

REVIEW OF IDAHO LAWS AFFECTING UNACCOMPANIED YOUTH

Each year, an estimated 1.6 million children and youth (ages 12-17) experience homelessness without a parent or guardian. These youth leave home for a variety of reasons, including severe family conflict, parental abuse or neglect, parental mental health issues, or substance abuse. Prior to leaving home:

- 43% of homeless youth report being beaten by a caretaker;
- 25% of homeless youth have had caretakers request sexual activity;
- 20% of homeless youth had conflicts with their parents around their sexual orientation which caused them to leave.

Whether runaway or throwaway, once on the street, unaccompanied homeless youth face numerous legal barriers that often complicate their attempts to meet the basic necessities of life on their own and prevent them from reaching out for assistance to state agencies and service providers that could otherwise help them.

The legal rights and responsibilities of unaccompanied young people vary among states and territories and often depend upon the specific right a youth wishes to exercise. Despite the reality that they are living apart from parents or guardians, youth who are legally minors lack the legal status to live independently. Unaccompanied youth and their advocates constantly struggle with legal questions regarding access to shelter, public education, and medical and mental health care; legal rights to rent property and enter into contracts; and, issues of juvenile justice, parental rights, and availability of emancipation. Many of these legal questions find their answers in state statutes and regulations. **Source: National Law Center on Homelessness & Poverty • National Network for Youth**

DEFINITION CHILD, JUVENILE, MINOR

Child: Any person under 18 years of age who is not enrolled in an institution of higher education [Health and Safety Title]. Idaho Code Ann. §39-1202 (2011).

Juvenile: Any person under 18 years of age [Probate Code Title, Juvenile Corrections Act Chapter]. Idaho Code Ann. §20-502 (2011).

Minor: Any person under 18 years of age [Domestic Relations Title]. Idaho Code Ann. §32-101 (2011).

CLASSIFICATIONS OF HOMELESS AND RUNAWAY YOUTH

Homeless Child: A child who is without adequate shelter or other living facilities, and the lack of such shelter or other living facilities poses a threat to the health, safety, or well-being of the child. Idaho Code Ann. § 16-1602 (2011).

Runaway: An individual under 18 years of age that is reported to any law enforcement agency as a runaway. Idaho Code Ann. § 18-4508 (2011).

YOUTH IN NEED OF SUPERVISION STATUTES

No CHINS-type statute was found in the Idaho Code.

STATUS OFFENSES – STATUTES

RUNAWAYS

Nine jurisdictions classify runaway youth as status offenders: Georgia, **Idaho**, Kentucky, Nebraska, South Carolina, Texas, Utah, West Virginia, and Wyoming.

- ◆ A runaway youth may be taken into custody without a warrant by a police officer or by a private citizen until the youth can be delivered into the custody of a police officer. The police officer shall then transfer custody to the youth's guardian or deliver the youth to a juvenile shelter care facility or community-based diversion program to await a hearing. Idaho Code §20-516 (2011). A hearing may be avoided if the youth is referred to a community-based diversion program for services and treatment or informally supervised by the Probation Department. Idaho Code § 20-511 (2011). A runaway can be declared a status offender by the court. If a youth commits two status offenses (such as running away, truancy, or curfew violations) in one year, the court may declare the youth a habitual status offender. Idaho Code § 20-521 (2011).

TRUANCY

Six jurisdictions classify truant youth as status offenders: Georgia, **Idaho**, Nebraska, South Carolina, Texas, and West Virginia

- ◆ Compulsory school age is 7 to 15 years old. A student who repeatedly violates compulsory school attendance requirements is considered a habitual truant. A habitual truant may be denied enrollment in a school by a board of trustees or may be temporarily suspended by the school superintendent. Punishment for truancy is guardian-focused and a parent or guardian may be directly prosecuted for knowingly allowing a child to become a habitual truant. However, truancy is considered a status offense and a suspected truant may be taken into custody by a peace officer. If a youth commits two status offenses (such as running away, truancy, or curfew violations) in one year, the court may declare the youth a habitual status offender. Habitual status offenders may be placed on probation or placed in a juvenile shelter care facility. Idaho Code § 20-516 (2011); Idaho Code § 20-520 (2011); Idaho Code § 20-521 (2011); Idaho Code § 33-202 (2011); Idaho Code § 33-205 (2011); Idaho Code § 33-206 (2011); Idaho Code § 33-207 (2011).

