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# Forgotten Youth: Homeless LGBT Youth of Color and the Runaway and Homeless Youth Act

Michelle Page\*

## ABSTRACT

*Over the years, the rate of youth homelessness in America has steadily risen, prompting the creation and subsequent revision of corrective policies. One such policy is the Runaway and Homeless Youth Act of 1974. The Act is not a cure-all for homelessness, but it does provide services and programs specifically designed to aid homeless youth. It has had some success, but not all homeless youth benefit from it equally.*

*Obviously, the youth population is not a homogenous one. Youth are of varying ages, races, genders, and sexualities. Unfortunately, the Runaway and Homeless Youth Act does not specifically account for these differences which causes some youth in need to miss out on the services and programs that their peers receive. As a result, there is presently a disproportionate percentage of youth of color, and especially LGBT youth of color, who experience homelessness in a given year compared to their overall percentage in the general population.*

*Thus, this Comment focuses on how and why this problem occurs, the effects it has on homeless LGBT youth of color, and then proposes specific revisions to the Runaway and Homeless Youth Act that would better remedy the present pervasive homelessness amongst LGBT youth of color, and in effect, all homeless youth.*

## INTRODUCTION

“I’m gay.” “I’m bisexual.” “I’m in the wrong body.” A single sentence, like any of the preceding three, is all it takes for someone’s world to change. When a child or a teen realizes that he or she is not heterosexual, as customarily presumed, and comes out to his or her legal guardian, family, or friends, the moment is unforgettable. It is usually a long-awaited relief to finally show the world one’s true self. But for some, this relief may come at a price. One severe, and yet common, repercussion is homelessness. Lesbian, Gay, Bisexual, and Transgender (LGBT<sup>1</sup>) youth<sup>2</sup> become homeless<sup>3</sup> for a variety of

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reasons, but the most commonly reported reason, is that youth are kicked out<sup>4</sup> of their homes after revealing their sexual orientation to their family members.<sup>5</sup> Studies have found that up to approximately 20% of youth leave home because their family members disapprove of or are uncomfortable with their sexual orientation.<sup>6</sup> This often means that parents or guardians of LGBT youth treat them in such a way that they feel they have no other choice but to leave their homes.<sup>7</sup> Some LGBT youth even run away from home without having disclosed their sexual orientation to their families in order to avoid the stress and fear of rejection, or worse, eviction.<sup>8</sup> Still others, who may not even be living with family at the time they come out to them, are financially cut off and ignored, which can also result in homelessness.<sup>9</sup>

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<sup>1</sup> “LGBT” is a common acronym used to distinguish between people who do not identify as heterosexual and people who do identify as heterosexual. Although some heterosexuals do identify as LGBT and there are other, more specific, terms available—such as “pansexual” or “asexual”—that are not included in the LGBT acronym, for purposes of this Comment, “LGBT” refers to all non-heterosexual identities.

<sup>2</sup> Of the 12 states that statutorily define the term “homeless youth,” only seven states consider “youth” to include individuals over age 18. However, most studies and reports on homeless consider the term “youth” to include ages 12–24. *On the Streets*, CTR. FOR AM. PROGRESS 4 (June 2010), <https://www.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>. For purposes of this Comment, “youth” includes individuals above the age of 18, which is the age at which 48 states cut off youth services, because the author believes that states should try to provide services to homeless young people for as long as possible. This Comment further defines individuals aged 11 and below as “children” and therefore such individuals are not addressed in this Comment. *Alone Without a Home: A State-by-State Review of Laws Affecting Unaccompanied Youth*, NAT’LL. CTR. ON HOMELESSNESS & POVERTY & THE NAT’L NETWORK FOR YOUTH 23–30 (2012), [https://www.nlchp.org/Alone\\_Without\\_A\\_Home](https://www.nlchp.org/Alone_Without_A_Home).

<sup>3</sup> The United States Department of Housing and Urban Development (HUD) defines “homeless” very narrowly to refer to individuals “who stay in places not meant for human habitation like the streets, abandoned buildings, vehicles or parks” or individuals who “are staying in emergency shelters, transitional housing programs, or safe havens.” *The 2014 Annual Homeless Assessment Report (AHAR) to Congress, Part 1: Point-in-Time Estimate of Homelessness*, U.S. DEP’T OF HOUSING AND URB. DEV. 2 (2014), <https://www.hudexchange.info/resources/documents/2014-AHAR-Part1.pdf>.

<sup>4</sup> Youth who are kicked out or forced of their homes are commonly referred to as “throwaways.” *Runaway/Thrownaway Children: National Estimates and Characteristics*, NISMART 2 (Oct. 2002), [http://www.icmec.net/en\\_US/documents/nismart2\\_runaway.pdf](http://www.icmec.net/en_US/documents/nismart2_runaway.pdf).

<sup>5</sup> *Opening Doors: Federal and Strategic Plan to End Homelessness*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS 22 (June 2015), [https://www.usich.gov/resources/uploads/asset\\_library/USICH\\_OpeningDoors\\_Amendment2015\\_FINAL.pdf](https://www.usich.gov/resources/uploads/asset_library/USICH_OpeningDoors_Amendment2015_FINAL.pdf). (“[M]ore than 40 percent [of LGBTQ youth] are rejected and put out of their homes as a result of sharing their sexual orientation or gender identity.”).

<sup>6</sup> See, e.g., Margaret Rosario et al., *Risk Factors for Homelessness Among Lesbian, Gay, and Bisexual Youths: A Developmental Milestone Approach*, 34 CHILD. & YOUTH SERV. REV., 186, 191 (2012) (noting that 14%-26% of lesbian, gay, and bisexual youth reported leaving home because of conflicts with family members about their sexual orientation); See also *Alone Without a Home*, *supra* note 2, at 5. (As of 2012, “20% of homeless youth had conflicts with their parents around their sexual orientation which caused them to leave.”).

<sup>7</sup> See Ritch C. Savin-Williams, *Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay Male, and Bisexual Youths: Associations with School Problems, Running Away, Substance Abuse, Prostitution, and Suicide*, 62 J. CONSULTING & CLINICAL PSYCHOL. 261, 264 (1994).

<sup>8</sup> See Rosario et al., *supra* note 6, at 191.

<sup>9</sup> See, e.g., Alex Morris, *The Forsaken: A Rising Number of Homeless Gay Teens are Being Cast Out by Religious Families*, ROLLING STONE MAG. (Sep. 3, 2014), <http://www.rollingstone.com/culture/features/the-forsaken-a-rising-number-of-homeless-gay-teens-are->

Finally, substance abuse, physical abuse, sexual abuse, mental health issues, early development of sexual orientation,<sup>10</sup> family poverty, aging out of the foster care or juvenile justice systems,<sup>11</sup> and financial or emotional neglect from family members,<sup>12</sup> are also common reasons why LGBT youth may become homeless.<sup>13</sup> Furthermore, since many homeless youth are forced out of their homes, they are often unaccompanied, meaning they live on the streets or in homeless shelters without the presence of an adult.

Currently, LGBT youth are disproportionately impacted by homelessness compared to the national percentage of youth homelessness and compared to the national percentage of LGBT youth.<sup>14</sup> To illustrate, recent studies estimate that 1.6 million children and youth (ages 12-17) are homeless each year without an accompanying parent or guardian.<sup>15</sup> It is estimated that 5%-10% of all youth in this country identify as LGBT; by contrast 20%-40% of homeless youth identified as LGBT.<sup>16</sup> If the percentages seem low, keep in mind that the numbers are likely to be under-representative of the actual LGBT percentage of homeless youth in the country due to sampling bias and underreporting,<sup>17</sup> signifying the likelihood of even more LGBT youth living on the streets than currently reported. Additionally, the fact remains that LGBT youth run away from home more frequently than heterosexual youth which may also add to the current percentages.<sup>18</sup>

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being-cast-out-by-religious-families-20140903 (discussing the stories of two teens, one black and one Latino, who experienced years of homelessness after being cut off by their religious parents for being gay).

<sup>10</sup> Rosario et al., *supra* note 6, at 191. Youth who come to terms with their sexual orientation earlier in life (before their teenaged years) show higher rates of homelessness than those who do not. Although the reason for this correlation is unknown, one argument is that risky behaviors (like running away) are more likely to be used as coping mechanisms in early adolescence than in later adolescence.

<sup>11</sup> Laura E. Durso & Gary J. Gates, *Serving Our Youth: Findings from a National Survey of Service Providers Working with Lesbian, Gay, Bisexual, and Transgender Youth Who Are Homeless or at Risk of Becoming Homeless*, THE WILLIAMS INST. WITH TRUE COLORS FUND & THE PALETTE FUND 4 (2012), <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>; Opening Doors, *supra* note 5, at 51.

<sup>12</sup> *Id.*

<sup>13</sup> See Rosario et al., *supra* note 6, at 191; see also *Hunger and Homelessness Survey: A Status On Hunger And Homeless In America's Cities – A 25-City Survey*, U.S. STATES CONF. OF MAYORS 2 (Dec. 2014), <http://www.usmayors.org/pressreleases/uploads/2014/1211-report-hh.pdf>; *Homelessness in America: Overview of Data and Causes*, NAT'L L. CTR. ON HOMELESSNESS & POVERTY (2015), [http://www.nlchp.org/documents/Homeless\\_Stats\\_Fact\\_Sheet](http://www.nlchp.org/documents/Homeless_Stats_Fact_Sheet).

<sup>14</sup> *Gay and Transgender Youth Homelessness by the Numbers*, CTR. FOR AMERICAN PROGRESS (June 21, 2010),

<http://www.americanprogress.org/issues/lgbt/news/2010/06/21/7980/gay-and-transgender-youth-homelessness-bythe-numbers/>; *Seeking Shelter*, CTR. FOR AMERICAN PROGRESS 4 (Sept. 2013), <https://www.americanprogress.org/wp-content/uploads/2013/09/LGBTHomelessYouth.pdf>.

<sup>15</sup> *Alone Without a Home*, *supra* note 2, at 6.

<sup>16</sup> *On the Streets*, *supra* note 2; Kaya Lurie & Breanne Schuster, Policy Brief, *Discrimination at the Margins: The Intersectionality of Homelessness & Other Marginalized Groups*, SEATTLE U. SCH. L., at v (2015).

<sup>17</sup> Les Whitbeck et al., *Mental Disorder, Subsistence Strategies, and Victimization Among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. OF SEX RESEARCH 329, 329–30 (2004).

<sup>18</sup> See Bryan 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. PUB. HEALTH 773, 774 (2002).

Meanwhile, of the 3.5 million people in the United States who experience homelessness each year, 42% of them are black and 20% are Hispanic (even while each group represents just over 12% of the U.S. population), indicating that minorities make up well over half of the national homeless population in a given year.<sup>19</sup> Unfortunately, there are few statistical studies specifically focusing on the percentage of LGBT homeless youth who are also of a racial minority.<sup>20</sup> Yet, in the few studies that have addressed racial diversity amongst LGBT homeless youth, LGBT homeless youth tended to be disproportionately people of color.<sup>21</sup>

This Comment argues that when a minority sexual orientation is compounded with a minority race, youth exhibiting both minority identities have a higher risk of becoming homeless and staying homeless for longer periods of time compared to those individuals with both majority identities (white heterosexuals). Racial and sexual minorities are more likely to become homeless because of their higher likelihood of poverty, lower exposure to education, and other negative situational circumstances.<sup>22</sup> These factors also make their homelessness harder to correct. Accordingly, state legislative strategies combating youth homelessness must account for the relevant intersection of race and sexuality or else “legislative invisibility” or “legislative blindness” will perpetuate LGBT youth homelessness.<sup>23</sup> Legislative invisibility is the phenomenon that when certain classifications of people, like LGBT, are not specifically addressed in a statute, they reap no benefit from it even though it is meant to benefit everyone. This type of invisibility is a consequence of implementing overly generalized policies, which lack nuance, to extend to homeless youth on a national scale. Laws based solely on the experiences of one identity group, when members within the group are also members of varying subgroups, can only provide a limited amount of support.<sup>24</sup>

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<sup>19</sup> *Racial Discrimination in Housing and Homelessness in the United States: A Report to the U.N. Committee on the Elimination of Racial Discrimination*, NAT'L LAW CTR. ON HOMELESSNESS & POVERTY 3 (July 3, 2014), [https://www.nlchp.org/CERD\\_Housing\\_Report\\_2014.pdf](https://www.nlchp.org/CERD_Housing_Report_2014.pdf) [hereinafter *Discrimination Report*].

