medicaid Access for People Experiencing Chronic Homelessness: State Examples*, prepared for the U.S. Department of Health and Human Services Centers for Medicare and Medicaid Services Disabled and Elderly Health Programs Division (2004), available at www.cms.hhs.gov/HomelessnessInitiative/Downloads/ImprovingMedicaidAccess.pdf (last visited March 30, 2009).

¹²⁸ L. Cox, *Allowing Families to Self-Report Income: A Promising Strategy for Simplifying Enrollment in Children's Health Coverage Programs*, Center on Budget and Policy Priorities (2001).

¹²⁹ Donna Cohen Ross DC and Laura Cox, *Enrolling Children and Families in Health Coverage: The Promise of Doing More*, Kaiser Commission on Medicaid and the Uninsured (2002), available at <http://www.kff.org/medicaid/4046-index.cfm> (last visited March 30, 2009).

¹³⁰ 42 C.F.R. § 435.910.

LGBTQ YOUTH¹³¹



In homeless service settings, lesbian, gay, bisexual, transgender and questioning (“LGBTQ”) youth regularly face harassment and abuse—physical, verbal and sexual. They are isolated from other youth, threatened or attacked by youth, blamed by service providers for their own mistreatment and even denied services outright because of their sexual orientation, gender identity and/or gender expression.¹³² Transgender youth face particularly poor treatment. They are often targeted for harassment and assault, receive rooming assignments in accordance with their birth sex rather than the sex with which they identify, are called by their birth names and are forced to abide by dress codes that make no room for their gender expression.¹³³

LGBTQ homeless youth need culturally competent services across the continuum of care. Such services include safe shelters where their sexual orientation, gender identity and gender expression are respected, referrals to LGBTQ-friendly physical and mental health providers, affirming mentors and role models who can provide long-term sources of support in their lives and independent life skills and other transitional services that take into account the specific challenges that LGBTQ people face because of the pervasive discrimination that continues to affect our society.¹³⁴

The mistreatment that LGBTQ youth face is itself reprehensible and is even more alarming considering the number of youth affected. Existing research indicates that 20-40 percent of homeless youth identify as LGBTQ.¹³⁵ These youth often become homeless due to family

¹³¹ Flor Bermudez, Attorney, Youth in Out of Home Care Project, Lambda Legal, New York, NY.

¹³² See Child Welfare League of America & Lambda Legal Defense & Education Fund, *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care* 18 (2006), available at http://www.eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/29/de/bb.pdf (last visited March 30, 2009); Nicholas Ray, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* 83-84 (2006), available at <http://www.thetaskforce.org/downloads/HomelessYouth.pdf> (last visited March 30, 2009).

¹³³ See Ray, *supra* at 84; Lisa Mottet & John M. Ohle, *Transitioning Our Shelters: A Guide to Making Homeless Shelters Safe for Transgender People* 1 (2003), available at <http://www.thetaskforce.org/downloads/reports/reports/TransitioningOurShelters.pdf> (last visited March 30, 2009). For more information about the needs of transgender youth in out-of-home care generally, see *Out of the Margins, supra* at 80-101.

¹³⁴ *Out of the Margins, supra* at 36-39.

¹³⁵ See Ray, *supra* at 1, 11-16, 162-166.

rejection because of their sexual orientation or gender identity.¹³⁶ With little support at home, in school,¹³⁷ from their families and in the safety nets created to help homeless youth find stability, LGBTQ homeless youth face poor prospects of gaining the skills that they need to successfully transition to adult living, as well as elevated health and behavioral risks compared to their non-LGBT counterparts.¹³⁸

In recent years, advocates and service providers have brought increased attention to the problem of LGBTQ youth homelessness and the need for a public policy response. For example, the National Gay and Lesbian Task Force (“NGLTF”) released a much-publicized report on the issue.¹³⁹ The National Network for Youth created an “Agency Readiness Index” for youth-serving organizations to assess their effectiveness in working with LGBTQ youth.¹⁴⁰ This issue brief expands on the work done by NGLTF, the Child Welfare League of America (“CWLA”), Lambda Legal Defense and Education Fund (“Lambda Legal”), the National Center for Lesbian Rights, the National Network for Youth and numerous service providers¹⁴¹ and includes many of the policy recommendations made by these organizations. The recommendations included here are not exhaustive but address many of the types of support that are necessary for services to meet the goals of general good child care practice and cultural competence.

Model State Statute—The Lesbian, Gay, Bisexual, Transgender, and Questioning Runaway and Homeless Youth Safety Act

CHAPTER I. SHORT TITLE; LEGISLATIVE FINDINGS; AUTHORITY

Section 101. Short Title.

This Act may be known as the Lesbian, Gay, Bisexual, Transgender, and Questioning Runaway and Homeless Youth Safety Act.

¹³⁶ *Id.* at 16-21; *Out of the Margins*, *supra* at 34.

¹³⁷ A growing body of research indicates that LGBTQ youth face pervasive harassment in school settings that contributes to high truancy and drop-out rates. See *Out of the Margins*, *supra* at 56; R.C. Savin-Williams, *Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay Male, and Bisexual Youths: Associations with School Problems, Running Away, Substance Abuse, Prostitution, and Suicide*, 62 *J. of Consult. and Clin. Psychol.* 261-69 (1994).

¹³⁸ See Ray, *supra* at 41-64; James M. Van Leeuwen et al., *Lesbian, Gay, and Bisexual Homeless Youth: An Eight-City Public Health Perspective*, 85 *Child Welfare* 151 (2006).

¹³⁹ Ray, *supra*.

¹⁴⁰ See National Network for Youth, *Agency Readiness Index: A Self-Assessment and Planning Guide to Gauge Agency Readiness to Work with Lesbian, Gay, Bisexual, and Transgender Youth* (2004).

¹⁴¹ Theresa Nolan of Green Chimneys Children’s Services in New York, Grace McClelland of the Ruth Ellis Center in Michigan and Colby Berger of the Home for Little Wanderers in Massachusetts have all reviewed the recommendations here. Nicholas Ray of the National Gay and Lesbian Task Force also provided invaluable assistance.

Section 102. Legislative Findings.

1. The Legislature finds that homelessness disproportionately affects lesbian, gay, bisexual, transgender, and questioning (“LGBTQ”) youth. LGBTQ youth often experience negative reactions from their parents or caregivers upon coming out or upon caregivers learning that they are LGBTQ, including physical violence and being kicked out of their homes.
 2. The Legislature further finds that LGBTQ runaway and homeless youth face heightened risks in comparison to their non-LGBTQ peers. For example, they present significantly higher risk for mental health problems, substance abuse, and exposure to sexually transmitted infections.
 3. The Legislature further finds that because of homophobia and discrimination, LGBTQ youth are unable to access resources to obtain care and may live on the streets for extended periods, thereby endangering themselves. LGBTQ runaway and homeless youth are urgently in need of temporary shelter and services, including services that are culturally appropriate and acknowledge the unique needs of LGBTQ runaway and homeless youth.
 4. The Legislature also finds that existing services to appropriately serve LGBTQ runaway and homeless youth are underfunded and that members of this population are often ignored, discriminated against, and harassed in homeless youth settings in the State. Therefore, it is the intent of the Legislature that no runaway and homeless youth shall be denied access to temporary shelters and services, or be discriminated against or harassed because of the youth’s sexual orientation, gender identity, gender expression, or HIV status.
 5. The Legislature further finds that to make a successful transition to adulthood, LGBTQ runaway and homeless youth need homeless services that allow them to access opportunities to complete high school or earn a general equivalency degree and move on to postsecondary education, learn job skills, and obtain employment in a safe and welcoming environment.
 6. The Legislature further finds that it is the responsibility of the state government to complement federal funding programs in the development of an effective system of care for runaway and homeless youth, including preventive and aftercare services, emergency shelter services, extended residential shelter, and street outreach services, outside the child welfare and juvenile justice systems.
 7. The Legislature further finds that although the provision of homeless youth services shall be administered at the local level to address specific community needs, the Legislature also recognizes the need for the state to play a primary coordinating, funding, and monitoring role. Systematic statewide data collection on LGBTQ runaway and homeless youth must be a critical component that will enable the State to provide better services to this population.
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Section 103. Definitions.

“Homeless youth” means a person twenty-four years of age or younger, who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care, or who lacks a fixed, regular, and adequate nighttime residence. The following are not fixed, regular, or adequate nighttime residences:

1. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
2. An institution or a publicly or privately operated shelter designed to provide temporary living accommodations;
3. Transitional housing;
4. A temporary placement with a peer, friend, or family member that has not offered permanent residence, a residential lease, or temporary lodging for more than thirty days; or
5. A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.

Homeless youth does not include persons incarcerated or otherwise detained under federal or state law.

Section 104. Authority to Make Grants for Centers and Services.

1. The [appropriate state agency or department] shall prepare and disseminate a request for proposals for grantees under this chapter by [date]. The [appropriate state agency or department] shall enter into grant agreements, and the operation of projects shall begin, not later than [date].
2. Grantees funded under this chapter may be partially funded by the Runaway and Homeless Youth Act.¹⁴² State funding provided under this chapter will be awarded on an annual basis, subject to a renewal process, and is meant partially to supplement federal funding or fully fund specialized shelters specifically designed to house LGBTQ runaway and homeless youth.
3. An agency eligible to apply for funds under this chapter shall be a public entity or private nonprofit entity that operates homeless youth service projects and has a demonstrated record of success in the delivery of services to homeless youth such as Basic Center Programs, Transitional Living Programs, or Street Outreach Programs.
4. The request for proposals shall include at least [X] special interest requests for proposals for agencies to establish, or turn their current facility into, specialized shelters specifically designed to house LGBTQ runaway and homeless youth who are not safe in existing shelters.

¹⁴² 42 U.S.C. § 5701 *et seq.*

5. The [appropriate State agency or department] shall monitor the projects established under this chapter. In monitoring and evaluating the projects, the [appropriate State agency or department] shall carefully review the policies and practices of agencies that offer LGBTQ-safe beds to ensure that they conform to the highest professional standards that relate to caring for LGBTQ homeless youth.
6. The aggregate amount of all such grants made for a fiscal year shall not exceed [\$XX0,000], and no grantee shall receive any such grants in an aggregate amount exceeding [\$XX0,000].
7. Failure of any public or private entity to comply with all required sections of this Chapter shall bar receipt of any grant funds by such entity.
8. The [appropriate state agency or department] may establish additional minimum requirements for grant eligibility.
9. The [appropriate state agency or department] shall create a data collection system to gather the numbers of runaway and homeless youth who access homeless youth service projects as well as basic demographic information. Data on sexual orientation and gender identity shall be included in such counts. Those charged with collecting demographic data shall be trained in how to sensitively collect this information.

CHAPTER II. GUIDELINES FOR SERVICE DELIVERY

Section 201. Non-Discrimination Policies.

1. The [appropriate state agency or department] shall require agencies operating homeless youth service projects to adopt and enforce LGBTQ-inclusive non-discrimination policies.
 2. Agencies operating homeless youth service projects shall prohibit both discrimination and harassment against youth and staff on the basis of their sexual orientation, gender identity, gender expression, or HIV status, whether actual or perceived. The policies shall not only apply to employees, but also to contractors and volunteers.
 3. The agencies' non-discrimination policies shall include the following definitions:
 - a. "Protected Categories" include race, color, religion, sex, national origin, ethnicity, ancestry, age, disability, sexual orientation, gender identity and expression, and any other category protected now or in the future by State or federal laws.
 - b. "Contractor" is any person who is employed directly by an agency or organization that has a contract or Memorandum of Understanding with the agency or organization.
 - c. "Discrimination" is any act, policy, or practice that regardless of intent, has the effect of subjecting any person to differential negative treatment as a result of that person's actual or perceived sexual orientation, gender identity, gender expression, HIV status, or based on that person's association with a person or group with one or more of these actual or perceived characteristics.
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- d. "Gender Identity and Expression" mean having or being perceived as having gender-related characteristics, appearance, mannerisms, or identity, whether or not stereotypically associated with one's assigned sex at birth.
 - e. "Harassment" is unwelcome, offensive, or intimidating behavior on account of an individual's (or group of individuals') membership in a protected category, whether or not directed at the individual, as defined above. Harassment may take many forms, including but not limited to:
 - i. Verbal conduct that is directed at an individual (or group of individuals) because of membership in a protected category. Examples include, but are not limited to, epithets, derogatory comments, unwelcome jokes or stories, slurs, unwelcome verbal advances or invitations, requests for sexual favors, or harassing phone calls.
 - ii. Visual conduct that is directed at an individual (or group of individuals) because of membership in a protected category. Examples include, but are not limited to, derogatory or offensive posters, cartoons, bulletins, drawings, photographs, magazines, written articles or stories, screen savers, or electronic communications.
 - iii. Physical conduct that is directed at an individual (or group of individuals) because of membership in a protected category. Examples include, but are not limited to, touching, patting, pinching, grabbing, staring, leering, lewd gestures, invading personal space, assault, blocking normal movement, or other physical interference.
 - iv. Sexual conduct that is directed at a youth by an employee, contractor, volunteer, or another youth, which is unwelcome and/or harassing. Examples include, but are not limited to, unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature.
4. Agencies operating homeless youth service projects shall ensure that all youth, employees, contractors, and volunteers receive notice of the non-discrimination policy, both written and verbal.
5. To implement the non-discrimination policy effectively, agencies operating homeless youth service projects must provide initial and ongoing professional training on the policy and its application to all personnel as well as to contract service providers like health and mental health providers.

COMMENT. In order to stem the flow of youth from the child welfare system to the streets, States should adopt legislation and policies that protect youth from harassment and discrimination in foster families or group homes and that reform services to adequately meet their needs.¹⁴³

¹⁴³ See, e.g., Cal. Welf. & Inst. Code § 16013(a) (2008).

Such policies are also necessary for juvenile justice placements, where LGBTQ youth face sexual and physical assault, prolonged isolation and other forms of maltreatment that only exacerbate the core psychological issues that often result in delinquency in the first place and conflict with constitutional standards.¹⁴⁴

For a sample non-discrimination policy applying to child welfare and juvenile justice settings, see National Center for Lesbian Rights, Model Anti-Harassment and Non-Discrimination Policy for Child Welfare or Juvenile Justice Agencies (2006).

Section 202. LGBTQ Competence Training.

1. The [appropriate State agency or department] shall require that agencies operating homeless youth service projects provide initial and ongoing comprehensive LGBTQ competence training for all staff. This includes administrators, managers, supervisors, social workers, case workers, direct service staff, support staff, volunteers, and health and mental health providers with whom the agency contracts.
2. The training may be provided by [appropriate State agency or department] or by another entity or person it approves.
3. Training shall include but not be limited to the following topics,¹⁴⁵ with the focus tailored to the types of homeless services provided:
 - a. A review of vocabulary and definitions relevant to LGBTQ youth.
 - b. Sexual orientation vs. gender identity vs. gender expression.
 - c. An exploration of myths and stereotypes regarding LGBTQ youth and adults.
 - d. Developmental issues and adaptive strategies for LGBTQ children and youth.
 - e. Promoting positive development of LGBTQ children and adolescents.
 - f. A review of the coming-out process and how adults can support a young person who is coming out.
 - g. A discussion of how sexual orientation relates to the reasons a young person is homeless or has run away.
 - h. A discussion of how gender identity relates to the reasons a young person is homeless or has run away.

¹⁴⁴ See, e.g., Cal Welf. & Inst. Code § 224.71(i) (2008); New York State Office of Children and Family Services, *Policy & Procedure Manual* § 3442.00, Appendix to 3442.00 (“Guidelines for Good Childcare Practices with Lesbian, Gay, Bisexual, Transgender, and Questioning Youth”) (2008).

¹⁴⁵ See, e.g., National Center for Lesbian Rights, *Model Anti-Harassment and Non-Discrimination Policy for Child Welfare or Juvenile Justice Agencies* 6 (2006); “Recommendations for Training & Education on LGBTQ Issues” in *Getting Down to Basics: Tools for Working with LGBTQ Youth in Care*. Child Welfare League of America and Lambda Legal (2006).

- i. The issues and challenges unique to transgender or gender non-conforming youth.
- j. Approaches to working with families of LGBTQ youth.
- k. Guidance on how to serve LGBTQ youth respectfully and equitably.
- l. Community resources available to serve LGBTQ youth and their families.
- m. Addressing homophobia and transphobia from staff and/or clients.
- n. Oppression including racism, classism, sexism, ageism, etc.
- o. Challenges faced by LGBTQ youth in education.
- p. How to communicate sensitively with youth about sexuality, sexual orientation, and gender identity.

Section 203. Minimum Standards for Service Delivery.

1. The [appropriate State agency or department] shall develop minimum standards for service delivery to ensure that its homeless youth service projects meet the needs of runaway and homeless youth and operate in a cost-effective manner.
2. The [appropriate State agency or department] shall issue a Homeless Youth Service Project Certificate of Accreditation to staff who complete [X] hours of training. The education leading to certification shall include general knowledge of the factors leading youth to homelessness as well as LGBTQ competence.
3. The minimum standards for homeless youth service projects shall ensure that direct care and support staff who work in homeless youth service projects, or staff from any contracting agency, are required to earn a State-issued Homeless Youth Service Project Certificate of Accreditation to work with homeless youth. Social workers and other social service professionals who work with homeless youth shall also be required to earn a State-issued Homeless Youth Service Project Certificate of Accreditation.

Section 204. Terminology, Names, and Pronouns.

The [appropriate State agency or department] shall require agencies operating homeless youth service projects to:

1. Ensure that staff use the words gay, lesbian, bisexual and transgender in an appropriate context when talking with youth about diversity.
2. Adopt policies and procedures for allowing residents to request the use of a preferred first name and pronoun that is in accordance with the youth's gender identity or expression.

COMMENT. (1) Service providers should come to understand how to use terms like "lesbian," "gay," "bisexual" and "transgender," and should understand the reasons that other terms — like "homosexual" or "transvestite" — can be offensive to LGBTQ people.¹⁴⁶

¹⁴⁶ See "Basic Facts About Being LGBTQ" and "Caseworkers with LGBTQ Clients" in *Getting Down to Basics*, *supra*.

(2) The use of correct terminology is particularly important to effectively work with transgender youth, who often have preferred names and pronouns that contrast with their biological sex. Agencies should be required to respect preferred name and pronoun choices of transgender youth, as well as other choices related to gender expression like grooming and clothing.¹⁴⁷

Section 205. Confidentiality.

The [appropriate State agency or department] shall require agencies operating homeless youth service projects to:

1. Adopt written policies regarding the management of information about a young person's sexual orientation, gender identity, or HIV status.
2. Ensure that staff do not disclose a young person's sexual orientation, gender identity, or HIV status without the young person's permission unless limited disclosure is required to protect a young person's safety. When disclosure is legally required, staff shall explain to the youth who else is entitled to the information and why.

Section 206. Accountability Mechanisms.

