

**HOMELESS CHILDREN AND YOUTH:
AN EXAMINATION OF LEGAL CHALLENGES
AND DIRECTIONS**

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I. INTRODUCTION	456
II. THE ISSUE OF NUMBERS	457
III. DEFINITION AND THE LAW	462
A. HUD Definition.....	464
B. DOE Definition	464
IV. LEGAL OBSTACLES FACING HOMELESS CHILDREN AND YOUTH...	466
A. National Coalition for the Homeless Survey.....	466
B. Housing	468
1. Family Based Issues for Younger Children and Youth.....	468
2. Guardianship Issues	470
3. Illegal or Undocumented Parents.....	471
4. Older Youth.....	472
5. Foster Care.....	474
6. LGBT Youth.....	474
7. Youth with Juvenile Justice Histories	475
8. Unaccompanied Youth.....	477
9. Emancipation.....	480
V. EDUCATIONAL PROBLEMS OF HOMELESS CHILDREN AND YOUTH.	482
A. McKinney-Vento Homeless Assistance Act	482
1. Residency requirements.....	486
2. Records	486
3. Transportation.....	486
4. Guardianship Requirements	486
5. Preschool.....	486
6. Higher Education	487
7. Disabled Students	488
VI. SOCIAL SERVICES	490

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A. <i>Contracting for Services</i>	497
B. <i>Financial Assistance</i>	499
C. <i>Health Care</i>	500
D. <i>Dental Coverage</i>	507
E. <i>Food and Transportation</i>	508
VII. CONCLUSION.....	509
A. <i>More Inclusive, Broader, Nationally Consistent Definitions for Homeless, Unaccompanied, and Runaway Youth</i>	509
B. <i>Creation of a National Children's Ombudsman Office</i>	510
C. <i>Greater Access to Legal Representation</i>	511
D. <i>Greater Ability to Secure Housing, Utility Assistance, and Food on Their Own Behalf</i>	511
E. <i>Greater Access to Physical, Mental, and Dental Health Care Insurance and Care</i>	511
F. <i>Greater Access to Social Services</i>	511
G. <i>Adopt Explicit Exemptions for Reasonable Cause in Anti-Harboring Provisions</i>	512
H. <i>Emancipation Processes Should Become Easier and Provide Support</i>	512
I. <i>Create Statutes that Explicitly Assign Responsibility for Providing Services/Shelter to Homeless or Runaway Youth to a Designated Executive Branch Agency With Local Affiliates</i>	512
J. <i>Create Alternative Arrangements to Foster Care for Older Youth</i>	512
K. <i>Allow Youth to Engage in Contractual Arrangements, With Protection</i>	513
L. <i>Strengthen the McKinney-Vento Act</i>	513
M. <i>Reconsider Illegal Immigration Status for Children</i>	513
N. <i>Eliminate the Stigma and Criminality of Homelessness</i>	513
O. <i>Amend Existing Laws so it is Appropriate to Report Homeless, Runaway, and Unaccompanied Children and Youth to Social Services and Child Welfare Authorities</i>	514

I. INTRODUCTION

The legal rights of homeless children and youth have been compromised because of their status as young citizens and because of their status as homeless individuals. Individually, age and housing issues pose legal obstacles that would be significant enough on their own, but when they are combined, they pose almost insurmountable problems for

this group of at-risk individuals.² As poverty has increased in the United States, the concomitant problems for children exponentially increase.³ According to both qualitative and quantitative data, it appears that the legal rights of homeless youth and children are frequently violated and that these populations are in need of further legal protections. This paper explores the obstacles that face them and recommends a set of legal strategies that would improve their lot in life.

II. THE ISSUE OF NUMBERS

The first question that typically gets asked about the homeless is “how many are there?” This question implies that if many people are homeless that their needs should be addressed more aggressively than if only a few people are affected. Numbers are irrelevant to the central issue – that when one person’s legal rights are violated, that is one person too much.

The numbers of homeless people and the methodologies used to count them vary significantly.⁴ According to the National Coalition for the Homeless,⁵ there is no definitive number about how many people in general, and children and youth in particular, are homeless for a variety of reasons. One reason is definitional: the question of how many people is misleading since homelessness is a temporary circumstance and not a permanent condition. Homelessness is best understood as a process, not just an outcome. A second definitional issue is that children are often counted within the context of families and not as individuals in and of themselves. Despite the knowledge that homeless children face poor outcomes, research has largely focused on the parent or family as the unit of analysis. However, children and youth themselves have different and

2. YUMIKO ARANTI, NAT’L CTR. ON CHILDREN IN POVERTY, *HOMELESS CHILDREN AND YOUTH: CAUSES AND CONSEQUENCES* 3-4 (2009); *see also* Ellen Bassuk & Lenore Rubin, *Homeless Children: A Neglected Population*, 57 *AM. J. ORTHOPSYCHIATRY* 279, 284-85 (1987).

3. *See* CHILDREN’S DEF. FUND, *TRENDS IN CHILD POVERTY* (2008); *see also* BARBARA DUFFIELD (NAT’L ASS’N FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH) & PHILLIP LOVELL (FIRST FOCUS), *THE ECONOMIC CRISIS HITS HOME: THE UNFOLDING INCREASE IN CHILD & YOUTH HOMELESSNESS*, at exec. sum. (2008), <http://www.naehcy.org/dl/TheEconomicCrisisHitsHome.pdf>.

4. Yvonne Vissing, *Researching Homeless Children*, in *RESEARCH ISSUES IN THE STUDY OF CHILDREN* (Amy Best ed. 2007).

5. NAT’L COALITION FOR THE HOMELESS, *HOW MANY PEOPLE EXPERIENCE HOMELESSNESS?* (2009), *available at* http://www.nationalhomeless.org/factsheets/How_Many.html; *see also* NAT’L COALITION FOR THE HOMELESS, *NCH FACT SHEET NO. 13, HOMELESS YOUTH* (2007), <http://www.nationalhomeless.org/publications/facts/youth.pdf>.

separate needs from their parents. Given the impact of the current recession, it is critical to understand the impact of homelessness on the youngest segments of the population and to identify if their needs are being met quickly and thoroughly.⁶ Children and youth, especially those who are unaccompanied, may fall through the definitional cracks and tend to be drastically under-counted as a result. Another reason is methodological: a more appropriate measure of the magnitude of homelessness is the number of people who experience homelessness over time, not the number of “homeless people” at any one point in time. Many homeless studies are panel designs or one-shot studies that obtain numbers at a given moment; the numbers may vary dramatically from season-to-season or as a result of environmental or situational pressures. It is therefore likely that any number of homeless children we receive is likely an underestimate of the actual number of how many children and youth actually do not have housing.⁷

According to the National Center on Family Homelessness,⁸ current economic problems have put significantly more children at risk of poverty than ever before. They estimate there are 1.6 million homeless American children, which amounts to one in forty-five of all children, 30,000 each week, or 4,400 homeless children each day. These figures represent a thirty-three percent increase in homeless children from 2007, when there were a reported 1.2 million homeless children. These figures indicate more distress than the figure produced by the U.S. Department of Housing and Urban Development (HUD), which reports a twenty-eight percent increase in homeless families from 131,000 in 2007 to 168,000 in 2010. HUD’s numbers are much smaller because they count only families living on the street or in emergency shelters.⁹

6. See JUDITH SAMUELS, MARY BETH SHINN & JOHN BUCKNER, U.S. DEPT. OF HEALTH & HUMAN SERVICES, HOMELESS CHILDREN: UPDATE ON RESEARCH, POLICY, PROGRAMS, AND OPPORTUNITIES 7 (2010).

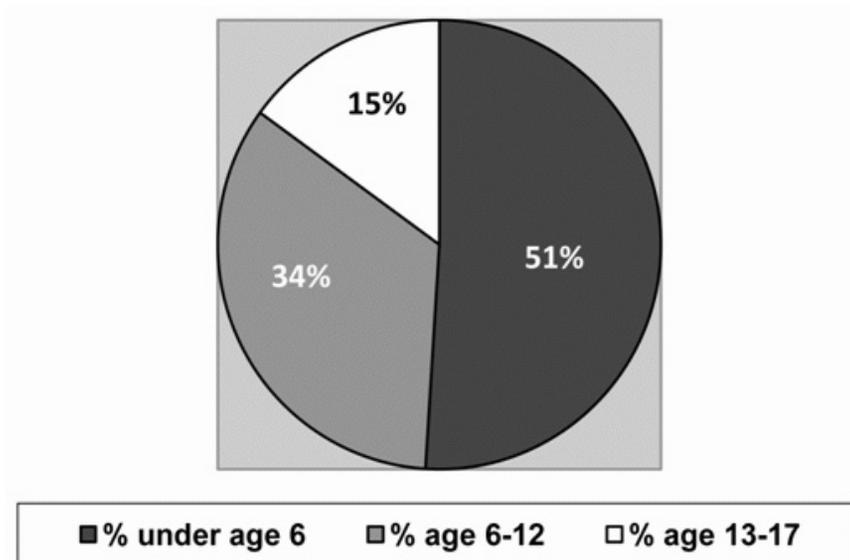
7. See generally CHRISTOPHER HUDSON, AN INTERDEPENDENCY MODEL OF HOMELESSNESS: THE DYNAMICS OF SOCIAL DISINTEGRATION (1998); YVONNE VISSING, ENUMERATING HOMELESS TEENS IN THE SEACOAST AREA (1993); Yvonne Vissing & Joseph Diament, *Are There Homeless Youth In My Community? Differences of Perception Between Service Providers and High School Youth*, 4 J. SOC. DISTRESS & HOMELESS 287, 287-99 (1996); and see YVONNE VISSING, OUT OF SIGHT, OUT OF MIND: HOMELESS CHILDREN IN SMALL TOWN AMERICA 8 (1996) [hereinafter OUT OF SIGHT].

8. ELLEN L. BASSUK, ET AL., NAT’L CTR. ON FAMILY HOMELESSNESS, AMERICA’S YOUNGEST OUTCASTS: STATE REPORT CARD ON CHILD HOMELESSNESS 2010, at exec. sum. (2011) [hereinafter AMERICA’S YOUNGEST OUTCASTS], available at <http://www.scribd.com/doc/75506633/Report-Americas-Youngest-Outcasts>.

9. Marisol Bello, *Child Homelessness Up 33% in 3 Years*, USA TODAY, Dec. 13, 2011, <http://www.usatoday.com/news/nation/story/2011-12-12/homeless-children-increase/51851146/1>.

Families are the largest subgroup of the homeless.¹⁰ The National Law Center on Homelessness and Poverty indicates that there are more than 1.3 million homeless children in the United States, and forty percent of all homeless people consist of families with young children.¹¹ The U.S. Department of Education found that forty-two percent of homeless children are under five years of age.¹² A study for the U.S. Department of Health and Human Services stated that the majority of homeless children and youth are under the age of six. (Table 1.)¹³ However, for reasons to be discussed in the next section, it is useful to consider that HUD counts traditionally underestimate the number of older children and youth.

Table 1. Age Distribution of Homeless Children, HUD's Housing Management Information System



The U.S. Department of Education relies upon McKinney-Vento counts to help them determine how many homeless students are in its

10. See AMERICA'S YOUNGEST OUTCASTS, *supra* note 8; see also NAT'L COALITION FOR THE HOMELESS, WHO IS HOMELESS? (2009), available at <http://www.national-homeless.org/factsheets/who.html>.

11. ELLEN L. BASSUK & STEVEN M. FRIEDMAN, FACTS ON TRAUMA AND HOMELESS CHILDREN 1 (2005), http://www.nctsn.org/nctsn_assets/pdfs/promising_practices/Facts_on_Trauma_and_Homeless_Children.pdf.

12. U.S. DEPT. OF EDUC., REP. TO CONG. FISCAL YEAR 2000, EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM 5, 13-14 (2000).

13. SAMUELS, SHINN & BUCKNER, *supra* note 6, at 10.

schools. In 2007, over 700,000 school-aged children were identified,¹⁴ which is likely a gross underestimation of the likely number of children who are homeless since those responsible for conducting the counts may not have the time or expertise to conduct thorough counts. Additionally, schools may use different enumeration methodologies, have different reporting mechanisms, and different amounts of funding, all of which impact the numbers that are obtained. What seems to be certain is that the reported numbers are likely just the tip of the iceberg when it comes to the identifying distress experienced by many less visible homeless students.

While McKinney-Vento counts are considered as the standard, further indications that the McKinney-Vento numbers are undercounts come from the National Network for Youth, which has conducted research on unaccompanied and homeless youth and found that there are over 1.6 million youth age twelve to seventeen who are homeless each year.¹⁵ This number does not include children eleven and younger. This organization notes that 7.6 percent of youth aged twelve to seventeen had at least one episode of staying in a shelter or with a stranger, that five percent of all homeless people were aged eighteen to nineteen, and that seven percent of the homeless population is between twenty and twenty-four years of age.¹⁶ Collectively, these statistics point to about twenty percent of the homeless population consisting of young people who are left to fend for themselves.

The National Incidence Studies of Missing, Abducted, Runaway and Thrownaway Children found that an estimated 1.7 million youth had a runaway/throwaway episode.¹⁷ Of these youth only twenty-one percent were reported to authorities as missing. According to the National Alliance to End Homelessness, national studies indicate a surprisingly high rate of homelessness among teens under age eighteen, with five to seven percent, or 1 to 1.5 million adolescents, experiencing at least one episode of homelessness each year.¹⁸ The Urban Institute has been active in the enumeration of homeless individuals since 1987, when it estimated that there were 229,000 homeless children and adults on any given night.

14. See Yvonne Vissing & Christopher Hudson, Presentation at the National Association for the Education of Homeless Children and Youth Conference: Issues in Enumerating Homeless and Youth (Nov. 2, 2008).

15. NAT'L NETWORK FOR YOUTH, UNACCOMPANIED YOUTH FAST FACTS 1 (2011).

16. *Id.*

17. See Heather Hammer, David Finkelhor & Andrea J. Sedlak, *National Estimates and Characteristics: Runaway/Thrownaway Children*, NISMART BULL., NCJ 196469 (U.S. Dep't of Justice, Office of Juvenile Justice & Delinquency Prevention), Feb. 2006.

18. STEVE MANCUSO & MIKE MAFFIE, NAT'L ASS'N FOR URBAN DEBATE LEAGUES, CORE REPORT 2009/2010, at 7 (undated), <http://www.urbandebate.org/resources/09-10.Core.Files.Final.pdf>.

It has continued its active involvement identifying social problems that afflict individuals and recently concluded that 2.3 to 3.5 million people in the United States are homeless over the course of a typical year, with over a third of them being children and youth.¹⁹ The National Law Center on Homelessness and Poverty found that approximately 3.5 million people, 1.35 million of them children, are likely to experience homelessness in a given year, and that children have a one in fifty chance of being homeless.²⁰ This author²¹ found in a sample of about a dozen high schools that in each of the schools, about ten percent of the youth identified themselves as homeless or in housing distress. This ten percent figure is similar to that found in other studies.²² Combining the known numbers of homeless children with the known numbers of homeless youth, the figures exceed the known numbers for the adult population. Most researchers agree that whatever number is obtained through traditional survey methods, that actual number is likely much higher.

