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## Because Parents Owe It to Them: Unaccompanied LGBTQ Youth Enforcing the Parental Duty of Support

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### Acknowledgements

This article was written for a CUNY School of Law course entitled Sexuality & the Law in Spring 2012. I am indebted to the clients and volunteers at M.C.C.N.Y. Sylvia's Place for inspiring my journey to become a juvenile rights advocate. I am grateful to Ruthann Robson, Professor of Law and University Distinguished Professor, for believing that the ideas of her students ought to be shared beyond CUNY. I wish to thank the staff of this Law Review for crafting and re-crafting this Note with me. Last but not least, I thank my mother Elena, my father Konstantin, and my brother Gregory for their love and support—no matter what.

# BECAUSE PARENTS OWE IT TO THEM: UNACCOMPANIED LGBTQ YOUTH ENFORCING THE PARENTAL DUTY OF SUPPORT

*Maria Roumiantseva*<sup>†</sup>

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*The streets steal stories. Crush the bodies of boys and girls with molars of jagged concrete; tear at tender hearts with incisors of glass shards. I tried to remember who we wanted to be. Where we came from before our names shriveled under the labels of “at risk,” “street involved,” “runaways,” “throwaways,” “trash.” The streets ingest lives. Bodies decompose in the acidic reality of survival. We were swallowed by systems incapable of digesting us.<sup>1</sup>*

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<sup>1</sup> Sassafra Lowrey, *KICKED OUT* (2010), <http://www.kickedoutanthology.com/anthology/> (last visited Dec. 3, 2013).

## INTRODUCTION

Colloquially, it is termed the “kicked out for coming out epidemic.” Youth are coming out to their parents as lesbian, gay, bisexual, transgender, or questioning (LGBTQ)<sup>2</sup> at younger ages than ever before.<sup>3</sup> Some parents not only support their child but are excited by this discovery of self. Others are uncomfortable at first but grow tolerant and, eventually, affirming of their child’s identity. But “the epidemic” is not referring to these scenarios. There are parents that outright reject their child’s sexual orientation or gender non-conformity. Frightened, threatened, angered, or disgusted by their child’s disclosure, some try to *repair* the child through therapy.<sup>4</sup> Others badger, belittle, or beat the youth.<sup>5</sup> Finally, there are the vectors of “the epidemic.” There are parents that turn the home into such an unbearably cruel place that the child runs away; these parents present the choice: follow my rules or go. Other parents simply demand the child to leave.

LGBTQ youth are disproportionately represented among unaccompanied homeless youth.<sup>6</sup> Homelessness can also be dispro-

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<sup>2</sup> I use the acronym LGBTQ throughout this paper to refer to lesbian, gay, bisexual, transgender, and questioning youth. When a source has used an alternative acronym or specific term, I have noted it. “Lesbian” refers to a woman or girl who has enduring romantic, physical, and/or sexual attraction for other females. “Gay” refers to a person who is romantically, physically, and sexually attracted to other people of the same gender; it may be used to refer to men and boys specifically. “Bisexual” refers to a person who is romantically, physically, and sexually attracted to people who are male or female. “Transgender” is an umbrella term encompassing people whose gender identity does not match their sex assigned at birth. The term includes people who self-identify as transgender or are perceived to be transgender. “Questioning” refers to a person who is exploring their sexual orientation and/or gender identity.

<sup>3</sup> LGBT youth who worked with The Family Acceptance Project reported coming out, on average, at age 13 and four months. See CAITLIN RYAN, NAT’L CTR. FOR CULTURAL COMPETENCE, HELPING FAMILIES SUPPORT LGBT CHILDREN 1–2 (2009), available at [http://nccc.georgetown.edu/documents/LGBT\\_Brief.pdf](http://nccc.georgetown.edu/documents/LGBT_Brief.pdf). See also NICO SIFERA QUINTANA ET AL., CTR. FOR AMERICAN PROGRESS, ON THE STREETS: THE FEDERAL RESPONSE TO GAY AND TRANSGENDER HOMELESS YOUTH 8–9 (2010), available at [http://www.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouth\\_homelessness.pdf](http://www.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouth_homelessness.pdf).

<sup>4</sup> See generally Karolyn Ann Hicks, “Reparative” Therapy: Whether Parental Attempts to Change A Child’s Sexual Orientation Can Legally Constitute Child Abuse, 49 AM. U. L. REV. 505, 513–19 (1999). For more personalized accounts of reparative therapy, see Tyler Talbot, Comment, *Reparative Therapy for Homosexual Teens: The Choice of the Teen Should Be the Only Choice Discussed*, 27 J. JUV. L. 33 (2006).

<sup>5</sup> See generally Lowrey, *supra* note 1.

<sup>6</sup> See NICHOLAS RAY, NAT’L GAY & LESBIAN TASK FORCE POL’Y INST. & NAT’L COAL. FOR THE HOMELESS, LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH: AN EPIDEMIC OF HOMELESSNESS 162–66 (2006), available at <http://www.thetaskforce.org/downloads/HomelessYouth.pdf> (providing a detailed list of estimates about the proportion of LGBTQ youth within the homeless youth population, and noting that, although spe-

proportionately brutal for these youth. Not only do LGBTQ youth face barriers to assistance that other youth encounter, such as a lack of services and general distrust of adult service providers, but they are also plagued with the risk of continuing rejection. Parents are not the only entities that reject, and LGBTQ youth can resist services when they perceive them as unsafe or discriminatory toward their sexual orientation and/or gender expression.<sup>7</sup> Hindered access to services increases the difficulty of securing basic survival needs.

LGBTQ homeless youth advocates have advanced recommendations to increase services and support for these youth.<sup>8</sup> The recommendations include raising awareness among service providers about the unique struggles LGBTQ youth face, transforming the culture of homeless youth services to be safer for LGBTQ youth, expanding LGBTQ specific services, and working with parents to prevent rejection.<sup>9</sup> These recommendations must be implemented. Yet advocates must also take guidance from the creative youth they serve and consider alternative options.

One unexplored option is the parental duty of financial support. In New York, parents must provide their children with shelter, food, clothing, and other necessities until the child reaches 21 years of age or the parent-child relationship is legally terminated.<sup>10</sup> Unaccompanied youth who have been rejected by their families because of their actual or perceived sexual orientation or gender

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cific research is minimal, estimates about transgender homeless youth are included in general estimates). For a similar, more recent study that does not include transgender identity, see Heather L. Corliss et al., *High Burden of Homelessness Among Sexual-Minority Adolescents: Findings From a Representative Massachusetts High School Sample*, 101 AM. J. OF PUB. HEALTH 1683 (2011), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3154237/pdf/1683.pdf> ("Approximately 25% of lesbian and gay adolescents and 15% of bisexuals reported homelessness compared with just 3% of the exclusively heterosexual adolescents." *Id.* at 1686.).

<sup>7</sup> See Laura A. Hughes, *Homeless LGBT Youth: Living on the Streets at the Dangerous Intersection of Sexual Orientation, Gender Identity, Race, and Class*, HUFFINGTON POST (Mar. 12, 2012, 3:41 PM), [http://www.huffingtonpost.com/laura-a-hughes/homeless-lgbt-youth\\_b\\_1338509.html](http://www.huffingtonpost.com/laura-a-hughes/homeless-lgbt-youth_b_1338509.html); RAY, *supra* note 6, at 5.

<sup>8</sup> See N.Y.C. COMM'N ON LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING RUNAWAY AND HOMELESS YOUTH, ALL OUR CHILDREN: STRATEGIES TO PREVENT HOMELESSNESS, STRENGTHEN SERVICES, AND BUILD SUPPORT FOR LGBTQ YOUTH 31-42 (2010) [hereinafter N.Y.C. LGBTQ HOMELESS YOUTH REPORT], available at [http://www.nyc.gov/html/om/pdf/2010/pr267\\_10\\_report.pdf](http://www.nyc.gov/html/om/pdf/2010/pr267_10_report.pdf). This commission consists of LGBTQ homeless youth service providers and government officials who make broad policy recommendations and specific strategies to address LGBTQ youth homelessness in New York City. See also LAMBDA LEGAL ET AL., NATIONAL RECOMMENDED BEST PRACTICES FOR SERVING LGBT HOMELESS YOUTH (2009), available at <http://www.f2f.ca.gov/res/pdf/NationalRecommended.pdf>.

<sup>9</sup> See LAMBDA LEGAL ET AL., *supra* note 8.

<sup>10</sup> N.Y. FAM. CT. ACT § 413 (McKinney 2013).

identity, could enforce this duty against their parents. Court enforcement can provide youth with the financial resources to obtain their basic needs. Additionally, enforcement could incentivize a transformation in the parent-child relationship.

Section II of this paper discusses the unique challenges LGBTQ youth face during episodes of homelessness.<sup>11</sup> This section emphasizes the difficulty youth face in securing their basic needs because of hindered access to homeless and social services, as well as a general lack of financial resources.<sup>12</sup> Section III explains the legal duty parents have to financially support their child, which persists despite a breakdown in the parent-child relationship. This section focuses specifically on New York law and analyzes the defense of constructive emancipation which parents could raise to avoid liability. Section IV explores what enforcement by LGBTQ unaccompanied youth would look like and exposes the inapplicability of constructive emancipation to these cases. Section V rebuts the expected critiques, and maintains that this proposal is a supplement to, rather than a replacement of, the already-existing recommendations to improve services and supports for LGBTQ unaccompanied youth.