CURFEW

Violation by a juvenile of a curfew established by a municipal or county ordinance shall be punishable by a fine not to exceed \$300, detention (county jail prohibited), or both. Idaho Code § 20-549 (2011).

EMANCIPATION

There is no general statute that addresses the process of emancipation, but the state does recognize emancipation in other statutes. The first definition from the probate code states that an emancipated minor shall mean any male or female who has been married. Idaho Code § 15-1-201 (2011). The second definition from a statute addressing the treatment and care of the

developmentally disabled states that an emancipated minor means an individual between 14 and 18 years of age who has been married or whose circumstances indicate that the parent-child relationship has been renounced. See Idaho Code Ann. § 66-402 (2011).

Idaho does not explicitly address the subject of an emancipated minor's right to contract

RIGHTS OF YOUTH TO ENTER INTO CONTRACTS

Idaho permit minors to enter into binding contracts for “necessities” or “necessaries:”

Any contract made by a minor may be disaffirmed, either before majority or within a reasonable time afterward, but a minor may not disaffirm a contract for necessities or one entered into by express statutory authority. Any minor 15 years of age or older may contract for annuities and for life, body, health, property, and liability insurance. The minor may also contract for insurance on any person in whom the minor has an insurable interest. The minor may not, by reason of his/her minority, disaffirm the insurance contract, but an un-emancipated minor, because of an unperformed agreement, will not have to pay any premium on an insurance contract or annuity. Any person may have an interest in real or personal property, so it can be inferred that a minor may do so as well. Idaho Code Ann. §§ 29-101, 32-101, 32-103, 32-104, 32-105, 41-1807, 55-103 (2011).

HEALTH CARE ACCESS

In Idaho, “[a]ny person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of and the significant risks ordinarily inherent in, any contemplated hospital, medical, dental or surgical care, treatment or procedure is competent to consent thereto on his or her own behalf.” Idaho Code Ann. § 39-4503 (2011). In addition to this broad statement, Idaho also specifically allows minors 14 and older to consent to treatment for sexually-transmitted diseases, and minors to request treatment for substance abuse. Idaho Code Ann. § 39-3801 (2011). Idaho prohibits un-emancipated minors from obtaining an abortion without written parental consent or court order. Idaho Code Ann. § 18-609A (2011).

Idaho's SCHIP plan is called the Idaho Children's Health Insurance Plan and it is administered by the State Medicaid Agency. It covers youth under 19 years of age with family incomes of up to 185% of the FPL who are U.S. citizens or legal residents. Depending on the household income, a monthly premium for coverage may be assessed. In addition, Idaho offers the Access Card program, which assists members with paying their premiums, administered in partnership with insurance carriers. An eligible youth qualifies for up to \$100 a month in premium assistance. The program also covers youth with family incomes up to 185% of the FPL.

Unaccompanied youth may apply for coverage independently.

A youth may apply for the program by completing a standard Medicaid paper application.

Applications are available for download at http://healthandwelfare.idaho.gov/LinkClick.aspx?fileticket=lqleO_7F11A%3d&tabid=123&mid=4137.

The website for the Plan is located at <http://healthandwelfare.idaho.gov/Medical/MedicaidCHIP/tabid/123/Default.aspx> or one can contact the office at 1-800-926-2588 or at 205332-7205 for the hearing impaired.

CONSENT & CONFIDENTIALITY STATUTES

Any person of ordinary intelligence and awareness sufficient for him or her generally to comprehend the need for, the nature of, and the significant risks ordinarily inherent in any contemplated hospital, medical, dental, or surgical care, treatment, or procedure is competent to consent thereto on his or her own behalf. Idaho Code Ann. § 39-4503 (2011). A minor 14 years of age or older who may have come into contact with any infectious, contagious, or communicable disease reportable by law may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Idaho Code Ann. § 393801 (2011). A person may request treatment and rehabilitation for addiction or dependency to any drug, and if the person is 16 years of age or older the fact of seeking or receiving treatment shall not be reported to the parents or legal guardian without the minor's consent. Idaho Code Ann. § 37-3102 (2011). An alcoholic or an addict may apply for voluntary treatment directly to any approved public treatment facility. If the proposed patient is a minor or an incompetent person, he/she, a parent, legal guardian, or other legal representative shall make the application. Idaho Code Ann. § 39-307 (2011).