<sup>20</sup> “Race” is defined as “a group of people identified as distinct from other groups because of supposed physical or genetic traits shared by the group.” THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2014), <https://ahdictionary.com/word/search.html?q=Race&submit.x=0&submit.y=0>.

<sup>21</sup> *Seeking Shelter*, *supra* note 14.

<sup>22</sup> *Discrimination Report*, *supra* note 19, at 2. For instance, “While African Americans represent 12.6 percent of the total U.S. population in 2013, they represented 41.8 percent of the total sheltered homeless population in 2013.” *Opening Doors*, *supra* note 5, at 16.

<sup>23</sup> John Charles Thomas, *Self-Efficacy and Homeless Adolescence: Relationship of Length of Homelessness, Gender, and Race to the Self-Efficacy of Homeless Adolescents* (1993) (unpublished M.S.S.W. thesis, U. Texas at Arlington) (on file with U. Texas at Arlington). The term “of color” refers to people of an ethnic or minority status classified by the darker pigmentation of their skin compared to individuals of Caucasian or European ancestry who have a much lighter skin tone. For example, people of color include blacks, non-white Hispanics, Native Americans, East and Southeast Asians, Indians, etc.

<sup>24</sup> Laws, policies, regulations, and strategies that fail to take into consideration the different obstacles members of historically discriminated groups face, are of limited applicability and helpfulness. For example, Kimberlé Crenshaw, although focusing on battered women, argued that intervention strategies to assist battered women were less helpful than they could be because they were based solely on the experiences of women who do not all share the same class or racial backgrounds. Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color*, 43 STANFORD L. REV. 1241, 1246 (1991).

Both federal and state laws fail to classify certain identity groups, preventing individuals in these groups from getting help. For example, courts have held Title VII does not protect against sexual orientation discrimination, even if pursued under sex-based discrimination.<sup>25</sup> This leaves LGBT people vulnerable and without a remedy for sexual-orientation-based discrimination. The same issue occurs under many state employment non-discrimination statutes where sexual orientation is not an explicitly recognized category of discrimination.<sup>26</sup> Consequentially, some LGBT employees in certain states fail to receive the same benefits and legal remedies as heterosexual employees due to the narrow applicability of Title VII despite its broad policy goal. This is exactly what is happening today to homeless LGBT youth of color under the major federal anti-homelessness statute.

There have been many articles written and studies conducted on homeless LGBT youth, but few address the experiences of LGBT youth of color<sup>27</sup> who, as a result of their compounded minority identity, experience homelessness differently than white LGBT youth. For LGBT youth of color, the costs of homelessness are unique and predominantly more devastating.<sup>28</sup> When statutes trying to combat instances of homelessness fail to explicitly address race and sexuality, many homeless youth with distinct needs, such as the availability of free counseling services, for example, fall through the cracks.<sup>29</sup> Since a formal legal analysis of life on the streets for LGBT youth of color has yet to be conducted, it is a topic of both concern and significance.

In an ambitious attempt to correct the problem of widespread homelessness amongst LGBT youth of color, and particularly amongst black LGBT youth,<sup>30</sup> this Comment will explore the intricate dynamics of homelessness as it relates to minority identities. Because of these dynamics, fixing the problem of homelessness through social policy becomes extremely difficult. And yet, federal policy on youth homelessness does exist. The single most dominant policy serving homeless youth since 1974 is the Runaway and Homeless Youth Act (RHYA or the Act).<sup>31</sup> RHYA was initially enacted to

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<sup>25</sup> *Simonton v. Runyon*, 232 F.3d 33, 36 (2d Cir. 2000) (holding the term “sex” in Title VII refers “only to membership in a class delineated by gender, and not to sexual affiliation” and therefore Title VII does not prohibit discrimination based on sexual orientation); *Wrightson v. Pizza Hut of Am., Inc.*, 99 F.3d 138, 143 (4th Cir. 1996) (holding that Title VII does not create a cause of action for discrimination based on sexual orientation); *Williamson v. A.G. Edwards & Sons, Inc.*, 876 F.2d 69, 70 (8th Cir. 1986) (affirming summary judgment for the former employer of a black homosexual male because “Title VII does not prohibit discrimination against homosexuals” and the plaintiff’s claim concerned more his sexuality and less his race).

<sup>26</sup> States like Texas, Kansas, Ohio, Florida, and many more, do not have sexual orientation discrimination laws. *Sexual Orientation Discrimination in the Workplace*, FINDLAW, [http://files.findlaw.com/pdf/employment/employment.findlaw.com\\_employment-discrimination\\_sexual-orientation-discrimination-in-the-workplace.pdf](http://files.findlaw.com/pdf/employment/employment.findlaw.com_employment-discrimination_sexual-orientation-discrimination-in-the-workplace.pdf).

<sup>27</sup> See, e.g., Cochran, *supra* note 18.

<sup>28</sup> See PIER KIDS: THE LIFE (Elegance Bratton Dec. 11, 2013).

<sup>29</sup> See generally Benjamin Ashley, *The Challenge of LGBT Youth in Foster Care*, 1 THE FORUM 47 (2014) (addressing how few states have adopted laws to protect the interests of LGBT youth in foster care, let alone LGBT youth of color).

<sup>30</sup> Particularly concerning is the rising rate of homelessness amongst black LGBT teens and young adults because the rates of homelessness amongst the black population and the LGBT population are staggeringly high—a topic of both social and personal importance.

<sup>31</sup> Michael Glassman, Donna Karno & Gizem Erdem, *The Problems and Barriers of RHYA as Social Policy*, 32 CHILD. & YOUTH SERV. REV. 798,798 (2010).

deinstitutionalize status offenders (minors who commit an offense that is only prohibited during minority such as consuming alcohol, truancy, or running away from home).<sup>32</sup> It was primarily used as a way to control youth in danger of going to jail for minor offenses by intervening first.<sup>33</sup> Homelessness was not added as a component of the Act until three years later when it became clear that many status offenders were also in danger of becoming homeless or were already homeless.<sup>34</sup>

Presently, the Act serves a variety of functions. Under RHYA, youth jailed for running away can enter a runaway youth program to prevent the reoccurrence of homelessness upon release.<sup>35</sup> The Act also recommends the establishment of services and programs for youth who have become homeless to prevent self-endangerment from living on the streets.<sup>36</sup> Since the purpose of RHYA is to provide programs and services to homeless youth, it can also be used as a vehicle for social change for homeless youth of a sexual and racial minority. For that purpose, I examine the statute's positive and negative aspects and propose amendments that would be more inclusive and beneficial to LGBT youth of color.

Because LGBT youth of color have multiple intersecting minority identities (including sexual orientation and race or ethnicity), they have different social needs compared to non-intersectional youth. These needs are presently overlooked by RHYA. In response, Congress should alter certain provisions of RHYA in order to incorporate language addressing these realities: homeless LGBT youth of color experience higher rates of prostitution, sexually transmitted diseases (STDs), discrimination from peers, problems in school, verbal and physical abuse, and violence.<sup>37</sup> RHYA already has the foundation to address all the needs of runaway and homeless youth.<sup>38</sup> However, if legislators understand the social reality of minority homeless youth and incorporate the solutions proposed, RHYA would better assist homeless LGBT youth of color by providing systemic support and minimizing the factors contributing to their homelessness. Simply, RHYA will reduce rates of homelessness among LGBT youth of color if it tailors services more to their needs.

This Comment proceeds in three parts. Part I has two sections. Section A explains the unique social identity of LGBT youth of color by examining the theory of intersectionality as it relates to sexuality and race. Section B outlines the structure, purpose, and effectiveness of RHYA. Part I also gives context to the subsequent discussion on why viewing youth homelessness from the lens of minority identities can improve conditions for homeless LGBT youth of color.

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<sup>32</sup> usgovACF, *40 Years of the Runaway and Homeless Youth Act*, YOUTUBE (Oct. 21, 2014), <https://www.youtube.com/watch?v=A4WZovwshnU>.

<sup>33</sup> Glassman, Karno & Erdem, *supra* note 31, at 801.

<sup>34</sup> *Id.*

<sup>35</sup> usgovACF, *supra* note 32.

<sup>36</sup> 42 U.S.C. § 5701 (2012).

<sup>37</sup> See Savin-Williams, *supra* note 7, at 264–65.

<sup>38</sup> RHYA specifically differentiates between homeless youth and runaway youth. Homeless youth are persons who do not have a home to return to either because “it is not possible to live in a safe environment with a relative” and there is no alternative safe living arrangement. 42 U.S.C. § 5732a(3)(B)-(C). In contrast, runaway youth are persons under 18 years of age who have absented themselves “from a home or place of legal residence without the permission of a parent or legal guardian.” 42 U.S.C. § 5732a(4).

Part II describes and analyzes the general problems with creating legislative change for homeless LGBT youth of color. It examines why LGBT youth of color should be evaluated separately from non-minority homeless youth both in race and sexual orientation. For instance, homeless LGBT youth of color withstand racial discrimination, sexual orientation discrimination, higher rates of sexual deviance, such as prostitution, higher risk of STDs, including HIV, and mental illnesses like depression and anxiety.<sup>39</sup> Such issues require highly tailored and unambiguously stated policy solutions. Part II also goes into greater depth on the phenomenon I call “legislative blindness,” an outcome of what Valerie Purdie-Vaughns & Richard P. Eibach call, “intersectional invisibility,”<sup>40</sup> to show why it is imperative that a comprehensive policy is initiated to protect homeless racial and sexual minorities.

Finally, Part III proposes specific additions to RHYA that incorporate the unique policy needs of LGBT youth of color. Presently, RHYA provides extensive assistance to runaway and homeless youth, specifically in the areas of education, street outreach, temporary and permanent shelter, employment, physical health care, mental health care, and family reunification or sustainable independent living.<sup>41</sup> Although these assistance programs are comprehensive and seemingly encompass the needs of LGBT youth of color, without statutory language identifying and validating the distinct problems these youth face, there is no way to ensure enforcement and coverage. Furthermore, based on the statistics regarding homeless youth, it appears that many are not reaping the benefits of RHYA.<sup>42</sup> If specific provisions within the statute solely regarding issues of minority youth were added, not only would the percentage of homeless minority youth drop, it would stay low.

The following four additions and revisions to RHYA would help ensure this result: (1) adding the category of “at-risk youth” to the statute with a definition that includes language about race, sexuality, and intersectionality; (2) ensuring that eligibility for program funding is conditional upon implementation of individual action plans for each homeless youth; (3) mandating staff sensitivity training for program workers, such as educators, administrators of state programs, housing providers, doctors, and counselors;

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<sup>39</sup> Cochran, *supra* note 18, at 773-74; *see also* Theodora B. Consolacion, Stephen T. Russell & Stanley Sue, *Sex, Race/Ethnicity, and Romantic Attractions: Multiple Minority Status Adolescents and Mental Health*, 10 CULTURAL DIVERSITY & ETHNIC MINORITY PSYCHOL. 200 (2004) (discussing how LGB (lesbian, gay, and bisexual) youth of color are confronted with mental health issues, stereotyping, identity issues, and higher levels of alcohol intake compared to their counterparts).

