

Charting a Better Future for Transitioning Foster Youth



Report from a National Summit
on the Fostering Connections
to Success Act

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American Bar Association Commission on Youth at Risk

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Introduction

In April 2010, the American Bar Association's Commission on Youth at Risk convened a National Summit on the recently enacted *Fostering Connections to Success and Increasing Adoptions Act* (FCA or "Fostering Connections"). The focus of the Summit was to address how this new ground-breaking piece of legislation affects youth and young adults involved in and "aging out of" the foster care system. The Summit brought together over 100 leaders and experts for a day-long "action-oriented" dialogue that inspired, educated, and produced this blueprint of recommendations for national and state leaders to implement new approaches for addressing the unique needs of youth leaving the foster system.

As states have begun to implement aspects of this new federal legislation, a variety of questions and challenges arise. Through this Summit, the American Bar Association and our collaborating organizations are encouraging states to seize this new opportunity to support foster youth beyond age 18 and implement the *Fostering Connections Act* in an expansive manner. The chapters and recommendations that follow reflect the suggestions and conversations that were born from the experts and leaders who participated in this Summit. In some instances, recommendations may repeat certain core concepts that Summit leaders felt were particularly important for states and localities to consider when implementing the *Fostering Connections Act*.

Emphasis is placed on the importance of court oversight and engagement for youth who elect to remain in foster care between the ages of 18 to 21. Courts can be instrumental, and often vital, in helping ensure that youth in foster care receive the support to which they are entitled. Chapters addressing health, employment, housing and permanency stress how states can use *Fostering Connections* to better prepare youth for a successful transition to adulthood and help them avoid the pitfalls of homelessness, joblessness and criminal or juvenile system involvement. The final chapter provides states with additional concrete steps to implement and fund systemic reforms for youth in and leaving care.

In these difficult economic times, we realize that not all states will be able to implement all aspects of these best practice recommendations at once. However, if taken in steps or phased-in over time, these recommendations can make significant differences for youth transitioning from care and help lead them toward a path of hope and success.

"...now I have to face the world on my own and I don't even have a clue what to do."

FosterClub member Desiree Moore

Carolyn B. Lamm

*President, American Bar Association 2009-2010
February, 2011*

Executive Summary

Introduction

Every year over 29,000 youth age out of our nation's foster care system and too often face the harsh realities of adulthood ill-prepared and alone. Without the anchor of a family, former foster youth disproportionately join the ranks of the homeless, incarcerated and unemployed.

While our current policies and practices are premised on the presumption that foster youth can somehow attain financial and emotional independence by age 18, most emancipated foster youth are woefully unprepared for independent adult life: only one-third have a driver's license, fewer than four in 10 have at least \$250 in cash, and fewer than one-quarter have the basic tools to set up a household, let alone the skills to know what to do with those tools. With generally no more than a garbage bag of belongings, our foster youth commonly emancipate from foster care with no significant connection to a responsible adult, no one to provide them with desperately needed guidance, and no place to turn when they falter.

We know that extending support for even a few years to the thousands of youth who otherwise would leave care at age 18 would enable a much higher percentage of foster youth to become productive members of our communities. Youth who were allowed to remain in foster care beyond age 18 in a few forward-thinking states have been shown to be more likely to be working toward completion of a high school diploma or in college, and far less likely to be victims or perpetrators of crime and violence. These studies confirm the wisdom of embracing policies and practices that can lengthen the window of support for these vulnerable and at-risk youth.

New Opportunities under the Fostering Connections Act

The "Fostering Connections to Success and Increasing Adoptions Act" Act (H.R. 6893) (the "FCA" or "Fostering Connections Act"), signed into law on October 7, 2008 as Public Law 110-351, will provide federal funds for the first time to enable states to extend child welfare services through age 21. With the enactment of this landmark legislation, courts, advocates, and child welfare professionals in local, state, and tribal governments will have new resources and opportunities to create critically needed supports to meet the needs of young adults in foster care. Effective October 1, 2010, federal funds will support state efforts to extend foster care services and oversight beyond age 18.

Yet these new opportunities also create new challenges. States must consider how and if to opt into this new legal landscape. Similarly, professionals in the court system and child welfare arena must begin to re-conceptualize practices and devise new approaches to best address the needs of these young adults.

The National Summit

On April 16, 2010, child welfare professionals, leaders, judges, lawyers and advocates from around the country gathered at the Roosevelt House Public Policy Institute at Hunter College of the City University of New York to discuss how to effectively seize upon the new opportunities created by the Fostering Connections Act and improve the plight of foster youth in transition. This invitation-only event brought together over 100 national, state and local leaders. Significantly, the voices and perspectives of current and former foster youth were prominently included in the participant mix.

Summit Structure

The Summit was structured as a working day with vigorous discussion among key experts from around the nation. The experts were broken into the following breakout groups:

- Permanency for Older Youth;
- Courts and the Legal Process;
- Housing and Placement;
- Education and Employment;
- Health and Mental Health;
- Crossover Youth;
- Youth Engagement and Youth Focused Systems; and
- State Implementation of the Fostering Connections Act.

Each group contained a mix of judges, practitioners, legislators, policy makers, and current or former foster youth. The working groups performed the most crucial work of the Summit—discussing the pressing challenges facing youth in transition and ultimately proposing concrete recommendations to address those challenges.

In addition to focusing on their specified topic, each working group was also asked to consider the following questions during its discussion of challenges and recommendations:

- What implementation challenges and opportunities exist for FCA provisions relevant to your topic area?
- What role is there for the private bar, the ABA and/or pro bono attorneys to assist in advocacy and reform work in your topic area?
- What strategies could address the disproportionate number of African American youth aging out of foster care?
- What challenges arise in your topic area concerning particularly vulnerable youth populations, such as pregnant and parenting teens, LGBTQ youth, children with disabilities, and immigrant youth?

Lead by two co-facilitators, each breakout group spent the first part of the day considering the challenges relating to its specified topic. After a mid-day report to the full Summit on those challenges, and an opportunity to get feedback, the working groups used the rest of the Summit to craft concrete recommendations.

Recommendations

The working groups proposed 56 major recommendations. Several key themes emerged over the course of the Summit and the crafting of the recommendations. In particular, there was uniform recognition that:

- Youth must be afforded much greater involvement in the decisions being made about them by judges, attorneys and agencies;
- States implementing the FCA should seize the opportunity to make major changes to how older youth are served by their child welfare agencies and courts; and
- Data collection, information sharing, and analysis of the effectiveness of new policies must be done to ensure continuous improvement of how older youth are served by child welfare systems and the courts.

“I did not become a statistic of the foster care system... I know how to cook, shop wisely, keep a clean house, and utilize public transportation. Most people that leave the foster care system do not know how to do these things.”

FosterClub member Allison H.

The breakout groups’ recommendations, listed below, are discussed and analyzed in much greater detail in the body of this report. While some of the recommendations are aspirational, others provide concrete guidance and strategies for implementation of the FCA. In an effort to preserve the integrity of each group’s dialogue, the report does not attempt to eliminate some of the duplication that arose among the breakout groups’ recommendations and also does not list the recommendations in any particular order of preference.

The recommendations are addressed to a wide range of audiences, including legislators, judges, attorneys, child welfare agencies, schools, community groups, and youth. All of these groups will be struggling over time with how and if to put in place new strategies to attend to the challenges and needs of youth in transition.

The breakout groups’ recommendations, divided by topic, are as follows:

Permanency for Older Youth

1. Federal and state governments, as well as state child welfare agencies, must develop laws and practices consistent with the FCA’s objectives and provisions confirming that permanency should be continuously pursued for all youth.
 - a. Child welfare agencies must plan for permanency from the beginning.
 - b. The federal government should create equitable incentives for all permanency options—reunification, adoption, and guardianship.
 - c. Federal and state governments and child welfare agencies should re-examine and limit the use of the another planned permanent living arrangement (APPLA) goal.
 - d. The Child and Family Service Reviews (CFSR) should encourage finding permanency for older youth.
 - e. States should extend not only foster care, but also guardianship and adoption assistance to age 21.

2. Federal and state governments, as well as state child welfare agencies, must develop laws and practices that promote and appropriately value youth's parental ties and extended family connections.
 - a. Child welfare systems should use different licensing standards for relatives.
 - b. Laws that allow judges to reinstate parental rights should be enacted and appropriately utilized.
 - c. Schools of social work and child welfare agencies must integrate philosophies recognizing the importance and value of families, including both maternal and paternal sides of families, into social work education curricula and child welfare worker and foster parent trainings.
 - d. Child welfare agencies should use family group decision-making and engage parents and/or relatives every time there is a need for a placement change.
 - e. Child welfare professionals and practitioners should elicit and carefully consider the youth's definition of family.
 - f. Child welfare professionals, judges and others should encourage and support meaningful contact between the youth and their identified connections.
 - g. States should provide additional funding to support family engagement and post-permanency supports.
 - h. States should take advantage of the new technological resources available to find families and interact with others.
3. States and child welfare agencies should develop programs and practices that acknowledge the unique needs of young adults, are youth-driven, and use assessment tools to measure the effectiveness of programs serving them.
 - a. Child welfare agencies and professionals should include youth in designing extended care support systems.
 - b. Child welfare agencies and professionals should learn about what has worked and what hasn't in states that already have extended care and supports for young adults.
 - c. State, county, and tribal child welfare agencies should continue to evaluate and assess their programs for older youth and promote mechanisms for necessary data sharing.

Courts and the Legal Process

4. States should enact legislation ensuring that juvenile court jurisdiction continues.
5. Courts should adopt procedures and modify hearings to ensure that older foster youth and young adults are present at, and involved participants in, their own court hearings.
 - a. The child welfare agency should involve young people in the planning process in advance of court and create mechanisms to support that involvement.

- b. Young adults who remain under dependency court jurisdiction should be represented by client-directed lawyers.
 - c. Judges, lawyers, and child welfare agency personnel should be trained and provided guidance to help them engage older foster youth as central actors in the planning and court process.
 - d. Child welfare agencies and courts should collect data that informs and fine tunes programming and support for young adults in care.
6. HHS should provide guidance, consistent with these recommendations, to ensure compliance with the FCA.
 7. State and local governments and judicial leaders should develop and promote new policies and practices that enhance the resources, support and prominence of juvenile courts.

Housing and Placement

8. States must create placement and housing options that meet foster youth's individual needs and prioritize permanency, as no youth should be permitted to transition from foster care to homelessness.
 - a. State child welfare agencies must promote, support, and create avenues for youth to connect and reconnect with family.
 - b. States must ensure that child welfare agencies, service providers, foster families, family members, and youth are aware of the housing and placement options and benefits of the FCA.
 - c. Any instructions issued by HHS on the "supervised setting in which the individual lives independently" (SSILs), and their implementation, must balance flexibility with accountability to ensure quality program delivery.
 - d. The special needs of particular subgroups must be addressed as states consider redesigning or enhancing their placement and post-discharge housing options for older youth.
9. The child welfare system should support youth until age 21 and reframe its housing and placement practices to meet the needs of older youth.
 - a. Child welfare agencies must promote meaningful and routine participation of youth in developing housing services.
 - b. Foster parents should be recruited, trained, and supported to work with older foster youth.
 - c. States should review and eliminate/amend laws and agency rules that prohibit age-appropriate behavior in placement settings.
 - d. Agencies should allow youth to have more control in placement decisions.
 - e. Child welfare agencies should allow youth to re-enter the system before turning 21.

