
CHAPTER SIX

A Matter of Survival Representing Runaway and Homeless Youth

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PART I: SAMMY'S STORY

Police brought 16-year-old Sammy to Spruce Street Secure Crisis Residential Center, a short-term lockdown facility in Seattle, Washington, for runaways, after he ran away from home. Most youth at Spruce Street are ultimately sent home to their families, so it came as no surprise when the state's Children's Administration (CA) ordered the facility to return Sammy to his caretaker. But Spruce Street's program director, who had a gut feeling that something was amiss and was uneasy about sending Sammy home, reached out to the Street Youth Legal Advocates of Washington (SYLAW) for help. SYLAW spent the better part of a year fighting for Sammy—often against the very agency that was charged with promoting his well-being—to secure a safe and stable home for him.

SYLAW's first step was to interview Sammy, who described a life of horrors, every bit of which and more was confirmed by SYLAW's investigation. When Sammy and his twin brother, Billy, were toddlers, their mother disappeared and subsequently died from an overdose. Then their father went to prison. Still toddlers, the two boys ended up in the care of a family friend, Frida, who lived with her adult daughter, Julie. During the time that Sammy and Billy lived with Frida and Julie, CA received dozens of

referrals and conducted sixteen intakes on the family. The agency received calls from concerned teachers, counselors, neighbors, family friends, and the police—many indicating possible abuse by Julie. The allegations of abuse were severe, including threats to cut off the boys' penises and nail them to the wall, striking their heads against the table corner, beatings with kitchen utensils, black eyes, lacerations, choking, starving, and other assaults. Their caretakers threatened the boys with starvation if they told anyone of the abuse, so the boys lied, though not always convincingly. The lies were as transparent as blaming rabbit attacks for their cuts and marks. Frida and Julie often kept the boys home from school when they had bruises, or moved the boys from one school to another. Frida once threatened a school with a lawsuit for harassment if the school continued to interfere.

Over the years, CA passed the boys off from one caseworker to another and among different divisions. But each caseworker would eventually just close the case without providing any protection to the boys or finding them a new placement. CA's own notes indicate that the agency closed the case once because Frida threatened legal action against CA. Twice, CA's records noted allegations that Frida and/or Julie personally knew a CA worker who was tipping them off before investigations, but CA never followed up on the allegation. Inexplicably, caseworkers would often rate the risk to the boys as low, despite the number of allegations and concerns that the boys were small for their age and unable to fend for themselves.

When the boys were teenagers, Frida passed away, leaving the twins in the sole care of Julie. The abuse continued. When the boys were 16, Julie admitted to a police officer that she had physically assaulted Sammy on a number of occasions—she had backhanded him so hard his nose bled, thrown him five feet onto a couch, pulled his hair, punched him in the chest with a closed fist, thrown food at him, backhanded him while wearing rings, and hit him with a telephone. She also admitted that she had forced Sammy to steal for her on 25 occasions. If she were the officer, she told him, she would be “disgusted” with herself. The thefts, it turned out, were to support Julie's substance abuse. CA received this report, but never took action on it, still insisting that the boys be returned to Julie's care.

Over the years, both boys took to the streets to escape the abuse. Billy would get himself locked up in juvenile detention and hide in abandoned

buildings. And Sammy would try to get locked up at Spruce Street, a facility that other runaway youth were desperately trying to escape.

SYLAW's advocacy on Sammy's behalf met CA's opposition from the start. Indeed, CA attempted to retaliate against the Spruce Street program director for referring Sammy and letting him speak to his attorney; the agency argued that Sammy had no right to talk to his attorney even after Sammy specifically asked the attorney for help.

One of SYLAW's first tasks was to convince CA that neither Frida, who was deceased, nor her daughter Julie was related to Sammy and his brother, and that the women had never obtained legal custody of the boys. CA's notes indicated massive confusion about Frida's identity; at times the agency mistook her for the boys' biological mother and insisted that Julie was a stepsister. SYLAW attempted to clear up the confusion, explaining the lack of a legal relationship and showing that petitions by Frida and Julie for legal custody and guardianship had been dismissed. Despite this, CA continued to take the position that these boys should be returned to Julie's care, explaining that it "took [Julie] at her word" that she was the legal guardian.