<sup>40</sup> Valerie Purdie-Vaughns & Richard P. Eibach, *Intersectional Invisibility: The Distinctive Advantages and Disadvantages of Multiple Subordinate-Group Identities*, 59 SEX ROLES 377, 381 (2008) (arguing that possessing multiple intersecting subordinate identities leads people to become legally invisible because their discrimination claims based on their unique identity are irreconcilable); Darren Rosenblum, *Queer Intersectionality and the Failure of Recent Lesbian and Gay “Victories,”* 4 LAW & SEXUALITY 83, 92-93 (1994) (addressing how there are different types of queer people and how being queer does not erase their singularity); RUTHANN ROBSON, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* 22 (1992) (discussing how queer theory is mainly “gay male legal theory” which perpetuates the invisibility of lesbians).

<sup>41</sup> *Runaway and Homeless Youth Act (RHYA): Reauthorization 2013*, THE NATIONAL NETWORK FOR YOUTH, <http://www.nn4youth.org/wp-content/uploads/NN4Y-RHYA-Fact-Sheet-2013.pdf>.

<sup>42</sup> *See* Cochran, *supra* note 18; *see also* *Gay and Transgender Youth Homelessness by the Numbers*, *supra* note 14.



(4) creating specific guidelines for how to support minority youth, especially regarding housing placement and counseling services.

## I. BACKGROUND

This background Part lays out the controlling law and social theory guiding this Comment and its proposals. It proceeds in two Sections. Section A discusses intersectionality, a social theory that will later be used to explore the unique conditions for homeless LGBT youth of color. This section demonstrates how the multiple minority identities of LGBT youth of color contribute to and perpetuate homelessness. Section B comprehensively reviews RHYA's statutory language and shows how the statute is designed to tackle the needs of runaway and homeless youth. Every relevant provision of the Act is laid out in detail to set up the later discussion of how to revise these provisions.

### A. *Defining Intersectionality in the Context of Race and Sexual Identity*

The discussion of intersectionality in this Comment pertains to the interaction of youth homelessness with race and sexual orientation.<sup>43</sup> Youth homelessness, therefore, will be used as the baseline identity from which other minority identities intersect. Hence, any reference to intersectionality is in regards to homeless youth of an ethnic,<sup>44</sup> racial, or sexual minority.

Intersectionality is a common tool often used in Critical Race Theory<sup>45</sup> to analyze the problems of subordination and discrimination faced by individuals with multiple minority identities that are not addressed by a single-axis approach.<sup>46</sup> Intersectionality is also a lens through which one can examine and critique social interactions and social policy.<sup>47</sup> For the purposes of the analysis, it will be used to evaluate social policy on homelessness rather than social interactions amongst individuals. Intersectionality will be used as an instrument both to help understand and to correct widespread homelessness amongst LGBT youth of color. It is assumed that the identities of race and sexual orientation are immutable, inseparable traits, meaning the youth in question do not just identify as black or Hispanic, but instead see themselves as black lesbians or Hispanic bisexuals.<sup>48</sup> Their identity as an individual is not categorized solely on the basis on race, gender, or sexual

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<sup>43</sup> The following discussion of intersectionality considers the intersection of youth homelessness with sexual orientation and race, but there are other identities affecting homeless youth such as gender or disability that will not be discussed here for the sake of simplicity.

<sup>44</sup> "Ethnic" refers to "a group of people sharing a common cultural or national heritage and often sharing a common language or religion." *Ethnic*, THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (5th ed. 2016), <https://www.ahdictionary.com/word/search.html?q=ethnic&submit.x=42&submit.y=29>.

<sup>45</sup> Critical Race Theory is a theoretical framework at the intersection of social science and legal theory in which theorists examine the intersection of society, race, racism, power, and the law. It looks at the multidimensionality of racial oppression and its pervasiveness in the law. *See generally* RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* (2d ed. 2012).

<sup>46</sup> *See* Dean Spade, *Intersectional Resistance and Law Reform*, 38 *SIGNS* 1031, 1031 (2013).

<sup>47</sup> *See id.*

<sup>48</sup> John Sibley Butler, *Homosexuals and the Military Establishment*, 31 *SOCIETY* 13, 15–17 (1993); Devon W. Carbado, Symposium, *Black Rights, Gay Rights, Civil Rights*, 47 *U.C.L.A. L. REV.* 1467, 1481 (2000).

preference, but instead is a collection of all those identities.<sup>49</sup> As hosts of multiple intersecting minority identities, these youth are referred to as intersectional.<sup>50</sup>

Intersectionality is the idea that the convergence of oppressed identities, such as race or sexuality, creates unique experiences that traditional theories of identity fail to accurately explain.<sup>51</sup> In 1989 Kimberlé Crenshaw coined the term “intersectionality” as a way to refer to the intersection of multiple minority identities in systems of discrimination (e.g. race discrimination—the perceived superiority of one race over another) and domination (e.g. sex inequality—men over women).<sup>52</sup> This concept of intersecting subordinate identities can be examined from the lens of any minority identity. For instance, intersectional LGBT people have a subordinate identity like ethnicity, race, or gender<sup>53</sup> that intersects with their minority sexual orientation identity like gay, bisexual or transgender. Intersectional LGBT people can be black lesbians, Asian bisexual men, or Hispanic trans-women, all of which experience discrimination and subordination in their interactions with the law and society.<sup>54</sup> In contrast, non-intersectional LGBT people are gay white men who are less likely to be discriminated against on the basis of their identity compared to gay people of color because they are of a “superior” race and “dominant” sex.<sup>55</sup>

One example of how LGBT people of color are subordinated and discriminated against compared to white LGBT people, is in the former “Don’t Ask, Don’t Tell” policy used in the United States military.<sup>56</sup> During the Reagan and Bush administrations, black females in the Marine Corps “were discharged for homosexuality at twice the rate of white males.”<sup>57</sup> In one instance, all the black female crewmembers on the U.S.S. Norton Sound were accused of being lesbians, while white female crewmembers were not.<sup>58</sup> This same disproportionate and discriminatory treatment of blacks who are suspected of being gay or transgender continues today and happens often within the homeless community.<sup>59</sup>

Crenshaw typically discusses intersectionality as it relates to racism and sexism by using black women as the subject of study. Instead, the following looks at racism and homophobia using homeless LGBT youth of color as the subject of study. The discussion broadens her methodology by focusing on a minority group that is often overlooked—the

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<sup>49</sup> Carbado, *supra* note 48, at 1481.

<sup>50</sup> *Id.* at 1504.

<sup>51</sup> Darren L. Hutchinson, *Ignoring the Sexualization of Race: Heteronormativity, Critical Race Theory and Anti-Racist Politics*, 47 BUFF. L. REV. 1, 10 (1999).

<sup>52</sup> Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. CHI. LEGAL F. 139, 140 (1989).

<sup>53</sup> The word “gender” is used instead of “sex” to connote the distinction between the self-identification of a gender such as male, female, both, or neither and the biological sex assignment associated with reproduction.

<sup>54</sup> See generally Hutchinson, *supra* note 51, at 10.

<sup>55</sup> See *id.*

<sup>56</sup> Carbado, *supra* note 48, at 1511 n.174; see also SARAH SCHULMAN, MY AMERICAN HISTORY: LESBIAN AND GAY LIFE DURING THE REAGAN/BUSH YEARS 269 (1994) (documenting aspects of life for American activists between 1981 and 1992, including a discussion on the “Don’t Ask, Don’t Tell” policy).

<sup>57</sup> Carbado, *supra* note 48, at 1511 n.174.

<sup>58</sup> See RANDY SHILTS, CONDUCT UNBECOMING: LESBIANS AND GAYS IN THE U.S. MILITARY: VIETNAM TO THE PERSIAN GULF 336–37 (1993) (documenting the experiences of over one thousand gay military personnel by conducting extensive interviews with veterans).

<sup>59</sup> For an in-depth discussion on discriminatory treatment of LGBT homeless youth of color see Part II.

homeless. Expanding the intersectionality analysis to include sexuality and homelessness, will show a more complex side of discrimination, supporting the argument for more sweeping legislation addressing homelessness.

### *B. The Runaway and Homeless Youth Act*

RHYA is a comprehensive federal statute addressing youth homelessness in the United States that has the potential to become the driving force behind ending homelessness amongst minority youth.<sup>60</sup> To understand why, this Section will first outline the provisions of the Act most relevant to the argument and then briefly discuss the statute's legislative intent.

In general, every state has its own laws for regulating and correcting homelessness.<sup>61</sup> For homeless youth, the varying practices between states can mean better or worse conditions for the homeless depending on their location. RHYA regulates this by operating as a federal conditional grant, meaning it can be implemented by each state on a local level in exchange for federal funding. These monetary grants ensure states have the resources they need to carry out various programs created by the Act. The programs are divided into three main categories: the Basic Center Grant Program, the Transitional Living Program, and the Street Outreach Program and its subset the Sexual Abuse Prevention Program. The Basic Center Grant Program funds organizations that provide immediate and short-term assistance to homeless youth.<sup>62</sup> Youth must be under the age of 18 to benefit from the Program and receive support such as shelter, clothing, and food.<sup>63</sup> The Transitional Living Program funds transitional housing programs for homeless youth between the ages of 16 and 21.<sup>64</sup> Under the program, youth are able to stay in group homes, with host families, or in supervised apartments for up to 18 months.<sup>65</sup> Finally, the Street Outreach Program funds organizations that conduct street-based outreach geared toward youth under the age of 21. Services include, but are not limited to, emergency access to shelter, counseling, crisis intervention, and referrals.<sup>66</sup>

However, based on self-reporting from homeless youth, it appears the support services offered by RHYA are only serving a small percentage of the total homeless youth population.<sup>67</sup> The reasons for this are likely vast, but one cause is that many youth are routinely denied housing under the Transitional Living Program due to the lack of

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<sup>60</sup> See, e.g., McKinney-Vento Act of 1987, 42 U.S.C. §§ 11431-11435 (2016).

<sup>61</sup> See, e.g., ALONE WITHOUT A HOME, *supra* note 2, at 36–64 (analyzing the effectiveness, or lack thereof, of homeless youth statutes in all 50 states including the District of Columbia, Virgin Islands, American Samoa, Guam, Northern Mariana Islands, and Puerto Rico).

<sup>62</sup> *On the Streets*, *supra* note 2, at 22.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at 23.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 22.

<sup>67</sup> *Id.* at 24–25. Note that none of the services in the three main programs target young adults over the age of 21 because generally RHYA only provides services to those individuals under the age of 21. § 5732a(3)(A). However, exceptions can be made in exceptional circumstances if the youth desperately needs housing. § 5714-2(a)(2).

available housing.<sup>68</sup> This is particularly bad for homeless LGBT youth because they represent up to 30% of clients utilizing housing programs.<sup>69</sup> And yet, all three programs can benefit from certain revisions in order to reach more homeless youth and subsets of the population.<sup>70</sup> Presently, the programs treat all homeless youth as one large group, but this is only valid to an extent. There are, naturally, sub-groups within the homeless youth population. Members of these groups have one or more minority identities and, as a result, require special attention.

### 1. Defining “Youth”

Before a homeless youth can benefit from RHYA he or she must fall under the statute’s jurisdiction by fitting into one of several outlined definitions of “youth.” Homeless youth have generally been defined as “individuals under the age of eighteen who lack parental, foster, or institutional care.”<sup>71</sup> RHYA’s definition of homeless youth is much broader, capturing every homeless youth “less than 21 years of age.”<sup>72</sup> If the person is seeking shelter in a state homeless youth center then he or she must be less than 18 years of age or less than the age maximum as defined by the state where the housing center is located.<sup>73</sup> In contrast, RHYA defines runaway youth as individuals “less than 18 years of age” who have left their “place of legal residence without the permission of a parent or legal guardian.”<sup>74</sup> Consequently, RHYA provides a broader definition of youth, going up to age 25 in some circumstances, compared to other statutes or social programs.<sup>75</sup>

Runaways or throwaways<sup>76</sup> are often living on the streets without a parent or guardian and so are classified as unaccompanied.<sup>77</sup> The Secretary of Health and Human Services makes grants under statutes like RHYA to public and nonprofit entities to create and operate local services and centers for runaways, throwaways, and their families.<sup>78</sup> The purpose of doing so is to provide homeless youth an alternative to becoming involved in the juvenile justice system, child welfare system, and public mental health system.<sup>79</sup> Services include:

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<sup>68</sup> *On the Streets*, *supra* note 2, at 25. (In 2008, “at least 7,400 youth were turned away and denied RHYA-funded shelter and transitional housing services.”)