Homeless children are found in every state in the nation, and even with methodological and definitional differences it appears that early life homelessness is unevenly distributed. Half of the homeless children reside in six states; seventy-five percent reside in eighteen states.²³ States with the highest percentage of homeless children are generally located in the South and Southwest, reflecting the higher levels of national poverty levels. These include Alabama, Mississippi, Arkansas, Arizona, California, New Mexico, Louisiana, Nevada, Florida and Georgia.²⁴ California in recent years has accounted for twenty-five percent of the reported number of homeless children and youth.²⁵ The states with the lowest percentages of homeless children and youth tend to be located in the North and Northeast, including Vermont, Minnesota, Nebraska, North Dakota, Maine, New Hampshire, New Jersey, Massachusetts, Montana and Iowa.²⁶ These states tend to have less poverty and stronger safety nets for children.

19. *A New Look at Homelessness in America*, URBAN INST. (Feb. 1, 2000), <http://www.urban.org/url.cfm?ID=900366>.

20. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, TWENTIETH ANNIVERSARY OF THE MCKINNEY VENTO ACT 1 (2007), available at http://www.nlchp.org/view_report.cfm?id=208.

21. OUT OF SIGHT, *supra* note 7, at 10.

22. See Yvonne Vissing & Christopher Hudson, Presentation at the National Association for the Education of Homeless Children and Youth Conference: How Can You Measure Homelessness More Accurately? (Nov. 1, 2008).

23. AMERICA'S YOUNGEST OUTCASTS, *supra* note 8, at 10.

24. *Id.* at 14 (2010 State Composite).

25. *Id.* at 6.

26. *Id.* at 14 (2010 State Composite).

III. DEFINITION AND THE LAW

Access to housing may be considered a human rights issue.²⁷ But the definition of what constitutes homelessness influences its legal determination, funding, and services provided. As a result, definitions are very important factors to consider in any legal forum regarding homeless children and youth. Laws can open doors, or slam them shut for homeless children and youth. They are political and ideological. Essentially, one governmental faction seeks to limit the official definition of homelessness to people who are in shelters or on the street, which will reduce the amount of funding, programs and services. With limited funds available, it seeks to assist the most visible sector of homeless adults. Another faction defines homeless children and youth to include not just those found in shelters, but also unaccompanied underage youth, children who live in doubled-up with others, and those who live in orthodox “homes” such as abandoned buildings, motels, cars and campgrounds. This latter definition expands the number of individuals considered to be homeless as well as the financial and programmatic resources needed to assist them. With too few shelter beds and services available to help the homeless who are already living on the streets, the debate over whether to expand significantly the pool of people eligible for such limited aid has sharply divided advocates for the homeless.²⁸ The National Alliance To End Homeless alleges that the definition of homeless people is “a high stakes game” because the stakes include money, resources, staff, supplies, and also policies and the law itself.²⁹

The main players in this high stakes game are the HUD and the U.S. Department of Education (DOE). HUD counts focus primarily upon people in homeless shelters and those who can be found on the street. DOE wants to continue using the legal definition of homelessness instituted into law by the McKinney-Vento Homeless Assistance Act of 2001, which enables schools to count, and therefore serve children who would be otherwise ignored by HUD. Because these two federal agencies operate with different legal definitions of who is homeless, homeless children and youth may not receive the services that adults would be entitled to, and they may be denied needed services because they don't fit exactly into the eligibility standards each set. In an analysis of

27. See generally Maria Foscarinis, *The Human Right to Housing*, SHELTERFORCE (2011).

28. Judy Chang, *Expanding HUD's Definition of Homelessness*, PLANETIZEN (Sept. 17, 2007, 7:00 AM), <http://www.planetizen.com/node/35084> (citing Rachel L. Swarns, *Capital Strives to Define 'Homelessness'*, N.Y. TIMES, Sept. 15, 2008).

29. NAT'L ALLIANCE TO END HOMELESSNESS, HOMELESSNESS COUNTS 8 (2007).

definitions of homeless children and youth, it was found that most governmental agencies use slightly different definitions, and that HUD's is most restrictive. (Table 2.)³⁰

Table 2. Definitions of Homelessness Used by Federal Programs Serving Children

Program	Agency/Department	Shelter	Doubled-up	Hotel/Motel	Other locations
All HUD programs	Department of Housing and Urban Development	X			
McKinney-Vento Education for Homeless Children and Youth Program	Office of Elementary and Secondary Education, Department of Education	X	X	X	X
Head Start	Administration for Children and Families, Department of Health and Human Services	X	X	X	X
Runaway and Homeless Youth	Administration for Children and Families, Department of Health and Human Services	X	X	X	X
Health Care for the Homeless	Health Resources and Services Administration, Department of Health and Human Services	X	X	X	X
Treatment for the Homeless	Substance Abuse and Mental Health Services Administration, Department of Health and Human Services	X	X	X	X
Homeless Veterans Reintegration Program	Veterans Employment and Training Service, Department of Labor	X	X	X	X
Violence Against Women	Office of Violence Against Women, Department of Justice	X	X	X	X
School Lunch Program	Food and Nutrition Service, Department of Agriculture	X	X	X	X

30. SAMUELS, SHINN & BUCKNER, *supra* note 6, at 3.

A. HUD Definition

The federal definition of homelessness according to HUD can be found in Title 42, Chapter 119, Subchapter I of the United States Code.³¹ It narrowly defines homelessness and targets street adults, many of whom may have mental health, physical health, or substance abuse issues that are consequences of homelessness. HUD's definition does not include people who live doubled-up with others or unaccompanied youth and misses many of homeless children and youth. HUD leaders allege that because insufficient funds are available to serve the needs of all people who could use assistance, by focusing just upon those people on the street and in shelters they will be able to better address the needs of the most visibly homeless. They also question whether a family of four who lost their home to the bank and is now couch-surfing with relatives should be considered homeless.³²

HUD's adult emphasis largely leaves families and independent youth out of the equation, because most shelters are not equipped to handle families. Families generally need more resources because exponentially there are more people with whom to be concerned. The etiology of family, child and youth homelessness is different than that of single adults who may be on the street. Most of them have become homeless not because they had mental health or substance abuse problems, but because they either could not find affordable, available housing or they lost their economic ability to pay for all the things their families require. Once without housing, a host of personal problems may occur, but they tend to be outcomes of homelessness and not the cause of it. This means that structural problems, rather than personal problems, are more likely to be identified as the cause of child and youth homelessness.³³

B. DOE Definition

The McKinney-Vento Assistance Act of 1987³⁴ definition of homelessness is considerably broader than that advocated by HUD. Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act defines homelessness as youth who share the housing of other persons due to loss of housing, economic hardship or a similar reason (sometimes

31. See 42 U.S.C. § 11302 (providing six definitions of the terms "homeless" and "homeless person").

32. NATHAN THORNBURGH, *Defining 'Homelessness Down'*, TIME, July 30, 2008, available at <http://www.time.com/time/nation/article/0,8599,1827876,oo.html>.

33. See OUT OF SIGHT, *supra* note 7, at 172.

34. McKinney-Vento Assistance Act of 1987, P.L. 100-77, 101 Stat. 482 (1987).

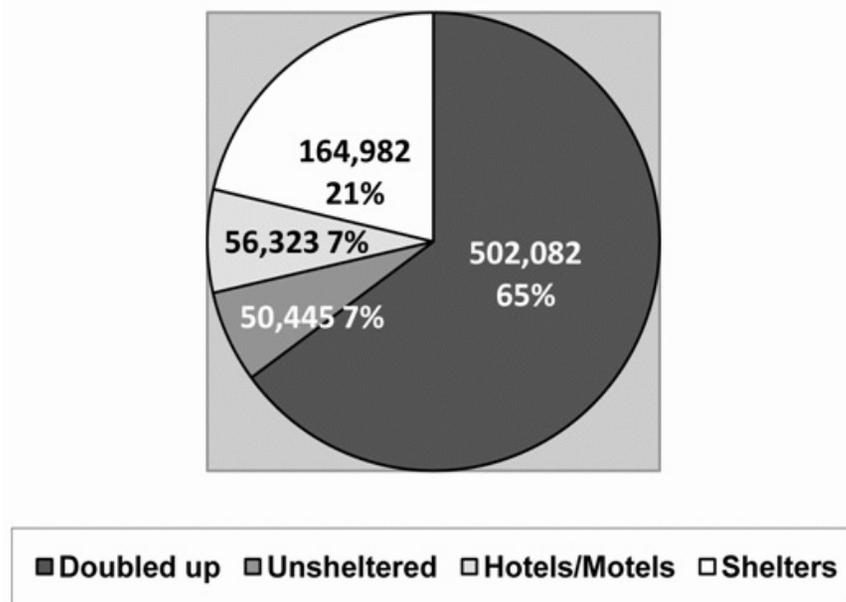
referred to as doubled-up), living in motels, trailer parks or campgrounds due to lack of alternative accommodations, living in emergency or transitional shelters, abandoned in hospitals, awaiting foster care placement, using a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings, living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations or similar situations, and migratory children who qualify as homeless because they are living in those circumstances.³⁵

This federal law is regarded as the first significant federal law to help homeless children. It authorizes a spectrum of services that include the Continuum of Care Programs, the Supportive Housing Program, the Shelter Plus Care Program, the Single Room Occupancy Program and Emergency Shelter Grant Program, and established the Interagency Council on Homelessness. Because it allows the counts of people who lack a fixed, regular, and adequate nighttime residence and who may live in unorthodox housing arrangements, this definition allows providers to address the needs of a variety of children and youth who lived in distressed housing conditions. Because homelessness is not an event but a process, a broader definition helps bridge the debate between a family that is in “housing distress” and when they are “homeless.”

DOE counts of homeless children and youth consider living arrangements not counted by HUD. In Table 3, the majority of homeless children live doubled-up with others, and only about one in five live in shelters.³⁶ Because the counts come from the schools, they would neither include children too young to be in school nor older youth who have dropped out. This is an indication that many official numbers of homeless youth and children are but the tip of the iceberg.

35. McKinney-Vento Education for Homeless Children and Youths Program, 67 Fed.Reg. 10,697, 10,698 (Mar. 8, 2002).

36. SAMUELS, SHINN & BUCKNER, *supra* note 6, at 5.

Table 3. Students Primary Nighttime Residence 2008

IV. LEGAL OBSTACLES FACING HOMELESS CHILDREN AND YOUTH

Homeless children and youth regularly face problems including access to housing, education, social services, health care and transportation. These issues will be explored with particular attention to legal ramifications. In the section below, first survey data from the board members and staff of the National Coalition for the Homeless will be provided followed by an elaboration of specific legal obstacles.

A. National Coalition for the Homeless Survey

The board members of the National Coalition for the Homeless were surveyed in summer 2011 to ascertain what kinds of legal problems homeless children and youth confront. This national sample represented a variety of homeless service providers and advocates. Responding to a four-point Lickert scale question, over eighty percent of them felt most homeless children and youth experience many or some legal problems; none thought they experienced no legal problems. When asked to identify which types of homeless children and youth experienced legal problems, Table 4 illustrates that respondents felt that the groups most likely to experience legal problems were immigrant children (seventy-three percent), underage parents (sixty-four percent) and teens aged

fifteen to eighteen (fifty-five percent). Groups least likely to experience legal problems were babies and children up to age ten. Young children from birth to ten years were those least likely to have legal problems because they are under the care of their parents. This is not necessarily the case for babies who are born to underage parents who are homeless since those parents were identified to experience significant legal difficulties. Risk, then, is associated for children of teenage parents who are on their own and homeless because those young parents may not qualify for housing, social services and a variety of assistance programs that older parents may get.

Table 4. NCH Identification of Degree Groups Experience Legal Problems

Group	Significant	Some	Not many
Immigrant children/youth	72.7%	27.3%	0.0%
Underage parents	63.6%	36.4%	0.0%
Teens age 15 – 18	54.5%	45.5%	0.0%
Young adult 19 – 21	45.5%	54.5%	0.0%
GLBT youth	45.5%	45.5%	9.1%
Foster children	45.5%	45.5%	9.1%
Adolescents age 11 – 14	18.2%	72.7%	9.1%
Preschoolers (birth – 6)	9.1%	54.5%	36.4%
Children age 7 – 10	9.1%	54.5%	36.4%

The NCH board/staff were asked to rank a series of issues on a four-point ordinal scale to determine if they posed a legal problem for homeless children and youth. Homeless children and youth were found by the NCH to have significant difficulties obtaining secure and affordable housing. They may not be able to get housing of their own and be forced into living in risky situations as a result. In Table 5, they concluded that the most pressing problems for homeless children and youth were: Housing, access to social services, being an unaccompanied/independent/emancipated youth and experiencing sexual assault. They have significant difficulty obtaining the social services they need and services that could buffer them against a host of preventable problems. The problem least likely to be of concern was being a perpetrator of crime since most homeless children are more likely to be victims of crime than perpetrators. They are at particular risk of sexual and physical assault when they are on the streets.

Table 5. Pose Legal Problems for Homeless Children/Youth

Problem	Significant	Somewhat	Not much	Not a problem
Housing	90.9%	9.1%	0.0%	0.0%
Social service access	72.7%	9.1%	18.2%	0.0%
Unaccompanied youth	72.7%	9.1%	9.1%	9.1%
Sexual assault	66.7%	22.2%	11.1%	0.0%
Employment	55.6%	33.3%	11.1%	0.0%
Alcohol/substance abuse	54.5%	18.2%	27.3%	0.0%
Education	54.5%	36.4%	9.1%	0.0%
Physical health	54.5%	27.3%	18.2%	0.0%
Mental health	54.5%	36.4%	9.1%	0.0%
Transportation	54.5%	27.3%	18.2%	0.0%
Crime (as victims)	45.5%	18.2%	36.4%	0.0%
Physical assault	40.0%	40.0%	20.0%	0.0%
Financial assistance	40.0%	50.0%	10.0%	0.0%
Staying with parents	36.4%	36.4%	18.2%	9.1%
Access to food	27.3%	36.4%	27.3%	9.1%
Crime (as perpetrators)	18.2%	36.4%	36.4%	9.1%

The NCH board and staff were also asked to provide qualitative data on each of the aforementioned issues. These findings are interjected into discussion of the different legal issues that confront homeless children and youth, as described below.

B. Housing

Housing is the number one problem for homeless children and youth. Homes are the essential foundation to establish the wellbeing of children, and when children are deprived of adequate housing a variety of preventable but traumatic events occur to disrupt normal physical, cognitive and emotional development.³⁷ The legal issues they confront vary by age and family composition.

1. Family Based Issues for Younger Children and Youth

Families may become homeless for a variety of economic, health, educational, and interpersonal reasons. Their trajectory into homelessness can be slow and progressive or swift and decisive. The

37. BASSUK & FRIEDMAN, *supra* note 11, at 2.

etiology of homelessness may create interrelated legal problems that complicate the acquisition of housing. The biggest factor contributing to child and youth homelessness is the legal definition of homelessness itself since that determines eligibility requirements. The more narrow the definition, the less likely the family is to obtain assistance; the more rigorous the eligibility process, the longer it takes for people to qualify for housing and services, if they can qualify at all. These factors may put people into precarious housing and economic arrangements for some time, thereby worsening their situation.³⁸

Children may be removed from parents who have economic problems and compromised living arrangements. If parents were well served by the economic and social service sectors they may have housing and supportive assistance that could keep their families together and stable. But the current economic downturn has created a significant increase in request for services, which results in waiting lists and eligibility challenges.³⁹ National Coalition for the Homeless representatives reported that need is up and services are down; as a result more families live in doubled-up with others or even in cars because there is inadequate shelter space available. Across the nation, more children are finding themselves living in unorthodox housing arrangements, including parking lots as they try to keep their families together. Because parents cannot find affordable housing, if a family's living situation is not conducive to the well-being of the child for an extended period of time, the children may be removed from the family and put into foster care. Once removed, any financial assistance the family may have received prior to that time may become unavailable to them, which makes it harder for parents to secure adequate housing and get their children back. There is a fine line between what constitutes the best interest of the child: is it staying with their family in an inadequate living arrangement or being removed from them to stay with strangers in a more affluent housing arrangement? This is a matter of subjective interpretation.

