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Caitlin "Casey" Judge
judgec@indiana.edu

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Thrown Away for Being Gay: The Abandonment of LGBT Youth and Their Lack of Legal Recourse

Note by Caitlin “Casey” Judge*

INTRODUCTION

Lesbian, gay, bisexual, and transgender (LGBT) youth face the threat of victimization everywhere.¹ One of the most pervasive threats they face, however, is that of being thrown out of their homes by their families. Every year thousands of minors are forced into homelessness by their families because of their sexual orientation.² While the exact number of runaways and homeless youth in the United States each year is unknown,³ various sources estimate that at any given time, between 500,000 and 2.8 million youth are homeless.⁴ Of those youth, between 20% and 40% identify as LGBT.⁵

* Indiana University Maurer School of Law, J.D. expected 2015; University of Michigan, December 2010 B.A. English Literature, Spanish. I am grateful to the members of my family, Eli Judge, Bill Judge, and Tina Getz, for their insight and unwavering support as I worked on this piece. I want to thank Professor Deborah Widiss for her feedback and ideas during the editing process, and for encouraging me during times of frustration. Finally, I want to thank the Associates and Board of Editors of the *Indiana Journal of Law and Social Equality* for all of their hard work and for the time they spent improving this Note for publication.

1. NICHOLAS RAY WITH COLBY BERGER, SUSAN BOYLE, MARY JO CALLAN, MIA WHITE, GRACE MCCELLAND & THERESA NOLAN, NAT’L GAY & LESBIAN TASK FORCE POLICY INST. AND NAT’L COAL. FOR THE HOMELESS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 3 (2006).
2. *Id.* at 2.
3. *Id.* at 11.
4. See EDITH FAIRMAN COOPER, CONG. RESEARCH SERV., RL 31933, THE RUNAWAY AND HOMELESS YOUTH PROGRAM: ADMINISTRATION, FUNDING, AND LEGISLATIVE ACTIONS 1 (2006) (“the number of homeless and runaway youth ranges from 575,000 to 1.6 million per year”); RAY ET AL., *supra* note 1, at 1 (“the number of such youth falls between 500,000 and 2.8 million”).
5. RAY ET AL., *supra* note 1, at 1.

Given that about 5% of the United States population outwardly identify as sexual minorities, it is clear that LGBT youth experience homelessness at a rate disproportionate to that experienced by heterosexual youth.⁶

According to a Massachusetts Youth Risk Behavior Survey, one in four teens who identifies as lesbian or gay is homeless.⁷ One study suggests that rather than choosing to leave on their own, these teens are more likely being driven out of their homes by their parents.⁸ While youth homelessness is most often attributed to neglect, family tragedy, poverty, and addiction, most LGBT youth populations attribute their homelessness directly to their sexual orientation.⁹ Many families, it seems, would rather have no child than a gay child.¹⁰

The purpose of this Note is to expose a hole in the law allowing parents to escape the consequences of forcing their LGBT children into homelessness. Child abandonment is illegal, yet the laws, policies, and resources that are currently in place to help these children are insufficient to get them the help they need. Parts I and II give an overview of LGBT homelessness and discuss why LGBT youth become homeless at a disproportionate rate to their heterosexual counterparts. These Parts also show how sexual minority status puts youth at a higher risk for abuse and discrimination, both in the home and on the streets. Part III discusses the legal responses that have been developed to start combating this problem, and Part IV proposes several legal and legislative changes that would mitigate the undeniably hostile circumstances that LGBT youth are being forced to endure.

I. OVERVIEW OF LGBT HOMELESSNESS

While strides have been made in the last several years for LGBT equality, little is being done to combat LGBT youth homelessness. Much of the literature on homeless children distinguishes between “runaway youth” and “throwaway youth.” The U.S. Department of Justice defines a runaway youth as an individual under the age of eighteen who has left home without parental or a legal guardian’s permission for more than twenty-four hours.¹¹ This definition implies that these children are voluntarily missing.¹² The term “voluntary,” however, often does not appropriately

6. *Id.*

7. Andrea Mooney, *No Place Like Home? One in Four LGB Teens Are Driven Out*, CHILD HEALTH BOSTON’S PEDIATRIC HEALTH BLOG (Aug. 3, 2011), <http://childrenshospitalblog.org/no-place-like-home-one-in-four-lgb-teens-are-driven-out/>.

8. *Id.*

9. Reverend Irene Monroe, *Massachusetts’ Throw-Away Kids*, BAY WINDOWS (July 27, 2011), <http://www.baywindows.com/massachusetts-throw-away-kids-122702>.

10. *Id.*

11. COOPER, *supra* note 4, at 1.

12. *See id.*

apply to the root cause of their forced homelessness.¹³ More often than not, parents and families of LGBT runaways have created such hostile environments for their children through fear, abuse, and neglect that the children have no choice but to leave to protect themselves.¹⁴

“Throwaway” or “throwaway” youth are people under the age of eighteen who leave home with parental or a legal guardian’s permission for over twenty-four hours.¹⁵ The U.S. Department of Justice defines throwaways as children who (1) are told to leave home, (2) are abandoned or deserted, (3) are refused reentry to the home after running away, or (4) are unsought by their parents after running away.¹⁶

Although it is common to differentiate between runaway and throwaway children, the U.S. Department of Justice’s National Incidence Studies of Missing, Abducted, Runaway, and Throwaway Children has started to deemphasize the distinction.¹⁷ It concluded that the differences between the two groups were not clear-cut, and that the causes of youth homelessness often had overlapping runaway and throwaway characteristics.¹⁸ Instead, the Department of Justice decided to study both groups as one larger category of children called “runaway/throwaway youth.”¹⁹ This regrouping is appropriate because the at-risk children of both groups, regardless of whose decision ultimately caused their homelessness, have been cast out of their homes with no financial resources and no legal standing to remedy their abandonment.²⁰

Once LGBT children and teens are forced out of their homes, they are several times more at risk than heterosexual youth for victimization, violence, physical and sexual abuse, survival sex, substance abuse, and mental health issues.²¹ LGBT youth are discriminated against in shelters, in foster care, and on the streets.²² They are less likely than other homeless youth to be able to support themselves on their own, a problem that is compounded by the extensive legal disabilities that all minors face in the United States.²³

The government has traditionally shielded minors from the adversarial court system because, dating back to the common law system, children have

13. HEATHER HAMMER, DAVID FINKELHOR & ANDREA J. SEDLAK, U.S. DEPT. OF JUSTICE, NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN: RUNAWAY/THROWN AWAY CHILDREN: NATIONAL ESTIMATES AND CHARACTERISTICS (Oct. 2002), <https://www.ncjrs.gov/html/ojjdp/nismart/04/index.html>.