10. Child welfare agencies should include transition planning that ensures safe and stable housing as part of effective independent living and permanency planning.
 - a. States should develop and clarify what is expected through the housing option component of the transition plan.
 - b. States should require courts to oversee transition and housing planning to ensure accountability and protect each youth's rights.
 - c. Transition planning must address and overcome all legal barriers to securing housing before youth are discharged from care.
 - d. States must create or expand youth-friendly avenues to share information about their rights and the programs and resources that are available to them as they are discharged from care.
 - e. Congress should require that elements of transition plans, such as housing, are reviewed as part of the federal Child and Family Services Reviews (CFSR).
11. Federal and state governments should promote creation of affordable housing options for youth after they leave care.
 - a. Congress should mandate collaboration and mutual responsibility between federal child welfare and housing agencies.
 - b. Local child welfare agencies and housing developers should create a structure of collaboration and mutual responsibility.
 - c. Child welfare agencies should work with older foster youth to develop their financial literacy and stability.

Education and Employment

12. Child welfare agencies should develop and implement policies and practices predicated on the assumption that the education and employment outcomes of children and youth in foster care should be equal to or better than those achieved by their peers not in foster care.
13. Interventions aimed at improving the educational and employment outcomes of foster youth should address the needs of sub-populations that may face additional barriers to education and employment.
14. Child welfare agencies, school districts and the courts should establish a clear division of responsibilities for addressing the educational needs of children and youth in foster care.
15. Child welfare agencies should ensure that every child or youth in foster care has an educational advocate who monitors that child's or youth's academic progress and intervenes when needs are identified.

16. Every court hearing for school-aged children and youth in foster care should include an inquiry about their education.
17. Child welfare agencies and school districts should work together to ensure that foster children and youth remain in the same school even when they change placements, unless doing so is not in the child's best interest. To achieve this, child welfare agencies and school districts should create a blended funding stream that pays for the costs of transporting children and youth to their school of origin.
18. Educational outcome measures should be added to the list of data elements that child welfare agencies are required to report to the federal government.
19. States should develop policies and programs that promote the postsecondary educational attainment of youth in foster care and provide them employment opportunities. These would include tuition waivers that current or former foster youth could use at any public college or university in the U.S.
20. Congress should increase the annual appropriation for the Education and Training Voucher (ETV) program so that ETV funds are available to all eligible current and former foster youth.
21. Colleges and universities should provide wraparound services to students who are current or former foster youth to increase their retention and graduation rates.

“In a family, even once you leave home, you still have a place to return to. You still have support. So why is it that kids like me will no longer have anyone in their life and nowhere to go? It's just wrong.”

Anonymous

Health and Mental Health

22. States should create a single, centralized entity to develop, coordinate and oversee the implementation of health care policies for children and youth in care.
23. States must provide all children and youth with an initial medical and mental health screening immediately upon entering care, a comprehensive evaluation within the first month, and regular periodic examinations throughout their time in care.
24. States should develop an electronic “medical passport” for every child and youth in foster care.
25. States should develop models of health care delivery that provide youth with a “medical home base” with professionals knowledgeable about issues confronting youth in care.
26. Child welfare agencies should develop a new paradigm for providing services to older youth—“a young adult well-being model”—which includes physical and emotional health.

27. Youth must be given a “voice” in the treatment process.
28. The child welfare system should expand the definition of “therapeutic” services to supplement traditional mental health treatments and support healthy emotional development.
29. States must ensure that all youth leaving care have been given essential discharge exams, documents and services.
30. States should opt into the Chafee Medicaid waiver to provide health coverage until age 21 for youth leaving care.

Crossover Youth

30. Laws, court policies, and practices should reduce the ease with which dependent youth enter the delinquency system, and they should also increase the ability of delinquent youth to be reclassified as dependent youth.
32. Funding reforms should be considered that will avoid the necessity of transferring a youth from one “system” to another for service accessibility, while financial restrictions that inhibit all systems’ abilities to best serve children should be eliminated.
 - a. Funding should not drive the choice of system in which the crossover child is maintained and provided services.
 - b. Funding should be sufficient for crossover children’s needs, regardless of the system in which they are being served.
33. Policy discourses about delinquent youth must be reframed, so that services for them are not limited to those simply serving “bad kids.”
34. Jurisdictions should develop coordinated assessments and services between the delinquency and dependency systems to focus on the needs of and outcomes for crossover youth.
35. Crossover youth data collection should be a priority.
36. Judicial and child welfare leaders and professionals should ensure that delinquent youth, in appropriate circumstances, are adjudicated dependent before their 18th birthday to maintain eligibility for services in the dependency system.
37. Arrest or conviction after a young adult’s 18th birthday should not preclude continuation of or return to the dependency system.
38. Dependency and delinquency system caseloads must be reasonable to effect change.
39. Cross-system protocols should include information-sharing mechanisms that provide consent and confidentiality safeguards while promoting service coordination.

40. Jurisdictions should take immediate steps to change practice related to cases involving youth involved in more than one “system.”

Youth Engagement and a Youth Focused System

41. Involving and effectively engaging youth in permanency planning, court hearings, and policy development will require all involved professionals to make basic and fundamental accommodations to facilitate youth involvement.
42. Professionals should effectively engage youth in all aspects of their cases and should have the requisite training and skills to ensure that youth are not simply present but actively participate.
 - a. Fundamental training delivered when a child welfare professional or advocate initially enters the field must involve education on why and how to engage youth in permanency planning and court hearings.
 - b. Child welfare advocates and professionals should receive ongoing training on methods for effective communication with youth and ways to effectively support and promote youth engagement.
43. Youth must be provided with the training, information, knowledge and power to become engaged participants in court, case planning, and policy arenas.
 - a. Youth must be told consistently that they have the right to be involved in their planning and in the court process.
 - b. Agencies should develop age-appropriate training and written materials to inform youth about their rights and provide descriptions on how they can be involved.
 - c. The court, the child welfare agency, or the child’s attorney must provide age appropriate notices to youth concerning upcoming meetings and hearings.
 - d. Lawyers and advocates should help youth determine what they want, how to ask for it, and the best way to share their experiences effectively.
44. Child welfare professionals should develop and promote services and programs that support effective youth involvement
 - a. Contracts for services should include a requirement for service providers to include youth as a condition of payment.
 - b. Youth and professionals should use VirtualTeen.org, Facebook, and other internet based social networking sites to learn and teach about youth engagement.
45. Youth who have been involved in the child welfare system should educate their peers on the benefits of being involved.
 - a. Child welfare professionals and the broader community must dispel stigmas associated with foster care by making the plight of foster youth more visible and helping promote alumni and peer support networks.

- b. States and communities should support youth organizations like Foster Club, Foster Care Alumni of America, youth leadership councils and other organizations that assist youth in becoming engaged.
- 46. Child welfare professionals should be required in standards of practice to meet with and involve youth in their permanency planning and in other aspects of their case.
 - a. Judicial standards and practices should promote youth engagement.
 - b. Outcome measures should assess the effectiveness of youth engagement, and professionals should be held accountable by the court and their superiors.
 - c. The Child and Family Service Review (CFSR) process must better involve youth in assessing child welfare challenges and crafting effective systemic solutions.

State Implementation of the Fostering Connections Act

- 47. States should identify which areas of the FCA are mandatory and which are optional and take affirmative steps to implement all of these provisions.
- 48. HHS should provide more structured guidance to states on certain key issues.
- 49. HHS should allow flexibility in how states comply with certain provisions of the FCA.
- 50. States should provide training to various stakeholders to help them implement the FCA.
- 51. HHS should provide states with information and updates on state challenges and best practices for policy and implementation.
- 52. HHS should provide states with assistance and guidance to clearly and accurately calculate the costs and savings associated with implementing various FCA provisions, including an examination of FCA areas that may offset costs.
- 53. HHS should support state efforts to phase in the option to extend care to youth over age 18 until all youth are covered by a specified date and to allow youth to reenter care up until age 21.
- 54. Youth involvement in FCA planning and implementation should be encouraged, expected and supported.
- 55. Courts should consider the older youth sections of the law as part of the total set of opportunities presented by the FCA.
- 56. Combating disproportionality should be a priority throughout states' planning and implementation of the FCA.

Next Steps

This Summit provided an invaluable opportunity for leaders to come together, share ideas, and define elements of success that can promote improved outcomes for older youth in care. We hope that legislators, policy advocates, administrators, attorneys, courts, and foster youth will use these recommendations for two purposes: (1) as a resource for what actions they specifically can take to improve outcomes for older foster youth; and (2) as a tool to support and enhance efforts to advocate for changes and improvements in how their legislatures, agencies, and courts work with older foster youth. While challenges will always remain, the thoughtful work by Summit participants—memorialized in this Report—provides a platform for ongoing innovations and a roadmap for concrete practices that can improve the path to adulthood for the many foster youth who every year venture out on their own. It is our hope that this important work will also redouble our collective commitment to the need for ongoing attention to and support for the children and youth in our charge.

Miriam Aroni Krinsky

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February, 2011

Permanency for Older Youth



Chapter One

Background

The Fostering Connections Act provides many new opportunities to support and promote permanency for children and youth, including older youth and young adults in foster care. Many of its provisions are aimed at providing support for and incentivizing permanency through connections with birth families, extended families, or new families through adoption. As soon as a child or youth enters care, the FCA requires child welfare agencies to exercise due diligence to identify and notify all adult relatives within 30 days so that permanent connections can be encouraged.

These new requirements will help keep older youth attached to their families. The need for a permanent family does not end when a youth turns 18. Permanency must remain a central component for youth who continue in care beyond their 18th birthday.

Youth who “age out” of foster care have also needed additional resources. While previous laws and policies, such as the creation of the John H. Chafee Foster Care Independence Program, allow states to provide limited federally-supported supports and services to youth after they exit care, that funding has been insufficient. In addition, those supports and services are notably less than those provided to older youth able to remain in care when necessary, which the FCA now facilitates.

Key Provisions of FCA

The FCA also provides Family Connection Grants that will allow many agencies to:

- Start or expand programs that help children and youth connect with their families through family finding;
- Engage families through family group decision-making;
- Provide support to relative caregivers through Kinship Navigator programs; or
- Provide comprehensive family-based substance abuse treatment to parents to help families stay together and/or reunify more quickly.

“I feel like the system is our parent until you turn 21 and then when you turn 21, they forget about us and we are left to fend for ourselves.”

FosterClub member Magdalene Soufiant, New York, age 20

The FCA gives states the option of providing guardianship assistance, similar to adoption assistance, to relative foster parents who become children’s guardians to allow them to exit foster care to permanency. In addition to giving states the option to extend foster care to young adults to age 21, states may also extend guardianship and adoption assistance to age 21 to create an incentive to permanency for older youth in care.

The adoption provisions in the FCA also recognize the importance of permanency for older youth by phasing in a de-linking of federal Adoption Assistance subsidies from parental income. The de-linking occurs first for youth 16 and older, beginning in FY2010, then 14 and older in FY2011 and so on until FY2018. The adoption provisions also give states greater incentive payments (\$8,000 rather than \$4,000 per child) for placing older children and youth in adoptive homes.

FCA provisions requiring agencies to support educational stability and continuity of health care providers can also help promote overall stability and allow for more enhanced exploration of permanent connections. The provisions allowing direct access to federal Title IV-E funds for tribes will provide Indian children with access to all the protections provided to non-Indian children, including options to offer guardianship assistance and extend foster care.

