

“You’re Going To Be Straight or You’re Not Going To Live Here”: Child Support for LGBT Homeless Youth

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At a time when hundreds of thousands of LGBT youth are homeless across the country, LGBT homeless youth are in desperate need of competent assistance from attorneys. In an effort to fulfill this dire need, this Article highlights a groundbreaking approach to securing housing and health for these young people. By drawing extensively on New York case law, this Article outlines the previously unutilized approach that attorneys can take in representing homeless LGBT youth: assisting them in petitioning their parent(s) for child support. Unemancipated minors are eligible for child support, and this Article proves how homeless LGBT youth could be deemed unemancipated. By extensively focusing on the causes of LGBT youth homelessness, the extreme risks these youth face on the streets, and the tremendous burdens that would be lifted if they received child support, this Article offers a great tool for attorneys who wish to help improve the lives of homeless LGBT young people and ensure that they no longer have to struggle to survive on the streets.

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I. INTRODUCTION

Every day, thousands of lesbian, gay, bisexual, and transgender (LGBT) young people are abandoned by their parents on the streets of major cities and small towns across the United States.¹ The most common reasons are heterosexism² and homophobia, both of which continue to dominate much of U.S. society, notwithstanding the fact that the United States Supreme Court has recognized same-gender marriages since 2013.³ LGBT youth still suffer daily. The problems these biases cause for youth are so expansive that Sarah Valentine, author of *Traditional Advocacy for Nontraditional Youth*, has argued, “Queer kids are the most isolated, attacked, endangered, and underserved adolescent population in the United States.”⁴

These attacks and endangerments culminate for many LGBT youth in homelessness. There are over a million homeless youth across the country, of which LGBT youth make up approximately 40%.⁵ They have proven themselves to be tremendously strong, creative, and resilient in their means of survival and in the face of incredible challenges. However, the resilience of LGBT homeless youth has thus far been met

1. NICHOLAS RAY, NAT’L GAY & LESBIAN TASK FORCE POLICY INST., NAT’L COAL. FOR THE HOMELESS, LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 14 (2006).

2. “Heterosexism” is a term that has been used “[w]hen discussing the belief . . . that [same-sex attraction] is ‘wrong’ or ‘less than’ . . . ‘Heterosexism’ . . . can be understood as an overt or tacit bias against non-heterosexuality based on a belief in the superiority or, sometimes, the omnipresence of heterosexuality. Heterosexism is a broader term than homophobia in that it need not imply the fear and loathing the latter term suggests. Heterosexism can describe seemingly benign [but harmful] behavior based on the assumption that heterosexuality is the norm.” Scott Hirschfeld, *Moving Beyond the Safety Zone: A Staff Development Approach to Anti-Heterosexist Education*, 29 FORDHAM URB. L.J. 611, 617-618 (2001). Heterosexism also encompasses bias against people who do not conform to expectations regarding gender, whether through being transgender, gender nonconforming, or nonbinary. Though Valentine uses the word “homophobia” to describe “the full range of anti-LGBT thought and behavior,” I will use the term heterosexism in the rest of this Article in order to avoid linguistically erasing the transphobia and gender rigidity that “heterosexism” encompasses. Sarah E. Valentine, *Traditional Advocacy for Nontraditional Youth: Rethinking Best Interest for the Queer Child*, 2008 MICH. ST. L. REV. 1053, 1054.

3. The Supreme Court struck down the Defense of Marriage Act, which prohibited the federal recognition of lawful same-gender marriages. *United States v. Windsor*, 133 S. Ct. 2675 (2013).

4. Valentine, *supra* note 2, at 451.

5. Zack Ford, *Study: 40% of Homeless Youth are LGBT, Family Rejection Is Leading Cause*, THINK PROGRESS, July 12, 2012, at 1.

largely by silence in the legal profession and hostility from the juvenile and criminal justice systems.

This Article documents the specific trials that are faced by homeless youth who self-identify as LGBT. It also offers a powerful but thus far unexplored recourse that is legally available to LGBT youth but that, unfortunately, remains enormously untapped: child support. A disturbingly large percent—as many as half—of LGBT youths are kicked out of their homes or flee them due to the persistent lack of support of their parents when the children disclose their sexual orientation or gender identities.⁶

Due to the cause of their homelessness, these youth are eligible for child support. That is, even though they may have run away, case law strongly suggests that because these youth have not been emancipated, they are eligible to receive child support from their parents until they achieve the age of majority (21 in New York). While this remedy will not help all LGBT homeless youth, and while monetary assistance is far from the only thing these young people need, being able to receive child support from their parents can make a huge difference in the lives of LGBT homeless youth.

Before discussing the hard realities of homelessness for LGBT youth and their legal recourse of filing for child support, it is important to define what is meant by both “LGBT youth” and “homeless youth.” Additionally, a deeper understanding of who is included under the umbrella of “LGBT” is vitally important to further understand the struggles these youth face and the legal recourses that they have thus far not been able to utilize.

The definition of LGBT or questioning⁷ youth offered by the New York State Office of Child and Family Services is fairly straightforward: these youth are defined as “youth who have self-identified or are perceived by others as lesbian, gay, bisexual, transgender or questioning their sexual orientation or gender identity.”⁸ There is, however, an

6. *Id.* at 2.

7. The term “questioning” when referring to a person’s sexuality or gender identity indicates that the person is in the process of figuring out whether they identify as LGBT.

8. “Transgender” is often considered to specifically refer to individuals whose gender identity does not match the gender they were assigned at birth. However, *transgender* is also often used as an umbrella term to include people who do not identify as either male or female and for people who are gender nonconforming. See RANDI FEINSTEIN, ANDREA GREENBLATT, LAUREN HASS, SALLY KOHN & JULIANNE RANA, LESBIAN AND GAY YOUTH PROJECT OF THE URBAN JUSTICE CENTER, JUSTICE FOR ALL? A REPORT ON LESBIAN, GAY, BISEXUAL, AND TRANSGENDERED YOUTH IN THE NEW YORK JUVENILE JUSTICE SYSTEM 62 (2001). On a related note, gender nonconformity is a huge issue for LGBT homeless youth. As Valentine writes, “Society often equates gender nonconformity with sexual orientation and uses gender nonconformity as a marker by which to

anomaly implicit in identifying someone as an “LGBT youth.” Temmu Ruskola, author of *Minor Disregard: The Legal Construction of the Fantasy That Gay and Lesbian Youth Do Not Exist*, has pointed out that there is a “central cultural fantasy that gay and lesbian youth do not exist.”⁹ This fantasy hinges on the broader desexualization of children and on the denial of children’s rights to proudly assert their sexual orientation and/or gender identity.¹⁰ Specifically, it hinges on the heterosexist notion that being LGBT is unnatural, and that children should be kept separate from abnormalities.¹¹

In flagrant violation of these normative expectations, however, LGBT youth are asserting themselves at younger and younger ages. News agencies have reported that 13 is the new average age for young people to come out as LGBT.¹² Unfortunately, this mode of youth empowerment and self-awareness has immediate and horrifying ramifications for the epidemic of LGBT youth homelessness. As Carl Siciliano of the Ali Forney Center¹³ has stated:

It has become clear to me that we are living in a societal moment, where kids are coming out at younger and younger ages, and there are so many parents who can’t be parents to their gay kids. They can’t cope, they can’t deal with it, their religion is in conflict with the reality of their kids’ lives, and these kids are getting thrown away.¹⁴

Parents are an enormous cause of LGBT youth homelessness (to be discussed extensively below). One study found that nearly half of parents had negative emotional reactions upon first learning of their

target those thought to harbor same-sex attraction. However, the relatively new pathologizing of gender nonconformity in young children has created an especially high-risk environment for this segment of the queer child population, regardless of their actual sexuality.” Valentine, *supra* note 2, at 1078. This observation is particularly important for gender nonconforming youth living on the streets or in shelters, who are more vulnerable to the assumptions and violent reactions of people such as shelter workers, coresidents, and (perhaps especially) police officers. *Lesbian, Gay, Bisexual, Transgender and Questioning Youth (PPM 3442.00)*, N.Y. ST. OFF. CHILDREN & FAM. SERVS. (Mar. 17, 2008), <http://nycourts.gov/ip/judicialinstitute/transgender/220U.pdf>.

9. Temmu Ruskola, *Minor Disregard: The Legal Construction of the Fantasy That Gay and Lesbian Youth Do Not Exist*, 8 YALE J.L. & FEMINISM 269, 270 (1996).

10. Someone’s gender identity is their understanding of what their own gender is, and it is that gender by which others need to recognize them.

11. Julie Novkov, *The Miscegenation/Same-Sex Marriage Analogy: What Can We Learn from Legal History?*, 33 LAW & SOC. INQUIRY 345, 360 (2008).

12. E.K. Kim, *Many Gay Teens Are Coming Out at Earlier Ages*, ST. LOUIS POST-DISPATCH, July 3, 2006, at 1.

13. The Ali Forney Center assists LGBT homeless youth by empowering them with opportunities to live in safe and homelike environments: see Appendix A for more information.

14. Margot Adler, *Young, Gay, and Homeless: Fighting for Resources*, NPR (Nov. 20, 2011), <http://www.npr.org/2011/11/20/142364493/young-gay-and-homeless-fighting-for-resources>.

child's LGBT identity.¹⁵ The definition of "homeless youth" offered by Andrew Cray is particularly acute, then, for LGBT youth who too often come out into toxic parental reactions. According to the Center for American Progress, "[T]he classification of 'homeless youth' commonly refers to unaccompanied young people between the ages of 12 and 24 for whom it is not possible to safely live with a relative or in another safe alternative living arrangement."¹⁶ Unlike other minority children, LGBT children do not usually grow up in families that share their minority status.¹⁷ In fact, as will be discussed below, prior to becoming homeless, an overwhelming number of LGBT youth live with families (specifically parents) who are openly hostile to their LGBT identities.¹⁸ This toxic atmosphere contributes greatly to the disproportionate numbers of LGBT youth who become homeless.

As Sonja Shield explains, "No one deserves to be evicted from their home, denied a job, targeted for violence and harassment, or profiled by police, simply for being who they are."¹⁹ Yet daily, this is precisely the reality that LGBT homeless youth confront. It is up to the courts to determine whether these youth may use the law to resist homophobia and heterosexism. As I will prove below, case law suggests that it is unreasonable for a parent to demand that their child be straight or cisgender.²⁰ Because youth are entitled to receive child support when they leave their home after their parents make unreasonable demands of them (as discussed below in Part 5), children who leave their homes for fear of further rejection by their parents due to their sexual orientation or gender identity are entitled to receive child support. The greater the number of attorneys and LGBT youth who are aware of this particular form of recourse, the greater the number of LGBT homeless youths who will be closer to securing safe, affirming living environments for themselves.

15. Twenty-two percent felt angry, 14% sick, and 9% disgusted. Sonia Renee Martin, *A Child's Right To Be Gay: Addressing the Emotional Maltreatment of Queer Youth*, 48 HASTINGS L.J. 167, 172 (1996).

16. ANDREW CRAY, KATIE MILLER & LAURA E. DURSO, CTR. FOR AM. PROGRESS, SEEKING SHELTER: THE EXPERIENCES AND UNMET NEEDS OF HOMELESS LGBT YOUTH 3 (2013).

17. COLLEEN SULLIVAN, SUSAN SOMNER & JASON MOFF, LAMBDA LEGAL DEFENSE FUND, YOUTH IN MARGINS: A REPORT ON THE UNMET NEEDS OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER ADOLESCENTS IN FOSTER CARE 13-14 (2001).

18. Martin, *supra* note 15, at 169.

19. Sonja Shield, *The Doctor Won't See You Now: Rights of Transgender Adolescents to Sex Reassignment Treatment*, 31 N.Y.U. REV. L. & SOC. CHANGE 361, 368 (2007).

20. People who are not transgender are generally considered cisgender: cisgender people identify as the gender they were assigned at birth.

II. THE EPIDEMIC OF LGBT YOUTH HOMELESSNESS

Across the United States, every day, up to 1.6 million children live their lives with no place to call home.²¹ Whether they identify as LGBT or not, the primary cause of homelessness for all youth is family conflict.²² Young people across the country are being stripped of their basic need to have a place to live. Around 40% of these homeless youths across the country identify themselves as LGBT.²³ This statistic translates into a staggering figure: hundreds of thousands of LGBT youths across the country are homeless each year.²⁴ The leading cause is the rejection that LGBT youth endure from their families, most specifically their parents or guardians.²⁵ This disturbing fact is perhaps not quite surprising when considering that at least half of all LGBT youths face negative reactions from their families upon the revelation of their gender identity or sexual orientation. Around one-third are subsequently physically abused by their family members; this is to say nothing of the verbal and psychological abuse that they are forced to endure.²⁶

This Part will expand upon the general idea of LGBT youth homelessness, focusing first on the national context of the epidemic and then addressing the situation specifically in New York. The Part will conclude by highlighting the causes of LGBT youth homelessness. This is particularly important for the subject of this Article: given that parental intolerance and abuse are the primary reasons for initial homelessness amongst LGBT youth, the opportunity for these youth to avail themselves of the child support they are entitled to is a particularly difficult, delicate, and crucial issue.

A. *LGBT Youth Homelessness Nationally*

As mentioned, nearly two million youth are homeless in the United States. These bleak figures are mollified slightly by the fact that 99% of homeless youth under the age of 18—homeless children—eventually

21. RAY, *supra* note 1, at 1.

22. *Id.* at 2.

23. Ford, *supra* note 5, at 1.

24. LAMBDA LEGAL DEFENSE FUND, NATIONAL RECOMMENDED BEST PRACTICES FOR SERVING LGBT HOMELESS YOUTH 1 (2009).

25. Ford, *supra* note 5, at 1.

26. Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 787 (2006).

return home.²⁷ Of these homeless children, 380,000 stay away from home for more than a week, and 131,000 are homeless for more than a month.²⁸ The fact that these many homeless children have the opportunity to return home eventually, however, does not exempt them from the traumatizing realities of being homeless, even for a relatively short period of time. The damage that homelessness does to one's emotional, psychological, and physical state—especially for children—is immense.²⁹

However, many LGBT homeless youth have no choice but to remain on the streets. Twenty-six percent of gay teenagers are kicked out of their homes upon coming out or being outed, and the numbers may well be higher for transgender youth.³⁰ Despite this staggering figure, LGBT youth are less likely to report being “thrown out” of their homes than non-LGBT youth.³¹ Interestingly, however, LGBT youth are also less likely to identify themselves with the label of “runaway.”³² This suggests strongly that even when LGBT youth are not *explicitly* thrown out of their homes, they still do not believe that they themselves hold primary responsibility for leaving. As will be discussed below, LGBT youth experience disproportionate amounts of abuse at home for being LGBT, and this is the main cause of their subsequent homelessness.

Race, immigration status, class, age, ability, gender expression, gender, religion, body type, and a plethora of other aspects of youths' identities intersect with their status as LGBT youth to create as many unique struggles as there are homeless youth.³³ Unfortunately, few, if any, studies have focused on the intersectional identities of LGBT

27. *Defining Homeless Youth Subpopulations Is a Step Towards Solving the Problem*, NAT'L LOW INCOME HOUSING COALITION (Mar. 23, 2012), <http://nlihc.org/article/defining-homeless-youth-subpopulations-step-towards-solving-problem>.

28. *Id.*

29. RAY, *supra* note 1, at 44.

30. *Id.* at 2.

31. This suggests that the recommendations in this Article regarding child support applications may well apply to non-LGBT youths, as well. Youths likely will not be judged to be emancipated (and thus ineligible for child support) if the court finds that they were, in fact, kicked out of their homes by their parents. However, this Article specifically addresses the concerns of LGBT youth because of the grossly disproportionate representation of these youths in the homeless youth population and the virulence and near uniformity with which parents reject these youths simply on the basis of their status as LGBT.

32. NAT'L RUNAWAY SWITCHBOARD, *WHY THE RUN: AN IN-DEPTH LOOK AT AMERICA'S RUNAWAY YOUTH 8-9* (2010).

33. Gender expression is the way that an individual presents their gender through clothing, speech patterns, gait, etc. Gender expression and gender identity are not always congruous (*see Sexual Orientation and Gender Identity Definitions*, HUM. RTS. CAMPAIGN, <http://hrc.org/resources/entry/sexual-orientation-and-gender-identity-terminology-and-definitions> (last visited Nov. 3, 2014)).

homeless youth.³⁴ LGBT homeless youth do not constitute a monolithic block; some youth are simply more vulnerable than others due to an amalgam of different facets of their identities. The struggles of a cisgender feminine lesbian homeless youth who is white and able-bodied vastly differ from those of a transgender feminine lesbian homeless youth who is a woman of color and lives with a disability of some kind. This is merely one example of the ways in which intersecting aspects of identity greatly impact the unique experiences of each LGBT homeless individual.

Unfortunately, most of the various aspects of youth identity listed above have not been systematically studied as they pertain to LGBT youth homelessness. I will attempt to elucidate at least some of the differences in LGBT youth experiences by paying close attention to two aspects of LGBT homeless youth identity that have been studied (albeit not enough) uniquely: the experiences of transgender youth and youth of color, which can differ greatly from those of cisgender and white youth.