1. The [appropriate State agency or department] shall designate regional runaway coordinators throughout [State] to receive discrimination or harassment complaints from staff or youth who access homeless youth services.
2. Upon their own initiative or upon receipt of a complaint, regional runaway coordinators shall conduct a preliminary investigation, and hold an informal hearing if necessary, to determine whether an individual's actions are in violation of State criminal or child protection laws. If so, regional runaway coordinators shall immediately report that fact to the county prosecutor or the attorney general.
3. The [appropriate State agency or department] shall require agencies operating homeless youth service projects to:
 - a. Develop accountability standards that assess shelter staff performance in supporting LGBTQ youth.
 - b. Adopt grievance procedures that allow for confidential complaints and neutral third-party investigations.
 - c. Ensure that supervisory and management staff treat all incidents of discrimination or harassment seriously and follow up promptly by initiating a grievance according to the agency's grievance procedure and reporting the incident to the regional runaway coordinators.

¹⁴⁷ See, e.g., *Out of the Margins*, *supra* at 82-85.

- d. Ensure that all youth who access homeless youth services are aware of the role of the regional runaway coordinators and are given clear instructions on how to file a complaint of discrimination or harassment.
- e. Prohibit retaliation against an individual who files a complaint of discrimination or harassment or participates in an investigation of such a complaint.

Section 207. Housing Placements.

1. The [appropriate State agency or department] shall develop a system to approve and fully fund requests from agencies operating homeless youth service projects to expand the maximum length of stay in a temporary youth emergency shelter to up to ninety days. Determinations shall be made on a case-by-case basis.
 2. The [appropriate State agency or department] shall require agencies operating homeless youth service projects to:
 - a. Ensure that LGBTQ runaway and homeless youth are not automatically placed in LGBTQ-specific facilities.
 - b. Ensure that transgender or gender non-conforming youth are not automatically placed based on their biological sex, but rather in accordance with an individualized assessment that takes into account their safety and the youth's gender identity.
 - c. Ensure that agency staff work with individual LGBTQ runaway and homeless youth to identify the most appropriate housing assignment in a given group facility, given the youth's specific preferences, personality, background, age, developmental status, health status, sophistication, social skills, behavioral history, and other factors that might influence his or her adjustment.
 - d. Ensure that individual LGBTQ runaway and homeless youth are not placed in a room with another youth who is overtly hostile toward or demeaning of LGBTQ individuals.
 - e. Provide bathrooms, locker rooms, and dressing areas to transgender or gender non-conforming youth that keep these youth safe and comfortable.
 - f. Ensure that staff do not prohibit LGBTQ runaway and homeless youth from having roommates or isolate these youth from other youth based on the false assumption that LGBTQ youth are more likely to engage in sexual behaviors.
 - g. Ensure that staff never automatically isolate or segregate LGBTQ youth for their protection.
 - h. Ensure that staff display LGBTQ-supportive images such as pink triangles, rainbows, or safe-zone stickers to send a clear message to all youth and staff that LGBTQ people are welcome.
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COMMENT. (b), (e) LGBTQ youth are especially vulnerable to sexual and physical assault within homeless settings in sleeping quarters, bathrooms, changing rooms and showers. Transgender youth face particular risks because their physical bodies may not comport with their gender expression. Transgender youth should have the option of being assigned to a sleeping placement according to their gender identity rather than their birth sex. Additionally, agencies should take steps to provide private bathrooms, showers and changing facilities. Every agency should have at least one private bathroom.¹⁴⁸

Section 208. Medical and Mental Health Care.

1. [Name of the State] shall expand the availability of comprehensive health insurance and services through the age of twenty-four to all low-income youth via Medicaid programs.
2. The [appropriate State agency or department] shall require agencies operating homeless youth service projects to:
 - a. Ensure that staff provide LGBTQ runaway and homeless youth with information about any services available that address individual, family, and health issues around sexual orientation and/or gender identity, once the youth discloses to the agency's staff that he or she is LGBTQ.
 - b. Ensure that staff facilitate exploration of any gender or sexuality issues with LGBTQ youth by being open, non-judgmental, and empathic.
 - c. Ensure that staff provide LGBTQ runaway and homeless youth with family counseling services that will be able to assess a family's ability to adjust to an LGBTQ youth's identity and ensure the youth's immediate emotional and physical safety.
 - d. Use health and mental health providers who have been trained on the specific health needs of transgender youth and who understand the professional standards of care for transgender people.
 - e. Ensure that transgender runaway and homeless youth continue to receive all transition-related treatment they started prior to accessing homeless youth services, following an individualized medical and psychological assessment.
 - f. Adopt strict policies prohibiting the use of conversion or reparative therapies intended to alter a person's sexual orientation, gender identity, or gender expression.
 - g. Ensure that all youth accessing services receive information about safe sex that is inclusive and affirming of LGBTQ youth.

¹⁴⁸Shannan Wilber et al., *CWLA Best Practice Guidelines: Serving LGBT Youth in Out-of-Home Care* 49-50 (2006).

COMMENT. (d) Physicians and mental health providers should be knowledgeable about gender identity disorder and about transition-related services like hormone prescriptions, sex-reassignment surgery and related professional standards.

Section 209. Education.

The [appropriate state agency or department] shall require agencies operating homeless youth service projects to:

1. Determine whether LGBTQ runaway and homeless youth are safe and supported in school and work with school staff to improve conditions for LGBTQ students. With regard to transgender youth, agencies shall help connect school staff to training and consultation services regarding the creation of safer school environments for transgender youth, including but not limited to, safety, harassment, and discrimination protections, access to gender neutral bathrooms, and name/pronoun preferences.
2. Incorporate components within life skills curricula that address issues of sexual orientation and gender identity.

COMMENT. (2) These issues may include maneuvering complex considerations around discrimination and employment, safety on the streets and negotiating interpersonal conflict around sexual orientation or gender identity.¹⁴⁹

Section 210. Community Connections.

The [appropriate State agency or department] shall require agencies operating homeless youth service projects to help LGBTQ runaway and homeless youth access community services and supportive adult mentors. Agencies shall develop up-to-date lists of LGBTQ resources in the community annually and distribute them to everyone in their agencies, including to youth who may wish to access the resources privately.

¹⁴⁹ *Out of the Margins, supra* at 40.

IMMIGRATION¹⁵⁰



Across the United States, thousands of homeless youth are affected by the immigration laws of the United States. These youth generally fall into one of four different categories: 1) unaccompanied youth without legal immigration status who are in removal (deportation) proceedings and who are in federal immigration custody; 2) unaccompanied youth without legal immigration status who are not in federal immigration custody; 3) youth with lawful immigration status but who are homeless; and 4) U.S. citizen youth who are left homeless due to the removal of their parents. For the most part, the underlying problem for homeless immigrant youth is their immigration status or lack of legal status in the United States.

Although immigration laws are born of federal legislation, state law can assist youth who do not have lawful immigration status. Within the Immigration and Nationality Act (“INA”), Congress created an immigration benefit that allows youth who have been declared a dependent of a state court to apply for “Special Immigrant Juvenile” (“SIJ”) status, which provides an avenue for obtaining lawful permanent resident (green card) status if approved.¹⁵¹ Since the dependency order of a state court plays a pivotal role in whether youth will be able to obtain federal immigration benefits, there are areas in which state law can be used to address challenges facing homeless immigrant youth.

Model State Statute—Special Provisions for Immigrant Youth CHAPTER I. ORDERS OF DEPENDENCY AND FOSTER CARE

Section 101. Residency; Age.

1. All youth, age twenty-one or younger, shall be eligible to seek dependency orders, regardless of citizenship or immigration status and their length of residency in the state.¹⁵²

¹⁵⁰ Juliann Bildhauer, Director, Volunteer Advocates for Immigrant Justice, Seattle, WA. The author thanks Jana Heyd, Stacey Violante, David Walding, Rebekah Fletcher, Anne Schaufele and Kristen Jackson for their suggestions on the following proposed legislation.

¹⁵¹ 8 U.S.C. § 1101(a)(27)(J).

¹⁵² States may wish to increase the upper age limit beyond 21, as is recommended elsewhere in these model laws. For immigrant youth, the relevant age is 21 because youth who are dependents of the state can be granted Special Immigrant Juvenile status through that age. *See* 8 C.F.R. § 204.11.

2. If the petitioner is twelve years old or older, the petitioner may petition the court for an order of dependency on their own behalf. An adult representative may file the petition on behalf of the youth twelve years old or older with the youth's permission.
3. If the petitioner is under twelve years old, an adult representative may file a petition for an order of dependency on the petitioner's behalf.

COMMENT. Creating standing and jurisdiction to allow a youth or other interested party to seek and obtain a dependency order through age twenty-one will ensure that youth have the opportunity to seek Special Immigrant Juvenile ("SIJ") status within the age perimeters of the federal statute, which allows youth who are dependents of the state to be granted SIJ status through age twenty-one.¹⁵³ Additionally, in providing a mechanism for the youth himself or herself to petition for dependency and seek the required findings, all youth who are factually eligible for SIJ will be able to meet the legal requirements for the immigration benefit of SIJ.

Section 102. Full Faith and Credit.

The court shall give full faith and credit to the dependency orders of other states and shall assume jurisdiction over those orders, regardless of the youth's citizenship and immigration status.

Section 103. Special Immigrant Juvenile Petitions; Jurisdiction.

1. The court has jurisdiction to extend dependency over youth, regardless of citizenship and immigration status, transitioning from foster care until age twenty-one.¹⁵⁴
2. The court and child welfare system shall develop and maintain a system and procedures to ensure immigrant youth committed to their care or declared dependents of the state are identified for purposes of completing and filing timely Special Immigrant Juvenile ("SIJ") petitions before the juvenile ages out of eligibility. The youth shall remain a dependent of the state until the Special Immigrant Juvenile process is completed or until age twenty-one.

COMMENT. A "Special Immigrant Juvenile" is an immigrant physically present in the United States who has been declared dependent by a juvenile court located in the United States or whom such court has legally committed to, or placed under the custody of, an agency or department of a state, and who has been deemed eligible by that court for long-term foster care due to abuse, neglect, or abandonment. Additionally, the dependency order must state that it is not in the juvenile's best interest to return him or her to his or her home country.¹⁵⁵ The

¹⁵³ 8 C.F.R. § 204.11(c).

¹⁵⁴ *Id.*

¹⁵⁵ INA § 101(a)(27)(J)(i); 8 U.S.C. § 1101(a)(27)(J)(i); 8 C.F.R. § 204.11.

state courts are uniquely situated to develop a process through which juveniles who need to access the dependency court for SIJ purposes can be identified. Once the juveniles have been identified and the dependency is established, the court can use its authorities to ensure that the SIJ process is not only initiated, but completed. Relying upon and expanding on already-existing dependency, probation, delinquency, and truancy systems, a referral system for youth who qualify as dependents and are eligible for SIJ status should be developed and implemented.

Section 104. Oversight.

1. The court shall ensure adequate resources and assistance are provided to all immigrant youth that have been declared dependent to ensure the Special Immigrant Juvenile process is initiated and completed.
2. The court shall ensure that immigrant youth transitioning out of foster care have access to competent counsel who are trained in immigration-related legal matters and can advocate for and ensure access to necessary services and safeguards, including SIJ status and other immigration benefits.

COMMENT. Once a system is in place to identify and initiate the dependency and SIJ proceedings, state law should create a duty for the dependency court to certify and monitor the progress of the SIJ proceedings to ensure that the youth has the resources necessary to complete the SIJ process. The court should have the power to take actions such as: 1) appointing counsel; 2) scheduling and conducting status hearings to ensure a responsible party oversees the SIJ process through completion; and 3) ensuring access to services provided to other dependents of the court. If an individual or agency is in violation of its duties or failed to act when instructed to do so by the court, the court should have the power to address the problem and compel performance on the youth's behalf.

CHAPTER II. HOUSING; OTHER SERVICES

Section 201. Alternatives to Foster Care.

The state shall provide alternative living situations to foster care and ensure that orders of dependency include shelter care as an alternative to foster care.

COMMENT. A common result of dependency proceedings is placement of a child in foster care. However, for many youth, particularly as they near adulthood, a traditional foster care setting is not practical, given their age, life experience and independence. Alternatives to foster care that are specifically tailored to immigrant youth should be provided in all states through state law. Shelter care and/or group homes that provide guidance specifically tailored to the unique needs of immigrant youth should be developed.

Section 202. Access to Services.

All dependent youth shall have access to all services and state benefits that dependent youth are eligible for, regardless of citizenship or immigration status.

CHAPTER III. EDUCATION

Section 301. Homeless Designation.

All youth, regardless of immigration status, who are in a foster care placement prior to adoption, shall be considered homeless for the purpose of federal education laws.¹⁵⁶

Section 302. In-State Tuition.

All youth who can establish residency for three years continuously before the point of application and who have completed secondary school in good standing or a General Educational Development (“GED”) equivalence shall be eligible for in-state tuition at any community college and state college or university, regardless of their immigration status.

CHAPTER IV. CRIMINAL RECORDS AND COOPERATION WITH IMMIGRATION AUTHORITIES

Section 401. Automatic Sealing and Destruction of Juvenile Criminal Records.

The juvenile criminal records of all youth, regardless of immigration status, shall be sealed or destroyed at age eighteen. Additionally, juvenile criminal records shall not be shared with immigration enforcement authorities.

Section 402. Cooperation Prohibited.

Law enforcement authorities and juvenile justice authorities shall be prohibited from cooperating with immigration authorities with regard to disclosing the immigration status of juveniles with whom they come into contact. However, cooperation is not prohibited with regard to individuals seeking law enforcement certification for purposes of immigration benefits.

COMMENT. State law should also prohibit cooperation with federal immigration officials with respect to juveniles. Across the nation, federal immigration authorities are developing Memoranda of Understanding (“MOUs”) with state and federal officials to assist in immigration enforcement efforts. Given their particularly vulnerable status as juveniles, state law should prohibit state agencies, notably probation officers, from cooperating with immigration authorities with respect to juveniles.

¹⁵⁶ See P.A. Popp et al., *Students on the move: Reaching and teaching highly mobile children and youth*, National Center for Homeless Education (2003), available at http://eric.ed.gov/ERICDocs/data/ericdocs2sql/content_storage_01/0000019b/80/1b/92/c6.pdf (last visited March 31, 2009).

ACCESS TO CUSTODIAL SYSTEMS¹⁵⁷



With the passage of the Foster Care Independence Act of 1999,¹⁵⁸ also known as the Chafee Act, it was nationally recognized that youth aging out of foster care needed continuing assistance to make a safe and productive transition to adulthood. Lack of employment, education, health care and housing were found to often lead to homelessness for these young adults.

According to the U.S. Department of Health and Human Services, “about 20,000 youth ‘age out’ of the foster care system each year, without being reunited with families” and “40 percent of homeless young adults (18 to 20 years old) were in the foster care system as youth.”¹⁵⁹ For these “system-involved” young adults, homelessness is the “disastrous result of a combination of inadequate transition planning and the lack of affordable service-supported housing settings to assist them in the transition to adulthood.”¹⁶⁰

In addition, youth who run away from foster care are most often older teens; some are never found and become homeless. In many states, foster youth living on the street are uncertain of the path—or there is no clear path—to voluntarily return to care and seek assistance; they often fear reprisal or an unacceptable living arrangement upon their return.

Lastly, many homeless teens and young adults do not come to the attention of child welfare agencies, even though they may have been victims of abuse and neglect or have mental health treatment needs. After living on the streets, these youth are reluctant to seek care given the narrow choices regarding living situations in foster care and its reputation for lacking youth development and empowerment.

¹⁵⁷ Mary “Dee” Richter, Executive Director, Florida Network of Youth and Family Services, Tallahassee, FL; Christine Smith, GAL Project Director, Children’s Law Center, Washington, DC.

¹⁵⁸ Pub. L. 106-169.

¹⁵⁹ Dr. Margot B Kushel *et al.*, *Homelessness and health care access after emancipation*, 161 *Arch. of Ped. and Adol. Med.* 986-993 (October 2007).

¹⁶⁰ Corporation for Supportive Housing, *New York Program: Supportive Housing for Young Adults*, available at <http://www.csh.org/index.cfm?fuseaction=Page.viewPage&pageId=4086&nodeID=89> (last visited March 31, 2009).

Model State Statute—Youth Access to Custodial Systems and Services

CHAPTER I. PURPOSE AND DEFINITIONS

Section 101. Purpose.

To assist older youth in the child welfare system and runaway/homeless youth it is intended that this law will:

1. Mandate equal treatment for older youth entering the foster care system and retention of youth in the foster care system who have chosen homelessness or running away as a remedy for harmful living arrangements due to the actions of the adults who are legally responsible for them;
2. Provide a safe and healthy living arrangement and age/developmentally appropriate services that recognize the specific, special needs of youth eligible for child welfare services;
3. Ensure youth receive services that provide needed treatment and teach skills to adequately prepare youth for adulthood;
4. Ensure that youth have adequate opportunities to express their preferences, future goals, and ideas for how to achieve a safe and productive life;
5. Ensure the health, safety and well-being of youth who have “exited” or “aged out” of the child welfare system; such youth usually lack the family supports other young adults have;
6. Provide continued child welfare services to youth adjudicated to foster care who are subsequently adjudicated delinquent;
7. Encourage consideration of the input given by youth in all service planning and court proceedings; and
8. Provide continued housing for foster youth, including those who are leaving foster care, between the ages of eighteen and twenty-four years old.

Section 102. Definitions.

In this act, unless a different meaning plainly is required,

1. “Youth” means those children who are at least sixteen years of age, but not older than the state’s statutorily defined upper age limit for foster care services;
 2. “Service plan for youth” means action steps detailed in a written report resulting from a service planning meeting held by the child welfare or juvenile justice agency with case management responsibility over a youth;
 3. “Runaway” means any youth who is absent from his or her parent or guardian’s home without permission for a period of three or more consecutive days;
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4. "Homeless" means any youth who is homeless under federal law (42 U.S.C. 11431 et seq.).
5. "Transition plan" means a plan created before a youth's child welfare and/or juvenile justice system case is terminated. A "transition plan" includes services and action steps to ensure the safety and well-being of youth as they reach adulthood.

CHAPTER II. LAWS AND POLICIES REGARDING OLDER YOUTH AND THE CHILD WELFARE SYSTEM

Section 201. Access to Critical Services.

1. A report that alleges a youth is the victim of parental or primary caretaker abuse or neglect that (1) meets the jurisdictional definition of child abuse and neglect or (2) at a minimum, endangers his or her health and safety, denies access to food, clothing, and shelter, and severely compromises his or her ability to attain a high school diploma, shall be subject to the same investigative procedures and determinations as those reports regarding children younger than sixteen years of age.
2. Self-referrals to government services in order to access substance abuse and/or mental health services by a homeless and/or runaway youth shall be accepted and acted upon.
3. All secondary schools throughout this state that receive state, federal or local assistance shall develop the capacity to, and shall immediately enroll and serve all foster, homeless and runaway youth. Lack of a permanent residence shall not constitute a barrier for youth to access education.¹⁶¹
4. Youth placed in the child welfare system shall have the same educational rights regarding choice of school as homeless students do under relevant federal law.