Recommendations

1. Federal and state governments, as well as state child welfare agencies, must develop laws and practices consistent with the FCA’s objectives and provisions confirming that permanency should be continuously pursued for all youth.

a. Child welfare agencies must plan for permanency from the beginning.

Many current strategies to engage families happen after children are in foster care for years (the “back end”), but would be better used when children first enter care (the “front end”) so that children and youth would continue to be connected to their families without having to re-connect. Implementation of the FCA will provide several opportunities, both at the front end and the back end, to support and value family connections:

- The requirement to identify and provide notice to all grandparents and other relatives (both maternal and paternal) within 30 days of removal will help children and youth stay connected to their families from the beginning.
- The ability to grant non-safety licensing waivers for relatives may allow more children to be placed with relatives.
- The ability to apply for federal funding to create or expand programs that support engaging families through family group decision-making or other family teaming strategies to help bring families to the center of the decision-making table.

- The ability to apply for federal funding to support family finding and kinship navigators helps recognize the value of family connections for youth.
- The availability of guardianship assistance to age 21 provides greater support for permanency with relatives.

b. The federal government should create equitable incentives for all permanency options—reunification, adoption, and guardianship.

States are financially rewarded for the number of adoptions completed each year but there is no reward for safely and successfully reunifying a family or for placing a child with a relative in guardianship. Permanency options should be put on equal footing and states should be rewarded with financial incentives not only for increasing the number of adoptions finalized each year but also for the number of successful reunifications and guardianships finalized.

“I wish I had someone with me, you know, like a mentor, for my entire life. I mean, I’m fine with all the changes in my social worker but... I never really met someone in the system or someone, [a] mentor that was with me my entire life.”

Anonymous, California

c. Federal and state governments and child welfare agencies should re-examine and limit the use of the APPLA goal.

Too many youth are currently given the goal of APPLA and then nothing more is done to actually find that *planned* and *permanent* living arrangement. Instead, the goal is treated as if long-term foster care or independent living were acceptable permanency goals. In essence, the system plans for the youth to age out without a permanent connection to anyone. APPLA should be re-examined so that it does not continue to be another name for long-term foster care or independent living but actually results in a connection to a supportive individual that is both *planned* and *permanent*.

d. The Child and Family Service Reviews (CFSR) should encourage finding permanency for older youth.

There is currently a disincentive within the CFSR process for finding permanency for youth who have been in the system longer than 24 months. States are only scored positively for establishing permanency within the first 24 months. While states should be encouraged to promote achieving permanency for children and youth as fast as possible, there also should be recognition that finding permanency for a child, whenever that happens, is a good outcome.

e. States should extend not only foster care, but also guardianship and adoption assistance to age 21.

The FCA gives states the option of extending foster care to 21 as well as guardianship and adoption assistance, if the youth exits to guardianship or adoption after turning 16. It is important that the state take all three options to extend foster care, guardianship and

“It’s difficult. I’ve had to make my own plan... I’ve had help from people. But, there’s only so much they can do because at some point you have to make your own decisions with what you want to do with your life.”

FosterClub member Magdalene Soufiant, New York, age 20

adoption assistance so as to not create a disincentive to moving a youth or young adult to permanency after age 16. Youth exiting to permanency with a guardian or adoptive family would continue to receive assistance to 21 just as they would have, had they stayed in foster care.

2. Federal and state governments, as well as state child welfare agencies, must develop laws and practices that promote and appropriately value youth’s parental ties and extended family connections.

a. Child welfare systems should use different licensing standards for relatives.

Current foster home licensing requirements often rule out potential relative placements for children who could otherwise have been placed in the home of a relative rather than a non-relative foster home. Some licensing standards that may be important for non-relative foster parents may not be as important as keeping children connected to their relatives and in a familiar setting.

b. Laws that allow judges to reinstate parental rights should be enacted and appropriately utilized.

Many youth have had their parental rights terminated and are still languishing in foster care. Yet over the years, many of the issues that resulted in termination may have been resolved and prior safety issues may no longer exist. Some of these youth are still in contact with their birth families or have found their family again through new technology (e.g., Facebook, ancestry.com, etc.) and others would like to have contact with their biological parents. If safe and appropriate and if the youth consents, creating a way to reinstate parental rights provides them another valuable permanency option.

c. Schools of social work and child welfare agencies must integrate philosophies recognizing the importance and value of families, including both maternal and paternal sides of families, into social work education curricula and child welfare worker and foster parent trainings.

Integrating into social work education curricula and other training programs a philosophy that values family connections (both on the maternal and paternal side) for children and youth entering care will equip social workers and the child welfare workforce generally with a better understanding of why family engagement is critical, teach them how to engage families and better promote family connections. Integrating similar philosophies into foster parent training can help foster parents support family connections by understanding the importance of facilitating visits, phone calls, and other ongoing contact.

d. Child welfare agencies should use family group decision-making and engage parents and/or relatives every time there is a need for a placement change.

When a placement change is needed, rather than immediately trying to find a new non-family placement for the child, family group decision making or another family engagement strategy can be used to bring parents and relatives back to the table. This provides an opportunity to look again at the assets within the child's family to see if circumstances may have changed and a placement with family may now be possible. At the very least, this strategy would again give parents and relatives a chance to make some decisions about what type of placement they would like to see for the child and how they may be able to serve as a resource for the child, even if not a placement resource.

e. Child welfare professionals and practitioners should elicit and carefully consider the youth's definition of family.

Youth should be permitted to identify important people in their lives when searching for permanency and permanent connections. Ask youth who is important to them, whom they might want to live with, whom they have been in contact with, and help them engage those people in making decisions about their future.

f. Child welfare professionals, judges and others should encourage and support meaningful contact between the youth and their identified connections.

For each of the individuals youth identify as important to them, the system should pursue and hold itself accountable for maintaining meaningful contact between the youth and those individuals:

- Foster parents can help support visits and phone calls.
- Caseworkers can make sure that youth and adults have access to therapeutic services that may help them get to know each other again or manage new expectations.
- At each hearing, judges can ask the agency about the individuals who have been identified as possible permanent connections, and how many meaningful contacts the youth has had with those individuals since the last hearing.
- Judges can also ask whether a change of permanency goal to reunification, guardianship, or adoption is appropriate based on any new connections.

"I am close to aging out. My 20th birthday is coming soon and I will have to leave the group home I am living in. I don't know where I am going next and I am scared. I can't get any definite answers from anyone. Everyone keeps telling me that time is running out and that overwhelms me even more. Once I am 21, I have nowhere to go and that scares me."

Anonymous

“I guess it’s just a survival of the fittest when you turn 21 and just deal with it. Take whatever you learned from Independent Living and keep on stepping.”

FosterClub member Tamika Webb, New York, age 20

g. States should provide additional funding to support family engagement and post-permanency supports.

New funding streams are needed to support the sometimes intensive grief and loss therapy that is required when youth reconnect with family and to support those families once permanency is achieved.

h. States should take advantage of the new technological resources available to find families and interact with others.

There are countless new technological resources available to help youth connect with others, including their families and other significant people in their lives. While certainly asking the youth and other known relatives is the most effective way to find other relatives, case-

workers can use family finding techniques, ancestry.com, ussearch.com, and even Facebook to help youth find connections. It is also important to use available technologies to keep track of the youth’s connections, to get in touch with them, and to assess how many meaningful contacts the youth has had with them. Knowing what technology the youth is using can also help the caseworkers and others help the youth navigate new relationships safely.

3. States and child welfare agencies should develop programs and practices that acknowledge the unique needs of young adults, are youth-driven, and use assessment tools to measure the effectiveness of programs serving them.

Eighteen to 21 year olds comprise a group that agencies are still learning how to serve, as most agencies have not been working with this population for very long. The FCA brings new challenges as more agencies will need to provide them with protections afforded to all children and youth in foster care while understanding their unique needs as young adults who still have an ongoing need for permanency.

a. Child welfare agencies and professionals should include youth in designing extended care support systems.

Agencies and child welfare professionals should work with youth currently in the system as well as alumni to determine how new programs will work and can most effectively provide extended support to youth beyond age 18.

b. Child welfare agencies and professionals should learn about what has worked and what hasn’t in states that already have extended care and supports for young adults.

Agencies can look at available data and talk to leaders in the states that have already extended care, guardianship, and adoption assistance for youth beyond age 17 and ask them what has been the key to their success and what they would do differently.

c. State and county child welfare agencies should continue to evaluate and assess their programs for older youth and promote mechanisms for necessary data sharing.

Agencies should have plans to collect data about the young adults they serve as they implement the option to extend care, guardianship, and adoption assistance. State and county agencies can, for example, partner with researchers in their states to evaluate their programs and encourage youth and young adults to qualitatively evaluate these supports as well. Fully implementing the National Youth in Transition Database will also help child welfare systems learn more about this group and their unique needs. Young adults should, however, have the right to consent to sharing their data. If they consent, sharing data across the artificial boundaries of health, education, and child welfare will allow a much better understanding of their needs and how to meet them.

Courts and the Legal Process



Chapter Two

Background

Many youth age out of foster care every year without the supports and services they need to successfully transition to adult independence. This is due, in part, to the resource and time constraints under which child welfare agencies operate. It is also due, in part, to the fact that some of the services they require are traditionally provided by other agencies responsible for education, employment readiness, housing and health care. The communication between these agencies is often poor, and many foster youth and caregivers find themselves unable to navigate the bureaucracy of different systems.¹ In addition, foster youth are given limited opportunities to take an active role in planning for their futures and in engaging the various systems involved in this process. Juvenile courts can play a unique and important role in addressing the problems that stand in the way of a foster youth's successful transition to adulthood.

Court Oversight

Courts should ensure state and county child welfare agencies offer support and services to foster youth.² Indeed, they are required by law and regulation to do so. Federal child welfare provisions under Title IV-E of the Social Security Act require that during permanency hearings courts “shall determine...in the case of a child who has turned 16, the services needed to assist the child to make the transition from foster care to independence.”³ Moreover, in all cases where children have been in foster care for 12 months or more, courts are required to

1. See Mark E. Courtney, et al. Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19 (Chapin Hall Center for Children, Chicago, IL, 2005), available at Sarah Geenon & Laurie E. Powers, “Tomorrow is Another Problem”: *The Experiences of Youth in Foster Care During Their Transition Into Adulthood*, 29 CHILD. & YOUTH SERVICES REV. 1085, 1091 (2007). <http://www.chapinhall.org/research/report/midwest-evaluation-adult-functioning-former-foster-youth>.

2. See Emily Buss et al., From Foster Care to Adulthood: The University of Chicago Law School Foster Care Project's Protocol for Reform (2008), available at <http://webcast-law.uchicago.edu/dfs/fostercareprotocol.pdf> at 65-69; see also Emily Buss, *Juvenile Court for Young Adults? How Ongoing Court Involvement Can Enhance Foster Youths' Chances for Success*, 48 Fam. Ct. Rev. 262, 265-66 (2010).

3. 42 U.S.C. § 675(5)(C).

“Being in the system really makes you self sufficient and able to do things on your own. I’ve learned to take care of things on my own and formed my own path.”

*FosterClub member
Magdalene Soufiant,
New York, age 20*

assess annually whether the child welfare agency has made “reasonable efforts to finalize the permanency plan that is in effect” for each child, which includes the permanency plan for foster youth who are expected to age out of the system.⁴ For young people with a permanency plan other than reunification, adoption, or guardianship, the requirement of a regular permanency review can most sensibly be understood as a directive to courts to assess the steps taken by the state child welfare agency to assist these young people with their transition to independence. The accompanying federal regulations, which call for a “judicial determination of [the state or county’s] reasonable efforts to finalize a permanency plan,”⁵ reinforce this interpretation.