Youth of color and transgender youth (especially transgender youth of color) are both disproportionately represented amongst LGBT homeless youth and are disproportionately targeted by the juvenile and criminal justice systems.³⁵ They embody many identities that shape, are shaped by, and are distinct from their identities as LGBT youth. While the racial diversity of LGBT youth is understudied, youth of color are disproportionately represented amongst LGBT homeless youth and are likely to be homeless longer than youths who are not similarly targeted by the criminal justice system.³⁶

B. Young, LGBT, and Homeless in the Big Apple

LGBT cinematic culture is rife with representations of the “backward” heterosexist small town that violently persecutes (and often kills) LGBT youth almost as a matter of course.³⁷ Films such as *Boys Don’t Cry* (1999) and *Brokeback Mountain* (2005) perpetuate ideas and ideals of a monolithically hateful and murderously heterosexist rural life.

34. Calling identities “intersectional” refers to the ways that different aspects of a person’s identity interacts with other aspects of that person’s identity. For example, black women may experience their gender differently than white women because race and gender are intersectional identities.

35. Cray et al., *supra* note 16, at 13.

36. *Id.* at 6, 13.

37. See Colin R. Johnson, *Rural Space: Queer America’s Final Frontier*, CHRON. HIGHER EDUC. Jan. 13, 2006, at B15; Fiorenzo Iuliano, *Virtual Bodies, Imagined Landscapes: Marginal Corporealities and the Ethical Space*, ESF-LIU CONFERENCE (2006), <http://www.ep.liu.se/ecp/020/ecp072012.pdf>.

This portrayal of small towns establishes a binaristic comparison with urban bastions of acceptance like New York City. Even a cursory evaluation of the situation of LGBT homeless youth in New York City, however, shatters this urban-centric mythology and brings to the fore the stark reality that the Big Apple is actively hostile to thousands of its LGBT youth who are homeless. As Nicholas Ray has aptly written, “In the case of LGBT street youth in particular, conversations with service providers suggest that there is a somewhat romanticized [and false] notion of leaving the homophobic hometown behind to find acceptance in New York City, Los Angeles, or San Francisco.”³⁸

In New York City, 12,000 to 20,000 youth are homeless, and up to almost half of these youths are LGBT.³⁹ Of these 3,500 to 7,000 LGBT homeless NYC youth, most are turned away from shelters each night.⁴⁰ For youth who have a choice between the streets and shelters, however, there are fewer than 450 (LGBT nonspecific) transitional living beds available.⁴¹ The utter lack of access to conventional resources leads many LGBT youth to discuss with heartbreaking frankness and resilience their relationship with discovering which places are the best in which to sleep and seek refuge from the elements. One homeless LGBT youth, Tiffany Cocco, who was 23 at the time of her interview but has been homeless since her teenage years, explains, “I lived on the streets. . . . Literally, the A Train was my best ride: Waking up to the sunrise, gorgeous. I slept on stoops, park benches—then, finally, shelters.”⁴²

Shelters do not always offer a safe haven for LGBT youth, however. In New York City, Covenant House provides over 60% of beds for homeless youth.⁴³ This facility, however, has a powerful history of hosting LGBT youth who report that during their stay, they were “threatened, belittled and abused by staff and other youth because of their sexual orientation or gender identity.”⁴⁴ This treatment in shelters is particularly damaging to transgender youth, whose average period of

38. RAY, *supra* note 1, at 14.

39. Tina Rosenberg, *Helping Them Make It Through the Night*, N.Y. TIMES, July 12, 1998, at 1; ALI FORNEY CENTER, HOMELESS YOUTH FACE HARD STATISTICS, THE CREATIVE VOICE OF LGBT YOUTH 1 (2007).

40. N.Y.C. ASS'N OF HOMELESSNESS & ST. INVOLVED YOUTH ORGS., STATE OF THE CITY'S HOMELESS YOUTH REPORT 59 (2007).

41. RAY, *supra* note 1, at 86.

42. Adler, *supra* note 14, at 5.

43. RAY, *supra* note 1, at 5.

44. *Id.*

homelessness is even longer than LGBT youth (thus increasing the importance of shelters during the duration of their homelessness).⁴⁵

The inability to stay safely in shelters also dramatically impacts LGBT youth of color, who are disproportionately represented amongst LGBT homeless youth in New York City (fitting the national pattern).⁴⁶ Of homeless LGBT youth surveyed in one study, 70% also identified as youth of color. 6.33% of black homeless youth also identified as transgender; that number was 4.76% of Hispanic homeless youths.⁴⁷ This overrepresentation of youth of color in the homeless LGBT population requires further, detailed study of how homelessness in NYC impacts specifically LGBT youth of color.

C. Causes of LGBT Youth Homelessness

The threat of “[y]ou’re going to be straight or you’re not going to live here anymore” (a quote from a mother speaking to her gay son) is an all too familiar reality for many LGBT young people.⁴⁸ LGBT youth are kicked out of their homes every day precisely because of their LGBT identities.⁴⁹ Most LGBT youth who are homeless become such because they were either kicked out of their homes or have fled homes in which their parents were intolerant of their LGBT identities.⁵⁰ In fact, the main reason that LGBT youth may conceal their identities is fear of parental rejection and the deterioration of relationships with parents.⁵¹

Unfortunately, their fears are far from unfounded. LGBT youth are far more likely than their non-LGBT peers to have profound family issues.⁵² A third of LGBT youths are victims of physical violence at the hands of their family members when they come out or are outed in the home.⁵³ Even those who are not physically abused by their parents or other family members statistically can almost expect to be abused in some way because of their LGBT identity: at least half of all LGBT

45. LANCE FREEMAN & DARRICK HAMILTON, N.Y.C. COALITION ON THE CONTINUUM OF CARE, A COUNT OF UNACCOMPANIED HOMELESS YOUTH IN NEW YORK CITY 10 (2013).

46. *Id.* at 7.

47. *Id.* at 11.

48. RAY, *supra* note 1, at 11.

49. Shield, *supra* note 19, at 372.

50. Joseph J. Wardenski, *A Minor Exception?: The Impact of Lawrence v. Texas on LGBT Youth*, 95 J. CRIM. L. & CRIMINOLOGY 1363, 1364 (2005).

51. Anthony R. D’Augelli, Arnold H. Grossman & Michael T. Starks, *Parents’ Awareness of Lesbian, Gay, and Bisexual Youths’ Sexual Orientation*, 67 J. MARRIAGE & FAM. 474, 480 (2005).

52. Martin, *supra* note 15, at 169-170.

53. NAT’L CTR. FOR LESBIAN RIGHTS, LGBTQ YOUTH IN THE JUVENILE JUSTICE SYSTEM 1 (2006).

youths experience some form of parental rejection upon coming out or being outed.⁵⁴

It is difficult to find positive reactions to the revelation of an LGBT identity. Ritch C. Savin-Williams, a generally optimistic researcher when it comes to studying LGBT youth, admits that parental reactions are akin to the stages of grieving, claiming that few plainly positive reactions have been documented in studies.⁵⁵ Perhaps unsurprisingly, then, almost half of all bisexual and gay men have run away from home at least once.⁵⁶ Even before LGBT youth come out, they often bear the brunt of their parents' heterosexism. As D'Augelli has noted: "Parents who suspect their children to be LGB may make more antigay comments, which may lead to learning that they have an LGB child. Gender atypical children may [endure] more negative parental comments."⁵⁷

These kinds of horrendous living conditions, in which LGBT youths' very selves are denigrated and diminished by unsupportive parents, are the primary reason that LGBT youth become homeless.⁵⁸ According to one young LGBT person (an African-American gay boy who was homeless on the streets of Detroit), "I spoke to my momma's boyfriend's uncle, and he was like, 'What? You talking to me? I don't speak to faggies.' It's messed up."⁵⁹ Another LGBT youth, living in emergency housing after leaving an intolerant home, explained:

The day after my eighteenth birthday this year, my adopted parent [sic] kicked me out. . . . At the time, I was really infatuated with this guy, and she was listening to my phone calls. She started telling my family, "He is this, he is that, he is gay," and talking about me as if I wasn't part of the family.⁶⁰

Unfortunately, these kinds of overwhelmingly negative and isolating responses are not uncommon, either in biological families or in adoptive and foster families.

Foster care situations can be excruciating for LGBT youth. In foster care, youth have been "beaten by other residents while staff watched; taunted by foster parents, staff, and other residents because of their homosexuality; sexually assaulted by staff members; and, forced to undergo conversion therapy in an attempt to teach them that being gay or

54. Martin, *supra* note 15, at 169.

55. Ritch C. Savin-Williams & Eric M. Dube, *Parental Reactions to Their Child's Disclosure of a Gay/Lesbian Identity*, 47 FAM. REL. 7, 7-9 (1998).

56. RAY, *supra* note 1, at 163.

57. D'AUGELLI ET AL., *supra* note 51, at 481.

58. Wardenski, *supra* note 50, at 1364.

59. RAY, *supra* note 1, at 17.

60. Adler, *supra* note 14, at 4.

lesbian is ‘repulsive and deviant.’”⁶¹ Given this, the fact that many homeless LGBT youth have run away from foster care is not surprising.⁶²

What may be surprising, however, is the lack of shame with which families corroborate the claims of LGBT youths regarding their mistreatment at home because they are LGBT. In extensive studies of both youth and their families, often when LGBT young people claimed that they had left the home to escape atmospheres that were unsupportive of LGBT identities, their families corroborated these claims.⁶³ Even in situations in which the children in question were homeless during the time of the studies, many parents were unabashedly open about how they were and would remain unsupportive of their child’s status as an LGBT person.⁶⁴

Rob Maitra undertakes these severe problems that LGBT youth face at home by arranging general family relationships into four basic categories that are specific to the unique needs and experiences of LGBT youth.⁶⁵ The first type of relationship is functional, in which the child is out in the home and is accepted as they are.⁶⁶ As noted above, this type of functional familial relationship is exceedingly rare in the beginning stages of the coming out process for LGBT youth, directly contributing to the epidemic of homelessness that these youth endure.⁶⁷ The second kind of familial relationship is a strained relationship, in which the young person or people in the home are out to their parents but are not accepted.⁶⁸ This strained relationship often features the implicit or explicit abuse of LGBT adolescents. The third kind of relationship that a family might have with an LGBT young person is a separated relationship.⁶⁹ In this dynamic, the strained relationship has become too overwhelming, and the child has left the home. A separated relationship may or may not feature regular contact between the parent and child, and is characterized by the physical segregation of LGBT family members

61. James W. Gilliam, Jr., *Toward Providing A Welcoming Home for All: Enacting A New Approach to Address the Longstanding Problems Lesbian, Gay, Bisexual, and Transgender Youth Face in the Foster Care System*, 37 LOY. L.A. L. REV. 1037, 1039 (2004); SULLIVAN, SOMNER & MOFF, *supra* note 17, at 9.

62. Rosenberg, *supra* note 39, at 1.

63. LES B. WHITBECK & DANNY R. HOYT, NOWHERE TO GROW: HOMELESS AND RUNAWAY ADOLESCENTS AND THEIR FAMILIES 7 (1999).

64. *Id.*

65. Rob Maitra, *The Homeless Community of the Piers*, 2002 GAY & LESBIAN REV. 8, 10-11.

66. *Id.* at 10.

67. WHITBECK & HOYT, *supra* note 65 at 10-11.

68. Maitra, *supra* note 65, at 10-11.

69. *Id.* at 11.

from non-LGBT family members. The final category of familial relationships that Maitra set forth was a deceptive relationship, in which the young person is not out in the home because this is the safer strategy in the short term.⁷⁰ When this deceptive relationship breaks down through the young person being outed or coming out, danger can often ensue, perhaps resulting in the relationship becoming separated so that the LGBT person can avoid persistent and explicit abuse.⁷¹

For transgender young people, the familial relationships are overwhelmingly likely to be strained or separated when the youth is out. Over half of the transgender clients at a specialized gender-identity health clinic reported difficulties with parents or guardians, indicating that transgender individuals have just as much difficulty, if not more, in the home than their LGBT peers.⁷² Parents of transgender youth are reported to frequently engage in abusive behaviors such as taking actions to “bribe, cajole, and beat their children into expressing the gender they were assigned at birth.”⁷³

The intensity of these problems at home for transgender youth specifically are magnified once these youth cross the line into homelessness. In 2003-2004, nearly 40% of transgender people on a national level were victims of gender/sexuality-based violence, as compared with only 1% of their cisgender gay male peers and 7% of cisgender gay female peers.⁷⁴ A full one in five transgender people will experience homelessness throughout their lives. The problems of youth being driven out of their homes by unsupportive families are dramatically compounded by the incredibly high obstacles faced by transgender people in gaining housing and employment generally.⁷⁵ Transgender people as a whole are much more likely than their LGB peers to live in poverty (and LGB people are in turn more likely to live in poverty than non-LGB peers).⁷⁶ Barriers to achieving and retaining employment are immense for transgender individuals; consequently, escaping homeless-

70. *Id.*

71. *Id.*

72. David Freedman, Fiona Tasker & Domenico di Ceglie, *Children and Adolescents with Transsexual Parents Referred to a Specialist Gender Identity Development Service: A Brief Report of Key Developmental Features*, 7 *CLINICAL CHILD PSYCHOL. & PSYCHIATRY* 423, 423 (2002).

73. SHANNON MINTER & CHRISTOPHER DALEY, *TRANSGENDER LAW CTR. & NAT'L CTR. FOR LESBIAN RIGHTS, TRANS REALITIES: A LEGAL NEEDS ASSESSMENT OF SAN FRANCISCO'S TRANSGENDER COMMUNITIES* 21-22 (2003).

74. CLARENCE PATTON, *NAT'L COAL. OF ANTI-VIOLENCE PROGRAMS, ANTI-LESBIAN, GAY, BISEXUAL AND TRANSGENDER VIOLENCE IN 2004*, at 10 (2005).

75. *NAT'L CTR. FOR TRANSGENDER EQUALITY, HOUSING AND HOMELESSNESS* 1 (2011).

76. SYLVIA RIVERA LAW PROJECT, *FLOWCHART: POVERTY AND HOMELESSNESS* (2012).

ness is much more difficult for transgender youth than it is for their LGB peers, often leading to prolonged homelessness.⁷⁷

The juvenile and criminal justice systems also contribute to keeping LGBT youth on the streets.⁷⁸ New York is one of two states (the other being North Carolina) that automatically tries 16- and 17-year-olds as adults.⁷⁹ While their families may be the original cause of homelessness, the juvenile and criminal justice systems often prolong the duration of LGBT youth homelessness by giving them inappropriate convictions as sex offenders and decreasing their chances of finding stable employment and housing.⁸⁰ A disproportionate number of youth offenders experience homelessness.⁸¹ At least 30% of the youth at one large shelter for homeless youth in New York City had been arrested or previously incarcerated.⁸² Over 60% of homeless youth had been ticketed for survival crimes such as panhandling.⁸³

Many LGBT youth face longer periods of homelessness because of their involvement with the juvenile and criminal justice systems (involvement that is precipitated by the original fact of their homelessness).⁸⁴ Youth who have been convicted of felonies become ineligible to live in public or Section 8 housing, thus all but ensuring that they will remain on the streets longer upon release from the system.⁸⁵ As the director of the San Francisco LGBT Community Center's Community Programs has articulated: "[W]ithout safe, supportive and affordable housing, the youth aren't able to access jobs, continue their education, [or] deal with mental health issues. They are stuck."⁸⁶ This lack of access combined with a low federal minimum wage essentially guarantee that LGBT homeless youth will continue to be homeless for extended periods after being forced out of their homes in the first place.⁸⁷

77. MINTER ET AL., *supra* note 73, at 14.

78. NAT'L CTR. FOR LESBIAN RIGHTS, *supra* note 53, at 2.

79. Editorial, *When Children Become Criminals*, N.Y. TIMES, Jan. 19, 2014, at A16.

80. *Id.*

81. Paul A. Toro, Amy Dworsky & Patrick J. Fowler, *Homeless Youth in the United States: Recent Research Findings and Intervention Approaches*, NAT'L SYMPOSIUM ON HOMELESSNESS RESEARCH 6-11 (2007), <http://www.aspe.hhs.gov/hsp/homelessness/symposium07/toro/report.pdf>.

82. *Id.*

83. NELL BERNSTEIN & LISA FOSTER, CAL. RESEARCH BUREAU, VOICES FROM THE STREET: A SURVEY OF HOMELESS YOUTH BY THEIR PEERS 57 (2008).

84. Toro et al., *supra* note 81, at 6-9.

85. *Id.* at 6-11.

86. Kevin Fagan, *Survey: Housing, Education, Jobs, Drugs Challenge Poor Gay Youths*, S.F. CHRON., Jan. 9, 2006, at B3.

87. RAY, *supra* note 1, at 155.

Thus, even though homelessness of LGBT youth is most frequently caused by parental rejection *initially*, vital factors such as employment discrimination, lack of access to affordable housing, racial and LGBT-based targeting by the juvenile and criminal justice systems, and an unlivable minimum wage all contribute to the causes of the *duration* of LGBT youth homelessness. If parental rejection were the only factor working against LGBT young people, their homelessness—if it occurred at all—would be briefer in duration because they would be immediately protected by social and economic safety nets. Given the current heterosexist construction of societal institutions, however, it is likely that the hundreds of thousands of homeless LGBT youth across the country will remain such for extended periods of time due to external economic and social factors.