### I. KICKED OUT FOR COMING OUT

*“No matter what estimates are used, it is accepted that homelessness among youth is substantial and widespread throughout the nation.”*<sup>13</sup>

New York State defines a homeless youth as a person younger than 21 years of age who is in need of services and without shelter where supervision and care are available.<sup>14</sup> Unaccompanied youth are those who are homeless on their own. Federal law defines homeless youth as youth who are not in the physical custody of a

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<sup>11</sup> See *cf.* JAN MOORE, NAT’L CTR. FOR HOMELESS EDUC., UNACCOMPANIED AND HOMELESS YOUTH: REVIEW OF LITERATURE 1995–2005, at 8 (2005), available at [http://center.serve.org/nche/downloads/uy\\_lit\\_review.pdf](http://center.serve.org/nche/downloads/uy_lit_review.pdf) (stating that more than 22% of youth with foster care experience are homeless for one or more days after turning 18). This article focuses on the initial adoptive or biological relationship, while recognizing that a major subset of youth is leaving foster care and juvenile justice systems.

<sup>12</sup> See NAT’L COAL. FOR THE HOMELESS, HOMELESS YOUTH: NCH FACT SHEET #13, at 1–2 (2007), available at <http://www.nationalhomeless.org/publications/facts/youth.pdf> (summarizing that the causes of homelessness include three interrelated categories of family problems, economic problems, and residential instability).

<sup>13</sup> MOORE, *supra* note 11, at 5.

<sup>14</sup> Runaway and Homeless Youth Act of 1978, N.Y. EXEC. LAW §532-a(2) (McKinney 2013).

parent or guardian.<sup>15</sup> This population encompasses runaway<sup>16</sup> and throwaway youth.<sup>17</sup> In data collected from major cities, unaccompanied youth comprise approximately 1% of the sheltered homeless population.<sup>18</sup> However, this number only considers young people ages 5 to 17.<sup>19</sup> Youth ages 18 to 21 fall into the next age range, 18 to 34, which constitutes approximately 25% of the homeless population in major cities.<sup>20</sup>

Generating accurate statistics about youth homelessness is difficult. Federal, state, and local governments differ in their definitions of *homeless youth*.<sup>21</sup> Additionally, unaccompanied youth are difficult to research. One surveyor of homeless youth research and literature conducted between 1995 and 2005 found that accurate estimates about this population are particularly difficult to make because these youth are highly transient, distrust adults, and may not be able to consent to a research study.<sup>22</sup> Furthermore, researchers often look at sheltered populations to quantify homelessness, though youth do not utilize homeless services universally.<sup>23</sup> Determining the precise numbers of unaccompanied LGBTQ

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<sup>15</sup> McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11434a(2), (6) (2012).

<sup>16</sup> See Ira Colby, *Runaway and Throwaway Youth: Time for Policy Changes and Public Responsibility*, J. OF APPLIED RES. ON CHILD.: *Informing Pol’y for Child. at Risk* 3 (2011), available at <http://digitalcommons.library.tmc.edu/cgi/viewcontent.cgi?article=1025&context=childrenatrisk>. The U.S. Department of Education defines “runaway youth” as young people who have left the home without parental permission and stay away overnight. See *id.* Traditional definitions of *runaway* problematically imply that youth had a choice to stay or leave. See *id.*

<sup>17</sup> *Id.* at 3 (citing the 1001 NISMART report’s definition of *throwaway youth* as young people who are either told to leave home by a parent or other household adult, or are away from home and prevented from returning, with no adequate alternative care arranged for them and they stayed outside the household overnight). See also Moore, *supra* note 11, at 3 (positing that a broader definition of *throwaway youths* includes those who have been abandoned or deserted by their parents).

<sup>18</sup> U.S. CONF. OF MAYORS-SODEXHO, HUNGER AND HOMELESSNESS SURVEY: A STATUS REPORT ON HUNGER AND HOMELESSNESS IN AMERICA’S CITIES: A 23-CITY SURVEY 13–14 (2007), available at <http://usmayors.org/hhsurvey2007/hhsurvey07.pdf>.

<sup>19</sup> *Id.* at 15.

<sup>20</sup> *Id.*

<sup>21</sup> PATRICIA JULIANELLE ET AL., NAT’L LAW CTR. ON HOMELESSNESS & POVERTY, ALONE WITHOUT A HOME: A STATE-BY-STATE REVIEW OF LAWS AFFECTING UNACCOMPANIED YOUTH 3–16 (2003), available at [http://www.maine.gov/education/homeless\\_ed/documents/alonewithouthome.pdf](http://www.maine.gov/education/homeless_ed/documents/alonewithouthome.pdf) (listing state definitions, if they exist, for *homeless* and *runaway youth*). See also RAY, *supra* note 6, at 9 (“A number of different definitions of ‘youth’ and ‘homeless’ are used by government agencies and . . . this type of inconsistency makes it difficult to optimize service delivery or determine the level of funds really needed to serve the population.”).

<sup>22</sup> MOORE, *supra* note 11, at 6.

<sup>23</sup> *Id.* (stating that there is over reliance on information from shelters and agencies in research on homeless and unaccompanied youth).

youth is an even more muddled task. Sexual orientation and gender identity are inherently fluid, especially for adolescents.<sup>24</sup> Not all youth who practice same-sex sexual relations identify as lesbian, gay, or bisexual, just as gender non-conformity is not indicative of a transgender identity. These fluid aspects of identity make quantifying “LGBTQ homeless youth” difficult to study.

The last federal count of runaway and throwaway youth was done in 1999.<sup>25</sup> The Office of Juvenile Justice and Delinquency Prevention found that approximately 1.7 million youth under the age of 18 had had a runaway or throwaway experience in 1999.<sup>26</sup> A 2007 study found approximately 3,800 unaccompanied youth in New York City.<sup>27</sup> Though they comprise only an estimated 2% to 7% of the general youth population, between 20% and 40% of homeless youth identify as lesbian, gay, bisexual, or transgender.<sup>28</sup> These extraordinary numbers are on the rise.<sup>29</sup>

The causes of youth homelessness are as varied as the youth themselves. Though some youth leave their homes by choice, many do not.<sup>30</sup> Economic problems, residential instability, and family conflict—including physical and psychological abuse—account for most episodes of homelessness among youth.<sup>31</sup> These long-stand-

<sup>24</sup> J. Lauren Turner, *From the Inside Out: Calling on States to Provide Medically Necessary Care to Transgender Youth in Foster Care*, 47 FAM. CT. REV. 552, 553–54 (2009).

<sup>25</sup> See HEATHER HAMMER ET AL., U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, OFFICE OF JUVENILE JUSTICE & DELINQUENCY PREVENTION, NATIONAL INCIDENCE STUDIES OF MISSING, ABDUCTED, RUNAWAY, AND THROWN AWAY CHILDREN (NISMART) 1–2 (2002), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/196469.pdf>.

<sup>26</sup> *Id.* at 5. This is a dated statistic. In 2010, the Office of Juvenile Justice and Delinquency Prevention initiated the NISMART-3 process to gather more recent statistics. See Request for Proposals, U.S. DEP’T OF JUSTICE, OJJDP FY 2010 National Incidence Studies of Missing, Abducted, Runaway, and Thrownaway Children 3, OMB No. 1121-0329 (2010), available at <http://www.ojjdp.gov/grants/solicitations/FY2010/NISMART3.pdf>. But cf. NAT’L RUNAWAY SWITCHBOARD, <http://www.1800runaway.org/> (last visited Jan. 19, 2013) (estimating that between 1.6 and 2.8 million youth run away annually in the United States).

<sup>27</sup> LANCE FREEMAN & DARRICK HAMILTON, EMPIRE STATE COAL. FOR YOUTH & FAMILY SERVS., A COUNT OF HOMELESS YOUTH IN NEW YORK CITY 7 (2008), available at [http://www.citylimits.org/images\\_pdfs/pdfs/HomelessYouth.pdf](http://www.citylimits.org/images_pdfs/pdfs/HomelessYouth.pdf).

<sup>28</sup> RAY, *supra* note 6, at 1. See also LAMBDA LEGAL ET AL., *supra* note 8, at 1 (estimating percentage of LGBT youth in the general population ranges between 4% and 10%).

<sup>29</sup> RAY, *supra* note 6, at 12.

<sup>30</sup> See *Three Rules for Working with Unaccompanied Youth*, NAT’L CLEARINGHOUSE ON FAMILIES & YOUTH, <http://ncfy.acf.hhs.gov/features/serving-youth-economic-down-turn/three-rules-working-unaccompanied-youth> (last visited Dec. 1, 2013). See also RAY, *supra* note 6, at 16; Rosemarie Buchanan, *Young, Homeless, and Gay*, 22 HUM. RTS. 42, 49 (1995) (arguing that in connection with family rejection, LGBT youth may be pulled to the streets as “the road toward the realization of self”).

<sup>31</sup> MOORE, *supra* note 11, at 6–7.

ing issues are often interwoven into the lives of young people who eventually experience homelessness.<sup>32</sup> LGBTQ youth are not spared these catalysts. However, lesbian and gay youth are more likely than their heterosexual counterparts to *actually* leave when confronted with these issues.<sup>33</sup> Additionally, LGBTQ youth are disproportionately represented among homeless youth because of family rejection of their actual or perceived sexual orientation or gender identity.

Though perhaps antithetical to the social understanding of the parent-child relationship, “parental love is not necessarily enduring.”<sup>34</sup> Parents can and do reject their children.<sup>35</sup> Family rejection denotes the negative, adverse, punitive, and traumatic reactions families have toward their child’s actual or perceived LGBTQ status.<sup>36</sup> Family rejection can include name-calling, blaming the child for being LGBTQ, forcing the child to keep their orientation or identity a secret, physical violence, isolation from friends and family, denying LGBTQ-related care and services, and controlling dress and behavior for gender appropriateness.<sup>37</sup> Family rejection elevates mental and physical health risks for LGBTQ children.<sup>38</sup> The U.S. Department of Health and Human Services estimates that approximately 26% of LGBTQ homeless youth were forced to leave

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<sup>32</sup> See Ilse Nehring, “Throwaway Rights”: Empowering a Forgotten Minority, 18 *WHITTIER L. REV.* 767, 770 (1997).