14. *Id.*

15. *Id.*

16. *Id.*

17. *See generally id.*

18. *Id.*

19. *Id.*

20. *See infra* Part III.

21. *See generally* RAY ET AL., *supra* note 1, at 41–79.

22. *Id.* at 83–90.

23. *Id.* at 41–90.

been presumed to lack the requisite mental capacity to function in legally binding situations.²⁴ It is a general rule that children cannot sue on their own behalf or participate in legal actions.²⁵ As a result, it is difficult for LGBT children who have been forced to leave their homes to bring legal actions against their parents.²⁶ The government has enacted several responses to discourage and remedy the harsh effects of child abandonment, and these have greatly improved the lives of some homeless youth.²⁷ These remedies, however, are often incompatible with LGBT needs and leave gay and lesbian youth without the emergency resources they need to survive.²⁸

In addition to existing initiatives, lawmakers should consider relieving abandoned children of certain legal disabilities so that they may better support and protect themselves. Parents should not, however, be relieved of their duty to financially support their children. Therefore, minors who are unilaterally thrown out of their homes by their parents should be able to more easily petition the court for emancipation while preserving their right to financial support from their parents. This would allow minors to make primary legal decisions for themselves, but would still require parents to provide for the children they have thrown away.

II. UNDERSTANDING LGBT THROWN AWAY YOUTH

The root causes of youth homelessness vary as much as the thousands of young people who find themselves on the streets every year.²⁹ Why, then, are LGBT youth becoming homeless at a disproportionate rate to their heterosexual peers? While there is a growing awareness of the number of LGBT youth experiencing homelessness, why is this number still on the rise?³⁰

Conflict over a youth's sexual orientation or gender identity is often the deciding factor that forces a young person onto the streets or into alternate care.³¹ People are now coming out at earlier ages, "with one report citing an average age of thirteen years old."³² Once LGBT youth are forced from their homes, they are more likely than their heterosexual peers to end up on the streets than to end up

24. Claudio DeBellis & Marta B. Soja, Note, Gregory K.: *Child Standing in Parental Termination Proceedings and the Implications of the Foster Parent-Foster Child Relationship on the Best Interests Standard*, 8 ST. JOHN'S J. LEGAL COMMENT. 501, 507-08 (1993).

25. Jay C. Laubscher, Note, *A "Minor of Sufficient Age and Understanding" Should Have the Right to Petition for the Termination of the Parental Relationship*, 40 N.Y.L. SCH. L. REV. 565, 568 (1996).

26. *Id.*

27. *See infra* Part III.

28. *Id.*

29. RAY ET AL., *supra* note 1, at 16.

30. *Id.* at 12.

31. *Id.*

32. *Id.*

in the State's care.³³ While homelessness is traumatic for all youth, LGBT youth must deal not only with the rigors of being on their own, but also with coming out in a hostile environment.³⁴ Research shows that this additional emotional strife amplifies the dangerous consequences of homelessness.³⁵ LGBT homeless youth are more at risk than heterosexual youth for physical and sexual abuse, survival sex, mental health issues, and substance abuse, in addition to the rejection and victimization generally experienced by LGBT people in the United States.³⁶ While the risk factors are elevated for LGBT youth, it is important to recognize that these risks are correlated with, but in no way caused by, their sexual minority status.³⁷ These harsh social realities are important to identify, however, because they help us characterize and attempt to mitigate the dangers that LGBT youth face if they are forced into homelessness.³⁸

A. Physical Abuse

Physical abuse in the home is a consistent factor leading to child homelessness for all youth.³⁹ Between 40% and 60% of all homeless youth say that physical abuse contributed (at least in part) to them no longer living in the home.⁴⁰ While homeless youth generally experience heightened levels of violence, LGBT youth are particularly at risk for abuse.⁴¹ According to one study, 50% of gay males experienced a negative parental reaction when they came out, and 26% of those disclosures resulted in the youth being kicked out of the home.⁴² One-third of LGBT youth are assaulted by a parent or family member when the youth disclose their sexual orientation.⁴³ "According to the National Runaway Switchboard, LGBT homeless youth are seven times more likely than their heterosexual peers to be victims of a crime."⁴⁴ In addition to physical abuse, LGBT youth experience an elevated risk of sexual assault.

33. *Id.*

34. *Id.* at 44.

35. *Id.*

36. *See, e.g.*, Stephen T. Russell, Caitlin Ryan, Russell B. Toomey, Rafael M. Diaz & Jorge Sanchez, *Lesbian, Gay, Bisexual, and Transgender Adolescent School Victimization: Implications for Young Adult Health and Adjustment*, 81 J. SCH. HEALTH 223, 224 (2011).

37. *See, e.g.*, Tori DeAngelis, *New Data on Lesbian, Gay and Bisexual Mental Health*, MONITOR ON PSYCHOL., Feb. 2002, at 46; *see also* RAY ET AL., *supra* note 1, at 148.

38. *See generally* RAY ET AL., *supra* note 1, at 41–82.

39. *Id.* at 18.

40. *Id.*

41. *Id.* at 66.

42. *Id.* at 16.

43. *Id.* at 18.

44. *Id.* at 3.

B. Sexual Abuse

Overall, street youth are five times more likely than children living in stable homes to report experiencing sexual abuse as a child.⁴⁵ In a survey of the children seeking guidance from the Ozone House, an alternative nonprofit social service agency in Ann Arbor, Michigan, about one-third of the LGBT children left home to escape sexual abuse from family members.⁴⁶ Research shows that predators specifically seek out LGBT homeless youth because these youth are particularly vulnerable and desperate.⁴⁷

While all homeless youth are especially vulnerable to risky sexual behaviors, LGBT homeless youth are particularly susceptible to survival sex when their basic needs for food and shelter are not being met.⁴⁸ Survival sex is defined as “exchanging sex for anything needed, including money, food, clothes, a place to stay[,] or drugs.”⁴⁹ A study on homeless youth in Canada found that those who identified as LGBT were three times more likely to have engaged in survival sex than their heterosexual peers.⁵⁰ This behavior often leads to high rates of depression and substance abuse, compounded by alarmingly high rates of suicidal thoughts and suicide.⁵¹

C. Mental Health

According to the U.S. Department of Health and Human Services, a “society that discriminates against and stigmatizes homosexuals,” like the social culture in the United States, makes LGBT youth more vulnerable to mental health issues than their heterosexual peers.⁵² For LGBT youth, homelessness uniquely amplifies these mental health concerns. One research study reported that more than half of homeless youth surveyed had considered suicide, and over a quarter of them had attempted suicide in the previous twelve months.⁵³ LGBT homeless youth are especially vulnerable to mental health concerns, not only because their homelessness makes them disproportionately prone to psychological issues, but also

45. *Id.* at 18.