III. CONSEQUENCES OF HOMELESSNESS

This Part will provide a brief overview of the effects of homelessness on LGBT youth, demonstrating the urgency of this multifaceted injustice. Homeless people in general are disproportionately affected by the criminal justice system, and LGBT homeless youth are particularly vulnerable.⁸⁸ Rejected by bigoted parents, targeted by the juvenile and criminal justice systems, and shut out by the rules and norms of the already inadequate shelter system, LGBT youth endure enormous mental and physical health problems. These problems put their lives in dire jeopardy on a daily basis.

The devastating consequences of LGBT youth homelessness are widespread and all-encompassing. LGBT young people who are homeless also find themselves particularly vulnerable to violent abuse with little or no access to basic services that could increase both their physical safety and vital sense of self-worth. Half of homeless youths surveyed are afraid to access services because of uncertainty about being turned over to police, parents, or child and family services.⁸⁹

These fears are justified considering that homelessness is a crime and LGBT youth in particular are susceptible to becoming criminals.⁹⁰ As noted above, families may push LGBT youth onto the streets, but abuse at the hands of the juvenile justice and shelter systems keep youth there. As explained below, LGBT youth who are of color, are

88. *Id.* at 71.

89. NAT'L RUNAWAY SWITCHBOARD, *supra* note 32, at 14.

90. *See supra* Part III.E.

undocumented immigrants, and/or are transgender endure particularly damaging and long-lasting consequences of their homelessness.

A. Emotional/Mental Health Consequences

The emotional and psychological impacts of homelessness on young people generally are immense, but these consequences are particularly acute for homeless youth who are LGBT. As Nicholas Ray notes: “Homelessness is traumatic for all youth. For LGBT youth, who must also deal with ‘coming out’ and living in a society that is often hostile. . . the dangerous consequences of homelessness are amplified.”⁹¹ All homeless people, particularly homeless youth, are afflicted by trauma, but the LGBT-specific impacts of homelessness will be the subject of the discussions here.

In addition to coping with the stark realities of homelessness in general, LGBT homeless youth are often still in the first waves of coming out to themselves and struggling with their identity and its implications.⁹² Going through this otherwise often liberating process in the context of having become homeless because of their sexual identities can have terrible impacts on emotional health.⁹³ Not only that, but homelessness can have profound negative impacts on young people’s developmental processes when they believe that the homelessness is their fault.⁹⁴ While most of their peers have the privilege of struggling with typical teenage developmental agonies in the comfort and safety of their homes, LGBT homeless youth have no such underlying sense of security.

Most LGBT homeless young people experience homelessness due to parental rejection. Even absent explicit mistreatment prior to their children first experiencing homelessness, unsupportive parents hinder their LGBT children’s ability to develop into mentally healthy, confident, and autonomous people.⁹⁵ These detrimental impacts on development carry into and are exacerbated by a young person’s experiences of homelessness.

This sense of being overwhelmed can wreak havoc on LGBT adolescents’ coping mechanisms and developmental processes. Lesbian homeless youth are far more likely to have posttraumatic stress disorder

91. RAY, *supra* note 1, at 44.

92. Miye A. Goishi, *Unlocking the Closet Door: Protecting Children from Involuntary Civil Commitment Because of Their Sexual Orientation*, 48 HASTINGS L.J. 1137, 1159-60 (1997).

93. RAY, *supra* note 1, at 16.

94. *Id.*

95. CAITLIN RYAN, HELPING FAMILIES TO SUPPORT THEIR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER CHILDREN 2 (2009).

due to their living conditions and life experiences than their nonlesbian homeless peers.⁹⁶ Young gay men are more likely than their nongay homeless peers to experience major depressive episodes.⁹⁷ The agonies of living with these mental health struggles are compounded by the abuse that many LGBT youths continue to experience while living on the streets.

B. *Street Abuse*

Having been kicked out of or run away from familial situations that were often abusive, LGBT homeless youth receive little relief from abuse on the streets. They are at a higher risk than their peers of being robbed, assaulted, and raped, with no hope of receiving relief from a juvenile and criminal justice systems that criminalize their very existence.⁹⁸ Transgender and gender nonconforming⁹⁹ youth, youth of color, and/or undocumented youth have particularly little to gain and a great deal to lose from reporting their victimization to authorities. The risk of being arrested, deported, humiliated, or turned back over to parents or child care systems that will perpetuate their abuse is especially high for these LGBT youth.¹⁰⁰

While many homeless youth, LGBT and non-LGBT alike, experience abuse and violence on the streets, LGBT youth are much more likely to be victims than their non-LGBT counterparts. Compared to 21% of non-LGBT homeless youth, 30% of LGBT homeless youth are robbed.¹⁰¹ While 18% of non-LGBT homeless youth endure physical assaults, 28% of LGBT homeless youth experience this.¹⁰² Nearly one in

96. Les B. Whitbeck, Xiaojin Chen, Dan R. Hoyt, Kimberly Tyler & Kurt D. Johnson, *Mental Disorder, Subsistence Strategies, and Victimization Among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RES. 329, 334 (2004).

97. *Id.*

98. Bryan N. Cochran, Angela J. Stewart, Joshua A. Ginzler & Ana Mari Cauce, *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 AM. J. PUB. HEALTH 773 (2002).

99. Gender nonconforming (GNC) individuals are people who present their gender in a way that does not match what the dominant culture in their society expects to find in gender identity (for example, if someone identifies as a man but wears dresses, he may be gender nonconforming, or if someone identifies as a woman but wears “men’s” clothing and has a short haircut, she may be gender nonconforming). GNC people are not necessarily transgender, but they may not identify as simply “woman” or “man.” Being GNC does not mean that someone is lesbian, bisexual, or gay, though many GNC people are.

100. NAT’L RUNAWAY SWITCHBOARD, *supra* note 32, at 14.

101. S. RABINOVITZ, M. DESAI, A. SCHNEIR & L. CLARK, DIV. OF ADOLESCENT MED., CHILDREN’S HOSPITAL L.A., NO WAY HOME: UNDERSTANDING THE NEEDS AND EXPERIENCES OF HOMELESS YOUTH IN HOLLYWOOD 22 (2010).

102. *Id.*

every four homeless LGBT youths is sexually assaulted or raped, more than three times the rate of sexual assault and rape of non-LGBT homeless youth.¹⁰³ Nearly half of all LGBT youth are harassed by police, as compared to only 35% of non-LGBT youth.¹⁰⁴ Thus, LGBT youth who leave their homes to avoid abuse experience it on the streets as well.

C. Shelter Abuse

It is difficult for homeless LGBT youth to seek refuge from the abuse that they endure on the street. Though there are not nearly enough shelter beds to accommodate the thousands of LGBT homeless youths in New York City alone, some LGBT youth do try to take refuge from all of this street violence by sleeping in shelters. Those that do find the space are not rewarded with increased safety. They often face violence from shelter staff and fellow residents alike.

Perhaps the problems would be less intractable if it were only a matter of staff heterosexism. Unfortunately, discrimination and violence against LGBT youth in shelters is written into the very structure of shelter life. Most shelters are segregated according to which gender residents were assigned at birth.¹⁰⁵ Shelters—many of which are run by religious organizations that are openly hostile to LGBT youth generally and transgender youth specifically—could conceivably argue that since a relatively small percentage of the general shelter population is transgender, they need not change their very structure to accommodate transgender residents.¹⁰⁶ However, transgender people are grossly overrepresented in homeless populations in shelters: roughly one out of every five transgender individuals needs or is at risk of soon needing the assistance of homeless shelters.¹⁰⁷

Indeed, homeless transgender youth in particular often face violence destructive to their physical and emotional lives in shelters. Shelters are often run by religious organizations, and these religious beliefs “then play out in delicate issues like where to have transgender people sleep.”¹⁰⁸ According to a staff member of one homeless shelter, “[There] is a pattern of homophobia. . . . We see staff members behaving in ways that

103. *Id.*

104. *Id.*

105. LISA MOTTET & JOHN M. OHLE, NAT’L GAY & LESBIAN TASK FORCE POLICY INST., *TRANSITIONING OUR SHELTERS: A GUIDE TO MAKING HOMELESS SHELTERS SAFE FOR TRANSGENDER PEOPLE 1* (2003).

106. Jarrett Murphy, *Wounded Pride: LGBT Kids Say City-Funded Shelter for the Homeless Breaks Its Covenant*, VILLAGE VOICE, Apr. 26, 2005, at 2.

107. MOTTET & OHLE, *supra* note 105, at 6.

108. Murphy, *supra* note 106, at 21.

are directly homophobic themselves, and we see staff members failing to intervene to stop homophobia among other residents.”¹⁰⁹

Despite or perhaps because of this targeted abuse, transgender homeless people across the United States “are denied access to shelters because of their gender or are placed in inappropriate housing based on social service providers’ perceptions or ignorance.”¹¹⁰ Even services that cater to the needs of LGB homeless people often ostracize transgender individuals and single them out for mistreatment.¹¹¹ This mistreatment can easily cross into the realm of violent abuse. In just one example, a transgender shelter resident reported that “the staff psychologist refused to call her by her girl name, and the job counselor mocked her feminine appearance. The other residents cornered her, robbed her, and threw things at her while she slept.”¹¹² The staff ignored all these acts of violence.¹¹³

A familiar pattern to homeless LGBT youth, particularly transgender youth, then, seems to be one of making a choice between facing heterosexist violence on the streets or facing in the shelter system. This dangerous choice too often shapes the lives of homeless LGBT youth who must find ways to survive on their own, without parental support.

D. Survival Crimes

Homelessness generally is treated as a series of punishable crimes, rather than a deplorable societal injustice that must be addressed structurally.¹¹⁴ Similarly, many actions that LGBT homeless youth take to ensure their survival are considered crimes. LGBT homeless youth are disproportionately affected by laws that target their resilient attempts to survive in an overtly hostile climate. These “survival crimes” are legally punishable rather than being treated as symptoms of the victimization that caused homelessness and the survival that necessitated the action to begin with.¹¹⁵

Homeless youth are frequently arrested for the theft of such essentials as food and clothing, as well as for trespassing in abandoned

109. *Id.*

110. RAY, *supra* note 1, at 59.

111. HCH CLINICIANS’ NETWORK, CROSSING TO SAFETY: TRANS HEALTH AND HOMELESSNESS 2 (2004).

112. Murphy, *supra* note 106, at 21.

113. *Id.*

114. RAY, *supra* note 1, at 71.

115. Alecia Humphrey, *The Criminalization of Survival Attempts: Locking Up Female Runaways and Other Status Offenders*, 15 HASTINGS WOMEN’S L.J. 165, 178 (2004).

buildings.¹¹⁶ These actions are undertaken with the intent of surviving while facing hunger, unsheltered weather, and the disdainful treatment and inability to get a job resulting from these conditions. However, they are treated as criminal actions without regard to homeless youths' circumstances.

Survival crimes are not limited in scope to theft and trespassing, however. In order to get by from day to day, many homeless youth engage in sex work. Prostitution is disproportionately a survival crime of LGBT youth due to the generally harsher conditions LGBT homeless youth face compared with their non-LGBT homeless peers.¹¹⁷ Homeless LGBT youth often have little other recourse to surviving than prostitution due to a lack of alternatives through which they can receive financial and emotional support.¹¹⁸ Approximately two out of every three adolescent male prostitutes are gay.¹¹⁹ Transgender homeless youth have even greater rates of survival-based prostitution: they are approximately three times more likely than their nontransgender peers to have survival sex.¹²⁰

These devastating statistics and their underlying realities were the subject of a report carried out during the term of former New York City Mayor Rudolph Giuliani.¹²¹ The report also revealed that over one in every three homeless youth acknowledged having survival sex, while half of all homeless youth thought it was likely or very likely that they would become HIV positive.¹²²

While the publication of these findings may not have seemed appropriate politically, LGBT homeless youth do not need government reports to publicize their experiences with prostitution. For example, Brian Murray, a 22-year-old who has been engaging in sex work due to his homelessness since he was 15, said in an interview with the *International Herald Tribune*, "You've got to do what you've got to do to survive."¹²³

Many homeless LGBT youth perform sex work for either a place to stay or for money.¹²⁴ As one homeless 19-year-old African-American

116. CRAY ET AL., *supra* note 16, at 14-16.

117. Martin, *supra* note 15, at 177.

118. *Id.*

119. *Id.*

120. CRAY ET AL., *supra* note 16, at 15.

121. The findings of this report were allegedly suppressed for a year after the mayor's office commissioned it. David Kihara, *Ask, Don't Tell: Giuliani's Suppressed Report on Homeless Youth*, VILLAGE VOICE, Aug. 18-24, 1999.

122. *Id.*

123. A. Jacobs, *Young, Gay, and Homeless with few Places to Turn*, INT'L HERALD TRIB., June 28, 2004 at 2.

124. RAY, *supra* note 1, at 55.

transgender youth living in Detroit said regarding prostitution: “I really had to. I had no money. My boyfriend did it. . . . I thought about it for a long-ass time. And I was on hormones and I was depressed, too, and I had no money in my pocket. I was stuck. I put money in my pocket.”¹²⁵ It is essential to remember that many of these young people are just coming out and only beginning to have sexual experiences. Some “began hustling as a way to earn easy money, and many reported that they were curious about the sexual experiences.”¹²⁶ However, one LGBT homeless youth commented that “after [the curiosity] goes away, it’s just about money.”¹²⁷

Indeed, homeless LGBT youth, too young or otherwise unable to find traditional or more stable employment, often have no choice but to turn to prostitution as survival sex. This and other “crimes” are at once necessary for the survival of LGBT youth and also leave them more vulnerable to a juvenile and criminal justice systems that are already prone to targeting homeless LGBT young people for arrest and abuse.

E. Juvenile and Criminal Justice Systems

Survival crimes such as theft, trespassing, and prostitution are not the only aspects of LGBT homeless youths’ lives that are criminalized and punished. Homeless LGBT young people are often targeted under the guise of enforcing “quality of life” regulations, such as “public indecency,” “intent to solicit,” “lewd conduct,” and “loitering.”¹²⁸ (The irony of the lack of concern for homeless youths’ quality of life in this enforcement should be noted.) These regulations are leveled against homeless youth in discriminatory patterns against LGBT youth of color and transgender youth in particular.¹²⁹ Youth of color, even those who are not LGBT, are disproportionately targeted by the juvenile and criminal justice systems; when these youth are also LGBT, their vulnerability to discrimination increases.¹³⁰

Homeless transgender youth are especially targeted by ordinances that encourage arrests for “false personation.” For example, a youth can be charged with false personation in New York if he or she “knowingly misrepresents his or her actual name, date of birth or address to a police

125. *Id.* at 56.

126. *Id.*

127. Maitra, *supra* note 65, at 11.

128. JOEY L. MOGUL, ANDREA J. RITCHIE & KAY WHITLOCK, QUEER (IN)JUSTICE: THE CRIMINALIZATION OF LGBT PEOPLE IN THE UNITED STATES 53 (Michael Bronski ed., 2011).

129. AMNESTY INT’L STAFF, STONE WALLED: POLICE ABUSE AND MISCONDUCT AGAINST LESBIAN, GAY, BISEXUAL AND TRANSGENDER PEOPLE IN THE U.S. 52 (2005).

130. *Id.*

officer or a peace officer with the intent to prevent such [person] from ascertaining such information.”¹³¹ Transgender individuals’ legal name is often not the person’s chosen name. Telling a cop their preferred name is being honest, as well as safe; if a given name does not match an individual’s gender presentation, that person is outing themselves to a representative of juvenile and criminal justice systems that are openly hostile to transgender people.¹³² However, if an officer discovers that the person is transgender and has a different legal birth name, the officer can arrest and charge transgender individuals with false personation.

Such minefields that homeless LGBT youth must navigate in order to escape the persecution of correctional facilities are too often unavoidable.¹³³ LGBT youth are treated poorly within the juvenile and criminal justice systems, and their experiences in these systems only make it more likely that they will remain homeless for more extended periods of time.¹³⁴ After emerging from the juvenile and criminal justice systems, they discover that stable housing is even more difficult to find than it was before incarceration.¹³⁵

While in these systems, LGBT youth experience abuse that rivals and even exceeds the levels of violence they endure on the streets. As one example, a young gay man in the juvenile justice system reported being teased by other youth who told him not to act so “gay.”¹³⁶ Another young gay man reported, “The staff think that if a youth is gay, they want to have sex with all of the other boys, so they did not protect me from unwanted sexual advances.”¹³⁷

Such instances of staff ignoring the sexual assault and rape of gay inmates are not unfamiliar to transgender youth in the juvenile and criminal justice systems. One transgender youth elaborated, “Most people [in the juvenile justice system] are stupid. They treat me like I’m not human. They call me ‘faggot’ and tell me I have no life. [I am treated] like trash, like an animal.”¹³⁸ For another example: “One

131. N.Y. PENAL LAW § 190.23 (McKinney 2014); *see also In re Travis S.*, 96 N.Y.2d 818, 819 (2001).

132. AMNESTY INT’L STAFF, *supra* note 129, at 26.

133. FEINSTEIN, *supra* note 8, at 18-20.

134. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 147 (2012).