Sammy had been in touch with Brian, the brother of an ex-boyfriend of Julie's. When interviewed by SYLAW, Brian corroborated the allegations of Julie's abusive behavior, and was very concerned about the twins' welfare. Brian stepped up and agreed to take custody of Sammy for as long as necessary. Brian filed a petition to establish nonparental custody and make Brian Sammy's legal custodian. (Billy had not yet contacted SYLAW.)

At the preliminary hearing, Julie appeared and argued that she had legal custody of the boys; she said her "proof" was that the state was giving her food stamps and medical coupons for their care. SYLAW argued that she had no legal relationship to the boys, and that the state's decision to provide her with public benefits for the boys did not alter that fact. SYLAW successfully asserted that the only living adult with any rights to the boys was their incarcerated father, whom SYLAW had tracked down in prison. He had become a model prisoner, and explained that his efforts to locate Sammy and Billy had been futile, as Frida and Julie had kept them hidden. The father agreed to help wrest legal control of the children from Julie, by supporting Sammy's request to live with Brian.

The judge sided with Sammy. First, the court found that Julie lacked standing and dramatically ordered her to leave the courtroom to allow the confidential hearing to proceed. Julie left and was not heard from again. The court then granted legal custody of Sammy to Brian, with Sammy's father having the right to stay involved with Sammy. Once the court determined that Julie was not a legal parent, Billy felt free not to return to Julie's care. He later joined Sammy. After their father was released from prison, Brian helped him reunite with Sammy and Billy. The children, in fact, began living with their father again, with Brian's support.

Even after the family court excluded Julie from the case because she lacked standing and ordered Sammy into Brian's care, CA continued to argue for Sammy's return to Julie. In all the years that the CA received abuse allegations, the agency never once removed the boys from their home, and instead actively fought the attempts of Spruce Street staff, the boys' friends, and Sammy's attorney to put an end to the abuse. Without the intervention of an attorney, there would have been no possibility to achieve what Sammy ultimately found—a stable and happy home with his twin brother and father.

PART II: ADVOCATING FOR HOMELESS AND RUNAWAY YOUTH

Characteristics of Homeless and Runaway Youth

The National Alliance to End Homelessness (NAEH) estimates that 550,000 youth like Sammy experience homelessness each year.¹ Schools reported almost 53,000 unaccompanied homeless youth in the 2008–2009 school year. A similar number of youth used homeless youth services in 2007.² These youth often flee homes in which they experience physical and/or sexual abuse.³ While infant victims account for most homicides, a study in

1. NAT'L NETWORK FOR YOUTH, RUNAWAY AND HOMELESS YOUTH ACT FACT SHEET, available at <http://www.nn4youth.org/system/files/NN4Y%20RHYA%20Fact%20Sheet%20%282013%29.pdf>.

2. *Id.*; U.S. Interagency Council on Homelessness, *Opening Doors: Federal Strategic Plan to Prevent and End Homelessness* 15 (2010), available at http://usich.gov/PDF/OpeningDoors_2010_FSPPPreventEndHomeless.pdf.

3. It is estimated that 17%–35% of homeless and runaway youth have been subject to sexual abuse. See Marjorie J. Robertson & Paul A. Toro, *Homeless Youth: Research, Intervention, and Policy*, in PRACTICAL LESSONS: THE 1998 NATIONAL SYMPOSIUM ON HOMELESSNESS

the *Journal of the American Medical Association* reported that the “overall incidence of abuse and neglect in adolescents is either higher or the same as that of younger children.”⁴ Most new reports of maltreatment occur disproportionately among older children and adolescents, yet older children are more likely to be perceived as responsible for their own maltreatment.⁵ Homeless youth often come from families with high rates of parental drug or alcohol abuse.⁶ More than one in five youth who age out of foster care experience at least one day of homelessness within a year of leaving care.⁷ Additionally, as many as 255,000 youth age out of the juvenile justice system each year.⁸

Living in shelters or on the streets, unaccompanied homeless youth are at high risk for physical and sexual assault or abuse and physical illness, including HIV/AIDS. Homeless youth also face a high likelihood of becoming involved in prostitution. This is on top of the wide range of serious risk behaviors that adolescents may engage in as a result of their past maltreatment, including premature sexual activity, unintended pregnancy, emotional disorders, suicide attempts, eating disorders, alcohol and drug abuse, and delinquent behavior.⁹

Despite all of these setbacks, many homeless youth remain in school. A 2005 survey found that before entering shelter, 79% of homeless youth regularly attended school, and 78% of youth in transitional housing were still in school.¹⁰

RESEARCH 3-8 (Linda B. Fosburg & Deborah L. Dennis eds.), available at <http://www.eric.ed.gov/PDFS/ED443892.pdf>.