Families seeking housing may be questioned by landlords about how many children they have, and those with "too many" as defined by the landlord may be denied housing. It is difficult for parents to prove this is the reason, but many feel this is indeed the case. If anyone in the family has legal problems that are not even related to the housing, the legal issues may become justification for their eviction from public or section

38. See generally *OUT OF SIGHT*, *supra* note 7.

39. Hope Yen, *Census Shows 1 in 2 People Are Poor or Low-Income*, YAHOO!FINANCE (Dec. 15, 2011), <http://finance.yahoo.com/news/census-shows-1-2-people-103940568.html>.

8 housing, often with a three-year no-return policy. This results in people becoming chronically homeless. It particularly penalizes children and youth who had nothing to do with the legal problem for which they were evicted. Children and youth whose families are evicted cannot do a thing about it and cannot secure housing for themselves because of economic and legal constraints.

In some cases the housing that is offered to homeless families is substandard and may play into an ideology that “beggars can’t be choosers” when they are given any place to live. Low-income housing may be more commonly found in low-income neighborhoods; low-income neighborhoods are associated with crime and problems like exposed wiring, inadequate plumbing, asbestos, or lead paint. States like New York have enacted law S1391-2011 to bar discrimination in the leasing of rental property against families receiving public assistance or governmental housing subsidies and to protect homeless children from lead paint poisoning. Other states do not have such laws and homeless children may find themselves living in houses or apartments but their conditions may be lax. The data proves a clear relationship between housing and health.⁴⁰

2. Guardianship Issues

Grandparents, siblings, relatives and friends may step up and take care of homeless children or youth because the children’s family cannot, will not, or should not take care of them, yet they may not have the official paper work that legally allows them to do so. Legal problems confront caregivers of children and youth who do not have formal authorization to be the guardians for their young charges. Family and friends may shelter children when their parents are unable to do so, but if they do not have legal guardianship papers they cannot secure housing or other services for them.

Informal agreements may have been made between the parents and caregivers, but unless there are legal documents transferring guardianship to the caregivers, the children may be unable to receive assistance. Frequently the parents are unavailable or unable to authorize the necessary paperwork giving guardian’s custody. Children and youth may get stonewalled without services as a result. Providers experience significant legal difficulty because they may know these relatives or

40. *See, e.g.*, NATIONAL CTR. FOR HEALTHY HOUSING, HOUSING INTERVENTIONS AND HEALTH OUTCOMES: A REVIEW OF THE EVIDENCE (2009); NATIONAL CTR. FOR HEALTHY HOUSING, U.S. DEPT. OF HOUSING & URBAN DEV. HOUSING QUALITY STANDARDS (1995), available at <http://www.healthyhomestraining.org/Codes/HQS.htm>.

friends are taking charge, yet they may not have so much as a handwritten note giving them permission to do so. As one National Coalition for the Homeless board member and shelter provider reflected,

The custody issues have always been a big legal problem for the children in homeless families. We have a grandmother with her two year old grandson in our waiting room now, and no shelter or transitional program will take them without evidence of the grandmother's legal custody. They need to have guardianship authorization in order to act on behalf of the youth.

The Administration for Children and Families estimates that about six million children are being raised by grandparents.⁴¹

3. Illegal or Undocumented Parents

Immigrant parents may have problems obtaining housing for their children which results in them becoming homeless. Some parents may be in the country illegally, others may be here legally but live with someone who is not, and some may not have the paper work in order to meet the official designation of meeting legal residency standards. Immigrant children are at risk of homelessness because their parents' illegal status makes it impossible for them to access services. Their parents may be afraid to sign legal documents or contracts or be in contact with organizations who could on one hand help them, but on the other hand turn them in to legal authorities. Immigrant parents of children may hide in order to evade Immigrations and Customs Enforcement (ICE); trying to keep their families together, they may live in precarious housing arrangements or become homeless because of laws that influence the lives of immigrants.⁴²

According to the Homeland Security Act of 2002, the correct legal designation to refer to unaccompanied undocumented youth is "unaccompanied alien child."⁴³ This refers to children under age eighteen who do not have a lawful immigration status or a parent/legal guardian in the U.S. available to provide physical custody and care. A youth who entered into the U.S. with a parent but subsequently left the care of the

41. See ADMIN. FOR CHILDREN & FAMILIES, GRANDPARENTS RAISING GRANDCHILDREN: A CALL FOR ACTION 1 (undated), <http://www.acf.hhs.gov/opa/doc/grandparents.pdf>.

42. See generally NAT'L ASS'N FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, IMMIGRATION AND SCHOOLS: SUPPORTING SUCCESS FOR UNDOCUMENTED AND UNACCOMPANIED HOMELESS YOUTH (2010).

43. *Id.* at 3.

parent could pragmatically be considered an unaccompanied alien child, but not necessarily legal under immigration law. In 2007 the U.S. Department of Health and Human Services had 8,227 unaccompanied youth, eighty-five percent of them between fourteen and eighteen years of age.⁴⁴ Most (seventy-six percent) were male.⁴⁵ The majority of youth (eighty-five percent) were from three countries – Guatemala, Honduras, and El Salvador.⁴⁶

There is the overarching issue that sometimes children and youth do not get the assistance that could legally be available to them because they, or their caregivers, either are not aware of services or do not apply for them. Understanding their legal rights, knowing what services are available and being able to access them are complicated for people of any age, and especially challenging for children and youth. There is no nationally organized system of child advocacy or ombudsmen that children can easily identify and access for assistance. There exists significant debate on how to serve the best interests of this group of homeless children.⁴⁷

4. Older Youth

Older youth may not be in a family setting or cared for by a responsible adult. Some have fled because of abuse, others have been pushed-out or thrown-out, and some have left on their own volition. The National Law Center on Homeless and Poverty found in their report *Alone Without a Home: A State by State Review of Laws Affecting Unaccompanied Youth*⁴⁸ that the legal rights and responsibilities of unaccompanied youth vary state-by-state. Despite the fact that they are living apart from their parents or guardians, minor aged youth lack the legal status to live independently.⁴⁹ This report found that most states have established statutory definitions of the term “youth” that have not kept pace with contemporary understanding of human development and the distinctions between its childhood and adolescent phases.⁵⁰ Many

44. *Id.* at 3 n.9 (citing CHAD C. HADDEL, CONG. RES. SERV. REP., UNACCOMPANIED ALIEN CHILDREN: POLICIES AND ISSUES (2009)).

45. *Id.*

46. *Id.*

47. See Christopher Nugent, *Whose Children Are These? Towards Ensuring the Best Interests and Empowerment of Unaccompanied Alien Children*, 15 B.U. PUB. INT. L.J. 219, 219 (2006).

48. See generally NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *ALONE WITHOUT A HOME* (2003) [hereinafter *ALONE WITHOUT A HOME*].

49. *Id.* at 1.

50. *Id.* at 3-4.

jurisdictions determine the age of majority to be eighteen, indicating that older youth are not viewed as different from adults.⁵¹ But most people at age eighteen, or even older, are rarely independent at age eighteen and able to handle the demands that confront adulthood.⁵² Many states do not have specific definitions of runaway or homeless children/youth, which reflects their lack of attention on these populations. Many states use a terminology that reflects a punitive attitude toward these young people, using terms like vagrant, unruly, incorrigible, rebellious, absence from the family without permission, with little mention that the youth may have fled the home for safety reasons.⁵³

Legal obstacles are overwhelming for homeless youth. Minors do not have the right to even fill out a housing application. They cannot sign a rental or lease agreement. They likely do not have much income of their own to pay for housing and fail to qualify for public assistance. Unaccompanied youth fall through the cracks and are not served because they do not fit the HUD or other definition. There may be few institutional resources available to help them short of putting them into foster care if they are not emancipated. Older youth may not want to go into foster care. Some may have the capabilities, with support, to live independently. When unaccompanied youth cannot be reunited with parents or guardians, they must care for themselves. Living independently either by choice or because there are no adults to assist the un-emancipated youth are unable legally to obtain housing, buy cars, make health care decisions, take out educational loans, or engage in other contractual transactions necessary to live independently.

Some studies indicate that there are some populations of youth that are grossly overrepresented in the homeless youth populations. These groups include: gay, lesbian and bisexual youth; youth who are transgender; minority youth; youth with some history of foster care; and youth who have been through either the juvenile justice or criminal justice systems.⁵⁴

51. *Id.* at 4.

52. *Id.*

53. *Id.* at 3.

54. *See, e.g.*, LANCE FREEMAN & DARRICK HAMILTON, EMPIRE STATE COAL. OF YOUTH & FAMILY SERV., A COUNT OF HOMELESS YOUTH IN NEW YORK CITY, at exec. sum. (2008), http://www.citylimits.org/images_pdfs/pdfs/HomelessYouth.pdf; NICHOLAS RAY ET AL., LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS I (2006).

5. Foster Care

Youth who have been placed into foster care have a much higher chance of becoming homeless when they leave foster care.⁵⁵ There are over a half-million children and youth in foster care in the United States.⁵⁶ This group of people could be considered homeless because they are in temporary housing and away from their family. About 20,000 foster children age-out or emancipate annually, and about two-thirds of them leave foster care (usually at their eighteenth birthday) without a place to live.⁵⁷ About half of foster children do not complete high school and most have trouble getting or holding a job.⁵⁸ About half the former foster care youth become homeless within the first eighteen months after they are considered adult; fifty-eight percent of all young adults in youth shelters had previously been in foster care.⁵⁹ Girls in foster care are six times more likely to have a baby before turning age twenty-one than the general population.⁶⁰ Allowing young people to remain in foster care until their twenty-first birthday may not prevent, but may delay entry into homelessness. Foster youth in Illinois were found to be about one-third as likely to become homeless by age nineteen and about three-quarters as likely to become homeless by age twenty-one as foster youth in other states.⁶¹

6. LGBT Youth

Gay, lesbian, bisexual, transgender, and people questioning their sexual identity have been found to have higher than average rates of homelessness, usually attributed to parental resistance accepting their children's sexual identity or orientation. The National Coalition for the Homeless found that twenty percent of homeless youth are LGBT,

55. Richard Barth, *On Their Own: Experiences After Foster Care*, 7 CHILD & ADOLESCENT SOC. WORK J. 419, 420, 424 (1990); *National Foster Care Youth Statistics*, ON THE MOVE, <http://www.onthemovebayarea.org/node/561> (last visited Sept. 14, 2012).

56. *National Foster Care Youth Statistics*, ON THE MOVE, <http://www.onthemovebayarea.org/node/561> (last visited Sept. 14, 2012).

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. AMY DWORSKY & MARK COURTNEY, *ASSESSING THE IMPACT OF EXTENDING CARE BEYOND AGE 18 ON HOMELESSNESS: EMERGING FINDINGS FROM THE MIDWEST STUDY 5* (2010), available at <http://www.chapinhall.org/research/brief/assessing-impact-extending-care-beyond-age-18-homelessness-emerging-findings-midwest>.

compared to only ten percent of the general youth population.⁶² While youth who are homeless report severe family conflict as the reason for their homelessness, LGBT youth are twice as likely to experience sexual abuse before age twelve.⁶³ Once homeless, they are at higher risk of victimization, mental health problems and unsafe sexual practices⁶⁴. Almost fifty-nine percent of LGBT homeless youth have been sexually victimized compared with thirty-four percent of heterosexual homeless youth.⁶⁵ LGBT homeless youth commit suicide at higher rates than heterosexual sexual youth (sixty-two percent to twenty-nine percent).⁶⁶ The Homelessness Resource Center⁶⁷ indicates that thirty percent of families reject their child when they learn of their alternative sexual preference, and that one in five homeless youth are LGBT. PFLAG⁶⁸ indicate that about a quarter of gay males are thrown out of their homes when they tell their families about their sexual orientation, and that between twenty-five percent and fifty percent of homeless youth are LGBT and on the streets because of their sexual identity. Because of the stigmatization LGBT individuals have experienced, their legal rights have been compromised historically and add that stigmatization to that of being homeless, there is a reasonable probability that this population of youth experience high rates of exclusion.⁶⁹

7. Youth with Juvenile Justice Histories

According to the National Center on Homeless Education,⁷⁰ there is a significant overlap between youth homelessness and contact with the juvenile/criminal justice system. There seems to be both a cause and an effect relationship between them; in some cases homelessness triggers actions that put the youth into contact with the criminal justice system; in other cases detained youth may find themselves more likely to become

62. See NAT'L COALITION FOR THE HOMELESS, LGBT HOMELESS (2009), available at <http://www.nationalhomeless.org/factsheets/lgbtq.html>.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. See NAT'L GAY AND LESBIAN TASK FORCE & NAT'L COALITION FOR THE HOMELESS, LESBIAN GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS (2011).

68. *Statistics You Should Know About Gay and Transgender Students*, PFLAG, <http://www.pflagnyc.org/safeschools/statistics> (last visited Sept. 15, 2012).

69. See WENDY EVANS, HOMELESSNESS RES. CTR., SUPPORTING LGBT YOUTH AND THEIR FAMILIES: THE FAMILY ACCEPTANCE PROJECT (2010).

70. See NAT'L CENTER ON HOMELESS EDUC., YOUTH HOMELESSNESS AND JUVENILE JUSTICE (2011), http://www.terrifictransitions.org/nche/downloads/briefs/juv_just.pdf.

homeless upon their release. In a study of a homeless youth center in New York, thirty percent of the youth had been arrested or incarcerated previously.⁷¹ Usually the crimes that led to their arrest were nonviolent or status offenses, including loitering, camping, panhandling or breaking curfew.⁷² Some homeless youth engage in illegal activities such as prostitution, survival sex or drug dealing in exchange for food or shelter. Some may qualify as a “child in need of services” (CHINS). Almost none have parents or legal counsel who can help them to navigate the criminal justice system.⁷³

When detained youth are released from juvenile justice, detention, or correctional facilities, many become homeless because they do not have a stable home to return to. Sometimes the reason they were at the juvenile facility in the first place concerned family dysfunction.⁷⁴ Once youth have been convicted of certain crimes (such as domestic violence), they may be prohibited from living in public or Section 8 housing.⁷⁵

Unaccompanied youth tend to engage in delinquent survival strategies because they have few legitimate means to support themselves. Studies indicate that the longer unaccompanied youth experience homelessness, the higher the probability of committing a crime. Further, in addition to being homeless, the lack of financial assistance from the

71. Paul A. Toro, Amy Dworsky & Patrick J. Fowler, Paper prepared for the 2007 National Symposium on Homelessness Research: Homeless Youth in the United States: Recent Research Findings and Intervention Approaches (2007), available at <http://aspe.hhs.gov/hsp/homelessness/symposium07/toro/index.htm>. Cited material is located in subsec. “Homelessness Among Youthful Offenders,” at ¶ 4.