Section 202. Jurisdiction.

1. Dependency courts shall retain jurisdiction over youth until the youth reaches the age of twenty-five unless the court determines, after a hearing, that it is in the best interests of the youth to terminate jurisdiction prior to the age twenty-five.
2. For youth who have an open child welfare case and are subsequently adjudicated delinquent, the child welfare and juvenile justice agencies shall have shared case planning and financial responsibility for the youth.

Section 203. Rights of Youth Under Jurisdiction of the Child Welfare System; Status Offenders.

1. Youth Participation in Service Planning

¹⁶¹ See EDUCATION, *supra*, for a more detailed discussion.

- a. An initial service planning meeting shall be held within two weeks of a youth's entry into the child welfare and/or juvenile justice system as a status offender, with the youth as an active participant.
- b. All service planning meetings shall be facilitated by individuals specifically trained in adolescent development and child welfare.
- c. The youth shall be consulted regarding family members or other important adults he or she wishes to have participate in the service planning meeting.
- d. Lack of family member participants does not obviate the need for the service planning meeting. If family members cannot be located, or are unable or unwilling to participate, the service planning meeting shall occur with the youth, case worker, service providers, guardian ad litem or attorney, and/or any other participants that will be helpful to the youth.
- e. The youth's input and recommendations shall be made known to all parties and considered with equal weight by all parties.

2. Youth Participation in Court Hearings

- a. The youth's case worker shall inquire of the youth whether the youth desires to be present at court hearings. If the youth requests to attend court hearings, the case worker shall arrange transportation for him or her to be present at the hearing.
- b. Whenever the youth is present in court, the judicial officer shall ascertain the youth's desires regarding critical elements of the case, including, but not limited to, type of placement, services requested, permanency goal, and visitation by family.
- c. The youth shall declare his or her desired placement type at the first court hearing in a child welfare case. These placements may include, but are not limited to, a foster home, group home, residential treatment facility, placement with a parent who has not been found abusive or negligent, or other appropriate adult or family member. The youth's desires regarding placement shall be reviewed at every court hearing.
- d. Youth shall be given the option to state his or her desired permanency goal of adoption, guardianship, custody or alternative permanent planned living arrangement at the first adjudicatory hearing. The youth's stated permanency goal shall be reviewed at each hearing held thereafter.
- e. If, after consultation with the youth's case worker and/or guardian ad litem/attorney, the youth wishes to contact the court regarding a change in his or her desires regarding placement and/or permanency goal, the case worker and/or the youth's guardian ad litem/attorney shall inform the court of the youth's change in desire.

3. Continued Educational and Vocational Development

- a. When a youth enters the child welfare and/or juvenile justice system as a status offender, the youth shall, with his or her consent, undergo an educational assessment.
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- b. The public school system shall provide the assessment and educational services to compensate for educational deficits.
 - c. Every effort shall be made to meet appropriate education and vocational goals of the youth.
4. Contact by Those Managing the Youth's Life
- a. All case workers must meet face-to-face with youth in the child welfare and/or juvenile justice system once a month. This face-to-face meeting shall occur at the youth's placement/residence, school and/or other location as desired by the youth.
 - b. All case workers must visit the youth's placement/residence at least once every three visits.
5. Receiving Information Regarding Youth Rights
- a. Each jurisdiction shall create a written pamphlet to be provided to youth entering the child welfare and/or juvenile justice system as a status offender. This pamphlet shall inform youth of their rights while in the child welfare and/or juvenile justice system as a status offender.
 - b. The youth's case manager shall provide the youth with written information in the form of the pamphlet referenced in subsection (a) and a verbal explanation regarding youth rights to each youth at the initial service planning meeting.
 - c. Youth rights information shall include a listing of services available to the youth including, but not limited to,
 - i. Counseling (individual, group, and family);
 - ii. Family mediation;
 - iii. Parenting classes;
 - iv. Addiction services;
 - v. Mental health services;
 - vi. Housing;
 - vii. Life skills;
 - viii. Job/Vocational training; and
 - ix. Academic tutors.

Section 204. Placement of and Housing for Youth.

- 1. Jurisdictions shall amend laws, codes or policies that create unnecessary barriers or restrictions to safe, stable living situations for runaway and/or homeless youth age sixteen and over placed in foster care by providing exemptions from full licensure for
 - a. Non-relative private homes determined to be a placement in the youth's best interests; and
 - b. Homes of relatives.
-

2. Youth placed in licensed foster homes shall be placed with foster parents who
 - a. Are specially trained in adolescent development; and
 - b. Express a desire to work with youth age sixteen to twenty-four.
3. Foster parents to youth age sixteen to twenty-five shall be given incentives for the foster youth's successes. These successes may include, but are not limited to, continuous attendance at therapy sessions, continuous attendance at school, graduation from school, and/or achievement of a GED.
4. Prior to a youth's placement in a foster home, the case worker must ensure that the placement is culturally appropriate for the youth.
5. Jurisdictions shall expand housing options for those youth eighteen to twenty-four years of age who are still in foster care, leaving foster care, or who are homeless. Options shall include, but are not limited to,
 - a. Private homes;
 - b. Apartments;
 - c. Congregate living residences that allow appropriate levels of independence and support;
 - d. Living arrangements that accompany post-secondary education and/or vocational training; and
 - e. Homes of relatives.

Section 205. Goals of the Service Plan for Youth.

At the conclusion of a service planning meeting, a service plan shall be created. The service plan shall include services to fulfill the following case closure benchmarks essential for youth to succeed:

1. Continuing education/vocational training that affords every youth leaving foster care with
 - a. A high school diploma or GED; or
 - b. The means to complete a degree or vocational training.
 2. Housing so that every youth shall leave foster care with
 - a. Identified, affordable housing;
 - b. Basic household furnishings and furniture which remain with the youth upon case closure/completion of living program; and
 - c. Basic home maintenance skills.
-

3. Continued healthcare so that every youth leaving foster care shall have
 - a. Complete medical, dental, vision, and mental health records;
 - b. An understanding, to the extent possible, of any ongoing medical, dental, vision, auditory or mental health conditions;
 - c. Connections to professionals for medical, dental, vision, auditory, and/or mental health care;
 - d. Continued access to and payment for health care and mental health providers who have seen the youth on a regular basis for the six months preceding closure of the case.
 - i. Each jurisdiction shall amend any laws and policies that create barriers for youth to receive Medicaid, SCHIP, or other financial supports for these services.
 - ii. The youth's service plan prior to the termination of jurisdiction shall specifically address how medical and mental health services shall be maintained and supported once jurisdiction is terminated.
4. Financial Management
 - a. Classes/training in money management, specifically including information regarding obtaining public benefits;
 - b. A spending plan to include a regular allowance prior to the closure of a case to assist youth with developing budgeting skills; and
 - c. Financial assistance with security deposits, short-term rental subsidies, utility bills, and payment of old bills to improve credit.
5. Permanent Relationships
 - a. The agency with case management responsibility shall establish, to the greatest extent possible, continuous and regular contact with family members with whom the youth desires to maintain a relationship.
 - b. Family mediation shall be provided if requested by the youth.
6. The youth shall also receive information about free/low-cost community activities at the youth's request, to include but not limited to, art and music classes, dance lessons, and physical fitness.

Section 206. Revision and Assessment of the Service Plan.

1. The court shall hold a hearing and the service plan shall be reassessed and appropriately revised at least once every six months.
 2. The youth shall be able to independently request reassessment and revision of the service plan.
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Section 207. Duration of Service Plan.

The agency with case management responsibility shall provide the youth continued access to services implemented in the service plan for six months after either of the following: termination of jurisdiction or the youth's twenty-fifth birthday.

Section 208. Peer/Alumnus Mentorship.

Each jurisdiction shall create a peer/alumnus mentorship program. Each youth entering the child welfare system shall be assigned a peer/alumnus mentor.

Section 209. Termination of Jurisdiction.

1. No child welfare and/or juvenile justice case may be closed without a judicial order.
 2. The youth, caseworker, guardian ad litem or attorney, and service providers shall create a service plan for the youth to prepare for termination of the court's jurisdiction over the youth sixty days prior to the anticipated closure of the case.
 3. A youth's lack of cooperation with service providers shall not constitute a basis for closing a child welfare and/or juvenile justice case.
 4. A youth's running away from a child welfare placement shall not constitute the sole basis for closing his or her child welfare case.
 5. Arrest and/or conviction of a foster youth of a non-violent and/or misdemeanor crime shall not constitute the sole basis for closing of the youth's child welfare case.
 6. A judicial officer may not close a child welfare and/or juvenile justice case prior to a youth's eighteenth birthday without finding that commitment to the child welfare system is no longer necessary to safeguard the youth's welfare and that it is in the youth's best interests to close the case. In determining whether to close a youth's case prior to the youth's eighteenth birthday, the court shall hold a hearing and consider all of the following:
 - a. The stated desire of the youth;
 - b. The youth's physical health;
 - c. The youth's mental health;
 - d. The youth's education status;
 - e. The youth's housing arrangements;
 - f. The youth's employment status; and
 - g. Any other consideration the court deems appropriate.
 7. If a youth aged sixteen years or older expresses a desire to be emancipated, the court shall hold a hearing to determine if the youth is capable of living on his or her own
-

without the assistance of the child welfare and/or juvenile justice system. Factors that the court shall consider are

- a. Whether the youth is employed and the length of employment;
- b. Whether the youth has affordable housing. If the youth is in independent living, the court may order the child welfare and/or juvenile justice agency to continue to pay for the youth's placement in independent living for six months after the case is closed;
- c. Whether the youth is enrolled in school; and
- d. Whether the youth has extended family or other personal supports that will provide a safety net for the youth.

CHAPTER III. LAWS AND POLICIES REGARDING THE TREATMENT OF YOUTH WHO RUN FROM PLACEMENT

Section 301. Services for Runaway Foster Youth and Homeless Youth.

1. If a youth runs from a child welfare placement, the child welfare agency shall:

- a. Hold the youth's placement open for at least ten days;
- b. Refrain from petitioning the court for closure of case;
- c. Shall continue to plan services in anticipation of the youth's return;
- d. Maintain and make available a crisis hotline for youth to call to access assistance.
 - i. The hotline shall provide immediate assistance for youth in crisis.
 - ii. The hotline shall be staffed by personnel trained in crisis intervention.
 - iii. A youth is considered "in crisis" if any of the following or a combination of the following exist:
 - 1). The youth is threatening to inflict bodily harm on him or herself and/or others;
 - 2). The youth is in immediate need of shelter;
 - 3). The youth is in immediate need of food;
 - 4). The youth is at high risk for losing his/her living arrangement;
 - 5). The youth reports a physical injury or illness;
 - 6). The youth reports other unsafe situations; or
 - 7). The youth is arrested for an alleged delinquent or criminal act while homeless or has runaway and been homeless or on the run for at least 14 days;
 - iv. A child welfare professional may determine that any foster youth is in crisis.

- e. Each jurisdiction shall create a youth crisis intervention response for homeless youth younger than eighteen years of age and for returning runaway foster care youth.
 - i. Crisis intervention services will be accessible to youth through the hotline described in Subsection (1)(d) or any other contact with the child welfare agency.
 - ii. Crisis intervention services shall be equipped to provide temporary, safe shelter to a youth in crisis.
 - iii. Crisis intervention services shall include access to licensed professionals needed to address the crises identified.
 - iv. Crisis intervention will include transportation of the youth as needed.
- 2. Foster care youth who return from running away and foster parents/primary caretakers of the youth shall be interviewed independently to ascertain, at a minimum,
 - a. Whether or not the previous placement should be maintained; and
 - b. Assessment of the placement/living arrangement regarding
 - i. Safety;
 - ii. Mutual respect;
 - iii. Compatibility; and
 - iv. Areas where additional supports will allow a higher likelihood for the subsequent placement to succeed.
- 3. No delinquency charges shall be filed based solely on a youth's running from a child welfare placement.
- 4. If a youth in foster care runs from his/her placement and is subsequently located by the police or other means, the youth shall not be securely detained. The youth shall be brought directly to the jurisdiction's child welfare agency.¹⁶²
- 5. Youth who run from a child welfare placement shall not be commingled with youth in the juvenile justice system.¹⁶³

Section 302. Case Responsibilities for Foster Care Youth on Runaway Status.

- 1. Law enforcement shall be notified to assist in the location of a runaway foster youth.
- 2. The agency in charge of case management shall actively look for the youth in an effort to locate the youth and bring him or her back into care.
 - a. The agency in charge of case management shall use due diligence in its efforts to locate youth who have absconded.

¹⁶² See STATUS OFFENSES, *supra*, for a more detailed discussion.

¹⁶³ *Id.*

- b. The agency actively looking for the youth shall take all reasonable steps to locate a youth who has run. This includes, but is not limited to, searching for the youth at his or her last known address, speaking to family members and other acquaintances known to be a part of the youth's life, visiting the youth's school or vocational training site, and searching local hospitals and jails.
- c. If case management is shared between the child welfare and juvenile justice systems, both agencies shall make efforts to locate the youth.
- d. A child welfare case and/or case regarding a status offender shall not close solely based on the youth running from a placement.

Section 303. Additional Responsibilities.

1. Foster Care Youth

- a. The case worker for the runaway foster youth shall convene a service planning meeting within seventy-two hours after the youth returns.
- b. The youth shall have the right to request and receive a hearing within seven days of his or her return to pursue emancipation.
- c. Each jurisdiction shall compile data on a bi-annual basis regarding all youth who run away from foster placements; data shall include, at a minimum,
 - i. Total number of youth who ran away from foster care placements;
 - ii. Age of youth;
 - iii. Gender of youth;
 - iv. Date left and date returned;
 - v. Length of time in the placement prior to running away; and
 - vi. How the youth was located/returned.

2. Homeless Youth

- a. Each jurisdiction shall annually provide data regarding the number of homeless youth under eighteen years old who accessed and received services through the hotline; data shall include, at a minimum,
 - i. Total number of youth;
 - ii. Age of youth;
 - iii. Gender of youth;
 - iv. Date youth made contact;
 - v. Current living arrangement;
 - vi. Services rendered; and
 - vii. Living arrangement at case closure.
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DISCHARGE FROM CUSTODIAL SYSTEMS¹⁶⁴



Scope of Foster Care in the United States¹⁶⁵

In any given year, about 800,000 children are served in foster care in family and non-family settings, with a daily census of 510,000.¹⁶⁶ The numbers of children in foster care have risen substantially since 1980 and are only now just leveling off. Most of these children have suffered maltreatment, but some children are placed due to other parental dysfunction, parent death or, in about one in five cases, because a child has mental health service needs that the family cannot address.¹⁶⁷

Though preventing the placement of children in foster care and minimizing their length of stay is a child welfare priority, many children will spend a substantial amount of their childhood in foster care. Nearly half of the children placed in foster care will remain there for a year or longer with an average length of stay of two years.¹⁶⁸ Of those leaving care in fiscal year 2006, 42% had been in care eleven months or less, but 26% had been there for three years or more.¹⁶⁹ Over 26,000 older youth emancipate to adulthood from a foster care setting every year.¹⁷⁰

¹⁶⁴ Beth Colgan, Managing Attorney, Institutions Project, Columbia Legal Services; Leslie Starr Heimov, Executive Director, Children's Law Center of Los Angeles, Los Angeles, CA; Andrea Khoury, Staff Attorney, American Bar Association, Washington, DC; Peter Pecora, Senior Director of Research Services, Casey Family Programs, Seattle, WA; George Yeannakis, Special Counsel, TeamChild, Seattle, WA.

¹⁶⁵ Special thanks to the foster care alumni who have shared their wisdom and experiences with us.

¹⁶⁶ U.S. Department of Health and Human Services, Administration for Children and Families, Children's Agency, *The AFCARS Report No. 14: Preliminary FY 2006 estimates as of January 2008* (2008), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report14.htm (last visited May 4, 2009).

¹⁶⁷ Richard P. Barth *et al.*, *Placement into foster care and the interplay of urbanicity, child behavior problems, and poverty*, 76 Am. J. of Orthopsychiatry 358-366 (2006). Mary Gilberti and Rhonda Schulzinger, Bazelon Center for Mental Health Law, *Relinquishing custody: The tragic result of failure to meet children's mental health needs* (2000).

¹⁶⁸ *The AFCARS Report*, *supra*.

¹⁶⁹ *Id.*

¹⁷⁰ Adrienne L. Fernandes, *Youth Transitioning From Foster Care: Background, Federal Programs, and Issues for Congress* (2008), available at <http://openncs.com/document/RL34499/2008-05-21> (last visited May 4, 2009).

Key Juvenile Justice Statistics

In 1999, approximately 100,000 juveniles (ages seventeen years and under) left a juvenile correctional facility, state prison, or federal prison.¹⁷¹ The rate of juvenile violent crime arrests has consistently decreased since 1994, falling to a level not seen since at least the 1970s. From 1999 to 2003, the committed population in custody on the census day dropped 10%.¹⁷² Thus, the size of the reentry population is presumably smaller today than it was in 1999.¹⁷³ But even a 10% decrease in the population would result in 90,000 juveniles exiting a juvenile facility and reentering society each year.

Data from the 2003 Census of Juveniles in Residential Placement Databook (“CJRP”) and 2003 Survey of Youth in Residential Placement (“SYRP”) provide a current understanding of the characteristics of candidates for reentry programs.¹⁷⁴ The reentry population had the following characteristics:

- 86% are male.
- 40% are white, 38% are black, and 18% are Hispanic.
- 12% are age 14 or younger, 44% are age 15 or 16, and 44% are age 17 or older.
- 57% of reentry youth come from publicly operated facilities and 43% from privately operated facilities.
- 34% were committed for a person offense (most likely simple assault), 32% for a property offense (most likely burglary), 10% for a drug offense, 10% for a public order offense, 10% for a technical violation of probation or parole, and 5% for a status offense.

More than half of these youth were held in public facilities with doors or gates that are locked day and night. More than one-third came from facilities that have living quarters, wings, floors, or units that are locked for all youth day and night. The majority of facilities which held these youth said they provide on-site treatment (85%), most often mental health (63%) or substance abuse (67%) treatment. Fewer than four in ten violent offenders were in facilities providing treatment specifically for violent offenders.

Youth ages sixteen and seventeen constitute 25% of the youth population ages ten to seventeen, but they account for nearly 50% of arrests of youth under age eighteen, nearly 40% of delinquency court cases, and more than 50% of juveniles in residential placement. Juveniles released from secure confinement still have their likely prime crime years ahead of them. Juveniles released from secure confinement have a recidivism rate ranging from 55% to 75%.

¹⁷¹ Howard N. Snyder and Melissa Sickmund, Office of Juvenile Justice and Delinquency Prevention, *Juvenile Offenders and Victims: 2006 National Report* (2006), available at <http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/NR2006.pdf> (last visited March 31, 2009).

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ CJRP Databook, available at <http://ojjdp.ncjrs.gov/ojstatbb/Cjrp/> (last visited March 31, 2009); SYRP available at http://ojjdp.ncjrs.gov/pubs/makingadiffer/critical_4.html (last visited March 31, 2009).