A person shall not perform an abortion upon an un-emancipated minor unless the attending physician has secured the written consent of one of the minor's parents or the minor's guardian or conservator. Idaho Code Ann. § 18-609A (2011). Judicial bypass is addressed in sections (2)–(6) of the statute, and exceptions are addressed in section (7). *See id.*

DISCHARGE FROM THE JUVENILE JUSTICE SYSTEM

Adjudicated youths may be released to their home, a residential community based program, a nonresidential community based treatment program, an approved independent living setting, or other appropriate residence. Idaho Code Ann. § 20-533 (2011).

INTERSTATE COMPACT FOR JUVENILES

Idaho Code Ann. § 16-1901 (2011).

FEDERAL BENEFIT STATUTES

TAFI (Temporary Assistance for Families in Idaho)

TAFI provides assistance to parents and pregnant women who are in their third trimester and unable to work. Enhanced Work Services Manual, p. 14 (2008). Generally, unmarried parents under age 18 must live with their parents in order to receive assistance. Two unmarried parents under age 18, with a child in common, can choose to live with the parents of the unmarried father or the unmarried mother. Idaho Admin. Code r. 16.03.08.128 (2011). This requirement may be waived if (a) the child of the minor parent was conceived by rape or incest, (b) the minor's parents are abusive, (c) the minor parent's parents are not available due to incarceration, death, or their whereabouts are unknown, (d) the minor parent's parents refuse to allow the minor parent into the home and no alternative care is available, or (d) the minor parent is dangerous to the parents or other household members. Idaho Admin. Code r. 16.03.08.129 (2011). A minor parent who is exempt from living with his or her parents may live with an adult guardian, an appropriate adult relative, an appropriate adult not related to the minor parent, or in an independent living arrangement with adult supervision, including a home for unwed mothers. Enhanced Work Services Manual, p. 17 (2008). A child between the ages of 16 and 18 who is not attending school must participate up to 40 hours per week in assigned work activities. A single custodial parent of a child less than 6 years of age is

exempt from work activities if distance or child care is a hardship. Work activities consist of paid work, including self-employment that produces earnings of at least the federal minimum wage; unpaid work; community service; work search activities; education leading to high school diploma or equivalency; work preparation education; vocational or job skills training; and other activities that improve the ability to obtain and maintain employment or support self-reliance. Idaho Admin. Code r. 16.03.08.163 to 16.03.08.164

RIGHTS OF UNACCOMPANIED YOUTH TO PUBLIC EDUCATION

Unaccompanied youth experiencing homelessness have the right to the same free, public education and opportunities for academic success as housed students. The federal McKinney-Vento Homeless Assistance Act (McKinney-Vento Act) also provides additional protections to many unaccompanied youth. 42 U.S.C. §§ 11301-11435 (2006). Subtitle VII-B of the McKinney-Vento Act establishes an array of rights for unaccompanied youth in homeless situations. The Act defines unaccompanied youth as young people who are not in the physical custody of parents or guardians. *Id.* § 11434A(6). Homelessness is defined broadly, to include a wide variety of temporary, inadequate living situations, such as staying temporarily with friends or relatives due to a loss of housing, economic hardship or a similar reason; living in emergency and transitional shelters; staying in motels, hotels, campgrounds or trailer parks due to the lack of alternative adequate accommodations; sleeping in parks, cars, abandoned buildings, train or bus stations, and other public spaces; and awaiting foster placement. *Id.* § 11434A(2).

Unaccompanied youth must be provided with equal access to appropriate secondary education and support services. Youth in homeless situations also have the right to remain in one school, even if their lack of housing forces them to move to a different area. As long as it is feasible, unaccompanied youth can stay in the same school for the entire time they are homeless. The school district must provide transportation to and from that school by providing free passes for public transportation, reimbursement for gas, or other transportation services. 42 U.S.C.A. § 11432 (2010).

Unaccompanied youth who are covered by the McKinney-Vento Act also have the right to enroll in school immediately, even if they lack documents normally required for enrollment. Every school district must appoint a liaison who is responsible for assisting unaccompanied youth with enrollment, transportation, and other issues. Liaisons and state Departments of Education must also ensure that school personnel are made aware of the specific needs of runaway youth and other youth experiencing homelessness. Protections for unaccompanied youth are also explicitly included in the Individuals with Disabilities Education Act (IDEA) as amended, which mandates that children with disabilities receive a free, appropriate public education. 20 U.S.C. §§ 14001450 (2006). IDEA requires, as part of its “child find” program, that all children with disabilities, including those who are homeless, be identified, located, and evaluated. *Id.* § 1412(a)(3)(A). It expressly commands each State education agency to ensure that pertinent requirements of the McKinney-Vento Act are met. *Id.* § 1412(a)(11)(A)(iii). For children whose parents are unknown, including homeless children, IDEA requires that the State assign an independent surrogate for the child if needed. *Id.* § 1415(b)(2). The surrogate, like parents, has the right to examine all records relating to the child, to participate in meetings with respect to identification, evaluation, and educational placement of the child under IDEA, and to obtain an independent educational evaluation in appropriate circumstances. *Id.* §

1415(b)(1). The surrogate, like parents, may file complaints and participate in due process hearings to resolve disputes regarding special education services. *Id.* § 1415(b)(6)-(7).