72. Yvonne Vissing, *Curfews*, in KEY ISSUES IN CRIME AND PUNISHMENT 64, 66 (William Chambliss ed., 2010); NELL BERNSTEIN & LISA K. FOSTER, CAL. RESEARCH BUREAU, VOICES FROM THE STREET: A SURVEY OF HOMELESS YOUTH BY THEIR PEERS 53-55 (2007), <http://www.library.ca.gov/crb/08/08-004.pdf>; Andrea J. Sedlak & Carol Bruce, *Youth’s Characteristics and Backgrounds: Findings from the Survey of Youth in Residential Placement*, JUV. JUST. BULL. (U.S. Dep’t of Justice, Office of Juvenile Justice & Delinquency Prevention), Dec. 2010, at 3-4, <https://www.ncjrs.gov/pdffiles1/ojjdp/227730.pdf>.

73. NAT’L CTR. ON HOMELESS EDUC., YOUTH HOMELESSNESS AND JUVENILE JUSTICE 1-2 (2011), http://www.terrifictransitions.org/nche/downloads/briefs/juv_just.pdf.

74. U.S. DEPT. OF HEALTH & HUMAN SERVICES, FAMILY & YOUTH SERV. BUREAU, REP. TO CONG., PROMISING STRATEGIES TO END YOUTH HOMELESSNESS 2 (2005), http://www.acf.hhs.gov/programs/fysb/content/docs/reporttocongress_youthhomelessness.pdf.

75. JUVENILE JUSTICE & DELINQUENCY PREVENTION COAL., YOUTH REENTRY TASK FORCE, BACK ON TRACK: SUPPORTING YOUTH REENTRY FROM OUT-OF-HOME PLACEMENT TO THE COMMUNITY 18 (2009)

state also increases the likelihood of youth being involved in violent crime.⁷⁶

Congress enacted the Juvenile Justice and Delinquency Prevention Act of 1974⁷⁷ to address needs of runaway, homeless and at-risk youth. While the intention was to create a system that would rehabilitate young offenders to mold them into successful members of society, according to the National Center on Homeless Education,⁷⁸ statistics show that the juvenile justice system has failed many homeless youth. Youth who are involved with the juvenile justice system have substantially higher rates of mental health disorders comparable to those among youth being treated in the mental health system. The prevalence of mental disorders among youth in the general population is estimated to be about twenty-two percent; the prevalence rate for youth in the juvenile justice system is as high as sixty percent.⁷⁹ Over eighty percent of the young people who enter New York's juvenile facilities end up returning or being put into adult prisons within three years, which is a recidivism rate significantly higher than in the adult criminal justice system. Similar failures in the system can allegedly be found in other major cities across the country.

8. *Unaccompanied Youth*

Young people who are on their own quickly find themselves unable to meet their basic survival needs without assistance from others. The National Law Center for Homelessness and Poverty⁸⁰ found that it is commonplace for states to enact statutes that explicitly prohibit the "harboring" of unaccompanied or runaway youth by individuals and organizations who are not their legal guardians. Other jurisdictions have

76. ARATANI, *supra* note 2, at 7; *see generally* Stephen W. Baron, *Street Youth, Unemployment, and Crime: Is It That Simple? Using General Strain Theory to Untangle the Relationship*, 50 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 399, 399-434 (2008); Jeanne G. Kaufman & Cathy Spatz Widom, *Childhood Victimization, Running Away, and Delinquency*, 36 J. RES. CRIME & DELINQ. 347, 347-70 (1999); Les B. Whitbeck & Ronald L. Simons, *Life on the Streets – the Victimization of Runaway and Homeless Adolescents*, 22 YOUTH & SOC'Y 108, 108-25 (1990).

77. Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. No. 93-415, 88 Stat. 1109 (1974).

78. NAT'L CTR. FOR HOMELESS EDUC., EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM: DATA COLLECTION SUMMARY FROM SCH. YEAR 2009-2010, at 18 (2011).

79. NAT'L MENTAL HEALTH ASS'N, MENTAL HEALTH TREATMENT IN THE JUVENILE JUSTICE SYSTEM 1 (2004), https://www.nttac.org/views/docs/jabg/mhcurriculum/mh_mht.pdf.

80. ALONE WITHOUT A HOME, *supra* note 48, at 87.

enacted contributory delinquency, custodial interference and minor concealment statutes that may lead to not serving them.⁸¹ These put youth in very precarious situations. While such statutes are designed to preserve the rights of families and to prevent states from unnecessarily assuming custodial responsibilities, they limit individuals and organizations that have legitimate purpose in providing safe havens for youth in need. The National Law Center⁸² found that sixteen jurisdictions make it a crime to harbor a runaway; at least one jurisdiction makes it a crime to harbor any child, at least eight jurisdictions make it a crime to interfere with custodial rights, and four jurisdictions make it a crime to conceal a minor. This makes it very difficult to legally help unaccompanied youth. The sixteen jurisdictions explicitly make it a crime to harbor include: Colorado, Delaware, the District of Columbia, Florida, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, North Dakota, Texas, Utah, Vermont, Washington and American Samoa.⁸³ The District of Columbia statute applies only to persons who harbor young people who run away from the child welfare system.⁸⁴ Ohio makes it a crime to harbor any person under age eighteen.⁸⁵ Since less than one-third of jurisdictions have enacted statutes that prohibit the harboring of runaways, jurisdictions rely on broader child protection provisions to avert unwarranted trespass across legally established guardian-child custodial boundaries. The result is uncertainty as to whether or not harboring of unaccompanied youth actually falls within the scope of these more general statutes. A number of statutes compel individuals and organizations to notify law enforcement officials to report their harboring actions in order to avoid committing a crime.

There are some states with laws that are worth mentioning as they pertain to the management of unaccompanied youth. Wyoming's statute (WYO. STAT. ANN. § 6-4-403) has custodial interference and minor concealment provisions that establish defenses to harboring them "in order to protect the child from abuse, or that the child was over the age of fourteen and the child wanted to be taken away and not returned, provided that the person took the child without intent to commit a criminal offense with the child."⁸⁶ This provision enables the young person to express his or her wishes regarding their custodial relationship and empowers the harboring agent to act in accordance with the youth's

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. ALONE WITHOUT A HOME, *supra* note 48, at 88.

request. Alaska's statute (ALASKA STAT. § 11.51.130), criminalizing the aid, inducement, causation or encouragement of a child to be absent from a guardian without having the guardian's permission, can be defended against if the person harboring the youth reasonably believed that the child was in physical danger or needed shelter or reported the name of the child and his/her location within twelve hours to a peace officer, law enforcement officer or Department of Health and Social Services.⁸⁷ The explicit mention of need for shelter as a reasonable purpose for harboring, as well as the option for reporting the young person's location to the child welfare system negates the criminalization teeth of this statute. A New Jersey statute (N.J. REV. STAT. § 9:12A-6) gives homeless youth a statutory right to access walk-in shelters.⁸⁸ The law allows youth care organizations to provide safe, stabilizing services to youth in crisis. They can provide basic shelter to homeless youth, age twenty-one or younger, without parental notification or a court order. After proper notification to a juvenile-family crisis intervention unit, an admitted homeless youth may remain at the basic shelter for up to ten days without the consent of the youth's parent or legal guardian. Where abuse and/or neglect is suspected and an official report is filed, the youth may remain in the shelter for up to thirty days pending upon the disposition of the case. Washington's statute (WASH. REV. CODE § 13.32A.080) provides civil immunity from liability if the person reports a runaway within eight hours of learning of their runaway status and only criminalizes harboring when a person prevents a police officer, not a parent, from taking a runaway into custody.⁸⁹

As a general rule, even when youth are parents, if they are under age eighteen, they are still considered minors and not eligible to sign legal documents on their own behalf. However, they can sign paperwork for their children. This group of homeless individuals is legally considered as both minors and adults (in their role as parent), and may find themselves falling between the cracks and unable to obtain assistance. When all options are depleted, youth may seek assistance from shelters. But shelters cannot serve youth because they are minors who legally need parents to sign on their behalf for them to access services. Yet they lack the parental supports that would enable them to do so. Shelters may be subject to legal penalties if they do serve undocumented youth. In one case in New Hampshire, an underage mother sought shelter for herself and her new baby in the middle of a blizzard; the shelter could not legally serve her and offered to put her into foster care, but there was

87. *Id.*

88. *Id.*

89. *Id.*

concern that the baby may not be allowed to stay with her. They left to take their chances on the wintry streets.

9. *Emancipation*

Emancipation is a serious legal decision since it terminates parental responsibility and leaves the youth with no legal rights to demand assistance from parents. But it may in the youth's best interests to do so, especially in cases of abuse and domestic violence. Emancipation may enable the young person to control their own finances, own property, engage in contractual arrangements, consent to medical care, or marry if they choose. When they apply for aid the financial benefits may go directly to them rather than to parents or guardians. When this occurs, they may be able to apply for public assistance housing. The National Law Center for Homelessness and Poverty⁹⁰ found that thirty jurisdictions have established processes for emancipation, in nine of the jurisdictions, parental consent is required for emancipation, but such consent can be waived in four of those nine. In particular, the most common minimum age to petition for emancipation is sixteen years old, with twenty jurisdictions establishing that limit: Alaska, Arkansas, Connecticut, Florida, Illinois, Maine, Michigan, Montana, Nevada, New Mexico, North Carolina, Oregon, Pennsylvania, South Dakota, Texas, Vermont, Virginia, Washington, West Virginia and the U.S. Virgin Islands.⁹¹ California permits youth as young as fourteen years old to petition for emancipation, Louisiana has set fifteen years old as its minimum age.⁹² Five jurisdictions do not specify any minimum age: Indiana, Kansas, Mississippi, Oklahoma and Tennessee. Nine jurisdictions specifically require parental consent for emancipation.⁹³ Three of those jurisdictions require parental consent by prohibiting emancipation unless youth are living on their own with the consent of parents: California, South Dakota and Wyoming.⁹⁴ The remaining six jurisdictions require parental consent as part of the court process for granting emancipation: Alaska, Illinois, Louisiana, Michigan, Puerto Rico and the U.S. Virgin Islands.⁹⁵ However, four of those six jurisdictions allow courts to waive the consent requirement: Alaska, Louisiana, Puerto Rico and the U.S. Virgin Islands. For example, courts

90. *Id.* at 63.

91. *Id.*

92. ALONE WITHOUT A HOME, *supra* note 48, at 63.

93. *Id.*

94. *Id.*

95. *Id.*

in Alaska do not need parental consent to grant emancipation if such consent is difficult to obtain, and courts in Louisiana can waive consent if the parents have treated the young person roughly or had a negative influence on the youth.⁹⁶ Only twenty-one jurisdictions recognize emancipation in limited circumstances, but do not set forth a statutory process for becoming emancipated.⁹⁷

Common requirements for emancipation include attaining a minimum age, living apart from parents, managing oneself and being able to support oneself financially. Some jurisdictions permit youth to become emancipated without a court proceeding if they and their parents agree. For example, in Puerto Rico, a parent and youth can agree to emancipation and complete the process by signing a notarized declaration.⁹⁸ In Louisiana, a youth age fifteen or over and his or her parents can complete emancipation by signing a notarized declaration in front of two witnesses.⁹⁹ Emancipation may permit courts to treat them as adults for criminal purposes as well, as it explicitly does in Wyoming.¹⁰⁰ Emancipation without court involvement could be very attractive to young people whose parents consent to emancipation, as it would likely be faster, easier and less costly than judicial emancipation. However, it may be possible for a parent to abuse the process by coercing a youth to agree to emancipation. In Indiana, IND. CODE § 31-34-20-6 does not establish a minimum age for emancipation and does not require parental consent; youth must state that they wish to be independent and show that they can support themselves, including acceptable living arrangements.¹⁰¹ This statute protects a young person's right to become legally independent, but also requires the court to ensure the youth understands what emancipation means and has a safe place to live. Emancipated youth in Indiana have the right to enter contracts, marry, own property and consent to medical care.¹⁰² The U.S. Virgin Islands maintains certain legal protections for young people even after they are emancipated; they cannot enter any contract that would obligate them to pay a sum greater than their annual income, appear in a lawsuit without a guardian ad litem or sell real property without the court's approval (see V.I. CODE ANN. tit. 16, §§ 211, 231-33, 241, 251, 253-54).¹⁰³

96. *Id.*

97. *Id.* at 63-64.

98. ALONE WITHOUT A HOME, *supra* note 48, at 63.

99. *Id.*

100. *Id.* at 70-71.

101. *Id.* at 66-67.

102. *Id.*

103. *Id.* at 71.

In sum, homeless children and youth experience a host of housing difficulties. There is no national standard for their definition of who they are or how they should be served. There is an attempt to deal with their housing problems in some states, but the variability is considerable. The result is that there is no single law that protects the housing needs of either children or youth.

V. EDUCATIONAL PROBLEMS OF HOMELESS CHILDREN AND YOUTH

A. *McKinney-Vento Homeless Assistance Act*

Perhaps the most successful legal action to protect the rights of homeless children and youth has occurred within the educational arena. The right of equal access to a free public education is today firmly established in federal law. The educational rights of homeless children are rooted in state, federal and international law. Congress passed the McKinney Homeless Assistance Act in 1987 to protect the educational rights of homeless children and youth. The federal McKinney-Vento Homeless Assistance Act – Title X, Part C, of the No Child Left Behind Act of 2001 – provides a comprehensive national framework to protect the educational rights of homeless children across the United States, and also provides protections to many unaccompanied youth.¹⁰⁴ According to the McKinney-Vento Act, a child or youth meets the legal definition of homelessness when he or she does not have a fixed, regular and adequate nighttime residence.¹⁰⁵ This includes students who live with friends, relatives or others because they have financial problem that forced them to lose their home. People who stay in shelters, motels, hotels, trailer parks, campgrounds, substandard housing, cars, parks, abandoned buildings or transportation stations also fit the definition. Youth who do not live with parents or guardians are known as “unaccompanied youth,” and include those who were thrown out or pushed out by their parents, who left home with the consent of parents, or who do not have parents to care for them. Students who live in transitional housing programs are considered homeless under Subtitle VII-B of the McKinney-Vento Act.¹⁰⁶

104. See McKinney-Vento Education for Homeless Children and Youths Program, 67 Fed. Reg. at 10,701.

105. NAT'L CTR. FOR HOMELESS EDUC., BEST PRACTICES IN HOMELESS EDUCATION: DETERMINING ELIGIBILITY FOR RIGHTS AND SERVICES UNDER THE MCKINNEY-VENTO ACT 2 (undated).

106. See 42 U.S.C. §§ 11431-11435. See generally NAT'L ASSOC. FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, A CRITICAL MOMENT: CHILD AND YOUTH HOMELESSNESS IN OUR NATION'S SCHOOLS (2010), http://www.naehcy.org/dl/crit_mom.pdf; NAT'L

Subtitle VII-B of the McKinney-Vento Act establishes an array of rights for unaccompanied youth in homeless situations. The Act defines unaccompanied youth as young people who are not in the physical custody of parents or guardians (42 U.S.C. 11434A). Homelessness is defined broadly, to include a wide variety of temporary, inadequate living situations such as staying temporarily with friends or relatives due to a loss of housing, economic hardship or a similar reason; living in emergency and transitional shelters; staying in motels, hotels, campgrounds or trailer parks due to the lack of alternative adequate accommodations; sleeping in parks, cars, abandoned buildings, train or bus stations and other public spaces; and awaiting foster placement. Unaccompanied youth experiencing homelessness have the right to the same free, public education and opportunities for academic success as housed students. They must be provided with equal access to appropriate secondary education and support services. Youth in homeless situations also have the right to remain in one school, even if their lack of housing forces them to move to a different area. As long as it is feasible, unaccompanied youth can stay in the same school for the entire time they are homeless. The school district must provide transportation to and from that school by providing free passes for public transportation, reimbursement for gas or other transportation services. Unaccompanied youth who are covered by the McKinney-Vento Act also have the right to enroll in school immediately, even if they lack documents normally required for enrollment.