<sup>33</sup> See Bryan N. Cochran et al., *Challenges Faced by Homeless Sexual Minorities: Comparison of Gay, Lesbian, Bisexual, and Transgender Homeless Adolescents with Their Heterosexual Counterparts*, 92 *AM. J. OF PUB. HEALTH* 773, 774 (2002), available at <http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.92.5.773>. This study was designed to “identify the risks faced by GLBT youth and to determine whether these risks transcend those of their heterosexual counterparts,” *id.* at 773, but did not differentiate between gender non-conforming and gender-conforming or cis-gendered homeless youth, indicating that the authors may have conflated the risks faced by gender non-conforming youth with risks faced by youth with a non-heterosexual sexual orientation. Most data was based on “self-reporting” and most youth identified as bisexual. *Id.* at 776. Thus, the results may not necessarily extend to youth who exclusively identify as gay, lesbian, or transgender.

<sup>34</sup> Nehring, *supra* note 32, at 769.

<sup>35</sup> MOORE, *supra* note 11, at 7; see also N.Y.C. LGBTQ HOMELESS YOUTH REPORT, *supra* note 8, at 17–18 (stating that parents with religious attitudes that condemn homosexuality and gender non-conformity may be likely to reject their child).

<sup>36</sup> Caitlin Ryan, et al., *Family Rejection as a Predictor of Negative Health Outcomes in White and Latino Lesbian, Gay, and Bisexual Young Adults*, *PEDIATRICS* 2009 at 346, 350, available at <http://pediatrics.aappublications.org/content/123/1/346.full.pdf+html>.

<sup>37</sup> RYAN, *supra* note 3, at 5.

<sup>38</sup> See *id.*; see also Carl Siciliano, *A Call to Cardinal Dolan to Stop Endangering LGBT Youth: An Open Letter*, *HUFFINGTON POST*, Mar. 20, 2012, available at [http://www.huffingtonpost.com/carl-siciliano/cardinal-dolan-lgbt-youth\\_b\\_1363153.html](http://www.huffingtonpost.com/carl-siciliano/cardinal-dolan-lgbt-youth_b_1363153.html) (reporting that youth who are rejected by their families are “eight and a half times more likely to be suicidal than those whose families accept them”).

their families as a result of revealing their sexual orientation or gender identity.<sup>39</sup>

Once homeless, a person is not simply without stable shelter. Homelessness is accompanied by a loss of “community, routines, possessions, privacy, and security.”<sup>40</sup> There are social, mental, emotional, and physical consequences of homelessness. LGB youth experience “greater vulnerability to physical and sexual victimization . . . in comparison with homeless heterosexual adolescents.”<sup>41</sup> Most significant is the impact homelessness has on an individual’s ability to survive. Generally, youth have not had the experience of living independently before homelessness.<sup>42</sup> Once homeless, youth have to secure their basic needs and plan for the future when “their capacity for rational thought and decision making is inconsistent and still developing.”<sup>43</sup> The ability to obtain even a minimum wage or short-term job can be hindered by age, lack of housing, and lack of identification, as well as minimal education and work experience.<sup>44</sup> Unaccompanied youth face a high risk of living in absolute poverty with no guaranteed route to financial stability. Between 120,000 and 240,000 LGBTQ youth are forced into “abject destitution.”<sup>45</sup>

The financial consequences of homelessness can be somewhat mitigated when youth have access to homeless services. In New York City, homeless youth service providers help youth with housing, as well as assistance with services.<sup>46</sup> Though informal arrangements are generally set up between youth, unaccompanied youth generally have few other options to obtain food, shelter, and cloth-

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<sup>39</sup> Turner, *supra* note 24, at 554 (citing PAUL GIBSON, U.S. DEP’T OF HEALTH AND HUMAN SERV., REPORT OF THE SECRETARY’S TASK FORCE ON YOUTH SUICIDE 110, 112 (1989)).

<sup>40</sup> ELLEN L. BASSUK & STEVEN M. FRIEDMAN, NAT’L CHILD TRAUMATIC STRESS NETWORK HOMELESSNESS AND EXTREME POVERTY WORKING GROUP, FACTS ON TRAUMA AND HOMELESS CHILDREN 1 (2005), *available at* [http://www.nctsnet.org/sites/default/files/assets/pdfs/Facts\\_on\\_Trauma\\_and\\_Homeless\\_Children.pdf](http://www.nctsnet.org/sites/default/files/assets/pdfs/Facts_on_Trauma_and_Homeless_Children.pdf).

<sup>41</sup> See Cochran, *supra* note 33, at 775 (LGB is used here because of the limited scope of the study—only one person identified as transgender, while 84% identified as bisexual).

<sup>42</sup> NAT’L ALLIANCE TO END HOMELESSNESS, FUNDAMENTAL ISSUES TO PREVENT AND END YOUTH HOMELESSNESS: BRIEF NO. 1 2 (2006), *available at* [http://www.endhomelessness.org/files/1058\\_file\\_youth\\_brief\\_one.pdf](http://www.endhomelessness.org/files/1058_file_youth_brief_one.pdf). *But see* RAY, *supra* note 6, at 20–21 (discussing how dysfunctional family relationships led many homeless youth to become highly independent before eventually leaving the home).

<sup>43</sup> NAT’L ALLIANCE TO END HOMELESSNESS, *supra* note 42, at 3.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> Siciliano, *supra* note 38.

<sup>46</sup> N.Y.C. LGBTQ HOMELESS YOUTH REPORT, *supra* note 8, at 23.

ing, among other necessities.<sup>47</sup> Unfortunately, unaccompanied youth do not have equal access opportunities to these services.

LGBTQ youths' ability to access homeless services depends on whether the service provider is providing *safe* services. Access can be impeded by the issues homeless youth generally face in accessing services,<sup>48</sup> compounded by problems unique to LGBTQ youth, such as a service provider's blatant or subtle demonstrations of homophobia, transphobia,<sup>49</sup> racism, or discrimination based on age, mental health and ability, and physical ability. For example, transgender youth, particularly those of color, are prevented from accessing services when their identification documents do not match their gender presentation or expression, just as much as they are by the well-documented harassment and physical assaults they risk in shelters.<sup>50</sup> If LGBTQ youth are prevented from accessing safe services to obtain their basic needs, then these services are not viable options for all youth.

When financial instability and hindered access to services prevent youth from obtaining their basic needs, alternative, and dangerous, survival strategies are the last option.<sup>51</sup> Youth may begin participating in the "street economy," which includes sex work, selling drugs, panhandling, shoplifting, mugging, and selling stolen goods.<sup>52</sup> As one homeless youth reported: "[Y]ou have to make a living somehow. And if you really truly believe that you can't do it in a legal fashion, then you'll do anything you have to do in order to make money."<sup>53</sup> Providers working with LGBTQ youth substantiate findings that LGBTQ youth face an increased risk of engaging in survival sex.<sup>54</sup>

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<sup>47</sup> NAT'L COAL. FOR THE HOMELESS, *supra* note 12, at 2.

<sup>48</sup> *Id.* ("Few homeless youth are housed in emergency shelters as a result of lack of shelter beds for youth, shelter admission policies, and a preference for greater autonomy.").

<sup>49</sup> RAY, *supra* note 6, at 5; LAMBDA LEGAL ET AL., *supra* note 8, at 2.

<sup>50</sup> N.Y.C. LGBTQ HOMELESS YOUTH REPORT, *supra* note 8, at 16; *see also* RAY, *supra* note 6, at 59.

<sup>51</sup> Marya Viorst Gwadz et al., *The Initiation of Homeless Youth into the Street Economy*, 32 J. OF ADOLESCENCE 357, 358–59 (2009) (examining the survival strategies of homeless youth and their initiation into the street economy).

<sup>52</sup> *Id.* at 358. Homeless youth begin participating in the street economy for several reasons, including obstacles to legal employment, the perceived benefits of the street economic activities, immediate economic need, as well as feeling rejected or excluded by society at large. Youth who were studied identified the street economy as normative and the formal economy as foreign, which the researchers believe to be another inhibitor to stable and formal employment.

<sup>53</sup> *Id.* at 367.

<sup>54</sup> *Petition from The Ali Forney Center et al. to Governor Cuomo, the New York State Legislature, and Mayor Bloomberg*, THE ALEY FORNEY CTR., available at <http://www.aliforney>

## II. THE PARENTAL DUTY TO SUPPORT THE CHILD

*“Wherever I look, I see signs of the commandment to honor one’s parents and nowhere of a commandment that calls for the respect of a child.”*<sup>55</sup>

At English common law, the duty to support the child was a “principle of natural law.”<sup>56</sup> Children were entitled only to that which they received by their parents’ grace, and could not enforce this moral duty.<sup>57</sup> Seventeen-year-old Frieda Huke’s unsuccessful action against her father, William, for maintenance and support, exemplifies the use of this common law principle by American courts.<sup>58</sup> In 1890, William, a wealthy business owner in St. Louis, forced Frieda out of his home without money or any provision for her care. She was left impoverished, with no means of survival. Due to her “youth, sex and lack of education and experience,” she was unable to secure food and shelter, except that which she received through charity.<sup>59</sup> Frieda tried to enforce her “right to a just, adequate and suitable provision for her wants in the premises” against her father.<sup>60</sup> The St. Louis Court of Appeals, Missouri, held that such an action could not be sustained because, at common law, the duty to provide for the maintenance of a child was left “to the natural feelings of the parents,” and was therefore unenforceable in an action by a child.<sup>61</sup> Courts rarely diverted from this common law

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center.org/?fuseaction=cms.page&id=1014 (last visited Nov. 15, 2013); *see also* Siciliano, *supra* note 38; Laura A. Hughes, *Youth Homelessness Moves Forward as a Major LGBTQ Issue*, HUFFINGTON POST (Jan. 21, 2013), available at [http://www.huffingtonpost.com/laura-a-hughes/homeless-lgbyouth\\_b\\_1333732](http://www.huffingtonpost.com/laura-a-hughes/homeless-lgbyouth_b_1333732); JAIME M. GRANT, ET AL., INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 3, 7 (table) (2011), available at [http://www.thetaskforce.org/reports\\_and\\_research/ntds](http://www.thetaskforce.org/reports_and_research/ntds). Of the transgender and gender non-conforming respondents to the National Transgender Discrimination Survey, 16% reported that they had been compelled to work in the underground economy for income (which includes sex work), and of those who had been rejected by their families, 19% were engaged in sex work.