46. *Id.* at 118.

47. *Id.* at 98.

48. *Id.* at 3 (quoting John E. Anderson, Thomas E. Freese & Julia N. Pennbridge, *Sexual Risk Behavior and Condom Use Among Street Youth in Hollywood*, 26 FAM. PLANNING PERSP. 22, 23 (1994)).

49. *Id.*

50. *Id.*

51. *Id.* at 43.

52. *Id.* at 44 (quoting Paul Gibson, *Gay Male and Lesbian Youth Suicide*, in 3 REPORT OF THE SECRETARY’S TASK FORCE ON YOUTH SUICIDE: PREVENTIONS AND INTERVENTIONS IN YOUTH SUICIDE 110, 110 (Marcia R. Feinleib ed., 1989)).

53. *Id.* at 43.

because of the social stigma attached to being a sexual minority.⁵⁴ A 2004 study found that “significantly more LGB youth had thoughts of suicide than did their heterosexual peers (73[%] compared to 53[%]), and one-half of LGB youth had attempted suicide at least once, compared to one-third of heterosexual youth.”⁵⁵ A 2005 study estimated that an LGBT child or teen committed suicide every five hours and forty-eight minutes; it was also found that 30% of gay and bisexual males had attempted suicide at least once in their lifetimes.⁵⁶ The rejection that LGBT youth face deepens the already serious psychological struggles that sexual minority youth combat on a daily basis.

D. Substance Abuse

To deal with the abuse and psychological pressures attached with being a sexual minority, LGBT youth often resort to substance abuse. While substance abuse is common among young people, LGBT children and teens are more likely to use substances to escape from the stressors and feelings of unhappiness caused by rejection and the stigma of homosexuality.⁵⁷ In one study, researchers found that 93% of females and 89% of males surveyed reported ever using any legal or illicit substance.⁵⁸ The study also found that 76% of the gay/bisexual males, compared with 49% of heterosexual males, used alcohol, and 25%, compared with 2%, used cocaine or crack.⁵⁹ The researchers reported an overall elevated frequency and quantity of substance abuse among LGBT youth, with 20% rated as being dependent on substances.⁶⁰ Although substance abuse is highly prevalent in runaway and throwaway youth (and especially in LGBT youth), most shelters do not have the resources to provide effective intervention beyond basic crisis counseling.⁶¹ Therefore, unmediated, self-injurious behavior and psychological problems motivate continued use and abuse of drugs and alcohol in already compromised circumstances.

E. Lack of a Social Network at Home and on the Streets

These elevated risk factors are compounded by the reality that LGBT youth are victimized and confronted with the stigma of homosexuality.⁶² One

54. *Id.* at 41.

55. *Id.* at 43.

56. *Id.*

57. Margaret Rosario, Joyce Hunter & Marya Gwadz, *Exploration of Substance Use Among Lesbian, Gay, and Bisexual Youth: Prevalence and Correlates*, 12 J. ADOLESCENT RES. 454, 455 (1997).

58. *Id.* at 462–63.

59. *Id.* at 455.

60. *Id.*

61. RAY ET AL., *supra* note 1, at 46–47.

62. *Id.* at 41.

study found that in a sampling of the sexual minority youth in fourteen cities, 80% reported verbal abuse, 44% reported threats of violence, 30% had been chased, and 17% had been physically assaulted for being gay.⁶³ The fear and anxiety these children and teens develop from this abuse often motivates the breakdown in communication between the youth and their families.⁶⁴ Some LGBT minors fear that their sexual orientation will disappoint their families or cause their families to reject them, which leads them to find “an alternative space where they can be respected and optimize their chances of succeeding in life.”⁶⁵ These situations can be particularly problematic when the youth’s sexual orientation conflicts with his or her family’s religious beliefs.⁶⁶ When families are unable or unwilling to accept their child’s sexual orientation or gender identity because of their faith, it motivates the child to seek acceptance and support outside of the home.⁶⁷

Once on the streets, however, the negative social stigma follows LGBT youth into their homelessness, which debilitates their already slim chances of survival.⁶⁸ Homeless youth often try to form social networks with their peers in an attempt to better protect themselves from the dangers of homelessness.⁶⁹ LGBT youth are less likely to be accepted into a social network on the streets because of their sexual orientation.⁷⁰ As a result, they face an elevated probability of harm.⁷¹ According to research conducted by Susan Ennett et al., “runaway youth lacking a social network were more likely to report using illicit drugs, having multiple sex partners and engaging in survival sex than youth that had a social network of peers.”⁷² A different study reported that youth without a social network were almost eight times more likely to have traded sex for money, drugs, food, or shelter than children with a network.⁷³

These challenges, without additional help, make it difficult for homeless LGBT youth to take care of themselves. While there are statutes and laws in place criminalizing child abandonment and endangerment, parents of these children seldom face the consequences because they are unlikely to report their own gross

63. *Id.* at 66.

64. *Id.* at 20.

65. *Id.*

66. *Id.* at 21.

67. *Id.*

68. “GLBT homeless adolescents experience not only the vulnerabilities, daily difficulties, and survival challenges of living on the street but also the discrimination faced by GLBT youth in general.” *Id.* at 51.

69. *Id.* at 53.

70. *Id.*

71. *Id.*

72. *Id.* (citing Susan T. Ennett, Susan L. Bailey & E. Belle Federman, *Social Network Characteristics Associated with Risky Behaviors Among Runaway and Homeless Youth*, 40 J. HEALTH & SOC. BEHAV. 63 (2009)).