4. Council on Scientific Affairs, Am. Med. Ass’n, *Adolescents as Victims of Family Violence*, 270 JAMA 1850, 1850 (1993).

5. *Id.* at 1852.

6. Robertson & Toro, *supra* note 3, at 3-12.

7. PETER PECORA ET AL., IMPROVING FOSTER FAMILY CARE: FINDINGS FROM THE NORTHWEST FOSTER CARE ALUMNI STUDY 37 (2005), available at http://www.casey.org/Resources/Publications/pdf/ImprovingFamilyFosterCare_FR.pdf.

8. U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, OPENING DOORS: FEDERAL STRATEGIC PLAN TO PREVENT AND END HOMELESSNESS: HOMELESSNESS AMONG YOUTH (2010), available at http://www.usich.gov/resources/uploads/asset_library/FactSheetYouth.pdf.

9. Robertson & Toro, *supra* note 3, at 3-10-3-14.

10. NAT’L ALLIANCE TO END HOMELESSNESS, FACT SHEET: YOUTH HOMELESSNESS 2 (2010), available at http://b3cdn.net/naeh/7947d5ba7cdd6c309f_bdm6bxt27.pdf.

Youth who are homeless are more likely to turn to low-level offenses—petty theft, other property offenses, and drug-related offenses—to survive. Unaccompanied youth are at a distinct disadvantage in juvenile court proceedings. Not only are they unlikely to have an effective parent advocate, they may, in fact, have a parent who wants the youth to be locked up. It is not uncommon for a homeless youth to be charged because of a domestic altercation with the child’s parents. Without a parent on his or her side to advise him or her, the youth may take a bad plea deal, or not sufficiently consider longer-term collateral consequences. If locked up, the youth may have no parent to be released to when the court is ready to discharge him or her, and thus could end up spending more time in detention. Lacking a stable place to live, homeless youth who are on probation may be unable to comply with such conditions as regular check-ins, or may be placed on electronic monitoring as an alternative to detention.

Options for Homeless and Runaway Youth

When physical or sexual abuse or extreme neglect caused the youth’s homelessness, instituting abuse and neglect (dependency or deprivation) proceedings is one strategy to address the family’s issues. However, many child welfare agencies are reluctant to institute such cases for older youth; consequently, those youth are more likely to become involved with the juvenile justice or status offense systems. Sammy’s case is an excellent example of this. Dozens of referrals and numerous investigations had already taken place before SYLAW ever got the case. Sammy’s brother Billy might never have been involved with the juvenile justice system if the child welfare system had taken action.

Status offenses are quasi-criminal offenses that would not be actionable if they were committed by adults. Compared to other types of juvenile legal proceedings, status offense proceedings provide some benefits to homeless youth, yet they can generate detrimental effects as well.

Status offenses vary tremendously from state to state. However, the most common process—known as a FINS (Family in Need of Services), CHINS (Child in Need of Services), or some variation thereof depending on the state—provides the court with some level of control over the child’s (and, to a lesser extent, the family’s) behavior. In some states, the court’s order to

the family members to behave in a certain manner carries with it the possibility of contempt, and even the threat of detention of the youth, upon violation. Depending on the state, the child may be ordered to live in an out-of-home placement, which, for a homeless youth, could temporarily resolve a housing dilemma. However, some states rely on quasi-criminal group homes for status offenders, which may not resolve long-term familial issues that prompted the youth's homelessness. Rarely, in some states, a youth can file his or her own status offense petition with the court to request out-of-home care. For example, Sammy could have filed a petition that he was a Child in Need of Services,¹¹ by which he could ask the court to order him placed in someone's home. For Sammy, however, the fact that there was no legal guardian against whom to file may have precluded this approach. Importantly, housing options for a youth in status offense proceedings will typically be broader than those in abuse and neglect proceedings, as these youth are not generally required to live in a licensed foster care home or relative placement. In addition to housing, status offense proceedings can open doors to other beneficial services—assistance from a caseworker, and mental health and substance use counseling.

On the flip side, status offenses can set a youth up for unnecessary involvement in or scrutiny by the juvenile justice system. A youth who runs from a placement (or otherwise violates a court order) may face civil or criminal contempt of court. As compared to a youth involved in abuse and neglect proceedings, a status offender may not have access to as broad a range of placements or services, or postmajority support.