<sup>55</sup> ALICE MILLER, *FOR YOUR OWN GOOD: HIDDEN CRUELTY IN CHILD-REARING AND THE ROOTS OF VIOLENCE* 263 (Hildegard Hannum trans., Sunkhamp Verlag 1st ed. 1980) (2003).

<sup>56</sup> Drew D. Hansen, *The American Invention of Child Support: Dependency and Punishment in Early American Child Support Law*, 108 YALE L.J. 1123, 1133 (1999) (citing WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 435 (1898)); JOANNA L. GROSSMAN & LAWRENCE M. FRIEDMAN, *INSIDE THE CASTLE: LAW AND THE FAMILY IN 20TH CENTURY AMERICA* 287 (2011) (discussing how the financial obligation to support *illegitimate* children has been enforced in America through “bastardy laws” since the early 17th century).

<sup>57</sup> Nehring, *supra* note 32, at 778 (citing BLACKSTONE, *supra* note 56, at 447).

<sup>58</sup> *Huke v. Huke*, 44 Mo. App. 308 (Mo. Ct. App. 1891).

<sup>59</sup> *Id.* at 311.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* at 315.

principle and then only if there was a specific law mandating such enforcement<sup>62</sup> or a contract with the parent authorizing such enforcement.<sup>63</sup>

Today, in New York, parents have a legal duty to financially support their child.<sup>64</sup> This duty is considered “one of the oldest and firmest pillars of New York family law.”<sup>65</sup> Pursuant to a court order or valid agreement between the parties, parents with sufficient means must pay a reasonable and fair sum for the care, maintenance, and education of any un-emancipated child under 21 years of age.<sup>66</sup> The amount to be paid is determined by the court.<sup>67</sup> Support payments provide for the child’s necessary “shelter, food, clothing, care, medical attention, expenses of confinement, the expense of education, payment of funeral expenses, and other proper and reasonable expenses.”<sup>68</sup> Although child support is typically understood in the context of a divorce,<sup>69</sup> the obligation is not from non-custodial parent to the custodial parent, but from the parent to the child.<sup>70</sup> This is important because child support obligations can be enforced whether the parents’ relationship is intact, or if the parents are separated, or even if the parents never maintained a relationship.<sup>71</sup>

There are important nuances associated with this duty. First, unless an agreement expressly stating otherwise is made, the parent is only liable until the child turns 21.<sup>72</sup> Second, parents are only liable for a reasonable and fair sum.<sup>73</sup> To determine the sum, courts will consider the child’s reasonable needs, the parent’s ability to pay, and how the standardized child support guidelines ap-

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<sup>62</sup> *Id.* at 313 (“[I]f any popish parent should refuse to allow his Protestant child a fitting maintenance, with a view to compel him to change his religion, the lord chancellor should, by order of the court, constrain him to do what is just and reasonable . . . . [I]f Jewish parents should refuse to allow their Protestant children a fitting maintenance, suitable to the fortune of the parents, the lord chancellor, on complaint, might make such order as he should see proper.”).

<sup>63</sup> Nehring, *supra* note 32, at 778 (citing BLACKSTONE, *supra* note 56, at 420 nn.7–9).

<sup>64</sup> N.Y. FAM. CT. ACT § 413 (McKinney 2013).

<sup>65</sup> 11 ALAN D. SCHEINKMAN, WEST’S NEW YORK PRACTICE SERIES, NEW YORK LAW OF DOMESTIC RELATIONS § 16:1 (2d ed. 2011).

<sup>66</sup> N.Y. FAM. CT. ACT § 413(1)(a)-(2).

<sup>67</sup> *Id.* § 413(1)(a).

<sup>68</sup> *Id.* § 416.

<sup>69</sup> Nehring, *supra* note 32, at 780.

<sup>70</sup> *Id.*

<sup>71</sup> 11 SCHEINKMAN, *supra* note 65, § 16:1.

<sup>72</sup> N.Y. FAM. CT. ACT § 413; *see also* Hirsch v. Hirsch, 142 A.D.2d 138, 140 (2d Dep’t 1988).

<sup>73</sup> N.Y. FAM. CT. ACT § 413(1)(a).

ply.<sup>74</sup> Third, numerous entities can enforce the duty. These include the custodial parent,<sup>75</sup> a third party,<sup>76</sup> or a social services agency.<sup>77</sup> New York allows youth to bring independent action against a parent for support.<sup>78</sup> When a custodial parent or third party cannot or will not bring an action to enforce the parental duty of support, a child can bring an independent enforcement action.<sup>79</sup>

To bring an action against their parent for support, the youth must be un-emancipated.<sup>80</sup> Emancipation denotes the legal adulthood of a young person, where there is a “surrender and renunciation of the correlative rights and duties concerning the care, custody, and earnings of a child.”<sup>81</sup> Generally, emancipation results when the child reaches the age of majority, marries, or joins the armed forces.<sup>82</sup> Additionally, a court can emancipate a minor that is of a minimum age, lives apart from her parents, handles her own affairs, and can support herself financially.<sup>83</sup>

When the court deems a child emancipated, the parental duty to support the child terminates.<sup>84</sup> The child’s previous dependency on a parent is not a determinative factor in finding that there is a continuing obligation of support.<sup>85</sup> This is in stark contrast to a divorce action, where courts may look at the dependency of one spouse on the other during the marriage to justify continued support.<sup>86</sup> Importantly, the duty of support extends in special situa-

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<sup>74</sup> N.Y. DOM. REL. LAW § 240(1)(f) (McKinney 2012); N.Y. FAM. CT. ACT § 413(1)(f); Comm’r of Soc. Servs. *ex rel.* Wandel v. Segarra, 78 N.Y.2d 220, 226 (1991). The Guidelines provide the courts with a method for calculating payment for the basic needs of the child, such as shelter, food, and clothing, and the resulting payment can be modified to include “add-ons” such as health care, child-care, and educational expenses. 11 SCHEINKMAN, *supra* note 65, § 16:12.

<sup>75</sup> 11 SCHEINKMAN, *supra* note 65, § 16:51. Though traditionally the father was only chargeable for support, in 1979 the Supreme Court of the United States held that support laws could no longer discriminate on the basis of the gender of the parent. *See generally* OTT v. OTT, 440 U.S. 268, 281–82 (1979).

<sup>76</sup> 46 N.Y. JUR. 2D *Domestic Relations* § 1013 (2012).

<sup>77</sup> N.Y. FAM. CT. ACT § 235.

<sup>78</sup> *Wakefield v. Wakefield*, 84 A.D.3d 1256 (2d Dep’t. 2011) (ruling that 18-year-old could maintain independent action against mother for child support).

<sup>79</sup> *Id.*

<sup>80</sup> N.Y. FAM. CT. ACT § 413(1)(b)(2).

<sup>81</sup> BLACK’S LAW DICTIONARY 468 (9th ed. 2010) (definition for “emancipation”).

<sup>82</sup> 45 N.Y. JUR. 2D *Domestic Relations* § 576 (2012); 46 N.Y. JUR. 2D *Domestic Relations* § 907 (2012).

<sup>83</sup> 46 N.Y. JUR. 2D *Domestic Relations* § 907; JULIANELLE, *supra* note 21, at 63–73 (discussing state law on emancipation).

<sup>84</sup> 11 SCHEINKMAN, *supra* note 65, § 16:50. Emancipation may be reversible.

<sup>85</sup> Nehring, *supra* note 32, at 800.

<sup>86</sup> *Id.*

tions, such as where the young person receives public assistance.<sup>87</sup> The duty is prolonged to protect society's resources.<sup>88</sup>

In 1979, the New York Court of Appeals established "constructive emancipation," as a parental defense to a child support enforcement action.<sup>89</sup> The Court held that when a "minor of employable age and in full possession of her faculties, voluntarily and without cause, abandons the parent's home against the will of the parent and for the purpose of avoiding parental control, she forfeits her right to demand support."<sup>90</sup> Constructive emancipation is a limited defense.<sup>91</sup> The party asserting emancipation bears the burden of proof.<sup>92</sup> The court will only relieve parents of their duty to support "under extreme circumstances," where the actions and behavior of the child toward the parent have been egregious.<sup>93</sup> This is in part because courts are cognizant of the child's emotional instability and immaturity, and are very hesitant to penalize a youth by withholding necessary support.<sup>94</sup> Additionally, courts are cautious in burdening taxpayers with child support.<sup>95</sup> However, courts are also hesitant to unfairly burden the parent with underwriting the lifestyle the child has chosen against the parent's reasonable wishes.<sup>96</sup>

Whether the child has been constructively emancipated de-

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<sup>87</sup> 46 N.Y. JUR. 2d *Domestic Relations* § 912.