<sup>69</sup> Durso & Gates, *supra* note 11, at 3.

<sup>70</sup> Glassman, Karno & Erdem, *supra* note 31, at 802.

<sup>71</sup> NAT’L COALITION FOR THE HOMELESS, NCH FACT SHEET # 13: HOMELESS YOUTH (1999), <http://www.nationalhomeless.org/factsheets/youth.html>.

<sup>72</sup> 42 U.S.C. § 5732a(3)(A)(1)(2012).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* § 5732a(4).

<sup>75</sup> RHYA calls for periodic estimates of the incidence and prevalence of runaway and homeless youth between the ages of 13 and 25. The estimate also requires an assessment of the characteristics of such youth, including socioeconomic characteristics and “barriers to . . . obtaining— safe, quality, and affordable housing”; healthcare; income; public benefits; and “connections to caring adults.” 42 U.S.C. § 5714-25(b)(1)(a)-(b)(2012).

<sup>76</sup> “Throwaway” youth are youth who have been thrown out of their homes because of their sexual preferences. *Runaway/Thrownaway Children: National Estimates and Characteristics*, *supra* note 4.

<sup>77</sup> *Seeking Shelter*, *supra* note 14, at 3; *On the Streets*, *supra* note 2, at 4.

<sup>78</sup> 42 U.S.C. § 5711(a)(1)(2012).

<sup>79</sup> *Id.* § 5711(a)(2). Involvement in a state mental health system could be anything from voluntary outpatient civil commitment or involuntary inpatient commitment at a state institution.

(i) safe and appropriate shelter provided for not to exceed 21 days; and (ii) individual, family, and group counseling, as appropriate; and may include (i) *street-based services*; (ii) *home-based services* for families with youth at risk of separation from the family; (iii) *drug abuse education and prevention services*; and (iv) at the request of runaway and homeless youth, testing for sexually transmitted diseases.<sup>80</sup>

Street-based services, utilized by both the Basic Center Grant Program and Sexual Abuse Prevention Program, are services “provided to runaway and homeless youth, and street youth,<sup>81</sup> in areas where they congregate, designed to assist such youth in making healthy personal choices regarding where they live and how they behave.”<sup>82</sup> Services for these youth include: crisis intervention, housing information and referral, health care services referral, advocacy and prevention services related to alcohol and drug abuse, general STD and HIV treatments, physical and sexual assault help, and sexual exploitation help.<sup>83</sup>

Home-based services are mainly preventative measures used to keep youth from running away from home or being separated from their families.<sup>84</sup> The services also help return runaway or homeless youth to their families (assuming this is an option).<sup>85</sup> Home-based services include intensive individual and family counseling, as well as parenting and life skills training.<sup>86</sup> The same kinds of counseling, training, and drop-in services that are available for home-based services are also available for drug prevention services.<sup>87</sup> The purpose of drug abuse education services is to avoid and reduce the illicit use of drugs by homeless youth.<sup>88</sup>

## 2. Program Eligibility and Plan Requirements

Yet, all of these services are useless without funding. For homeless youth centers, temporary shelters, and counseling services to receive funding, they must meet certain requirements. These requirements *do* benefit homeless LGBT youth of color. For example, certain programs must (1) operate in an area frequented by or accessible to runaway and homeless youth; (2) use the federal grants to establish, strengthen, or fund the center, shelter, or services; (3) contact parents or relatives and provide appropriate living arrangements; (4) coordinate with the McKinney-Vento Act and “ensur[e] proper relations with law enforcement personnel, health and mental health care personnel, social service personnel, school system personnel, and welfare personnel”; (5) submit a plan for providing counseling and aftercare services; and (6) develop a plan for establishing outreach programs to attract persons eligible to receive services (including those of a

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<sup>80</sup> *Id.* (emphasis added).

<sup>81</sup> RHYA defines a “street youth” as a youth who is a runaway or who is indefinitely or intermittently homeless and spends significant amounts of time on the streets or places that increase his or her chances of prostitution, drug abuse, sexual abuse, and sexual exploitation. *Id.* § 5732a(6)(A)-(B).

<sup>82</sup> *Id.* § 5732a(5)(A).

<sup>83</sup> *Id.* § 5732a(5)(B).

<sup>84</sup> *Id.* § 5732a(2)(A).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* § 5732a(2)(B).

<sup>87</sup> *Id.* § 5732a(1)(B).

<sup>88</sup> *Id.* § 5732a(1)(A).

cultural minority, where applicable).<sup>89</sup> Furthermore, it seems the aforementioned street-based services, home-based services, and drug abuse prevention and education services available through RHYA also benefit LGBT youth of color based on the high volume of issues faced by homeless LGBT youth of color covered by those services.<sup>90</sup>

There are a number of selection factors the Secretary of Health and Human Services prioritizes when deciding which private and state entities offering services to runaway and homeless youth receive grants.<sup>91</sup> Included in the list are staff training programs.<sup>92</sup> These are programs that train staff on how to identify “the behavioral and emotional effects of sexual abuse and assault,” as well as human sex trafficking, and are given priority for funding.<sup>93</sup> This training may also include how to respond to those effects and how to develop strategies to combat them.<sup>94</sup> Staff training related to teaching runaway and homeless youth how to prevent the transmission of HIV is also prioritized.<sup>95</sup>

In selecting which program applicants for grants shall receive funding, the Secretary is additionally required to ensure the programs “represent diverse geographic regions of the United States” and “carry out projects that serve diverse populations of runaway or homeless youth.”<sup>96</sup> This means programs and services that receive RHYA funding ideally would reach runaway and homeless youth in all geographic regions of the U.S. and from all different kinds of backgrounds and identities. But in practice, casting such a wide net causes intersectional youth to be lost in the masses.

RHYA also necessitates that programs providing housing for youth under the Transitional Living Program (like shelters, group homes, maternity group homes, host family homes, and supervised apartments) offer certain services and follow certain guidelines. For instance, to be eligible for government funding, program applicants under the Transitional Living Program must provide homeless youth under their supervision information on basic life skills such as money management, interpersonal skill building, education advancement, job attainment, parenting (if applicable) and mental and physical health care.<sup>97</sup> There must also be on-site supervision at each shelter facility<sup>98</sup> and each youth must receive a written transitional living plan to help transition from supervised living arrangements to independent living arrangements.<sup>99</sup> There are some structural problems with the Transitional Living Program,<sup>100</sup> and yet it may be the most important program in the statute for homeless LGBT youth of color because it gives them access to

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<sup>89</sup> *Id.* §§ 5712(a)-(b).

<sup>90</sup> A recent survey of homeless youth service providers (not all receiving RHYA funding) found that 94% of responding agencies and programs reported serving LGB youth. Durso & Gates, *supra* note 11, at 3.

<sup>91</sup> 42 U.S.C. § 5714-23.

<sup>92</sup> *Id.* § 5714-23(b)(5).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* § 5714-23(b)(7).

<sup>96</sup> *Id.* § 5714-23(c)(2).

<sup>97</sup> *Id.* § 5714-2(a)(1).

<sup>98</sup> *Id.* § 5714-2(a)(3).

<sup>99</sup> *Id.* § 5714-2(a)(6).

<sup>100</sup> There are three major issues with the current Transitional Living Program. First, it receives less funding than is ideal for having such a high client demand. Second, it tends to benefit only a narrow age range, 16 to 21, and only provides temporary housing. Finally, the program is not designed to address specific needs of LGBT youth, despite serving many of them. Glassman, Karno & Erdem, *supra* note 31, at 799, 802; *On the Streets*, *supra* note 2, at 26.

stable and long-term housing—the best hope to combat homelessness.<sup>101</sup> Redesigning the Transitional Living Program to effectively serve all homeless youth, could provide the kind of safe and stable environments youth need to end their homelessness.

RHYA can successfully tackle homelessness once its services and programs are better funded and more inclusive. A national survey of homeless youth programs—not limited to RHYA-funded programs—indicated that the lack of government funding is the “primary barrier to improving services related to reducing LGBT homelessness.”<sup>102</sup> Surprisingly, 24% of those same respondents indicated that their programs are designed specifically for LGBT youth.<sup>103</sup> But since this percentage also included programs not presently funded under RHYA, the number of programs that are sponsored by RHYA and that target LGBT youth are likely lower. Comparatively, since the homeless youth population consist of 20%-40% of LGBT identified youth,<sup>104</sup> the ratio of programs directed at LGBT youth should be higher.

Finally, RHYA requires periodic reports on the prevalence of youth homelessness and demographic information on runaway and homeless youth.<sup>105</sup> The reports are mandated to include the results of surveys and interviews with runaway and homeless youth between the ages of 13 and 25 in order to determine their past and present socioeconomic status and any barriers to obtaining “safe, quality, and affordable housing; comprehensive and affordable health insurance and health services;” steady income; public benefits; and connections to caring adults.<sup>106</sup> Ideally, the demographics covered by such reports would include reference to a youth’s race and sexuality.

### 3. Why RHYA Requires Revisions

The above services and their requirements make up a comprehensive legislative policy to end homelessness. The legislative intent of RHYA is to protect runaway and homeless youth who, by leaving their homes, become disproportionately at risk of developing “serious health, behavioral, and emotional problems because they lack sufficient resources to obtain care and . . . [create] a substantial law enforcement problem for communities in which they congregate.”<sup>107</sup> Thus, on a basic level, the Act’s main concern is with the wellbeing of runaway and homeless youth.

At first glance, the services provided by RHYA appear to be exactly what homeless and runaway LGBT youth of color need and would benefit from. And yet even with the statute, many LGBT youth—specifically black and Hispanic youth—remain homeless, revealing a disconnect between the statute and the population it serves. The reasons for the statute’s failure to reach LGBT minority youth may be attributed to the statutory language, and subsequently the implementation of the Act. Though this is likely not the only reason, it is one that can be easily fixed.

Predetermined factors in a legislative scheme identifying what is best for minority youth are necessary to adequate implementation. The more narrowly tailored and specific

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<sup>101</sup> *Id.*

<sup>102</sup> Durso & Gates, *supra* note 11, at 4.

<sup>103</sup> *Id.*

<sup>104</sup> *On the Streets*, *supra* note 2.

<sup>105</sup> 42 U.S.C. § 5714-25(b)(1)(2012).

<sup>106</sup> *Id.*

<sup>107</sup> *Id.* § 5701(1).

the statutory text, the more likely it will be effectively implemented since the language addresses the particular issue at hand without leaving room for lax interpretation by enacting states.<sup>108</sup> Vague statutes can have the benefit of broad interpretation, but can also lead to confusion and poor application.<sup>109</sup> This may be what is happening with RHYA. A revision of the text to aid in clarity and the addition of provisions designed to address specific problems homeless intersectional youth face may correct the problem of underrepresentation amongst the minority homeless youth population.

## II. CREATING LEGISLATIVE POLICY FOR INTERSECTIONAL HOMELESS YOUTH

Now that I have presented some background information necessary to examine several difficulties presenting LGBT youth of color and outlined specific provisions in RHYA, I will explain why some of these problems can be fixed by legislative reform, namely incorporating the ingenuities of identity politics<sup>110</sup> into the Act. This Part proceeds in two Sections. Section A explains why intersectionality plays an important role in the lives of homeless youth by examining the daily factual realities of an LGBT youth of color. Section B then goes over the problem of legislative blindness by describing what happens when the law fails to consider intersectional identities. Though the purpose of RHYA is to alleviate problems all homeless youth encounter, regardless of their race or sexual orientation, it will be clear by the end of this Part why the statute must also plainly address the needs of homeless LGBT youth of color.

