

Legislative Initiatives For Healthier Lives

Executive Summary

A Collaborative Partnership:

The Health Law Institute

A Program of the Justice Resource Institute

And

Northeastern University School of Law

Law, Culture, and Difference Program

Law Office #2

April 9, 2002

Faculty Supervisors:

Hon. Susan Maze-Rothstein

Professor Libby Adler

Teaching Facilitators:

Megan Boyle (Fall)

Jodie Marksamer (Winter)

Law Office #2 Members:

Robert Belle, Stephen Boardman, Christina Boutilier, Diana Cap, Amanda Faerber, Adam Kessel, Stephanie Mandell, Sergey Mikhlin, Caitlin Palm, Bethany Stasiak, Ariel Strauss, Christina Watson

Presenters

Introduction: Christina Watson

Emancipation: Christina Watson

Legal Access: Ariel Strauss

Mature Minor Rule: Stephanie Mandell

Shelter Restriction: Caitlin Palm

Group Process: Caitlin Palm

Tech. Innovations: Adam Kessel

Recommendations: Caitlin Palm

1 Executive Summary

At the request of the Justice Research Institute, Law office #2 has looked at runaway and homeless youth's access to services in the state of Massachusetts. We have researched at emancipation and mature minor issues, in order to determine the pros and cons of these approaches to providing services that would not normally be provided to minors. We have also researched how Massachusetts provides essential services to homeless and runaway youth, such as shelter and access to legal aid, and provided recommendations for how Massachusetts could better provide these services. Our methodology for investigating these issues was to assess how services are provided in six other states, to determine what federal statutes apply, and to compare these approaches to those in Massachusetts. This Executive summary will include a description of the issues and a summary of our suggestions for modifications to the statutes of Massachusetts. Please see our paper for more in-depth analysis.

Emancipation is a legal status that removes legal barriers and grants minors, prior to the age of majority, many of the same rights that adults are entitled to. Some of these rights include: the ability to legally enter into contracts and be financially and socially independent from parent(s) or guardian(s), as well as being able to freely consent to medical care and legal advice. In the jurisdictions that we examined, prior to the granting of the petition, minors must demonstrate the ability to financially support themselves and must have housing. These requirements are obviously meant to insure that the minor will not be indigent and homeless. However, in most states, once a minor is emancipated, all parental obligation to financially support their child is obliterated, including court-ordered child support. This termination of parental support is often detrimental to the successful passage of the minor into adulthood and is a major drawback of many emancipation statutes. However, not all emancipation statutes terminate the parents duty to provide financial support to their child. Michigan, for example, explicitly states in its statute that an emancipated minor is entitled to continued support. The law office's research has revealed no federal statutes or regulations that suggest a minor is precluded by federal law to receive financial support from a parent after becoming

emancipated. Also, there is no federal regulation that suggests that an emancipated minor may not be a direct payee of any support that is mandated by the state. Although we did not find any cases that deal specifically with continued support of a court-ordered emancipated minor, one interesting rule that appears in Massachusetts divorce cases is that minors are not automatically emancipated at any particular age. Even when Massachusetts reduced its age of majority from 21 to 18, this did not mean that all people between the ages of 18 and 21 were automatically emancipated for support purposes. Thus, divorce settlements that predicated child support on non-emancipation were still binding even after age 18 if the child was not considered financially emancipated. This precedent may be useful to strengthen the argument for an emancipation statute that provides for continued parental financial support.

In Massachusetts, the lack of formal procedures to guide emancipation determinations, the potential termination of parental financial support to the minor, and the potential lack of maturity of the minor are reasons given by the judiciary for their unwillingness to grant emancipation petitions. However, if Massachusetts adopted a statute that incorporated the positive characteristics of other state's statutes, particularly Michigan, and by specifying criteria that the minor must fulfill prior to an emancipation determination, the judiciary's concerns would be greatly reduced.

Minors do not have the right to enter into contracts, and thus, consent for their own medical care. Emancipation is the legal means through which a minor may be relieved of the "disability of minority" and then be afforded the responsibilities and rights consistent with obtaining the age of majority. A prevalent problem that exists among many homeless minors is the issue of consenting to their own medical care. Mature Minor Rule is a term that refers to a minor's right to consent to certain types of medical care before reaching the age of majority. There is no federal statute stating when a minor may consent to her own medical care. Consequently, each state has legislatively enacted statutes regulating when a minor may legally consent to her own medical care. The age at which a minor may consent to her own care differs with the type of care sought. For example, oftentimes a minor may be able to consent to treatment for a sexually transmitted disease at a younger age than consenting

for treatment for mental illness. In addition, the scope of care provided to minors varies between states. Imposition of constraints on a minor's right to consent to her own medical care poses special threats to the homeless population. Primarily, as a result of exposure to the elements, the homeless population has a greater risk of contracting illnesses and injuries that can quickly become life threatening if left untreated. Without proper medical care colds can develop into respiratory infections, and wounds can become gangrenous. Medical providers are often only sought out when conditions become serious, and even then, both the medical provider and youth will often skirt around the issue of the age of the patient. While treatment for some conditions is allowed to minors, it is ironic that preventative medical care is not mentioned in statutes. Both morally and fiscally, it makes sense to treat a patient for a minor condition before it becomes the cause of suffering, and expensive to treat.