The chances that young people will successfully transition into society improve with effective reentry and aftercare programs.

Juvenile correctional systems have many different components. Some juvenile correctional facilities look very much like adult prisons. Others seem very much like “home.” Private facilities continue to play a substantial role in the long-term custody of juveniles, in contrast to adult correctional systems. Although six in ten juvenile facilities were privately operated, public facilities held six in ten juvenile offenders.¹⁷⁵ The daily number of committed youth held in public and private facilities increased 28% between 1991 and 2003, with the increase far greater in private than in public facilities.

Many youth returning from juvenile institutions have significant educational disabilities, lagging behind their peers, and facing unwelcoming school districts that want no part of accepting them back. Communities to which these youth return can also pose significant challenges. Most youth come from and return to communities of concentrated disadvantage where crime is rampant and education and employment opportunities are few.¹⁷⁶ Further, adolescence itself is a period of time often characterized by experimentation, rebellion, impulsiveness, insecurity, and moodiness, further complicating transition from facility to community.¹⁷⁷ Youthful offenders face two transitional challenges: the developmental transition from adolescence to young adulthood, and the transition from life in a correctional facility to life in the community.¹⁷⁸

Research and practice show that long-term success in helping offenders prepare for economic self-sufficiency requires strategies that address their education and employment needs. Recent research suggests that a solid academic foundation and employment- and career-focused programs can be cost-effective in reducing the likelihood of reoffense.

Transition Issues

Large numbers of older children emancipate from foster care and juvenile justice in the United States every year. These older children face serious challenges, including establishing a viable relationship with their birth family members. Many of these older children need special services while in care and transition services as they emancipate from care, especially if they do not have a permanent home. No matter what the length of stay, after a safe home environment has been established, the developmental needs of the transitioning youth should

¹⁷⁵ *CJRP Databook*, *supra* at 197.

¹⁷⁶ Daniel P. Mears and Jeremy Travis, *Youth development and reentry*, 2 *Youth Viol. and Juv. Just.* 3-20 (2004).

¹⁷⁷ David M. Altschuler and Rachel Brash, *Adolescent and teenage offenders confronting the challenges and opportunities for reentry*, 2 *Youth Viol. and Juv. Just.* 72-87 (2004).

¹⁷⁸ See National Center for Mental Health and Juvenile Justice, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System*, available at <http://www.ncmhjj.com/Blueprint/intervention/reentry.shtml> (last visited March 31, 2009).

become the top priority for attention by the youth's family, caseworker, juvenile probation worker, health care or other professional.

The available research indicates that youth transitioning from foster care are likely to experience a number of negative outcomes in addition to homelessness. For example, studies have found that these youth are more likely to be involved in the criminal justice system compared to the general population,¹⁷⁹ and that they are at higher risk of teen pregnancy and parenting.¹⁸⁰ Because most youth in foster care have changed schools multiple times, many have lower reading and math skills, as well as lower high school graduation rates.¹⁸¹ Other studies show that foster care alumni tend to have higher rates of alcohol and other drug abuse,¹⁸² higher rates of unemployment, and greater likelihood of dependence on public assistance.¹⁸³

In summarizing what we know about the outcomes for older youth in care and foster care alumni, caution needs to be exercised. There are enough methodological concerns with past research (such as a lack of adequate comparison groups and low study response rates) that the results noted above need to be viewed with caution. Furthermore, youth outcomes are affected by variables outside the control of those providing services, including characteristics of the child, the birth family, other relatives, and foster parents; ecological factors before services were begun (such as schooling, neighborhood environment); and the child's degree of resiliency.¹⁸⁴

Because of the lack of "strengths-oriented" research and the media preoccupation with negative effects, the many success stories of older youth in foster care often are not publicized.¹⁸⁵ This model law attempts to identify the nature and extent of supports required and promising strategies for delivering services to help every youth in foster care succeed.

¹⁷⁹ Mark Courtney *et al.*, *Foster youth transitions to adulthood: A longitudinal view of youth leaving care*, 80 *Child Welfare* 685-717 (2001); Thomas P. McDonald *et al.*, *Child Welfare League of America, Assessing the long-term effects of foster care: A research synthesis* (1996). Note: These comparisons must be viewed with caution as maltreated children and children from families in poverty would be more appropriate comparison groups.

¹⁸⁰ Ronna Cook *et al.*, *A National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth: Phase 2* (Westat, Inc. 1991); Mark E. Courtney *et al.*, *Chapin Hall Center for Children, University of Chicago, Midwest Evaluation of Adult Functioning of Former Foster Youth: Outcomes at Age 19* (2005).

¹⁸¹ See, e.g., Wendy Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non Foster Care Youth*, 14 *Child and Adol. Soc. Work J.* 41-53 (1996); Courtney *et al.*, *supra* at note V.

¹⁸² Courtney *et al.*, *supra* at note V; Peter Pecora *et al.*, *Casey Family Programs, Improving family foster care: Findings from the Northwest Foster Care Alumni Study* (2005), available at <http://www.casey.org/Resources/Publications/NorthwestAlumniStudy.htm> (last visited March 31, 2009); Lee N. Robins, *Deviant children grown up: A sociological and psychiatric study of sociopathic personality* (1966).

¹⁸³ Mark Courtney *et al.*, *Involvement of TANF Applicant families with child welfare services*, 79 *Social Serv. Rev.* 119-157 (2005); Robert M. Goerge *et al.*, *Chapin Hall Center for Children at University of Chicago, Center for Social Services Research at University of California Berkeley, Employment Outcomes for Youth Aging Out of Foster Care- Final Report* (2002), available at <http://aspe.hhs.gov/hsp/fostercare-agingout02/> (last visited March 31, 2009).

¹⁸⁴ See, e.g., Anthony N. Maluccio *et al.*, *Child Welfare League of America, Child Welfare Outcome Research in the United States, the United Kingdom and Australia* (2001); BJ Harden, *Safety and stability for foster children: A developmental perspective*, 14 *Future of Children* 39-47 (2004); and Benjamin Kerman *et al.*, *Outcomes for young adults who experienced foster care*, 24 *Children and Youth Serv. Rev.* 319-344 (2002).

¹⁸⁵ See Nell Bernstein, *A rage to do better - Listening to young people from the foster care system* (2000); Antwone Q. Fisher and Mim Eichler Rivas, *Finding Fish* (2002); Dave Pelzer, *A Man Named Dave: A Story of Triumph and Forgiveness* (2000).

Model State Statute—Youth Discharged from Custodial Systems

CHAPTER I. LEGISLATIVE FINDINGS; INTENT

Section 101. Legislative Findings.

The legislature finds that:

1. Young people aging out of the child welfare system and the juvenile justice systems are often unprepared and ill equipped to manage the many responsibilities associated with a successful transition to independence. The difficulties associated with community transition for youth are enormous. Many of these youth have spent significant portions of their young lives in out-of-home placement, without the benefit of developing personal bonds or close relationships with any adult, making it difficult to form positive and stable relationships.
 2. Many of the youth released from custodial systems have mental health and/or substance abuse issues. Many of these youth also have learning and other educational challenges. These youth often are summarily rejected from school and other support services because of their status as dependent youth or their past incarceration. The inability to get prompt and appropriate treatment and services to address these individual factors can impede successful transitions. As a result, many of these young people find themselves dependent on adult mental health or public social service systems or incarcerated. For youth involved in the juvenile justice system, services and supports that meet the individual needs of youth, if made available immediately upon release, reduce the likelihood of re-offense and increase the safety of communities.
 3. While the child welfare system should always look toward identifying a permanent plan of return to home, adoption or guardianship, efforts must begin early to ensure that the young person is fully prepared for independence. Throughout a youth's time in custodial care and with increasing frequency and intensity as the child approaches the age of majority, the youth must be provided with opportunities to develop competence in and be prepared to exercise control over a wide array of life skills.
 4. For dependent youth for whom a permanent plan of return to home, adoption or guardianship has not been established, the youth's dependency case shall remain open at least until the youth reaches the age of majority or otherwise legally emancipates.
 5. Youth striving to establish stable independent adult lives will benefit from comprehensive discharge planning. Successful transitions to adulthood require that prior to the release of a juvenile from foster care or juvenile court jurisdiction, the responsible agency must develop an individualized transition or re-entry plan to ensure that housing, health and mental health services, education, employment, and vital records are available immediately upon release.
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6. Throughout this process, the professionals working with the youth must demonstrate cultural and linguistic competency. The plan must be developmentally appropriate, culturally sensitive, gender sensitive, built upon the individual strengths and needs of youth, and must emphasize opportunities for the youth to form or maintain connections to the community, as identified by the youth.
7. Effective discharge planning is based upon assessments and periodic reassessments. Youth involvement and choice at every phase of the case, both in and out of court, is essential to successful discharge planning.

Section 102. Intent.

In each of the areas identified below the youth should have practical experience and real life opportunities to test the identified skills. Youth exiting care to independence should have demonstrated competency in all of the areas identified below. In effect, every court hearing is a permanency or discharge planning hearing. Children must have, from the very start, incremental opportunities to take on additional responsibilities. Similarly, children must be given regular opportunities to make independent choices, to make mistakes, and to be supported as they work to correct or remedy the consequences of any poor choices made.

Section 103. Definitions.

“Youth” or “juvenile” refers to an individual under the age of twenty-five, unless otherwise specified.

CHAPTER II. TRANSITION SERVICES FOR YOUTH AGING OUT OF FOSTER CARE

Section 201. Emancipation Planning.

Emancipation planning should begin at the outset of every dependency case but no later than age fourteen or when family reunification services are terminated, whichever occurs first.

Section 202. Hearings; Competencies.

1. At a hearing held twelve months prior to any hearing to terminate jurisdiction over a dependent child who is between the ages of sixteen and twenty-one, the agency shall submit a report verifying that the youth has had practical, real world opportunities to develop skills in all of the areas listed below and that the youth has achieved competency in each identified area.
 - a. Housing: The youth has the ability to secure housing and is well versed in competencies related to rental applications, landlord/tenant rights, securing housing, setting up accounts with local utilities, and the challenges associated with and factors to consider when choosing a roommate.
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- b. Money Management: The youth demonstrates an ability to budget, manage his or her finances, understands basic responsibilities associated with maintaining a checking and savings account, use of an ATM card, use of credit cards, implications of taking on credit obligations, and interest rates in the context of saving, investing, and borrowing money.
 - c. Life Skills
 - i. The youth demonstrates an ability to access public transportation.
 - ii. The youth demonstrates a basic understanding of nutrition, meal planning, grocery shopping, and food preparation.
 - iii. The youth demonstrates an ability to maintain a clean and safe environment, including doing laundry, performing basic household chores, and practicing good personal hygiene.
 - d. Health and Mental Health
 - i. The youth demonstrates an ability to access community based health and mental health services.
 - ii. The youth understands his or her own medical and mental health history and relevant health issues, including safe use of any over the counter or prescription medications.
 - iii. The youth has received comprehensive and medically accurate information regarding reproductive health, safe sex and avoiding sexually transmitted infections.
 - e. Education
 - i. The youth is enrolled in and attending school.
 - ii. The youth is able to independently prepare for school and manage class work and homework.
 - iii. The youth participates in age and developmentally appropriate extracurricular, social, and enrichment activities.
 - iv. The educational placement is appropriate to meet the child's academic, vocational, and developmental needs.
 - v. Youth who may qualify for special education services are receiving educational services consistent with a current Individual Education Plan ("IEP"), including a behavioral plan based on a functional behavioral assessment. This plan shall be regularly updated.
 - vi. The youth is on track to graduate, is aware of his or her educational status, and understands the requirements still needed in order to be eligible for desired postsecondary educational, vocational, or employment setting.
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- f. Employment
 - i. The youth has participated in an employment skills assessment conducted by a qualified occupational therapist. Any recommended job readiness and job skills programs have been offered to the youth.
 - ii. The youth demonstrates an ability to seek employment, complete an employment application, and participate in a job interview.
 - iii. The youth demonstrates the ability to use the internet to seek out job resources and other useful information.
 - 2. At a hearing held six months prior to any hearing to terminate jurisdiction over a dependent youth who is between the ages of sixteen and twenty-one, the child welfare agency shall explore with the youth whether the youth would benefit from participation in a program of extended support. The youth may voluntarily decline services at any time after jurisdiction is terminated and may seek re-admittance into any program or service identified below up until the age of twenty-five. The identified services are to be provided at an alumni resource center or resource and referral program staffed, at least in part, by former foster or delinquent youth. Current and former foster or delinquent youth shall participate in the design of any such programs.
 - 3. If the youth indicates a desire to participate in such a program, the agency shall ensure the provision of any or all of the services listed below to the youth, and where appropriate, the youth's domestic partner or other relevant family members, until the youth reaches the age of twenty-five or until the youth no longer wishes to receive the services, whichever occurs first. Provision of one service shall not be dependent on acceptance of another service. These services shall include, but are not limited to,
 - a. Subsidized or transitional housing;
 - b. Educational supports;
 - c. Assistance with applying to and securing financial aide for post secondary educational or vocational programs;
 - d. Employment assistance;
 - e. Health and mental health care;
 - f. Substance abuse treatment;
 - g. Domestic violence counseling;
 - h. Child care resource and referral;
 - i. Parenting classes;
 - j. Social, recreational, and enrichment activities;
 - k. Legal advocacy services; and
 - l. Any other needed service coordination and linkages.
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4. Participation in a program of extended support is not contingent on finding a risk to reoffend or of ongoing or current abuse or neglect, or risk of abuse or neglect, by the parent. The youth shall not be required to waive any legal rights that he or she holds as an adult in order to participate in any program or service, including but not limited to the right to exercise freedom of speech and participation in social activities of his or her choice.
5. Youth must have the opportunity to present at each and every court hearing

Section 203. Termination Requirements.

Prior to terminating the provision of services to any dependent youth who is between the ages of sixteen and twenty-one, the court must find that

1. The agency has assisted the youth in obtaining, and that the youth has obtained, if eligible, a driver's license or government-issued identification card, a social security card, a clean and accurate credit report, a savings and a checking account, a current resume, a high school diploma or equivalent, copies of his or her own birth records, and a Know Your Rights publication.
 2. The agency has assisted the youth in sealing and/or expungement of his or her juvenile criminal records. In the event that the youth is not eligible to have his or her records sealed or expunged at the time the youth is exiting care, the agency has provided the youth with information needed to process a future request to have these records sealed. The agency has provided the youth with an explanation of what the youth is legally required to report regarding any delinquency or criminal history on employment, rental, and other applications. The agency shall pay any remaining financial obligations owed by a youth aging out of foster care.
 3. The agency has assisted the youth to obtain or provided the youth with any photographs, other than forensic photographs, of the child and his or her family members in the possession of the agency, all health and mental health records, educational records, placement history, family history, contact information for all siblings, parents, and any other relatives or important people in the child's life known to the agency, proof of residency or citizenship, passport, and records relating to tribal affiliation, if applicable.
 4. When needed, the agency has assisted the youth to become a legal resident of the United States, consistent with the federal Special Immigrant Juvenile status ("SIJ"), the Violence Against Women Act ("VAWA") or any other applicable state or federal law.
 5. The youth has secured adequate and stable housing.
 6. The youth has information regarding all existing local, state, and federal housing subsidy programs established to assist young people find and maintain affordable housing.
 7. The youth is employed or is enrolled in a postsecondary educational or vocational training program.
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8. The youth has adequate ongoing resources to meet all of his or her financial obligations, including rent, utilities, food, transportation, and clothing.
9. The youth is enrolled in an appropriate publicly or privately funded healthcare plan.
10. The youth has access to all needed medical and mental health care providers, clinics, or agencies.
11. Where indicated, the youth is receiving mental health and/or developmental services including, but not limited to, occupational therapy, addiction services, developmental services, disability benefits, or survivors benefits.
12. Where indicated, a plan is in place to transition the care, custody, and control of the youth to the Department of Mental Health or other similar entity.
13. The youth has relationships with or connections with adults who are important to the youth and who have a demonstrated commitment to the youth and a willingness to provide emotional support and to serve as a resource for the youth.
14. The youth has adequate clothing, including clothing suitable for job interviews and employment.
15. The youth has adequate household furnishings.
16. In the event that the youth exiting care is a parent, the agency shall verify that the youth has received any needed referrals for child care, parenting support, infant or child health and mental health services, and resolution of any family law or custody issues.

Section 204. Higher Education.¹⁸⁶

1. The state shall establish a program of tuition waivers for youth exiting foster care for all state-run institutions of postsecondary education including, but not limited to, community colleges, colleges, universities, vocation schools, occupational centers, and trade schools.
2. Merit-based and need-based scholarships shall be established to assist youth exiting state care seeking to access postsecondary educational opportunities.
3. Colleges and universities shall provide on-campus supportive services targeted at enabling youth exiting state care to successfully complete their education.
4. Dormitories and other on-campus housing facilities shall give priority to youth exiting state care.
5. Dormitories and other on-campus housing facilities shall allow youth exiting state care to occupy their on-campus housing during school breaks and summer vacation.

¹⁸⁶ See EDUCATION Section 211 for recommendations regarding postsecondary opportunities for youth experience housing instability.

COMMENT. For example, the Guardian Scholars and Renaissance Scholars programs provide support to college-bound and college enrolled students exiting the foster care system.¹⁸⁷ These comprehensive programs assist students with scholarship funds, academic counseling, tutoring, and mentoring. For youth who lack family support and who may never have even been on a college campus prior to the first day, these programs can be essential to helping the students reach their goal of not only attending college but thriving on a college campus.

Section 205. Civil Legal Advocacy for Youth.¹⁸⁸

All youth transitioning out of dependency or delinquency systems shall have access to civil legal advocates trained in youth issues to help secure the services and programming listed above.

Section 206. Records.

Child welfare agencies shall serve as a repository for information and records on each child they serve and related information. All records and related information shall be maintained on the agency's website. The website shall have all needed electronic security features to ensure that the confidential nature of the information is not compromised. The site shall be accessible to the youth upon request.

Section 207. Housing Support.

A housing subsidy program sufficient to meet the needs of youth exiting state care shall be established to assist these youth in finding and maintaining affordable housing options.

CHAPTER III. PROVISIONS FOR YOUTH RELEASED FROM JUVENILE JUSTICE SYSTEMS

Section 301. Individual Re-entry Plan.

1. In addition to requirements of the preceding chapters, for all incarcerated youth the juvenile justice agency supervising the young offender shall, prior to the release from custody, develop a comprehensive Individual Re-entry Plan ("IRP").
2. An individual re-entry plan shall include a comprehensive assessment of an offender initiated at the time the offender is committed to the jurisdiction of the department. The plan shall address both the assets and needs of the offender and describe actions needed to prepare an individual for release, define terms and conditions of release, and address the supervision and services needed in the community. At a minimum, the competencies listed in Section 202 should be addressed in the IRP.