The same pressures of caseloads, crises, and budgets that have undermined service delivery for minors in foster care, and that led Congress to require additional court involvement in foster care cases generally, stand in the way of older youth receiving the services for which they are eligible in preparing to exit from care. These risks can be greater for young adults in foster care who will be a new population for many child welfare agencies. Likewise, a relevant permanency plan for young adults, another planned permanent living arrangement (APPLA), is the least well defined of the permanency goals, and this may translate into more restricted funding and programming by cautious state and county agencies. [See additional information on this topic in Chapter 1 *Permanency for Older Youth*]

Finally, many youth who need the most help will test the patience and skills of their caseworkers. It is easy to put the oppositional or noncompliant youth at the bottom of the list, especially if she is an adult, but it is the noncompliant individual who may be most in need of immediate and ongoing attention as she makes the transition to independence. Without court oversight, the problems that plague child welfare agencies, generally, when courts are not actively involved, can be particularly grave for older youth.

Effective Court Involvement and New Federal Requirements

As with all foster care cases, effective court involvement in young adults’ cases can ensure that every case receives periodic attention. At a minimum, the court review process should provide the same benefits to older youth that it has for younger children and their families. More ambitiously, the review process could have a special value for adolescents, who are in a position to play a lead role in planning for their future and gaining important skills from their participation.

Court involvement will be particularly important for the implementation of two aspects of the Fostering Connections Act—the new requirements for the pre-discharge transition plan and the new option of extended federal funding to 21.

4. 45 C.F.R. § 1356.21(b)(2).

5. 45 C.F.R. § 1356.21(b)(2) (2009).

Research on the Transition to Adulthood and the Right of Re-entry

Research has shown that “[a]lthough the median age at which adolescents first leave home is about 19 years, 40% of those who leave home for the first time between the ages of 18 and 24 return to live in their parental household at some time thereafter.” In contrast, former foster youth generally have no family support and “disproportionately join the ranks of the homeless, incarcerated and unemployed.” Youth with resources and support systems do not have to fear that they may end up homeless or in jail if their lives take an unexpected turn while they are still learning how to navigate the world on their own. Accordingly, states need to have a mechanism to permit young adults who came of age in the foster care system to re-enter the system before they turn 21, just as children can turn to their homes and families for a place to stay or for financial or other support.

Sources:

Rosemary J. Avery & Madelyn Freundlich, *You’re All Grown Up Now: Termination of Foster Care Support at Age 18*, 32 J. OF ADOLESCENCE 247, 248 (2009).

Miriam Aroni Krinsky, “A Not So Happy Birthday: The Foster Youth Transition From Adolescence Into Adulthood,” FAMILY COURT REVIEW, Vol. 48, No. 2 at 251 (April 2010).

Pre-Discharge Transition Plans: The FCA adds a new mandate that the state must provide all youth⁶ who are receiving foster care maintenance payments under Title IV-E a personalized transition plan during the 90-day period before the youth ages out of care.⁷ The transition plan must be developed with the youth by a caseworker on the staff of the state or county agency and, as appropriate, other representatives who work closely with the youth.⁸ The transition plan must include at a minimum specifics on:

- Housing;
- Health insurance;
- Education;
- Local opportunities for mentors and continuing support services; and
- Workforce supports and employment services.

The plan must be personalized at the direction of the youth and be as detailed as the youth elects. The court is essential to ensuring that this new requirement is meaningful. Courts need to provide oversight of the transition plans to ensure:

6. “Youth who have returned home or for whom kinship guardianship assistance or adoption assistance payments are being made must also have a transition plan if they are also receiving Chafee Program benefits or services.” National Foster Care Coalition, Frequently Asked Questions on the Provisions Designed to Impact Youth and Young Adults, 38 (June 2009), *available at* <http://www.nationalfostercare.org/pdfs/NFCC-FAQ-olderyouth-2009.pdf>.

7. When youth age out of care, they could be age 18, 19, 20, or 21 if the state extends care up to one of those ages and the youth chooses to remain in care.

8. These additional representatives may include independent living program staff, lawyers, foster parents, relative caregivers, CASA volunteers, doctors, mental health professionals, teachers, vocational counselors, mentors, biological family members, friends and others identified by the youth as helpful to the process of planning for a successful transition.

- The goals contained in it are viable;
- The plan is coordinated meaningfully with any previous independent living plans;
- The youth actively participated in its creation;
- The plan is tailored to meet the individual needs of the youth;
- The plan contains the supports and services identified as important by the youth;
- The plan is as specific as the youth wants and needs to successfully transition from care; and
- There is sufficient follow up with the caseworker and the youth to ensure that the services and supports in the transition plan are implemented.

While the FCA does not set out the consequences of failing to meet these new planning and implementation requirements, it seems to give courts the opportunity to make discharge contingent on compliance with them.

Extended Federal Funding to Age 21: The FCA also extends eligibility for federal foster care support to age 21. In addition to lengthening the time during which this planning and review process is available, the extension of federal funding gives states an opportunity to provide for some form of trial discharge, during which young people who have opted for independence can return to get additional help. The transition to adulthood is not a linear process and policy should reflect this principle. Many young adults are eager to be on their own when they turn 18.⁹ But just like young people who grow up in their own families, foster youth often discover a need for additional financial, practical, or emotional help with education, housing or health care after attempting to strike out on their own.

For states to draw down federal funds for returning youth clients, they must create legal mechanisms that are consistent with federal requirements. While the FCA does not specifically speak to re-entry for youth over age 18, it appears to provide no barriers to implementation of this practice. Because section 201 of the FCA permits states to continue young adults in care and court jurisdiction until age 21, there is nothing in the federal law that would prohibit states from enacting laws that allow reentry. The guidance provided thus far by the U.S. Department of Health and Human Services (HHS)¹⁰ suggests, however, that it may be beneficial to maintain court jurisdiction to oversee agency services as well as to authorize a youth's post-18 continued stay in, or re-entry to, foster care.

Recommendations

There are an array of questions that can be posed in considering the nature and extent of court hearings for young adults:

- Should court review hearings occur once a year as directed by federal law?

9. See Erik S. Pitchal, *Thickening the Safety Net: Key Elements to Successful Independent Living Programs for Young Adults Aging Out of Foster Care*, 23 St. John's J. Legal Comment. 447, 455-56 (2008). See also, Robert Schwartz & Jennifer Pokempner, *Commentary*, 23 SOC. POL'Y REP. 13, n. 1 (2009).

10. Children's Bureau Program Instruction ACYF-CB-PI-10-11, July 9, 2010 includes this language: "To the extent that court jurisdiction extends to a youth age 18 or older, court orders can provide the Title IV-E agency with placement and care responsibility."

- Should court hearings occur more frequently to better engage young people in the planning process and ensure that everyone involved in case planning and service delivery is held to the commitments made at the hearings?
- Should parents be invited to hearings after their child turns 18?
- Should hearings go forward if the young person is not present?
- What efforts should be made to secure a young person's attendance at court before the hearing can go forward without her?
- Should the youth continue to have court appointed legal representation, and if they previously had only a CASA or guardian *ad litem*, shouldn't they now have an appointed attorney instructed to be acting as the youth's legal counsel?
- Must cases remain open to allow the young person to return after having left the services of the child welfare system?

“Prepping youth well before court and debriefing afterwards, is very important. Especially when working with older youth (14–17) who are old enough to advocate for themselves. Rights should be discussed when they first go into the foster care system and adjusted accordingly as they get older. When I was in foster care system my GAL (Guardian *ad litem*) always asked me if there was anything that I wanted her to tell the judge, and if there was anything that I wanted to say in court as well.”

FosterClub member Janessa

In the absence of federal guidance, these questions may serve to inhibit states' good faith efforts to move forward with full and comprehensive implementation of the FCA. States should be encouraged to work through these and other issues and promptly implement this critical legislation. While answers to some of these questions may require further legal development or guidance, certain fundamental principles, as set forth below, should be part of any implementation of the FCA.

1. States should enact legislation ensuring that juvenile court jurisdiction continues.

Many feel that ongoing court involvement is inconsistent with recognizing foster youth who are over 18 are full adults with the same rights and obligations as all other adults. Yet ongoing court involvement and oversight is critical to ensuring that youth and young adults receive requisite services and support as they transition into adulthood.

Court monitoring helps ensure effective service delivery in a number of ways:

- The court review structure creates and enforces deadlines for planning and implementation. For each court hearing, caseworkers prepare case plans, which they then present in court. The various players—caseworkers, lawyers, family members, and service providers—assemble for this presentation and are available to provide information and answer the judge's questions.

- Courts are required by law to assess case plans and the steps taken to implement them.¹¹ Courts have an established process of fact finding and record keeping that helps hold people (government actors, private agencies, and family members) accountable and ensures a more coherent planning process over time.
- Because they stand apart from the agency, the family, and others involved in the case, judges bring an important objectivity to the review process.
- Judges are the only individuals with authority to order people to act. The request of a judge for a meeting or to provide services often carries more weight than the requests of other stakeholders. Moreover, in most states, juvenile courts have the power to subpoena individuals to court, to order the provision of services in certain circumstances, and to impose consequences when parties fail to comply. This allows for a more comprehensive consideration of the issues at stake, encourages inter-systems coordination, and enhances the court's opportunity to develop special relationships with the individuals involved.

2. Courts should adopt procedures and modify hearings to ensure that older foster youth and young adults are present at, and involved participants in, their own court hearings.

It is extremely important that young people attend their hearings, and every effort should be made to secure their attendance, including providing transportation, scheduling hearings so that they do not conflict with school or work, and requiring them to waive their right to participate (if they wish to do so) in person. Young adults who remain in foster care should be the lead planner, and the central participant other than the judge, in their hearings.

Court procedures should also create a youth friendly and youth focused process and atmosphere. For example, hearings should be scheduled to avoid conflicts with school and work schedules and should be structured to place youth at the center of the discussion and decision-making. The Cook County, Illinois Benchmark Permanency Hearings offer an excellent model of such procedures.

a. The child welfare agency should involve young people in the planning process in advance of court and create mechanisms to support that involvement.

The young person's leadership role at court hearings should reflect and mirror their leadership role in the planning process. Indeed, youth in foster care should be given increasing control over the planning process throughout their adolescence, so that they are in a position to lead the process as young adults. Tucson, Arizona's "In My Shoes" peer-mentoring model, and many jurisdictions' use of "Youth Circles," offer excellent examples of processes designed to put the young person at the center of the planning process.

11. Under federal law, which is often mirrored or elaborated upon in state law, judges are required to assess the short- and long-term goals in each case and the progress made toward those goals. 42 U.S.C. § 675(5)(B) & (C) (2009).

Older foster youth and young adults should be connected with supportive individuals who can assist them in the planning process and serve as sources of support throughout their lives. Benchmark Hearings and Youth Circles offer examples of programs designed to help connect young people to life-long sources of support in the context of case planning.

b. Young adults who remain under dependency court jurisdiction should be represented by client-directed lawyers.