Emancipation sometimes may be another route for a youth to escape an abusive parent. This proceeding, created either through common law or statute, provides youth with the ability to enter into a binding lease and exercise other rights usually reserved for adults. About one-half of the states have a statutorily codified option for emancipation.¹² Emancipation, however, is a legal catch-22. A youth generally has to show that he or she can support himself or herself to be legally emancipated, a high hurdle for

11. WASH. REV. CODE § 13.32a.160 (2000).

12. *Emancipation of Minors—Laws*, LEGAL INFORMATION INSTITUTE, http://www.law.cornell.edu/wex/table_emancipation.

a youth who has been deprived of emotional or financial support from his or her parents.

Current Role of the Federal Government

The federal government has created modest funding streams designed to prevent and end youth homelessness. The Runaway and Homeless Youth Act helps fund local programs to serve hundreds of thousands of homeless and runaway youth.¹³ Still, not all youth who need shelter and housing can access this life essential—in 2008, the Department of Health and Human Services reported more than 7,663 homeless and runaway youth were turned away from shelters due to lack of bed spaces.¹⁴

The Chafee Foster Care Independence Program (CFCIP) provides funding to support youth who are expected to or who do age out of the foster care system.¹⁵ In addition, as a result of the federal Fostering Connections to Success Act, states may receive federal financial support if they choose to allow youth to stay in foster care until age 21.¹⁶

Most unaccompanied minors continue to be, or at least want to be, connected to their school. The federal McKinney-Vento Homeless Assistance Act, first passed in 1987 and since reauthorized several times, provides protections for homeless children and youth to ensure that they receive the same quality of education as housed students. McKinney-Vento addresses many of the obstacles that homeless students face in pursuing their education and directs school districts to ensure that homeless children are not discriminated against in the classroom or with respect to enrollment, transportation, full access, and other services.¹⁷ Most critically, the act requires school districts

13. 42 U.S.C. §§ 5711–14 (2003).

14. Nat'l Network for Youth, Statement for the Record before the Subcommittee on Labor, Health and Human Services, Committee on Appropriations, U.S. House of Representatives (2008).

15. See *John H. Chafee Foster Care Independence Program*, U.S. DEP'T OF HEALTH & HUM. SERV., CHILD. BUREAU (June 28, 2012), <http://www.acf.hhs.gov/programs/cb/resource/chafee-foster-care-program>.

16. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949. For more information, see http://www.nrcpfc.org/fostering_connections/.

17. The act defines homeless youth as those “who lack a fixed, regular, and adequate nighttime residence” and lists various examples of children who are considered homeless. 42

to allow homeless students to remain in their school of origin—that is, the school they attended before becoming homeless—or to enroll in a school that other students living in the attendance area are allowed to attend.¹⁸ (See Box 2, “Major Federal Laws Affecting Homeless Youth.”)

Youth such as Sammy are likely to come into contact with one legal system or another—even those who do not have their life choices and outcomes dictated by a web of laws that are as likely to keep them homeless as they are to aid them in their exit from the streets.

Advocacy Efforts for Systemic Reform

Legislative, litigation, and legal education efforts to help youth such as Sammy on a broad scale are taking place throughout the nation. (See Box 1, “Resources for Lawyers Working with Homeless Youth.”)

Law reform. State laws affecting homeless youth are extremely varied. The National Law Center on Homelessness and Poverty and the National Network for Youth (NN4Y) have catalogued the major state laws affecting this population.¹⁹ In 2009, the American Bar Association’s Commission on Homelessness and Poverty and NN4Y brought together experts to create *RUNAWAY AND HOMELESS YOUTH AND THE LAW: MODEL STATE STATUTES*.²⁰ These and other resources provide a road map to advocates about what legislative reforms are necessary to help youth. Lawyers play a key role in writing and advocating for laws to better address the needs of this population. Local legislative efforts have ranged from extending foster care to age 21 to improving access to education for unaccompanied youth.

Legal education. In addition to publishing *Alone without a Home*,²¹ lawyers in various states have put together materials to describe, for youth and

U.S.C. § 11434a(2)(a) (1994).

18. 42 U.S.C. § 11432(e)(3).

19. NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY AND NATIONAL NETWORK FOR YOUTH, *ALONE WITHOUT A HOME: A STATE BY STATE REVIEW OF LAWS AFFECTING UNACCOMPANIED YOUTH* (2012), available at http://www.nlchp.org/Alone_Without_A_Home. The National Conference of State Legislatures has also cataloged some of this legislation at <http://www.ncsl.org/issues-research/human-services/homeless-and-runaway-youth.aspx>.

20. AM. BAR ASS’N COMM. ON HOMELESSNESS & POVERTY, *RUNAWAY AND HOMELESS YOUTH AND THE LAW: MODEL STATE STATUTES* (2009).

21. JULIANELLE, REEG, ET AL., *supra* note 19.

service providers, information about the existing state of the law. Lack of knowledge around the law has prevented youth from escaping homelessness or has prolonged periods of homelessness. The Law and Corporate Affairs Department at Starbucks, in conjunction with the law firm of Baker & McKenzie and the Washington State legal services agency Columbia Legal Services, created the website homelessyouth.org to increase knowledge about the laws among youth and the professionals who serve them.

Litigation. Advocacy groups also have brought litigation to improve conditions for homeless youth. Litigation is often focused on improving outcomes for youth who age out of foster care. For example, the settlement in *Braam v. State*,²² a class action over conditions in the Washington State foster care system, required the state to “[o]ffer support services to foster youth until age 21” and “propose a statutory change to extend out-of-home care benefits to children through age 21.”²³ Similarly, the Legal Aid Society and Lawyers for Children filed *D.B. et al. v. Richter* in New York in 2011 to secure adequate housing for youth before their discharge from foster care.²⁴

Legal clinics. Finally, in order to serve individual homeless youth for whom legal issues are standing in the way of safety and stability, lawyers have started legal clinics in numerous communities. For example, the Teen Legal Advocacy Project at the University of Connecticut School of Law runs a clinic in Hartford Public Schools that represents homeless youth on a variety of education and civil matters. In Los Angeles, Public Counsel operates a legal clinic at a drop-in center for homeless youth. Similarly, Bay Area Legal Aid operates a clinic at a homeless youth shelter in Oakland.



For youth such as Sammy, legal support is critical to avoid prolonged homelessness, prison, or death. The legal profession has as important a role to play as do the medical and social work professions. Lawyering on behalf

22. *Braam v. State*, 81 P.3d 851 (Wash. 2003).

23. *Braam v. State* implementation plan, available at <http://braamkids.org/ImpPlanFeb06.pdf>.

24. *D.B. v. Richter*, Index No. 402759/11, was settled in March 2012.

of youth in cases that can completely change the trajectory of their lives is at the heart of lawyers' commitment to deliver justice.

Box 1: Resources for Lawyers Working with Homeless Youth

American Bar Association Homeless Youth and the Law Initiative:
http://www.americanbar.org/groups/public_services/homelessness_poverty/initiatives/homeless_youth_andthelaw.html

American Bar Association Resolution on the Runaway and Homeless Youth Act: http://www.americanbar.org/content/dam/aba/migrated/homeless/PublicDocuments/105B_FINAL.authcheckdam.pdf

Runaway and Homeless Youth and the Law: Model State Statutes (free PDF):
http://www.nn4youth.org/system/files/ABA_Runaway_eBook.authcheckdam.pdf

National Law Center on Homelessness and Poverty Children and Youth and Education Program: <http://www.nlchp.org/youth>

Alone without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth: http://www.nlchp.org/Alone_Without_A_Home

National Association for the Education of Homeless Children and Youth:
www.naehcy.org

National Network for Youth: www.nn4youth.org

Box 2: Major Federal Laws Affecting Homeless Youth

The Runaway and Homeless Youth Act (RHYA) provides funding for resources for local systems of care for runaway and homeless youth. 42 U.S.C. §§ 5711–14 (2003).

The McKinney-Vento Homeless Assistance Act includes provisions to ensure the enrollment, attendance, and success of homeless children and youth in school. 42 U.S.C. §§ 11431–33 (2002).

The Chafee Foster Care Independence Program provides states with funding to support youth who are likely to and who do age out of foster care. *John H. Chafee Foster Care Independence Program*, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, CHILDREN'S BUREAU (June 28, 2012), <http://www.acf.hhs.gov/programs/cb/resource/chafee-foster-care-program>.

The Fostering Connections Act of 2008 offers federal funds to states to extend foster care to youth up until age 21. Pub. L. No. 110-351, 122 Stat. 3949.