¹⁸⁷ For more information, see <http://www.fosteryouthhelp.ca.gov/pdfs/GuardianScholars.pdf> (last visited March 31, 2009) and <http://www.fullerton.edu/guardianscholars/> (last visited March 31, 2009).

¹⁸⁸ See ACCESS TO LEGAL SERVICES, below, for a more detailed recommendation.

Section 302. Access to Health, Mental Health, and Substance Abuse Treatment.

1. Youth in the juvenile justice system shall be provided access to all medically necessary health, mental health, and substance abuse treatment immediately upon release from custody.
2. In the case of any youth who is enrolled for medical assistance under the state's Medicaid plan at the date of commitment:
 - a. The state shall not terminate eligibility for medical assistance of any such individual, but shall establish a process so that the state does not claim federal financial participation for services that are excluded under federal law;
 - b. Such individual shall be presumed enrolled for medical assistance upon release from custody unless and until there is a determination that the individual is no longer eligible to be so enrolled; and
 - c. Once discharge from custody is anticipated, the state shall take whatever steps are necessary to ensure that the eligible individual can begin receiving Medicaid-covered services immediately upon leaving custody.
3. In the case of any juvenile who is not enrolled for medical assistance under the state's Medicaid plan at the date of commitment:
 - a. The state shall take whatever steps necessary to determine Medicaid eligibility prior to release from custody; and
 - b. Once discharge from custody is anticipated ensure that, if eligibility is established, Medicaid-covered services will begin immediately upon leaving custody.

Section 303. Education Access.

1. All school-aged youth leaving custody shall be:
 - a. Reenrolled in an appropriate education placement immediately upon release; and
 - b. Entitled to an educational placement in the least restrictive environment.
 2. All agencies responsible to ensure reenrollment shall:
 - a. Collaborate to develop a reenrollment plan with the participation of the youth and appropriate family member or guardian;
 - b. Provide access to information necessary to ensure reenrollment consistent with state and federal confidentiality laws and regulations;
 - c. Ensure the timely transfer of records;
 - d. Ensure continuity of educational services to achieve individualized academic and behavioral goals; and
 - e. Provide transportation to indigent parents or guardians, and other accommodations, as necessary, to facilitate participation in educational release planning.
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Section 304. *Employment and Life Skills.*

In anticipation of discharge from custody, the releasing authority shall ensure that a juvenile over the age of fifteen demonstrates the following:

1. An ability to complete a job application, participate in a job interview, and use the internet to seek out job information and resources; and
2. The life skills necessary for success upon release, including the ability to manage finances, access public transportation, access needed supports and services, maintain a safe and clean environment, secure housing, and has a basic understanding of nutrition, meal planning and food preparation.

Section 305. *Vital Records and Essential Services.*

In anticipation of discharge from custody, the releasing authority shall assist a juvenile to obtain:

1. A driver's license, if eligible, a social security card, and birth records;
2. A safe housing option and housing subsidy, if eligible;
3. Access to educational or employment training opportunities, if appropriate;
4. Information to assist the youth in sealing juvenile criminal records;
5. Access to legal services to address immigration or other legal matters.

Section 306. *Discrimination.*

It shall be unlawful to discriminate in making employment, housing, and education decisions against juveniles who have been confined pursuant to an adjudication of juvenile delinquency or as a status offender. In making hiring decisions, companies and individuals may not inquire about or consider juvenile adjudications or sealed convictions for criminal violations.

COMMENT. See (NY) S. 3092. *Protection Against Employment Discrimination.*

HOUSING¹⁸⁹



Unaccompanied homeless youth in America face economic, legal, and societal barriers to securing housing. Most federal funding for rental subsidies and the development of affordable housing excludes homeless youth from programmatic benefits and resources. What little federal resources are devoted to homeless youth through the Runaway and Homeless Youth Act program are inadequate to meet the demand for shelter and housing options. In 2008, federally funded community-based programs made over 740,000 contacts with youth through street outreach programs, but less than 46,000 obtained access to a shelter bed or transitional housing apartment due to lack of funding capacity.¹⁹⁰ Youths' minority status also may constitute a legal barrier to securing housing, as some jurisdictions do not allow minors to enter contracts for such accommodations and other states create procedural barriers to obtaining an emancipation order. Furthermore, federal fair housing law and most state civil right codes fail to protect youth against age discrimination in securing housing.

Fundamentally, youth homelessness is the result of family breakdown and system failure. Youth homelessness would not exist to such an alarming degree if American public and private investment in affordable housing and supportive services were adequate to meet societal demand or if a right to housing were recognized in American jurisprudence.

These model laws cover those areas of law or statute that could be reformed to expand housing options for unaccompanied, homeless youth, including:

1. Minor's right to consent to residential shelter;
2. Minor's right to contract for necessities;
3. Emancipation;
4. Fair housing rights afforded to minors;

¹⁸⁹ Paul Freese, Director of Litigation and Advocacy, Public Counsel, Los Angeles; Richard Hooks Wayman, Senior Youth Policy Analyst, National Alliance to End Homelessness, Washington, D.C.

¹⁹⁰ National Alliance to End Homelessness, *America's Homeless Youth: Recommendations to Congress on the Runaway and Homeless Youth Act* (2009), available at www.endhomelessness.org/files/2210_file_FY2010_RHYA_Appropriations.pdf (last visited May 4, 2009).

5. Guardianship and delegation of parental physical custody;
6. Foster care and transitional independent living services; and
7. Youth tenant rights in eviction proceedings.

These legal strategies for making housing more accessible to at-risk youth are not by any measure a substitute for expanding the infrastructure of affordable supportive housing options. Community organizers and advocates should continue pressuring both our local and national leaders to increase public and private investment in this vitally needed resource.

The systemic change needed to address this crisis will require multi-pronged advocacy strategies and should not be limited to incremental efforts of state legislatures. On the macro-level, long-term advocacy efforts may focus on a universal right to housing and increasing appropriations for youth housing, perhaps as part of a more comprehensive array of services under a state runaway and homeless youth act. On the micro-level, advocates may improve housing access by amending state law to recognize a minor's right to consent to shelter, right to contract for housing, allowing for emancipation, or securing the fair housing or tenant rights of minors. These model laws are offered to outline various legislative proposals that bear hope for extended access to housing opportunities for unaccompanied, homeless youth.

Right to Shelter

Model State Statute—Youth Right to Access Shelter and Services to Prevent or End Abuse and Neglect¹⁹¹

Section 101. Findings.

Best practices dictate that reasonable efforts should be made to return runaway or homeless youth to their parent or guardian, often with the provision of support services. However, recognizing that some parents are unwilling to participate in a reunification process and that minors may flee from abuse or severe neglect, this Legislature finds that minors should be allowed to consent to residential shelter and ancillary services in certain circumstances.

COMMENT. See, e.g., California Family Code Section 6924(b), which provides: "A minor who is 12 years of age or older may consent to mental health treatment or counseling on an outpatient basis, or to residential shelter services, if both of the following requirements are satisfied:

(1) The minor, in the opinion of the attending professional person, is mature enough to participate intelligently in the outpatient services or residential shelter services.

¹⁹¹ Modeled after Nevada Revised Statutes, Chapter 244.421 *et seq.*

(2) The minor (A) would present a danger of serious physical or mental harm to self or to others without the mental health treatment or counseling or residential shelter services, or (B) is the alleged victim of incest or child abuse."

Section 102. "Approved Youth Shelter" Defined.

"Approved youth shelter" means a youth shelter that has been designated as approved by a county pursuant to an ordinance adopted pursuant to Section 107.

Section 103. "Necessary Services" Defined.

"Necessary services" means:

1. Food;
2. Access to an approved youth overnight shelter;
3. Counseling to address immediate emotional crises or problems;
4. Outreach services to locate and assist runaway or homeless youth;
5. Screening for basic health needs and referrals to public and private agencies for health care;
6. Referrals to assistance and services offered by public and private agencies; and
7. Long-term planning, placement and follow-up services.

Section 104. "Runaway or Homeless Youth" Defined.

1. "Runaway or homeless youth" means a youth who is twelve to seventeen years of age, who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care, or who lacks a fixed, regular, and adequate nighttime residence. The following are not fixed, regular, or adequate nighttime residences:
 - a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - b. An institution or a publicly or privately operated shelter designed to provide temporary living accommodations;
 - c. Transitional housing;
 - d. A temporary placement with a peer, friend, or family member that has not offered permanent residence, a residential lease, or temporary lodging for more than thirty days; or
 - e. A public or private place not designed for, nor ordinarily used as, a regular sleeping accommodation for human beings.

2. Homeless youth does not include persons incarcerated or otherwise detained under federal or state law.

COMMENT. It is assumed that under most state law, youth emancipate at age eighteen and may independently determine their residential status. Therefore, this model statute does not address the right to consent to shelter for youth who have reached the age of majority.

Section 105. "Youth" Defined.

"Youth" means a child who is:

1. Twelve years of age or older;
2. Not emancipated; and
3. Mentally competent.

Section 106. "Youth Shelter" Defined.

"Youth shelter" means an entity which is not operated for profit and which provides, at a minimum, necessary services to runaway or homeless youth who qualify for such services.

Section 107. Designation by Ordinance; Contents of Ordinance; Regulations.

1. The [appropriate agency] of any county may provide by ordinance for the designation of a youth shelter operated within the county as an approved youth shelter.
2. If [the appropriate agency] has adopted an ordinance pursuant to subsection (1), a youth shelter that is located in that county and seeking to be designated as an approved youth shelter may apply to the [appropriate agency] for such a designation.
3. An ordinance adopted by [the appropriate agency] pursuant to subsection (1) must:
 - a. Prescribe the requirements for designation of a youth shelter as an approved youth shelter, including, without limitation
 - i. A requirement that the youth shelter provide necessary services;
 - ii. The form and manner of the application for designation or renewal of a designation as an approved youth shelter;
 - iii. An application fee in an amount not to exceed the actual cost to the county for reviewing the application; and
 - iv. A requirement that an applicant must comply with the provisions of an ordinance adopted pursuant to this section and with all applicable federal, state, and local laws and ordinances pertaining to shelters for the homeless;

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- b. Provide for reasonable inspections of an approved youth shelter to confirm that the youth shelter is complying with the provisions of an ordinance adopted to carry out the provisions of this section;
 - c. Provide for the revocation of a designation as an approved youth shelter for failure to comply with the provisions of an ordinance adopted to carry out the provisions of this section;
 - d. Require an approved youth shelter to conduct an interview to determine whether a youth is a runaway or homeless youth and is qualified to receive the necessary services of the approved youth shelter;
 - e. Upon admission of a runaway or homeless youth to a shelter, require
 - i. A reasonable, bona fide attempt to notify the parent, guardian, or custodian of the runaway or homeless youth concerning the whereabouts of the runaway or homeless youth as soon as practicable, except in circumstances of suspected abuse, neglect, or exploitation;
 - ii. The notification of state and local law enforcement agencies concerning the whereabouts of the runaway or homeless youth; and
 - iii. A licensed professional to perform an evaluation of the youth to determine
 - 1). Reasons why the youth is a runaway or homeless youth;
 - 2). Whether the youth is a victim of abuse, neglect, abandonment, or exploitation; and
 - 3). Whether the youth needs immediate medical care, counseling, or intensive supportive services;
 - f. Require an approved youth shelter to return or facilitate the return of a runaway or homeless youth to the parent, guardian, or custodian who was notified of the whereabouts of the runaway or homeless youth pursuant to subparagraph (i) of paragraph (e), if the parent, guardian, or custodian so requests. Except that in the case where a licensed professional subsequent to a face-to-face interview has reasonably determined, based on a physical examination or oral testimony, that the youth is a victim of abuse, neglect, abandonment, or exploitation as a result of the youth's parent's or guardian's explicit or implicit conduct and behavior, the youth shall not be transported to his parent or guardian but be provided with shelter and supportive services and an opportunity to petition the state court for a change in custody or temporary guardianship or continued respite shelter care and counseling not to exceed thirty days;
 - g. Provide for the liability of a parent, guardian, or custodian of a runaway or homeless youth for any expenses or costs incurred by the approved youth shelter for providing
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- services to the runaway or homeless youth, only if the services of the shelter were obtained through fraud or misrepresentation; and
- h. Except as otherwise provided in state law, require the information or records obtained by an approved youth shelter to remain confidential, unless the use or disclosure of the information or records is necessary to
 - i. Locate a parent, guardian, or custodian of a runaway or homeless youth;
 - ii. Comply with the duty to report abuse or neglect of a child pursuant to state law;
 - iii. Notify state and local law enforcement agencies; or
 - iv. Seek appropriate assistance for a runaway or homeless youth from public and private agencies.
4. In a county where the [appropriate agency] has adopted an ordinance pursuant to subsection (1), the [appropriate agency] may establish, by ordinance, other regulations as are necessary to carry out the provisions of this section.
5. As used in this section:
- a. "Abuse or neglect" means abuse or neglect of a child as defined in state law.
 - b. "Licensed professional" includes, without limitation,
 - i. A social worker;
 - ii. A registered nurse;
 - iii. A physician;
 - iv. A psychologist or psychiatrist;
 - v. A teacher; or
 - vi. Any other class of persons, who are identified in an ordinance adopted by the county, who hold a professional license in this State and who are trained to recognize indications of abuse or neglect.

Section 108. Immunity from Civil Liability.

If a county designates a youth shelter as an approved youth shelter pursuant to an ordinance adopted pursuant to Section 107, the approved youth shelter and its director, employees, agents or volunteers are immune from civil liability based upon any act or failure to act while admitting, releasing, or caring for a runaway or homeless youth, unless the act or failure to act was the result of the gross negligence or intentional or reckless misconduct of the approved youth shelter or its director, employees, agents, or volunteers.

Youth Fair Housing

Model State Statute—Prohibition of Discriminatory Conduct in Real Property¹⁹²

COMMENT. Common forms of housing discrimination against young people, under either federal or state fair housing law, often include the denial of housing based upon: race (e.g., youth of color are told that apartment is already rented but unit remains advertised); receipt of public assistance (e.g., requirement that the youth have a job); use of Section 8 housing vouchers; disability status (including former history of mental health problems); sex of the housing applicant (e.g., youth is told that it's an "all girl complex"); sexual orientation and gender identity (youth denied housing due to their status as gay, lesbian, bisexual, and transgender); and familial status (e.g., youth is told that the apartment does not accept children or pregnant women).

Section 101. Definitions.

For the purposes of this chapter, the terms defined in this section shall have the meanings ascribed to them in this section:

1. "Minority or youth status" means persons who have not reached their twenty-fifth birthday but have passed the age of majority in this state or minors who are emancipated under the laws of this state.
2. "Discriminate or discrimination" includes all unequal treatment of any person by reason of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance. For purposes of discrimination based on sex, it includes sexual harassment.
3. "Real property" includes real estate, tenements, and hereditaments, corporeal and incorporeal.

Section 102. Prohibited Acts in Real Property.

It is an unfair discriminatory practice:

1. For an owner, lessee, sublessee, assignee, managing agent, real estate developer, real estate salesperson, real estate broker, appraiser, or other person having the right to sell, rent, or lease any real property, or any agent of any of these,
 - a. To discriminate by refusing to sell, rent, lease, or otherwise deny to or withhold from any person or group of persons, solely on the basis of race, creed, religion, color, sex,

¹⁹² Text substantially copied from the Saint Paul City Legislative Code, Chapter 183: Human Rights Act for the City of Saint Paul, Minnesota.

- sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status, any real property, by representing that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or otherwise deny or withhold any property or any facilities of real property to or from any person or group of persons; or
- b. To discriminate against any person or group of persons, solely on the basis of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status, in the terms, conditions, or privileges of the sale, rental, or lease of any real property or in the full and equal enjoyment of services, facilities, privileges, and accommodations or in the furnishing of facilities or services in connection therewith, except that nothing in this clause shall be construed to prohibit the adoption of reasonable rules intended to protect the safety of minors in their use of the real property or any facilities or services furnished in connection therewith; or
 - c. In any transaction involving real property, to make statements, print, circulate, or post, or cause to be printed, circulated, or posted, any advertisement or sign, to use any form of application for the purchase, rental, or lease of real property, or to make any record or inquiry in connection with the prospective purchase, rental, or lease of real property, which indicates any preference or discrimination on the basis of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status, except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to elderly persons but only if the dwelling meets the federal requirements of exempt housing for the elderly; or
 - d. To coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed or that person having aided or encouraged a third person in the exercise or enjoyment of, any right granted or protected by this subdivision.
2. For a person, bank, banking organization, mortgage company, insurance company, or other financial institution or lender to dissuade a person from making an application, solely on the basis of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status, or to so discriminate when application is requested or made for financial assistance for the purchase, lease, acquisition, construction, rehabilitation, repair, or maintenance of any real property or any agent or employee thereof:
-

- a. To discriminate against any person or group of persons, solely on the basis of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status, in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions, or privileges of the financial assistance, or in the extension of services in connection therewith;
 - b. To use any form of application for the financial assistance or make any record or inquiry in connection with the applications for the financial assistance which discriminates on the basis of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status or expresses any intent to so discriminate; or
 - c. To discriminate against any person or group of persons, solely on the basis of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, status with regard to public assistance, or minority or youth status, who desire to purchase, lease, acquire, construct, rehabilitate, repair, or maintain real property in a specific urban or rural area, or any part thereof, in order to reap or enjoy the social, economic, or environmental benefits of the area, in the granting, withholding, extending, modifying, or renewing, or in the rates, terms, conditions, or privileges of the financial assistance, or in the extension of services in connection therewith.
3. For a person to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of, or on account of that person having aided or encouraged a third person in the exercise or enjoyment of, any right granted or protected by this section.

COMMENT. Federal law does not protect homeless youth from being discriminated against because of their age. Landlords and rental companies may deny housing to homeless youth simply based on the person's age without violating federal fair housing laws. The federal Fair Housing Act¹⁹³ prohibits discrimination by landlords, real estate companies, public housing authorities, and lending institutions whose discriminatory practices make housing unavailable to persons because of: race, color, religion, sex, national origin, familial status, or disability. If a youth is denied housing due to one of the above protected class statuses then a complaint may be brought, but if the landlord simply has a "no one under the age of twenty-five" rule it would not run afoul of federal protections.

Some state laws and local ordinances will protect against age discrimination. In fact, several state statutes specifically protect against age discrimination in

¹⁹³ 42 U.S.C. § 3601 *et seq.*

housing.¹⁹⁴ However, even where jurisdictions prohibit age discrimination in housing practices, many times the protections are only afforded to persons eighteen years or older. Pennsylvania state law protects against age discrimination but only if the person is forty years or older.¹⁹⁵

Section 103. Real Property Exemptions.