Young adults are entitled to the representation of an attorney just as any other adult, in any other legal context. As such, all older foster youth and young adults should be represented by an attorney, who assists her in playing an active role in the hearing. If a foster youth has been represented by a guardian *ad litem*, or any other citizen or professional charged with advocating for the child's "best interest," that representation must change to traditional client-directed representation when the foster youth reaches age 18. Lawyers should not displace their clients' voice at the hearings, and should advocate zealously in support of positions taken by their clients. Pro Bono initiatives that involve members of the private bar in cases involving older youth can expand the pool of available attorneys, and help ensure that young people are afforded zealous representation as required by lawyers' professional obligations.

c. Judges, lawyers, and child welfare agency personnel should be trained and provided guidance to help them engage older foster youth as central actors in the planning and court process.

Subsequent to the enactment of the Adoption and Safe Families Act, several organizations published guidelines for how courts should implement that law's requirement of annual permanency hearings. Perhaps the most robust and comprehensive is the National Council of Juvenile and Family Court Judges' (NCJFCJ) *Adoption and Permanency Guidelines, Improving Court Practice in Child Abuse and Neglect Cases*. While not tailored solely to the needs of older adolescents, this publication offers excellent ideas for how courts can use the permanency hearing process to ensure the best possible outcomes for children in state custody. Jurisdictions should determine how to adapt and tailor the NCJFCJ's recommendations to hearings for older youth.

"I was never allowed to attend any court hearings or told of what occurred in court proceedings relating to my case. It was never stressed to me that it was of much importance, so I figured that it didn't matter... later I would find I that it did very much. Sometimes I think that maybe if I had participated in my court case and it had been explained to me, then maybe some things would have turned out differently."

FosterClub member Faith

d. Child welfare agencies and courts should collect data that informs and fine tunes programming and support for young adults in care.

Data collected should include the supports requested, the supports provided, and the problems faced by foster youth in the transition process. This data collection process should be built into the case planning and review process.

3. HHS should provide guidance, consistent with these recommendations, to ensure compliance with the FCA.¹²

Among other things, HHS should make clear that for young adults who remain in foster care, the statutory requirement of court “consultation” with foster youth must include youth attendance and active participation at court hearings.

4. State and local governments and judicial leaders should develop and promote new policies and practices that enhance the resources, support and prominence of juvenile courts.

Juvenile courts are overburdened and have caseloads that vastly exceed their ability to attend to the needs of the children and families that appear before them. They are unlikely to increase their capacity absent additional resources and support. Yet many feel that scarce resources should be invested in programs for children and families and not court and legal procedures and processes. In reality, few investments could be more critical than enhancing the capacity for courts to oversee the progress and well being of children in their charge.

Similarly, juvenile courts are often a disparaged and unwanted assignment for judges and are not accorded the respect of the entire court system. For foster youth to receive the best attention and care, the judicial officers who devote themselves to these critically important cases must be acknowledged and supported by the entire court system. Thus, it is recommended that juvenile courts hearing cases involving youth in and transitioning from foster care be substantially upgraded and provided additional resources and support.¹³

12. In early July 2010 the federal government issued policy guidance concerning states’ implementation of the Fostering Connections Act, including the provisions relating to judicial involvement in cases of young people over 18 in states that will exercise the option to extend care. This guidance came after the Summit and thus was not discussed there. Nevertheless, it is important to note two points about this document. First, it represents the federal government’s interpretation of the *minimum* requirements for states seeking federal IV-E reimbursement for young people 18 and older. Second, it does not necessarily reflect all the best practices in the field, and in several aspects varies from the recommendations of this report. In particular, the guidance suggests that states need only provide a permanency hearing for those young people 18 and older whose cases are eligible for federal reimbursement (in contrast to children under 18, all of whom are entitled under federal law to a permanency hearing, even if their individual cases are not receiving federal money). Nothing in the discussions at the Summit or in other material concerning best practices would suggest that it is appropriate for only some young people to have the benefits and protections of a permanency hearing, let alone that such a distinction should be based on financial variables that have no effect on foster youth’s experience in the system.

13. After this Summit, in August 2010, the American Bar Association House of Delegates approved “Judicial Excellence in Child Abuse and Neglect Proceedings: *Principles And Standards For Court Organization, Judicial Selection And Assignment, Judicial Administration And Judicial Education*”. These provide a guide to the court structure and support recommendations made at the Summit.

Housing and Placement



Chapter Three

Background

Housing is one of the most immediate needs for youth who age out of the foster care system.¹⁴ Acquiring and maintaining affordable housing has become increasingly challenging for even the most privileged young adult, and is especially difficult for one who has not been properly prepared for independent living and who does not have the social and familial supports so integral to a successful transition to adulthood. Housing is a central component to achieving stability and success after foster care. Without it, school, employment and healthy relationships are difficult or impossible to maintain.

While the housing issue most dramatically confronts youth when they leave care, it is clear that to improve housing outcomes, we must improve services and practices while youth are still in care as well as develop resources for them when they leave. A youth's placement while in care affects them later in many ways, including their capacity to acquire and maintain housing upon discharge. Among other reasons, youth who are in more restrictive placements like congregate or institutional care face many challenges to preparing for adulthood because they are less likely to have the opportunity to practice their independent living skills. Most importantly, increasing the number of older youth who achieve the permanency of a family will positively impact housing outcomes for youth when they reach adulthood.

The Impact of FCA on Housing Outcomes

If implemented aggressively and creatively, the FCA can have a significant impact on housing outcomes for youth aging out,¹⁵ especially in four areas of law and practice:

- **Federal Reimbursement to Age 21:** by allowing states the option to receive federal reimbursement to care for youth until age 21, the FCA can have a significant

14. Deseree Gardner, National Association of Counties, *Youth Aging out of Foster Care: Identifying Strategies and Best Practices* (February 2008).

15. The provisions of the FCA that allow tribes to directly receive federal funds to run their child welfare systems will also bring these benefits to Native American youth. *See e.g.*, 42 U.S.C. § 679c.

positive impact on housing outcomes for youth. Youth who remain in care will have more time to continue their education and training so that they are more likely to have the skills they need to sustain housing upon discharge. In addition, by allowing states to provide adoption subsidies as well as kinship guardianship subsidies until age 21, it is likely that more youth will find permanency and that families will have more resources to help youth transition to adulthood.

- **Federal Reimbursement for Living Independently:** by allowing reimbursement for a new placement setting—“a supervised setting in which the individual is living independently”¹⁶—the FCA ensures states will have federal financial support to provide placement options for youth that have been shown to improve their independent living outcomes. While youth should continue to receive permanency services until age 21, living settings should be age-appropriate and facilitate the acquisition of independent living skills.
- **Transition Planning:** the transition plan¹⁷ language in FCA requires the agency to develop a plan with youth prior to their leaving care, which includes options for housing. This should result in earlier planning for housing needs and greatly reduce the number of youth who leave care without having a concrete and appropriate housing plan.
- **Support of Relative Care Options:** the FCA’s increased focus on and support of relative caregivers, as well as support for new relative location technologies, such as family finding and the potential use of the Federal Parent Locator Service, can result in increased housing stability by including relative placement as a possible permanency option.

Recommendations

1. States must create placement and housing options that meet foster youth’s individual needs and prioritize permanency, as no youth should be permitted to transition from foster care to homelessness.

Youth in care can be more adequately prepared to obtain and maintain housing upon discharge by:

- Ensuring they receive quality services while in care, including monitoring their educational progress;
- Enhancing their opportunities to achieve permanency and exit the system positively; and

16. 42 U.S.C. § 672(c).

17. 42 U.S.C. § 675(5)(H).

- Ensuring that placement settings are developmentally appropriate and foster skill building.

e. State child welfare agencies must promote, support, and create avenues for youth to connect and reconnect with family.

The FCA's support for and emphasis on family connections can have a particularly positive impact on older youth. Ample data shows that youth remain in contact with their biological families even after they have been removed from their care. The system must help youth forge and strengthen these relationships when they want and should be willing to revisit relationships that may not have been viable in the past, including parental relationships that have been legally severed. *[See additional information on permanency and family connections in Chapter 1 Permanency for Older Youth].*

“When you’re in foster care, they boot you out at 18 and you are on your own. It’s called emancipating. They have housing, but with 20,000 foster youth emancipating this year, and so many trying to get into housing, it’s like trying to win the lottery.”

Anonymous

f. States must ensure that child welfare agencies, service providers, foster families, family members, and youth are aware of the housing and placement options and benefits of the FCA.

The FCA is a new law, and more training must be done so that the options available are clearly understood and fully utilized, thereby ensuring that youth and families receive the full benefits of it.

g. Any instructions issued by HHS on the “supervised setting in which the individual lives independently” (SSILs), and their implementation, must balance flexibility with accountability to ensure quality program delivery.

Youth who turn 18 while in care have varied experiences preparing for adulthood. HHS should help ensure that SSILs can allow for the broadest range of appropriate living situations while ensuring that each is adequate and sufficiently supportive of youth.

h. The special needs of particular subgroups must be addressed as states consider redesigning or enhancing their placement and post-discharge housing options for older youth.

LGBTQ youth, for example, are at great risk for running away from placements because, often, caregivers are not trained in meeting their unique needs. Parenting youth also pose challenges as they often fear being separated from their children due to a lack of appropriate placements.

2. The child welfare system should support youth until age 21 and reframe its housing and placement practices to meet the needs of older youth.

States that opt to receive federal reimbursement to support youth in care until age 21 are explicitly committing to reframe their system to a 0 to 21 model. This will require state child welfare systems to change their cultures, policies and practices to extend their obligations to older youth, while recognizing that they are also adults in the eyes of the law in many aspects of their lives.

a. Child welfare agencies must promote meaningful and routine participation of youth in developing housing services.

Youth participation in all aspects of the design and delivery of housing services is crucial to ensuring that the services are appropriate and effective. Involving youth in the design and delivery of training around the myriad aspects of obtaining housing and maintaining supportive housing is particularly important.

b. Foster parents should be recruited, trained, and supported to work with older foster youth.

This should include considering performance based incentives and addressing licensing/legal requirements that create barriers to foster parents continuing to care for youth over age 18 (i.e., background checks for the youth, restrictions on who can live in the home, etc).

c. States should review and eliminate/amend laws and agency rules that prohibit age-appropriate behavior in placement settings.

Rules that limit the behavior and activity of youth in ways that their peers are not experiencing (e.g., undue curfew restrictions or visitation restrictions) should be limited to allow youth to experience their young adulthood in the same ways that their peers experience it.

d. Agencies should allow youth to have more control in placement decisions.

Anecdotal evidence suggests that allowing youth more of a say in choosing their placements will result in a more successful placement. Agencies should incorporate the wishes of youth to the maximum extent possible.

e. Child welfare agencies should allow youth to re-enter the system before turning 21.

This recommendation also appears in Chapter 2. Allowing youth who exited the system at age 18 and who are still under age 21 to reenter is important to creating a system that more accurately resembles the structures of support available for non-system youth [*See Chapter 2 Courts and the Legal Process*]. From the housing perspective, allowing reentry is a homeless prevention strategy as well as good child welfare practice.

3. Child welfare agencies should ensure that transition planning includes safe and stable housing as part of effective independent living and permanency planning.

The new requirement that a transition plan be created within 90 days of being discharged from foster care at age 18 or older (or when Chafee Act aftercare services are terminated) should be used to ensure that youth do not leave the system without having safe, affordable, and appropriate housing. States should ensure this requirement is meaningful and related to concrete outcomes. It is essential that planning begin well before 90 days prior to discharge and be connected to good permanency and independent living planning.

“I’ve seen a lot of foster kids end up on the streets. They have no family to go to; they have nowhere to turn. They don’t know anything about being on their own.”

Anonymous

a. States should develop and clarify what is expected through the housing option component of the transition plan.