<sup>88</sup> *Id.* § 907.

<sup>89</sup> *Id.* Constructive emancipation is also called "emancipation by conduct," Wisselman & Talassazan, *infra* note 93, at 1, or the "abandoned parent doctrine." 11 SCHEINKMAN, *supra* note 65, § 16:51. Cases on constructive emancipation are generally set in the context of a post-divorce family, where one parent is using constructive emancipation as a defense to terminate their duty of support.

<sup>90</sup> *Roe v. Doe*, 29 N.Y.2d 188, 192 (1971).

<sup>91</sup> Jerome A. Wisselman, & Eyal Talassazan, *Constructive Emancipation: Conduct of the Child Can Lead to a Termination of Support—But Only Rarely*, N.Y. FAM. L. MONTHLY 1 (Aug. 2008), available at <http://www.lawjaw.com/documents/Aug08NYFam.pdf>. Courts have also made constructive emancipation procedurally difficult to establish. *Id.* at 8. For instance, if the non-custodial parent is seeking to terminate their duty of support to the child, they will have to follow a process that includes several petitions. *Id.* These petitions include an order for visitation so as to establish evidence that the child refuses to see the parent or maintain contact with the parent. *Id.*

<sup>92</sup> 46 N.Y. JUR. 2d *Domestic Relations* § 907.

<sup>93</sup> Wisselman & Talassazan, *supra* note 91, at 8; 11 SCHEINKMAN, *supra* note 65, § 16:51. Egregious behavior toward the parent may be found in a case like *Donnelly v. Donnelly*, 14 A.D.3d 811 (3d Dep't 2005) (holding that a mother no longer had a duty to support her son because he violently abused her, stole from her, refused to attend school, abused alcohol and drugs, was arrested, barricaded his room, and sequestered his girlfriend in his room for days).

<sup>94</sup> 11 SCHEINKMAN, *supra* note 65, § 16:51.

<sup>95</sup> *Id.*

<sup>96</sup> See, e.g., *Parker v. Stage*, 43 N.Y.2d 128, 134 (1977).

pends on the particular circumstances of each case.<sup>97</sup> The court will only undertake the constructive emancipation analysis after an initial inquiry into the age and capacity of the child.<sup>98</sup> One legal scholar has provided a three-part test for constructive emancipation in New York.<sup>99</sup> First, the court will look at the circumstances surrounding the child's alleged abandonment. Constructive emancipation will only apply when the child has left the home voluntarily for the purpose of avoiding parental authority.<sup>100</sup> Voluntary abandonment can be established where the child had a choice and the abandonment was "against the will of the parent."<sup>101</sup> A child running away from home can be highly probative of voluntary abandonment, while a parent instructing the child to leave the home or preventing them from returning home is not.<sup>102</sup> The child must also abandon the home for the purpose of escaping parental control, custody, and care. The duty of support does not generally terminate simply because the child was "at odds with her parents or had disobeyed their instructions."<sup>103</sup> Findings of voluntariness or an intent to escape parental control are probative of constructive emancipation, but not conclusive.<sup>104</sup>

Second, the court will look at the parental actions related to the abandonment. The court may find constructive emancipation when the child lacked good cause for leaving the home because the parent was reasonably exercising their right to "control, custody, and care."<sup>105</sup> The duty of support has been cast as reciprocal.<sup>106</sup> In return for support, the parent could "establish and im-

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<sup>97</sup> See Wisselman & Talassazan, *supra* note 91, at 8.

<sup>98</sup> *Id.* at 1. See also *Hiross v. Hiross*, 224 A.D.2d 662, 662–63 (2d Dep't 1996) (determining that son could not have abandoned his father as a matter of law because the son was only 14 years old); 11 SCHEINKMAN, *supra* note 65, § 16:51 (constructive emancipation cases generally deal with youth close to or over the age of 18).

<sup>99</sup> Nehring, *supra* note 32, at 795–96.

<sup>100</sup> *Id.*

<sup>101</sup> Wisselman & Talassazan, *supra* note 91, at 1.

<sup>102</sup> See *Ontario Cnty. Dep't of Soc. Serv. v. Gail K.*, 269 A.D.2d 847 (4th Dep't 2000) (relieving mother of child support liability where child refused to obey her lawful directives, ran away from home, assaulted police officer, called mother vile names, and was "totally out of control"). But see *Drago v. Drago*, 138 A.D.2d 704, 706 (2d Dep't 1988) (finding father liable for support when he refused to take in his daughter, insisting instead that she attend boarding school or join the military); *Alice C. v. Bernard G.C.*, 193 A.D.2d 97, 108 (2d Dep't 1993) (finding father liable for child support because the son was not found to have "abandoned" the home against his father's will when his father told him during an argument that if he left the house then, he should not return home).

<sup>103</sup> Wisselman & Talassazan, *supra* note 91.

<sup>104</sup> Nehring, *supra* note 32, at 795–96.

<sup>105</sup> *Id.*

<sup>106</sup> *Roe v. Doe*, 29 N.Y.2d 188, 193 (1971).

pose reasonable regulations for his child.”<sup>107</sup> The parent could use “the child unjustifiably withdraw[ing] from parental control and supervision” to establish emancipation.<sup>108</sup> If emancipated, the child forfeits their right to support while the parent loses the right to “custody, control, services, and earnings of such child.”<sup>109</sup> The court is considering whether, from the objective perspective of a reasonably prudent parent, the parent made reasonable regulations for the child.<sup>110</sup> Reasonable regulations include a father requiring his daughter, from the age of 14 to 17, to leave the bedroom door open when she had boys over.<sup>111</sup> The child’s right to support is severed if the parent neither abused nor made unreasonable demands but the child wanted to live somewhere else against the wishes of her parents.<sup>112</sup>

If the youth had good cause to leave or had the approval of the parent, constructive emancipation is not applicable.<sup>113</sup> There is no abandonment when the child is reluctant to see the parent for good cause.<sup>114</sup> Alternatively, the parent may be responsible for the child’s alleged abandonment by causing a breakdown in the relationship with the child.<sup>115</sup> For instance, a father was still liable for support when he made very little effort to fix the relationship with his child after a violent fight.<sup>116</sup> Courts have suggested that if the child were abandoned or abused by the parent, the parent would continue to be liable for support.<sup>117</sup> The New York Court of Appeals has suggested that a father “actively drove [his daughter] from her home or encouraged her to leave in order to

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<sup>107</sup> *Id.*

<sup>108</sup> Wisselman & Talassazan, *supra* note 91, at 1.

<sup>109</sup> Boley v. Knowles, 905 S.W.2d 86, 88 (Mo. 1995) (citing *Mennemeyer v. Hart*, 221 S.W.2d 960, 962 (1949)). *See also* 59 AM. JUR. 2D *Parent and Child* § 37 (2013).

<sup>110</sup> Nehring, *supra* note 32, at 794–95.

<sup>111</sup> *Chambers v. Chambers*, 742 N.Y.S.2d 725, 726–27 (3d Dep’t 2002).

<sup>112</sup> 46 N.Y. JUR. 2D *Domestic Relations* § 912 (2013).

<sup>113</sup> *Monroe Cnty. Dep’t of Soc’y. Serv. ex rel San Filippo v. San Filippo*, 178 A.D.2d 1011, 1012 (4th Dep’t 1991); 45 N.Y. JUR. 2D *Domestic Relations* § 524 (2012). *See also* G. Stephen Neeley, *The Psychological and Emotional Abuse of Children: Suing Parents in Tort for the Infliction of Emotional Distress*, 27 N. KY. L. REV. 689, 711 (2000) (stating that a child may also be able to bring a tort action against the parent for intentional infliction of emotional distress and receive compensation or damages).

<sup>114</sup> 11 SCHEINKMAN, *supra* note 65, § 16:51; *Radin v. Radin*, 209 A.D.2d at 396 (2d Dep’t 1994) (no abandonment when father claimed daughter didn’t return phone calls).

<sup>115</sup> 11 SCHEINKMAN, *supra* note 65, § 16:51.

<sup>116</sup> *Kordes v. Kordes*, 70 A.D.3d 782, 783 (2d Dep’t 2010) (finding that daughter was not constructively emancipated where father was most likely the cause of the alienation).

<sup>117</sup> *See, e.g., Parker v. Stage*, 43 N.Y.2d 128, 134 (1977).

have the public assume his obligation of support” would render a different ruling.<sup>118</sup>

Finally, the court will look to see whether the child has tried to return home. If the child has made a request to return home and the parents have refused, the court is less likely to find that the child is emancipated.<sup>119</sup> This factor rests on the idea that the right to support is reciprocal with the right to custody and control. Courts ask this question in cases where it may be possible for the child to return home as a condition of the support.<sup>120</sup> However, courts recognize that returning home to the parent is not possible in every situation. Where the court determines that the family ties have been irreparably severed, they will not give much weight to this inquiry.<sup>121</sup>

### III. A NEW LEGAL STRATEGY FOR UNACCOMPANIED LGBTQ YOUTH

*“Sometimes like when you don’t have nowhere to go. I’m about to cry right now. You need the money to eat you know. You might want to make money to stay in a hotel in the night because you haven’t slept in so long. You know little things like that. You need to buy a new pair of underwear, a new pair of socks, or something because you don’t want to be stinking, you know. It’s really hard.”<sup>122</sup>*

Youth who have been forced out of their homes due to their sexual orientation or gender identity could enforce the duty to pay child support against their parents. Though the court would have to look at the particular circumstances in each case, generally LGBTQ unaccompanied youth could survive the constructive emancipation defense if it is put forth by the parent. When it is established that the youth is owed support, the court can determine the fair and reasonable sum that parents should pay for their child’s basic needs, including food, shelter, and clothing. If utilized, this recommendation would most likely be limited to specific situations.