73. *Id.* at 55.

negligence, and minors do not have the legal standing to bring actions against their parents.⁷⁴ Because of the overwhelming caseloads that welfare and legal aid agencies manage, it is rare that these organizations are able to represent an LGBT youth's interests in court. Without that aid, these youth are often left with no one and nowhere to go in the face of these elevated struggles.

III. LEGAL BARRIERS FOR LGBT THROWN-AWAY YOUTH

A. *Legal Disabilities of Minors, Parental Right to Privacy, and State Intervention*

Minors in the United States do not have the same legal rights as adults. Minors are subject to legal disabilities, which prevent them from suing or being sued in their own name, contracting, establishing their own domicile, and consenting to medical treatment.⁷⁵ In *Bellotti v. Baird*, the Supreme Court recognized three reasons justifying why the constitutional rights of children are not the same as those of adults: “the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.”⁷⁶ This blanket generalization about minors leaves their well-being in the hands of their parents who, traditionally under the law, are assumed to always advance the best interests of their children.⁷⁷ Unfortunately, “parental love is not necessarily enduring.”⁷⁸ When parents fail to fulfill their parental duties, it is the responsibility of the State to intervene on the child's behalf.⁷⁹ The State's obligation is limited, however, by its deference to parental rights.

Adults have a constitutional right to privacy.⁸⁰ This right gives adults the freedom to raise their children without unnecessary interference from the

74. Laubscher, *supra* note 25, at 568 (citing U.S. DEP'T OF HEALTH AND HUMAN SERVS. & SCIENTIFIC ANALYSIS CORP., *THE LEGAL STATUS OF ADOLESCENTS* 11 (1981)).

75. *Id.*

76. 443 U.S. 622, 634 (1979).

77. Gloria Christopherson, *Minnesota Adopts a Best Interests Standard in Parental Rights Termination Proceedings*: In re J.J.B., 71 MINN. L. REV. 1263, 1267 (1987) (“The presumption has always been that parents will provide better care for their children than the state could provide.”); Ilse Nehring, “*Throwaway Rights*”: *Empowering a Forgotten Minority*, 18 WHITTIER L. REV. 767, 769 (1997).

78. Nehring, *supra* note 77, at 769.

79. “In such situations, the state, as *parens patriae*, must intervene on the child's behalf. *Parens patriae* means ‘parent of the country,’ and signifies the state's well-established duty to intervene on behalf on individuals under legal disability.” DeBellis & Soja, *supra* note 24, at 501–02.

80. *See generally* *Roe v. Wade*, 410 U.S. 113 (1973) (recognizing a fundamental right to privacy in seeking an abortion); *Eisenstadt v. Baird*, 405 U.S. 438 (1972) (expanding the scope of sexual privacy rights by extending constitutional protection to all procreative sexual intercourse, not just sex between married partners); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (recognizing a married couple's right to privacy in seeking information about and a prescription for contraceptives).

government.⁸¹ While parental rights are comprehensive, they are not limitless.⁸² In *Prince v. Massachusetts*, the Court concluded, “neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth’s well-being, the State as *parens patriae* may restrict the parent’s control.”⁸³ Therefore, although the government follows a general policy of nonintervention with respect to family disputes,⁸⁴ the State may violate the parental right to privacy if there is clear and convincing evidence that the child is in need of state intervention.⁸⁵

Because of their deference to parental rights and a fear of violating the adult right to privacy, state agencies often do not intervene when they should or do not do so until it is too late. In *DeShaney v. Winnebago County Department of Social Services*, the Court held that the Due Process Clause does not require a state or local government entity to protect its citizens, specifically children being abused by their parents, from “private violence, or other mishaps not attributable to the conduct of its employees.”⁸⁶ In this case, the Department of Social Services failed to intervene after repeated incidents of child abuse, and this failure ultimately resulted in a child being beaten so brutally that he was left severely disabled.⁸⁷ While the State may not have been required by the Due Process Clause to intervene on behalf of the child, deference to parental rights in instances like these causes a chilling effect on the government’s duty to protect the legally disabled.

The question remains: What happens when neither the State nor the parents promote the best interests of the child?

B. Previous Legal Responses to Child Abandonment and Youth Homelessness

The government has developed several responses to discourage child abandonment and to remedy the harsh challenges facing throwaway youth, but there are four overarching responses that are particularly worth discussion because of their prevalence across the country. These responses include state criminal statutes, federal legislation, state assumption of responsibility, and emancipation. Even the most notable initiatives, however, have serious gaps in helping abandoned LGBT minors.

81. See generally *Santosky v. Kramer*, 455 U.S. 745 (1982) (recognizing that parents have a liberty interest in the parent-child relationship); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (recognizing that parents’ fundamental right to freedom of religion outweighed the state’s interest in educating its children); *Pierce v. Soc’y of Sisters*, 268 U.S. 510 (1925) (recognizing that parents and guardians have a right to direct the upbringing and education of children under their control); *Meyer v. Nebraska*, 262 U.S. 390 (1923) (recognizing that parents have a right to educate their children how they see fit).

82. *Prince v. Massachusetts*, 321 U.S. 158, 169 (1944).

83. *Id.* at 166.

84. DeBellis & Soja, *supra* note 24, at 508.

85. See *Santosky*, 455 U.S. at 747–48.

86. 489 U.S. 189, 193–94, 197, 202 (1989).

87. *Id.* at 193.

i. State Criminal Statutes

The first response is based on state criminal statutes. While not all states define abandonment and child neglect in the same way, forty-nine states have statutes criminalizing the underlying facets of child abandonment.⁸⁸ These statutes typically impose varying degrees of felony liability on those who neglect, abandon, or endanger their dependent children. There are two problems with statutory enforcement against child abandonment. First, parents are unlikely to report themselves for abandonment. Second, children have difficulty reporting their parents.⁸⁹ This problem is compounded by the fact that children are often afraid to go to the police because they do not want to be sent back to the families that abused and rejected them.⁹⁰ As a result, the abandonment is not brought to the authorities' attention, and the parents do not face consequences. This problem is worsened by the courts' aforementioned deference to parental rights. The courts typically terminate parental rights as a last resort.⁹¹

ii. Federal Statutes and Legislation

The second response is based on federal statutes and legislation. In the early 1970s, the problem of runaway youth gained national prominence.⁹² Child runaways in the 1960s were seen as "flower children" participating in the nation's subcultures of rebellion.⁹³ This perception changed at the start of the 1970s as policy makers realized that the increasing number of youth runaways was not caused by "youthful rebellion," but instead fueled by child abuse and unbearable conditions at home.⁹⁴ In 1972, concern for the nation's youth led Congress to hold hearings for two days to learn more about and to discuss the reasons why youth felt forced to leave their homes.⁹⁵

88. See NAT'L CTR. FOR PROSECUTION OF CHILD ABUSE, NAT'L DIST. ATTORNEY ASS'N, CHILD NEGLECT AND ABANDONMENT (2011), http://www.ndaa.org/pdf/Child%20Neglect%20&%20Abandonment_2011.pdf.