The FCA requires that the transition plan include “options for housing.” States should require, through state law or regulation, that the plan includes *a guaranteed, stable, appropriate, quality housing arrangement that can be expected to last for not less than one year*. In addition, the transition plan should include a longer-term (three-year) housing plan as well as contingency plans. States should prohibit plans that include shelter as an option.

b. States should require courts to oversee transition and housing planning to ensure accountability and protect each youth’s rights.

The FCA does not provide any mechanism for accountability and oversight of the transition plan. Reviewing and approving the transition plan is a task that fits within the court’s traditional oversight duties and provides a check on accountability. This oversight can also help ensure that youth are not discharged to homelessness.

c. Transition planning must address and overcome all legal barriers to securing housing before youth are discharged from care.

This should include:

- Ensuring that youth who are eligible to seal or expunge their juvenile record are assisted in doing so;
- Providing assistance in getting youths’ credit reports; and
- Rectifying any errors or issues in these reports, such as those caused by identity theft.

d. States must create or expand youth-friendly avenues to share information about their rights and the programs and resources that are available to them as they are discharging from care.

At a minimum, a website or portal providing resources and a written notification of rights should be provided.

“I turned 18 a month before I graduated from high school. The day after graduation, I was kicked out of my foster home, where I had been living for two years. I was 18, a high school graduate on my way to college in the fall, and I was homeless.”

FosterClub member Nicole, Oregon

e. Congress should require that elements of transition plans, such as housing, are reviewed as part of the federal Child and Family Services Reviews (CFSR).

Because of the importance of the transition plan, and specifically the housing component, the federal CFSR review should increase states’ accountability by reviewing the sufficiency of these plans.

4. Federal and state governments should promote creation of affordable housing options for youth after they leave care.

Perhaps the biggest housing barrier for youth who age out of care is that there are few available, affordable, quality and safe housing options. Full or partial subsidies must be made available to youth so they can obtain housing, which will require the allocation of federal and state funds.

a. Congress should mandate collaboration and mutual responsibility between federal child welfare and housing agencies.

The intersection between the child welfare and housing systems has been widely noticed, but has not been directly addressed in any significant way outside of the Family Unification Program (FUP). Congress should require HHS and the Department of Housing and Urban Development (HUD) to work together to ensure that more housing resources are devoted to youth leaving the child welfare system as adults as well as to families to prevent their children from entering the system. This collaboration is integral to effectively achieve safety, permanency, and well-being for youth and families. While this does not mean that HHS must become a housing agency, it does mean that child welfare agencies should see housing as one of the essential services to be provided to keep families together and to achieve positive outcomes for older youth leaving the system. Among other things, HHS and HUD could:

- Increase appropriations for FUP vouchers;
- Remove the 18 month time limit on FUP vouchers for youth;
- Increase the amount of funds allocated through the Chafee Act; and
- Designate a portion of the Housing Trust Fund to meet child welfare needs.

b. Local child welfare agencies and housing developers should create a structure of collaboration and mutual responsibility.

Collaboration between child welfare and governmental housing agencies is also critical at the local level. To encourage this, Congress, or where appropriate, HUD and HHS, could:

- Better oversee state performance in satisfying the McKinney Continuum of Care requirements that require states to have appropriate discharge policies from foster care as a condition of receiving funding;

- Improve oversight of states in satisfying the requirement under the Chafee Act to consult with relevant stakeholders and agencies in developing the state's Chafee Plan;
- Require that the degree and nature of collaboration between the child welfare and housing agencies be reviewed in the CFSR; and
- Provide trainings to child welfare and housing agencies about the workings of each agency and models for working together (sample MOUs, etc).

c. Child welfare agencies should work with older foster youth to develop their financial literacy and stability.

Unlike many children who grow up in intact families, there is little focus on building the financial assets of youth in care as they age. While financial literacy is an important independent living skill, accumulating savings that could assist with getting and maintaining housing after leaving care has not been a widespread focus. Congress, HHS, state legislatures, and state agencies could employ the following strategies for increasing the financial stability of older foster youth:

- Ensure that youth savings are protected and do not impact IV-E and Chafee eligibility;
- Require states to use at least a portion of a youth's SSI or survivors' benefits towards their needs in adulthood, such as education or housing; and
- Expand the use of asset building tools, such as the Jim Casey Opportunity Passport and Individual Development Accounts (IDA) that are developed based on youth needs and goals (i.e., focus on savings for rental housing rather than purchasing a home, the latter of which is the focus of a traditional IDA).

Education and Employment



Chapter Four

Background

Education, as a predictor of future adult successes, is as important for youth in foster care as it is for their peers not in foster care. Nevertheless, foster youth are far less likely than their peers not in foster care to graduate from high school, to enroll in college if they graduate from high school, or to graduate from college if they enroll.¹⁸ The problem is not that foster youth have lower educational aspirations or capabilities.¹⁹ Rather, a number of factors beyond the young person's control make it more difficult for the youth to achieve his educational goals.

Connecting School and Child Welfare Systems

Four factors that impact foster youth educational achievement are particularly important to consider as policy reforms are crafted in this area:

- In far too many cases, no one is monitoring the academic progress of children and youth in foster care or advocating on their behalf when they need additional services and supports from their school.
- There is often a lack of awareness within schools or child welfare agencies of laws and policies relevant to the education of children and youth in foster care as well as programs and other resources for which they may be eligible.
- There are gaps in the services and supports available to meet the educational needs of children and youth in foster care. This includes financial assistance to help pay for college.

18. Brandford, C., & English, D. (2004), *Foster youth transition to independence study*, Seattle, WA: Office of Children's Administration Research, Washington State Department of Social and Health Services; Courtney, M. E., Dworsky, A., Cusick, G., Havlicek, J., Perez, A., & Keller, T. (2007), *Midwest evaluation of the adult functioning of former foster youth: Outcomes at age 21*, Chicago, IL: Chapin Hall at the University of Chicago; Davis, R. J. (2006), *College access, financial aid, and college success for undergraduates from foster care*, Washington, DC: National Association of Student Financial Aid Directors; Wolanin, T. R. (2005), *Higher education opportunities for foster youth: A primer for policymakers*, Washington, DC: The Institute for Higher Education Policy.

19. Brandford, *supra* note 18; Courtney et. al, *supra* note 18; McMillen, J.C., Auslander, W., Elze, D., White, T., & Thompson, R. (2003). Educational experiences and aspirations of older youth in foster care. *Child Welfare*, 82, 475-495.

- There is little communication, coordination and shared accountability between child welfare agencies and schools or school systems.

Similarly, research on the labor market outcomes of former foster youth has consistently found that far too many former foster youth are either not employed or employed sporadically. Moreover, when they do have jobs, their earnings are very low.²⁰ In part, these poor outcomes are a reflection of the link between education and employment. However, another contributing factor is the lack of employment-related services and supports for youth in foster care.

Recommendations

1. Child welfare agencies should develop and implement policies and practices predicated on the assumption that the education and employment outcomes of children and youth in foster care should be equal to or better than those achieved by their peers not in foster care.

There are no inherent reasons why foster youth cannot and should not achieve educational and employment outcomes equal to those of their peers. The percentage of foster youth who (a) complete high school and (b) graduate from college should be at least as high as the percentage of young people in the general population. By accepting this starting point as the presumed norm, foster youth will necessarily be more likely to reach the high bar we set for them.

2. Interventions aimed at improving the educational and employment outcomes of foster youth should address the needs of sub-populations that may face additional barriers to education and employment.

Particular populations of current and former foster youth face unique barriers to academic and employment attainment and advancement. These include children and youth of color and pregnant or parenting youth. Practices should be put in place to better address the needs of these populations.

3. Child welfare agencies, school districts and the courts should establish a clear division of responsibilities for addressing the educational needs of children and youth in foster care.

Too often responsibility for youth on the cusp of transitioning from foster care is segmented, with no one taking responsibility for the “whole” child. Coordination and collaboration are

20. Courtney et. al., *supra* note 18; Dworsky, A. (2005). *The economic self sufficiency of Wisconsin's former foster youth*, Children and Youth Services Review, 27, 1085–1118; Macomber, J., Cuccaro-Alamin, S., Duncan, D., Kuehn, D., McDaniel, M., Vericker, T., Pergamit, M., Needell, B., Kum, H., Stewart, J., Lee, C., & Barth, R. (2008). *Coming of age: Employment outcomes for youth who age out of foster care through their middle twenties*. Washington, DC: Urban Institute.

particularly essential to the educational successes of children and youth in foster care, but communication can be challenging and information sharing is often nonexistent.

These silos can be overcome by facilitating collaboration and coordination among the various agencies, departments and professionals attending to the needs of young adults in care. In particular, educational agencies and districts should designate a single point of contact to provide information and expertise when questions about the education of children or youth in foster care arise.

4. Child welfare agencies should ensure that every child or youth in foster care has an educational advocate who monitors that child's or youth's academic progress and intervenes when needs are identified.

The educational needs of children and youth in foster care may go unmet because no adult is monitoring their progress or advocating on their behalf. This may be because none of the adults in a child's or youth's life (e.g., birth parent, foster parent, caseworker, CASA) sees this as a role they are "responsible" for or otherwise need to play. Child welfare agencies must ensure that there is at least one adult in the life of each child or youth in foster care who will assume this responsibility.

5. Every court hearing for school-aged children and youth in foster care should include an inquiry about their education.

Requiring an education-focused inquiry at each court hearing is consistent with Section 204 of the FCA, which focuses on attendance and requires all Title IV-eligible foster children of minimum compulsory school age to be enrolled in school. The inquiry should always include questions about attendance and academic progress.²¹

6. Child welfare agencies and school districts should work together to ensure that foster children and youth remain in the same school even when they change placements, unless doing so is not in the child's best interest. To achieve this, child welfare agencies and school districts should create a blended funding stream that pays for the costs of transporting children and youth to their school of origin.

Educational stability is key to a youth's attainment and advancement in school. The FCA recognizes this by promoting key aspects of school stability. Section 204 of the FCA amends

"It is the end of my first term in college. All the students here talked about how they went home and spent time with their families during Christmas break. When they asked me what I did, I said I slept and wished that my family would come back to me."

Anonymous

21. See Technical Assistance Brief: Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care, available at <http://www.ncjfcj.org/content/blogcategory/363/432/>.

“I’m trying to pay rent,
find where my next
meal is coming from,
and still sit in school
and try to be focused.”

FosterClub member Desiree Moore

the definition of “foster care maintenance payment” to include the costs of transporting foster children and youth to the school in which they had been enrolled when they were placed in care.²² States should implement and expand upon these federal provisions.

When a change of schools is necessary, child welfare agencies and school districts should work together to ensure that foster children and youth are immediately enrolled and that their education records follow them to the new school.

7. Educational outcome measures should be added to the list of data elements that child welfare agencies are required to report to the federal government.

Currently, the Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements do not include education-related measures.²³ When revisions to the AFCARS requirements are made, it will be critical to add some basic information about the education of foster children and youth, such as measures of grade level, receipt of special education services and school mobility.

8. States should develop policies and programs that promote the postsecondary educational attainment of youth in foster care and provide them employment opportunities. These would include tuition waivers that current or former foster youth could use at any public college or university in the U.S.

Child welfare agencies should provide foster youth with opportunities to build assets in the form of individual development or matched savings accounts to pursue their education and employment goals after they leave care. The FCA requires child welfare agencies to help foster youth develop a personalized transition plan that includes specific options for education. This plan should also address financial aid needs.²⁴ Portable tuition waivers would increase the ability of foster youth to take advantage of opportunities for postsecondary education.