135. *Id.*

136. FEINSTEIN, *supra* note 8, at 33.

137. RUBY ESTRADA & JODY MARKSAMER, LAMBDA LEGAL AND NATIONAL CENTER FOR LESBIAN RIGHTS, *THE LEGAL RIGHTS OF YOUNG PEOPLE IN STATE CUSTODY: WHAT CHILD WELFARE AND JUVENILE JUSTICE PROFESSIONALS NEED TO KNOW WHEN WORKING WITH LGBT YOUTH* 6 (2006).

138. FEINSTEIN, *supra* note 8, at 32-33.

transgendered girl told of a situation in which one boy hit her in the head while others pulled her hair. There were no staff people around, and so when she told a staff person of the incident, the staff person said there was nothing she could do.”¹³⁹

This abusive treatment is the norm rather than the exception for LGBT youth in the juvenile and criminal justice systems.¹⁴⁰ The traumas that began in the home and continued in the streets are only intensified, representing another threat to the health, safety, and very survival of LGBT homeless youth.

F. Health and Health Care

Given the vast and constant threats to their emotional and physical well-being, it is hardly surprising that homeless LGBT youth are particularly prone to substance use and abuse as a coping strategy.¹⁴¹ Data collected across eight cities showed that 42% of LGBT homeless youths binge drink, compared with 27% of non-LGBT homeless youths.¹⁴² LGBT homeless youth are also much less likely to be optimistic about remaining HIV negative.¹⁴³ This fear is not mitigated by reality. In fact, despite having higher rates of HIV infection than non-LGBT homeless youth, LGBT homeless youth are more likely to report being unable to access testing and treatment for sexually transmitted infections.¹⁴⁴

Problems of access impact the health of transgender youth with particular intensity. Homeless transgender youth are much less likely than their LGB peers and non-LGBT peers alike to receive adequate health care—both doctor visits unrelated to their transgenderism and transgender-specific hormone treatment.¹⁴⁵ This is particularly troubling considering the fact that a mere 9% of all homeless youths have access to any mental health services.¹⁴⁶ This lack of access to necessary health care is especially disturbing in light of the immense amounts of trauma that all homeless youth (particularly LGBT homeless youth) experience.

139. *Id.* at 33.

140. *Id.* at 32-34.

141. Shelley Mallett, Doreen Rosenthal & Deborah Keys. *Young People, Drug Use and Family Conflict: Pathways into Homelessness*, 28 J. ADOLESCENCE 185, 186-99 (2005).

142. James M. Van Leeuwen, *Lesbian, Gay, and Bisexual Homeless Youth: An Eight-City Public Health Perspective*, 85 CHILD WELFARE 151, 161 (2005).

143. Kihara, *supra* note 121.

144. RABINOVITZ ET AL., *supra* note 101, at 56.

145. RAY, *supra* note 1, at 60.

146. Natasha Slesnick & Jillian Prestopnik, *Dual and Multiple Diagnosis Among Substance Using Runaway Youth*, 31 AM. J. DRUG & ALCOHOL ABUSE 179, 193 (2005).

As a result of the abuses they endure and the lack of treatment they receive, homeless LGBT youth are much more prone to suicide than their non-LGBT peers. Homeless LGBT youth deal with the expected adolescent anxiety caused by developing identities combined with traumas of parental rejection and homelessness. The grief caused by rejection results in dangerously low levels of hope and high rates of suicidal thoughts, attempts, and completions in LGBT homeless youth.¹⁴⁷ Fifty-one percent of transgender youths who have experienced family rejection have attempted suicide.¹⁴⁸ This statistic hammers home the brutal consequences of parental rejection and homelessness for LGBT youth.

It is absolutely vital to bear in mind, however, that LGBT youths' particularly high suicide rate has nothing to do with the inherent constitution of LGBT young people. Rather, the primary cause of these attempts and suicides is "a society that discriminates against and stigmatizes" LGBT people, especially LGBT young people.¹⁴⁹ This discrimination and stigmatization takes on even more acute meanings for homeless youth who live their lives at the mercy of the external forces and hardships discussed above. Indeed, "these youths are not depressed as a natural function of their sexual orientation, but because of the consequences of living in a society that does not treat them fairly or equally."¹⁵⁰

G. Education

It may be easy to forget when discussing the devastating abuses that homeless LGBT youth endure that many of these young people, had they had accepting parents, would be in school. As it is, thousands of LGBT youths across the country receive a different kind of education—one that is acquired on the streets and in shelters, rather than schools.¹⁵¹ Twenty-nine percent of all homeless youths need extra help returning to school, over half of whom do not receive the necessary assistance.¹⁵² For LGBT

147. Whitbeck, *supra* note 96, at 334.

148. JAMIE M. GRANT, LISA A. MOTTET, JUSTIN TANIS, JACK HARRISON, JODY L. HERMAN & MARA KEISLING, NAT'L CTR. FOR TRANSGENDER EQUALITY, *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 34* (2011); Van Leeuwen, *supra* note 142, at 157.

149. PAUL GIBSON, REPORT OF THE SECRETARY'S TASK FORCE ON YOUTH SUICIDE, *GAY MALE AND LESBIAN YOUTH SUICIDE* 3, 115 (1989).

150. RAY, *supra* note 1, at 44.

151. Rabinovitz, *supra* note 101, at 51.

152. *Id.*

homeless youth, the rates of both needing and not receiving help are doubled.^{153 154}

H. Immigration

The problems of homelessness are compounded for LGBT young people who are undocumented immigrants. Immigrant youth who lack documentation or IDs can face the dangers of lacking access to shelters, services, or education.¹⁵⁵ Access to loans or jobs is also a problem for youth without documentation.¹⁵⁶ Even if homeless LGBT youth are in the country legally, they may be unable to access documents needed to unlock what little help is available to them if their unsupportive parents have their documentation.

Staying in the country legally can become impossible for youth who find themselves on the streets. As Nicholas Ray notes:

Runaway or throwaway LGBT youth who are non-citizen . . . residents may face problems qualifying to stay in the United States after many years if a family member who is qualified to sponsor them refuses to do so due to objections to their declared sexual orientation or gender identity. Many may face dangerous or even lethal consequences if they are forced to return to a nation that might no more than nominally be considered home.¹⁵⁷

When addressing the needs of homeless LGBT youth, attention must be paid to their immigration status, which is physically invisible to those attempting to provide the young person with various services.

IV. RESILIENCY IN THE FACE OF HARDSHIP

Although LGBT homeless youth lack access to even the most basic services and are targeted by other youth and the juvenile and criminal justice systems, it is important not to assume that they are incapable of succeeding. As one homeless young person noted, "I've been out of my parents' house since I was 14 . . . just problems at home . . . I held a place for three years paying rent . . . I don't like to use a lot of support. I like to do it myself."¹⁵⁸ Despite such an attitude of self-sufficiency, many LGBT homeless youth also often acknowledge that they can use the few

153. *Id.* at 52.

154. *Id.* at 54.

155. RAY, *supra* note 1, at 35.

156. *Id.*

157. *Id.*

158. Pamela Miller, Pete Donahue, Dave Este & Martin Hofer, *Experiences of Being Homeless or at Risk of Being Homeless Among Canadian Youths*, 39 *ADOLESCENCE* 735, 741 (2004).

resources at their disposal to make life more livable. Danny, a young gay man living in a shelter in the western United States, recalled that he would “go to the library, [I’d] get on Craigslist and Manhunt and Gay.com, just to find somewhere to sleep for the night, not for money. I slept with them so I could have a place to stay.”¹⁵⁹ Danny thus utilized LGBT networks in order to get by, demonstrating his bold resilience in the face of homelessness.

Indeed, “resilient, emerging” characteristics of strength and resourcefulness in LGBT homeless youth, spurred by their fierce determination to survive, often increases the self-confidence that was torn down in heterosexist, abusive homes.¹⁶⁰ “Street competencies” like Danny’s and that of the transgender youth quoted above regarding prostitution are both attempts to survive and signs of resilience, accompanied by a defiant “I’ll show you” attitude toward those who persecuted them.¹⁶¹

Even when engaging in otherwise risky behaviors, LGBT homeless youth find ways to increase their own and others’ safety. By “exchanging sex in a safe manner, avoiding arrest, building relationships with clients, and securing untainted drugs and injection paraphernalia,” LGBT homeless youth form communities of trust and mutual support.¹⁶² Despite the relentless abuse they experience from society, LGBT homeless youth carve lives for themselves against all odds. As one youth reported, “What I do is set daily goals. Just minor things I want to accomplish that day. I set about ten major goals for the year and then I have a blueprint, an outline, for five years or ten years down the road of where I want to be.”¹⁶³

Filing for child support can dramatically assist many LGBT homeless young people in reaching these goals and traveling down the roads they envision for themselves.

V. PETITIONING PARENTS FOR CHILD SUPPORT

Child support is usually considered only in the context of payments made by one parent to another. However, child support payments can be

159. RAY, *supra* note 1, at 55.

160. Nancy R. Williams, Elizabeth W. Lindsey, P. David Kurtz & Sara Jarvis, *From Trauma to Resiliency: Lessons from Former Runaway and Homeless Youth*, 4 J. YOUTH STUDIES 233, 242 (2001).

161. *Id.*

162. Stephen E. Lankenau, Michael C. Clatts, Dorinda Welle, Lloyd A. Goldsamt & Marya Vioist Gwadz, *Street Careers: Homelessness, Drug Use, and Sex Work Among Young Men Who Have Sex with Men (YMSM)*, 16 INT’L J. DRUG POL’Y 10, 17 (2005).

163. Miller, *supra* note 158, at 746.

made to a child after the child becomes estranged from one or both parents. In such a case, the child's eligibility to receive child support is largely contingent upon whether the estrangement results in the child's emancipation. When a child is deemed emancipated, the child is no longer eligible to receive child support from his or her parent. There are several ways a child may become emancipated, as discussed below. In New York, parents are responsible for providing for unemancipated children and young adults until the children turn 21. As the Court reminded us in *Thomas B. v. Lydia D.*, "[t]he concept of parental financial responsibility has its roots in the common law. Initially limited to paternal support to provide 'necessaries' for a child, the support obligation was later expanded to include both parents."¹⁶⁴ Even in cases in which children have left the home of their parent(s) before reaching the age of 21, parents can be obliged to pay child support to their child. As long as youth leave the home with "good reason" and have not refused to follow "reasonable" requests from and demands by parents, they can be entitled to receive child support.¹⁶⁵

Many LGBT youth under the age of 21 who leave their homes—whether because they were told to leave or because they ran away due to parental intolerance of their LGBT identities—are entitled to receive child support payments from their parents. Leaving the home and/or becoming estranged from parents does not in itself constitute either emancipation or constructive emancipation. If a person under the age of 21 is not found by a court to be emancipated, that person is entitled to the benefits of child support.

It is my contention that many LGBT youth who are homeless because of nonsupportive parents are entitled to receive child support. Case law suggests that it is very difficult for young people to constructively emancipate themselves.¹⁶⁶ We live in an age of awareness that "conversion therapy"—in which LGBT people are attempted to be coerced into "becoming" straight, gender conforming, or cisgender—is traumatic and damaging. Given this societal awareness, courts cannot defensibly claim that parental demands for children to be straight or cisgender are reasonable. If this demand (implicit or explicit) is unreasonable, children can disobey or refuse their parents' wishes without emancipating themselves. An abundance of available

164. *Thomas B. v. Lydia D.*, 69 A.D.3d 24 (N.Y. App. Div. 2009).

165. *See generally* *Roe v. Doe*, 29 N.Y.2d 188 (1971); *Bogin v. Goodrich*, 265 A.D.2d 779 (3d Dep't 1999); *Alice C. v. Bernard G.C.*, 193 A.D.2d 97 (2d Dep't 1993).

166. *See, e.g.*, *Gold v. Fisher*, 59 A.D.3d 443 (2d Dep't 2009); *Bates v. Bates*, 310 N.Y.S.2d 26 (fam-ct 1970).

information (discussed above) supports the face that nonsupportive homes do tremendous damage to LGBT adolescents. Thus, it is likely that most LGBT youth who were kicked out of or left their homes due to their LGBT identities will be deemed unemancipated, and therefore, eligible for child support.

This extra support cannot be received by all LGBT youth (as discussed below), but it can tremendously help those who can and choose to seek it. Many homeless LGBT youth survive and even thrive without their parents due to their own resilience, but if they are willing to demand child support, the extra assistance could keep them from resorting to risky means of survival. Though many homeless LGBT youth may understandably recoil at the idea of petitioning their parents for child support, those who can and choose to take advantage of this option can greatly increase their safety and health.

Jurisdictional rules and regulations differ governing child support across the country. In discussing child support in the context of homeless LGBT youth, this Article will continue its focus on New York, highlighting case law and statutes relevant to New York as an example. This is not to say that child support cannot be a resource to children in other states; however, it is necessary to become familiar with the child support laws of a particular state to confirm a child's eligibility to receive child support in that specific state.

If and when homeless LGBT young people choose to petition their parents for child support in New York, they may be appointed an attorney by the state.¹⁶⁷ Once appointed an attorney, young people can choose to file for child support against one or both parents. As discussed below, the calculations to determine appropriate levels of support will take into account the combined income of both parents and determine individual payments proportionally.

The Child Support Standards Act (also discussed below) does not provide the meaning of noncustodial parent (the parent who is primarily responsible for child support payments).¹⁶⁸ However, the court in *Baraby v. Baraby* has determined that in the case of a youth living with both parents equally, the noncustodial parent will be determined by the courts based on which parent is best positioned to support the child.¹⁶⁹ From

167. *Child and/or Spousal Support: Frequently Asked Questions: Do the Parties Need To Be Represented by Lawyers?*, N.Y.C. FAM. CT., http://www.nycourts.gov/courts/nyc/family/faqs_support.shtml#su3 (last visited Oct. 17, 2014) [hereinafter *Do the Parties Need To Be Represented by Lawyers?*].

168. N.Y. FAM. CT. ACT § 416 (McKinney 2009).

169. *Baraby v. Baraby*, 250 A.D.2d 201, 204 (3d Dep't 1998).

this, one can deduce that if the child had lived equally with both parents and is currently living with neither parent, similar procedures will be taken to determine the noncustodial parent.

Homeless LGBT youth can file for support directly or through an external agency if they are already receiving public assistance. For access to the child support forms for New York, attorneys should visit the New York Unified Court System website.¹⁷⁰ As discussed below, being a beneficiary of public assistance does not preclude a child from receiving child support payments from their parents. Similarly, benefitting a young person indirectly, if a young person in foster care is a ward of the state, the state can file for child support payments to be made to the state on behalf of the child.¹⁷¹ If the young person is homeless, however, and direct payments are considered appropriate, the person may not have an address or P.O. box through which to receive it. In these cases, an attorney may help a homeless LGBT youth client to establish a means through which to receive payments.

VI. OVERVIEW OF THE CHILD SUPPORT STANDARDS ACT (1989)

Before 1989, New York had awarded child support orders on the basis of the court's discretion. Beginning with the implementation of the Child Support Standards Act (CSSA) in 1989, however, New York altered its laws governing child support to comply with federal requirements regarding the calculations of child support orders. Federal standards dictated that each state base its child support orders on a set formula to avoid unfair rulings; each state was to determine its own specific formula, and the CSSA was New York's introductory child support formula.¹⁷² Generally speaking, the CSSA defines child support in New York as a sum of money that is paid for the "care, maintenance, and education of any unemancipated child under the age of twenty-one years."¹⁷³

This legislation reflects the bifurcation of the New York State courts regarding family matters. The guidelines that the CSSA established can be found in the mirror statutes of the Domestic Relations Law § 240 (DRL) and the Family Court Act § 413 (FCA). The former is utilized in the Supreme Court; the latter is used in Family Court.

170. *Child Support Forms*, N.Y.S. UNIFIED CT. SYS., <http://www.nycourts.gov/forms/familycourt/childsupport.shtml> (last visited Nov. 11, 2014).

171. N.Y. SOC. SERV. LAW § 111-i (McKinney 2010).

172. 42 U.S.C.A. § 666 (West).

173. N.Y. FAM. CT. ACT § 413(1)(b)(2) (McKinney 2011).

Together, the DRL and FCA set forth the formulae with which to calculate the appropriate amounts of child support parents can owe. Additionally, the DRL and FCA set forth what other benefits parents can be obligated to pay, including health care, housing, and education costs.

VII. STATUTES IN BRIEF

When discussing potential child support payments to homeless LGBT youth, it is important to be conversant with the relevant statutes pertaining to what child support must and can entail. For the purposes of this Article, I will provide a brief overview of the calculations used to determine child support payments, rules regarding situations in which a child is already receiving public assistance, and rules regarding the provision of housing and health care for an eligible child in New York.

A. Child Support Calculation

Both FCA § 413 and DRL § 240 outline the means for determining the basic and additional elements of child support payments. Basic payments are split into two calculations, separated by whether the combined parental income is over \$136,000 or below this level.¹⁷⁴ Both parents' incomes are calculated based on the most recent federal tax returns, as well as compensatory calculations to take into account investment income and any additional income.¹⁷⁵ Deductions such as public assistance and supplemental security income are taken into account.¹⁷⁶ However, if it is found that parents have reduced their income in anticipation of child support proceedings, the court is empowered to impute additional income to the parents based on their former income or resources.¹⁷⁷

If after these calculations, the combined parental income is under \$136,000, basic child support is owed at specified percentages of that income, such as 17% for one child and 25% for two children.¹⁷⁸ If the combined parental income amounts to more than \$136,000, basic percentages are calculated separately.¹⁷⁹ Add-ons to the basic child

174. N.Y. DOM. REL. LAW § 240 1-b(c)(2), (3). Effective January 31, 2014, and every two years thereafter, this \$136,000 limit will increase based on changes in the Consumer Price Index. See *Form 5-2 (Paternity Petition)*, N.Y. ST. CTS., <http://www.nycourts.gov/forms/familycourt/pdfs/5-2.pdf> (last visited Nov. 11, 2014).