#### A. *Unaccompanied LGBTQ Youth Enforcing the Parental Duty of Support*

When an unaccompanied youth brings an action to enforce

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<sup>118</sup> *Id.*

<sup>119</sup> Nehring, *supra* note 32, at 795–96.

<sup>120</sup> Drago v. Drago, 138 A.D.2d 704, 706 (2d Dep’t, 1988).

<sup>121</sup> *Id.*

<sup>122</sup> Gwadz et al., *supra* note 51, at 371 (quoting Jonella, age 19).

the parental duty of support, the parent may claim constructive emancipation to escape liability. LGBTQ youth may be experiencing homelessness for a variety of reasons. This section will focus on applying the duty of support and the constructive emancipation defense to situations where LGBTQ youth have been forced out of the home and where they have run away from the home.

In cases where a youth, younger than 21, has been rejected by their family for coming out as LGBTQ and is subsequently forced out of the home, the parental duty to financially support the child remains intact and enforceable. The constructive emancipation defense is not applicable in these cases. In dicta, it has been said that if the parent instructed the child to leave the home or refused to take them back as they were currently identifying, courts cannot find voluntary abandonment for the purpose of escaping parental control.<sup>123</sup> For example, the New York Court of Appeals has suggested that where there is evidence that the parent drove the child from the home or encouraged the child to get public assistance to avoid supporting the child, the constructive emancipation defense could not be met.<sup>124</sup>

For LGBTQ youth who have run away from home, the constructive emancipation defense may prove more difficult to overcome. Running away has been found to be probative of voluntariness.<sup>125</sup> However, courts will balance the child's act of running away with whether or not it was *against the wishes of the parent*.<sup>126</sup> For instance, a father could prove that the child voluntarily abandoned the home when she ran away *and* that this was against his wishes because he went to look for her each night.<sup>127</sup> For LGBTQ youth, an act of running away will be probative of voluntary abandon-

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<sup>123</sup> See *Roe v. Doe*, 29 N.Y.2d 188, 193–94 (1971) (“We do not have before us the case of a father who casts his helpless daughter upon the world, forcing her to fend for herself.”)

<sup>124</sup> See *Parker v. Stage*, 43 N.Y.2d 128, 134 (1977). It should be noted that the court did not specifically rule on the hypothetical of these facts.

<sup>125</sup> See *Ontario Cnty. Dep’t of Soc. Serv. v. Gail K.*, 269 A.D.2d, 847, 847–48 (4th Dep’t 2000) (relieving a mother of her obligation to support her 16-year-old son when she established, among other infractions, that he repeatedly ran away from home); *Parker*, 43 N.Y.2d at 134–35 (terminating a father’s duty to support his child after he submitted evidence that the daughter ran away from his home and, upon return, continued to disappear for long periods of time).

<sup>126</sup> *Wisselman & Talassazan*, *supra* note 91, at 1; *Roe*, 29 N.Y.2d at 189 (point made by counsel rather than the court).

<sup>127</sup> *Parker*, 43 N.Y.2d at 131 (indicating that father wanted his daughter to return home and utilized the police to get her safely home); see also *Orange Cnty. Dep’t of Soc. Serv. ex rel Clavijo v. Clavijo*, 172 Misc. 2d 87, 89 (N.Y. Fam. Ct. 1997) (indicating that the parents set a curfew time for their son, and when the son did not come home on time, the father would go search for him).

ment. In order to negate the value of this act, they will have to argue either that their act was aligned with the wishes of their parent or that their act was not actually voluntary. They could establish that their abandonment of the home was not against the wishes of the parent if the parent had previously told them to leave. This could also be established if there was evidence that the parents did not look for the child after he ran away. If, alternatively, the child were to argue that their act was not actually voluntary, the court's analysis would bleed the inquiry into the purpose of the child's abandonment.

The court will inquire into the child's reason for abandoning the family home to determine whether it was for the purpose of avoiding parental "control."<sup>128</sup> As a generalization, LGBTQ youth who run away from home after experiencing family rejection of their sexual orientation or gender identity, leave to avoid the authority of their parents. For example, a transgender youth may leave because the parent forces them to dress and behave in ways that do not conform to their gender identity. In these cases, where the young person leaves to escape an intolerable living environment, courts will have to consider whether the parent's rules were reasonable. The youth could argue that rules arising out of the parent's rejection of the youth's sexual orientation or gender identity are unreasonable because they amount to abuse, neglect, or maltreatment.

Regulations that amount to abuse, neglect, maltreatment, and abandonment of the child are unreasonable.<sup>129</sup> The New York City Administration for Children's Services has issued a policy recognizing the connection between family rejection and parental behaviors that impact a child's safety or puts them at risk.<sup>130</sup> The policy states that a child's sexual orientation and/or gender identity does not excuse a parent's abuse or neglect.<sup>131</sup> It permits child protective services to investigate the beliefs and values of the parents when it is suspected that family rejection of the child's sexual ori-

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<sup>128</sup> See Nehring, *supra* note 32, at 808.

<sup>129</sup> *Roe*, 29 N.Y.2d at 193 ("It is the natural right, as well as the legal duty, of a parent to care for, control and protect his child from potential harm, whatever the source and absent a clear showing of misfeasance, abuse or neglect, courts should not interfere with that delicate responsibility.")

<sup>130</sup> See N.Y.C. ADMIN. FOR CHILDREN'S SERVS., PROMOTING A SAFE AND RESPECTFUL ENVIRONMENT FOR LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUESTIONING (LGBTQ) YOUTH AND THEIR FAMILIES INVOLVED IN THE CHILD WELFARE, DETENTION, AND JUVENILE JUSTICE SYSTEM, POLICY # 2012/01, at 17-18, 19 (2012), available at [http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ\\_Policy.pdf](http://www.nyc.gov/html/acs/downloads/pdf/lgbtq/LGBTQ_Policy.pdf).

<sup>131</sup> *Id.* at 7.

entation and/or gender identity is directly related to the allegations of abuse or neglect.<sup>132</sup> Family rejection is related to child abuse or neglect when parents behave adversely or punitively toward the child for disclosing their LGBTQ identity.<sup>133</sup> Behaviors indicating rejection of the child's sexual orientation or gender identity are related to allegations of abuse or neglect when parents behave adversely or punitively toward their child for disclosing their LGBTQ identity.<sup>134</sup> The parental duty to support a child is not severed when the child is no longer living at the home because of abuse and neglect. This is particularly clear where a social services agency removes the child from the home for abuse or neglect, provides the child with necessary services, and then sues the parent for reimbursement.<sup>135</sup>

A determination about whether the parental regulations were reasonable will depend on the specific circumstances of the case. For instance, a court would likely find that physical abuse of the child would constitute an unreasonable exercise of parental authority. The analysis becomes more complicated if a child abandoned the home because the parent regulated their association with other LGBTQ youth. New York courts have held that controlling a child's association with friends under certain circumstances is reasonable. A father's prohibition against his teenage daughter from having boys in her room with the door closed was reasonable.<sup>136</sup> The Second Department has implied that a mother's rule against her daughter hanging out with her friends during all hours of the night was considered reasonable.<sup>137</sup> If a child can establish that the parent controlled her association with other LGBTQ friends at all times or isolated her from her friends under all circumstances, this could amount to an unreasonable exercise of authority over the child. If unreasonable demands were placed on the child, the court is likely to find good cause for abandoning the home.

The child retains their right to support if they have left for good cause or the parent was the cause of the breakdown of the

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<sup>132</sup> *Id.* at 6.

<sup>133</sup> *Id.* at 6–7 (explaining that among the factors a child protective specialist is directed to consider are the following applicable safety factors: verbal violence; ostracizing or belittling the child for their status; and/ or controlling the child's association with friends, clothing choices, and grooming practices).

<sup>134</sup> *Id.*

<sup>135</sup> N.Y. FAM. CT. ACT §§ 235, 415 (McKinney 2012).

<sup>136</sup> *Chambers v. Chambers*, 295 A.D.2d 654, 655 (3d Dep't 2002).

<sup>137</sup> *Comm'r of Soc. Servs. v. Jones-Gamble*, 227 A.D.2d 618 (2d Dep't 1996).

relationship.<sup>138</sup> The court will also consider whether the child has requested to return to the parental home.<sup>139</sup> For LGBTQ youth who have been forced out of the home because of sexual orientation and/or gender identity, an inquiry into whether they requested to return home is unlikely to become determinative. New York courts have accepted that if the parental home is not open for return, there is no injustice to the parent in continuing to support the child elsewhere.<sup>140</sup>

If the court finds that the parent of an LGBTQ unaccompanied youth continues to be responsible for the child's support, then the court will determine the amount of child support owed to the child. Though the ideal would be to have the parents maintain the child at the lifestyle to which they were accustomed, the child should be awarded enough for basic necessities.<sup>141</sup> Child support, in this context, should be capped at a percentage that adequately provides for the child's basic needs in the particular jurisdiction. For instance, a specific amount could be determined as the reasonable and fair sum that could provide the child with food, shelter, and clothing. Courts would then adjust the payments as per the parents' financial situation, the child's financial situation, as well as any add-on expenses such as healthcare and educational expenses. Additionally, although the continued duty of support rests on the precept that a parent will have some continued custody and control over their child, this is not upheld in all cases. Courts do not have to include a reciprocal right to care, custody, and control in the order for continuation of support.<sup>142</sup> This is especially important for LGBTQ youth who may not be willing to go to court to enforce their right to support by the parent if they have to reconcile or move back in with the parent.