### A. *Why Intersectional Homeless Youth have Unique Needs*

Youth can have a host of developmental issues as they begin to understand the world. These can include issues with peer pressure, crime, emotional issues like anger and depression, attachment and trust issues, issues with poor performance at school, self-esteem issues, behavioral issues leading to violence, and a slew of other issues.<sup>111</sup> Homelessness can easily exacerbate these problems and can even lead to long-term adult homelessness.<sup>112</sup> LGBT youth are likely to have these issues intensified and have even more problems simply because their sexuality deviates from the norm. Now if we were to combine these developmental issues with the common problems racial minorities have such as low economic status, domestic violence, low education, gender stereotyping, strong religious beliefs, high incarceration rates and more, the likelihood of homelessness

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<sup>108</sup> Abbe R. Gluck, *Intrastatutory Federalism and Statutory Interpretation: State Implementation of Federal Law in Health Reform and Beyond*, 121 YALE L.J. 534, 534 (2011); see *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984) (creating a standard of judicial deference to agency interpretation of federal statutes based on the clarity of the statutory text and the reasonableness of an agency's interpretation of an unclear statutory text).

<sup>109</sup> Gluck, *supra* note 108, at 572.

<sup>110</sup> Identity politics is a type of academic study that focuses on the importance of individual identities like race, gender, and sexuality as they relate to sociopolitical reform. The aim is to secure the sociopolitical freedom of the focus identity group. STANFORD ENCYCLOPEDIA OF PHILOSOPHY, <http://plato.stanford.edu/entries/identity-politics/>.

<sup>111</sup> John Thomas, *Self-Efficiency and Homeless Adolescence: Relationship of Length of Homelessness, Gender, and Race to the Self-Efficacy of Homeless Adolescents* (May 1993) (unpublished M.S.S.S. dissertation, University of Texas Arlington).

<sup>112</sup> *Id.*



skyrockets, leading homelessness to be just another outcome of the structural and social barriers inhibiting minorities.<sup>113</sup> In order to better understand this, let us separately examine the different problems faced by homeless LGBT youth and homeless LGBT youth of color.

### 1. Homeless LGBT Youth

There is no question that the phenomenon of LGBT homelessness has been widely discussed.<sup>114</sup> Federal agencies have even published findings on homelessness that specifically single out LGBT youth as “representing a larger proportion when compared to the overall population” of homeless youth.<sup>115</sup> Life as a homeless youth, regardless of sexual orientation, is extremely difficult. Youth are at an age where less supervision is required, the need for social recognition and approval is high, there is a higher likelihood of peer influence,<sup>116</sup> and above all, the feeling of “being grown” is widespread. “Being grown” is when a child or youth believes he or she is old enough to make his or her own decisions because he or she feels like an adult —“a grown-up”—even though he or she is legally still an adolescent. Therefore, in addition to desiring to escape harassment and ridicule,<sup>117</sup> youth may also leave the foster system and try to survive on their own because they feel they are old enough to do so. But many who have decided to try and make it on their own soon realize that adulthood, if not just a feeling, comes at a price. Homeless LGBT people have a high-risk of succumbing to extreme survival strategies.<sup>118</sup> For instance, some are forced to sexual exploits to provide for their basic needs of food and shelter.<sup>119</sup>

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<sup>113</sup> See Becky Pettit & Bruce Western, *Mass Imprisonment and the Life Course: Race and Class Inequality in U.S. Incarceration*, 69 AM. SOC. REV. 151, 164 (2004) (In 1999, 30% of Black men without a college education and 60% of Black men who dropped out of high school spent time in prison.); Heather O’Connell, *The Impact of Slavery on Racial Inequality in Poverty in the Contemporary U.S. South*, 90 SOC. FORCES 713, 714 (2012) (arguing that the legacy of slavery disadvantages blacks through the adherence of social expectations of black inferiority which causes racial inequality, particularly in regards to poverty); Earl Smith, *African American Men and Intimate Partner Violence*, 12 J. AFRICAN AM. STUDIES 156 (2008) (arguing that the violence black men show toward black women, which is more severe compared to the violence shown by white men toward white women, is caused by exposure to violence at an early age, social constructions of masculinity, unemployment, and incarceration).

<sup>114</sup> See e.g., Alex Keuroghlian et al., *On the Street: A Public Health and Policy Agenda for Lesbian, Gay, Bisexual, and Transgender Youth Who are Homeless*, 84 AM. J. ORTHOPSYCHIATRY 66 (2014) (discussing the prevalence of LGBT youth homeless and the subsequent mental health, substance abuse problems, STD risks, and victimization that comes with youth homelessness); S. Quintana, J. Rosenthal & J. Kehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, CTR. FOR AM. PROGRESS (June 21, 2010), <http://www.americanprogress.org/issues/lgbt/report/2010/06/21/7983/on-the-streets/>; N. Ray, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness*, NATIONAL GAY AND LESBIAN TASK FORCE POLICY INSTITUTE AND THE NATIONAL COALITION FOR THE HOMELESS (2007), [http://www.thetaskforce.org/reports\\_and\\_research/homeless\\_youth](http://www.thetaskforce.org/reports_and_research/homeless_youth); J. Noell & L. Ochs, *Relationship of Sexual Orientation to Substance Use, Suicidal Ideation, Suicide Attempts, and Other Factors in a Population of Homeless Adolescents*, 29 J. ADOLESCENT HEALTH 31 (2001).

<sup>115</sup> *Opening Doors*, *supra* note 5.

<sup>116</sup> Sanford M. Dornbusch, *The Sociology of Adolescence*, 15 ANN. REV. SOC. 233, 248–49 (1989).

<sup>117</sup> Ashley, *supra* note 29, at 57–58.

<sup>118</sup> Keuroghlian et al., *supra* note 114, at 67.

<sup>119</sup> *Id.* (“Homeless [LGBT] youth between the ages of 10 and 25 years are 70% more likely than homeless heterosexual youth to engage in survival sex.”). This behavior is called “survival sex” because youth have

Homeless LGBT youth also experience harassment, victimization, and stigmatization.<sup>120</sup> Commonly, LGBT youth are harassed by their peers, families, and other adults because of their sexual orientation or gender identity.<sup>121</sup> Homeless LGBT youth are also more severely victimized compared to homeless straight youth.<sup>122</sup> As a result, they experience more problems with sexual assault, physical abuse, and mental health problems compared to heterosexual youth.<sup>123</sup>

Many LGBT youth also fear rejection<sup>124</sup> and isolation in their group homes and by peers at work or school because of their sexual orientation.<sup>125</sup> Because of these fears, LGBT youth have more school-related problems like fights, poor grades, and high drop-out rates.<sup>126</sup> This causes added stress which can lead to unhealthy coping mechanisms. As mentioned, homeless LGBT have a higher tendency to have run-ins with the law, take drugs and drink alcohol excessively, turn to prostitution, contract HIV,<sup>127</sup> and commit suicide compared to their heterosexual peers.<sup>128</sup>

To illustrate, LGBT youth have reported using more drugs, more often than heterosexual youth.<sup>129</sup> Studies show, “LGBT homeless youth 13 to 21 years are more likely than non-LGBT homeless youth to use cocaine, crack, or methamphetamines.”<sup>130</sup> They also exhibit mental health problems like depression and psychopathy at higher rates than heterosexual youth.<sup>131</sup> 53% of LGBT homeless youth and street youth have attempted suicide.<sup>132</sup> Finally, STDs are higher amongst LGBT youth because they tend to have intercourse at earlier ages, have more unprotected sex, and have more partners compared to heterosexual youth.<sup>133</sup>

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“sex in exchange for money, drugs, or shelter” which causes them to have a higher chance of victimization and contracting STDs. This form of prostitution is seen less as a profession and more a consequence economic hardship. Cochran et al., *supra* note 18, at 773; N. Eugene Walls & Stephanie Bell, *Correlates of Engaging in Survival Sex among Homeless Youth and Young Adults*, 48 J. SEX RESEARCH 423, 423 (2011).

<sup>120</sup> Cochran et al., *supra* note 18, at 773; Nusrat Ventimiglia, *LGBT Selective Victimization: Unprotected Youth on the Streets*, 13 J.L. SOC. 439, 440–42 (2012).

<sup>121</sup> Savin-Williams, *supra* note 7, at 263.

<sup>122</sup> Ventimiglia, *supra* note 120, at 440.

<sup>123</sup> Whitbeck et al., *supra* note 17, at 340 (Studies found that gay, lesbian, and bisexual runaway youth were more likely than heterosexual runaway youth to experience sexual abuse by caretakers and sexual victimization while living on the streets. Gay males were more likely to show signs of major depressive episodes while gay females were more likely to have PTSD, alcohol and drug abuse.); Ventimiglia, *supra* note 120, at 441–42.

<sup>124</sup> Savin-Williams, *supra* note 7, at 266 (Gay male, bisexual, and lesbian youths and adolescents “are particularly sensitive to feeling rejected by others.”).

<sup>125</sup> Whitbeck et al., *supra* note 17, at 341.

<sup>126</sup> Savin-Williams, *supra* note 7, at 264.

<sup>127</sup> Some factors contributing to the likelihood of contracting HIV include age, ethnicity, prostitution, and sexual orientation. See Mary Jane Rotheram-Borus, Helen Reid & Margaret Rosario, *Factors Mediating Changes in Sexual HIV Risk Behaviors Among Gay and Bisexual Male Adolescents*, 84 AM. J. PUB. HEALTH 1938, 1938 (1994).

<sup>128</sup> Savin-Williams, *supra* note 7, at 264–66 (“Sexual activity between males...accounts for two thirds of 20-to-24-year-old men with AIDS,” which suggests that they were infected with HIV during adolescence.); Rotheram-Borus, Reid & Rosario, *supra* note 127.

<sup>129</sup> Cochran et al., *supra* note 18, at 774; Keuroghlian et al., *supra* note 114, at 67.

<sup>130</sup> Keuroghlian et al., *supra* note 114, at 67.

<sup>131</sup> Cochran et al., *supra* note 18, at 774–75.

<sup>132</sup> Savin-Williams, *supra* note 7, at 266.

<sup>133</sup> Cochran et al., *supra* note 18, at 775.

Moreover, rejection and isolation are hard to combat because many of the victims find it easier to live on the streets rather than seek help or try to correct their problems.<sup>134</sup> However, there are some examples of LGBT youth attempting to legally address problems of harassment or discrimination. While lawsuits have yet to expand beyond the educational setting, current case law suggests that LGBT youth are protected from discrimination based on their sexual identity by the Fourteenth Amendment.<sup>135</sup> For instance, in *Nabozny v. Podlesny*, the Seventh Circuit held that a student could maintain an equal protection claim that alleged discrimination on the basis of gender and sexual orientation.<sup>136</sup> But bullying and harassment outside of school (by housemates in a group home, for example), has yet to be addressed by the courts.

Furthermore, although litigation is a valid way to implement social change, public policy reform is a better solution because it is faster and more far-reaching. Litigation has historically been an important avenue of change, with cases like *Brown v. Board of Education of Topeka*<sup>137</sup> and *Roe v. Wade*,<sup>138</sup> but it is undoubtedly a slow process. In order for litigation alone to improve the conditions for every homeless LGBT youth of color, the litigation must take place before Supreme Court, which can mandate compliance by the states; yet, based on the dearth of LGBT-related cases heard by the Court in the past few years,<sup>139</sup> it is unlikely that this will happen any time soon.

