

Call for Justice, LLC—United Way 2-1-1 Training Paper

Session 6: Youth Law

September 20 and 21, 2012: Monica Bogucki and Tyshia Riddley, Mid-Minnesota Legal Aid, Minneapolis Office

Featured Speakers' Topic

This month, Monica Bogucki and Tyshia Riddley will discuss Youth Law in Minnesota. A question and answer session will follow the presentation.

Basic Concepts of Youth Law in Minnesota

What is Youth Law?

Youth Law is a very broad label that covers everything from protecting homeless youth to special education rights. It is a highly specialized area of the law with a limited number of legal providers/resources available to serve children/youths and their families. This is one legal area in which social service providers may work closely with attorneys and the subject child/youth and his/her family.

Child Protection/CHIPS

The core concept in Youth Law is that protection of a child/youth is paramount to anyone else's interests. In Minnesota, the main child protection law is known as **CHIPS** (Child in Need of Protective Services). The law is administered by Child Protection, a county-based agency. The function of Child Protection is to investigate reports of "**maltreatment**" (e.g. whether a child has been abused or neglected).

Abuse arises when someone responsible for a child/youth engages in purposeful physical or emotional harm of the child/youth. **Neglect** occurs when a child/youth is denied (or fails to get) necessary food, clothing, shelter, education, medical care, supervision, or protection from harm.

Procedurally, a Child Protection social worker will investigate reports of maltreatment. If the social worker determines that abuse or neglect has occurred, several things can happen. One rare option is to remove the child/youth from the home—which can take place on an emergency basis if the social worker believes the child/youth is in immediate danger.

A more likely course is for the social worker to open a case file and then deal with the family dynamics that are harming the child/youth—this can be in the form of therapy, counseling, or substance abuse counseling. Sometimes the social worker will recommend that the child/youth

be placed with a relative or in temporary foster care, although the parent must agree to the arrangement (unless a court orders the alternate placement).

In the event the social worker/Child Protection decides that a child/youth must be removed from the home (so as to protect the child/youth), low-income parents have a right to a court-appointed attorney after the first court hearing. On the other side of the controversy, the County Attorney will represent Child Protection.

Often, the court will appoint a Guardian ad Litem (GAL) to make a recommendation about what is in the child/youth's best interest (such as whether the child/youth should be removed from the home and placed with a relative or in foster care). A GAL doesn't represent the child/youth. In fact, no one usually represents the child/youth—which some consider a deficiency in the system.

Other disadvantages of the CHIPS process are that too many professionals may become involved or that the voices of the child/youth and the family may not be heard. The process can become adversarial, too.

Other Child/Youth Protective Measures

There are a number of other mechanisms available for determining where a child/youth may live and with whom. Up to a certain age (approximately age 14 or so), the child/youth usually doesn't have a say in where they live and with whom. However, past that age, the wishes of the youth become more significant. By age 16, a court will give the youth's wishes paramount consideration, although the guiding principle will continue to be doing what is in the best interests of the youth.

1. Order for Protection

Recall our training for Domestic Abuse (Session 4 in your training manual) and the mechanism by which a domestic abuse survivor could go to court for an Order for Protection. That same mechanism exists for a child/youth who has been abused emotionally, physically, or sexually, or where contact with the parent(s) is harmful. The domestic abuse survivor resources identified in Session 4 can assist a child/youth with obtaining an RFP against caregivers, including parents.

2. Delegation of Parental Authority (“DOPA”)

Minnesota law permits a parent to delegate or give to another adult caregiver temporary legal and physical custody of the child/youth. The adult could be a family member or not. The advantage to a DOPA arrangement is that it is quick, easy and doesn't need to involve the court system. The designated caregiver obtains the legal right to authorize medical, dental, legal, and

other resources for the child/youth at issue. A DOPA authorization can exist for up to one year; it can be renewed for successive twelve month periods thereafter.

There are some disadvantages to a DOPA arrangement, namely that unrelated people in the household may not be covered by public assistance like the Minnesota Family Investment Program (MFIP). Additionally, it requires the consent of both parents in some circumstances, thus possibly making family situations more, rather than less, complicated.

Note: LawHelpMn.org has DOPA forms that can be downloaded.

3. Informal Family Arrangements

As long as a child/youth's interests are protected, family members can agree to informal arrangements where the child/youth is placed with another family member. Potential problems can arise because the informal caregiver won't have legal authority to authorize medical care or counseling for the child/youth.

4. Third Party Legal Custody

Minnesota law provides that someone deemed a "de facto or interested third party" has the right to petition the court to obtain physical and legal custody of a child/youth. There are a number of factors that a court would consider; a main factor is whether the child/youth already resides with the de facto caregiver or interested third-party, and whether it is in the child/youth's best interest to take legal custody away from biological parents.

This procedure is utilized quite often when one or both of a child/youth's parents are dead or if the parents have abandoned the child/youth.

The process can be quite adversarial if either birth parent resists the petition to establish legal custody in another adult. Again, the test will be what is in the best interests of the child/youth.