175. N.Y. DOM. REL. LAW § 2401-b(b)(5).

176. *Id.* § 2401-b(b)(5)(vii).

177. *Id.* § 2401-b(b)(5)(v).

178. *Id.* § 2401-b(c)(2).

179. *Id.* § 2401-b(c)(3). These percentages are based on the guidelines found in § 2401-b(f) or § 2401-b(b)(3).

support payments include day care and health care expenses. Medical expenses—covered in the same proportion as each parent’s income is to the combined parental income—include health insurance, nonreimbursed medical expenses, and any public assistance medical coverage.¹⁸⁰ This legislation deems these medical expenses are deemed as “reasonable” as long as the expenses do not exceed 5% of the paying parent’s gross income.¹⁸¹ Additionally, educational expenses, including higher education, can be ordered as part of mandated child support.¹⁸²

B. Public Assistance

The obligation to pay child support to unemancipated children under the age of 21 exists even in situations in which the child is the recipient of public assistance or welfare.¹⁸³ Significantly for homeless LGBT youth who may seek support from the state in meeting their needs, parents are still responsible for these youth. According to the relevant statute, “[i]n its discretion, the court may require any [parent] to contribute a fair and reasonable sum for the support of such [child].”¹⁸⁴ Therefore, any child who is receiving public assistance may still be assisted by mandated child support payments from their parents.

C. Housing and Health Care

The FCA also reserves the court’s right to compel parents to “include in the requirements for an order from support the providing of necessary shelter, food, clothing, care, medical attention, expenses of confinement, the expense of education . . . and other proper and reasonable expenses.”¹⁸⁵ “Necessary shelter” leaves the door open for courts to mandate that parents provide their homeless LGBT children with housing at the parents’ expense. This kind of support—not to mention the support of providing food and clothing—can transform a young person’s state of homelessness into a state of living in a safe, stable space.

180. N.Y. DOM. REL. LAW § 240 1(d); N.Y. FAM. CT. ACT § 413(1)(c)(5).

181. N.Y. FAM. CT. ACT § 413(1)(c)(5) (McKinney 2011).

182. N.Y. DOM. REL. LAW § 240 1-b(c)(7).

183. N.Y. FAM. CT. ACT § 413(1)(a) (McKinney 2011).

184. *Id.* § 415.

185. *Id.* § 416 (a).

In addition to a lack of safer and stable housing, a lack of medical attention also plagues LGBT homeless youth.¹⁸⁶ As discussed above, a particularly powerful problem for homeless LGBT youth is a pervasive lack of health care. Fortunately, where the child is not presently covered by health insurance benefits, the court can mandate one of three actions by parents.¹⁸⁷ Firstly, if only one parent has health insurance, this parent must extend those health benefits to an eligible child.¹⁸⁸ Secondly, if both parents have health insurance, either or both parents must extend coverage to an eligible child.¹⁸⁹ Lastly, if neither parent has health insurance, the custodial parent must apply for the state's child health insurance plan.¹⁹⁰ All of these provisions ensure that, when a child successfully files for child support, they will become eligible for health insurance benefits.

VIII. AGE OF MAJORITY

It should be noted that, amongst all the jurisdictional differences in child support legislation, one of the most significant is New York's notably high age of majority set at 21. (The age of majority is the age at which young people automatically become ineligible for child support.) The District of Columbia (D.C.), Mississippi, Puerto Rico, and New York are the only states with 21 as the age of majority for the purposes of child support.¹⁹¹ However, Georgia, Minnesota, and North Carolina—with the general age of majority being 18—allow for young people to be eligible for child support until age 20 if they are enrolled in school.¹⁹² Similarly, Missouri, Oregon, and Vermont have a usual age of majority of 18 with the possibility of extension due to school enrollment until age 21.¹⁹³ The Virgin Islands extend the 18-year-old age of majority to 22 due to school enrollment, and Pennsylvania and New Hampshire allow nonspecified

186. The Affordable Care Act, signed into law in March 2010, will undoubtedly impact health care accessibility for homeless LGBT youth. How this will effect these youth is yet to be seen. 42 U.S.C. § 18001 (2012).

187. N.Y. FAM. CT. ACT § 416 (e)(2) (McKinney 2011).

188. *Id.* § 416 (e)(2)(i).

189. *Id.* § 416 (e)(2)(ii).

190. *Id.* § 416 (e)(2)(iii).

191. D.C. CODE ANN. § 46-101 (1976); MISS. CODE ANN. § 93-11-65(8)(a); 31 L.P.R.A. 971; N.Y. FAM. CT. § 413(1)(a) (McKinney 2011).

192. GA. CODE ANN. § 39-1-1, 19-6-15(e) (West 2014); MINN. STAT. § 518A.26, subdiv. 5; N.C. GEN. STAT. § 50-13.4. (West 2014).

193. MO. REV. STAT. § 452.340; OR. REV. STAT. 109.510; VT. STAT. ANN. tit. 1, § 173.

extensions to be made due to schooling. No state has an age of majority younger than 18.¹⁹⁴

The fact that New York laws obligate parents to carry out their parental responsibilities until their children reach the age of 21 distinguishes parents of children living in New York from parents in most other states. This relatively high age of majority has enormous implications for homeless LGBT youth: many of these youth are between the ages of 18 and 21 and would for this reason be ineligible for child support in most other states, but remain eligible in New York. This potentially opens the doors for thousands more homeless LGBT youth to file successfully for child support. It is essential that attorneys based in New York (as well as in D.C., Mississippi, and Puerto Rico) know about this high age of majority in order to help young people obtain child support that they would be ineligible for in other states.

IX. CONCEPTS OF EMANCIPATION AND CONSTRUCTIVE EMANCIPATION

The termination of the parental obligation to support their child or children can occur for several reasons. Firstly, when a young person reaches the age of 21 in New York, parental obligation legally ceases.¹⁹⁵ Secondly, if a child is adopted by another parent, the birth parents' obligation ends.¹⁹⁶ Thirdly, if a biological parent voluntarily surrenders a child born out of wedlock to a social services official, the biological parent is no longer obligated to support the child.¹⁹⁷

Lastly, and most significant here, if a child is emancipated, this brings about the termination of parents' obligation to support that child.¹⁹⁸ With caveats, children who support themselves or get married can be found to be emancipated.¹⁹⁹ As discussed below, however, a child can be working (even full-time) and not be considered emancipated.²⁰⁰ Similarly, even if a child is married, that fact in itself does not necessarily signal the end of parental support obligations.²⁰¹

194. VI. CODE ANN. tit. 16, § 341; PA. CONS. STAT. tit. 23, § 4321(2); N.H. REV. STAT. ANN. § 461-A:14(IV).

195. *Do the Parties Need To Be Represented by Lawyers?*, *supra* note 167.

196. *Betz v. Horr*, 276 N.Y. 83 (1937); *Harvey-Cook v. Neill*, 118 A.D.2d 109 (N.Y. App. Div. 1986).

197. N.Y. SOC. SERV. LAW § 398(5)(a) (McKinney 2012).

198. *Alice C. v. Bernard G.C.*, 602 N.Y.S.2d 623, 628 (N.Y. App. Div. 1993).

199. *Do the Parties Need To Be Represented by Lawyers?*, *supra* note 167.

200. *Drumm v. Drumm*, 88 A.D.3d 1110, 1113 (N.Y. App. Div. 2011); *Thomas B. v. Lydia D.*, 69 A.D.3d 24, 30-32 (N.Y. App. Div. 2009); *Henry v. Boyd*, 99 A.D.2d 382 (1984).

201. *Henry*, 99 A.D.2d 382 at 387.

A child can also experience constructive emancipation, however. Constructive emancipation refers to the emancipation of a young person who is found to have abandoned their home without good cause.²⁰² In order to prove that a young person has been constructively emancipated, however, it must be determined that they left the home for the sole purpose of avoiding reasonable requests and demands made by parents.²⁰³ If a young person is found to have left the home *with* good cause, however, they are not considered to have abandoned their parents.²⁰⁴ Without this abandonment, a child is not constructively emancipated. If they are not emancipated or constructively emancipated, they are entitled to receive child support.

Constructive emancipation cannot reasonably be understood as having occurred when LGBT youth leave their parents' homes due to their parents' oppression and nonsupport. Even LGBT youth who develop lives and survive on their own can still be considered unemancipated by case law that entitles youth to leave parents who make unreasonable demands on their children.²⁰⁵

X. CASE LAW OF CHILDREN PETITIONING PARENTS FOR CHILD SUPPORT

The question of whether a homeless LGBT young person is emancipated is crucial to the question of whether they will be eligible for child support. As discussed above, parents in New York are generally responsible for their children until the children turn 21. However, upon the child's emancipation—constructive or otherwise—parental obligation to support the child is terminated. According to the court in *Bogin v. Goodrich*,²⁰⁶ “Children are deemed emancipated if they attain economic independence through employment, entry into military service or marriage, and further, may be deemed constructively emancipated if, without cause, they withdraw from parental supervision and control.”²⁰⁷

If LGBT homeless youth achieve constructive emancipation, they are not eligible to receive child support. The case law in New York regarding emancipation and constructive emancipation overwhelmingly suggest, however, that many LGBT youth who are homeless and have

202. *Roe v. Doe*, 272 N.E.2d 567, 567 (N.Y. 1971).

203. *Bogin v. Goodrich*, 696 N.Y.S.2d 317, 318 (N.Y. App. Div. 1999).

204. *See, e.g., Thomas B.*, 69 A.D.3d 24; *Drago v. Drago*, 138 A.D.2d 704 (2d Dep't 1988).

205. *Drago*, 138 A.D.2d 704.

206. 696 N.Y.S.2d at 318.

207. 265 A.D.2d 779 (N.Y. App. Div. 1999).

fled nonsupportive homes will not be deemed to have abandoned their parents (thereby not becoming emancipated and remaining eligible for their parents' financial support).

A. *Emancipation/Constructive Emancipation Case Law*

There are circumstances—to be discussed below—in which children are deemed to have abandoned their parents without sufficient cause and are therefore considered emancipated and ineligible for child support. However, the court in *Bates v. Bates* determined that “[t]here is no presumption of emancipation; rather, so long as the child is a minor, the presumption is that he [or she] is not emancipated and the burden of proving emancipation of a minor by the parent is upon him [or her] who asserts and relies thereon.”²⁰⁸ This suggests the difficulty of children emancipating themselves. The public policy that enforces parental obligations to support their children until age 21 has been called “fundamental” by the court in *Gold v. Fisher*.²⁰⁹ It is easy, then, to infer that the courts have a powerful interest in ensuring that children are provided for unless they are demonstrably and completely independent from their parents.

This independence may emerge from being of employable age and abandoning one's parents. The court in *Kordes v. Kordes* made it clear that the doctrine of constructive emancipation means that the child can terminate entitlement to child support in certain situations.²¹⁰ One such situation in which a youth can constructively emancipate themselves is in the circumstance in which “a child of employable age . . . actively abandons the noncustodial parent by refusing all contact and visitation.”²¹¹ This may seem like an intractable obstacle to petitioning for child support for homeless LGBT youth who left the home of their own accord. However, to be found responsible for abandoning a parent (thereby constructively emancipating), youth must be fully independent economically and/or deemed to have left the home and refuse visitation *without good cause*.

Firstly, in terms of economic independence, young people remain economically dependent as long as they are reliant on their parent or parents for at least some economic support.²¹² Examples of this dependence range from continuing to receive mail at their parents' house,

208. *Bates v. Bates*, 310 N.Y.S.2d 26, 31 (Fam. Ct. 1970).

209. 59 A.D.3d 443, 444 (N.Y. App. Div. 2009).

210. 70 A.D.3d 782 (2010).

211. *In re Alice C.*, 193 A.D.2d 97, 109 (N.Y. App. Div. 1993).

212. *Thomas B. v. Lydia D.*, 69 A.D.3d 24, 29-30 (N.Y. App. Div. 1 2009).

having a telephone line in the house, receiving food from parents, or being covered by parents' medical insurance.²¹³ As suggested by the example of receiving mail at a parents' home, these rules regarding economic in/dependence apply even when the child "is residing with neither of the [parents]."²¹⁴

As illustrated here, even though being of employable age makes young people eligible for emancipation, it is still difficult for young people to constructively emancipate themselves through employment alone. Even working full-time is not an inherent guarantee that a child will be found to be emancipated. In fact, according to the court in *Drumm*, working full time "falls short of establishing that [a young person] has achieved economic independence."²¹⁵ Without this economic independence, emancipation is exceedingly difficult to prove. Even getting married is not in itself a definitive determinant of emancipation. Though marriage does indeed push forward the likelihood of a young person's becoming emancipated, the "fact of marriage . . . is not such a change of circumstance which mandates termination of [the] statutory responsibility [of child support]."²¹⁶

Secondly, though economic independence is hard to achieve, it is possible for youth to constructively emancipate from their parents by means of abandonment even if they are not financially independent.²¹⁷ If a child or young person refuses all opportunities to have contact with a parent without good cause, the child or young person can be considered constructively emancipated.²¹⁸ The court in *Donnelly v. Donnelly* concurs, stating:

[A] parent's obligation to support a child until he or she reaches age 21 may be suspended where the child, although not financially self-sufficient, abandons the parent's home without sufficient cause and withdraws from the parent's control, refusing to comply with reasonable parental demands, under the doctrine of constructive emancipation.²¹⁹

213. *Id.* at 30.

214. *Id.*

215. *Drumm v. Drumm*, 88 A.D.3d 1110, 1113 (N.Y. App. Div. 2011).

216. *Henry v. Boyd*, 99 A.D.2d 382, 387 (N.Y. App. Div. 1984).

217. *See, e.g., Parker v. Stage*, 43 N.Y.2d 128 (1977) (holding that when an older child chooses to leave a parent's home against their parent's wishes and thereafter receives public assistance because of the child's financial instability, that child is nevertheless emancipated and thus the Department of Social Services cannot compel the parent to pay for the support of the child).

218. *Radin v. Radin*, 618 N.Y.S.2d 105, 106 (2d Dep't 1994).

219. 14 A.D.3d 811, 812 (N.Y. App. Div. 2005).

In this case, constructive abandonment was achieved without economic independence. Because the parental demands by which the young person was not abiding were found to be reasonable by the court, the youth was deemed to have abandoned the parents.²²⁰

Estrangement from parents, however, does not in itself constitute abandonment. As the court in *Thomas B.* ruled, “[T]he estrangement between [parent] and [child] does not relieve the [parent] of [their] support obligation.”²²¹ Intense disagreement and even disdain on behalf of the child toward the parent is insufficient to establish constructive emancipation. Similarly, unruly and disobedient behaviors are not by themselves enough to justify the termination of a parent’s support obligation. As the court in *In re Roe v. Doe* found, “delinquent behavior of itself, even if unexplained or persistent, does not generally carry with it the termination of the duty of a parent to support” their child.²²² Even if it is not clear to a parent why a young person is being disobedient or behaving in a way that earns parental disapproval, this behavior alone is not enough to constitute constructive emancipation.

In a related vein, the parents will be held responsible for the support of their child if the parents are the cause of a deteriorating relationship with their child. The court in *In re Alice C.* found, “[W]here it is the parent who causes a breakdown in communication with [their] child . . . the child will not be deemed to have abandoned the parent.”²²³ Many LGBT homeless youth could thus claim that the responsibility for the relationship deterioration and subsequent leaving of the home rests with their unsupportive parents. In such situations, case law supports the circumstances of LGBT homeless youth who certainly cannot be deemed responsible for communication breakdowns because of their LGBT identities.

This supposition has been upheld in *Dzierson v. Dzierson*, in which a gay youth refused to see his father due to his father’s rejection of the youth’s gay identity.²²⁴ Even though the son “refused to speak with [the father] and would not see him [the father was] not able to establish that there was abandonment of the father by the son.”²²⁵ Instead, evidence merely indicated reluctance on the part of the child to have a relationship with his father, not abandonment.²²⁶

220. *Id.*

221. *Thomas B. v. Lydia D.*, 69 A.D.3d 24, 110 (N.Y. App. Div. 1 2009).

222. 29 N.Y.2d 188, 193 (1971).

223. *In re Alice C.*, 193 A.D.2d 97, 109 (N.Y. App. Div. 1993).

224. *Dzierson v. Dzierson*, 661 N.Y.S.2d 779, 780 (Fam. Ct. 1997).