In addition to the federal protections discussed above, several states also have adopted statutes or regulations to ensure access to education for unaccompanied young people. For example, Colorado enacted its own version of the McKinney-Vento Act in 2002. Colo. Rev. Stat. §§ 22-1-102, 221-102.5, 22-33-103.5 (2011). The statute reinforces the protections of the federal law and has garnered attention and results for unaccompanied youth in Colorado. Illinois has conferred statutory protections on unaccompanied youth since 1995. 105 Ill. Comp. Stat. 45/1-5 to 3-5 (2011). In fact, many of the changes to the McKinney-Vento Act enacted in 2002 were inspired by successful provisions in the Illinois statute. New York's statute enacting McKinney-Vento is notable for extending protections to students to remain in their schools of origin even in the year after they find permanent housing if that is the student's terminal year in a school (e.g. a homeless student who finds housing in 11th grade can still finish his 12th grade year in his same school). N.Y. Educ. Law § 3209 (2011). Many other states have incorporated provisions of the McKinney-Vento Act into their laws, including California, Connecticut, Delaware, Idaho, Maine, Maryland, North Carolina, North Dakota, Ohio, Tennessee, and Virginia. Cal. Educ. Code § 48850(a) (1) (West 2011); Conn. Gen. Stat. § 17b-800a (2011); 14 Del. Code Ann. § 202 (2011); **Idaho Code Ann. § 33-1404 (2011)**; Me. Rev. Stat. Ann. tit. 20-A, § 5205(7) (2011); Md. Code Ann., Educ. § 8-412 (2011); N.C. Gen. Stat. § 115C-366 (2011); N.D. Cent. Code § 15.1-19-08 (2011); Ohio Rev. Code Ann. § 3313.64(F)(13) (LexisNexis 2011); Tenn. Code Ann. § 49-6-5001(c)(3) (2011); Va. Code Ann. §§ 22.1-3(A)(6), 22.1-3.1, 22.1-270, 22.1-271.2 (2011). Many of these and other jurisdictions have also incorporated provisions of the Act into their regulations, including Maine, Maryland, and New Jersey. 05-071 Me. Code R. Ch. 14 (2011); Md. Code Regs. § 13A.05.09.01 et seq. (2011); N.J. Admin. Code §§ 6A:17-2.1 to 2.9 (2011). Following litigation in Pennsylvania brought by the Law Center and the Education Law Center, Pennsylvania issued model guidance for local school districts: http://homeless.center-school.org/providers/290/BEC_ECYESH_09-2011.pdf.

HARBORING UNACCOMPANIED YOUTH

There is no specific law referring to the harboring of runaway youth in general. However, it is a crime for a person to knowingly and intentionally house or otherwise accommodate a child who is under the age of 17 without having the authority of the child's guardian, the state of Idaho or a department within the state, or the person who has legal custody of the child. Harboring a runaway may fall within this category. It will be an affirmative defense to this crime if the person has notified the custodial guardian or a law enforcement agent of the child's location. It will also be an affirmative defense if shelter is given because the child is being legally detained, emergency aid is required, or there is reasonable evidence to believe that the child has been abused by the custodial guardian. Idaho Code Ann. § 18-1510 (2011).

SERVICES AND SHELTERS FOR UNACCOMPANIED YOUTH

Homeless Youth Services

The Department of Health and Welfare is responsible for cooperating with the federal government in extending services to homeless youth. Idaho Code Ann. § 56-202 (2011).

Child Care Facilities

In order for a children's institution to operate, it must obtain a license from the Board of Health and Welfare. A children's institution is a person or an organization that operates a residential facility for children not related to that person if that person is an individual, for the purpose of providing child care. Idaho Code Ann. §§ 39-1202, 1209 (2011).

Homeless Shelters

The Idaho Housing Trust fund allocates money for homeless shelters, sets standards for the use of the money allocated, and monitors compliance with these standards. Idaho Code § 67-8103 (2011); Idaho Code Ann. § 67-8109 (2011).