

Practice Tips – What Children’s Lawyers Should Know About Youth Homelessness¹

DRAFT

I. Introduction

Youth experiencing homelessness or housing instability often face daunting barriers accessing supports and services such as health care, cash and food benefits, and education. For some youth, lack of access to benefits and supports is what leads them to homelessness. These supports are even more urgent when considering the prevalence of trauma, violence, and disconnection among youth experiencing homelessness. Children’s lawyers can play a vital role removing barriers and securing services quickly for these youth.

II. Select Things to Know About Homeless Youth

1. Youth Homelessness Often Looks Different than Adult Homelessness

Youth experience homelessness in different forms—living on the street, staying in an emergency shelter, couch surfing, and living in substandard housing or with others due to housing instability. These forms are varied and tend to look different than adult homelessness, which often is visible in our shelter systems and on the street. Youth, and even young adults, tend to stay away from the formal shelter system unless efforts have been made to both welcome them and create age-specific supports.

Many jurisdictions do not have youth shelters and some youth will not turn to these facilities when they exist, fearing it may lead to child welfare involvement, contacting a family member they fear, or involvement with the juvenile justice system. In addition, many young adults do not feel comfortable in adult shelters. Complicating matters, youth may not think of themselves as homeless, especially as housing instability becomes normalized. Youth may also be embarrassed or fearful to share this information, especially when they are not certain there is help for them or that they will not be in trouble. Consequently, homelessness may not be visible to most unless there is a dedicated effort to identify, screen, track, and provide options for support and safety when a youth is experiencing homelessness.

Further, the term “homeless youth” may refer to distinct populations. The term may refer to any adolescent or young adult (including transition-aged youth up to age 25) experiencing homelessness in any form; or it may refer specifically to “unaccompanied” youth and young adults not in the physical custody of their parents or guardians. Occasionally, the term may refer to children who are homeless with their families, many of whom are quite young. In California, which has the most homeless children in the country, over half are children attending fifth grade or younger.² This article uses the term largely to refer to adolescents and young adults experiencing homelessness or housing instability in any form.

¹ This is a draft article with contributions from Jennifer Pokempner (Juvenile Law Center), Serena Holthe (National Juvenile Defender Center), and Brian Blalock (Tipping Point Community). A version of this article with contributions from Casey Trupin and Michael Santos can be found in the ABA Child Law Practice Spring 2017 journal.

² Kidsdata.org as reported by the California Department of Education (accessed March 25, 2017).

2. Unaccompanied youth experiencing homelessness are extremely vulnerable to violence and abuse.

Being an unaccompanied youth³ experiencing homelessness is terrifying. Many are fleeing abuse or severe neglect at home. The *2016 Street Outreach Report*⁴ noted that more than 75% of all surveyed youth had experienced abuse before experiencing homelessness with over half of all youth experiencing physical abuse.⁵ While homeless, these youth are 80% more likely to be exposed to violence. Almost half of all homeless youth reported being assaulted in the last year they were homeless.⁶ Youth who are homeless and in foster care are also at great risk for being victims of sex trafficking, as many struggle to find income, a place to live and a support system⁷.

3. “Runaway” is an empty term.

The term “runaway” does not tell an advocate anything legally significant about a youth because the label is missing the most important information—running away from what? The case planning and legal and systems intervention will vastly differ if a youth is running away from an abusive parent, from a trafficker who is looking for her, or from a parent or other caregiver because of acute and untreated mental health needs. In the first scenario, civil legal intervention may involve safety planning and possibly a restraining order to keep the parent away from the youth. The opposite may be true for the last scenario, when the best solution may be a treatment plan that heavily involves the parent or caregiver’s participation.

In addition, under the federal law, the state child welfare agency is obligated to report youth who run away or are missing from foster care, make efforts to locate them, and to investigate why youth run and develop services to meet their needs.⁸ Many states have focused on the requirements for reporting runaways and largely ignored the section requiring research into why youth may run in the first place and providing services to address any unmet needs that may prevent youth from fleeing.