225. *Id.*

226. *Id.*

The relationship can be considered abandoned by the child, however, as in the case of *Donnelly*, which made it clear that a child must have sufficient reason to leave a parent.²²⁷ This sufficient cause cannot be found where a child is simply unwilling to follow a parent's rules when their rules are not "unreasonable, arbitrary or capricious."²²⁸

It seems clear, especially in *Dzierson*, that courts will continue to find it unreasonable for parents to expect their child to be straight or cisgender and make their parental preferences and prejudices plain in either explicit or implicit ways.²²⁹ In order to further explore this question of reasonability, the following Subpart will review standards of determining which potential demands are reasonable and which are not in the context of determining whether a child has become constructively emancipated. If it is found to be unreasonable that parental regulations, implicit or explicit, would force being straight, cisgender or gender conforming onto LGBT youth, then youth who leave parents because of this can be deemed unemancipated and eligible for child support.

B. Reasonable Demands?

Parental obligations to children are accompanied by young people's obligations to their parents. As discussed above, obedience to parents' demands and regulations is, within reason, expected of children. Children's refusal to follow parents' "reasonable wishes" can terminate a parents' duty to support their children.²³⁰ In *Parker v. Stage*, the court found that a father was not obligated to support his daughter even though she was not in a state of economic independence.²³¹ The daughter in this case wanted to leave her father's home to live with her boyfriend and child. Neither she nor her boyfriend were employed, and the daughter sought to support herself by receiving public assistance. She dropped out of school and left her home one day while her father was at work. Two weeks later, the father was able to locate his daughter with the help of the police. At that point, the daughter would reside with her father intermittently, disappearing for long periods of time. The father always accepted her back and supported her. He tried to help her return to school or maintain a job. The daughter did as she initially planned, and sought public assistance. This suit was brought by a public welfare official to compel the father to support his daughter who had become a

227. *Donnelly*, 14 A.D.3d 811, 812 (N.Y. App. Div. 2005).

228. *William O. v. Richard O.*, 262 A.D.2d 913, 915 (N.Y. App. Div. 1999).

229. 661 N.Y.S.2d at 780.

230. *Parker v. Stage*, 371 N.E.2d 513, 516 (N.Y. 1977).

231. *Id.* at 513-14.

public charge.²³² The court found that the daughter chose to leave, abandoning her father's support of her.²³³ He had only imposed "reasonable wishes" upon her, such as urging her to remain in school and maintain employment, and her decision not to follow them resulted in the termination of her father's support obligation.²³⁴

Similarly, in *Donnelly*, a daughter was constructively emancipated from her father.²³⁵ The court ruled that the daughter had forfeited her right to support, "[h]aving chosen to disregard her father's reasonable mandates and voluntarily abandon his home to avoid parental discipline and control."²³⁶ In this case, parental discipline and control were characterized by punishment of the daughter for sneaking her boyfriend into her room when no one was home, skipping school, violating curfew, and getting arrested.²³⁷ Her father's expectations for her behavior were considered reasonable, including his restrictions on her sexual activity in their house when no one else was home.²³⁸ The court did not deem reasonable any more expansive restrictions on her activities and dating preferences, striking an encouraging note for LGBT young people with nonsupportive parents.

In the limited ways cited above, some parental restrictions are deemed reasonable such that refusal to follow them constitutes constructive abandonment. Parents who actively encourage their child to connect with them and lead a productive life have also been found to impose legitimate, reasonable demands upon constructively emancipated youth.²³⁹

However, there are a plethora of demands parents could make on their children that would not lead to constructive emancipation if the children refused to obey them. In *Drago*, for example, "the father's demands that [the] daughter attend boarding school or join [the] military were not reasonable."²⁴⁰ In this case, the court determined that "the father [was] not relieved of his support obligation by excluding the child from his household because of her prior truancy and his belief that she will not abide by his strictures."²⁴¹ A parent cannot, then, reasonably expect a

232. *Id.* at 514.

233. *Id.* at 516.

234. *Id.*

235. *Jacobi v. Lewis*, 92 A.D.3d 1100 (N.Y. App. Div. 2012).

236. *Id.* at 1101.

237. *Id.*

238. *Id.*

239. *William O. v. Richard O.*, 262 A.D.2d 913, 914 (N.Y. App. Div. 1999).

240. 138 A.D.2d 704, 706 (2d Dep't 1988).

241. *Id.* at 706.

child to change his or her entire life—by attending boarding school or joining the military, for example—against the child’s will. If a child refuses to alter his or her life as the parents wish, as demonstrated in *Drago*, the child is still entitled to child support.

Decisions regarding which demands are reasonable and which are not fall largely upon judges’ discretion. In the case of LGBT homeless youth, this involves ruling on whether being LGBT could reasonably be considered undesirable by parents. If a court were somehow to find that a young person being LGBT is undesirable, then the court might rule that a parent’s heterosexist wishes were reasonable. Homeless LGBT youths’ eligibility for child support, then, hinges on whether courts consider being LGBT undesirable. It is important to note that this is likely to vary by geographical region.

Encouragingly, in the child custody case *Palmore v. Sidotti*, the Supreme Court found that the judiciary had no right to take away a child from a mother cohabiting with a black man due to an attempt to protect the child from social stigma.²⁴² Racial oppression and heterosexism have unique histories, and it may not serve justice to equate the two forms of oppression. However, this case has significant bearing here because the Court did not limit its decision to racially based oppression, but rather, took aim at prejudice more generally. The Court held that “the Constitution cannot control such prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”²⁴³ This refusal to participate in societal prejudice set an important precedent that social stigma is not enough to find a home undesirable for a child. Likewise, the social stigma against young people who are LGBT (including the stigma felt and perpetuated by heterosexist parents of LGBT children) is not enough to reasonably deem LGBT status undesirable for young people.

The combined decisions of *Lawrence v. Texas* and *Limon v. Kansas* reinforce the idea that LGBT status cannot be reasonably wished away by parents.²⁴⁴ Matthew J. Hulstein used *Lawrence* (which deemed state bans on sodomy unconstitutional) and *Limon* (which extended the *Lawrence* decision to apply to minors) to effectively argue that judges cannot deem

242. *Palmore v. Sidotti*, 466 U.S. 429, 433 (1984).

243. *Id.* at 1882.

244. *Lawrence v. Texas*, 539 U.S. 558 (2003) (holding that statute’s criminalizing homosexual relationships and sexual activities was unconstitutional as a violation of the Fourteenth Amendment); *Kansas v. Limon*, 122 P.3d 22 (2005) (holding that voluntary unlawful sexual relations with a minor of the same sex may not constitutionally be punished more severely than for such acts with a minor of the opposite sex).

a child's LGBT identity undesirable for the purposes of custody battles.²⁴⁵ I would extend this logic to include youths' identities as LGBT in child support cases: if "moral disapproval of a group cannot be a legitimate government interest," then surely it is not reasonable for moral disapproval to be used to justify the abuse of LGBT youth by unsupportive parents.²⁴⁶

Indeed, parents' lack of support of their children's LGBT identities constitutes grave circumstances that may call for youths to leave the home. Certainly, "[e]ven absent mistreatment, a nonsupportive parent would likely inhibit the LGBT youth's ability to develop into a mentally healthy, autonomous LGBT person."²⁴⁷ The overwhelming preponderance of case law supports this contention, as well. Courts have found that when youth "[leave] the home for good cause," these young people are entitled to child support.²⁴⁸ This "good cause" often is formed by the "misfeasance and neglect on the part of [youths'] parents."²⁴⁹ When parental opinions or behavior create a "tumultuous home environment," young people have the right to leave the home and still be entitled to child support.²⁵⁰

In cases of parental heterosexism, it is the adult, not the child, who is responsible for the "breakdown in communication" that may lead to estrangement.²⁵¹ Because it is unreasonable for parents to attempt to cajole or coerce their children away from their identity as LGBT, given the damage this attitude can do to an adolescent's life, the responsibility for communication breakdowns must legally rest with parent parties. This was certainly the case in *In re Alice C.* In that case, "during the course of a heated argument, the father told the son that he was calling the police, and warned him that if he left the house, he should not return."²⁵²

Ambivalence on behalf of parents is still considered unreasonable coercion on their part, as when the father in *In re Alice C.* still had to pay child support. The father displayed his ambivalence: "[W]hen asked whether he would have permitted [his son] to reside with him following

245. Matthew J. Hulstein, *Recognizing and Respecting the Rights of LGBT Youth in Child Custody Proceedings*, 27 BERKELEY J. GENDER L. & JUST. 171, 171 (2012).

246. *Limon*, 539 U.S. 955 at 35.

247. Hulstein, *supra* note 245, at 181.

248. See, e.g., *Monroe Cnty. Dep't of Soc. Services v. San Filippo*, 178 A.D.2d 1011, 1012 (4th Dep't 1991); *Drago v. Drago*, 138 A.D.2d 704, 706 (N.Y. App. Div. 1988); *In re Alice C.*, 193 A.D.2d 97 (N.Y. App. Div. 1993).

249. *Drago*, 138 A.D.2d at 705.

250. *Id.* at 706.

251. *Alice C.*, 193 A.D.2d at 109.

252. *Id.* at 108-09.

the altercation, the father responded, “[i]n the presence of the police he would have been allowed back in the house”²⁵³

Disagreements caused by unreasonable parental demands are found in cases explicitly dealing with LGBT youth, as well. In *In re Lori M.*, the court refused to find that a 15-year-old who was in a lesbian relationship against her mother’s wishes was, as her mother sought to prove, a “person in need of supervision.”²⁵⁴ This favorable outcome, in which the court essentially refused to accept that a young adult in a lesbian relationship warranted extra monitoring for that reason, indicates how difficult it would be for courts to rule that parental demands against LGBT identities and relationships are reasonable.

Another example of courts reifying the notion that parental demands against LGBT identities are unreasonable can be found in *Dzierson*. There, after a son came out to his father, the father “told his [s]on he couldn’t accept that [gay] lifestyle.”²⁵⁵ After this declaration, the son “refused to speak with him and would not see him” due to the severe strain his coming out precipitated in their relationship.²⁵⁶ While this may at first glance appear to constitute abandonment on the child’s part, perhaps resulting in constructive emancipation, the Court ruled that the evidence did not “establish that there was abandonment of the Father by the Son.”²⁵⁷ The son’s reluctance to continue a relationship with a father who expected him to be straight was an insufficient ground for constructive emancipation. Thus, a parent’s refusal to accept a child’s LGBT identity cannot be rendered as “reasonable” by any court interested in the legal rights of the young people involved.

XI. REASONABILITY OUTSIDE OF CASE LAW

In addition to the case law suggesting that it is unreasonable for parents to expect their child to be non-LGBT, there is an overwhelming amount of evidence of the harm that unsupportive parents do to their LGBT children (as discussed extensively above). Sana Love outlines all of the criteria for the emotional and psychological abuse of children by parents—ranging from persistent emotional maltreatment to doing damage to a young person’s developing sense of identity—are committed

253. *Id.*

254. *In re Lori M.*, 496 N.Y.S.2d 940, 942-43 (Fam. Ct. 1982).

255. *Dzierson v. Dzierson*, 661 N.Y.S.2d 779, 780 (Fam. Ct. 1997).

256. *Id.*

257. *Id.*

by parents who do not accept their children's LGBT identities.²⁵⁸ Douglas C. Haldeman puts a fine point on this issue when writing about the connections between conversion therapy (which attempts to force LGBT youth into becoming non-LGBT) and child abuse: "If a case involving a child involuntarily subjected to 'reparative' [or conversion] therapy was before a nonhostile court there would be ample precedent for a finding of child abuse and neglect."²⁵⁹ In fact, legislatures in the United States have already begun to outlaw reparative therapy. For example, California's law, S.B. 1172, the landmark bill that makes it illegal for licensed professionals to practice reparative therapy on minors, was upheld by the United States Court of Appeals for the Ninth Circuit in 2013.²⁶⁰

In light of such evidence (in addition to the case law), it is absolutely indefensible for any judge to find reasonable parental demands or expressed wishes for their children to abandon their LGBT identities. If children are fleeing an abusive or neglectful situation, they are not constructively emancipating themselves: they are, to the contrary, leaving the home with good cause in order to avoid unreasonable expectations and treatment.²⁶¹ Therefore, LGBT young people who leave their homes are likely eligible for child support because they left with good cause (to avoid the painful inhibition of their personal development and emotional growth) and without disobeying reasonable requests or demands from parents.

XII. WHY SHOULD MAGISTRATE JUDGES GRANT SUCH ORDERS?

There is tremendous incentive for judges to concede that most homeless LGBT youth who choose to pursue this action have the right to receive child support from their parents. Case law legally obligates such a decision through its clear-cut precedents that children must only follow *reasonable* demands by parents, and demands to be non-LGBT, whether implicit or explicit, are simply not reasonable. Additionally, there are compelling policy reasons to grant such requests. Ruling that homeless LGBT youth are owed child support by their parents will serve important social functions by ameliorating some of the damage that LGBT youth

258. Sana Loue, *Redefining the Emotional and Psychological Abuse and Maltreatment of Children: Legal Implications*, 26 J. LEGAL MED. 311, 313-314 (2005).

259. Douglas C. Haldeman, *Sexual Orientation Conversion Therapy for Gay Men and Lesbians: a Scientific Examination*, 544 HOMOSEXUALITY: RES. IMPLICATIONS FOR PUB. POL. 149 (1991).

260. *Pickup v. Brown*, 740 F.3d 1208 (9th Cir. 2013).

261. *Monroe Cnty. Dep't of Soc. Servs. v. San Filippo*, 178 A.D.2d 1011, 1011 (N.Y. App. Div. 1991).

homelessness causes to larger society, as discussed below. Additionally, granting these orders will empower youth, help to prevent and lessen youth homelessness, diminish pressure on already overburdened resources and shelters, enable stable youth employment, diminish youths' interactions with the juvenile and criminal justice systems, increase LGBT young people's emotional and physical health and safety, and serve as a deterrent to parents treating LGBT youth so poorly that they have little recourse but to leave the home.

A. Legal Obligations

While an examination of the relevant case law was conducted above, a basic review of the main reasons that so many homeless LGBT youth are likely eligible for child support is appropriate here:

1. Under general circumstances, child support payments can be owed to young people in New York under the age of 21 who have not emancipated from their parents.
2. Termination of the parental obligation to support children may come about through several circumstances: the relevant situation here is the emancipation of the child.
3. Parental expectations that their children will not be LGBT are *unreasonable*, and children leaving the home in order to escape persecution are doing so with good cause.
4. Thus, LGBT youth who become homeless due to persecution from parents are unemancipated and entitled to child support.²⁶²

Given the case law and the overwhelming evidence of damage that is done to LGBT youth in unsupportive homes, it is reasonable to assume that many LGBT homeless youth who file for child support will be eligible to receive it. These legally based reasons alone compel judges to grant such requests.

B. Policy Reasons

Not only are there legal obligations involved, but far-reaching policy reasons exist for finding LGBT homeless youth eligible to receive child support payments, as well.

262. See *Do the Parties Need To Be Represented by Lawyers?*, *supra* note 167; Matthew J. Hulstein, *Recognizing and Respecting the Rights of LGBT Youth in Child Custody Proceedings*, 27 BERKELEY J. GENDER L. & JUST. 171, 181 (2012); *Drago v. Drago*, 138 A.D.2d 704, 706 (N.Y. App. Div. 1988).

1. Youth Empowerment

Without being able to reveal their LGBT identities safely and proudly, LGBT young people lose tremendous developmental potential. If a judge were to argue that parental demands and wishes for youth to be non-LGBT are reasonable in the face of all the evidence proving how damaging this philosophy is, they would be stripping LGBT young people of a mass of empowering opportunities.

LGBT young people are incredibly resilient and persistently find their own forms of empowerment and self-definition regardless of any legal mandate. However, ruling in favor of LGBT homeless youth in child support cases will empower youth to engage in a plethora of activities that would be otherwise unavailable to them. The extra assistance that child support provides can be the difference between a young person losing or maintaining the integrity of their bodies, having to commit survival crimes, or going without food or shelter. Such empowerment will enable youth to dramatically expand their range of choices about how they live while homeless and how quickly they can find stable housing and employment. As discussed above, case law suggests that courts could mandate parents who set unreasonable living standards to pay for the housing of their homeless LGBT children.²⁶³

Additionally, being granted child support will provide homeless LGBT youth with a sense of validation after a heterosexist former home life where they may have experienced abuse.²⁶⁴ The attendant sense of empowerment for youth is an intangible but enormous benefit that will doubtless emerge from judges' decisions to grant LGBT homeless youths' petitions for child support.

2. Ameliorating Damage to Society

When hundreds of thousands of LGBT youth are homeless nationwide, the entire country suffers the consequences. While it is homeless LGBT youth who directly experience the agonies and pains of their situations, all of society suffers from alienating a huge part of a generation into the midst of seemingly endless cycles of homelessness, the juvenile and criminal justice systems, and poverty. When all LGBT youth are empowered to be themselves safely, everyone who benefits from their talents and skills will be bettered.

As Valentine argues, "Beyond the harm done to an individual child, society as a whole is damaged when a segment of its children are denied

263. N.Y. FAM. CT. ACT § 416(a) (2009).

264. NAT'L CTR. FOR LESBIAN RIGHTS, *supra* note 53, at 2.

the ability to envision a safe, stable, and productive future.”²⁶⁵ Not only will harm be averted, but society will actively benefit from the betterment of the quality of life of LGBT homeless youth. With a source of income, even a small source, youth might be able to attend school. They may be able to purchase clothing and other personal care products so that they can have something to wear to a potential steady job. Jobs might then become more accessible to homeless LGBT youth, in turn helping the employers reap the benefits of having dedicated LGBT employees. The violence done to LGBT people is undercut by every action towards justice we can take, and advancing LGBT youth through child support is one way to move closer to justice in society.