5. Grandparent/Other Key Person Visitation Rights

Minnesota law provides that a grandparent or other key person may petition the court for the right to regular visitation with the child/youth. The law is more lenient for grandparents (they have an automatic right as long as the interests of the child/youth aren't at risk) than for other key people (for example, at some point, the child/youth must have lived with the key person for two years before a key person's right to visitation arises).

RED FLAG: The fact that someone needs to resort to court to establish visitation rights is an indicator that the entire process could be fraught with adversity, legal fees, and delay. This is a reason why someone seeking to establish visitation rights should get competent legal advice at the outset, rather than after things become problematic.

Emancipation

The term, “emancipation,” denotes situations where a youth under age 18 lives on their own, and becomes responsible for their affairs. It requires that a parent either give up the right to control the youth or that the youth establish the right to live on his or her own in some other way.

In some states, there is a formal process for declaring a youth emancipated. However, in Minnesota, there is no specific court process or procedure for emancipation. As a result, it is sometimes difficult to determine if emancipation exists.

It may come down to whether a youth’s parents are deemed to have given actual or implied consent for the youth to live on his/her own. For example, consent can be implied if the youth has run away and the parents don’t work to get the child back home.

Education Law

We could devote an entire session to education law (maybe that will occur), but for our purposes here, a few key points are in order.

We presume that many calls focus on the right to assistance when the student has learning or behavioral issues. Under the Individuals with Disabilities Education Act (IDEA), eligible children with disabilities have the right to receive special services and assistance in school. The law defines a “child with a disability” by listing 13 different disability categories under which a child/youth may be found eligible for special education and related services.

The IDEA requires that each disabled student be provided an Individual Education Program (IEP), which lists the special education services that the child/youth will receive. The IEP is developed by a team that includes the child/youth’s parents and school staff. **Normally, parents shouldn’t need to have an attorney involved in this process.**

Another aspect of education law relates to student discipline. There is a range of discipline that can be imposed on students—removal (when a student is kept out of a certain class or activity); suspension (when a student isn’t allowed to attend school for 1-10 days); expulsion (when a student isn’t allowed to attend any school in the district for up to 12 months); and exclusion (when a student isn’t allowed to enroll or re-enroll in a school for the rest of the school year).

Youth who are homeless have special rights under another federal law, entitled the “McKinney-Vento Act.” Under this law, schools are required to have liaisons to ensure that homeless students can enroll and succeed in school. This includes ensuring that the student has access to transportation to and from school; referring the student to health professionals; arranging for

tutors or language skills, etc. Homeless students are also entitled to stay enrolled in the school they were attending before they became homeless.

Bullying

Some consider Minnesota's anti-bullying statute the weakest in the nation. The law simply provides, *"Each school board shall adopt a written policy prohibiting intimidation and bullying of any student. The policy shall address intimidation and bullying in all forms, including, but not limited to, electronic forms and forms involving Internet use."* Minn. Stat. 121A.0695.

There are efforts to have the Legislature pass better anti-bullying legislation. It is unlikely that such legislation will be enacted in the current political climate.

We recommend that callers with school bullying concerns be directed to Stopbullying.gov (a U.S. Department of Education project) or to the National Bullying Prevention Center (<http://www.pacer.org/bullying/>). The Youth Law Project will also work with parents and school administrators on specific bullying complaints.

Juvenile Delinquency

In juvenile delinquency cases, a child (less than 18 years old) is alleged to have broken the law in instances ranging from being out past curfew to a charge of murder. Special court procedures exist to adjudicate juveniles; most Juvenile Court proceedings aren't open to the public, except for serious crimes committed by children over the age of 16.

Minnesota law sets out an entire procedure for how a juvenile is to be charged with a crime and then prosecuted. A child/youth may be appointed an attorney if the child/youth's parents have an income level that would qualify them for a court-appointed attorney. If the charge is proven, the court may make a finding of delinquency.

In some cases, the court can "certify" a child to be tried as an adult. Juveniles must be between 14 and 18 years old.

Legal Resources re: Youth Law/Issues Involving Minors

Primary Legal Resources—Twin Cities and Suburbs

1. Youth Law Project, Mid-Minnesota Legal Aid (www.mylegalaid.org)(612-334-5970). This is the primary legal referral and the only program that provides across-the-board services. There is no income eligibility requirement. The Project works with children/youth ages from

birth to age 18, and to 21 for youth in foster care. They will provide brief advice if they cannot offer full representation for the child/youth. **Note:** The above number is a central intake number; it does not automatically ring to the Youth Law Project per se, so make sure you advise callers to be patient.

2. Children’s Law Center of Minnesota (www.CLCmn.org)(651-644-4438).

The Children’s Law Center primarily advocates for children either in foster care or subject to a CHIPs petition for a change in the child’s living arrangement. Eligibility is ages 10 to 21 years old. They handle everything from changes in the foster care arrangement to visitation issues with biological family members.

RED FLAG: If the call relates to a foster child and foster care, the CLC should be your primary legal referral.