1. The provisions of Section 102 prohibiting discrimination because of minority and youth status and familial status shall not be construed to defeat the applicability of any local or state restrictions regarding the maximum number of occupants permitted to occupy a dwelling unit, if the occupancy restrictions are reasonably consistent with the Federal Fair Housing Act, and shall not apply to
 - a. Any owner-occupied building containing two or fewer dwelling units, or rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence; or
 - b. Housing for elderly persons, meaning housing
 - i. Provided under any state or federal program that the director determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
 - ii. Intended for, and solely occupied by, persons sixty-two years of age or older; or
 - iii. Intended and operated for occupancy by at least one person fifty-five years of age or older per unit provided that
 - 1). There are significant facilities and services specifically designed to meet the physical and social needs of older persons, or if the provision of the facilities and services is not practicable, that the housing is necessary to provide important housing opportunities for older persons;
 - 2). At least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and
 - 3). There is publication of, and adherence to, policies and procedures that demonstrate an intent of the owner or manager to provide housing for persons fifty-five years of age or older. Housing does not fail to meet the requirements for elderly persons if all new residents as of September 13, 1988, meet the age requirements of Subsection (b)(ii) and (iii)(1) and (2). In addition, housing does

¹⁹⁴ California, Cal. Govt. Code §12955; Connecticut, Conn. Gen. Stat. §46a-64c; Delaware, Del. Code tit. 6, 1953, § 4603; District of Columbia, D.C. Code § 2-1402.21; Hawaii, Haw. Rev. Stat. § 515-3; Illinois, 775 Ill. Comp. Stat. 5; Massachusetts, Mass. Gen. Laws ch. 151B; Michigan, Mich. Comp. Laws § 37.2502; Montana, Mont. Code Ann. § 49-2-305; New Hampshire, N.H. Rev. Stat. Ann. § 354-A:10; New York, N.Y. Hum. Rights Law; North Dakota, N.D. Cent. Code § 14-02.5; Pennsylvania, PHRAct § 5(h); Rhode Island, R.I. Gen. Laws § 34-37-2; Vermont, Vt. Stat. Ann. tit. 9 § 4503; Wisconsin, Wis. Stat. § 106.50.

¹⁹⁵ PHRAct § 5(h).

not fail to meet the requirements by reason of unoccupied units if unoccupied units are reserved for occupancy by persons who meet the age requirements of Subsection (b)(ii) and (iii)(1) and (2).

2. The provisions of Section 102 shall not apply to rooms in a community residential facility, group foster home, freestanding foster care home, or transitional housing facility if the treatment is based on sex for the purpose of protecting personal safety.
3. This chapter shall not be construed to relieve any person or persons of any obligations generally imposed on all persons regardless of any disability in written lease, rental agreement or contract of purchase or sale, or to forbid distinctions based on the inability to fulfill the terms and conditions, including financial obligations of the lease, agreement or contract.

Right to Contract

Model State Statute—Youth Right to Contract for Necessities¹⁹⁶

COMMENT. When family reunification is not an option, community-based organizations seek affordable housing options for unaccompanied homeless youth and may provide positive youth development services through case management support. However, youth may encounter barriers to accessing independent housing if they lack the capacity to contract with a landlord under a lease agreement.

Section 101. Minor Right to Contract for Necessities.¹⁹⁷

1. A minor shall be qualified and competent to contract for housing, employment, purchase of an automobile, receipt of a student loan, admission to high school or postsecondary school, obtaining medical care, establishing a bank account, admission to a shelter for victims of domestic violence, as defined in state statute, or a homeless shelter, and receipt of services as a victim of domestic and/or sexual violence, including but not limited to counseling, court advocacy, financial assistance, and other advocacy services, if:

¹⁹⁶ Sixteen states have specific laws allowing minors to contract for necessities or necessities: Arkansas, Ark. Code §§ 9-26-101, 9-26-103, 23-47-509, 23-47-903, 18-42-102; California, Cal. Fam. Code §§ 6700, 6701, 6710, 6711, 6712; Georgia, Ga. Code Ann. §§ 1-2-8, 33-24-5; Idaho, Idaho Code Ann. §§ 29-101, 55-103, 41-807, 32-103, 32-104, 32-105; Iowa, Iowa Code § 599.2; Kansas, Kan. Stat. Ann. §§ 38-102, 38-103, 40-237; Louisiana, La. Rev. Stat. Ann. § 22:612; La. Code Civ. Proc. Ann. § 1923; Maine, Me. Rev. Stat. Ann. tit. 33 § 52, Me. Rev. Stat. Ann. tit. 24 § 2407; Missouri, Mo. Rev. Stat. §§ 431.055, 431-056; Montana, Mont. Code Ann. §§ 33-15-103, 41-1-302, 41-1-303, 41-1-304, 41-1-305, 41-1-306; North Dakota, N.D. Cent. Code §§ 14-10-09, 14-10-10, 14-10-11, 14-10-12, 14-10-13; Oklahoma, Okla. Stat. tit. 15 §§ 17, 19, 20 and Okla. Stat. tit. 36 § 3606; Oregon, Or. Rev. Stat. §§ 109.510, 109.697; South Dakota, S.D. Codified Laws §§ 26-2-1, 26-2-2, 26-2-3, 26-2-4, 26-2-5, 26-2-6; Utah, Utah Code Ann. §§ 31A-21-103, 15-2-2, 15-2-3; Washington, Wash. Rev. Code §§ 26.28.015, 26.28.030, 26.28.040, 48.18.020; and Guam, Title 19 §§ 1106, 1107, 1108, 1109, 1110.

¹⁹⁷ Beyond state statute, state common law also appears to distinguish between contracts for necessities and contracts for other items. Contracts for non-necessaries (ipods, cars, cell phones, etc.) are subject to rescission by an un-emancipated minor. Enforcement of any contract in a court of law would necessitate either a finding that the minor is emancipated or the appointment of a guardian ad litem. It would appear that contracts for the purchase of food, medical care, shelter, housing, and utilities would be contracts for necessities which are ultimately enforceable by each party. Therefore, a lease agreement is arguably enforceable and valid even if signed by a minor. However, the right to contract is not an entitlement to housing. A contract is a voluntary arrangement between two or more parties. The right to contract for housing does not impose an obligation on the landlord to enter into a contract with any particular minor. The landlord must be willing to enter into a tenancy or leasehold estate.

- a. The minor is homeless, as defined in state statute, or a victim of domestic violence, as defined in state statute, unless the child is under the supervision of the children's division or the jurisdiction of the juvenile court; and
 - b. The minor is self-supporting, such that the minor is without the physical or financial support of a parent or legal guardian.
2. Such a contract is binding upon the minor and cannot be voided or disaffirmed by the minor based upon the minor's age or status as a minor.

COMMENT. Missouri state law allows minors to contract for housing, employment, student loans, admission to schools, medical care, bank accounts and admission to domestic and homeless shelter if the minor is sixteen or seventeen, homeless, a victim of domestic violence, self-supporting, and living independently of the minor's parents with consent.¹⁹⁸ Oregon state law allows unemancipated minors and unmarried persons living apart from their guardian who are sixteen and seventeen, under sixteen years of age and pregnant with a child who will live with the minor, or sixteen years of age and the parent of the child to contract for the necessities of residential living, including contract for living units and utilities.¹⁹⁹

Section 102. Waiver of Contractual Liability for Parents of Minors.

The consent of the parent or legal guardian of such minor shall not be necessary to contract for housing, employment, purchase of an automobile, receipt of a student loan, admission to high school or postsecondary school, obtaining medical care, establishing a bank account, admission to a shelter for victims of domestic violence, as defined in state statute, or a homeless shelter, or receipt of services as a victim of domestic and/or sexual violence, including but not limited to counseling, court advocacy, financial assistance, and other advocacy services. The parent or legal guardian of such minor shall not be liable under a contract by that minor unless the parent or guardian is a party to the minor's contract, or enters another contract, for the purpose of acting as guarantor of the minor's debt.

Delegation of Parental Authority

Model State Statute—Delegation of Parental Authority and Custody to Third Party

Parental Delegation of Authority and Custody through Written and Properly Executed Power of Attorney.

1. A parent, legal custodian, or guardian of a minor, by a properly executed power of

¹⁹⁸ Mo. Rev. Stat. §§ 431.055, 431-056.

¹⁹⁹ Or. Rev. Stat. §§ 109.510, 109.697.

attorney, may delegate to another person, for a period not exceeding one year, any powers regarding care, custody, or property of the minor or ward, except the power to consent to marriage or adoption of a minor ward.

2. A parent who executes a delegation of powers under this section must mail or give a copy of the document to any other parent within thirty days of its execution unless:
 - a. The other parent does not have parenting time or has supervised parenting time; or
 - b. There is an existing order for protection under state statute or a similar law of another state in effect against the other parent to protect the parent, legal custodian, or guardian executing the delegation of powers or the child.
3. A parent, legal custodian, or guardian of a minor child may also delegate those powers by designating a standby or temporary custodian under state statute.

COMMENT. Minnesota recognizes the rights of parents to transfer, temporarily, their custody rights to another adult. The adult does not need to be a relative and this can be done by a notary statement without court involvement.²⁰⁰

Emancipation

Traditionally, many jurisdictions award emancipation when any of the following applies: marriage of the minor with the consent of the parent; an instrument in writing from the parent divesting control and custody of the child; conduct by the parties which shows that the parent has given up control and custody of the minor; or the minor is enlisted in one of the armed forces. Common law or state statute often defines emancipation as the act of a parent, explicit or implicit, whereby the parent releases the child from her control and custody and thereby waives her right to control the child's behavior, earnings, association and residence.

A survey in 2003 of state laws concerning emancipation found the following:²⁰¹

- Thirty jurisdictions have established processes for emancipation;
- In nine of the jurisdictions, parental consent is required but can be waived in four of the jurisdictions;
- Twenty jurisdictions establish sixteen as the minimum age to petition for emancipation; and
- Twenty-one jurisdictions recognize emancipation in limited circumstances but do not set forth a statutory process for becoming emancipated.

²⁰⁰ Minn. Stat. § 524.5-211.

²⁰¹ National Law Center on Homelessness & Poverty, National Network for Youth, *Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth* (2003), available at www.nlchp.org/content/pubs/Alone%20Without%20A%20Home1.pdf (last visited April 2, 2009).

Model State Statute—Emancipation Option for Unaccompanied Youth

Section 101. Definition.

“Emancipated youth” means a youth over sixteen years of age and under eighteen years of age who has, with the explicit or apparent assent of the youth’s parents or guardian, demonstrated independence from the youth’s parents or guardians in matters of care, custody, control, and earnings. The term may include, but shall not be limited to, any such youth who has the sole responsibility for the youth’s own support, who is married, or who is in the military.

Section 102. Petition for Emancipation.

1. A minor who has reached the age of sixteen and has resided in this state for the past twelve months may petition the juvenile court for the county in which the minor resides for a determination that the minor named in the petition be emancipated. The petition must outline how the youth has demonstrated independent capabilities, separate from the youth’s parents or guardians, in matters of care, custody, control, and earnings.
2. A parent or guardian may not petition, individually or on behalf of the minor, for an order of emancipation.

Section 103. Orders of the Court; Investigation; Appointment of Counsel.

1. The court may:
 - a. Require the local welfare agency or court services to investigate the statements made in the petition and file a report of that investigation with the court; or
 - b. Appoint a guardian ad litem for the minor.
2. The court shall appoint client-directed counsel for the minor at the state’s expense.
3. The court shall provide for reasonable notice regarding the petition and a hearing on the petition to the minor’s parents or legal guardian and to the minor. Upon a showing of due diligence to locate the parents, if the parent or parents cannot be located for purposes of notice, the court may waive notice requirements.
4. The court shall provide the youth with an informational pamphlet explaining the youth’s rights and responsibilities as an emancipated youth and a listing of alternatives to emancipation, if available.

Section 104. Hearing; Necessary Findings.

The court may enter an order declaring the minor emancipated if, after the hearing, it is found that: (1) the minor has entered into a valid marriage, whether or not that marriage has been terminated by dissolution; (2) the minor is on active duty with any of the armed

forces of the United States of America; or (3) the minor willingly lives separate and apart from the minor's parents or legal guardians, with the explicit or implicit consent or acquiescence of the parents or legal guardians, or even without consent, the court determines that the weight of evidence shows that the best interest for the youth will be served by separation from the parent or legal guardian, that the minor is currently self-supporting or is capable of self-support and of managing the minor's own financial affairs, and that emancipation is in the best interest of the minor.

Section 105. Effect of Emancipation.

A minor emancipated under this chapter shall be considered to have the rights and responsibilities of an adult, except for those specific constitutional and statutory age requirements such as, but not limited to, voting, use of alcoholic beverages, and other health and safety regulations relevant to him or her because of his or her age. A minor shall be considered emancipated for the purposes of, but not limited to, all of the following:

1. The right to enter into enforceable contracts, including apartment leases.
 2. The right to sue or be sued in his or her own name.
 3. The right to retain his or her own earnings.
 4. The right to establish a separate domicile.
 5. The right to act autonomously, and with the rights and responsibilities of an adult, in all business relationships, including, but not limited to, property transactions and obtaining accounts for utilities, except for those estate or property matters that the court determines may require a conservator or guardian ad litem.
 6. The right to earn a living, subject only to the health and safety regulations designed to protect those under the age of majority regardless of their legal status.
 7. The right to file as an individual under state statute and regulations regarding income taxes.
 8. The right to authorize his or her own preventive health care, medical care, dental care, and mental health care, without parental knowledge or liability.
 9. The right to apply for a driver's license or other state licenses for which he or she may be eligible.
 10. The right to register for school.
 11. The right to marry.
 12. The right to personally apply to medical and other public assistance benefits administered by the state and the various counties, if needed.
 13. The right, if a parent, to make decisions and give authority in caring for his or her own minor child.
 14. The right to make a will.
-

COMMENT. State laws differ, but generally emancipation does not permit youth to vote, drive, consume alcohol, or enter the armed forces prior to reaching the established minimum age.

Section 106. Parental Obligations.

The parents of a minor emancipated by court order are jointly and severally obligated to support the minor. However, the parents of a minor emancipated by court order are not liable for any debts incurred by the minor after emancipation.

COMMENT. Emancipation, in some jurisdictions, can be complete, partial, conditional, absolute, or limited as to time or purpose. For example, a court could determine partial emancipation to terminate parental rights and control without relieving the parent from his or her legal obligations of furnishing the child with necessary support and medical care if needed and if not otherwise provided.

IDENTIFICATION²⁰²



Identification is a basic need. It is necessary, in one form or another, to access services and benefits, enroll in school, and secure employment. Barriers to getting identification are barriers to helping a youth move towards stability.

Social Security Cards

There are several barriers to youth getting a Social Security Card on their own. The limitations on who is permitted to request a Social Security Card and the type of identification that an individual must have to get a Social Security Card make it difficult for homeless young adults to obtain this form of identification without assistance.

In most cases, the request will be for a replacement card rather than a request for a Social Security Number and a card to be issued. To get a replacement copy of a Social Security Card, an individual must submit “convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status.”²⁰³ A minor can request a copy of his/her Social Security Card on her own. There is no cost for getting a replacement card.

Changes in the law from December of 2005 have resulted in more limited documents being accepted as proof of identity. However, the regulations provide this description:

Documentary evidence of identity may consist of a driver’s license, identity card, school record, medical record, marriage record, passport, Department of Homeland Security document, or other similar document serving to identify the individual. The document must contain sufficient information to identify the applicant, including the applicant’s name and (1) the applicant’s age, date of birth, or parents’ names; and/or (2) a photograph or physical description of the individual. A birth record is not sufficient evidence to establish identity for these purposes.²⁰⁴

²⁰² Jenny Pokempner, Juvenile Law Center, Philadelphia, PA; J. Peter Sabonis, Assistant Director of Advocacy for Welfare and Work, Maryland Legal Aid Bureau.

²⁰³ 20 C.F.R. § 422.107(a).

²⁰⁴ 20 C.F.R. § 422.107(c).

While these requirements may be difficult to meet, with the help of a McKinney Liaison, a youth may be able to get school records and a physical description of the youth from school personnel.

To prove citizenship, an individual can submit a U.S. birth certificate, a U.S. passport, or a Certificate of Naturalization or a Certificate of Citizenship. Individuals who are not citizens but have a valid immigration status can show the documents that evidence their status, such as a green card. It is likely that unaccompanied youth will face barriers in proving valid immigration status to access a Social Security Card.

Suggested amendment of federal laws is beyond the scope of these model state statutes. However, allowing for identification of homeless youth through collateral contacts and requiring that the youth's local educational agency liaison assist the youth in obtaining identification documents could help ensure access to Social Security Cards for homeless and unaccompanied youth.

Birth Certificates

Access to birth certificates are governed by state law. Most states require that the person requesting a birth certificate be at least eighteen years old and the subject of the certificate, a member of his or her immediate family, a legal representative, or someone with power of attorney. Some states, however, do not specify a minimum age for the requestor. The requestor must also provide a valid, usually government-issued, photo ID. However, many states permit school IDs to be used. Many states also allow alternatives to photo ID—usually a combination of documents such as a utility bill, Social Security Card, and a pay stub.

If the youth is or was in foster care, the appointed attorney, with a court appointment order, can usually request the birth certificate. Further, while it is not spelled out in law or regulation in Pennsylvania, providers of homeless services have been able to act as the valid requestors as long as they have valid government identification.

Some states do provide some flexibility in birth certificate requests. Maryland is an example of a state in which the law does not appear to impose an age limit on the requestor.²⁰⁵ With appropriate identification, a minor could request his/her birth certificate. Mississippi law allows a valid school or college identification card to be used as identification.²⁰⁶ Texas allows permissible requestors such as immediate family members to sign a notarized

²⁰⁴ 20 C.F.R. § 422.107(c).

²⁰⁵ See <http://vsa.maryland.gov/html/birth.cfm> (last visited May 4, 2009).

²⁰⁶ See http://www.msdlh.state.ms.us/msdlh/site/_static/31,1240,109,62.html (last visited May 4, 2009).

release to a third party who then becomes a legitimate requestor.²⁰⁷ Pennsylvania has a form entitled “Statement from Requestors not Possessing an Acceptable Government Issued Photo-ID.”²⁰⁸ This form allows the requestor to submit two of the following documents as proof of identity: utility bills, bank statement, car registration, pay stubs, income tax returns, or lease/rental agreement. While these are still documents that a youth may not have, forms such as this one provide a format for creating means of accepting alternative means of identification.

The following is a model law that could facilitate more easy access to birth certificates without compromising confidentiality.

Model State Statute—Obtaining Certified Copies of Birth Records

Section 101. Confidentiality.

1. Except for birth records over one-hundred years old which are not under seal pursuant to court order, all birth records of this state shall be confidential.
2. Certified copies of the original birth certificate or a new or amended certificate, or affidavits thereof, are confidential and, upon receipt of a request and payment of the fee prescribed in state statute, or for no fee if the registrant is indigent, shall be issued only as authorized by the department and in the form prescribed by the department, and only
 - a. To the registrant;
 - b. To the registrant’s parent or guardian or other legal representative;
 - c. To an agency certified as homeless service provider with the State if the registrant is homeless;
 - d. Upon receipt of the registrant’s death certificate, to the registrant’s spouse or to the registrant’s child, grandchild, or sibling, if of legal age, or to the legal representative of any of such persons;
 - e. To any person if the birth record is over one-hundred years old and not under seal pursuant to court order; or
 - f. Upon order of any court of competent jurisdiction.