9. Congress should increase the annual appropriation for the Education and Training Voucher (ETV) program so that ETV funds are available to all eligible current and former foster youth.

While the FCA extended ETV eligibility to youth who exit foster care to adoption or kinship guardianship on or after their 16th birthday²⁵, it did not increase the amount of funding available to the states. Efforts should be made to address this gap and increase the ETV appropriation.

22. 42 U.S.C. § 675.

23. 45 C.F.R. § 1355.40.

24. 42 U.S.C. § 675.

25. 42 U.S.C. § 677(i)(2).

10. Colleges and universities should provide wraparound services to students who are current or former foster youth to increase their retention and graduation rates.

These services should include academic, financial and social/emotional supports as well as year-round housing. Existing campus support programs could serve as a model.

Health and Mental Health



Chapter Five

Background

Foster youth are more likely than youth generally to have health issues and are at greater risk for unrecognized and untreated medical conditions than the general population²⁶. Approximately, 80% of foster youth are living with at least one chronic medical condition and many experience more than one.²⁷ However, caregivers and workers often fail to identify health needs. Even when treatment needs are identified, changes in placements, limited and delayed access to services, and a fragmented health care delivery system make it difficult for children and youth to receive the medical care they need.²⁸

While most children in care have heightened health needs, adolescents are particularly vulnerable. Adolescents in foster care often experience eating disorders, dental disease, substance abuse issues, reproductive health concerns, asthma, and vision problems, among other conditions. The circumstances of placement, age upon entry to care and speed with which youth receive treatment are all associated with health outcomes.²⁹

The FCA provides states and localities with a general blueprint for responding to the health and mental health needs of youth as they enter foster care, while they are in care, and as they transition to adulthood. The FCA requires states to develop, in consultation with medical professionals, child welfare experts, and recipients of child welfare services a comprehensive and coordinated statewide plan for the provision of medical services, including mental health and dental care, for all children in foster care. The plan must include mental, physical, and dental health services as well as a detailed description of how and when all ini-

26. New York State Permanent Judicial Commission on Justice for Children, Ensuring the Healthy Development of Foster Children: A Guide for Judges, Advocates and Child Welfare Professionals at 3.

27. *Id.*

28. Patricia Lopez & Patricia Allen, *Addressing the Health Needs of Adolescents Transitioning Out of Foster Care* (2007), available at: <http://www.medscape.com/view/articles/563202> p 2.

29. Children who entered foster care at a younger age fare better; children who receive treatment early fare better; youth in foster homes fare better than those in congregate settings. Michelle Kessler & Barbara Jaklitsch. *In the Spirit of Chafee: Collaboration in Youth Services* (2004), <http://www.nrcys.ou.edu/yd/resources/publications/monographs/collabmono.pdf>.

Mental Health Status of Youth in Care

The single greatest medical need for adolescents in care is for mental health treatment.³⁰ How systems respond to this need not only affects a youth's adjustment while in care but also the youth's permanency options, transition to adulthood, and long-term social adjustment.³¹ For many youth, lack of attachments, insufficient social supports and poor self-esteem lead to risky behaviors and negative outcomes.³² Studies that have compared the rates of mental health issues for foster care alumni with the rates for youth never in care, foster care alumni have significantly poorer outcomes in every category. The Northwest Foster Care Alumni Study examined outcomes for 659 young adults with a history of out-of-home placement and found that, within the past twelve months:

- More than 20% had been diagnosed with major depression;
- More than 17% with social phobia; and
- More than 25% with post-traumatic stress disorder, a rate five times the general population and almost twice that of US combat veterans.

Source:

Casey Family Programs, *Abstract*, Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study, 2005.

tial and follow-up screenings will occur and how the youth's health care needs will be identified, examined and treated. The plan must also specify a method through which updates to the youth's condition will be recorded and shared, how the use of prescription medications will be monitored and how continuity of the youth's health care services will be maintained.

Recommendations

The following recommendations are aimed at maximizing the unique opportunity offered by the FCA to insure that the health and mental health needs of foster youth are adequately addressed and to encourage, to the fullest extent possible:

- Youth participation;
- Cross-system collaboration;
- Creation of new, creative, service responses; and
- Increased sensitivity to the unique challenges and issues confronting older foster youth.

30. Joan Durocher, *Youth with Disabilities in the Foster Care System*, CW 360, 2009, at 22.

31. California Institute for Mental Health, *Evidence-based Services in Mental Health for Foster Youth*, 2002, p. 13.

32. Lopez & Allen, *supra* note 28.

1. States should create a single, centralized entity to develop, coordinate and oversee the implementation of health care policies for children and youth in care.

Youth in care receive services from multiple systems that often do not communicate or coordinate with each other, resulting in missed or delayed opportunities to adequately meet the youth's needs. The FCA requires state agencies responsible for out-of-home care and for medical assistance to collaborate in developing statewide plans to identify and treat the health needs of foster youth and to provide ongoing coordination and oversight. The most effective way to ensure the ongoing coordination and oversight is through creating a single statewide point of accountability.

“My Medicaid lapsed, and I got the run around. I feel like stuff like that shouldn't happen. I just feel like it's unfair. They say “I'm here to help you, we understand you have a hard life,” but... in the end they aren't there.”

Anonymous

2. States must provide all children and youth with an initial medical and mental health screening immediately upon entering care, a comprehensive evaluation within the first month, and regular periodic examinations throughout their time in care.

Children and youth often enter care with no or few medical records. Many have not received regular medical care before entering foster care and have previously undiagnosed or untreated conditions. For others, the removal from home and entry into care is in itself profoundly psychologically, and even physically, traumatic. An initial medical screening, including dental, vision and mental health components, is essential to identifying immediate needs pending a comprehensive evaluation. For adolescents entering care, reproductive health must be part of all medical evaluations. This initial comprehensive evaluation should also determine whether further diagnostic evaluations are needed and establish a baseline for health services while in care.

Since almost all children and youth in foster care receive health services through some type of Medicaid coverage, the timeframes and requirements of Medicaid's Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program should provide a baseline for setting health-related standards. EPSDT was designed to comply with standards of pediatric care and address the special needs of low-income children.

3. States should develop an electronic “medical passport” for every child and youth in foster care.

One such program is the San Diego Child Health and Disability Foster Care Program, which utilizes a computerized Health and Education Passport. This is an interagency, interdisciplinary, collaborative effort between the Departments of Health and Social Services. The Passport maintains summaries of all health and education records for children in out-of-home

care. Nurses co-located at the Children's Services Bureaus coordinate the system.³³ Another comprehensive Health Passport system was implemented in Texas in 2008. This program maintains all medical information in an inter-active web-based format that allows doctors, the “medical consentor,” and guardians to review and as appropriate update records.³⁴

4. States should develop models of health care delivery that provide youth with a “medical home base” with professionals knowledgeable about issues confronting youth in care.

Health care providers often have little training on the unique issues of and challenges for adolescents in foster care.³⁵ Localities should identify existing programs, or train and develop a cadre of medical professionals who are comfortable working with adolescents and sensitive to the issues confronting foster care youth; creating “medical homes³⁶” available to youth regardless of placement or agency changes. Doing so promotes continuity of medical care and avoids fragmentation of services.

Establishment of a “medical home” for all children is a priority of the American Academy of Pediatrics and HHS, through its *Healthy People 2010* initiative, which promotes the ongoing, comprehensive care, for all special needs children, within a “medical home.”³⁷

5. Child welfare agencies should develop a new paradigm for providing services to older youth—“a young adult well-being model”—which includes physical and emotional health.

Adolescents have health and developmental needs that differ from younger children. They are dealing with rapid physical growth and emerging sexuality, confronting identity and relationship issues, developing new ways of thinking and reasoning, exploring personal options and testing boundaries. For youth in care, this normative process is complicated by their family history, experience in foster care, and more vulnerable health status. These youth need and deserve programs designed to meet their specific issues, staffed by workers who have the interest, training and expertise to engage and assist them in building skills to transition from care. They should be provided a comprehensive array of services that support emotional and physical health and include:

33. US Department of Health and Human Services, and Georgetown University Child Development Center, *Meeting the Health Care Needs of Children in the Foster Care System*, Site Visit Report, September 2000.

34. Patrick Michels, *Electronic Health Records Improve Care for Texas Foster children*, September 29, 2009, Government Technology.

35. Lopez & Allen, *supra* note 28.

36. “A “medical home” is a trusting partnership between a child, a child's family and the pediatric team who oversees the child's health and well-being within a community-based system that provides uninterrupted care with appropriate payments to support and sustain optimal health outcomes. Medical homes address preventative, acute, and chronic care from birth through transition to adulthood. A medical home facilitates an integrated health system with an interdisciplinary team of patients and families, primary care physicians, specialists and sub-specialists, other health professionals, hospitals and healthcare facilities, public health and the community.” National Center for Medical Home Implementation, www.medicalhomeinfo.org, 1, July, 2010.

37. American Academy of Pediatrics, *Policy Statement, Pediatrics*, V. 110, N.1, July 2002; Reaffirmed August 2008, at <http://aappolicy.aappublications.org/>.

- Training for agency staff and foster parents on the medical screening process and “red flags” that require follow-up, as well as responding to issues raised by youth;
- Connecting youth with caring adults and community-based organizations that can remain a support after discharge from care;
- Using an achievement-oriented, strengths-based approach to engaging youth in planning around health and mental health issues;
- Responding to the unique health care needs of special populations of youth in care, including pregnant and parenting teens and LGBTQ youth;
- Monitoring and addressing how agency policies and practices contribute and/or respond to disproportionality; and
- Assuring continued attention to the youth adult’s need for a permanent family even after turning 18.

“Aging out at 21 resulted in health care being an issue for me. I lost my coverage while I was still a student. As a student, I have countless expenses and cannot afford to take out a personal policy, so now I am a part of the 42.6 million Americans uninsured.”

FosterClub member Ashley

6. Youth must be given a “voice” in the treatment process.

Youth should be given the opportunity to articulate what qualities they would like and find beneficial in their health and mental health providers and what works and does not work. Their input should be solicited before, during and after each contact. Services provided “in-house” by foster care providers may be perceived by older youth as not confidential and private, resulting in the youth’s reluctance to engage in treatment. In whatever setting treatment is provided, youth should be clearly informed regarding confidentiality, consent, and access to their records.

Youth should be given the tools to become their own advocates. They need to be educated about their medical and mental health conditions, their treatment options, available medical services, and how to manage their conditions and maintain their health. For example, one model developed by the Connecticut Department of Children and Families (DCF) provides youth with highly trained mentors who offer assistance navigating and resolving issues while in care and afterwards.³⁸

7. The child welfare system should expand the definition of “therapeutic” services to supplement traditional mental health treatments and support healthy emotional development.

Many foster youth have had negative experiences in mental health treatment or are reluctant to see a therapist within a traditional mental health setting. For many youth, group sessions

38. Connecticut Department of Children and Families, Strategic Plan 1010-1014 and Summary, http://www.ct.gov/dcf/lib/dcf/homepage/pdf/strategic_plan_rev072010.pdfhttp://ct.gov/dcf/lib/dcf/homepage/pdf/dcf_strategic_plan_summary.pdf.

and task-focused activities involving art, music, recreation, sports, and problem solving, may provide an alternative to traditional one-on-one talk therapy. For others, mentoring may offer youth an opportunity to share feelings and experiences with a caring adult and to build skills. The key to these approaches is proper training for the adult involved.