89. See, e.g., *Why Don't Children Tell If They Have Been Abused?*, STOP IT NOW!, <http://www.stopitnow.org/faq/why-dont-children-tell-if-they-have-been-abused> (May 2, 2015).

90. RAY ET AL., *supra* note 1, at 30 ("When youth are found on the street, the ideal situation might well be to see them at a drop-in center, perhaps provide short term emergency shelter, then see them return home. Whether this home is with natural, adoptive or foster parents or another relative or adult with whom the youth has a healthy and safe established relationship, reunification is the optimal outcome. Unfortunately, in too many instances, such an environment does not exist. Many runaway or homeless youth cannot return to their families, often-times due to abusive situations, abandonment or severe family conflict.").

91. See *supra* text accompanying notes 82–84.

92. RAY ET AL., *supra* note 1, at 25; see also COOPER, *supra* note 4, at 2.

93. RAY ET AL., *supra* note 1, at 25 (citing *Why Children are Running Away in Record Numbers*, U.S. NEWS & WORLD REP., Jan. 17, 1977, at 62).

94. *Id.*

95. COOPER, *supra* note 4, at 2.

As a result of these hearings, Congress passed the Runaway Youth Act as part of the 1974 Juvenile Justice and Delinquency Prevention Act.⁹⁶ This legislation decriminalized the status offense of being a runaway⁹⁷ by requiring states to separate law enforcement from services that would be newly available to runaway youth.⁹⁸ States that wanted to receive federal funding for homeless youth would have to provide them with shelter, food, counseling, and other welfare services.⁹⁹ As a result of this legislation, federal funding for homeless youth programs increased from \$2.3 million in 1973 to \$7 million in 1974.¹⁰⁰ While the Act made giant steps toward improving the lives of homeless youth, increased funding for state programs did not do enough to meet the growing need for youth welfare services.

In 1977, Congress reauthorized the Runaway Youth Act.¹⁰¹ The new legislation, renamed the Runaway and Homeless Youth Act (RHYA), expanded the services available under the original Act to include additional outreach programs specifically targeting the immediate needs of youth on the streets.¹⁰² These programs included the Basic Center Program (created under RHYA), the Transitional Living Program (created in 1988), and the Street Outreach Program (created in 1994).¹⁰³ These three programs are the central components of the federal programs still in place today, and they provide a variety of services that help homeless youth get the stable care they need.¹⁰⁴ In 2008, the Runaway and Homeless Youth Act was reauthorized through 2013.¹⁰⁵ The Act must be reauthorized every five years, and it has recently been reintroduced to the Senate for reauthorization.¹⁰⁶

According to the National Network for Youth, RHYA projects do more than battle the dangers of youth homelessness. RHYA programs are drastically more

96. *Id.*

97. RAY ET AL., *supra* note 1, at 26 (“Prior to 1974, youth who ran away from home were considered criminals. If found by police they were forcibly returned to their homes without any attempt to deal with the problem that caused them to run away. The problem was viewed only as a form of delinquency characterized by disobedience and ‘acting out.’ Today this indifference to home, school or risk of abuse strikes us as shocking, but young people were then far less likely to be seen as having individual rights and far more likely to simply be considered troublemakers ignoring their parents.”).

98. *Id.* at 28.

99. *Id.*

100. *Id.*

101. COOPER, *supra* note 4, at 3.

102. RAY ET AL., *supra* note 1, at 28.

103. See ADRIENNE L. FERNANDES-ALCANTARA, CONG. RESEARCH SERV., RL33785, RUNAWAY AND HOMELESS YOUTH: DEMOGRAPHICS AND PROGRAMS 11 (2013).

104. See RAY ET AL., *supra* note 1, at 28–31.

105. Reconnecting Homeless Youth Act of 2008, Pub L. 110-378, 122 Stat. 4068.

106. Leahy, *Collins Introduce Bipartisan Legislation to Combat Youth Homelessness & Trafficking*, PATRICK LEAHY—U.S. SENATOR FOR VT. (Jan. 27, 2014), <http://www.leahy.senate.gov/press/leahy-collins-introduce-bipartisan-legislation-to-combat-youth-homelessness-and-trafficking>.

cost effective for the government than either state-sponsored custodial care or incarceration.¹⁰⁷ The average annual federal cost of serving a youth is \$1,282 in a basic center and \$14,726 in transitional living programs.¹⁰⁸ Serving minors through the child welfare or juvenile justice systems, however, has an annual cost ranging from \$25,000 to \$55,000 per youth per year.¹⁰⁹ While there are a variety of reasons why these numbers differ dramatically, it is apparent that it may be more cost effective for the government to invest in preventative and rehabilitative youth programs rather than resorting to incarceration.

iii. State Assumption of Responsibility

The third response involves the State assuming control and responsibility over abandoned youth. This option, however, is in no way ideal. Of the \$4.2 billion in federal funds spent per year to combat homelessness, only \$195 million are allocated to fight homelessness for children and youth.¹¹⁰ In a structure already struggling financially, the youth social service system is not set up to facilitate positive outcomes when sexual orientation or gender identity is the root cause of homelessness.¹¹¹ The goal of these programs is often to reunify the child with his or her family. This methodology, however, does not help LGBT youth whose families have a fundamental disagreement with their sexual orientation.¹¹² Reunification in these instances may actually do more harm to these youth than good, because they are forced back into the abusive homes that they felt the need to escape in the first place.¹¹³ When family reunification is not in the best interests of the child, he or she is forced into shelters and foster care systems. These state-sponsored facilities, however, are often not hospitable places for LGBT youth.¹¹⁴

107. *The Reconnecting Homeless Youth Act of 2008 (S. 2982 Public Law 110-378)*, NAT'L NETWORK FOR YOUTH (SEPT. 28, 2008, 2:00 AM), <http://www.nn4youth.org/news/network-news/2008/09/28/reconnecting-homeless-youth-act-2008-s-2982-public-law-110-378>.