In the Massachusetts mature minor rule, allowing a minor to consent to her own medical care, precise language is used to allow for minors who: are married, who are themselves parents, members of the armed forces, or are pregnant. However, vague language is used that ostensibly allows a minor "living separate and apart from his parent or legal guardian, and is managing his own financial affairs" to consent to her own medical care. Given the way the statute currently reads, service providers who work with homeless youth, as well as medical personnel, need to understand how this affects treatment. Hence, education of what the current statute allows is necessary at both the provider level, as well as with homeless youth, so that homeless minors in Massachusetts can begin to receive proper medical care.

For some ideas or concepts regarding minors there are clear-cut rules set out. Some states have a mature minor rule to cover the area of medical attention or an emancipation statute whereby a minor can remove the disabilities that are put on by the state. Legal access for minors looks at what rights minors have when they have not been emancipated nor are already part of the system through DSS or some other organization...for example, their capacity to sue or be sued, to file petitions on their own behalf or seek out legal help for their own protection.

The legislation regarding minors has traditionally been left to be determined by each

state as they have seen fit. In Massachusetts, as in most states, a minor cannot access the legal system without the aid of a parent, guardian ad litem, or next friend. Typically, a guardian ad litem is appointed by the court and a next friend is someone bringing suit on the minor's behalf, however, in Massachusetts, a next friend is a specific type of guardian ad litem. Anyone of these three types of guardians is supposed to look out for the best interests of the minor. An attorney on the other hand should work towards reaching the minor's goals. Some states do provide for more access once an unemancipated minor has reached a certain age.

In researching legal access in the six chosen states and Massachusetts it is our opinion that Massachusetts provides for its minors in many ways. Minors have many legal rights and can access the court system. In regard to legal access, JRI should focus its resources on informing minors about what options they already have in Massachusetts. Our feeling is that the minors need to be educated about what is already out there for them.

The federal rules state that shelters must notify parents within 24 to 72 hours of the minor's admission. Different states have come up with different ways of dealing with this requirement. For example, the Tennessee statute requires that shelters make a "good faith" attempt to contact a youth's parents. Maine requires that a shelter contact the Department of Human Services, but does not require parental notification. In Alaska, Louisiana, and New York, no contact is necessary where compelling reasons are shown against it. In Massachusetts, a temporary shelter may only provide shelter for a period of seventy-two hours. This is stated in Mass. Gen. Laws ch. 119 §23 (2002): "A temporary shelter care facility program or a group care facility, licensed under the provisions of chapter twenty-eight A, may, for a seventy-two hour period, provide temporary shelter to a child under eighteen without parental consent, provided that the child's welfare would be endangered if such shelter were not immediately provided. At the expiration of such seventy-two-hour period, the licensee shall (1) secure the consent of parent or guardian to continued custody and care, (2) refer the child to the department for custody and care, or (3) refuse to provide continued care and custody to said child."

Originally this law was passed as part of the 1974 legislative agenda of the Office for Children. The intention of the Amendment to Ch. 119 was to "remove the cloud of civil or criminal liability for appropriately licensed facilities able to satisfy the emergency needs of runaways." The main goal of the legislative proposals were as follows; (1) to recognize that children are entitled to similar rights and social benefits as other citizens; (2) to adequately provide the community-based, preventive services that are critical to strengthening family life; (3) to give a greater voice to communities in planning the development of these local services; and (4) to increase our commitment of resources to services for children, Massachusetts' most precious resource.

The Office for Children intended to open up services to runaway children and not restrict their access to shelter and services. In fact, the law was meant to clarify that despite the fact that statutes against aiding and abetting runaways exist, this does not apply to shelters as long as they stay within the federal guidelines of only providing shelter to a youth for seventy-two hours. Although the bill was titled "An Act Providing a Temporary Shelter Program for Children," the Office for Children recognized that "(t)his law is mislabeled. It really gives the Office for Children authority to license and regulate temporary shelter facilities." While the law allowed for temporary shelter of minors in adult shelters, unfortunately, runaways often see homeless shelters as more dangerous than the streets, and choose not to stay. Another result is that there are far too few shelters that house only youth, as they are seen to be taken care of by the temporary shelters. When youth become homeless, it is often not because they do not have a home. They may have a place to live that is temporary or sporadic and so do not fit into the population that DSS serves, namely youth in need of foster care. This population is in desperate need of temporary shelter. Unfortunately, while they are legally able to seek temporary shelter for up to seventy-two hours, they almost always feel that the streets are a safer alternative. The regular population in homeless shelters sees homeless youth as vulnerable. Youth are therefore often targeted and become victims of crimes against person and property. Genny Price, the Clinical Director at Bridge Over Troubled Waters, a drop-in center for homeless minors, comments that minors "don't belong in the adult

shelters. They are really designed for an older, chronically homeless population. And so you don't want ... even 18 and 19 year olds in there getting comfortable, never mind kids under 18." What Massachusetts' law does is take away the possibility of providing homeless shelters designated for youth. It effectively makes the youth's situation more dangerous. Runaway youth are forced to live in camps, live in dangerous shelter conditions, or trade sexual favors for shelter.

Massachusetts must figure out a way to give the shelter staff discretion despite the plain language of the Federal rules. One way of doing this is by giving shelter staff the power to decide how much effort needs to be put into contacting parents before shelter is provided, or to allow shelter staff to decide who should be reported, and who should not. The clear intent of this legislation when it was passed in 1974 was to provide services for children. This statute may have the opposite effect of not allowing children to get one of the most necessary services, long-term shelter. JRI could show legislators the effects of the 1974 laws, and express the need for these amendments to the statute that have already been adopted in New York, Maine, Alaska, and Louisiana.