3. YouthLink (<http://www.youthlinkmn.org/>) (612-252-1200).

YouthLink operates a free clinic for low-income youth (under 21) with legal problems (family, immigration, employment, public benefits, criminal, housing, etc.) in conjunction with the Faegre Baker Daniels law firm, the Minnesota Justice Foundation, and Legal Aid.

RED FLAG: This would be a good resource to send youth/their parents who are beginning to deal with a non-emergency legal issue, as a way to get a better understanding of the depth of their legal problem and a possible referral to another resource.

4. School Law Center (www.schoollawcenter.com) (651-222-6288).

This private law firm specializes in school law, and works with disabled and special needs students. They have also represented students involved in bullying and harassment situations. It appears that this may be the only private firm in the metro area specializing in school law, and for that reason, we’ve listed them here. They charge fees for their services, but we’re advised that they will take a family’s ability to pay into consideration.

Secondary and Alternative Legal Resources

Youth with Disabilities (Non-legal but Advocacy)—Pacer Center (Minnesota) (952-838-9000) (pacer@pacer.org).

Pacer is a parent training and information center for families and youth with disabilities from birth through age 21. It is unique in that it serves children with all disabilities—learning, physical, emotional, mental, and health. It also works in coalition with 18 disability organizations. It provides advocacy services, but not legal.

GLBT Youth—OutFront Minnesota (www.outfront.org) (612-822-0127)(800)800-0350

OutFront provides various legal services, such as accompanying youth to hearing for restraining orders. It will also help guide a youth through the legal process. Additionally, it will refer the youth to other legal providers and/or partner with those providers to ensure that the youth’s legal needs are taken care of.

Crime Victims/Juvenile Records/Children of Incarcerated Parents—Council on Crime and Justice (<http://www.crimeandjustice.org/index.cfm>) (612-353-3000)(24 Hour Crime Victim Hotline [612-340-5400])(Expungement Line [612-353-3024]).

The Council on Crime and Justice provides some advocacy resources, such as assistance in filing reparations claims and requesting restitution, and acting as a liaison between the courts and crime victims. **Their website has a detailed explanation of juvenile records, so this may be a place to refer someone if they're trying to determine the effects of a juvenile delinquency adjudication.**

Criminal Representation and Expungements—Minnesota Law Collective (www.mnlawcollective.org)(621-326-9026/800-801-4660).

This is a relatively new organization that provides low bono services (ranging from \$25-\$1000 on a flat fee basis), including representing students/youths. The MLC represents adults and juveniles in misdemeanor, gross misdemeanor and felony state and criminal cases. It will also represent parties in civil case appeals, and criminal expungements. **Note: this is a new organization that is just getting started. By all means refer callers, but be sure to provide another referral, such as the Legal Rights Center (<http://www.legalrightscenter.org/>) (612-337-0030).**

Transgender Woman and Teenage Women—Gender Justice, LLC (<http://033e9e2.netsolhost.com/drupal/>)(651-789-2090).

A specialized Saint Paul nonprofit law firm named **Gender Justice** provides legal counsel in cases involving discrimination against women and transgender people. They operate under either a contingent fee or alternative fee arrangement. For some youth callers (female, lesbian or transgender [which, of course, the caller may not volunteer]), this may be an appropriate referral.

Teenage Women(Non-legal but Advocacy)—The Family Partnership (<http://www.everyfamilymatters.org/>) (612-339-9101).

The Family Partnership operates, PRIDE (From Prostitution to Independence, Dignity & Equality), which provides advocacy and support services to sexually exploited women and their families who have been victimized by prostitution. It is a nationally recognized and highly successful program. It also operates TeenPRIDE, support groups and education for young women who are at-risk of being sexually exploited or are victims of survival sex. (612-728-2080).

Native Americans (Non-legal but Advocacy)—Ain Dah Yung (<http://www.aindahyung.com/>) (651-227-4184--main office number).

Will provide specialized case and system advocacy for Native American youth who experience homelessness. They don't have lawyers on staff, but for the Native community, having an advocate involved in the legal process will be very important.

Homeless Youth (Non-legal but a first step)—Oasis for Youth, 2200 W. Old Shakopee Road Bloomington, MN 55431 (oasisforyouth.org)(612-840-9225).

A **drop-in center** is open from **2:30-5:00 Monday-Friday** in the basement of Oak Grove Presbyterian Church, which allows Oasis to use the space for free. Oasis serve homeless youth 16-21, and focus resources on the ones who are connected to Bloomington/Richfield/Edina through school/work/living, but it also never turns away a youth from outside the area. Does not provide shelter.

Fallback Resources

Always provide a referral to **LawHelpMN.org** since it has a good section on “Youth Law and Education.” The Court Self-Help Centers may be resources as well.

This Month’s Tips

- 1. Recall how we learned with Elder Law that the question of “who is the client” sometimes becomes complicated. Youth law is another area like this—because minors ordinarily require parental consent for various decisions.**
- 2. Homelessness among youth is a serious issue, as you know. We haven’t listed the shelter resources for homeless youth. Note, however, that most shelters for youth do not have legal personnel on staff.**

Let us know if you have questions. Thanks!

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