Every school district must appoint a liaison who is responsible for assisting unaccompanied youth with enrollment, transportation and other issues. Liaisons and state departments of education must also ensure that school personnel are made aware of the specific needs of runaway youth and other youth experiencing homelessness and help them to participate

ASSOC. FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, *BEST PRACTICES IN HOMELESS EDUCATION: DETERMINING ELIGIBILITY FOR RIGHTS AND SERVICES UNDER THE MCKINNEY VENTO ACT* (2008); NAT'L CTR. FOR HOMELESS EDUC., *EDUCATION FOR HOMELESS CHILDREN AND YOUTH PROGRAM: DATA COLLECTION SUMMARY FROM SCH. YEAR 2007-2008* (2009); NAT'L ASSOC. FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, *FACT CHECK: UPDATING HUD'S DEFINITION OF HOMELESSNESS IN THE REAUTHORIZATION OF THE HUD MCKINNEY-VENTO ACT PROGRAMS* (2008); NAT'L ASSOC. FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH ET AL., *QUESTIONS AND ANSWERS ABOUT EXPANDING HUD'S DEFINITION OF HOMELESSNESS* (2008); NAT'L L. CTR. ON HOMELESSNESS & POVERTY, *SUBTITLE VII-B-MCKINNEY VENTO ACT* (2002); Ann S. Masten et al., *Educational Risks for Children Experiencing Homelessness*, 35 J. SCH. PSYCHOL. 27, 27-46 (1997); V.C. McLoyd, *Socioeconomic Disadvantage and Child Development*, 53 AM. PSYCHOL. 185, 185-204 (1998); E.M. Menke & J.D. Wagner, *A Comparative Study of Homeless, Previously Homeless, and Never Homeless School-Age Children's Health*, 20 ISSUES IN COMPREHENSIVE PEDIATRIC NURSING 153, 153-173 (1997).

fully in school activities in order to succeed. School liaison or coordinators are to be present in every school to assist students. They are to ensure that students receive appropriate services, transportation, special education, English language services, vocational education, mentoring and preschool. Students are to be enrolled even if they do not have traditional records such as immunizations, physical exams, academic records, proof of residency, birth certificates and a parent or legal guardian. These are to be obtained later, if possible, but they should not impair the student's ability to attend school. The liaisons are to also make referrals to health care services, dentists, mental health providers and other needed resources. Some homeless students may have health problems or disabilities and may need special assistance or educational services. They also facilitate students staying in one school to help them so they do not fall behind on their school or their work or drop out. Staying in a single school provides them with stability, friends, and opportunities that they could not have if they were transient.

In addition to these rights provided by the McKinney-Vento Act, several jurisdictions have also adopted statutes or regulations to ensure access to education for unaccompanied young people. For example, Colorado enacted its own version of the McKinney-Vento Act in 2002.¹⁰⁷ The statute reinforces the protections of the federal law and has garnered attention and results for unaccompanied youth in Colorado. Illinois has conferred statutory protections on unaccompanied youth since 1995.¹⁰⁸ In fact, many of the recent changes to the McKinney-Vento Act were actually inspired by successful provisions in the Illinois statute. Many other states, including Maine, Maryland and New Jersey have adopted regulations applying the McKinney-Vento Act in the state.¹⁰⁹

Organizations such as National Association for the Education of Homeless Children and Youth (NAEHCY) and the National Law Center for Homeless Children and Youth conduct work to strengthen legislation that guarantees homeless students' right to education, and they train state and district education workers to pursue litigation when necessary to protect America's homeless students. Many individuals, organizations, and schools also attempt to help homeless students to succeed.¹¹⁰ While the McKinney-Vento legislation has sought to protect access to

107. COLO. REV. STAT. § 22-1-102; § 22-1-102.5; § 22-33-103.5 (2002).

108. Education for Homeless Children Act, 105 ILL. COMP. STAT. 45/1-5 *et seq.* (1994).

109. *See* N.J. ADMIN. CODE §§ 6A:17-2.1 *et seq.*; 05-071 ME. CODE R. §§ 1-3.3; MD. CODE REGS. 13A.05.09 *et seq.*

110. *See generally* Yvonne Vissing, *Homelessness in Middle School Students*, in EDUCATING HOMELESS STUDENTS: PROMISING PRACTICES (2000); *see also* Yvonne Vissing, *Prepping Homeless Students for School*, 69 EDUC. DIGEST 34, 34-38 (2004).

education for homeless children and youth, the realization of that right has been an ongoing struggle. In 1999, the U.S. Department of Education found that while forty-two percent of homeless children are under five years old, only fifteen percent of them are enrolled in preschool. Over thirty-eight percent of the homeless population has less than a high school degree by age eighteen¹¹¹ and fifty percent of the homeless population drops out of school during the course of their education.¹¹² In 2010, NAEHCY reported in a study of over 2,200 schools in forty-seven states that in two years alone the number of homeless children and youth identified by the schools increased forty-one percent, and that seventy percent of all schools reported seeing an increase of homeless students, further documenting that this is a national, not isolated, problem. The report found a variety of causes of child and youth homelessness, with the most common being the economic downturn that has resulted in loss of jobs, increased housing foreclosures, higher cost of living and increased need with dwindling community resources. Access to affordable housing and greater homeless student identification are priorities for the schools. School districts reported that many remaining barriers continue to exist for the education of homeless children and youth. The most frequently cited barriers included lack of affordable housing, difficulty identifying homeless students, transportation to the school of origin and meeting basic needs. The National Law Center on Homelessness and Poverty has examined the impact of homelessness on access to public education and in their report *Separate and Unequal*¹¹³ found that separate schools or classrooms for homeless children have been an increasing trend. Going to school is often one of the few regular, fixed, reliable aspects of a homeless child's life. Regular school attendance gives homeless children the chance to be treated like all other children, and to experience the same routines and rituals. Yet homeless children and youth are often denied their right to attend public schools because of the following barriers:

111. MARTHA R. BURT ET AL., U.S. DEP'T OF HOUSING & URBAN DEV., HOMELESSNESS: PROGRAMS AND THE PEOPLE THEY SERVE, at ch. 2 (1999) (highlights).

112. *Understanding Homeless Youth: Numbers, Characteristics, Multisystem Involvement, and Intervention Options: Hearing Before the Subcomm. on Income Security & Family Support of the H. Comm. on Ways & Means*, 110th Cong. 4, (2007) (testimony of Martha R. Burt, Principal Research Associate and Director, Social Services Research Program, Urban Institute).

113. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, SEPARATE AND UNEQUAL: A REPORT ON THE EDUCATIONAL BARRIERS FOR HOMELESS CHILDREN AND YOUTH I (2000).

1. Residency requirements

State or local laws typically require students to prove they are residents who live within a school district's boundaries as a prerequisite to enrollment. If public schools are paid for with tax dollars, schools want to ensure that only residents of their community attend their schools. Schools have denied enrollment to children or youth living in a shelter, doubled up with others or other alternative arrangement. They have also refused to serve students who belong to the school but are temporarily living across the geographic boundaries.

2. Records

Most schools require certain kinds of documents in order to enroll a student. These include birth certificates, health reports, immunization records and documents from previous schools attended. Homeless parents and children may not have ready access to these documents. As a result, some students have been refused to attend school until their parents produce them. This may take an extended period of time.

3. Transportation

All students need transportation to and from school, and homeless students may rely upon school-based transportation in order to attend. If they do not live on a bus route or have missed the bus for any reason, they may be unable to attend.

4. Guardianship Requirements

Some states have laws that require parental or guardian consent before they may enroll in school. Students may live with people who are not their official guardians, so they may not legally be allowed to enroll them. Students who have fled home because of abuse may not be able to secure parental signatures. Sometimes guardianships are pending and until they are official, schools may not be able to honor them.

5. Preschool

Most homeless preschoolers do not attend preschool even though they are a group that may benefit significantly from doing so. The

National Law Center on Homelessness and Poverty¹¹⁴ found that there is more of a demand for preschool spaces than there is availability, which puts homeless children at a distinct disadvantage, especially for transient families who may not know the community or have been at the top of the waiting list. Sixty percent of parents were not familiar with their educational rights; around half did not have immunization records, birth certificates or other residency requirements or paper work that the school requested, and these became obstacles in their securing preschool for their children. Transportation can be a major problem getting children to and from preschool, especially if the parents do not have their own transportation. But charging the parents for not getting children into preschool is misplaced blame; while most school homelessness coordinators know about the legal support for getting preschoolers enrolled into programs, little emphasis is placed on enrolling them, which results in few actually going to preschool. Public officials do not generally seem committed to getting the youngest homeless citizens into preschools where they and their families could likely gain more support and access to services.

For children under age five, efforts are geared toward increasing access to childcare or education programs such as the U.S. Department of Health and Human Services' Head Start Program. There is an underrepresentation of homeless preschoolers in early education programs even though they are entitled to one under McKinney-Vento Act. The Improving Head Start for School Readiness Act of 2007 made homeless children categorically eligible to participate in Head Start. States are required to ensure that homeless children have equal access to the same public preschool programs administered by state agencies and attended by housed children in the state, including Even Start. State coordinators for the education of homeless children and youth must coordinate with social services agencies, child development and preschool program personnel, and other agencies to provide comprehensive services to preschoolers.

6. Higher Education

Education is the one sure way for young people to break the cycle of poverty and homelessness in their families. If a student graduates from high school, it is still hard to find a job that pays well enough unless one goes on to vocational school or college. Homeless students may not have

114. See NAT'L L. CTR. ON HOMELESSNESS & POVERTY, BLOCKS TO THEIR FUTURE: A REPORT ON THE BARRIERS TO PRESCHOOL EDUCATION FOR HOMELESS CHILDREN ii (1997), for facts stated in this paragraph.

been able to obtain high grades because of their more disruptive home situation, which makes securing scholarships more challenging. This means that obtaining financial aid may be very important to them. The National Law Center on Homelessness and Poverty has worked with the federal government to revise the Free Application for Federal Student Aid (FAFSA) so it will comply with the tenets of the McKinney-Vento Act, and increase the chances they can go to college. For instance, twenty-two and twenty-three year old unaccompanied homeless students seeking independent status are not counted as “youth” under the FAFSA rules that identified youth as twenty-one years or younger, but they cannot achieve independent student status, granted only to persons twenty-four years or older without pursuing arduous administrative remedies. These policies create extraordinary barriers for twenty-two and twenty-three year old unaccompanied youth seeking to enter higher education. To eliminate the barriers facing these youth, the U.S. Department of Education should eliminate the definition of “youth” or define “youth” as twenty-four years of age or younger on the 2011-2012 FAFSA. The current FAFSA definition of “youth” is arbitrary and unsupported by federal statute, and it threatens the ability of unaccompanied homeless youth to seek higher education. It is recommended that the DOE change its process on how to verify unaccompanied homeless youth.¹¹⁵

7. Disabled Students

Homelessness and poverty breed a variety of physical, emotional and cognitive problems. Schools are obligated to enroll and help homeless children and youth to attend classes, and must make sure students with disabilities, including preschool children, get the special education and related services they need. Sometimes homeless students have trouble getting these services if they move or transfer schools frequently.¹¹⁶ Title I is a federal law that gives schools money to educate disadvantaged students. Title I services often include extra academic help and resources such as tutoring. Children and youth in homeless situations must get Title

115. See generally NAT'L ASSOC. FOR THE EDUC. OF HOMELESS CHILDREN & YOUTH, UNACCOMPANIED YOUTH TOOL KIT (2012), available at <http://www.naehcy.org/tk/faa.html>

116. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, CONNECTING HOMELESS STUDENTS TO SPECIAL EDUCATION SERVICES: A GUIDE TO RIGHTS AND RESOURCES 5 (2011).

I services no matter where they go to school, and school districts must set aside money to make sure homeless students get services.¹¹⁷

In contrast to the strides made by Title I, the United States Supreme Court case *Schaffer v. Weast*¹¹⁸ harms disabled students, because it found that the parents of a disabled child, not the school, are the appropriate party to bear the burden of proof of a child's disadvantaged state, even though the school "occupie[s] the position of advantage."¹¹⁹ In determining where the burden of proof should lie in due process hearings under the Individuals with Disabilities Education Act (IDEA, 20 U.S.C. § 1400 *et seq.*), the Court considered the entire spectrum of parents of children with disabilities and the resources they are able to muster to participate in the procedures established by the IDEA. Although there is great variation, parents of homeless children with disabilities are more likely to have characteristics that make it more difficult to navigate successfully the procedures established by the IDEA. Parents of children with disabilities tend to be less educated than parents of students in the general population and ignorant of their rights and intimidated by the process. A substantial portion of children with disabilities come from economic and social conditions like poverty and homelessness that likely limit the parents' involvement.¹²⁰ Inexperienced parents or those not represented by counsel are at a substantial disadvantage when trying to obtain services for their children, especially when dealing with schools that have legal representation.¹²¹

In sum, significant strides have been made to address the educational needs of homeless students. Social structures have been modified thanks to the McKinney-Vento Act that force schools to be receptive to, and accountable for, homeless students. With that said, indications exist that the educational laws and school implementation of them still have a way to go before they adequately address the educational needs of homeless children and youth.

117. Bonnie T. Zima et al, *Sheltered Homeless Children: Their Eligibility and Unmet Need for Special Education Evaluations*, 87 AM. J. PUB. HEALTH 236, 236 (1997).

118. *Schaffer v Weast*, 543 U.S. 1145 (2005).

119. *Tinker v. Midland Valley Mercantile Co.*, 231 U.S. 681, 682-683 (1914).

120. *O'Neal v. McAninch*, 513 U.S. 432, 436 (1995).

121. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 267 (1989) (O'Connor, J., concurring); *see also Philadelphia Newspapers v. Hepps*, 475 U.S. 767, 776 (1986); *Smith v. Robinson*, 468 U.S. 992, 1013 (1984); Pub. L. No. 94-142, § 3(a), 89 Stat. 775 (1975).

VI. SOCIAL SERVICES

The early years of life are most critical for the developing child, and homeless children and youth tend not to have their needs adequately addressed and experience preventable problems.¹²² Homelessness results after other resources have been depleted; this means that someone who is homeless will likely need more assistance than they would if they were helped before they hit bottom. The two major forms of assistance that people need are income and available affordable housing. When these two things are compromised, preventable physical, emotional and cognitive problems may occur, and more services will be needed as a result. Because of the resultant array of problems that accompanies homelessness, it usually costs more to help people who are homeless than people who are just poor; an investment in shoring up the middle class would likely result in lifting all boats, and reducing the number of people who need a multiplicity of services. The increase in economic distress has resulted in pressuring the existing social safety net to near its breaking point as more people need assistance and services and funding are limited or cut. According to the Foundation for Child Development,¹²³ twenty-one percent of U.S. children now live below the poverty line, which is the highest figure in over twenty years. The Child and Youth Well-Being Index Project at Duke University allege that as economic indicators have plummeted, the quality of all children's lives has also gone down. Sheldon Danziger, a University of Michigan public policy professor predicts dismal prospects for the increasing number of poor and near-poor families unless Congress allocates greater funding and support for families.¹²⁴ A study of American cities found that homelessness is up and more than one in four people needing assistance could not receive it. Many middle-class Americans have dropped below

122. See generally Elizabeth Mayfield Arnold & Mary Jane Rotheram-Borus, *Comparisons of Prevention Programs for Homeless Youth*, 10 PREVENTION SCI. 76, 76-86 (2009); John C. Buckner, *Understanding the Impact of Homelessness on Children: Challenges and Future Research Directions*, 51 AM. BEHAV. SCIENTIST 721, 721-36 (2008); Anne Hicks-Coolick et al., *Homeless Children: Needs and Services*, 32 CHILD & YOUTH CARE FORUM 197, 197-210 (2003); Marybeth Shinn et al., *Long-term Associations of Homelessness with Children's Well-Being*, 51 AM. BEHAV. SCIENTIST 789, 789-809 (2008); ManSoo Yu et al., *A Comparison Study of Psychiatric and Behavioral Disorders and Cognitive Ability Among Homeless and Housed Children*, 44 MENTAL HEALTH J. 1, 1-10 (2008); Brenda Kabler & Elena Weinstein, *The State of Homeless Children in America*, 38 NASP COMMUNIQUÉ ONLINE (2009), available at <http://www.nasponline.org/publications/cq/mocq384homeless.aspx>.