## 2. Homeless LGBT Youth of Color

No identity is exclusive, which is why an intersection of more than one minority identity that is prone to discrimination and oppression makes it difficult to address individual legal and social needs.<sup>140</sup> Both black people and LGBT people have been historically discriminated against in this country and the effects of this discrimination persists in society today. For people with both identities, overcoming the obstacles necessary to have a successful life, such as receiving a good education or living in a stable home, is considerably harder. Although there is no specific data on the issue, based on the numbers of homeless people of color and LGBT youth, it is fair to assume that LGBT youth of color are more likely to become homeless and stay homeless compared to their white heterosexual counterparts.<sup>141</sup>

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<sup>134</sup> Ashley, *supra* note 29, at 58.

<sup>135</sup> See *Nabozny v. Podlesny*, 92 F.3d 446, 456–57 (7th Cir. 1996).

<sup>136</sup> *Id.* at 453–54. The Seventh Circuit is not the only circuit to hold that students have a right to be free from intentional discrimination based on their sexual orientation. See *Flores v. Morgan Hill Unified School Dist.*, 324 F.3d 1130, 1132 (9th Cir. 2003); *but see Stiles ex. rel. D.S. v. Grainger Cnty, Tenn.*, 819 F.3d 834, 854 (6th Cir. 2016) (holding the board of education and several school officials not liable under §1983 for student-on-student harassment and that the student was not deprived of his constitutional rights to equal protection and substantive due process by the school’s inadequate response to the harassment).

<sup>137</sup> 347 U.S. 483 (1954).

<sup>138</sup> 410 U.S. 113 (1973).

<sup>139</sup> So far less than 10 major LGBT-related case to reach the Supreme Court since 1958. See Beth Rowen, *Important Supreme Court Decisions in Lesbian, Gay, Bisexual, and Transgender History*, <http://www.infoplease.com/gay-pride-month/supreme-court-decisions.html>; *Noteworthy Court Cases that Have Furthered Equal Rights for LGBTQ Americans*, <http://www.hrc.org/resources/noteworthy-court-cases-that-have-furthered-equal-rights-for-lgbt-americans>.

<sup>140</sup> See Crenshaw, *supra* note 52.

<sup>141</sup> See *Seeking Shelter*, *supra* note 14, at 6 (“[Y]outh of color identify as LGBT at average or slightly higher rates compared to other racial persons of New York City’s homeless youth” population.);

The population of homeless LGBT youth is not homogenous. Within the population, there are people of varying races, ethnicities, and disabilities. Homeless LGBT youth of color experience similar systematic barriers to receiving adequate services that other minorities, in particular, blacks, face.<sup>142</sup> Some of these barriers include racial degradation, stereotyping, stigmatization,<sup>143</sup> harassment, and discrimination.<sup>144</sup> For example, homeless LGBT youth experience “greater vulnerability to physical and sexual victimization . . . in comparison with homeless heterosexual [youth].”<sup>145</sup> But homeless people of color also have a history of mistreatment and continuously experience discrimination and victimization based on their race. Thus, homeless LGBT youth of color have an even greater chance of experiencing undue hardship and emotional distress when compared to heterosexual homeless youth of any race and white LGBT homeless youth<sup>146</sup> because they are subjected to both racial and sexual orientation victimization and harassment.<sup>147</sup>

Homelessness for LGBT youth is often a life filled with fear and frustration,<sup>148</sup> and when these youth feel like they cannot connect with their peers these feelings are

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*Intergenerational Disparities Experienced by Homeless Black Families*, ICPH 1 (Mar. 2012), [http://www.icphusa.org/filelibrary/ICPH\\_Homeless%20Black%20Families.pdf](http://www.icphusa.org/filelibrary/ICPH_Homeless%20Black%20Families.pdf) (stating that blacks are seven times more likely than whites to become homeless); Press Release, The Williams Institute, 94% of Homeless Youth Service Providers Report Serving LGBT Youth, (July 12, 2013), <http://williamsinstitute.law.ucla.edu/press/press-releases/94-of-homeless-youth-service-providers-report-serving-lgbt-youth/> (finding that 40% of homeless youth are LGBT and 94% of homeless youth service providers reported serving LGBT youth); Joe Sudbay, *In Mass, LGBT teens far more likely to be homeless than straight kids*, July 26, 2011, <http://americablog.com/2011/07/in-mass-lgbt-teens-far-more-likely-to-be-homeless-than-straight-kids.html> (citing recent study from Children’s Hospital in Boston finding 25% of gay and lesbian teens and 15% of bisexual teens in Boston public high schools reported homelessness compared to 3% heterosexual high schoolers who reported homelessness); See *Black Hole: Homelessness and Race*, THE ECONOMIST, Jan. 18, 1997, at 30 (noting black children are 12 times more likely to stay in a shelter than white children).

<sup>142</sup> See, e.g., Cathy Cohen, *Contested Membership: Black Gay Identities and the Politics of AIDS*, QUEER THEORY/SOCIOLOGY 362, 376 (1996).

<sup>143</sup> *Id.*

<sup>144</sup> See Jama Shelton, *Transgender Youth Homelessness: Understanding Programmatic Barriers through the Lens of Cisgenderism*, 59 CHILD. & YOUTH SERV. REV. 10, 13–16 (2015) (finding that transgender youth experience emotional difficulty from not being able to express their gender identity, obtain employment where they can express their gender identity, feel safe, and have adequate privacy in housing programs); Norweeta G. Milburn et al., *Discrimination and Mental Health Problems Among Homeless Minority Young People*, 125 PUB. HEALTH REP. 61, 66 (2010) (“[C]ontrolling for race/ethnicity and immigration status among homeless young people, perceptions of discrimination were associated with increased emotional distress” among homeless youth in Los Angeles County).

<sup>145</sup> Cochran et al., *supra* note 18, at 775.

<sup>146</sup> Although there are no studies specifically comparing the rates of hardship and emotional distress between homeless black and white LGBT youth of color, studies do indicate high levels of emotional distress for black LGBT youth compared to non-black LGBT youth and more systemic barriers to wellbeing for GBTQ youth of color compared to white GBTQ male youth. Consolation, Russell & Sue, *supra* note 39 (finding slightly lower levels of self-esteem and higher levels of depression among black gay youth compared to white gay youth); Laura Durso et al., *The Experience and Needs of GBTQ Male Youth of Color*, WILLIAMS INSTITUTE 2 (Mar. 2012), [http://www.lgbtfunders.org/files/GBTQ\\_Male\\_Youth\\_of\\_Color\\_Review.pdf](http://www.lgbtfunders.org/files/GBTQ_Male_Youth_of_Color_Review.pdf).

<sup>147</sup> See Whitbeck et al., *supra* note 17, at 330 (discussing the extensive victimization and discrimination of GLB (gay, lesbian, and bisexual) youth).

<sup>148</sup> *Id.*

intensified.<sup>149</sup> Group classification is also a contributor. How we classify groups of people can affect their social status and outcome in life because the lower social classification assigned, the more likely the group will experience discrimination and bias.<sup>150</sup> Since LGBT youth of color are classified as double minorities, and those identities frequently conflict with one another,<sup>151</sup> they have a higher chance of experiencing discrimination and bias, regardless of whether they are homeless or not. This works against them if they are or were at one point, a street kid,<sup>152</sup> both in regards to finding solidarity within a community and receiving aid from government services.

Furthermore, classification simply by sexual orientation does not do the social situation of homeless youth justice.<sup>153</sup> For example, the black LGBT identity is whitewashed by proponents of gay rights since white homosexuality is privileged over black homosexuality, simply because whites have more privilege in American society.<sup>154</sup> The black homosexual identity is obscured even in anti-racist politics because of black-white racial dynamics.<sup>155</sup> Aside from identity politics, black LGBT people are also demographically underprivileged compared to white LGBT people. For instance, 32% of children raised by black gay male couples and 41% of children raised by black lesbian couples are raised in poverty compared to only 14% of children raised by white gay couples and 16% of children raised by white lesbian couples.<sup>156</sup> The contrast is staggering.

Moreover, the life of an LGBT youth of color can oftentimes be harder than his or her counterparts' because their minority race and their minority sexual orientation habitually work against one another, causing "emotional isolation, vulnerability, and depression."<sup>157</sup> The experience of being gay complicates a youth's experiences as a member of one or more additional identity groups often through the disconnection of experiences and values.<sup>158</sup> A youth's LGBT status may also cause them to avoid seeking help; fearing the consequences may outweigh the benefits.<sup>159</sup>

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<sup>149</sup> See Savin-Williams, *supra* note 7, at 261; see also Gabe Kruks, *Gay and Lesbian Homeless/Street Youth: Special Issues and Concerns*, 12 J. ADOLESCENT HEALTH, 515, 515 (1991).

<sup>150</sup> Marjaana Lindeman, *Self-Enhancement and Group Identification*, 27 EUR. J. SOC. PSYCHOL. 337 (1997).

<sup>151</sup> See e.g., Gregory B. Lewis, *Black-White Differences in Attitudes Toward Homosexuality and Gay Rights*, 67 THE PUB. OPINION Q. 59, 76 (2003) (finding that the Black community tends to have lower tolerance for LGBT people, though not drastically lower than whites).

<sup>152</sup> "Street kid" is a term used by some researchers and homeless people themselves to refer to homeless children and youth. It is used here for imagery and as a way to signify unaccompanied minors living on streets, park benches, in cars, at shelters or schools, with friends, under bridges or other inconsistent and uninhabitable places.

<sup>153</sup> Butler, *supra* note 48, at 15–17.

<sup>154</sup> Carbado, *supra* note 48, at 1469.

<sup>155</sup> *Id.*

<sup>156</sup> *LGBT Families of Color: Facts at a Glance*, MOVEMENT ADVANCEMENT PROJECT, FAMILY EQUALITY COUNCIL & CTR. FOR AM. PROGRESS (Jan. 2012), <http://www.nbjc.org/sites/default/files/lgbt-families-of-color-facts-at-a-glance.pdf>.

<sup>157</sup> See Savin-Williams, *supra* note 7, at 267 ("[L]esbian, gay male, and bisexual youths, most of whom are also an ethnic minority in North American culture, often [feel] discredited and isolated from peers.").

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* For example, "few youths are willing to seek health care providers because they fear disclosure, humiliation, and discrimination" regarding their sexual orientation.

In addition, homeless LGBT youth of color are also confronted with issues of prostitution, substance abuse, poor health, and suicide.<sup>160</sup> For instance, in a study conducted in New York City in 1992, 5 out of every 20 Hispanic and black lesbian youth reported prostituting in exchange for money or drugs.<sup>161</sup> Black and Hispanic LGBT youth attending high school in New York City also showed extreme signs of emotional distress including change of appetite, sadness, self-blame, guilt, failure, loneliness, and isolation, putting them in danger of suicide or homelessness.<sup>162</sup> Another example is the prevalence of HIV and AIDS amongst black and Hispanic young men who have higher risks of contracting the virus through same-sex contact than any other racial groups.<sup>163</sup> If the virus is high amongst gay men of color and high amongst the homeless population, then homeless gay men and youth of color are particularly vulnerable to contracting HIV.<sup>164</sup>

The effects of harassment and victimization by peers and family members discussed in the previous section may worsen amongst minority LGBT youth who tend to have a harder time dealing with their sexuality compared to white LGBT youth.<sup>165</sup> Social scientists note that LGBT minority youth face emotional tasks that non-LGBT youth do not face.<sup>166</sup> They struggle with “(a)developing and defining both a strong gay identity and a strong ethnic identity; (b)potential conflicts in allegiance, such as reference group identity within one’s gay and ethnic community; and (c)experiencing both homophobia and racism.”<sup>167</sup>

Although minority and non-minority LGBT youth living on the streets or in housing programs have many of the same problems, youth of color have more structural and social barriers to overcome when ending their homelessness. Some of these barriers include indirect forms of discrimination (like microaggression<sup>168</sup> and implicit bias<sup>169</sup>) and direct forms of discrimination (such as outright racism through racial slurs or unequal

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<sup>160</sup> *Id.*

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

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

<sup>163</sup> Mary Jane Rotheram-Borus, Helen Reid & Margaret Rosario, *Factors Mediating Changes in Sexual HIV Risk Behaviors Among Gay and Bisexual Male Adolescents*, 84 AM. J. OF PUB. HEALTH 1938, 1940 (1994).