#### B. *Public Policy Reasons for Enforcing the Duty of Support*

The reason for hesitancy with allowing the child to enforce the parental duty of support in court is that it limits parental authority and requires parents to "share power with the children."<sup>143</sup> How-

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<sup>138</sup> Monroe Cnty Dep't of Soc. Servs. *ex rel.* San Filippo v. San Filippo, 178 A.D.2d 1011, 1012 (4th Dep't 1991) (citing Henry v. Boyd, 99 A.D.2d 382 (4th Dep't 1984)).

<sup>139</sup> See Nehring, *supra* note 32, at 795–96.

<sup>140</sup> See Drago v. Drago, 138 A.D.2d 704, 707 (2d Dep't 1988).

<sup>141</sup> See N.Y. FAM. CT. ACT §§ 413, 416 (McKinney 2012); Dutchess Cnty. Dep't of Soc. Servs. *ex rel.* Day v. Day, 96 N.Y.2d 149, 151 (2001).

<sup>142</sup> See, e.g., Drago v. Drago, 138 A.D.2d 704, 707 (2d Dep't 1988).

<sup>143</sup> Nehring, *supra* note 32, at 809 (quoting Leslie J. Harris et al., *Making and Breaking Connections Between Parents' Duty to Support and Right to Control Their Children*, 69 OR. L. REV. 689 (1990)).

ever, the state has determined that there are legitimate reasons for intervening in the parent-child relationship. The proposal explored in this article is in line with two important goals of state intervention in the family relationship: 1) protecting youth by providing support to allow them to grow into “good” citizens, and 2) to the extent possible, making reasonable efforts to reunify the family.

First, allowing a child who has been forced out of the home by the parent to seek enforcement of the parental duty to support is in line with the state’s goal of protecting youth so that they become good citizens. When the state intervenes in child abuse-and-neglect cases, the underlying understanding is that “well-cared-for children can grow into autonomous adults.”<sup>144</sup> There is a similar understanding when the state provides services for homeless and runaway youth.<sup>145</sup> New York’s Department of Youth and Community Development offers a number of services for homeless and runaway youth under the federal Runaway and Homeless Youth Act,<sup>146</sup> including street outreach, emergency shelter services, crisis intervention, and transitional living programs. These services supply youth with their basic necessities and help them develop skills to transition into adulthood, such as job skill development and independent living skills.

In the event that some or all of the homeless services options are not available, or their accessibility changes with time, youth should not be left without financial support. Enforcing the duty of support against parents responsible for homeless unaccompanied youth broadens the options for youth’s economic independence. This legal strategy helps youth secure a financial cushion to assist them with their basic needs as they become self-sufficient, “good” citizens for society.

Second, state intervention into family relationships includes a commitment to make all reasonable efforts to help reunify the family. Asking parents to financially support the youth they have forced out of their home could incentivize parents to rethink their relationship to their child. Families can be taught the impact that their words and actions have on their child’s well-being and ultimate survival.<sup>147</sup> If they learn the effects of family rejection, fami-

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<sup>144</sup> Anne L. Alstott, *What Does a Fair Society Owe Children—and Their Parents?*, 72 *FORDHAM L. REV.* 1941, 1942 (2004).

<sup>145</sup> See The Runaway and Homeless Youth Act, 42 U.S.C. § 5701(3), (5) (2012).

<sup>146</sup> See generally *Runaway Homeless Youth*, N.Y.C DEP’T OF YOUTH & CMTY. DEV., <http://www.nyc.gov/html/dycd/html/runaway/runaway.shtml> (last visited Nov. 15, 2013).

<sup>147</sup> For information on an organization working with these issues, see THE FAMILY

lies may begin to support their children.<sup>148</sup> By pulling parents into court, child support enforcement may force families to consider the deleterious effects of rejection on the well-being of their child, develop awareness about sexual orientation and/or gender identity issues, and change the parents' behavior toward their child. The argument that intra-family litigation causes further breakdown in the family does not apply when the matter at hand is enforcing child support for basic necessities. The potential for reunification is evinced by the arguments parents must put forth as they predictably assert the right to terminate support. In putting forth the constructive emancipation defense, the parent is arguing that they *want* to have care, custody, and control of the child—or, at a minimum, visitation or contact if they are made to pay child support. The parent will further have to establish that the child left *against their wishes*. Bringing parties into the courtroom to discuss the continuation of the parental duty to support can shift perspectives. The parent will be exposed to how their rejection has affected their child's survival, and they will also reflect on their relationship with the child.

#### IV. CRITIQUES

*"Issues of family rights, obligations, responsibilities, and accountability should be dealt with, but only after the young person is in a safe, secure environment."*<sup>149</sup>

Addressing the essential critiques of this proposal is necessary to negate the hesitancy courts feel in allowing youth to enforce the duty of support.<sup>150</sup> This section provides counterarguments to four major critiques expected to arise against this proposal. First, youth may be unwilling to enforce the duty of support against their parents. Second, youth should not be able to enforce the duty to support. Third, parents will not be able to pay the support payments. Finally, by allowing the child to enforce the duty of support against the parent, the state is violating the parent's fundamental liberty interest in the care, custody, and management of their child.

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ACCEPTANCE PROJECT, <http://familyproject.sfsu.edu> (last visited Jan. 19, 2013). The Family Acceptance Project is a multiyear research, intervention, and training initiative on LGBT youth and their families and caregivers carried out at the César E. Chávez Institute at San Francisco State University.

<sup>148</sup> See *id.*

<sup>149</sup> Colby, *supra* note 16, at 8.

<sup>150</sup> See Nehring, *supra* note 32, at 809.

A. *Youth Will Be Unwilling to Enforce the Parental Duty to Support*

Young people may be unwilling to enforce the duty of support against their parents, particularly when they have left the home because of family rejection of their sexual orientation and/or gender identity. This argument stems from the understanding that if youth have been thrown out of the home or abused, they tend to be “less than enthusiastic about bringing their families back into the process.”<sup>151</sup> For this reason, advocates that work on issues of LGBTQ youth homelessness focus more on serving the immediate needs of youth without involving the family.<sup>152</sup> Additionally, this critique involves the valid uncertainty of forcing youth to interact with a legal system that has often been hostile to LGBTQ people.

This proposal, however, is part of an effort to expand the options for economic stability in the lives of unaccompanied LGBTQ youth. As such, it recognizes the varied experiences of youth. Though it may not be an option for every child, it can open doors for youth who *are willing* to utilize it to receive financial support in this way. The parental duty to support the child is a mandatory one, but it will require the willingness of the child to seek enforcement. Furthermore, though some youth will rightfully be hesitant to interact with the court system, others may prefer it to interaction with state assistance programs. Advocating for both options of economic stability allows youth to seek out the method of financial support that is most suited to them. Finally, this option is not designed to encompass all LGBTQ unaccompanied youth. Some youth have actually emancipated and others want to be considered emancipated. In these cases, continued financial support would not be an option because their right to it has been severed.

B. *Youth Should Not Be Able to Enforce the Duty to Support*

The second critique is that youth should not be able to enforce the duty to support. This argument comes in three different versions. It may be argued simply that young people should not be

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<sup>151</sup> Theresa Nolan & Jennifer Gunnell, *Bringing Families into the Fold When Serving Homeless LGBT Youth*, HUFFINGTON POST (Jan. 20, 2012, 5:42 PM), [http://www.huffingtonpost.com/theresa-nolan/homeless-gay-youth\\_b\\_1218151.html](http://www.huffingtonpost.com/theresa-nolan/homeless-gay-youth_b_1218151.html).

<sup>152</sup> *Id.* (“Family rejection and its tragic consequences are hardly new problems. But for many years, providers and advocates for these youth have, for many reasons, focused on the youth themselves, giving little attention to their families. Those who work with LGBT youth must confront some basic realities: short-term stays, limited resources, and reluctant clients make it difficult to make much headway in involving families when the focus on basic needs and reducing the risks these youth are exposed to on the streets is paramount.”).

rewarded for “delinquent” behavior. Alternatively, it may be argued that parents shouldn’t have to support the runaway child because there are viable state sponsored mechanisms to provide the child with financial assistance. Another version of this critique is that youth are not mature enough to be awarded money.

The argument that young people should not be rewarded for delinquent behavior is a viable one. This view focuses on runaway youth who have undermined parental authority by running away. This viewpoint demonstrates why some courts have accepted the constructive emancipation defense and ordered the termination of the duty of support. This argument, however, does not account for the fact that youth, even if they have made the decision to run away, may have nonetheless been forced out of the home. Furthermore, the act of running away can be done for the youth’s own protection and safety.<sup>153</sup> Allowing youth to enforce the parental duty of support against a parent who has forced them out of the home is not a reward for delinquent conduct, but a reward for surviving and wanting to survive. There is a deeper argument that allowing youth to receive financial support may entice youth to leave for invalid reasons and try to enforce the parental duty of support. However, this is addressed by court involvement in ordering and enforcing the support. The court will determine whether the child has been forced out of the home by the parent, and if so, will order and enforce support.

It may also be argued that the youth should not pursue payment from the parents, but access the state assistance that is available for them. Yet, as emphasized throughout this paper, not all youth are eligible for state services or assistance.<sup>154</sup> Young people who have been forced out of the home or have run away rarely have the documentation necessary for accessing state services.<sup>155</sup> The ability of the state to prevent youth from accessing services based on lack of documentation is evident in federal legislation pertaining to homeless and unaccompanied youth. For instance, the McKinney-Vento Homeless Assistance Act has incorporated specific provisions mandating that states review and change their policies concerning necessary documentation youth need for accessing public education.<sup>156</sup> These provisions were incorporated because homeless and unaccompanied youth were prevented from

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<sup>153</sup> See RAY, *supra* note 6, at 20–21.