123. Elizabeth Landau, *Children's Quality of Life Declining*, CNN, June 08, 2010, <http://www.cnn.com/2010/HEALTH/06/08/children.wellbeing/index.html?hpt=T3>.

124. *Id.*

the low-income threshold (around \$45,000 for a family of four) because they have had hours cut at work, lost their jobs, or benefits, or cannot keep up with housing, food, health and child care costs. Families in the south and west, including Arizona, New Mexico and South Carolina have cut programs for the needy but have some of the highest numbers of low-income families in the nation. Texas and California have the largest total numbers of poor families.¹²⁵ The relationship between increased need and decreased funding for social services is clear, resulting in many homeless children, youth and families being unable to access the services and care they need.¹²⁶

There are federal programs in place, established by law, that attempt to assist homeless children and youth. But many of the programs have such rigorous requirements that homeless youth and children may not qualify, thereby leaving at-risk children who need assistance underserved. In Table 6,¹²⁷ Samuels, Shinn, and Buckner summarize the list of programs traditionally available for homeless children and youth. While the list attempts to cover a vast array of needs, many of the social service needs of homeless children and youth may fall between the cracks.

125. *Id.*

126. See generally MARJORIE ROBERTSON & PAUL TORO, HOMELESS YOUTH: RESEARCH, INTERVENTION, AND POLICY (1998), available at <http://aspe.hhs.gov/homeless/symposium/3-Youth.htm>.

127. SAMUELS, SHINN & BUCKNER, *supra* note 6, at 27.

Table 6. Selected Federal Programs That Assist Homeless Children and Their Families

Program	Agency/Department	Who is eligible	Eligibility	Service(s)
McKinney-Vento Education for Homeless Children and Youth Program	Office of Elementary and Secondary Education, Department of Education	Homeless children in schools.	Must report they are homeless at a school	Transportation to school of origin
Medicaid & Children's Health Insurance Program (CHIP)	Centers for Medicare & Medicaid Services, Department of Health and Human Services	Low income children	US Citizen or lawfully admitted immigrant, must meet specific income levels by state and age	Health/mental health insurance
National School Lunch and Breakfast Programs	Food and Nutrition Service, Department of Agriculture	Homeless children in school	Must report they are homeless at a school. Then they are categorically eligible	Free lunch and breakfast where available at schools
Supplemental Nutrition Assistance Program (SNAP)	Food and Nutrition Service, Department of Agriculture	Children in households with a citizen or legal immigrant	Income and resource limitations	SNAP benefits (formerly, food stamps)
Earned Income Tax Credit (EITC)	Internal Revenue Service	Low to moderate income workers		Refundable tax credit
Child Tax Credit (CTC)	Internal Revenue Service	Working individual with care of a child	Must have a child under age 17, some citizenship requirements	Federal tax reduction

Section 8: Housing Choice Voucher Program	Public and Indian Housing, Department of Housing and Urban Development	Low income families, seniors and the disabled	US Citizens and some with eligible immigration status. Income requirements vary by location.	Rent assistance
Temporary Assistance for Needy Families (TANF)	Administration for Children and Families, Department of Health and Human Services	Low income families	Eligibility varies by state as do work, school and other requirements	Cash assistance
Low Income Home Energy Assistance Program (LIHEAP)	Administration for Children and Families, Department of Health and Human Services	Low income households	Varies by state. In some states households who receive TANF, Social Security Income (SSI) or Food Stamps are categorically eligible	Assistance for paying energy bills
Federal-State Unemployment Insurance Program	Employment and Training Administration, Department of Labor	Workers who became unemployed through no fault of their own	Varies by state	Temporary financial assistance
Home Affordable Refinance Program (HARP)	Departments of the Treasury and Housing and Urban Development	Homeowners	Homeowners with good credit and payment histories	Home loan refinancing
Home Affordable	Departments of the Treasury and Housing	Homeowners	Homeowners with good	Home mortgage

Mortgage Program (HAMP)	and Urban Development		credit and payment histories	modifications to lower payments and terms
Child Care Assistance through the Child Care and Development Fund	Administration for Children and Families, Department of Health and Human Services	Low income families, families receiving TANF and those transitioning	Assistance is for families that need child care to work or attend training or education for children under age 13 unless disabled or under court supervision	Subsidies and payments for child care

The Runaway and Homeless Youth Act (RHY) became law in 2008. The mandates and benefits are administered by the Family and Youth Services Bureau of the U.S. Department of Health and Human Services (DHHS) Administration for Children and Families. It was established to connect youth to family reunification programs, outreach workers on the streets, emergency shelter, longer-term housing and myriad additional support systems, including workplace preparation, education, health and behavioral health services, and other opportunities to ensure their safety and well-being. The RHY Act includes four programs: the Basic Center Programs, which includes emergency shelter and services related to food, clothing, counseling and access to health care and reunification when possible; the Transitional Living Programs, which support long-term (up to eighteen months and an additional 180 days for those under age eighteen) residential services to homeless youth ages sixteen to twenty-one for self-sufficiency living; the Maternity Group Homes for Pregnant and Parenting Youth programs, which support long-term residential services (up to eighteen months and an additional 180 days for those under age eighteen) for homeless pregnant and parenting young people aged sixteen to twenty-one and their dependent children; and Street Outreach Programs, which provide financial assistance to private and nonprofit agencies for their outreach efforts targeting getting youth off the streets including information and referrals to crisis interventions.

The National Law Center for Homelessness and Poverty studied the assistance needs of unaccompanied youth and alleges that states bear

constitutional responsibility for ensuring the health, safety and welfare of their citizens.¹²⁸ When parents/guardians are unable or unwilling to care for their children, the state itself is obligated to assume such a role.¹²⁹ They may do so by assuming custodial responsibility directly or may delegate care and assistance responsibilities to private entities.¹³⁰ States are also to establish laws to ensure the protection of young people when they are in the custody of the state or outside of the immediate supervision of a parent/guardian.¹³¹ One type of child protection law, organizational licensure, requires entities providing services to young people to meet certain health and safety, clinical practice and staff qualifications standards in order to operate legally in the jurisdiction.¹³² Proof of licensure may also be a condition for the entity's receipt of public or private funds.¹³³

Their study focused on which jurisdictions assigned responsibility for providing services to runaway and homeless youth to a particular executive branch agency; which jurisdictions require runaway and homeless youth shelters to be licensed, and through what authority; and which jurisdictions establish and/or authorize funding for targeted runaway and homeless youth programs.¹³⁴ They also compiled where statutes regarding homeless shelters and services generally, recognizing that in some cases homeless youth (particularly those at or over the age of majority) may be served through a jurisdiction's general (typically, adult) homeless assistance system rather than its child-and youth systems.¹³⁵

They found that eleven jurisdictions explicitly assign responsibility for providing services and/or shelter to runaway and/or homeless youth to a designated executive branch agency, including Alabama, Florida, Idaho, Illinois, Minnesota, Mississippi, New Jersey, New Mexico, North Dakota, South Carolina and Vermont.¹³⁶ In ten of those jurisdictions, responsibility rests with a human services agency, and in one state (Alabama), such responsibility rests with a juvenile justice agency.¹³⁷ Twenty jurisdictions establish in statute a licensure requirement explicitly for runaway and homeless youth shelters or programs,

128. ALONE WITHOUT A HOME, *supra* note 48, at 95.

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. *Id.*

134. ALONE WITHOUT A HOME, *supra* note 48, at 95.

135. *Id.*

136. *Id.*

137. *Id.*

including Alaska, California, Colorado, Florida, Illinois, Iowa, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin and the District of Columbia.¹³⁸ In eighteen of those jurisdictions, responsibility for issuing the license rests with a human service agency, while Iowa puts such authority with a department of inspections and appeals and in the District of Columbia that authority rests with the mayor.¹³⁹

At least twenty-five jurisdictions regulate runaway and homeless youth shelters and programs via a broader child-caring license, and tend not to prescribe any standards for licensure.¹⁴⁰ Statutes of ten jurisdictions explicitly authorize the expenditure of funds or authorize local units of government to expend funds for programs and services targeted to runaway and homeless youth.¹⁴¹ These include Alaska, California, Illinois, Maryland, Minnesota, Missouri, Nebraska, New Jersey, North Dakota and Wisconsin.¹⁴² The authors note that the presence of authorization language does not necessarily mean that appropriations actually occur or that providing services for runaway and homeless youth programs actually exist.¹⁴³ The study highlights the Florida statute (FLA. STAT. § 409.441) because runaways are the responsibility of the Department of Children and Family Services (DCFS) which coordinates efforts to assist services for them, including community outreach, family services, shelter care, crisis intervention and counseling.¹⁴⁴ It must also establish standards for services offered for runaways, including guidelines focused on an intake system, counseling and case management.¹⁴⁵ Minnesota's "assignment" statute (MINN. STAT. § 256E.115) obligates the Commissioner of Human Services to arrange for housing supports for homeless youth and mentions funding considerations.¹⁴⁶ Louisiana's statute (LA. REV. STAT. ANN. §§ R.S.46:1352-1356) regulating runaway and homeless youth gives facilities sufficient time to notify the guardian of the youth's location, and the latitude to not contact the guardian if there is a compelling reason not to do so.¹⁴⁷ Youth have the right to leave the facility at any time.¹⁴⁸

138. *Id.*

139. *Id.*

140. ALONE WITHOUT A HOME, *supra* note 48, at 95.

141. *Id.* at 96.

142. *Id.*

143. *Id.*

144. *Id.*

145. *Id.*

146. ALONE WITHOUT A HOME, *supra* note 48, at 96.

147. *Id.*

They may remain at the facility up to seventy-two hours without a guardian's consent and up to fifteen days with a guardian's consent.¹⁴⁹ Facilities are required to provide care to the young person until the state human services agency or a court makes a placement decision.¹⁵⁰ Facilities are required to serve all runaway and homeless youth.¹⁵¹ Facility staff members are granted immunity from liability except in acts of gross negligence and intentional misconduct.¹⁵² A California statute authorizes funding for runaway and homeless youth programs and services, including a Runaway Youth and Families in Crisis Project and the Youth Center and Youth Shelter Bond Act.¹⁵³

In sum, homeless children and youth may or may not be able to access the comprehensive services they need, depending upon where they live. There is considerable variability in how they can access services, and considerable variability with how states mandate their care. Prevention programs are cost effective in the long run, but ironically they seem to be among the first type of programs that are cut.¹⁵⁴

A. Contracting for Services

If youth are homeless and have no one to advocate for them, what is their legal ability to self-advocate in a contractual way for housing, transportation, the purchase of goods, or securing services? The National Law Center for Homelessness and Poverty¹⁵⁵ found that only seventeen jurisdictions have passed laws that permit unaccompanied young people to enter into binding contracts for necessities. In the remaining thirty-nine jurisdictions, minors who are on their own may be unable to rent apartments, buy cars to transport themselves to school or work or enter into other contracts essential for independent living.¹⁵⁶ Although they may be otherwise capable of caring for themselves, this inability to engage financially with society may prevent them from surviving on their own. Four of the seventeen jurisdictions that permit minors to enter certain binding contracts specifically permit contracts for real property.¹⁵⁷ It is unclear if the remaining thirteen jurisdictions would

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. ALONE WITHOUT A HOME, *supra* note 48, at 96.

153. *Id.*

154. *See generally* Arnold & Rotheram-Borus, *supra* note 121.

155. ALONE WITHOUT A HOME, *supra* note 48, at 73.

156. *Id.*

157. *Id.*

consider real property to be a “necessity” covered by their statutes. Many youth who are on their own need to rent apartments or purchase property because they either have no other housing alternative or they desire to live independently. All jurisdictions should provide unaccompanied minor youth with the right to enter into binding contracts for real property. Only three jurisdictions allow minors to enter into binding student loan contracts.¹⁵⁸ For many young people, higher education is impossible without the assistance of student loans. Minors who are academically prepared to enter college or trade schools may be forced to wait until they become legal adults before they can obtain the funding for school. This delay can affect students’ income, school and work opportunities, as well as their motivation. Educational loans should be available to young people who need them.

Laws in some states are more amenable to minor contracts than others. Missouri law specifies a wide variety of important contracts that minors can enter, including housing, employment, automobiles, student loans, admission to schools, medical care, bank accounts and admission to domestic violence and homeless shelters.¹⁵⁹ These categories recognize the goods and services unaccompanied youth may need, and gives them a means to obtain them. Missouri law authorizes minors who are sixteen or seventeen years old to sign binding contracts; homeless or survivors of domestic violence; self-supporting; and living independently of parents with the parents’ consent.¹⁶⁰ By limiting the circumstances under which minors can enter binding contracts, this statute continues to protect other young people from burdensome contract liability while permitting young people who are truly on their own to engage financially with society as adults.¹⁶¹ Because many unaccompanied youth have been forced by neglect, abuse or family dysfunction to leave home without parental consent, it is unfortunate when statutes require parental consent.¹⁶² Oregon’s law also establishes certain eligibility criteria for entering binding contracts, specifically permits contracts for residential living units and expressly does not require parental consent.¹⁶³ Oregon’s statute includes the right to contract for dwelling units and utilities without parental consent but does not permit minors to enter binding

158. *Id.*

159. *Id.* at 74.

160. *Id.*; MO. REV. STAT. § 431.056 (2001).

161. ALONE WITHOUT A HOME, *supra* note 48, at 74.

162. *Id.*

163. *Id.*

contracts for other necessities like employment, cars, educational loans and medical care.¹⁶⁴

B. Financial Assistance

It is unrealistic to assume that homeless children and youth have access to trust funds, bank accounts or jobs that give them the financial resources to pay for their own place to live. Children depend upon their parents to provide for them. When they are unable or unwilling to do so, children have limited options to provide for themselves. They need assistance from outside sources in order to survive.

If a child can qualify, certain forms of governmental assistance may be provided such as health care insurance or food stamps, and these are still considered financial aid even though there is no money directly put into the hands of the child/youth. Similarly, if they can qualify for housing, this is considered financial aid. The two forms of assistance that put money into the hands of the individual to use with some discretion are welfare and Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI). Social Security Disability Insurance is based upon income paid into the social security system. As this pertains to children, they may qualify because they are minors even though they have never paid into the system. They may also be entitled to Medicare. Supplemental Security Income is not related to work history. It is designed for people who have not worked enough to qualify for SSDI, and is considered a form of welfare.¹⁶⁵ Medicaid, not Medicare, is provided as insurance, and the monthly payments or SSI are less than they are for someone receiving SSDI. In both cases, disability is an important consideration in the allocation of assistance. The word on the street is that people applying for SSI and SSDI will likely be rejected upon their first application; this discourages many people from reapplying. Some individuals hire attorneys to help them obtain assistance, but this is highly unlikely for homeless people who have limited resources and do not know their rights.