<sup>164</sup> See *HIV & Youth Homelessness: Housing as Health Care*, CA HOMELESS YOUTH PROJECT (Feb. 2014), <http://cahomelessyouth.library.ca.gov/docs/pdf/HIV&YouthHomelessnessFINAL.pdf>.

<sup>165</sup> Savin-Williams, *supra* note 7, at 267.

<sup>166</sup> *Id.*

<sup>167</sup> *Id.* For example, many black gay people experience difficulty reconciling their intersecting minority identity. I can create the need to “prioritize or fragment aspects of their identity. They have to decide whether, first and foremost, they want to be black or gay.” Devon W. Carbado, *Black Rights, Gay Rights, Civil Rights*, 47 U.C.L.A. L. Rev. 1467, 1478 (2000) (examining the relationship between and discourse on black rights and gay rights as they relate to civil rights activism).

<sup>168</sup> Professor of Psychiatry at Harvard Medical School, Chester Pierce first defined the term “microaggression,” as “the subtle, cumulative miniassult[s]” by non-African-Americans towards African-Americans. Such subtle, yet constant aggression toward blacks can create race-specific psychiatric problems. CHESTER M. PIERCE, *PSYCHIATRIC PROBLEMS OF THE BLACK MINORITY IN AMERICAN HANDBOOK OF PSYCHIATRY VOL II* 516 (1974).

<sup>169</sup> The Kirwan Institute at Ohio State University defines implicit bias as “the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner.” Implicit bias is unintentional, either positive or negative, and everyone is susceptible. Cheryl Staats, Kelly Capatosto, Robin A. Wright, & Victoria W. Jackson, *State of the Science: Implicit Bias Review*, 14 KIRWAN INST. FOR STUDY RACE & ETHNICITY (2016), <http://kirwaninstitute.osu.edu/wp-content/uploads/2016/07/implicit-bias-2016.pdf>.

treatment).<sup>170</sup> LGBT identifying people have similar but less systemic stressors such as experiencing name-calling, physical and sexual violence, fear of being “outed,” and other forms of direct discrimination.<sup>171</sup> LGBT people of color experience both forms of discrimination and oppression daily and their housing situation does not change that. Dealing with multiple layers of oppression not only complicates social relations, economic status, and education level, but also the possibility of acceptance by other cultural communities.

The social stressors racial minorities and sexual minorities brave every day do not go away when one is homeless. Homelessness is just an added stressor, making life that much harder. Although there are federal and state statutes and regulations in place that try to make life easier for homeless youth and ultimately correct their homelessness,<sup>172</sup> the broadness and vagueness of the statutes make them difficult to implement and inappropriate to help small groups of people like minorities who can easily fall through the statutory cracks.<sup>173</sup> This problem of legislative blindness is discussed further in Part B below.

### *B. Legislative Blindness: The Problem with the Current Laws*

Since RHYA already has most of the services LGBT youth of color need to combat homelessness, the task is to determine why the rates of homelessness among those youth are still high. The leading reason for the disconnect between the policy and the actual numbers of youth it helps is the statute’s failure to cover a portion of people who do not neatly fit into its target population. The unique identity of LGBT youth of color is nowhere to be found in RHYA either because it was overlooked or the drafters believed the youth would be covered under the umbrella definition of homeless youth. Yet none of the categories are sufficient to capture the complexity of intersectional youth. Another possibility is that Congress is blind to the very real and very key concept of intersectionality. One obvious solution is to simply alert Congress and state implementers of the theory so as to update the language of the statute. Since the percentage of homeless youth identifying as LGBT continues to increase each year,<sup>174</sup> either because of better reporting or an influx in LGBT youth living on the streets, renewed attention to the anti-homelessness social policy is required.

The trend across states and within the federal scheme is to have broad general policies to fight homelessness in order to encompass everyone without having to single out individuals.<sup>175</sup> Having broad policies may seem more beneficial at first glance since the

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<sup>170</sup> See Laura E. Kuper, Brett R. Coleman & Brian S. Mustanski, *Coping with LGBT and Racial-Ethnic-Related Stressors: A Mixed-Methods Study of LGBT Youth of Color*, 24(4) J. RES. ADOLESCENCE 703, 704 (2013) (examining how LGBT minority youth cope with certain ethnic or racial-related stressors like direct and indirect racism).

<sup>171</sup> *Id.* at 705.

<sup>172</sup> See *Alone Without A Home*, *supra* note 2, for a comprehensive overview of every statute, program, or regulation that addresses homeless youth.

<sup>173</sup> See 42 U.S.C. §§ 11301-11481 (2012).

<sup>174</sup> In 2012, 30%-45% of homeless youth identified as LGBT. This increased by 10%-15% from 2010. Keuroghlian et al., *supra* note 114, at 66; *Gay and Transgender Youth Homelessness by the Numbers*, *supra* note 14; see also Durso & Gates, *supra* note 11, at 8.

<sup>175</sup> Many state codes and regulations classify homeless minors as runaways who should be returned to their parents or guardians if their living arrangements are adequate under state law. Homeless youth are

goal is not to leave anyone out, but it can have the opposite effect by over-generalizing groups of people who are not large enough to be noticed on their own. Certain anti-homelessness youth laws try to encompass all homeless youth, but end up ignoring the significance of being homeless while having multiple minority identities by failing to specifically recognize those identities in the language of the statutes.<sup>176</sup> Laws addressing homeless youth tend to have overly broad classifications of homeless youth, saying little to nothing on the germaneness of demographical, racial, sexual, or other differences among them.<sup>177</sup>

Take for instance, the federal strategic plan to prevent and end homelessness.<sup>178</sup> The U.S. Department of Housing and Urban Development's goal is to successfully prevent and end child, youth, and family homelessness by the year 2020<sup>179</sup> —a worthy yet slightly abstruse ambition. The scheme fails to take into consideration the immutable identities of homeless youth like their race, sexuality, and gender.<sup>180</sup> The rare federal statutes that do address the sexualities of homeless youth leave out other potentially relevant characteristics like race, despite the fact that most people have multiple identities.<sup>181</sup> Therefore, the unique needs of homeless LGBT youth of color are continuously left out of national plans because the youth are grouped in an overarching “homeless youth” category.<sup>182</sup> Thus, homeless LGBT youth of color become essentially invisible to legislators and consequentially, unintentionally excluded from legislative policy.<sup>183</sup>

### III. THE SOLUTION: REVISING RHYA

Current legislative schemes for correcting youth homelessness do not account for the specific identities of American youth. Recognizably, accounting for these identities would be unconventional, foreign, and experimental, nevertheless any proposition is better than doing nothing when LGBT youth of color are living on the streets with systemic discrimination, oppression, and general disregard working against them. Identity

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supposed to be given access to appropriate public education and safe shelter. But in these state codes, there is little to no mention of unaccompanied homeless youth let alone gay minors of color. *See e.g.*, McKinney-Vento Homeless Assistance Act. Pub. L. 100-77. 101 Stat. 482-539. 22 July 1987; Mass. Gen. Laws ch. 6A § 16X “Contracts to provide housing and support services for unaccompanied homeless youth.”

<sup>176</sup> *See Alone Without a Home*, *supra* note 2 for a comprehensive overview of every state statute, program or regulation that addresses homeless youth.

<sup>177</sup> *See id.*

<sup>178</sup> AHAR, *supra* note 3, at 3.

<sup>179</sup> *Id.*

<sup>180</sup> *Opening Doors*, *supra* note 5. The plan does recognize characteristics like veteran status, age, and gender but race is not mentioned, which is an equally important characteristic contributing to homelessness. Likewise, the plan also does not consider that many people fall into more than one identity category.

<sup>181</sup> *Id.*

<sup>182</sup> The status of “homeless” is not a minority identity in this Comment because it is mutable— meaning it is a state of being that can be changed. On the other hand, race and sexuality are immutable characteristics that cannot be changed. They are with us from birth to death.

<sup>183</sup> Although there are no studies addressing the potential for LGBT youth of color to be excluded from legislative policy, there is evidence that homeless black youth are increasingly invisible to service providers. *See Nicole Hudley, Homeless Black Youth Largely Invisible to Service Providers* (Jan. 3, 2013), <http://newamericamedia.org/2013/01/study-cites-gap-in-homeless-services-for-black-youth.php>.



politics have usually only been discussed in terms of social science research,<sup>184</sup> but social theories like intersectionality need to be integrated into legislative policy as well. The intersection of multiple minority identities plays a significant role in the lives of homeless youth and may even prolong their homelessness.

RHYA already creates comprehensive programs for runaway and homeless youth, but it could be even more comprehensive. Although RHYA currently addresses homelessness among all runaway and homeless youth, in this Part, I propose four broad, non-program specific changes to the Act so it better supports LGBT youth of color. First, the Act should establish a new at-risk category which would encompass minority identities including race and sexual orientation. Second, the Act should mandate that programs receiving funding create individual action plans for each homeless youth, particularly those in the at-risk category. Third, there should be compulsory staff sensitivity trainings for all program workers which address some of the distinct struggles LGBT youth of color endure. Fourth, RHYA should provide specific program guidelines for how to approach minority youth issues, focusing on housing placement and counseling.

Change must start at the beginning by revising the Definitions section. A statute with great programs, but poor definitions for whom the programs are intended to serve is useless. Currently, the Definitions section of RHYA differentiates between homeless youth, runaway youth, street youth, and youth at risk of separation from their family or homes.<sup>185</sup> These categories, albeit important, are too broad to be inclusive of LGBT youth of color. A fifth category called “youth at-risk,” should be added to include individuals not explicitly stipulated in the current categories.

This differs from the “youth at risk of separation from their family or homes” category because the new “youth at-risk” category would be for youth currently separated from their families or homes without the option to return. Furthermore, youth in this category would have higher risks of depression, substance abuse, physical abuse, prostitution, and dropping out of school. Since these burdens are mainly attributed to LGBT youth of color, they would fall under this youth at-risk” category. Therefore, the youth at-risk category would alert state providers to a subset of the homeless youth population whose needs are different from those of their peers. The at-risk category should define these youth as individuals less than 21 years of age, and in exceptional circumstances, up to age 24 to capture more people. It should also categorize at-risk youth as minorities in sexual orientation, ethnicity, national origin, gender, race, disability, any combination thereof, or any other unstated minority identity. Finally, the at-risk definition should also address what precisely makes these youth at-risk by incorporating the language from the section in RHYA defining “street youth” as well as language about the specific risks LGBT youth of color face while homeless.

For example, a model definition of youth at-risk, encompassing language from other definitional categories in RHYA, would read as follows: youth at-risk are individuals who spend “a significant amount of time on the street or in other areas that increase the risk to such youth for sexual abuse, sexual exploitation, prostitution, [sic] drug abuse,”<sup>186</sup> physical violence, verbal abuse, sexually transmitted diseases (including HIV),

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<sup>184</sup> *But see* Price Waterhouse v. Hopkins, 490 U.S. 228 (1989) (in which social science research on sex stereotyping was successfully used to support a sex-based discrimination claim).

<sup>185</sup> *See* 42 U.S.C. § 5732a(2012).

<sup>186</sup> *Id.* § 5732a(6)(B).

recidivism, discrimination in shelters or at school, and any other discriminatory practices based on the youth's sexual orientation, race, ethnicity, gender, disability or combination thereof.