<sup>154</sup> See Nehring, *supra* note 32, at 804–05.

<sup>155</sup> Gwadz et al., *supra* note 51, at 368–69.

<sup>156</sup> See McKinney-Vento Homeless Assistance Act of 1987, 42 U.S.C. § 11432(g)(1)(H) (2012).

accessing public education for lack of necessary records. Transgender youth have also had well-documented problems accessing state assistance when the sex on their identification documents fails to match their gender expression or presentation.<sup>157</sup>

Furthermore, in New York, a parent of sufficient means is obligated to provide support for a child on public assistance.<sup>158</sup> The state will generally provide the assistance to the child and seek reimbursement from the parents. However, having the state act as an intermediary instead of allowing the child to enforce the duty of support directly against the parent places more obstacles in front of the child. The child may or may not want to seek public assistance, and may or may not be able to receive it.<sup>159</sup> Additionally, the burden should not fall on the state if there are people of means, namely the parents, to provide for the child.

The view that unaccompanied youth are able to obtain employment stems from a societal misconception about employment accessibility for homeless people in general. Obtaining employment is difficult for a housed person with access to hot water, food, a bed, and clean clothing, and so it is much more difficult for someone who does not even have those basic needs met. There are significant barriers to homeless youth obtaining jobs in the formal economy, including: the effects of homelessness itself (such as hunger, fatigue, and an inability to stay clean), the lack of an address to give to employers, educational limitations or lack of previous job experience, mental health issues, race and ethnicity, sexual orientation and transgender identity, and age.<sup>160</sup> Even if youth could become employed, these barriers could cause them to lose their job.<sup>161</sup> There are also barriers specific to actual or perceived LGBTQ identity. For instance, male-to-female transgender youth reported the highest levels of discrimination when attempting to access employment.<sup>162</sup> Still, youth should not be forced into employment, especially when they can attend school. In New York, youth must attend school until they are 16 years old and can attend until they are 21.<sup>163</sup> Youth should be allowed to attend school with-

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<sup>157</sup> The Sylvia Rivera Law Project is an example of a transgender-specific service provider that helps clients change their documentation because of the high demand for such services. *See generally* THE SYLVIA RIVERA LAW PROJECT, <http://srlp.org/> (last visited Apr. 17, 2013).

<sup>158</sup> *See* N.Y. FAM. CT. ACT § 415 (McKinney 2012).

<sup>159</sup> Nehring, *supra* note 32, at 804–05.

<sup>160</sup> Gwadz, *supra* note 51, at 368.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 369.

<sup>163</sup> N.Y. EDUC. LAW §§ 3202, 3205(1)(a) (McKinney 2012).

out the interference of having to obtain full-time work in order to attain their basic survival needs. Without permitting youth to enforce the parental duty of support, “when the parent-child relationship deteriorates, often the child shoulders the burden of financial loss and economic deprivation.”<sup>164</sup>

Finally, this second critique encompasses the question of whether young people could be paid directly. Generally, the custodial parent or third party enforces the child support obligations and is the one paid, though the money is owed to the child.<sup>165</sup> Unaccompanied youth over the age of 18 are legally adults and could be paid directly; as for unaccompanied youth under the age of 18, the court could make an inquiry into the child’s age and capacity to determine if the child could be paid directly.<sup>166</sup> In addition, children are awarded money after court intervention in other contexts. For instance, in jurisdictions where the parental immunity doctrine has been fully or partially abrogated, youth are permitted to bring tort claims for emotional, physical, and sexual abuse against their parents.<sup>167</sup> Here, the money from the parental duty of support could only be directed for necessities—namely shelter, clothing, and food—and would be available in small amounts paid regularly until the child reaches the age of 21. A third-party payor could be enlisted to receive, pay, and track the payments. For unaccompanied youth who are younger than 16, attempting to enforce the parental duty of support directly may result in child welfare placement, as the state is responsible for these youth.<sup>168</sup> If the state could not reunify the child with the parents, then they would be placed in care and the social services agency would seek reimbursement from the parent.

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<sup>164</sup> Nehring, *supra* note 32, at 804–05.

<sup>165</sup> *Id.* at 780.

<sup>166</sup> Courts already inquire into the age and capacity of a young person when determining whether to allow the constructive emancipation defense. *See* Wisselman & Talassazan, *supra* note 91, at 8. *Cf.* *Hross v. Hross*, 224 A.D.2d 662, 662–63 (2d Dep’t 1996); 11 SCHEINKMAN, *supra* note 65, § 16:51.

<sup>167</sup> *See* G. Stephen Neeley, *The Psychological and Emotional Abuse of Children: Suing Parents in Tort for the Infliction of Emotional Distress*, 27 N. KY. L. REV. 689, 711 (2000). *See also* Benjamin Shmueli, *Love and the Law, Children Against Mothers and Fathers: Or, What’s Love Got to Do With It?*, 17 DUKE J. GENDER L. & POL’Y 131, 147–54 (2010).

<sup>168</sup> Under New York law, being under 18 triggers the responsibility of the state. *Cf.* N.Y. SOC. SERV. LAW § 371(1) (McKinney 2012). There are major problems with this possibility, as LGBTQ youth have extensively suffered in state child welfare and juvenile justice systems. *See generally* ROB WORONOFF ET AL., CHILD WELFARE LEAGUE OF AM. & LAMBDA LEGAL DEF. AND EDUC. FUND, OUT OF THE MARGINS: A REPORT ON REGIONAL LISTENING FORUMS HIGHLIGHTING THE EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER AND QUESTIONING YOUTH IN CARE (2006), available at <http://www.cwla.org/programs/culture/outofthemargins.pdf>.

C. *Parents Without Sufficient Means to Pay*

Third, there is a general concern about child support enforcement. As enforcement has become stricter, parents without the sufficient means to provide support payments have been criminalized. This may be more likely in situations where the child has been thrown out or forced to run away from their home. Youth who are experiencing homelessness are typically leaving a dysfunctional and poverty-stricken family environment. Some youth have reported being forced to leave the home because their parents were not able to provide for their basic needs.

However, the parental duty to support the child, as statutorily codified in New York, already requires the court to inquire into whether the parents are of sufficient means or are able to earn the sufficient means to provide for the child. Allowing youth to directly enforce the parental duty of support would not change this requirement. A court would still have to make a determination about whether the parents are able to provide support for the child and if so, what the reasonable and fair sum would be. If the parents are of sufficient means, but refuse to pay, the court can withhold their wages or ensure compliance with a contempt order.<sup>169</sup>

D. *Allowing the Child to Enforce the Duty to Support Violates the Federal Constitution*

The United States Supreme Court has long recognized that parents have a fundamental liberty interest, protected by the Fourteenth Amendment of the United States Constitution, to the “care, custody, and management of their child.”<sup>170</sup> This interest does not evaporate when the parent temporarily loses custody of the child to the state.<sup>171</sup> In New York, courts have held that this interest in care, custody, and control is reciprocal to the duty to support the child. This parental authority over the child has been upheld because there are “pages of human experience that teach that parents generally do act in the child’s best interests,” even though some parents may abuse or neglect children.<sup>172</sup>

However, this fundamental liberty interest is not without limit. Parents cannot force their child from the home and argue that this is an extension of their fundamental right to care, custody and con-

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<sup>169</sup> See *Turner v. Rogers*, 131 S. Ct. 2507, 2517 (2011).

<sup>170</sup> *Santosky v. Kramer*, 102 S. Ct. 1388, 1394 (1982) (characterizing the right as “freedom of personal choice in matters of family life”).

<sup>171</sup> *Id.*

<sup>172</sup> *Parham v. J.R.*, 99 S. Ct. 2493, 2504 (1979).

trol. The state is not “without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized.”<sup>173</sup> The state regularly uses *parens patriae* power to protect children in cases of abuse and neglect. Furthermore, as discussed above, the state has the power to order and enforce child support orders against a non-custodial parent. Therefore, states can impose child support orders against parents who have forced their children from the family home without violating the parent’s right to care, custody, and control of the child.

#### CONCLUSION

*“And while so many [LGBTQ homeless] youth have displayed great resilience, wisdom, and independence in overcoming the obstacles they face, basic survival—let alone sustained independence—is a day-to-day challenge.”*<sup>174</sup>

Options of support for unaccompanied youth have transformed partly in recognition that specific subsets of this population receive services. LGBTQ youth are one such subset. In response to research studies and reports, and most importantly the voiced and written experiences of LGBTQ youth experiencing homelessness, practitioners and advocates have put forth numerous recommendations to improve homeless youth services. This work continues under the well-founded belief that bettering the services of an extremely vulnerable population will in turn make more services available to all youth. As a supplement to these recommendations, I suggest that LGBTQ unaccompanied youth advocates seriously consider whether some of the young people they are serving could benefit from enforcing the parental duty of support. This proposal is part of an effort to expand the options for economic stability for unaccompanied LGBTQ youth. At the very least, this option should be further explored by service providers and practitioners.

Exploring the ability of LGBTQ youth to enforce the parental duty of support recognizes the extremely varied experiences that unaccompanied youth have. Though it may not be an option for every child, it can open doors for youth who are willing to utilize it as a means of securing their basic needs. These youth deserve as many avenues and resources to achieve economic stability and, in turn, transition out of homelessness, as can be identified. They deserve *more* from their peers, service providers, policy-makers, and advocates. But their parents legally owe it to them.

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<sup>173</sup> *Id.*

<sup>174</sup> Hughes, *supra* note 7.