4. Our Public Child Serving Systems—Child Welfare, Juvenile Justice, and Mental Health Systems—Generate Large Numbers of Homeless Youth and Young Adults

The overlap between involvement in the juvenile justice and child welfare systems and homelessness has been well documented. For example, in a recent study of homeless youth,

³ See 42 USC 11434A(6), The term “unaccompanied youth” includes a homeless child or youth not in the physical custody of a parent or guardian.

⁴ *Street Outreach Report Data Collection Study*, April 12, 2016. <<https://www.acf.hhs.gov/fysb/resource/street-outreach-program-data-collection-study>>

⁵ The Roadmap: A Five Year Plan to End Family Homelessness in San Francisco 2016. <http://www.issuelab.org/resources/24812/24812.pdf>

⁶ ASR PIT self-reported survey data San Francisco 2015. <http://www.appliedsurveyresearch.org/homelessness-reports/2014/8/13/san-francisco-homeless-homeless-point-in-time-count-and-survey>

⁷ Loyola Study and Penn Studies. Laura Murphy, Labor and Sex Trafficking Among Homeless Youth: A Ten-City Study (Loyola University New Orleans 2017), <https://covenanthousestudy.org/landing/trafficking/docs/Loyola-Research-Results.pdf>

⁸ SFA Cite

nearly 44% of youth interviewed had been in a jail, prison or juvenile detention center, almost 78% had at least one interaction with the police, and nearly 62% had been arrested.⁹ In that same study, almost half of the youth reported a history of foster care placement and those with a foster care history had been homeless for longer periods of time than their peers with no foster care history.¹⁰ Another study also revealed that 40% of youth who aged out of foster care in three states experienced homelessness or housing instability by age 23 or 24.¹¹

III. Civil Legal Needs of Youth Experiencing Homelessness

Youth experiencing—or who are at risk of experiencing—homelessness and housing instability frequently have civil legal needs in broad substantive areas. These areas include:

- Employment
- Housing
- Education
- Obtaining identification documents¹²
- Immigration
- Consumer law issues, such as identity theft¹³
- Expunging or sealing juvenile records
- Accessing public benefits, including health insurance, TANF, SSI, SNAP, and other means tested benefits
- Accessing health and behavioral health care that they are entitled to
- Family law issues, including custody, child support, and domestic violence

Not only do homeless youth have varying needs, the intervention they are eligible for may depend on features of their past as well as eligibility criteria of programs. For example, the foster care history of youth in some states may make them eligible to re-enter foster care if they are homeless. Because most low income or poor youth will be eligible for Medicaid or CHIP, enrolling youth in these programs or enforcing the EPSDT requirement can be a valuable strategy for accessing treatment supports.

These multiple legal needs and service/benefit eligibility requirements can be overwhelming to navigate—which makes it critical to connect youth experiencing homelessness to appropriate

⁹ Administration on Children, Youth and Families, Family and Youth Services Bureau: Street Outreach Program Data Collection Project Final Report (April 2016).

¹⁰ *Id.*

¹¹ Amy Dworsky et al., Assessing the Impact of Extending Care beyond Age 18 on Homelessness: Emerging Findings from the Midwest Study (Chapin Hall 2010).

¹² Federal law does require that youth in foster care provided their identification documents before they leave care. There is still work to be done on enforcing this law as well as ensuring that youth have safe places to keep their documents when they leave care.

¹³ Federal law does require that youth in foster care are provided their credit reports annually beginning at age 14 and that they receive assistance in resolving any issues that appear on the credit report.

legal assistance whenever possible. Attorneys representing youth in child welfare or juvenile justice matters must address these issues from the beginning stage of representation throughout the youth's transition into adulthood.

Building Appropriate Civil Legal Interventions

While it is impractical to build a broad civil legal expertise overnight, there are several ways children's attorneys can modify their practice to respond to the needs of youth experiencing homelessness. Lawyers for children and youth can use their legal advocacy skills to prevent and end youth homelessness. When youth and young adults face barriers to addressing their civil legal issues, they are more vulnerable to becoming homeless. Similarly, assisting youth address their legal issues when they are homeless can provide a pathway to housing stability. It is recommended that these strategies be marshalled at two distinct points of practice for attorneys for youth: before youth discharge from public systems during the process of transition and discharge planning and in the community for youth and young adults who are no longer system involved and experiencing homelessness.