COMMENT. (2) This subsection refers to a fee waiver which could take the form of an existing fee waiver, or a new one could be created.

²⁰⁷ See <http://www.dshs.state.tx.us/vs/reqproc/faq/birthdeath.shtm> (last visited May 4, 2009).

²⁰⁸ Available at www.dsf.health.state.pa.us/health/lib/health/old_dir/vitalrecords/forms/pdfs/Statement_from_Requestors.pdf (last visited May 4, 2009).

Section 102. Identification Requirement.

1. A valid requestor may be issued a certified copy of the original birth certificate if the following identification is presented:
 - a. Government issued photo identification card, including a driver's license, a non-driver's identification card, a student identification card issued by a secondary school, a government employment badge or card, a military identification card, or two of the following:
 - i. Official secondary or postsecondary school records with name, date of birth, and description of the individual;
 - ii. Medical records with the name, date of birth, and a physical description of the individual; or
 - iii. Affidavit of identity from an individual who is able to demonstrate his or her relationship with the requestor.
2. If documentary proof of identification is not reasonably available within ten days, agency of vital statistics personnel shall attempt to verify the applicant's identity through two collateral contacts. Examples of acceptable collateral contacts include social service agency personnel, school personnel, landlords, employers, neighbors, and others who can be expected to provide accurate third-party verification. Where homeless and unaccompanied youth are involved, agency of vital statistics personnel shall work with the local educational agency liaison appointed under 42 U.S.C.A. § 11432(g)(6) to acquire proof of identity as expeditiously as possible.

State Identification Cards

Most states allow youth ages sixteen and older to apply for state identification cards. In some states, such as California, individuals of any age can receive state identification cards. It does not appear that most states require parental consent to request a state ID unless the youth is under age sixteen.

In general, an applicant must prove citizenship by presenting a Social Security Card and a birth certificate, valid U.S. passport, certificate of citizenship or naturalization, or proof of residency. Proof of residency can be shown through a presentation of current utility bills, W-2 forms, tax records, and/or mortgage documents.

In California, to get an identification card, an individual must give a thumb print, have a picture taken, provide a Social Security Number, and provide verification of birth date and valid presence in the U.S. through a birth certificate, passport, or INS documents.²⁰⁹ New York

²⁰⁹ See <http://dmv.ca.gov/idinfo/idcard.htm> (last visited May 4, 2009).

provides various alternatives for proving identity. It has created a list of documents ranging from a driver's license to a welfare or Medicaid card, high school ID and report card, college ID and transcript, pay stub or employee ID card, diploma or GED, and supermarket check cashing card.²¹⁰ Point values are assigned to these documents and applicants must present documents which add up to six points. While this system is complex, it does provide many alternatives to the traditional required documents.

Among the greatest difficulties that homeless individuals, both youth and adults, have in getting state ID cards is providing proof of residency when required. Oregon is an example of a state that explicitly permits shelter or transitional housing provider staff to prove residency of an applicant. In addition, it permits homeless individuals to describe their residence such as "under the west end of the Burnside Bridge" or a descriptive address of "continuous traveler" as long as they also provide a mailing address and complete a Certification of Oregon Residency or Domicile form.²¹¹

The following is a model law that could facilitate more easy access to state ID cards for homeless youth.

Model State Statute—Obtaining Non-Driver's State Photo Identification Card

Section 101. Identification and Residency Requirements.

An individual of any age can be issued a state photo identification card if the following documents are presented:

1. Proof of identity
 - a. Social security card; and
 - b. A birth certificate, certificate of U.S. citizenship, certificate of naturalization or other document with name and date of birth issued by USCIS, valid U.S. passport, driver's license, learner's permit, college or secondary school picture ID with a transcript or letter from the registrar, military ID; or
 - c. A letter on a social service, medical, or educational agency's letterhead, which describes the individual; and
 - d. Two of the following: a TANF, General Assistance, Food Stamp or Medicaid card, an employee ID card, or educational or medical records with name and date of birth.
 - e. If the individual does not have a copy of her social security card, the state agency shall verify the individual's social security number with the Social Security Administration.

²¹⁰ See <http://www.nydmv.state.ny.us/idlicense.htm> (last visited May 4, 2009).

²¹¹ See <http://www.oregon.gov/ODOT/DMV/driverid/idproof.shtml#Homeless> (last visited May 4, 2009).

2. Proof of residency

- a. An individual who is eighteen years of age or older or is judicially emancipated must present at least two of the following: utility or other household bills, W-2 form, tax records, lease agreement, or mortgage documents.
- b. If the individual shares a residence with another, the co-resident must appear and present photo identification and official mail that indicates residence at the address.
- c. A resident of a homeless shelter or transitional housing can prove residency by submitting a letter of residency from the shelter on agency letterhead with contact information.
- d. A person who is homeless with no fixed residence may describe the location he or she regularly frequents and provide a mailing address.

Section 102. Fee Waiver.

If the applicant is indigent, no fee will be charged for issuance of a state identification card.

Access and Verification

The barriers to receiving services and benefits because of a lack of identification are well known, and have been recounted in publications primarily about adults.²¹² In its report, the National Law Center on Homelessness & Poverty (“NLCHP”) surveyed fifty-six homeless service providers in sixteen states.²¹³ These providers served over 26,647 individuals. This Report was initiated because after September 11, 2001 many states enacted restrictive driver’s license policies, specifically with regards to the residency requirements and proof of citizenship. The report documented the significant difficulties homeless individuals face in getting public benefits due to a lack of identification. At the same time, NLCHP reported that one of the barriers to accessing benefits was that agencies administering benefits programs were erroneously requiring that picture identification be presented even when it was not required under the law. For example, even though an applicant does not need a picture ID to get food stamps or Supplemental Security Income, NLCHP reported that many applicants were turned away for exactly that reason.

Some state laws require that youth who are discharged from the foster care system at age eighteen or after be given their “permanent documents.” For example, in Pennsylvania, it is required that

²¹² See National Law Center on Homelessness & Poverty, *Photo Identification Barriers Faced by Homeless Persons: The Impact of September 11* (2004), available at www.nhchc.org/2008conference/workshops/32docs/Photo_ID_Barriers_for_the_Homeless.pdf (last visited April 2, 2009).

²¹³ *Id.*

*Permanent documents, such as birth certificates, immunization and health records, education records and legal documents relating to custody or guardianship, shall be given to the legally responsible person...If the child being discharged is eighteen years or older or is emancipated, the documents shall be given to the child.*²¹⁴

While federal law does not impose this requirement, it does require that “a child’s health and education record...is [to be] supplied to the child at no cost at the time the child leaves foster care if the child is leaving foster care by reason of having attained the age of majority under State law.”²¹⁵ These documents may be helpful in securing identification, and state law should specify that the child’s certified birth certificate, social security card, and driver’s license or state identification card be provided, as well.²¹⁶

The following is a model statute that would enable state agencies to electronically verify identity for youth seeking state assistance.

Model State Provision—Use of Technology to Facilitate Verification of Identity

All state agencies that handle documentation relative to the identity, citizenship, and residence of persons, shall, within five years, develop a plan to electronically scan or otherwise memorialize such documentation within their control; to share such documentation with other state agencies pursuant to agreement and authorization; and to eliminate requirements that individuals seeking state assistance physically produce such documentation that already has been electronically memorialized and is within the possession of a state agency. This plan must include safeguards to protect the confidentiality of individuals.

²¹⁴ 55 Pa. Code § 3130.45.

²¹⁵ 42 U.S.C. § 675(5)(D).

²¹⁶ See DISCHARGE FROM CUSTODIAL SYSTEMS, *supra*, for an example of such a law.

PUBLIC BENEFITS²¹⁷



There is no specific federal or state public benefits safety net designed specifically for unaccompanied youth. Only the child welfare, status offense, and juvenile justice systems are specifically targeted at youth in need. While some programs may contain provisions that anticipate young applicants, public assistance systems are generally designed for adults. Even the programs that accommodate youth employ application practices and policies that discourage youth applications or make them impossible.

Public assistance systems are governed by both federal and state law. Amendment to federal laws is beyond the scope of these model state statutes but there is a brief discussion of Temporary Assistance to Needy Families (“TANF”) and Medicaid below, followed by a model state Supportive Assistance statute, which would create a cash assistance program specifically for homeless youth.

Temporary Assistance to Needy Families and Medicaid

TANF provides cash assistance to families and adult caretakers with dependent children. Among the four purposes of TANF are “preventing and reducing the incidence of out-of-wedlock pregnancies,” and “ending the dependence of needy parents on governmental benefits.” Changes to TANF are necessary to make this benefit more accessible to pregnant and parenting minors. TANF could also create a new eligibility category of unaccompanied youth.

To make Medicaid more accessible to homeless youth, the upper age limit for eligibility could be extended and the federal government could require that states cover independent foster care adolescents.²¹⁸ For recommendations on how states can extend and expand Medicaid coverage under their state plan, see the HEALTH section.

²¹⁷ Jenny Pokempner, Juvenile Law Center, Philadelphia, PA; J. Peter Sabonis, Assistant Director of Advocacy for Welfare and Work, Maryland Legal Aid Bureau, Baltimore, MD.

²¹⁸ As defined in 42 U.S.C. § 1396d(w)(1) (“For purposes of this subchapter, the term “independent foster care adolescent” means an individual— (A) who is under 21 years of age; (B) who, on the individual’s 18th birthday, was in foster care under the responsibility of a State; and (C) whose assets, resources, and income do not exceed such levels (if any) as the State may establish consistent with paragraph (2).”).

Model State Statute—Supportive Assistance

COMMENT. The following is a benefit that can meet a youth's immediate subsistence needs, but has the potential to be more comprehensive than just a cash benefit. It attempts to balance the tensions between conditioning the benefit on engaging in certain activities and designing a benefit that prioritizes accessibility and harm reduction.

Section 101. Purpose.

To provide assistance in the form of cash and other services and programs that will help a young adult who does not have a safe place to live where his or her needs are met address immediate needs and access the tools to move towards greater independence and self-sufficiency.

Section 102. Legislative Findings.

1. Supportive Assistance (“SA”) is not meant to be a stand-alone program. Rather, SA will make all efforts to help applicants and recipients to access all currently available services and systems, including the child welfare, education, behavioral health, and housing systems. SA respects the rights of parents to the control and care of their children and will make all efforts to provide services to the family unit.
2. Youth between the ages of fourteen and twenty-five are making the difficult transition to adulthood. Because SA is targeted at transition age youth, the program will make all attempts to provide services and supports in developmentally appropriate ways which respect the young person’s autonomy as well as the connections she or he has to family and community.

Section 103. Definitions.

1. “Navigator” means a person who provides an individual eligible for SA with assistance in identifying services and programs that will move the SA recipient to greater independence, health, and safety. The navigator shall make referrals to services and programs and shall assist the recipient in accessing those services upon referral.
2. “Supportive Assistance Program” means a program that shall provide eligible individuals with cash assistance to meet subsistence needs, cash incentives for engagement in identified programs and for the achievement of educational, employment, treatment goals, and assistance in identifying needed services and programs.

Section 104. Persons Who Are Presumptively Eligible.

An individual who is under age twenty-five who declares that they do not have a safe place to live where their basic needs can be met shall access SA services within twenty-four hours if the individual’s unsafe status can be confirmed by at least one collateral contact.

Section 105. Persons Who Are Eligible.

Eligible individuals are

1. Under age twenty-five, and
2. Have no safe and permanent place to live where their basic subsistence and supervision needs are met, and
3. Have income that is less than 300% of the Federal Poverty Level.

Section 106. Application Process; Receipt of Benefit.

1. All individuals under age twenty-five may apply for SA.
 2. Upon application, an assessment shall be completed that will identify the individual's basic subsistence needs and document the individual's preference for assistance in the following areas:
 - a. Subsidized or transitional housing;
 - b. Educational supports;
 - c. Employment assistance;
 - d. Behavioral and physical health care;
 - e. Domestic violence counseling;
 - f. Child care resources and referrals;
 - g. Parenting classes;
 - h. Legal services; and
 - i. Other services and/or resources identified by the applicant.
 3. If eligible, the individual shall receive assistance in one or more of the following forms:
 - a. A cash amount placed on an electronic benefits card for the recipient to use and a matching cash amount to be placed in an Individual Development Account [or similar program];
 - b. A cash payment paid directly to a service provider or vendor; and/or
 - c. A referral to a service provider or vendor.
 4. Form of payment of assistance is determined as follows:
 - a. If the recipient is under age eighteen or has a behavioral or developmental disability, the navigator will make a determination of the minor's capability to manage finances and budget his or her funds.
 - b. The determination of capability must be based on objective factors that are documented in the file, and may include, but are not limited to,
-

- i. An assessment developed by the [appropriate government agency];
- ii. An opinion of an educational professional; and
- iii. An opinion of a doctor or behavioral health professional.

5. Amount of cash assistance is determined as follows:

- a. The [appropriate government agency] will determine a base amount of cash assistance for which a recipient is eligible. This amount is intended to meet subsistence needs.
- b. In addition to this base amount, an amount of assistance will be determined that will be placed directly in an Individual Development Account [or similar program].
- c. The department will determine an incentive scale to reward the achievement of specified goals. These goals may include, but are not limited to,
 - i. Enrollment or reenrollment in high school or a GED program;
 - ii. Graduation from high school or the completion of a GED;
 - iii. Maintaining employment for a certain time period; and
 - iv. Engagement in services identified by the navigator.

Section 107. Special Requirements when the Applicant is a Minor.

1. If the applicant is a minor not emancipated under state law, the agency shall notify one of the following of the youth's application for SA based on the youth's choice:
 - a. The minor's parent or legal guardian; or
 - b. The local child welfare agency, which will develop a protocol that will ensure that the youth's parents are not contacted if the youth fears for his or her safety if such contact is made.
 2. These requirements do not supplant this state's existing mandated reporting requirements.
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ACCESS TO LEGAL SERVICES²¹⁹



There are only limited situations in which youth are entitled, under the law, to appointed and free legal counsel. *In re Gault* extended court-appointed counsel in delinquency proceedings to minors.²²⁰ The extension of this right was based on constitutional due process principles rather than an analysis of capacity. In the delinquency context, even though the client is a minor, the client is to direct the legal representation, not a parent or guardian. There is no comparable entitlement to counsel in civil proceedings. Consensus is forming that youth in child welfare proceedings are entitled to a legal advocate who is sometimes an attorney. State statute determines whether an advocate is appointed and if that advocate is to act as an attorney or guardian ad litem. This distinction has great import for the youth's legal interest and ability to direct the representation. In other proceedings, mostly family law proceedings such as custody cases, state law may authorize the court to appoint a guardian ad litem. However, there is usually a reluctance to appoint an attorney for a child in non-dependency or non-delinquency matters in the name of preserving the unity of the family and parental authority.

Case law has been split on the ability of a minor to sue a parent for child support. Some states have clarified this right of support and the ability of a minor to bring an enforcement action.²²¹ These cases are highly relevant to unaccompanied youth who have been pushed out of the home or have left because of dangerous conditions.²²² The cases that allow minors who have been pushed out of the home to initiate actions in court for support explain that the unity of interests presumed to be shared by parent and child, which justified subsuming the child's rights by the parents, no longer exists. Similar to the child welfare scenario in which there are allegations that a parent has not acted in the child's interest, a homeless minor should acquire the right to act on his or her own to initiate actions for support.

²¹⁹ Jenny Pokempner, Juvenile Law Center, Philadelphia, PA; J. Peter Sabonis, Assistant Director of Advocacy for Welfare and Work, Maryland Legal Aid Bureau, Baltimore, MD.

²²⁰ 387 U.S. 1 (1967).

²²¹ See e.g., N.Y. Fam. Ct. Act § 413-a(3)(a).

²²² See e.g., *Jennifer S. v. Marvin S.*, 150 Misc.2d 300, 568 N.Y.S.2d 515 (N.Y.Fam.Ct. 1991)(minor was entitled to support payments from father when she was not permitted to come home unless she had an inpatient psychiatric evaluation).

Model State Statute—Right to Counsel

Court-Appointed Counsel Required

1. A party to proceedings involving dependency, delinquency, emancipation, expulsion under the public school code, and change in immigration status is entitled to representation by legal counsel at all stages of the proceedings. If the party is without financial resources or otherwise unable to employ counsel, the court shall appoint counsel. Counsel for youth must represent the client's stated interests at all stages of the proceedings.
2. A party to proceedings involving the transfer of custody or guardianship is entitled to representation by legal counsel at all stages of the proceedings if the court makes a finding that there is not an identity of interests between the youth and parent or caretaker and that it is in the youth's best interest to be represented by counsel. If the party is without financial resources or otherwise unable to employ counsel, the court shall appoint counsel. Counsel for youth must represent the client's stated interests at all stages of the proceedings.
3. If a party appears without counsel, the court shall ascertain whether he or she knows of his or her right to be provided with counsel by the court, if applicable. The court may continue the proceeding to enable a party to obtain counsel.
4. Counsel for a minor cannot be waived by anyone but the minor, and only following a colloquy with the court and a written finding that the waiver is knowing, voluntary, and intelligent.

Capacity to Bring Suit and Contract

There is some case law which suggests that minors do not have capacity to retain lawyers.²²³ However, most of these cases are in the family law context in which the youth's right to retain independent counsel is pitted against a parent's Constitutional right to care for and control their children. In these situations, state courts have not uniformly ruled on whether a youth has standing to bring an independent claim in family law issues in which visitation and other issues are at stake. For an example of a state statute providing for a youth to contract for necessities, see HOUSING section. The procedural rules in most state courts provide a means for a youth's "next friend" (usually an adult parent or guardian, but not necessarily a relative) to bring a legal proceeding or intervene in one. An example of such a provision is proposed below, as is a proposed addition to state child support law.

²²³ See *Miller v. Miller*, 667 A. 2d. 64(1996).

Model State Provision—Suits by Minors

Any person interested in the minor shall have the right to institute a legal action on behalf of the minor as next friend upon first mailing notice to the last known address of the custodial parent or guardian.

Model State Provision—State Child Support Law Definitions

“Obligee” means

1. An individual to whom a duty of support is owed or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.
 2. A minor to whom a duty of support is owed or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered where the minor is living apart from his parents and is not in the custody of any other agency or person, and alleges or it is found that the minor’s parent or parents have not acted in the child’s best interest.
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EMPLOYMENT²²⁴



The conditions of employment for minors are regulated by federal and state law. The Fair Labor Standards Act sets the minimum age for non-agricultural employment at 14.²²⁵ The hours of work for fourteen and fifteen year olds are limited based on whether or not school is in session—no more than three hours per school day, no more than eight hours per non-school day, and no more than eighteen hours per school week. These youth also can't work before 7:00 AM or after 7:00 PM, except in the summers. Work experiences through school allow a youth to work extended hours.