Some children/youth may qualify for SSDI if their parents had a substantial work history. If their parents did not, they would be more likely to qualify for SSI. Supplemental Security Income can be of significant benefit to unaccompanied homeless youth and for homeless families who have to spend more of their money to support a disabled

164. *Id.*; OR. REV. STAT. § 109.697 (2001).

165. NAT'L L. CTR. ON HOMELESSNESS & POVERTY, SSI: RIGHTS OF CHILDREN AND YOUTH (2011), <http://www.nlchp.org/content/pubs/SSI%20Rights%20Children%20and%20Youth2.pdf>.

child. In order to be considered disabled, the Social Security Administration demands proof that a physical or mental condition is present that results in functional limitations.¹⁶⁶ Assistance is only provided to U.S. citizens or eligible immigrants.¹⁶⁷ Unaccompanied youth may file for benefits without providing any information or permission from their parents if they can prove that they do not live with their parents.¹⁶⁸ Just like anyone receiving children's SSI, unaccompanied youth will have their cases re-evaluated when they turn eighteen, when their case will be evaluated under the adult disability standards.¹⁶⁹ Schools and medical practitioners can be of significant assistance to homeless children to obtain SSI by documenting their disability. School psychological evaluations, Individual Education Plans (IEPs), and standardized test results can be used to prove medical disability due to a cognitive impairment. School records and contact reports can be used to document need.¹⁷⁰

Legally, while there are some source of money that have been authorized by state or federal units, it may be difficult for homeless children and youth to access them because they may lack the documentation and representation to do so. They may not even be aware of what resources are available for them to actually access.

C. Health Care

Homeless children and youth systematically lack access to both physical and mental health care.¹⁷¹ A safe, decent, affordable home has

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *Id.*

171. See GARY W. EVANS & THEODORE D. WACHS, CHAOS AND ITS INFLUENCE ON CHILDREN'S DEVELOPMENT: AN ECOLOGICAL PERSPECTIVE 113-131 (2010). See generally ELLEN L. BASSUK ET AL, FAMILY PERMANENT SUPPORTIVE HOUSING: PRELIMINARY RESEARCH ON FAMILY CHARACTERISTICS, PROGRAM MODELS, AND OUTCOMES (2006) available at <http://www.csh.org>; Garth Alperstein et al., *Health Problems of Homeless Children in New York City*, 78 AM. J. PUB. HEALTH 1232 (1988); Ellen L. Bassuk & Lynn Rosenberg, *Psychosocial Characteristics of Homeless Children and Children with Homes*, 85 PEDIATRICS 257 (1990); Kerry E. Bolger et al., *Psychosocial Adjustment Among Children Experiencing Persistent and Intermittent Family Economic Hardship*, 66 CHILD DEV. 1107 (1995); John C. Buckner et al., *Characteristics of Resilient Children Living in Poverty: The Role of Self-Regulatory Processes*, 15 DEV. & PSYCHOPATHOLOGY 139 (2003); John C. Buckner et al., *Homelessness and Its Relation to the Mental Health and Behavior of Low-Income School Age Children*, 35 DEV. PSYCHOL. 246 (1999); Greg J. Duncan et al., *Economic Deprivation and Early Childhood Development*, 65 CHILD DEV. 296 (1994); Gary W. Evans, *Child Development and the Physical Environment*, 57

been compared to a vaccine because it literally keeps children healthy. Homes help a child to be clean, to have a place to sleep, to have a place to keep and cook food and a place to be safe. Homelessness naturally breeds a variety of preventable physical, behavioral, and mental health problems.

A national study conducted by the Robert Wood Johnson Foundation¹⁷² found four in five physicians indicating that patients' social needs are as important as medicine to address as their health conditions, and among physicians serving patients in low-income communities, nine in ten physicians believe this is true. They allege that one's zip code is more powerful than one's genetic code when it comes to health, since where we live, learn, work and play have a greater impact on quality of health and life expectancy than medical conditions and the health care received.¹⁷³ In a national survey of primary care providers and pediatricians, eighty-five percent believe that unmet social needs like access to nutritious food, reliable transportation, and adequate housing lead directly to worse health for all Americans.¹⁷⁴ But four in five physicians do not feel confident in their capacity to meet their patients' social needs because they do not have the time or sufficient staff support to address all of their patient's needs, and believe this impedes their ability to provide quality care.¹⁷⁵ Physicians surveyed feel so strongly about the connection between social needs and good health that three in four verbalize supporting health care coverage to pay for the costs associated with connecting patients to services that address their social needs if a physician deems it important for their overall health.¹⁷⁶ Results also revealed that if physicians had the power to write prescriptions for social needs, they would prescribe things ranging from housing, employee assistance, education, fitness programs, nutritional food, transportation assistance and mental health services.¹⁷⁷

Access to health insurance is an important step in securing health care for homeless children. Medicaid is the primary source of health

ANN. REV. PSYCHOL. 423 (2006); Abigail Gewirtz et al., *Psychosocial Status of Homeless Children and Youth in Family Supportive Housing* 51 AM. BEHAV. SCI. 810 (2008); Michael R. Kennedy, *Homeless and Runaway Youth Mental Health Issues: No Access to the System*, 12 J. ADOLESCENT HEALTH 576 (1991).

172. ROBERT WOOD JOHNSON FOUND., HEALTH CARE'S BLIND SIDE: THE OVERLOOKED CONNECTION BETWEEN SOCIAL NEEDS AND GOOD HEALTH 4 (2011).

173. *Id.* at 8.

174. *Id.* at 3.

175. *Id.* at 5.

176. *Id.* at 1.

177. *Id.* at 6.

insurance for homeless children.¹⁷⁸ Medicaid is health insurance for children and adults who meet the financial and general eligibility requirements. Eligibility depends on income and asset limitations, family size, living situation and government disability standards. The Children's Health Insurance Program (CHIP) program provides health insurance coverage to over eight million children in families with incomes too high to qualify for Medicaid, but cannot afford private coverage. Signed into law in 1997, CHIP provides federal matching funds to states to provide this coverage.¹⁷⁹ Both Medicaid and CHIP are financed by the federal and state governments, and are administered at the state level. For children in some states, Medicaid and CHIP are combined into one program. Many homeless children without health insurance are likely eligible for Medicaid or CHIP. Fourteen states have presumptive eligibility for Medicaid and eleven states have presumptive eligibility for CHIP for poor children.¹⁸⁰ Presumptive eligibility allows qualified health care providers to immediately enroll children who appear to meet the state's income eligibility requirements into Medicaid or CHIP. Thus, immediate care can be given to children without documentation of eligibility, although documentation must be provided by the end of the following month. In some states homeless shelters are considered qualified entities for presumptive enrollment of children into Medicaid and CHIP. Because Medicaid and CHIP do not collect information about children's housing status when they receive services, the amount of Medicaid or CHIP funding that is spent on children who are homeless is unknown. The recently enacted Patient Protection and Affordable Care Act¹⁸¹ may help people keep health insurance when they lose their jobs, switch jobs, move, or get sick. Another widely used source of health care for homeless children is the Health Care for the Homeless Program administered by the Health Resources and Services Administration within the U.S. Department of Health and Human Services. This program was first established with the McKinney Homeless Assistance Act of 1987 and reauthorized in 2002 in the Health Care Safety Net

178. See AMERICA'S YOUNGEST OUTCASTS, *supra* note 8, at 83.

179. *Children's Health Insurance Program*, MEDICAID.GOV, <http://www.medicaid.gov/Medicaid-CHIP-Program-Information/By-Topics/By-Topic.html> (select "Children's Health Insurance Program" hyperlink) (last visited Sept. 21, 2012).

180. See *Presumptive Eligibility for Medicaid/CHIP*, STATEHEALTHFACTS.ORG, <http://www.statehealthfacts.kff.org/comparabletable.jsp?ind=229&cat=4&rghl=22> (last visited Sept. 16, 2012).

181. Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat.119 (2010).

Amendments Act,¹⁸² and then again in 2008 in the Health Care Next Act.¹⁸³ In Fiscal Year 2010, the Health Care for the Homeless Program received \$185.5 million.¹⁸⁴ About seventeen percent of those served by this program are children.¹⁸⁵ HUD's Moving to Opportunity demonstration project has been shown to reduce rates of obesity, diabetes, depression and other physical and psychological problems when homeless people are allowed to move to safer more affluent neighborhoods.¹⁸⁶ This suggests long-term investments in improving neighborhoods may help improve the health outcomes of poor families. Another study, conducted in Southwest Baltimore found that racial differences in hypertension, diabetes and obesity among women either vanished or substantially narrowed when researchers took into account where people lived.¹⁸⁷ Neighborhoods matter. For years, the health and affordable housing sectors have worked on parallel but separate tracks to improve the lives of low-income people.¹⁸⁸ The affordable housing sector focused on improving neighborhoods suffering from poverty, overcrowded housing and high unemployment.¹⁸⁹ The health sector focused on combating poor health, including high rates of obesity, asthma and chronic disease.¹⁹⁰ Greater collaboration between the housing and health care communities should result in improving the health and quality of life for millions of Americans. The evidence makes clear that housing policy is health policy.¹⁹¹

Laws determine both funding and access to services. In a study of thirty industrialized countries that analyzed the relationship between social factors like rent subsidies, employment-training programs, unemployment benefits, financial assistance, family support and other services and health, it was found that health improves when social

182. Health Care Safety Net Amendments Act, Pub. L. No. 107-251, 116 Stat.1621 (2002).

183. See generally ABIGAIL ENGLISH ET AL., ADOLESCENTS IN PUBLIC HEALTH INSURANCE PROGRAMS: MEDICAID AND CHIP (1999); ABIGAIL ENGLISH ET AL., STATE MINOR CONSENT LAWS: A SUMMARY (2003); Abigail English et al., *Access to Health Care for Youth Leaving Foster Care: Medicaid and SCHIP*, 325 J. ADOLESCENT HEALTH 53 (2008).

184. SAMUELS, SHINN & BUCKNER, *supra* note 6, at 26.

185. *Id.*

186. See Raphael Bostic & Risa Lavizzo-Mourey, *Housing and Health Care Go Hand in Hand*, ROLL CALL, Dec. 15, 2011, available at http://www.rollcall.com/issues/57_75/raphael_bostic_risa_lavizzo_mourey_housing_health_care_go_hand-211053-1.html.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.*

service support is given; the less social service support, the lower the health of a society.¹⁹² In 2005, the United States devoted only twenty-nine percent of gross domestic product to health and social services combined, while countries like Sweden, France, the Netherlands, Belgium and Denmark dedicated up to thirty-eight percent.¹⁹³ America is one of only three industrialized countries to spend the majority of its health and social services budget on health care itself; for every dollar we spend on health care, we spend ninety cents on social services while in other developed countries, for every dollar spent on health care, an additional two dollars is spent on social services.¹⁹⁴ So not only is the U.S. spending less, but it is allocating resources disproportionately on health care.¹⁹⁵ Countries with high health care spending relative to social spending had lower life expectancy and higher infant mortality than countries that favored social spending.¹⁹⁶ While life expectancy in the United States remains at seventy-eight years, in many European countries it has leapt to well over eighty years and several countries boast infant mortality rates approximately half of ours.¹⁹⁷ Authors advocate a broader conceptualization about how to achieve a healthier society and recommend investing more heavily in social services since current social programs leave holes for the undocumented, uneducated and unemployed to slip through cracks and become acutely ill. While homelessness is not typically thought of as a medical problem, it often precludes good nutrition, personal hygiene and basic first aid, and it increases the risks of frostbite, leg ulcers, upper respiratory infections and trauma from muggings, beatings and sexual abuse.¹⁹⁸

In 2003, the National Law Center on Homelessness and Poverty found that homeless, unaccompanied youth (both those who are legally minors and those who are legally adults because of emancipation) regularly encounter serious obstacles in seeking health care.¹⁹⁹ They suffer disproportionately high rates of health problems such as mental illness, substance abuse, pregnancy and sexually transmitted infections.²⁰⁰ Since health insurance coverage is a key element in assuring access to health care, adolescents traditionally have been

192. Elizabeth H. Bradley & Lauren Taylor, Op-Ed, *To Fix Health, Help the Poor*, N.Y. TIMES, Dec. 8, 2011, at A.

193. *Id.*

194. *Id.*

195. *Id.*

196. *Id.*

197. *Id.*

198. Bradley & Taylor, *supra* note 192.

199. ALONE WITHOUT A HOME, *supra* note 48, at 83.

200. *Id.*

uninsured at higher rates than other age groups and young adults have lacked insurance at the highest rates of any age group.²⁰¹ About half of young adults ages eighteen to twenty-four or younger who are living under the poverty level are uninsured.²⁰² Young people who are living apart from family are likely to encounter serious obstacles when seeking health care whether they are living on the street, staying in temporary quarters, living in a shelter, or residing under the supervision of a public agency.²⁰³ The major barrier that they encounter is financial: usually they have no means of paying for care.²⁰⁴ Although some youth may qualify for a publicly funded insurance program or be able to obtain health care at a publicly funded site, many seek care in an emergency room only after their health problems have become severe.²⁰⁵ Additionally, they encounter difficulties associated providing legally authorized consent for their own health care and assuring the confidentiality of that care.²⁰⁶

While Medicaid and State Children's Health Insurance Program (SCHIP) eligibility expansions have made it possible for more poor and low-income adolescents to qualify for health insurance, homeless youth are difficult to locate and often applications must be signed by a parent/guardian and information about family income and other financial data must be included in the application.²⁰⁷ This alone makes it difficult for unaccompanied youth to apply for and receive coverage through Medicaid and SCHIP.²⁰⁸ The specific rules for Medicaid and SCHIP eligibility, as well as application procedures, are determined by the states within federal guidelines.²⁰⁹ Most states have expanded Medicaid and SCHIP eligibility for older adolescents in recent years, but few have specifically addressed the needs of homeless or unaccompanied youth.²¹⁰ A few states have explored innovative approaches such as allowing homeless youth to apply for Medicaid or SCHIP independently of their families or implementing a new Medicaid eligibility option for youths in foster care on their eighteenth birthday, but most states have not.²¹¹ In addition to the publicly funded health insurance programs, the Performance Partnership Grant for Community Mental Health Services,

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. ALONE WITHOUT A HOME, *supra* note 48, at 83.