3. Reducing Homelessness

By combining the resourcefulness of homeless LGBT youth with the benefits of receiving child support, the duration of many individuals’ experiences of homelessness could be vastly diminished. If child support orders include the provision of housing, youth will have an obvious means to end their homelessness. However, even if courts do not order this type of add-on within child support orders, with basic support from parents, it is possible that many LGBT youth will be able to avoid living on the streets altogether. Others may find that after a shorter period of time, they are able to stabilize their situations enough to gain steady employment and housing. By providing homeless LGBT youth with a steady source of income, health care, and possibly housing and food, they will likely be able to avoid longer-duration homelessness, if not avert the specter of homelessness altogether.

Although the dangers of homelessness are most pronounced to people who are homeless, there are also financial and social incentives for people who are not homeless to invest in reducing and eventually ending homelessness. Some social and financial costs associated with homelessness include failed tenancies, substance abuse problems that lead to prolonged health problems, prolonged unemployment, welfare benefit costs, economic inactivity, and extensive contact with the state’s juvenile and criminal justice systems.²⁶⁶ Preventing and reducing homelessness would decrease these costs while starting to reverse their negative effects.

265. Valentine, *supra* note 2, at 1058.

266. *Impact of Homelessness*, HOMELESS LINK (2012), <http://www.homeless.org.uk/facts/understanding-homelessness/impact-of-homelessness>.

4. Reducing Pressure on Overburdened Resources/Shelter System

In relation to reducing homelessness, diminishing pressure on an already overburdened shelter system and other resources would do wonders for local capabilities to provide adequate services and reduce costs.²⁶⁷ As referenced above, shelters are already unprepared for the massive amounts of LGBT homeless youth, in addition to homeless youth and adults who are not LGBT. If LGBT youth can avail themselves of the benefits of receiving child support, it is quite possible that as the rates of long-term homelessness are reduced, the rates of overburdening an already overtaxed shelter system will also decrease.

Reducing the number of people who are in need of shelters may be a drop in the proverbial bucket, because even if many LGBT youth no longer needed them, many other people still would. However, if every small attempt at improving a situation were turned down for being de minimis, few moves towards justice would ever be taken. Reducing pressure on the shelter system and other resources available to homeless individuals would greatly improve the depth and breadth that these services can provide for a smaller amount of people.

5. Enabling Steady Youth Employment

As discussed above, homeless LGBT youth (especially transgender youth) face particularly powerful obstacles when trying to get a steady job. Informal and extralegal economies emerge by necessity amongst homeless LGBT youth, who in order to survive turn to panhandling, turning tricks for money or places to sleep, trespassing to seek temporary shelter, and shoplifting food and clothing.

With the help of child support payments, LGBT young people who are homeless could more easily find steady employment. Instead of having to panhandle or steal clothes and food, with a reliable source of money and possibly food and clothing, LGBT young people could focus their talent, skills, and energies on finding a steady job that could help lead to a stable, safe home. This increase in youth employment would not only benefit the young people who would receive steady paychecks, but it would also do much to improve the local economies in which these homeless youth reside. A more stable economy, in turn, can lead to a restoration of more funding to combat homelessness and discrimination, which can positively reinforce the benefits of LGBT homeless youth employment across society.

267. RAY, *supra* note 1, at 4.

6. Diminishing Youths' Interactions with the Juvenile and Criminal Justice Systems

As discussed above, LGBT homeless youth have high rates of interaction with the juvenile and criminal justice systems. The juvenile and criminal justice systems, in addition to targeting people who are homeless, transgender, and/or people of color, then often perpetuate abuse of LGBT young people within the systems themselves. The negative impacts that the juvenile and criminal justice systems have, both on youth on the streets and within the confines of the systems' institutions, only perpetuate homelessness by diminishing young people's chances of finding a job, finding a home, and developing into emotionally and physically healthy adults.

If homeless LGBT youth have a reliable source of income, it is probable that they will be less likely to be forced into committing survival crimes with such frequency. Diminishing the frequency with which young people risk exposure to the juvenile and criminal justice systems would vastly improve their lives. Child support payments provide a stable alternative to high-risk survival crimes.

7. Health and Safety

The emotional and physical ramifications that homelessness has for LGBT youths' emotional and physical well-being are immense. As discussed above, homelessness takes a particularly harsh toll on LGBT young people, especially transgender youth and youth of color who are more specifically targeted for abuse on the streets, in shelters, and in the juvenile and criminal justice systems. As just one example of the suffering health and lack of care for LGBT homeless youth, suicide attempts—fulfilled and unfulfilled—are higher for LGBT youth than for their non-LGBT peers.²⁶⁸ Validation accompanying child support orders would likely decrease the sense of despair suffered by many homeless LGBT youth.

Significantly, homeless LGBT youth receiving child support would also receive medical insurance, greatly enhancing their lives. Becoming the beneficiaries of their parents' health care would enable access to life-saving resources that homeless LGBT youth, particularly transgender youth, often desperately need. For transgender youth in need of both transgender-sensitive physicians and transgender-specific health care, receiving child support would decrease incentives and pressure to receive

268. GRANT ET AL., *supra* note 148, at 2.

parts of their care (for example, hormone therapy) from extralegal sources.²⁶⁹ This would decrease their health risks while increasing the stability and quality of care received. Additionally, if payment for homeless youths' health care were provided by their parents, the strain on publicly funded health care options would decrease.

8. Deterrence

Finally, if information became public that parents are liable to pay child support to their LGBT children, this could have a significant deterrent effect on parents who otherwise refuse to support their LGBT children. The financial costs associated with mandated child support to their LGBT child, financially or otherwise.

Perhaps more significant, however, would be the potential social ramifications of being petitioned for child support by your own child. Aside from the emotional distress that both parties may want to avoid, unsupportive parents may be deterred from acting upon their prejudices by the knowledge that otherwise they can be brought to court. Additionally, retaining a lawyer is expensive, and time spent in court is disruptive. It takes valuable time and energy away from work and can provoke immense anxiety. Socially, parents likely have a strong investment in avoiding the embarrassment and shame of being petitioned by their own children for child support. For parents, steering clear of the hassle of court altogether may well become a better option than refusing to support their children.

On top of this, judicial decisions granting child support to children who leave the homes of unsupportive parents implicitly reprimand those parents. Such a reprimand may be a more powerful form of social censure for unsupportive parents than anything else. Taken together, these factors may well coalesce to form a powerful deterrent to parents against withholding support from their LGBT children who have done nothing wrong.

XIII. POTENTIALLY HARMFUL EFFECTS OF PETITIONING FOR CHILD SUPPORT

Despite the many benefits associated with the untapped potential of LGBT homeless youth filing for the child support to which they are entitled, there are also potentially harmful effects of pursuing such a

269. Sheila Anne Feeney, *Some Transgender Youths Look to Black-Market Hormones*, NEWSDAY (Apr. 5, 2011), <http://www.newsday.com/news/new-york/some-transgender-youths-look-to-black-market-hormones-1.2802396>.

course. Such negative effects include contributing to the prison-industrial complex; doing further and perhaps irreparable damage to the relationship(s) between parents(s) and LGBT children; risking the creation of damaging case law; and infringing upon parents' rights to parent as they deem fit.

A. Contributing to the Prison-Industrial Complex

Unfortunately, pursuing child support can potentially expose parents of LGBT homeless youth to the dangers of the broader prison-industrial complex. As noted in *Cook v. Temple W.*, "FCA § 234(b) empowers the court to order the parent or other person having the duty to support a child detained, placed or committed as a result of a juvenile delinquency proceeding to pay in whole or in part the cost of his [or her] care and maintenance."²⁷⁰ This opens the doors for parents to be incarcerated because they cannot pay costs associated with supporting their child. If the youth are eligible for child support payments, parents become responsible for their care even in the absence of money. Left on their own, families may be able to scrape by together in a state of extreme financial hardship, but when the state mandates payments, cutting corners becomes punishable by imprisonment.

Indeed, if parents in New York do not pay child support and show willful violation, incarceration of up to six months can occur.²⁷¹ According to *Powers v. Powers*,²⁷² upon demonstration by the child that the parent failed to make court-ordered payments, the burden of proof shifts to the parent.²⁷³ The parent then has the opportunity to present credible, competent evidence that the payments simply could not be made.²⁷⁴ This is extremely difficult to prove, however, especially for those whose income is very low but is too high to be eligible for benefits. This immense difficulty is compounded by the Supreme Court ruling in *Turner v. Rogers*, which held that indigent parents are not entitled to a court-appointed attorney in child support proceedings (because when they are incarcerated for not paying child support, it is most often for civil contempt of court).²⁷⁵ States can opt to provide attorneys for indigent parents, but they are not obligated to do so.²⁷⁶ It is enormously

270. *Cook v. Temple*, 512 N.Y.S.2d 296, 297 (Fam. Ct. 1987).

271. N.Y. FAM. CT. ACT § 455 (McKinney 2011); N.Y. DOM. REL. LAW § 245 (McKinney 2014).

272. 86 N.Y.2d 63 (1995).

273. *Powers v. Powers*, 86 N.Y.2d 63, 69 (Ct. App. 1995).

274. *Id.*

275. 131 S. Ct. 2507 (2011).

276. *Id.* at 2510.

difficult for parents attempting to represent themselves, but affording an attorney can be close to impossible for many parents. Imprisonment on top of counsel fees can do a great amount of financial damage to parents of LGBT youth who are themselves struggling to make ends meet.²⁷⁷

Imprisonment is not a rare occurrence for parents who cannot pay child support. Approximately 1.7% of the overall jail population in the United States—around 10,000 men—are incarcerated for nonpayment of child support.²⁷⁸ Sarah Geraghty, a lawyer in Georgia, poignantly highlights the racial overtones of this massive problem:

And I think anyone who went down and watched one of these proceedings [involving non-payment and subsequent incarceration] would agree with me. . . . You see a room full of indigent parents—most of them are African-American—and you have a judge and attorney general, both of whom are white. The hearings often take only 15 seconds. The judge asks, “Do you have any money to pay?” the person pleads and the judge says, “OK you’re going to jail.”²⁷⁹

Pumping the prison-industrial complex with even more people with very low or no income, many of whom are people of color, is not a desirable outcome of gaining some extra support for LGBT homeless youth. Therefore, decisions should be made on a case-by-case basis to evaluate what course of action would have the most desirable outcome.²⁸⁰

B. Causing Further Relationship Damage

Another perhaps obvious potential drawback to encouraging homeless LGBT youth to file for child support is that this legal action may further damage, perhaps irreparably, an already very fragile parent-child relationship. Court actions are fraught with emotional tension, especially when an action is being taken against one’s own parents. Precisely because of the emotive power of this reality, many homeless

277. N.Y. FAM. CT. ACT § 545(3) (McKinney 2011); N.Y. DOM. REL. LAW § 237(c) (McKinney 2011).

278. Mike Bruner, *Unable To Pay Child Support, Poor Parents Land Behind Bars*, MSNBC (Sept. 12, 2011), http://www.nbcnews.com/id/44376665/ns/us_news-crime_and_courts/t/unable-pay-child-support-poor-parents-land-behind-bars/#.VGQVa12H1F.

279. *Id.*

280. It should be noted, however, that the FCA and DRL take poverty into account when considering child support payments. It has been mandated that no child support order is allowed to reduce the noncustodial parent’s income below the self-support reserve. When the basic child support obligation does reduce the income to a level that is below the self-support reserve but above the recognized poverty level, the court may exercise its own discretion as to whether it will allocate health, education, and child care expenses in addition to the basic payment. See N.Y. FAM. CT. ACT § 413(1)(d); N.Y. DOM. REL. LAW § 240(1-b)(d).

LGBT youth, even if they could really use the assistance, would understandably pass up this opportunity for relief.

Many homeless LGBT youth, even those who were explicitly kicked out of their homes by openly hostile parents, may harbor a deep sense of hope that one day, their relationship with their parents will improve. This hope may well be dashed, perhaps permanently, by emotional impact of children taking their parent(s) to court. Because the relationship may never recover from such a blow, this poignant potential harm of pursuing this course of action should be considered as well.

C. *Generating Damaging Case Law*

Homeless LGBT youth petitioning their parents for child support could produce damaging case law. Perhaps judges' discretion as to the desirability of being LGBT perhaps should be guided by precedent and/or sweeping social changes.²⁸¹ Instead, issues left to judges' discretion are often marked with prejudice.²⁸² Though there is very clear case law indicating that an LGBT child with unsupportive parents has good cause to leave the home, matters such as determining the severity of parental abuse rest with judges.

In *In re Shane T.*, for example, verbal harassment from the father was deemed to constitute child abuse.²⁸³ However, in *Catherine W. v. Robert F.*, verbal abuse from the father was not deemed to rise to the level of harm necessary to require him to continue to pay child support when his child refused visitation.²⁸⁴ Such matters rested with the judge's discretion, and thus two very different outcomes could result in two very different sets of case law regarding LGBT child support.

Similarly, while the *In re Lori M.* case discussed above had a positive, affirming outcome for LGBT youth, a "potentially different (and dangerous) outcome would be possible" if several factors were slightly different.²⁸⁵ A homophobic judge, for example, could very negatively alter the outcome of a case.

D. *Parents' Rights*

Parents are granted a broad range of discretion in the ways they raise their children. It has been established that "those who nurture [a

281. Hulstein, *supra* note 245, at 181.

282. *Id.*

283. *In re Shane T.*, 115 Misc. 2d 161 (Fam. Ct. 1982).

284. 455 N.Y.S.2d 519, 521-22 (Fam. Ct. 1985).

285. Valentine, *supra* note 2, at 1100.

child] and direct [his or her] destiny have the right, coupled with the high duty, to recognize and prepare him [or her] for additional obligations.”²⁸⁶

The right to direct a child’s destiny could conceivably be misconstrued as the right to force a child not to be LGBT. Parents could claim that it is their right to make demands and place restrictions on their child’s behavior. However, as courts have more recently determined, children have the right to refuse their parents’ unreasonable demands.

Unsupportive parents may perceive this reasonableness standard to be suppressive of their own rights as parents. However, in light of the frequent mistreatment of LGBT youth in homes and society alike, it is likely that the scales of justice will tip in favor of LGBT youths’ rights to be who they are over parents’ rights to maintain independence from state control.

XIV. NOT FOR EVERYONE

Though most of the hundreds of thousands of LGBT homeless youth across the country (including the thousands in New York) left their homes either because they were kicked out or fled unsupportive parents, filing for child support is not a helpful option for all of them. Undocumented youth, youth with indigent parents, and youth who are more interested in salvaging damaged relationships with their parents might not (or cannot) choose to avail themselves of this option.

A. *Immigration Barriers*

As discussed above, homeless LGBT youth who are undocumented face much greater obstacles to accessing support services than youth who have access to citizenship papers. Although undocumented immigrants can both file for and be compelled to pay child support, child support may remain an exclusive privilege of those considered to be citizens due to the risks of deportation for undocumented immigrant youth.²⁸⁷

Even if young people have citizenship papers, their parents may not. Young people may not know either their own or their parents’ immigration statuses. This can present a grave danger to both themselves and their parents if youth unknowingly take court action against undocumented parents. Whether or not young people are aware

286. *Pierce v. Soc’y of the Sisters of the Holy Names of Jesus & Mary*, 268 US 510, 535 (1925).

287. *FAQ for Hispanic Parents*, OFFICE CHILD SUPPORT SERVICES, DEP’T HUM. SERVICES, ST. R.I., <http://www.cse.ri.gov/documents/faqHispanicParents.pdf> (last visited Nov. 11, 2014).

of their own or their parents' citizenship status, it is important that youth have access to services catered to fit their needs in lieu of filing for child support at risk of deportation.

B. Impoverished or Incarcerated Parents

Homeless LGBT youth who come from impoverished families or families in which one or both parents are incarcerated may not want to sue for child support due to the inability of their parents to make their payments. If a court order is issued for parents to pay child support and they do not comply, nonincarcerated parents may be imprisoned. For LGBT homeless youth, parent-child relationships are already extremely strained. In the further context of all the psychological ramifications of being unwelcome in a parent's home even if the alternative is homelessness, the prospect of an action that may lead to a parent's incarceration can cause further trauma to the child. This is not to mention the severe strain and series of new struggles that being incarcerated can cause unsupportive parents including losing any employment they had had because of time spent in jail.

Although the Family Court Act limits child support arrears to \$500 when a parent's income is below the poverty line, this \$500 may be unmanageable for some parents.²⁸⁸ Such parents then risk income withholding of up to 65%, which can be devastating to an already struggling individual.²⁸⁹ In these circumstances, further consequences such as the revocation of a driver's license or occupational license becomes more likely, which can easily result in job loss and further economic devastation.²⁹⁰

If parents are incarcerated or become incarcerated after the youth files successfully for child support, New York law does not allow any forgiveness in payments.²⁹¹ The "no justification" rule in New York is based on the idea that the incarcerated person's "current financial hardship is solely the result of his [or her] wrongful conduct."²⁹² Relying on this logic, the court in *Onondaga County Department of Social Services o/b/o Gloria T. v. Timothy S.*²⁹³ held that the FCA provision cited above that limits child support payments to \$500 for people living below

288. N.Y. FAM. CT. ACT § 413(1)(g) (McKinney 2011).

289. N.Y. C.P.L.R. § 5242(f)(ii) (McKinney 2014).

290. N.Y. FAM. CT. ACT §§ 458-a, 458-b, 458-c.

291. *Onondaga County Dep't of Social Servs. v. Timothy S.*, 741 N.Y.S. 622 (N.Y. 2002).