108. *Id.*

109. *Id.*

110. While there may be more homeless adults than children, it is difficult to ignore the extent of how disproportionately allocated these federal funds are. Courtney Lauren Anderson, *Opening Doors: Preventing Youth Homelessness Through Housing and Education Collaboration*, 11 SEATTLE J. FOR SOC. JUST. 457, 506 (2013).

111. RAY ET AL., *supra* note 1, at 17.

112. *See generally* COOPER, *supra* note 4 (discussing programs under the RHYA).

113. *See generally id.* at 2 (discussing the reasons youth run away from home, such as abuse).

114. RAY ET AL., *supra* note 1, at 5 (citing Gary Mallon, *The Delivery of Child Welfare Services to Gay and Lesbian Adolescents*, in PRIDE AND PREJUDICE: WORKING WITH GAY, LESBIAN, AND BISEXUAL YOUTH 223, 226–28 (Margaret S. Schneider ed., 1997)).

a. Shelters and Group Homes

Once LGBT youth are accepted into state care facilities, research shows that their living arrangements may not actually be safer than living on the streets. In one survey of children in the welfare system, researchers found that 78% of the youth and 88% of professional staff agreed that group homes are not safe for LGBT youth.¹¹⁵ As discussed in Part II, LGBT youth face an elevated risk of physical and sexual abuse in the home, and this risk remains prevalent in the state care system.¹¹⁶ Some residential service providers claim that they reject LGBT youth from being placed in a group home to protect them from the harm they would experience in the residential service providers' facilities. This allows those providers to avoid the effort needed to change those homophobic sentiments within their walls.¹¹⁷ Because of this offensive treatment, some LGBT children run away from placements where harassment and abuse is tolerated and even encouraged by staff members.¹¹⁸

A contributing factor to this deficient care is the States' inability to provide enough shelters for the homeless. When this happens, the government often uses federal funds to contract out those projects to private groups, an increased proportion of which are faith-based organizations.¹¹⁹ While there are some religious institutions that offer appropriate and nurturing services to their LGBT population, there are still some service providers whose belief systems negatively impact their treatment of homeless gays and lesbians.¹²⁰ The conflict between these religious organizations' professional obligation to provide services to LGBT homeless youth and their religious principles creates a threat of discrimination from religious bias and abuse.¹²¹ Because these services are often the only ones available, many LGBT youth may feel the need to lie about being a sexual minority for fear that they will be denied the services they rely on to survive.¹²²

b. Foster Care

Welcoming foster families are difficult to find for LGBT youth because disclosure of their sexual orientation affects their placement. Even though the average age of LGBT disclosure is younger than ever, gay and lesbian youth are

115. *Id.* at 83 (citing Gerald P. Mallon, Nina Aledort & Michael Ferrera, *There's No Place Like Home: Achieving Safety, Permanency, and Well-Being for Lesbian and Gay Adolescents in Out-of-Home Care Settings*, 71 CHILD WELFARE 407, 418 (2002)).

116. RAY ET AL., *supra* note 1, at 18, 83.

117. *See id.*

118. *See id.* at 8–9 (discussing the experiences of one transgender teen who ran away from foster placements due to harassment).

119. *See id.* at 4, 37–38, 85–86.

120. *Id.* at 85–89.

121. *Id.*

122. *See id.*

typically older than heterosexual youth entering care, and placing older adolescents has always been more difficult than placing younger children, regardless of sexual orientation.¹²³ In addition to age, research shows that youths who identify as gay and lesbian are harder to place because not only are there too few foster homes in general, even fewer foster families are willing to handle children with emotional or behavioral issues.¹²⁴

iv. Emancipation

The fourth major response the government has taken to remedy the harsh effects of child abandonment is to allow minors to petition for emancipation. Emancipation occurs when parents “surrender and renunciat[e] . . . the[ir] correlative rights and duties concerning the care, custody, and earnings of the child.”¹²⁵ When a child is emancipated from his or her parents, the action terminates the legal relationship between them.¹²⁶ This essentially relieves the parents from all parental obligations to the child.¹²⁷ Unfortunately, this includes any obligation the parents had to financially support their child.¹²⁸ This creates a serious barrier for emancipated children in becoming self-sufficient because it leaves them with no financial means to pay for their own food and housing.¹²⁹

Emancipation will not be granted, however, unless the court determines that the minor satisfies certain statutory requirements. Emancipation statutes vary from state to state, but “common requirements for emancipation include attaining a minimum age, living apart from the parents, managing oneself and being able to support oneself financially.”¹³⁰ As of 2012, twenty states have set the minimum age for emancipation at sixteen years old, making it one of the most common age limits.¹³¹ Some states allow for emancipation at a younger age, and five states do not have an explicit age requirement at all.¹³² Several states have a parental consent

123. *See id.* at 12, 158.

124. RAY ET AL., *supra* note 1, at 12 (“[T]here is typically a dearth of available foster families to begin with, and few are willing to work with young people who have emotional or behavioral problems. Fewer still are interested in fostering LGBT youths, many of whom arrive with emotional and behavioral issues as a result of the homophobia they’ve endured.” (quoting Colby Berger, *What Becomes of At-Risk Gay Youths?*, GAY & LESBIAN REV. WORLDWIDE, Nov.–Dec. 2005, at 24)). *See also* T. Richard Sullivan, *Obstacles to Effective Child Welfare Service with Gay and Lesbian Youths*, 73 CHILD WELFARE 291, 297 (1994).

125. BLACK’S LAW DICTIONARY 635 (10th ed. 2014).

126. Nehring, *supra* note 77, at 800.

127. *Id.*

128. *Id.* at 801–02.

129. *Id.* at 801.

130. Yvonne Vissing, *Homeless Children and Youth: An Examination of Legal Challenges and Directions*, 13 J.L. Soc’y 455, 481 (2012).

131. *Id.* at 480.