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.*

211. ALONE WITHOUT A HOME, *supra* note 48, at 83.

the Performance Partnership Grant for Prevention and Treatment of Substance Abuse, the Maternal and Child Health Services Block Grant, the Ryan White CARE Act, the Title X Family Planning Services Program and the Consolidated Health Centers Program exist.²¹² But most homeless youth do not know where to go and what is available to them.²¹³ Moreover, these safety net programs have come under increasing financial pressure in recent years and often have insufficient funds to care for all of the uninsured individuals who need their services.²¹⁴

When unaccompanied youth do find their way to a health care provider or site and can overcome the financial barriers, additional legal obstacles associated with consent and confidentiality may impede his or her access to comprehensive services.²¹⁵ Depending on their age, unaccompanied youths may or may not be legally authorized to give consent for their own care. In addition, limitations on the confidentiality of that care may exist. Unaccompanied youth who are age eighteen or older are generally able to give consent for their own care on the same basis as other adult but those who are under age eighteen are minors and may or may not be able to give their own consent for care, depending on the specifics of state and federal law and the services they are seeking. Generally the consent of a parent is required for health care that is provided to a minor child. However, most states have a legal mechanism that allows minors to give their own consent for care in specific circumstances. These laws are based either on the status of the minor or the services sought. 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 over a certain age. 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, sexually transmitted infection care, HIV/AIDS care, care for reportable infectious diseases, care for sexual assault, drug or alcohol care, and outpatient mental health services. With respect to confidentiality of health care, unaccompanied youth who are age eighteen or older are generally entitled to the same confidentiality

212. *Id.*

213. *Id.*

214. *Id.*

215. For information stated here and for the remainder of this paragraph, see *id.* at 83-84.

protections as other adults but confidentiality for those under age eighteen may be different. The Health Insurance Portability and Accountability Act (HIPAA) contain important provisions that affect medical privacy for both adults and minors. The Act's rules 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. Even when a law authorizes a minor to give consent for care, it may also grant discretion to a physician to notify the minor's parents. The specifics in this regard vary significantly from state to state. Many of the health services needed by unaccompanied youth fall within the scope of states' minor consent laws. Also, many unaccompanied youth fall within the groups of minors who are authorized to give consent for their own care. Often, however, young people themselves and their health care providers, as well as the sites where they seek care are not aware of the different ways in which laws may allow these youth to give their own consent for care and receive it on a confidential basis.

In sum, there are programs to provide both physical and mental health care for homeless children and youth. However, many do not know how to access the programs, may not qualify for them, or may find obstacles that limit the scope of services. It is clear that homeless children have a variety of physical and emotional health care needs and that they are not being adequately addressed.

D. Dental Coverage

Oral health problems are widespread among homeless children and youth. Tooth decay is common among homeless children, who find it challenging to receive dental care. Lack of dental insurance, access to affordable dental care and oral hygiene knowledge complicate this type of health care for homeless children. Medicaid covers only a fraction of dental costs, if they cover anything at all since economic cutbacks have resulted in less than half of all states provide comprehensive dental care coverage assistance. If a child needs dental care, they must have a direct dental referral. The Early Periodic Screening, Diagnostic and Treatment (EPSDT) mandates that any service be determined to be a medical necessity; the SCHIP provides some funding for dental care of uninsured children whose family income is above Medicaid level, but not sufficient for other forms of health insurance. Not all dentists accept or participate

in SCHIP.²¹⁶ Therefore, while there are some dental services available, they are challenging for homeless children to access, especially for non-emergency, preventive care such as cleanings, sealants, or fillings.

E. Food and Transportation

Data from the National Coalition for the Homeless survey indicates that food and transportation may pose problems for homeless children and youth, but they are toward the bottom of the list of legal concerns. Children and youth may access food from a variety of means; how nutritious it is may be questioned. Homeless children tend to suffer from not having enough to eat, and not being able to eat the most nutritious foods because they cost more. Processed and fast foods tend to be more readily available to poor families, especially those with limited resources to keep food safe or cook it. It is no surprise to find that many homeless children and youth are overweight but malnourished as a result.²¹⁷ From 2007 to 2010, over 750,000 more children were estimated to live in food-insecure households.²¹⁸ Food stamps may be available to families and emancipated youth who qualify. The Child and Adult Care Food Program (CACFP) provides subsidies to shelters and day care centers for meals provided to qualifying adults and children. The issue is that many do not qualify for the aid, and children/youth cannot qualify on their own. The funds are designed to feed people who live in homeless and domestic violence shelters in congregate meal settings for breakfast, lunch and dinner or two meals and one snack per child per day. The National School Lunch Program is a federal entitlement program that provides money to schools so that they can offer nutritious meals to students. Students can qualify for free school lunch if their household income is below 130 percent of the federal poverty guidelines, if the household receives food stamps or TANF or if the student is homeless. Homeless students must be documented by the school homeless liaison

216. NAYDA RONDON, MEDICAID DENTAL COVERAGE AND OTHER ASSISTANCE FOR DISADVANTAGED PEOPLE (2009) available at <http://www.yourdentistryguide.com/medicaid-dental-coverage/>.

217. See generally MARK NORD, FOOD INSECURITY IN HOUSEHOLDS WITH CHILDREN: PREVALENCE, SEVERITY, AND HOUSEHOLD CHARACTERISTICS (2009), <http://www.ers.usda.gov/Publications/EIB56/EIB56.pdf>; U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: A 23-CITY SURVEY (2007), available at <http://usmayors.org/uscm/home.asp>; U.S. CONFERENCE OF MAYORS, A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA'S CITIES: A 23-CITY SURVEY (2006), available at <http://www.usmayors.org/hungersurvey/2006/report06.pdf>; Marian Sigman, *Nutrition and Child Development: More Food for Thought*, 4 CURRENT DIRECTIONS IN PSYCHOL. SCI. 52 (1995).

218. Landau, *supra* note 123.

who can work with the cafeteria so the student can obtain the meals free of charge.²¹⁹ Therefore, even though food may be available to fill hungry bellies, the food may not always be high quality or easy to access.

Transportation to and from school is mandated by the McKinney-Vento Act for homeless students. However, if students miss the bus for any reason, that becomes their problem – even when they could not help it, which is common in the chaotic lives of homeless youth. Homeless children and youth may be on their own to get from one place to another and there may be legal restrictions on at what age they can travel alone on buses, subways or taxis. Sometimes travel vouchers may be available, but there is no legal requirement to provide them for routine travel to doctor appointments and the like.

VII. CONCLUSION

Homeless children and youth confront a variety of legal obstacles ranging from getting housing to getting assistance from doctors and social service providers. Many of their legal obstacles stem from discrimination against children in general and discrimination because they are homeless. Combine these two sources of discrimination together and homeless children and youth disproportionately are hit with a double-whammy of legal challenges that are almost impossible for them to overcome on their own. The overall recommendation would be to create or alter laws addressing children and youth rights, and to be more receptive to the legal rights of the homeless populations.

Some of the more detailed legal changes that could help homeless children and youth include:

A. More Inclusive, Broader, Nationally Consistent Definitions for Homeless, Unaccompanied, and Runaway Youth

Current definitions vary, stigmatize, penalize and fail to take into consideration the broad range of situations they confront. Possible models include Ohio's definition of "runaway" to be "any child who is separated from the child's guardian and appears to be in need of emergency housing and other services."²²⁰ It does not comment on the cause of the child's separation from the guardian or whether the separation need be voluntary or coerced on the part of the young person.

219. NATIONAL L. CTR. ON HOMELESSNESS & POVERTY, EDUCATION OF HOMELESS CHILDREN & YOUTH: A GUIDE TO THEIR RIGHTS 18 (2011), <http://www.nlchp.org/content/pubs/Basic%20McKinney-Vento%20Booklet%20%282011%29.pdf>.

220. OHIO REV. CODE ANN. § 5119.64 (LEXISNEXIS 2012).

New Jersey's definition of "homeless youth" includes persons twenty-one years of age or younger within its scope and because it acknowledges that even these older young people are in need of "appropriate care and supervision."²²¹ The NCLHP recommends that a nationally consistent definition of "youth" be created that is distinct from the definition of who is a child"; that eligibility for publicly funded opportunities and supports that are available to children and youth be extended to include older youth (up to age twenty-one) because of their developmental needs; that the terms "runaway child" and "runaway youth" in both criminal and civil statutes be defined to de-stigmatize them and reflect the realities that many children flee for safety reasons; that the terms "homeless child" and "homeless youth" in both criminal and civil statutes be more explicitly defined (perhaps to be in accordance with the McKinney-Vento definition); that separate definitions of "missing child" and "runaway child" be defined; and that judgmental and negative terminology (e.g., unruly, incorrigible, vagrant) for youth in high-risk situations be replaced with neutral terminology.

B. Creation of a National Children's Ombudsman Office

If a national organization existed that was well publicized to provide advocacy for children and youth, it could network homeless children and youth to the resources they need. This type of organization exists in Norway, where children have been taught to contact when they need help.²²² This type of organization would benefit not just homeless children but all youth in general. The duties of the Norwegian Child Ombudsman are to promote the interests of children vis-à-vis public and private authorities and to follow up the development of conditions under which children grow up. Children are taught at an early age that a governmental resource exists that they can contact independently that will assist them. This office could assist homeless (and all) children and youth to (a) learn what resources exist that may help them, (b) how to access those resources, and (c) what to do if they need additional advocacy. This office would provide an invaluable service to homeless

221. N.J. STAT. ANN. § 9:12A-4 (2001).

222. An overview of the Norwegian ombudsmen for children and youth program can be found at *About the Ministry*, MINISTRY OF CHILDREN, EQUALITY & SOC. INCLUSION, <http://www.regjeringen.no/en/dep/bld/BLD-arbeider-for-at.html?id=303> (select "Offices and Agencies Associated with the Ministry of Children and Equality" hyperlink on the left toolbar; then select "Ombudsman for Children in Norway" hyperlink) (last visited Sept. 16, 2012). See also *Ombudsman for Children – Norway*, CHILD RIGHTS INT'L NETWORK, <http://www.crin.org/organisations/vieworg.asp?id=1895> (last visited Sept. 16, 2012).

children and youth who tend to not know what resources exist and what their rights are.

C. Greater Access to Legal Representation

Poor children and youth are underserved because they have no one to advocate for them with any legal clout. Access to legal representation is a significant concern. They cannot afford lawyers, their parents cannot afford lawyers, and it is unlikely that they can get public defenders, who generally have over-burdened caseloads. Most do not know their legal rights or how to protect them. There needs to be a better, more accessible system of legal aid. The McKinney-Vento liaisons may be of some assistance, but interviews with them indicate that they are overworked, understaffed, and may not be as helpful in assisting homeless children as it may seem on paper.

D. Greater Ability to Secure Housing, Utility Assistance, and Food on Their Own Behalf

Many homeless youth may be able to make it on their own if they were provided assistance to do so. Without access to housing, heat, electricity, water, and food, they will inevitably end up in compromised, and often dangerous, living situations.

E. Greater Access to Physical, Mental, and Dental Health Care Insurance and Care

Homeless children and youth confront the customary health problems that accompany poverty, only they are heightened because of the lack of housing and resources. Their health and development are compromised when they cannot access needed care. They need both access to health care providers and a way of paying for needed health care services.

F. Greater Access to Social Services

Homeless children and youth confront extraordinarily challenging situations and need help from professionals trained in the social sciences to help prevent, treat, and ameliorate problems associated with their complex social situations. Issues of access and reimbursement to providers are of paramount consideration.

G. Adopt Explicit Exemptions for Reasonable Cause in Anti-Harboring Provisions

Explicit exemptions for reasonable cause in anti-harboring provisions should be adopted in those jurisdictions that make it a crime to harbor a runaway youth and make sure they meet constitutional standards. Amending or instituting anti-harboring, custodial interference, contributory delinquency and minor concealment prohibitions could ensure that a "Good Samaritans" providing temporary shelter to an unaccompanied youth at the young person's request won't be subject to criminal penalties for providing care. This pertains to both guardians and professionals. Sometimes licensed human services agencies and professionals acting within the scope of their duties provide care for homeless youth but do so at significant risk.

H. Emancipation Processes Should Become Easier and Provide Support

Youth should be able to initiate the procedures independently and should not have to obtain parental consent. In some cases, neglectful or abusive parents may withhold consent and guardianship and emancipation procedures should permit courts the maximum flexibility to according to the best interest of the youth. Emancipation laws should be established in all states that permit young people to initiate the process and repeal parental consent as a condition for emancipation.

I. Create Statutes that Explicitly Assign Responsibility for Providing Services/Shelter to Homeless or Runaway Youth to a Designated Executive Branch Agency With Local Affiliates

Only one-fifth of jurisdictions have enacted such a provision, indicating gross under-attention to unaccompanied youth. Many organizations across the nation fail to serve homeless youth, even by providing them with short-term assistance or shelter, because they do not have appropriate statutes and policies in place.

J. Create Alternative Arrangements to Foster Care for Older Youth

Given the statistics reflecting high rates of homelessness, low high school graduation rates and high unemployment post-foster care, it is questionable whether foster care is a reasonable long term solution for helping at risk children and youth. It is agreed that they need help; how best to provide care and assistance is a topic worthy of more examination.

K. Allow Youth to Engage in Contractual Arrangements, With Protection

The National Law Center on Homelessness and Poverty recommends that 1) all states enact laws permitting minors to contract for necessities, including real property, employment, educational loans, admission to school, medical/mental health care and treatment, bank accounts and admission to shelter, housing and supportive service programs and 2) states establish eligibility criteria for entering into binding contracts that will permit such contracts for unaccompanied youth but protect other young people from contract liability.

L. Strengthen the McKinney-Vento Act

The McKinney-Vento Act has been a huge help in providing a legal framework for schools to serve homeless children and youth but some still do not adhere to the McKinney-Vento guidelines, usually because they do not have the staff to do so, or they may not fully understand the range of McKinney-Vento programs. Keeping students in their home school remains a problem. Drop-out rates among homeless students are unnecessarily high. Transportation is essential and yet some students. Assignments and course scheduling may be problematic for students who have been transient, and adjustments to their courses, schedules, or credits are important for homeless students to help them succeed.

M. Reconsider Illegal Immigration Status for Children

Some parents who are illegal immigrants cannot provide an adequate lifestyle for their families yet cannot receive assistance. Even applying for assistance may result in deportation. While illegal immigration poses legal issues, children and youth are innocent victims in this legal debate. The illegal status of their parents results in preventable housing, education, health, and social problems for their children.

N. Eliminate the Stigma and Criminality of Homelessness

Homeless youth are more likely to be victims, not perpetrators, of crime. Homeless children and youth are at high risk of becoming victims, and often do not have recourse or know how to access assistance. Youth who are homeless live their lives in public, and rarely have access to adequate council. In courts and jails they are often treated in the system as adults. When engaged in crime, often in infractions are status offenses, substance use. Negative peer influences may occur, sometimes including gang involvement because they need a support network. Many homeless

children and youth experience abuses and are victims of crime but they do not report it. Problems include physical assault, sexual assault, substance abuse and economic exploitation.

O. Amend Existing Laws so it is Appropriate to Report Homeless, Runaway, and Unaccompanied Children and Youth to Social Services and Child Welfare Authorities

Laws should be amended to allow reporting to social services and child welfare authorities instead of law enforcement. Homeless children and youth need help; they are not criminals and would benefit significantly more from first contact with social service providers. Stigmatization of homelessness and fear of criminalization or punitive legal action prohibit homeless youth from seeking the care they need. A more humane, open door approach for homeless youth to seek services would be in their best interests.

In summary, local, state and federal laws dramatically impact the trajectory of life for homeless children and youth. A community will inevitably spend more trying to treat the outcomes of homelessness than trying to prevent it. All children, homeless or not, have constitutional rights that need to be protected and enforced in order for them to develop to their highest potential. Denying assistance to homeless children and youth because of their young age or their financial condition is an ultimate form of discrimination that is not in their best interest, or in the best interest in the nation. More benevolent implementation of broadened laws may cost more but research indicates that in a cost-benefit analysis, the constitutional and social rewards may well be worth it. This is especially true if adequate housing for children, like food, health care or education, is considered a basic human right.