Programs specific to the new youth at-risk category should focus on mental health services, physical health services, and legal services. As discussed earlier, there are a host of emotional problems that stem from, or are exacerbated by, being LGBT and homeless. Group meetings led by a counselor should be held for LGBT youth during which they can discuss issues they may have in shelters, group homes, at school, or on the streets. Hearing the stories of others in similar situations can be beneficial, helping to alleviate some of the stress associated with homelessness by creating supporters and building a sense of comradery.<sup>187</sup> Group discussion is a way for counselors to be aware of harmful home situations, substance abuse, violence, depression or negative thoughts about oneself or others, bullying at school, and general discrimination. Upon discovering any worrisome information, counselors should make recommendations to health care providers and legal services for youth who wish to seek treatment for symptoms of abuse or file legal claims against abusers or possible discriminators, like employers or school administrators.

The next change would be to the eligibility and plan requirements for youth centers, projects providing temporary shelters, and counseling services. These requirements should be amended to include examples of specific types of minorities and a requirement of individual action plans specifically designed for minority youth. Presently, individual transitional living plans are required by program providers under the Transitional Living Program,<sup>188</sup> but such plans should be required not only for housing, but also for all programs. An individual action plan should be an eligibility requirement for all RHYA-funded programs to better improve the general wellbeing of each homeless youth. Such a plan should emerge from discussions between the youth and their program directors, and should detail remedies for any current problems the youth may be facing and aspirations for his or her future. This way, the youth feel like they have control over their lives and allies in their corner.

Next, the unique characteristics of each minority youth in RHYA programs—their gender, race, sexual orientation, possible disabilities, and above all, the combination of those identities—should be listed in the plan provisions for each program and need to be present in the periodic reports given to Congress. Coordinators and program directors of centers, shelters, and other facilities need to keep track of the types of runaway and homeless youth that pass through in order to better aid the community. Creating identity-specific programming will better ensure that youth find long-term homes and do not become homeless again. The list of minorities should be as comprehensive as possible to avoid unintentionally excluding youth who are most in need. They need to be listed in RHYA so state providers know what to look for, and a disclaimer alerting providers to other possible intersecting minorities not listed should also be present.

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<sup>187</sup> See e.g., Savin-Williams, *supra* note 7; Cochran et al., *supra* note 18.

<sup>188</sup> 42 U.S.C. § 5714-2 (2012) (stating that to be eligible for assistance under the Transitional Living Grant Program, applicants must “provide a written transitional living plan to each youth based on an assessment of such youth's needs, designed to help the transition from supervised participation in such project to independent living or another appropriate living arrangement”).

The individual action plan requirement is feasible because centers and services for runaway and homeless youth do not actually see that many youth at a given point in time. For example, shelter facilities for runaway and homeless youth under RHYA must not accommodate more than 20 youth at a time.<sup>189</sup> Such a low amount would allow providers to create action plans for each youth based on his or her own needs in terms of shelter, education, health services, legal services, interpersonal skills, and job attainment skills. It also makes supervision and assessment easier.

The third revision involves additions to the staff training provisions of the relevant RHYA programs. These provisions should include sensitivity training and training on discriminatory practices and the emotional consequences of verbal, physical, and sexual abuse based on race, gender, sexual orientation, and the intersection of all three. This is presently missing from the provision. Sensitivity training would be particularly helpful in enhancing trust and communication among individuals and groups by creating a psychologically safe atmosphere.<sup>190</sup> In practice, this would mean informing providers of the importance of using preferred pronouns, avoiding heterosexual bias,<sup>191</sup> and avoiding racial bias when addressing and helping homeless youth. Subsequently, providers would become trained leaders on group dynamics and could help maintain an environment in which youth can express themselves and interact with others without feeling unwelcomed.

Training on discriminatory practices includes teaching awareness of how race and sexual orientation can negatively impact one another and cause youth experiencing both identities to feel isolated. Health care providers, educators, counselors, teachers, foster parents, group home leaders, and shelter volunteers should all go through the same sensitivity training. This training should illustrate the particular hardships LGBT youth of color confront, such as higher rates of abuse, addiction, and much more.<sup>192</sup> It should also establish guidelines and enumerate tips providers can use when addressing these issues in order to best serve their youth.

My final revision to RHYA would be to create procedures and provide guidelines for placement officers to follow when placing youth of a minority sexuality and/or race in housing shelters. Since the intersection of race and sexuality creates a unique identity that increases the chances a youth will become homeless and stay homeless, it is important that service providers understand this and take this into account when housing an LGBT youth of color. Home is where someone should feel safe and secure, and since many LGBT youth have left their homes because they do not feel safe, it is especially important that service providers take this into consideration. If there are threats of discrimination from fellow housemates or a disregard for any potential discrimination on the part of the overseer, then the home is no longer safe and defeats its purpose.

To prevent this, group homes, foster families, and youth shelters should be vetted, and the adults and families overseeing LGBT youth and LGBT youth of color should also

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<sup>189</sup> *Id.* § 5714-2(a)(4).

<sup>190</sup> *Sensitivity Training*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/sensitivity-training>.

<sup>191</sup> Heterosexual bias arises from the presumption that someone is straight without any knowledge of their sexual orientation. Its occurrence can be uncomfortable and cause an immediate tension between youth and program directors. To prevent this, providers should try not to make an initial assumption about a youth's sexuality.

<sup>192</sup> See Savin-Williams, *supra* note 7; Cochran et al., *supra* note 18.

go through sensitivity training. This training should include how to ask for the youth's preferred name (since some believe the name assigned to them at birth is not representative of their personality or gender identity), the youth's preferred pronouns, how to provide access to preferred clothing, bathroom arrangements, hormone treatments (if necessary), and safe-sex education.<sup>193</sup> Additionally, simply informing providers that homelessness is often a heavier burden on LGBT people of color would go a long way. Although using a youth's correct gender pronouns, name, and respecting their bathroom choice may seem trivial compared to numerous other hardships,<sup>194</sup> it is a way to alleviate feelings of isolation, despair, and rejection. This in turn can help prevent and minimize youth homelessness by reducing the possibility of turning to drugs, prostitution, crime, and giving into the continuous desire to run away.

Every state has a duty to protect youth in its care, but typically protection does not overtly extend to LGBT youth and their interests.<sup>195</sup> Currently, California is the only state that has adopted laws explicitly protecting LGBT youth in foster care.<sup>196</sup> The California Welfare and Institutions Code provides youth in the California's foster care system with numerous protections based on their identities.<sup>197</sup> Youth must receive fair and equal access to the statute's services and benefits regardless of "actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status."<sup>198</sup> Youth are to be placed in out-of-home care according to their expressed gender identity and caregivers and personnel must be culturally competent and receive sensitivity training.<sup>199</sup> This piece of legislation gives youth the opportunity to openly express their sexual orientation and gender identities in their foster homes without being discriminated against.<sup>200</sup> A revised housing eligibility standard of RHYA, extending to every state receiving federal grants for its implementation, should strive to create a similar policy for all forms of state housing for unaccompanied youth.

Aside from mandating sensitivity training on sexual orientation and race, RHYA should also instill the importance of providers gaining the trust and respect of the homeless youth they serve. For example, in 2006 The Model Standards Project (a non-profit organization for the betterment of LGBT youth in state care) and the Child Welfare League of America published the Best Practice Guidelines: Serving LGBT Youth in Out-

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<sup>193</sup> See Ashley, *supra* note 29, at 57.

<sup>194</sup> See Savin-Williams, *supra* note 7.

<sup>195</sup> Barbara Fedders, *Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth*, 6 NEV. L.J. 774, 794 (2006).

<sup>196</sup> James W. Gilliam Jr., *Toward Providing a Welcoming Home for All: Enacting a New Approach to Address the Longstanding Problems Lesbian, Gay, Bisexual, and Transgender Youth Face in the Foster Care System*, 37 LOY. L.A. L. REV. 1037, 1045 (2004) ("Unfortunately, California is the only state that has enacted laws protecting LGBT youth from discrimination in the state's foster care system.") (Citing CAL. HEALTH & SAFETY CODE §§ 1529.2, 1563 (West Supp. 2016) (mandating staff training on issues related to sexual orientation for foster care workers and parents)); CAL. WELF. & INST. CODE §§ 16001.9 (West Supp. 2016) (protecting minors and non-minors in foster care from discrimination based on perceived race, gender, sex, ethnicity, religion, color, sexual orientation, national origin, group identification, ancestry, mental or physical disability, or HIV status of the individual)).

<sup>197</sup> CAL. WELF. & INST. CODE §§ 16001.9(a)(23)-(25) (West Supp. 2016).

<sup>198</sup> *Id.* § 16001.9(a)(23).

<sup>199</sup> *Id.* at §§ 16001.9(a)(24),(25).

<sup>200</sup> *Id.* at §§ 16001.9(a)(23)-(25).

of-Home Care, which contains information “for supporting positive youth development; meeting the health and educational needs of LGBTQ youth; managing confidential information; and creating safe, respectful and nurturing home and social environments for LGBTQ youth in care.”<sup>201</sup> The standard in the Best Practice Guidelines should be distributed to all youth providers. Youth should be assigned a primary health care provider and a counselor that they can grow to trust to give them the confidence to disclose any physical or emotionally harmful practices they may be privy to. To do this, providers should be made aware of the social and structural impediments these youth face during a mandated training session.

With regular monitoring of state implementation and enforcement procedures, RHYA will do a great deal to help LGBT youth of color who have previously gone unnoticed by federal and state policy. One concern people may have with openly addressing sexuality and race in a piece of legislation is narrow specificity, which can lead to under-inclusiveness.<sup>202</sup> Under-inclusive statutes, however, can be found to violate the Equal Protection Clause, which mandates that all states provide every person within its jurisdiction equal protection of the laws.<sup>203</sup> Therefore, if there is a true problem of under-inclusiveness with RHYA, which there should not be since the services I propose benefit all homeless youth by providing resources and programs relevant to all youth, not just LGBT youth of color, then the issue can be evaluated by the courts or during the reauthorization process.

#### CONCLUSION

The objective of all homeless youth supporters is to help youth see better and brighter futures. The best thing we can do for homeless LGBT youth of color is to provide support, be it financially, educationally, emotionally, or any other form of support. This Comment has shown that the heart of the problem with perpetual youth homelessness, especially among LGBT youth of color, is statutory language or the lack thereof. RHYA essentially treats runaway and homeless youth as if they are all alike. But for youth with multiple intersecting minority identities they are anything but homogenous. Understanding that intersectional homeless youth are special and represent a growing number of homeless youth across America is the first step in achieving legislative change. To commence the process, Congress must reevaluate the Runaway and Homeless Youth Act, which has the right underpinnings to implement a social policy geared toward reaching small subsets of the runaway and homeless youth population, but still needs a bit more care in its construction. Once this happens, the wheels will be set in motion for the rectification of inadequate anti-homelessness polices; the promotion of better

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<sup>201</sup> *Recommended Practices: To Promote the Safety and Well-Being of Lesbian, Gay, Bisexual, Transgender and Questioning (LGBTQ) Youth and Youth at Risk of Living with HIV in Child Welfare*, CHILD WELFARE LEAGUE OF AM. 6 (2012),

<http://www.lambdalegal.org/sites/default/files/publications/downloads/recommended-practices-youth.pdf>.

<sup>202</sup> See Evan H. Caminker, Note, *A Norm-Based Remedial Model for Underinclusive Statutes*, 95 YALE L.J. 1185, 1186 (1986) (discussing remedies for unconstitutional under-inclusive statutes that treat citizens unequally by benefiting some and burdening others). An example of an under-inclusive federal law is one that provides unemployment benefits to men only. See, e.g., *Califano v. Westcott*, 443 U.S. 76 (1979) (extending social security benefits to children of unemployed mothers as well as unemployed fathers).

<sup>203</sup> See *Westcott*, 443 U.S. at 85; see also U.S. Const. amend. XIV, § 1.

implementation by individual providers will follow, diminishing and hopefully eliminating the sweeping population of homeless youth in America today.