State law has the most influence on a minor's ability to work and conditions of work.²²⁶ In most states, a youth under age eighteen must obtain a work permit or certificate of age. These documents are generally issued by the local school district, labor department, or workforce board. In most cases, for these documents to be issued, a parent or guardian must provide consent and proof of age must be provided. In some states, it is the school official who must sign off on the work authorization rather than the parent, which may make permits more accessible to homeless youth. In New Jersey, for example, a work permit can be issued with the following certification:

A school record signed by the principal of the school which the minor has last attended or by someone duly authorized by him, giving the full name, date of birth, grade last completed, and residence of the minor, provided, that in the case of a vacation certificate issued for work before or after school hours, such record shall also state that the child is a regular attendant at school, and in the opinion of the principal may perform such work without impairment of his progress in school, but such principal's statement shall not be required for the issuance of a vacation certificate for work during regular school vacations.²²⁷

²²⁴ Jenny Pokempner, Juvenile Law Center, Philadelphia, PA; J. Peter Sabonis, Assistant Director of Advocacy for Welfare and Work, Maryland Legal Aid Bureau, Baltimore, MD.

²²⁵ 29 U.S.C. § 213(c).

²²⁶ See <http://www.dol.gov/esa/whd/state/state.htm> for information on each state's labor laws and regulations (last visited April 12, 2009).

²²⁷ N.J. Stat. Ann. § 34:2-21.8.

Generally, the issuing agency cannot refuse to issue a work permit or age certificate if the young person meets the criteria. Thus, a school cannot refuse to issue a work permit to an otherwise eligible student due to poor behavior. However, a few states seem to provide the issuing authority more discretion. For example, Missouri law requires the issuing authority to grant the permit if he or she is “satisfied that the employment will serve the best interest of the child.”²²⁸ This discretion could create barriers to youth if not used in an equitable manner or without some clear guidance on how the best interest determination is made.

In most states, all individuals are subject to the child labor requirements whether they are past compulsory school age or not. A seventeen-year-old who has dropped out of school would still need to get a work permit and would be bound by child labor laws. He would be able to get a work permit in the school district in which he now resides. Expelled students also are subject to the same rules and their school district must issue them a work permit if they are otherwise eligible. In most jurisdictions, youth who have been emancipated by judicial decree are subject to child labor laws but do not need their parents’ consent to get a work permit.

Finally, Florida, Kentucky, Minnesota, Montana, and Tennessee are among the states that do not require a work permit or a certificate of age, but do require that the employer keep on record proof of the child’s age. This type of system reduces the barriers to work for minors.

Model State Statute—Issuance of Work Permits for Certain Minors

CHAPTER I. PURPOSE; APPLICABILITY

Section 101. Legislative Purpose.

The goals of this statute are to

1. Allow youth over age sixteen to work without special permission;
2. Maintain compliance with compulsory education laws and encourage education as a primary activity for youth under sixteen; and
3. To improve accessibility to permits by placing the issuing authority with the state Department of Labor [or similar agency] rather than the individual school district.

Section 102. Applicability.

The provisions of this section shall not apply to a minor who has been expelled or who has been granted an exception to state compulsory education requirements.

²²⁸ Mo. Rev. Stat. § 294.051.

CHAPTER II. WORK PERMIT AUTHORITY

Section 201. Conditions.

A minor under sixteen years of age may not be employed without a work permit signed and issued to the minor by the state Department of Labor [or similar agency]. The state Department of Labor [or similar agency] shall issue a work permit upon the following conditions:

1. If school is in session or the minor is attending summer school, the minor must be enrolled in school and not be habitually truant.
2. If school is not in session, the minor must furnish to the agency a certificate indicating the school last attended and showing that the minor has satisfactorily completed kindergarten to grade eight in the public schools or their equivalent, or is in the process of completion. If the certificate cannot be obtained, the agency shall establish a protocol to provide the youth with alternative means to demonstrate his or her educational status.
3. If the minor has been granted an exception to compulsory education or has been expelled, the minor must only submit proof of such exception or expulsion and age;
4. The issuing authority may issue more than one work permit per youth after considering the circumstance and the request and provided that issuing more than one work permit does not otherwise interfere with compulsory education requirements.

Section 202. Proof of Age.

The agency may issue a permit only upon receiving and examining satisfactory evidence of the minor's age. Satisfactory evidence consists of a certified copy of the minor's birth certificate or baptismal record, a passport showing the date of birth, or other documentary evidence of age satisfactory to the agency, provided, however, that in the case of an unaccompanied youth, the agency shall allow such verification through readily available documentary evidence or collateral contact for a period not to exceed ninety days.

Section 203. Issuance of Work Permit.

The agency's office shall distribute the work permit to the minor. The work permit is valid only for the employer and positions listed on the permit as issued by the agency.

Section 204. Conditions for Revocation.

The agency may revoke the work permit issued to a minor by the agency if the agency determines that the minor has not maintained the conditions for issuance of the work permit under Section 201. The agency shall revoke second work permits at the end of the summer vacation in accordance with the limits imposed by Section 201. The agency shall notify the Director of the Agency of Labor Standards [or similar agency] and the minor's employer in writing upon revoking a minor's work permit. The revocation is effective upon receipt by the employer of the agency's notice.

Section 205. Permit on File.

The employer shall keep all work permits issued for the employer's minor employees on file and accessible to any attendance officer, factory inspector, or other authorized officer charged with the enforcement of this subchapter.

Section 206. Exception.

This section does not apply to minors engaged in work performed in the planting, cultivating, or harvesting of field crops or other agricultural employment not in direct contact with hazardous machinery or hazardous substances, or to minors engaged in household work. Minors who are participants in summer youth employment and training programs funded by the Department of Labor are exempt from obtaining individual permits.

Section 207. Workfare Prohibition for Minors.

The Agency shall not issue a work permit to allow a minor to participate in work relief, workfare, or any work requirement imposed as a condition of receipt of state assistance.

RUNAWAY AND HOMELESS YOUTH SERVICE PROVIDERS²²⁹



The right to privacy within a family has long been held to be constitutionally protected. While there is no specific mention of the right to privacy within the constitution itself, the U.S. Supreme Court has found a “penumbra” right to privacy emanating from the Bill of Rights.²³⁰ Family privacy rights include the ability of a parent to raise a child and to make decisions on behalf of that child.

The right to privacy is not absolute and each state has laws that govern domestic issues. Marriage and divorce laws, child abuse and neglect laws, and compulsory education laws are all examples of areas where states have had almost exclusive jurisdiction. The lines between state and federal jurisdiction have become increasingly blurred as federal statutes defining marriage, requiring child support, and setting education standards have been enacted by Congress and signed into law.

One right that parents continue to have is the right to have their minor children live at home and obey their rules. The federal Runaway and Homeless Youth Act, however, allows a minor child who has run away from home to access residential services at a “basic center” program for a brief period of time while the issues that led to the runaway episode are resolved.²³¹ Still, the goal is that the youth should return home unless that is not possible or appropriate.

The need for federal legislation became apparent in the early 1970s after the Senate held hearings and learned that there were a significant number of runaway and throwaway youth living in dangerous and precarious situations. The rationale behind federal legislation was the number of youth traveling across state lines; federal legislation would allow youth to be

²²⁹ Margo Hirsch, Executive Director, Empire State Coalition for Youth and Family Services; Nancy Downing, Staff Attorney, Covenant House.

²³⁰ The term “penumbra” to define rights that arose from the constitution but not specifically referenced in the document was first used in *Griswold v. Connecticut*, 381 U.S. 479 (1965), when the Supreme Court struck down a Connecticut law banning married persons from using contraceptives. In using the term, the Court referenced a 1923 case, *Meyer v. Nebraska*, 262 U.S. 390 (1923), which held that states could not ban the teaching of a foreign language in school where parents had commissioned the language teacher. Shortly after *Meyer*, the Court heard *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and struck down an Oregon law which forbid parents from sending their children to private school. Both *Meyer* and *Pierce* stand for the parental right to control how their children are raised.

²³¹ Pub. L. 93-415.

served at runaway programs regardless of their state of residence. Some states followed suit with their own legislation. The first was New York, which passed its own act in 1978.

Today, twenty-one states have some type of legislation covering runaway and homeless youth services and each state has a different take on the issue. The types of differences include:

- The definition of who is a runaway and /or homeless, making it virtually impossible to get a national estimate of the scope of the problem;
- The length of stay in shelter, with some states allowing as little as seven days or as many as thirty;
- The upper age limit of youth accepted into programs, with some states including youth up to twenty-four in their youth population while others use twenty-one as the cutoff;²³²
- The basic responsibilities of programs, with some states requiring very little of programs while others have very onerous standards;
- The civil and criminality liability of programs and their staff, making it extremely costly and risky for programs to serve youth where there is no protection;
- How states define and fund outreach, which can be directly related to how willing a state is to recognize the problem of street-youth and youth homelessness;²³³
- How and to whom confidential information is released and whether it is the youth or the parent that provides consent for release; and
- Whether parental consent or merely parental notification is required for an agency to be able to serve a youth.

In addition to variations in laws and licensing from state to state that result in conflicts for programs that also wish to access federal funds, there are also variations in the needs that exist between programs in rural and urban areas. Special exceptions must be put in place to alleviate the burden placed on rural communities when they wish to provide a comprehensive continuum of services for runaway and homeless youth.

Since the passage of the first runaway act thirty years ago, much more is known about these young people and the types of services they need, including that this knowledge is in a constant state of flux. And, while there are some geographic differences, for the most part youth in crisis programs have many similarities across the nation, and the same is true for transitional programs, drop-in centers and street-outreach programs. There continues to be groups of young people who migrate across the nation, bringing with them information and

²³² In addition, there continues to be confusion as to whether services go *up to* the 18th, 21st, or 24th birthday or *through* that year (i.e., up to the 19th, 22nd, or 25th birthday).

²³³ In states where there is a system of comprehensive outreach and supportive services, programs are able to advocate for resources for street-youth. In states where outreach is limited to school and ad campaigns, there may not be a comprehensive understanding of the breadth or scope of the problem.

ideas that they seed in communities, and almost all youth have access to social networking sites, allowing trends to spread quickly into even the most geographically remote areas.

One undisputable fact is that young people who are on the streets are in need of immediate services. Since domestic relations are traditionally governed by state law, it makes sense to encourage all states to address the issue in a thoughtful and developmentally appropriate manner. The following model statute will provide states, both those who have runaway and homeless youth legislation and those who do not, with a framework upon which to design an alternative to the streets for young people who are without safe and stable housing, supports, and resources.

Model State Statute—Runaway and Homeless Youth Act

Section 101. Definitions.²³⁴

1. “Homeless Youth” means a person twenty-four years of age or younger who is unaccompanied by a parent or guardian and is without shelter where appropriate care and supervision are available, whose parent or legal guardian is unable or unwilling to provide shelter and care, or who lacks a fixed, regular, and adequate nighttime residence. The following are not fixed, regular, or adequate nighttime residences:
 - a. A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - b. An institution or publicly or privately operated shelter designed to provide temporary living accommodations;
 - c. Transitional housing;
 - d. A temporary living arrangement with a peer, friend, or family member who has not offered permanent residence, a residential lease, or temporary lodging for more than thirty days; or
 - e. A public or private place not designed for, not ordinarily used as, a regular sleeping accommodation for human beings.“Homeless Youth” does not include persons incarcerated or otherwise detained under federal or state law.
2. “Runaway Youth” means a person under the age of eighteen years who is absent from his or her legal residence without the consent of his or her parent, legal guardian or custodian.

²³⁴ Definitions for (1) “Homeless youth” and (3) Youth at risk of homelessness” were adopted from Minnesota’s Runaway and Homeless Youth Act, 2008 Minnesota Statutes, 256K.45.

3. “Youth at Risk of Homelessness” means a person twenty-four years of age or younger whose status or circumstances indicate a significant danger of experiencing homelessness in the near future. Status or circumstances that indicate a significant danger may include:
 - a. Youth exiting out-of-home placements;
 - b. Youth who previously were homeless;
 - c. Youth whose parents or primary caregivers are or were previously homeless;
 - d. Youth who are exposed to abuse and neglect in their homes;
 - e. Youth who experience conflict with parents due to chemical or alcohol dependency, mental health disabilities, or other disabilities; and
 - f. Runaways.
4. “Runaway Youth, Homeless Youth, and Youth at Risk of Homelessness Service Programs” means those community-based programs providing a range of services to homeless and runaway youth or youth at risk of homelessness, and their families, including prevention, community outreach, early intervention and crisis intervention, temporary residential shelter, counseling services, and aftercare follow up.
5. “Runaway and Homeless Youth Residence” means a residential facility operated for youth, all of whom are either under the age of eighteen years or between the ages of sixteen and twenty-four years.
6. “Rural” means any place with a population not in excess of 20,000 inhabitants and not located in a Metropolitan Statistical Area.

Section 102. Responsibility for Offering Opportunities and Supports for Runaway and Homeless Youth.

1. The Human Service Agency²³⁵ is responsible for coordinating efforts to assist runaway youth, homeless youth, and youth at risk of homelessness, including community outreach, family services, shelter care, crisis intervention, and counseling.
2. The Human Service Agency will obtain state, federal, and other appropriate funding to support these efforts. Private-public partnerships should be encouraged and facilitated.
3. The Human Service Agency will conduct a statewide survey every five years to identify the number of youth needing services and the ranges of services needed by runaway youth, homeless youth, and youth at risk of homelessness. A survey that solely collects and reports existing data will be deemed insufficient. The Human Service Agency will develop the method and manner of the survey in consultation with public, private, and nonprofit organizations or programs that have had past experience dealing with runaway youth, homeless youth, and youth at risk of homelessness.

²³⁵ I.e. Office of Children and Family Services; Department of Children and Family Services; Department of Social Services; Department of Youth Services, etc.

4. The Human Service Agency, in consultation with public, private, and nonprofit organizations or programs that have had past experience dealing with runaway youth, homeless youth and youth at risk of homelessness, will develop and promulgate regulations concerning the coordination and integration of services available for runaway youth, homeless youth, and youth at risk of homelessness.

Section 103. Licensing of Programs.

1. All residential programs providing shelter and services to runaway youth shall be licensed.
2. All residential programs providing shelter and services to homeless youth may be licensed.
3. All non-residential programs providing services to runaway youth, homeless youth, and youth at-risk-of homelessness may be licensed.
4. Protection from civil liability, as provided in Section 107, shall be available only to a licensed program and its officers, executives, and employees.
5. Recognizing the limitation of resources and the need for services in rural areas, a system of waivers and exemptions for the licensing provisions will be established by the Human Service Agency for Runaway Youth, Homeless Youth and Youth at Risk of Homelessness Service Programs located in rural areas so that the needs of runaway, homeless and at-risk youth can be met without undue burden on rural programs and resources.

Section 104. Operation of Shelters.

1. A runaway and homeless youth residence will provide a continuum of care that may include
 - a. Crisis Shelter;
 - b. Host Homes;
 - c. Transitional Living Preparation Programs (two to three months);
 - d. Transitional Living Programs (twelve to twenty-four months);
 - e. Use of Harm Reduction model;
 - f. Use of Counseling Model; and
 - g. Use of Other Program Models as appropriate.
 2. A Runaway and Homeless Youth Crisis Shelter or Host Home may provide residential services to a runaway youth or homeless youth for up to thirty days. A thirty-day extension may be granted by the Human Service Agency upon approval of a written application explaining the need for an extension.
 3. A Homeless Youth Transitional Living Preparation Program may provide residential services to homeless youth between the ages of sixteen to twenty-four for up to three months in order to assist a young person in the transition from street-involvement to a transitional living program.
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4. A Homeless Youth Transitional Program may provide residential services to homeless youth between the ages of sixteen to twenty-four for up to twenty-four months to assist homeless youth with the education, job preparation, and living skills needed to move to independent adulthood.
5. A runaway and homeless youth residence will conduct an assessment with each runaway and homeless youth to identify their immediate needs and their unique needs. A runaway and homeless youth residence will identify services that are available to address those needs.
6. A runaway and homeless youth residence shall provide or assist in obtaining the following necessities and services for youth and, where appropriate, for their families:
 - a. Shelter;
 - b. Food;
 - c. Clothing;
 - d. Individual and group counseling;
 - e. Transportation;
 - f. Medical and mental health, and dental care;
 - g. Legal assistance;
 - h. Copies of vital documents, such as birth certificates, social security cards, and education records; and
 - i. Employment services.
7. Runaway youth will be provided with separate sleeping quarters from homeless youth. Runaway and homeless youth shelters in rural areas may apply to the Human Service Agency for an exemption and such exemption will not be unreasonably withheld.²³⁶

Section 105. Notice to Minor's Legal Custodian.

1. Preferably within twenty-four hours, but not more than seventy-two hours, after the admission of a youth under the age of eighteen to a Runaway Youth, Homeless Youth, or Youth at Risk of Homelessness Service Program, the program staff and/or volunteers shall, to the maximum extent possible, provide notification of the youth's presence in the program to the parent, guardian, or legal custodian with whom the youth last resided, or in whose custody the youth was most recently placed prior to admission to the Runaway Youth, Homeless Youth, and Youth at Risk of Homelessness Service Program. Such notification shall include information about the following:

²³⁶ We do not recommend requiring separate locations for runaway youth (minors) and homeless youth due to the great financial burden and, in some cases, the impracticability of doing so, particularly in rural areas. However, recognizing that some jurisdictions may be insistent on a separation, we suggest this language.

- a. The youth's presence in program;
 - b. The youth's physical and emotional condition; and
 - c. The circumstances surrounding presence in program.
2. Notification to a parent, guardian, or legal custodian should not be made when there is reasonable suspicion that the youth has been the victim of child abuse, neglect, or maltreatment by the parent, guardian, or legal custodian, and instead a report must be made to child protective services.

Section 106. Confidentiality of Records.

1. Records of a runaway youth, homeless youth, or youth at risk of homelessness that identify the youth who has been admitted to or has sought assistance from the program are confidential and are not subject to inspection or copying unless
 - a. After being informed of his or her right to privacy, the youth consents in writing to the disclosure of the records for a particular purpose and for a particular period of time;
 - b. The records are relevant to an investigation or proceeding involving child abuse or neglect that was reported by the program and only with respect to that report of abuse or neglect; or
 - c. Disclosure of the records is necessary to protect the life of the youth.

Section 107. Liability.

1. The officers, directors, and employees of a licensed program for runaway youth, homeless youth, and youth at risk of homelessness are not liable for civil damages as a result of an act or omission in admitting a youth to the program.
2. This section does not preclude liability for civil damages as a result of recklessness or intentional misconduct.
3. The officers, directors, and employees of a licensed program for runaway youth, homeless youth, or youth at risk of homelessness are not criminally liable under state statutes related to Harboring a Runaway, Interference with Custodial Rights, Concealing a Minor or Contributing to the Delinquency or Dependency of a Minor for assisting a minor in the program in accordance with the requirements of this Act.

Section 108. No Landlord/Tenant Relationship.

A runaway and homeless youth residence does not create a landlord/tenant relationship by providing a shelter to a runaway youth or homeless youth where the runaway and homeless youth shelter is licensed or provides services other than shelter.



**Defending Liberty
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