292. *Knights v. Knights*, 71 N.Y.2d 865 (1988); *Furman v. Barnes*, 293 A.D.2d 781 (3d Dep't 2002); *Ontario County ex rel. Powers v. Jackson*, 212 A.D.2d 1056 (3d Dep't 1995).

293. 741 N.Y.S. 622 (N.Y. 2002).

the poverty line does not apply to people who are imprisoned because these parents should not “benefit from the conduct that led to his or her incarceration.”²⁹⁴

Rules disadvantaging imprisoned parents in these ways create barriers to successful reentry and create circumstances that lead to recidivism. Moreover, the rules make it very difficult to pay child support by decreasing one’s likelihood of gaining employment. Due to these New York laws prohibiting modifications to child support orders due to incarceration, homeless LGBT youth who file to receive child support from parents who are or become incarcerated may do greater harm than good to parents who cannot make their payments.

As in the case of immigration issues, attorneys working with homeless LGBT youth should make sure that the young people understand the potential ramifications of petitioning already impoverished or incarcerated parents for support.

C. *Unwillingness*

Even youth who are not (and whose parents are not) undocumented and/or from an impoverished background may be understandably reticent about pursuing any legal actions against their parents. Able to make it on their own and with the communities they form on the streets, many youth may simply be unwilling to seek help from unsupportive parents whose homes they left.²⁹⁵ The increased self-confidence and attitude of self-sufficiency that so many homeless LGBT youth develop on the streets may be jeopardized by asking for help from parents.²⁹⁶ Many youth may also feel that they can do better on their own and with their peers than they could through receiving parental assistance.

Relatedly, in a context in which the juvenile and criminal justice systems repeatedly abuse homeless LGBT youth, it is quite understandable that these youth may have no interest in entrusting some of their fate to lawyers and courts. A similar fear of the specter of their abusive parents may make many youth unwilling to confront them in court. A sense of solidarity with those for whom child support is not an option may also hinder many youth from pursuing this option.

294. 294 A.D.2d 27, 30 (2002).

295. Miller, *supra* note 158, at 741.

296. Williams, *supra* note 160, at 242.

XV. BEST PRACTICES

Attorneys who work to represent homeless LGBT youth have the difficult task of combining cultural competency with addressing each client as an individual rather than as the sum of their identities.²⁹⁷ Homeless LGBT youth are persistently living in situations over which they have little or no tangible control unless they assertively create that control for themselves. It is essential for attorneys to resist the urge to control the attorney-client relationship in order to pursue what is in the “best interest” of youth clients. Combining thorough and sensitively delivered explanations of the risks involved in petitioning for child support with a genuine respect for how the youth client wants to proceed is absolutely vital for attorneys working for homeless LGBT youth.

It is also important for attorneys to have a realistic idea of how child support efforts fit within the broader epidemic of LGBT youth homelessness. Helping these young people get child support payments can tangibly improve their lives while setting important case law precedents that further legally legitimize a healthy young people’s right to be LGBT. However, these efforts are simply one piece in a much, much wider puzzle of addressing the immense and complex issues that cause and are caused by LGBT youth homelessness.

A. Respecting Clients’ Agency

Just as the ultimate decisions regarding child support payments for LGBT young people rest with judges, the first legal line of potential respect for the youths’ agency rests with attorneys respecting the youths’ decisions about whether to move forward with this action. “[A] child’s right to be queer should not depend on whether she is lucky enough to be appointed an attorney who is not biased.”²⁹⁸ This “luck” is an enormously

297.

Cultural and linguistic competence is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals that enables effective work in cross-cultural situations. ‘Culture’ refers to integrated patterns of human behavior that include the language, thoughts, communications, actions, customs, beliefs, values, and institutions of racial, ethnic, religious, or social groups. ‘Competence’ implies having the capacity to function effectively as an individual and an organization within the context of the cultural beliefs, behaviors, and needs presented by consumers and their communities.

National Standards for Culturally and Linguistically Appropriate Services in Health Care, OFFICE MINORITY HEALTH, <http://minorityhealth.hhs.gov/assets/pdf/checked/finalreport.pdf> (last visited Nov. 12, 2014).

298. Valentine, *supra* note 2, at 1099.

frightening factor for LGBT young people who might choose to seek legal help.

Gaining the trust of youth who have experienced little if anything positive from the legal system may be particularly difficult. For this reason, openly LGBT attorneys (preferably ones who have personal experience with extreme poverty, parental rejection, and/or homelessness) may be best suited to this type of work, because there is a limit to the extent to which cultural competency trainings can be effective for people who cannot personally relate to their clients. Indeed, “cultural incompetence with this [LGBT youth] population jeopardizes their physical safety,” and potential clients know this better than anyone.²⁹⁹

Especially with LGBT homeless youth, cultural competency takes on multiple layers of complexity and nuance. Sensitivity to diversity in age, ability, health, race, immigration status, parental circumstances, living conditions, ability to pass as non-LGBT, gender expression, stage in the coming out process, and class are only some of the factors that are important to competently advocating for LGBT homeless youth.³⁰⁰ Unless an attorney has had similar experiences—such as parental rejection, homelessness, LGBT-based discrimination, and being targeted by the juvenile and criminal justice systems—as their homeless LGBT client, it may be difficult (but not necessarily impossible) for the attorney to competently address their clients’ needs.

This makes advocating for the “best interest” of the young person a very dangerous road to tread. As Sarah Valentine and Martin Guggenheim have skillfully explicated, a severe

lack of ethical clarity in the Rules of the profession [regarding the representation of children], coupled with the paternalistic history of juvenile courts, has created a situation in which children’s lawyers determine “what is best for their clients based on invisible factors that have more to tell us about the values and beliefs of that lawyers” than what is best for the [youth clients].³⁰¹

299. *Id.* at 1072.

300. To “pass” is to be perceived as being something or someone. In transgender communities, “passing” is the ability to be read as the gender you identify with. However, passing can also be inadvertent or even undesired by individuals who pass, as with a person of color passing as white or an LGBT person passing as straight or cisgender.

301. Valentine, *supra* note 2, at 1071-72; Martin Guggenheim, *A Law Guardian by Any Other Name: A Critique of the Report of the Matrimonial Commission*, 27 PACE L. REV. 100, 112 (2007).

Due to these reasons, Valentine concludes that attorneys practicing in the “best interest” of their youth clients may do great damage to LGBT youth.³⁰²

Instead of assuming that they know what is best for a young person whose exact experiences they can never share, advocacy that respects the agency of youth clients as competent and skilled in providing for themselves is less dangerous and more effective for homeless LGBT youth. These young people are accustomed to skillfully making evaluations about how best to survive and keep themselves safe. An attorney swooping in and making assumptions about what is best for an LGBT young person could damage their client. For example, an attorney may assume that any home is better than homelessness and try to either place their client in the often abusive foster care or shelter systems or convince their client to return to their unsupportive parents’ home. Conversely, an attorney might assume that homeless LGBT young people are comfortable pursuing the option of petitioning their parents for child support. These assumptions can sour attorney-client relationships and irreparably damage their ability to advocate for their clients effectively.

Legal advice in which all options are explained and clients shape the legal road ahead is a much safer and more empowering option for attorneys working with LGBT homeless youth.³⁰³ Although “New York, like many other states, allows a child’s attorney to practice best interest lawyering or to substitute her judgment for that of her client,” attorneys can still choose to respect their clients’ agency and decisions.³⁰⁴ In a court action that is motivated by the need for youth empowerment to begin with, it is vitally important that attorneys respect young people’s needs and abilities to control their legal choices.

B. Acknowledging Potentially Harmful Effects

Ceding decision-making control to homeless LGBT clients does not mean abandoning them to make decisions about which they may not have all the facts. It is an attorney’s responsibility to inform homeless LGBT youth clients about the many possible setbacks to legal action. Discussing these potential setbacks and how to ameliorate their effects would be more helpful to clients than simply listing the potentially negative impacts and allowing the client to feel overwhelmed.

302. Valentine, *supra* note 2, at 1057.

303. *Id.* at 1101.

304. *Id.* at 1100.

As discussed above, some potential setbacks of LGBT homeless youth petitioning their parents for child support include immigration obstacles, the possibility of their parents being unable to pay, and the threat of more permanently damaging their relationship with their parents. Attorneys should be open with young clients about these possible drawbacks to taking court action—as well as, of course, discussing the immense potential benefits—so that clients have a realistic portrait of the options in front of them. Not discussing all possibilities, negative and positive, with homeless LGBT youth amounts to irresponsible representation in which LGBT youth are not given a full opportunity to make an informed decision about a hugely important issue.

C. *Bigger Picture*

There are several organizations and services available in New York and across the country that work to empower homeless LGBT youth. Appendix A includes an annotated list of some national and New York-based organizations that are comprised of and/or work with homeless LGBT youth. These organizations may provide support systems, shelter, care packages, legal representation, medical and mental health services, and/or other needs specific to LGBT homeless youth.

The needs of homeless LGBT youth are largely informed by their background of having been rejected by parents. Efforts to educate parents, schools, and peers about a wide variety of LGBT issues would go a long way towards ensuring that parents are unable to refuse to support their LGBT children without being held accountable for their own bigotry.³⁰⁵ Increasing sensitivity in schools includes curricular changes to incorporate openly LGBT people in social studies and history classes. School reform also includes mandatory and repeated sensitivity trainings for all school administrators, staff, and teachers in a vast range of LGBT and other issues. Ensuring that schools become safe spaces for LGBT young people can provide them with incentives to stay in school and have a supportive safe haven. This also may deter parents from abusing children because of their LGBT status: schools may, in fact, become one place where parents can go to become educated themselves about the unique needs of LGBT young people. Parental education can help parents to overcome their negative feelings for their own children. Given how many homeless LGBT youth are homeless because of parental rejection, parental education also has a good chance of

305. FEINSTEIN, *supra* note 8, at 43.

decreasing the number of LGBT youth who are driven out onto the streets by unsupportive parents.

Other efforts that may not immediately seem specific to homeless LGBT youth but that would greatly improve efforts to reduce and eliminate the epidemic of homelessness include efforts to raise the federal minimum wage, combat employment discrimination, reform and/or overhaul the juvenile and criminal justice systems, decriminalize survival crimes, and ensure that affordable housing is safe and accessible to people who need it most.³⁰⁶ All of the above issues contribute to the prolonged homelessness of LGBT youth in the ways discussed above, and combating these issues structurally are key ways to dramatically diminish the number of LGBT young people who are homeless.

XVI. CONCLUSION

Every day, hundreds of thousands of LGBT youth are homeless across the United States. Thousands of these youth are living in New York. They are overrepresented in homeless populations, constituting a full 40% of all homeless youth.³⁰⁷ They are by necessity incredibly resourceful in the face of tremendous odds against them. Though mostly kicked out of or otherwise “thrown away” from their homes by unsupportive and/or heterosexist parents, LGBT homeless youth find innovative ways to survive their predicaments.

The violence and further rejection that these youth face once they are homeless is enormous. Homeless transgender youth and youth of color—both overrepresented amongst LGBT homeless youth—are two groups that have been found to be particularly vulnerable to abuse within the shelter and juvenile and criminal justice systems and on the streets themselves. The physical and emotional health problems that come with being homeless are enormous, and youth who are undocumented face particularly dangerous circumstances when they become homeless.

As stated above, one possible remedy for many of these homeless LGBT youth is filing for child support. This seems to be a relatively unknown method, because it is not a widespread legal remedy taken by LGBT homeless youth. Spreading knowledge about and access to this method could dramatically improve the lives of the many LGBT homeless youth who could successfully file for and begin to receive child support despite their homelessness.

306. *Id.* at 43-44.

307. Zack Ford, *Study: 40% of Homeless Youth Are LGBT, Family Rejection Is Leading Cause*, THINK PROGRESS (July 12, 2012, 4:39 PM), <http://thinkprogress.org/lgbt/2012/07/12/515641/study-40-percent-of-homeless-youth-are-lgbt-family-rejection-is-leading-cause/>.

Children in New York are eligible for child support from their parents or adoptive parents until the age of 21 unless they become emancipated or constructively emancipated. Constructive emancipation results from a child's abandonment of their parents without good cause. However, courts have found that leaving a parent's home to avoid verbal or physical abuse constitutes good cause, and it is likely that courts will find that implied and explicit parental wishes for their children not to be LGBT are unreasonable. If parental strictures are unreasonable, children can leave the home and become estranged from their parents without becoming constructively emancipated. If homeless LGBT young people in New York are found to be not constructively or otherwise emancipated, they will remain eligible for child support until they turn 21.

There is a plethora of reasons that homeless LGBT young people who can file for child support may want to do so. The consistent income and health care (as well as the possibilities of housing, food, clothing, and educational support) provided by their parents can help them combat chronic hunger and unemployment, as well as diminish their reliance on committing dangerous survival crimes in order to remain alive. Receiving child support can reduce the duration of a young person's homelessness, as well as potentially deter parents from being unsupportive in the first place. The benefits to youth receiving child support would be immense, but so too would the benefits that society would experience as LGBT youth become more empowered by the newfound source of support.

Not all homeless LGBT youth would be able or willing to avail themselves of this option of filing for child support, but those who would choose to do so can tremendously benefit from it. Even if a young person chose not to utilize this legal remedy, simply knowing that the option is available could go great lengths psychologically, affirming and validating those whose parents have abandoned them because of their LGBT identity.

Filing for child support can greatly improve the lives of many LGBT homeless youth. Though this method of legal recourse is exceedingly rare and remains undocumented, spreading awareness of the possibility of its use can go a long way towards further empowering LGBT homeless youth. It is to these resilient young people that this Article is dedicated.

APPENDIX

Organizations Supporting LGBT Homeless Youth Nationally

1. National Runaway Safeline
Services available from this 24-hour hotline for home for homeless youth include crisis intervention, local service referrals, prevention services, drug/alcohol counseling, and counseling. NAT'L RUNAWAY SAFELINE, <http://www.1800runaway.org/> (last visited Feb. 10, 2015).
2. National Alliance To End Homelessness
While not the king of organization that directly provides services to young people, the National Alliance To End Homelessness offers online resources for the prevention and resolution of homelessness amongst LGBT young people. *LGBTQ Youth*, NAT'L ALLIANCE TO END HOMELESSNESS, <http://www.endhomelessness.org/pages/lgbtq-youth> (last visited Feb. 10, 2015).

Organizations Supporting LGBT Homeless Youth in New York

1. The Ali Forney Center.
By opening spaces for homeless LGBT young people in safe, affirmative environments, the Ali Forney Center offers a nourishing atmosphere and material support that LGBT homeless youth otherwise lack. The AFC has a Day Center in Harlem, as well as Emergency Housing sites in Brooklyn and Queens and a Transitional Housing program in scattered sites in Brooklyn. *Programs*, ALI FORNEY CENTER, <http://www.aliforneycenter.org> (last visited Feb. 10, 2015).
2. Green Chimneys
The first mainstream child welfare agency to develop services (including residential, education, and social services programs) tailored specifically for LGBT youth, Green Chimneys offers services to children, youth, and families alike. GREEN CHIMNEYS, <http://www.greenchimneys.org> (last visited Feb. 10, 2015).
3. Health and Education Alternatives for Teens (HEAT)
Aimed at HIV+ and at-risk youth aged 13-24, HEAT caters to LGBT and non-LGBT young people alike. Based in Brooklyn,

HEAT's services include medical care, case management, STI diagnosis and treatment, hormone treatment and other transgender health services, and many others. HEAT allows young people to go to one place for all of their clinical needs. HEALTH & EDUC. ALTERNATIVES FOR TEENS, <http://www.heatprogram.org/> (last visited Feb. 10, 2015).

4. Pride for Youth

Housed at the Long Island Crisis Center, Pride for Youth provides a broad range of services including youth development, education, and supportive services such as support groups, individual and family counseling, a drop-in center open every Friday night, community education, and HIV/STI testing. This organization also targets young people between the ages of 13 and 20, specifically focused on LGBT youth. *Pride for Youth*, LONG ISLAND CRISIS CENTER, <http://www.longislandcrisiscenter.org/pfy/index.html> (last visited Feb. 10, 2015).

5. The Door

Empowering young people who are referred to its services mostly by peers, The Door serves young people aged 12-21. It offers these young people primary health care, mental health counseling, GED tutoring, career development services, daily meals, and arts activities, as well as many other services. THE DOOR, <http://www.door.org/> (last visited Feb. 10, 2015).

6. Safe Space

Based in southeast Queens, Safe Space offers many family-oriented services, including mental health clinics and affordable health care. Safe Space also offers specialized LGBT services including individual counseling and group workshops. Transitional housing for youth is also available. SAFE SPACE, <http://www.safespace nyc.org/safespace/> (last visited Feb. 10, 2015).