132. *Id.*

requirement, which may be both difficult to satisfy and dangerous for an abused child to acquire.¹³³ The courts in some of these states can waive this requirement if the evidence shows that emancipation is in the best interests of the child.¹³⁴ However, even with the waiver, the requirement still poses an additional hurdle for LGBT youth who may have a difficult time proving that they were abused or neglected because of their sexual orientation.¹³⁵

Once minors are granted emancipation, they are released from the traditional legal disabilities that prevent them from surviving on their own.¹³⁶ Emancipation may allow minors to “control their own finances, own property, engage in contractual agreements, [and] consent to medical care.”¹³⁷ Because the courts are hesitant to infringe on parental rights, however, the court may instead grant partial emancipation.¹³⁸ Partial emancipation “frees a child for only a part of the period of minority, or from only a part of the parent’s rights, or for only some purposes.”¹³⁹ This type of emancipation may give minors certain adult rights, while still maintaining the parents’ rights over and obligations to their children.¹⁴⁰

These four approaches for discouraging and remedying child abandonment have made significant strides in improving the lives of throwaway and runaway children. While these methods have brought national attention to and created discussions about homeless LGBT youth and youth homelessness in general, there are still not enough resources to address their needs. Because the available resources are ill-suited to LGBT youth, gay and lesbian homeless children are even less likely to get the emergency services they need.

IV. REFORM PROPOSALS

There is a societal assumption that parents have a legal obligation to care for their children.¹⁴¹ It is clear, however, that this does not always happen.¹⁴² When parents fail to fulfill their parental obligations, it is the State’s responsibility to intervene on behalf of those children.¹⁴³ The State’s deference to parental rights

133. *See id.*

134. *See id.* at 480–81.

135. *See generally* NAT’L LAW CTR. ON HOMELESSNESS & POVERTY AND NAT’L NETWORK FOR YOUTH, *ALONE WITHOUT A HOME: A STATE-BY-STATE REVIEW OF LAWS AFFECTING UNACCOMPANIED YOUTH* 105 (2012) (“In some cases, neglectful or abusive parents may withhold [parental] consent [for emancipation] to punish their children.”).

136. Nehring, *supra* note 77, at 805.

137. Vissing, *supra* note 130, at 480.

138. *See generally* Nehring, *supra* note 77.

139. BLACK’S LAW DICTIONARY, *supra* note 125, at 635.

140. *See, e.g.*, Nehring *supra* note 77, at 805.

141. *Id.* at 769.

142. *See, e.g.*, RAY ET AL., *supra* note 1, at 16–17.

143. DeBellis & Soja, *supra* note 24, at 501–02.

and privacy leaves at-risk children in danger of further abuse and neglect.¹⁴⁴ When neither the parents nor the State protect the best interests of their children, the children are deserted with no options at a time when most minors are incapable of living on their own.

In reality there are children who need to assert their own rights because they cannot depend on adults or the state systems to do so for them.¹⁴⁵ As the law currently stands, however, minors are legally incapacitated by the presumption that they lack the “maturity, experience, and capacity for judgment required for making life’s difficult decisions.”¹⁴⁶ While this may be the case, parents who abandon their children have constructively given up the right to make decisions for them. Instead, children who do not have parents to protect them should have the opportunity to legally protect themselves.

A. Partial Emancipation: Compelling Financial Support

Throwaway minors should be able to petition the court for partial emancipation if it is determined to be in their best interests. Black’s Law Dictionary defines “partial emancipation” as “[e]mancipation that frees a child for only a part of the period of minority, or from only a part of the parent’s rights, or for only some purposes.”¹⁴⁷ This type of action would terminate the legal relationship between the parent and child, but would still require the parents to give their minors financial support.¹⁴⁸ Several states have moved or are moving toward this approach and away from the strict language often used in the more traditional emancipation statutes.

i. Existing Law in Favor of Financial Support

One state supreme court recently recognized the constraints of traditional emancipation and allowed a minor to become emancipated while still retaining the right to seek financial support from her mother.¹⁴⁹ The New Mexico Supreme Court examined the plain language and legislative purpose of its Emancipation of Minors Act, which states, “[a]n emancipated minor shall be considered as being over the age of majority for *one or more of the following purposes*,” and then is followed by nine purposes, including “his right to support by his parents.”¹⁵⁰ The

144. See generally RAY ET AL., *supra* note 1 (discussing the epidemic of homelessness among LGBT youth).

145. Nehring, *supra* note 77, at 776.

146. *Id.* at 769.

147. BLACK’S LAW DICTIONARY, *supra* note 125, at 635.

148. See generally Lauren C. Barnett, Comment, *Having Their Cake and Eating It Too? Post-Emancipation Child Support as Valid Judicial Option*, 80 U. CHI. L. REV. 1799 (2013) (arguing for the efficacy of post-emancipation child support).

149. *Diamond v. Diamond*, 283 P.3d 260 (N.M. 2012).

150. N.M. STAT. ANN. § 32A-21-5 (West 2014) (emphasis added).

New Mexico Supreme Court concluded, however, that because the statute includes flexible language allowing the district court to decide what is in the child's best interests, it was allowed to conclude that the child's right to support by her parents was not barred by emancipation.¹⁵¹

At least one other state goes even further than the *Diamond* court by giving emancipated children the right to financial support. Michigan law not only *permits* but *mandates* financial parental support for emancipated minors.¹⁵² Michigan's statute permitting minor emancipation explicitly states: "The parents of a minor emancipated by court order are jointly and severally obligated to support the minor."¹⁵³

ii. Best-Interests-of-the-Child Standard and Public Policy

The "best interests of the child" standard is the paramount concern considered in the placement and disposition of children in situations of divorce, custody, visitation, adoption, the death of a parent, illegitimacy proceedings, abuse proceedings, neglect proceedings, crime, economics, and all forms of child protective services.¹⁵⁴ Although emancipation statutes tend to vary in terms of their language and provisions from state-to-state, they usually contain a requirement stating that the child can only be emancipated if doing so is in his or her best interest.¹⁵⁵ The *Diamond* court stated that the New Mexico Legislature specifically added this requirement to the statute in question before it became law.¹⁵⁶ The court found "persuasive indications of the Legislature's intent that district courts should tailor emancipation orders to the best interests of the minor in each particular case."¹⁵⁷ This standard is equally as relevant in the child support context. As one scholar concluded, "[g]iven that both emancipation and child support statutes share the goal of furthering children's best interests, granting post-emancipation child support may be the most faithful way to further this joint legislative purpose."¹⁵⁸

Although allowing children to petition for child support is controversial, it would likely also be in accordance with public policy. Although some believe that litigation between parent and child is contrary to public policy because it destroys the relationship between them,

151. See *Diamond*, 283 P.3d at 272.

152. MICH. COMP. LAWS ANN. § 722.4(e) (2011 & Supp. 2014).

153. *Id.* § 722.4(e)(2).