1. Develop a screening mechanism for legal needs

Homeless youth and lawyers who advocate for them often do not know much about each other. Youth may only think they have legal needs in limited situations—most frequently when they are charged with breaking the law or when they want to sue someone for money. Similarly, lawyers may only think youth have legal needs if the youth requests help and provides information without prompting for that specific issue.

Successful civil legal programs for homeless youth are predicated on allowing legal needs to surface over time. A tiered intake model allows youth to divulge more information as they feel comfortable with their legal advocates. Trauma and/or a history of inconsistent adults who fail to follow through on perceived commitments can make this process necessary and immensely rewarding for the youth and lawyer.

Children's lawyers can only identify civil legal needs if they screen for them. This may be as simple as asking what services youth are currently receiving—community-based mental health services, special education, disability benefits or supplements to the foster care payment, transportation to a previous school they want to attend.

2. Partner with legal aid, homeless youth providers, child welfare agencies and the private bar

Once children's lawyers ask the questions and identify the possible legal needs, they may need help to address those needs either because they do not have the time or the expertise. One way to build capacity is to involve local legal aid organizations. Legal aid attorneys tend to be experts in many of the substantive civil legal needs outlined above, but very few legal aid programs have dedicated youth homelessness practices and most do not have expertise in representing youth. Therefore, building partnerships with legal aid programs can maximize the expertise of each collaborator to create dedicated referral processes, homeless youth shelter legal clinics, or technical assistance hotlines, can be one way for court-appointed attorneys to increase capacity

and expertise. New funding sources have resulted in legal aid programs where this type of partnership has worked.

California's Bay Area Legal Aid has found that each attorney working with homeless youth recovers on average close to a million dollars per year for his or her clients with the majority coming from federal funding streams.⁶ This has led to partnerships with local county agencies that provide funding for legal aid to work with these youth going forward. Legal aid can also provide expertise and training to bring in the private bar. (See *Partnering to Protect the Legal Rights of Homeless Youth*.)

3. Develop expertise in areas that could make a big impact

Some programs focus on a specific need and have developed expertise in-house to meet that need. East Bay Children's Law Office in Oakland, California, follows this model. When they noticed many older youth in extended foster care were ending up homeless, they dedicated staff to work with this population and provide representation in other civil legal areas, such as benefits and eviction defense.

For youth involved in the child welfare and juvenile justice systems, most of the legal issues identified above can be addressed in the context of transition planning. Transition planning is mandated in the child welfare system and should be the norm in the juvenile justice system in the form of reentry planning. Because of how vulnerable youth exiting these systems are to becoming homeless, it is important that child welfare attorneys and juvenile defenders develop an expertise in transition planning that includes the identification and capacity to address legal issues.

For a youth involved in the child welfare system, this could mean enforcing the right to receive identification documents before he or she leaves care, taking advantage of the right to stay in care and receive benefits until age 21, or ensuring that medical insurance is in place before a youth leaves care. For a youth in the juvenile justice system, transition planning related to legal issues should also include ensuring the youth is connected to health insurance and care, other public benefits that could help with securing housing and meeting basic needs, and that they have their identification documents. It is also vital that, before the young person exits the system, attorneys ensure their clients understand the process and are aware of the benefits of clearing their juvenile record— as it is often crucial to the youth's ability to support him or herself..

IV. Conclusion

Providing legal services to youth who are homeless or at high risk of homelessness can be a powerful tool to helping youth find housing stability. The good news is that there is a strong civil legal aid community that has the expertise to work on these issues. The challenge and opportunity for lawyers for children is to

1. Develop the knowledge and mechanisms for identifying/screening these issues in our current work, including child welfare and juvenile justice representation;

2. Forge collaborations with existing civil legal services providers in the form of a referral system or joint clinics and projects;
3. Build our capacity to address these issues in-house through the development of expertise and positions; and
4. Partner with legal service providers to adopt models of service delivery that are trauma informed and reflect the developmental needs of adolescents and young adults.

Throughout the country, while programs are not meeting the immense need, well-designed legal services are helping youth exit the streets and live successful lives.