154. Lynee Marie Kohm, *Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence*, 10 J.L. & FAM. STUD. 337, 337 (2008) ("The best interests of the child doctrine is at once the most heralded, derided and relied upon standard in family law today. It is heralded because it espouses the best and highest standard; it is derided because it is necessarily subjective; and it is relied upon because there is nothing better.").

155. Barnett, *supra* note 148, at 1818.

156. *Id.* at 1818–19 (citing *Diamond v. Diamond*, 283 P.3d 260, 266–67 (N.M. 2012)).

157. *Diamond*, 283 P.3d at 266–67.

158. Barnett, *supra* note 148, at 1820.

[w]here this relation has already ceased to exist, as it has when the parent abandons his child, the reason for the rule does not apply. It would rather seem to be the dictate of public policy to recreate this relation as far as is possible by compelling the parent to support the child.¹⁵⁹

Therefore, the court should allow abandoned children to recover financial support from their parents because not only would it be in the children's best interests, but it would also be in accordance with the law's presumption that parents financially support their children until at least the age of majority.¹⁶⁰ The fact that the child is no longer a resident of the home, as opposed to living in an impoverished home, should be even more of a reason to compel that support.

iii. Initial Hurdles for Partial Emancipation

There is no existing structure that would practically allow for minors to manage this type of financial support on their own. Because all of our welfare and support systems are designed to distribute wealth through adults, it would be difficult to fashion a structure through which minors are the primary benefactors. While it is clear that there may be logistical problems with distributing funds to abandoned minors, this concern could be mitigated. For example, the court could institute of a program through which specially trained guardians ad litem (GAL) may monitor the children and distribute their finances. The court-appointed GALs would be able to supervise these minors by overseeing their expenses, helping them find appropriate housing, and ensuring that they are attending school. While this arrangement is admittedly not ideal, it is undoubtedly preferable to the children becoming homeless and destitute.

B. Legislative Proposals Moving Forward

Although many institutional changes may be made to discourage LGBT youth abandonment, there are four major legislative and administrative proposals that may help to mitigate the harm caused by LGBT youth homelessness. First, the federal government should reauthorize and increase its appropriations for federal programs like the RHYA.¹⁶¹ This will help ensure that current housing programs and additional services continue to be available and expand. Second, the government should require agencies and shelters that receive federal funding to serve homeless youth to adopt nondiscrimination policies for both residents and

159. Nehring, *supra* note 77, at 802.

160. *See id.* at 807.

161. RAY ET AL., *supra* note 1, at 153 (recommending reauthorization and an increase in appropriations for the RHYA).

staff. Third, any states that still maintain laws and policies that prevent single and partnered LGBT individuals from becoming adoptive and foster parents should be repealed. This would allow for an increased number of adoptive and foster parents overall and may increase the likelihood that LGBT homeless youth will be placed in an understanding and safe environment.¹⁶²

Finally, state legislatures may be able to institute elevated criminal punishment for parents whose child abandonment was motivated by sexual minority discrimination. In the civil context, it is not practical to require abandoned LGBT youth to show that their abandonment was motivated by discrimination in order to recover. This would be nearly impossible to show in court. Legislatures should instead institute deterrents for parents who would otherwise abandon their child based on his or her sexual orientation in their respective criminal codes. In *Wisconsin v. Mitchell*, the U.S. Supreme Court held that a sentencing enhancement provision for racially motivated crimes was not unconstitutional.¹⁶³ Along the same reasoning, state governments may be able to institute a provision in their child abandonment statutes that elevates the punishment for parents who force their children from the home because of their sexual orientation.¹⁶⁴ While it may be more difficult to prove, explicitly prohibiting parents from abandoning their children based on their sexual orientation may discourage some parents from doing so.

It is important to recognize, however, that homosexuality, unlike race, has not been classified as a traditionally “suspect” or quasi-suspect class and does not have the protection of strict scrutiny.¹⁶⁵ Therefore, states may not be allowed to create elevated punishment for sexual identity discrimination until a court rules that homosexuality is a protected class and merits stricter scrutiny. Until that time, LGBT youth must rely on traditional sentencing provisions to discourage their parents from abandoning them.

CONCLUSION

The harsh consequences that abandoned LGBT youth face are overwhelming. There seems to be no answer for these children and teens who have been rejected by their families, only to face an unwelcoming society with meager welfare resources. Some legislation, organizations, and agencies have improved the lives of thousands of LGBT minors over the past thirty years, but it is clear that much more has to be

162. *See id.* at 157–58.

163. 508 U.S. 476 (1993).

164. *Cf. Teresa Eileen Kibelstis, Preventing Violence Against Gay Men and Lesbians: Should Enhanced Penalties at Sentencing Extend to Bias Crimes Based on Victims’ Sexual Orientation?*, 9 NOTRE DAME J.L. ETHICS & PUB. POL’Y 309 (1995) (arguing that “bias crimes based on actual or perceived sexual orientation require enhanced penalties at sentencing in order to assure that gay men and lesbians receive protection under state and federal laws when they are victims of these crimes”).

165. *Evans v. Romer*, 854 P.2d 1270, 1275 (Colo. 1993).

done to truly meet the needs of this unique and vulnerable population. While the law presumes that parents will try to preserve what it is in the best interests of their children, this presumption is not enough to protect these children. The laws in place to protect these at-risk children often fail, and they are left with no ability to save themselves. The children who are not protected by their parents or the State become trapped in a world of abuse and neglect with no one to turn to—not even themselves.

While children may lack the knowledge, experience, and capacity that are required to engage in legal decision making, they are still capable of determining when their surroundings are unbearable. Although some people worry that giving children more rights may lead to a waste of resources in an already overburdened legal system, it is clear that expelling children from the system entirely is not the appropriate solution to protect their best interests. It is unacceptable to ignore the fact that thousands of LGBT children are abandoned every year, and that our current system does not provide adequate assistance for them. When parents are not doing their jobs, children need to have a better avenue for bringing their needs to the attention of someone who can help them. Comprehensive institutional change is necessary to tackle the increasing problem of LGBT youth abandonment and homelessness, but allowing minors to petition the court for partial emancipation and financial support from their parents is the right place to start.