Child welfare agencies should expand their use of evidence-based treatment programs that have proven effective with older youth and can be provided in the youth's home setting, e.g., trauma-focused cognitive behavioral treatment or multi-systemic treatment.

8. States must ensure that all youth leaving care have been given essential discharge exams, documents and services.

These include:

- A detailed transition plan that provides for health coverage and identifies specific providers for general medical, dental, vision, and emergency care;
- A comprehensive medical exam prior to final discharge;
- Copies of or access to medical and vital records (e.g., birth certificate, social security card, state ID); and
- As appropriate, assistance with the SSI application processes, including timing the application so that there is a seamless transition from IV-E to SSI support for the youth.

9. States should opt into the Chafee Medicaid waiver to provide health coverage until age 21 for youth leaving care.

The Medicaid expansion option allows states to extend health coverage until the age of 21 for youth 18 or older who transition from foster care to the community. This is an important opportunity to ensure that those youth who do not remain in care until age 21, have access to health care coverage. It is particularly important to do this prior to 2014. At that point, the 2010 federal Affordable Care Act provides for continued Medicaid eligibility for former foster youth up to age 26.

Crossover Youth



Chapter Six

Background

Crossover or “dual jurisdiction” youth are defined by the American Bar Association as abused or neglected youth with juvenile dependency cases who are charged with acts of delinquency.³⁹ Typically, youth who fall into this category are those who spend part of their lives in foster care and as they get older have interactions with the police.⁴⁰ Youth in foster care are at a high risk of being charged with an offense, either for criminal acts, or status offenses (acts that would not be “offenses” if committed by an adult, e.g., truancy, alcohol possession, etc.)⁴¹ and coming in contact with or entering the juvenile court system.

Unfortunately, the dependency and delinquency systems can operate in ways that have a negative effect on crossover youth.⁴² These youth are adversely affected by entry into the delinquency system, as they move from being seen as the “victim” who is sympathetic in the eyes of the law to a new status, that of juvenile “offender.” When they enter the delinquency system, they also risk losing many services, such as those provided through Title IV-E and Fostering Connections. They may also lose services related to the child’s foster care placement, health, well-being, and permanency; and services or supports related to maintaining sibling relationships through ongoing and regular visitation. In addition, a youth’s involvement in the delinquency system compels systems to rethink permanency planning.

Recommendations

1. Laws, court policies, and practices should reduce the ease with which dependent youth enter the delinquency system,

39. AMERICAN BAR ASSOCIATION, FEBRUARY 2008 ABA POLICY AND REPORT ON CROSSOVER AND DUAL JURISDICTION YOUTH (2008), <http://www.abanet.org/youthatrisk/crossoveryouthpolicy.html>.

40. *Recommendations from the ABA youth at risk initiative planning conference*, 45 Fam. Ct. Rev. 366, 366 (2007).

41. States treat status offenses in different ways. Some include them in the definition of dependent child; some under delinquent child; and many have intermediate categories, such as “children in need of supervision.”

42. AMERICAN BAR ASSOCIATION, *supra* note 39.

and they should also increase the ability of delinquent youth to be reclassified as dependent youth.

It is too easy for children to cross over from the dependency to delinquency system; and it is too difficult for youth in the delinquency system to cross to dependency, even when it is appropriate given the systems' goals and underlying public policies. This is especially problematic for youth whose life chances may be improved by the FCA. While this problem can be alleviated through improved screening, assessment and collaboration, jurisdictions must also address it through interagency memoranda of understanding, regulations that govern service providers, court rules, and leadership. In addition, strong prevention programs for dependent youth—and strong policies that reduce the likelihood that child welfare service providers will rely on law enforcement to manage dependent youth behavior—are essential for success.

Prevention of crossover status should have the highest priority and can be supported by continuing education of service providers, judges and lawyers on:

- The effects of trauma;
- Training and application of knowledge related to resiliency, brain development, resource development and sustainability; and
- Principles of restorative and therapeutic justice and how they can be applied in the child welfare system.

2. Funding reforms should be considered that will avoid the necessity of transferring a youth from one “system” to another for service accessibility, while financial restrictions that inhibit all systems' abilities to best serve children should be eliminated.

a. Funding should not drive the choice of system in which the crossover child is maintained and provided services.

One of the main differences between the dependency and delinquency systems is how each is funded. While some jurisdictions provide for blended funding streams—especially for youth who are in non-secure settings—most do not. There is a lack of efficiency and funding alignment that takes place in crossover cases. Whatever the funding system, youth should receive services from the most appropriate system, given the system's goals and the traits, behaviors and needs of the youth, and the continuing need for all youth to have permanent family.

b. Funding should be sufficient for crossover children's needs, regardless of the system in which they are being served.

Youth need adequate services from the system in which they are appropriately placed. This means ensuring funding for a continuum of services, from community-based to residential, and that addresses health care, behavioral health, education and other needs of

the child. Thus, state and federal funding barriers (e.g., those associated with funding under Title IV-E) should be minimized. A wide array of adequately funded services will ensure that youth are not being misdirected to better financed, but inappropriate systems and services.

3. Policy discourses about delinquent youth must be reframed, so that services for them are not limited to those simply serving “bad kids.”

Public officials and service providers should develop and deliver services that, while tailored when necessary to protect the public—nevertheless are built on the premise that delinquent and dependent youth often have similar, if not identical, needs. This will mitigate the need for the dependency system to refer youth to the delinquency system, and will facilitate movement of delinquent youth, when appropriate, to the dependency system.

“It’s not fair, it really isn’t. I just have to do it for myself. More support would help because it’s the foundation of everything. Without it, you’re lost.”

Anonymous

4. Jurisdictions should develop coordinated assessments and services between the delinquency and dependency systems to focus on the needs of and outcomes for crossover youth.

The dependency and delinquency systems’ missions, modalities, and languages are often a barrier to collaborative work on behalf of crossover children. Systems can improve collaboration by using common screening and assessment tools, and by developing memoranda of understanding that incorporate the dependency paradigm into the delinquency system. Overcoming the systems’ different missions is made more difficult by a lack of cross-system collaboration, communication, cooperation, and accountability. Collaborative meetings at the policy level are important to overcome these gaps. Collaboration is also crucial among key decision makers from the dependency system, delinquency system, courts, schools, and other stakeholders. The child and family voice is also key to setting a cross-system agenda to improve outcomes for crossover children.

5. Crossover youth data collection should be a priority.

The dependency and delinquency systems often keep data separately, and don’t track youths’ movement between systems, youth and family strengths, cross-system service needs, costs, and outcomes. Improved and common screening and assessment tools create opportunities for gathering common data from both systems. Targeted funding for common data collection tools and dedicated staff resources is needed. Data review and assessments should be a part of collaborative meetings and coordination between systems.

6. Judicial and child welfare leaders and professionals should ensure that delinquent youth, in appropriate circumstances, are adjudicated dependent before their 18th birthday to maintain eligibility for services in the dependency system.

Dependency system services may not be available to youth, if they are not adjudicated dependent before their 18th birthday. Jurisdictions should have policies and matching systems for case review and scheduling to ensure that youth who need and are eligible for dependency services between ages 18 and 21 are adjudicated dependent. This will make important FCA supports available to youth who would otherwise lose access to them.

7. Arrest or conviction after a young adult's 18th birthday should not preclude continuation of or return to the dependency system.

Youth who are arrested or adjudicated delinquent experience many “collateral consequences” that affect opportunities later in life. There are even more consequences for young adults arrested after their 18th birthday. The FCA contemplates supports for dependent youth between ages 18 and 21, which may include delinquent youth who have the option of entering the child welfare system. Jurisdictions must ensure that those supports do not disappear as a collateral consequence of arrest, either before or after the youth’s 18th birthday. Although some arrests will lead to incarceration past age 21, eliminating available supports through FCA, most arrests, or even convictions, will not change youths’ need for extended support through the dependency system.

8. Dependency and delinquency system caseloads must be reasonable to effect change.

These recommendations create a labor-intensive set of tasks. Judges will need more time for case review. Lawyers and guardians *ad litem* will need to coordinate advocacy efforts. Case workers and probation officers will be responsible for more screening, assessment, dispositional planning and case reviews. The caseloads of judges and child welfare professionals should be set at a level that will enable these tasks to be preformed competently and effectively.

9. Cross-system protocols should include information-sharing mechanisms that provide consent and confidentiality safeguards while promoting service coordination.

Protocols should address information sharing for purposes of:

- Individual case planning and decision-making;
- Data collection;
- Law, policy and program development; and
- Performance measurement and program evaluation.

Confidentiality barriers should reasonably allow key professionals and decision makers to access needed information, while protecting and limiting the use of sensitive, shared information.

10. Jurisdictions should take immediate steps to change practice related to cases involving youth involved in more than one “system.”

There are steps jurisdictions can take before policies are changed. For example, they can:

- Undertake an aggressive approach to utilizing one judge, one attorney, one caseworker-one child models;
- Focus on common expectations even in systems with different missions; and
- Align delinquency and dependency case plans and case reviews.

Youth Engagement and Youth Focused Systems



Chapter Seven

Background

To improve outcomes for older and transitioning foster youth, they must be actively engaged in case planning, court hearings, and child welfare policy development. Active engagement brings new information and new perspective on professionals' information, increasing the likelihood of better decisions and policy making. It also adds to a youth's sense of fairness and enables the youth to assert ownership over her future. On a national level, there has been a movement toward more youth participation in each of these areas. Support for this has come from the American Bar Association Commission on Youth at Risk, the Pew Commission on Children in Foster Care, other entities of the American Bar Association, the United Nations Convention on the Rights of the Child, numerous scholars and practitioners, and federal guidelines.

The recommendations below focus on three aspects of youth involvement: case planning, court hearings, and policy development. There are positive outcomes at each level when youth are actively engaged:

- Case plans are more youth centered and make better sense;
- Court hearings are more meaningful and result in better decisions; and
- Policies better represent youth's needs and interests.

Recommendations

- 1. Involving and effectively engaging youth in permanency planning, court hearings, and policy development will require all involved professionals to make basic and fundamental accommodations to facilitate youth involvement.**

Youth who are in foster care or just recently graduated share compelling experiences and provide powerful reasons why youth must be involved. When youth cannot be present, dig-

ital stories of current and former foster youth can be used to share their voice. In the face of multiple placements and schools, sporadic medical services, and permanency planning that does not involve them, youth feel powerless and voiceless. No professional should endorse this.

Youth can most eloquently share how disempowering the system can be and are in the best position to persuade child welfare professionals that fundamental system changes are in order.

2. Professionals should effectively engage youth in all aspects of their cases and should have the requisite training and skills to ensure that youth are not simply present but actively participate.

Professionals serving youth must believe that youth involvement and engagement in their case planning, court hearings, and policy development are important ways to improve youth outcomes. If the professionals are not “bought into” the idea that youth engagement is critical then efforts to require youth to be involved will not be successful.

Youth can and should be engaged in many different areas and settings:

- Family team meetings/family group decision making;
- Court hearings;
- Youth leadership councils;
- Youth support groups;
- Court improvement project workgroups;
- Legislative advocacy; and
- Policy development.

Often there is no organized structure to allow youth to engage nor is there any place to make youth engagement meaningful. As a result, child welfare programs are often not consumer driven or youth focused.

Professionals who create child welfare programs are not always knowledgeable about youth development, do not consult youth, and may not support or promote youth involvement. There is still a great deal of resistance from professionals to youth involvement at all levels. Professionals too often don’t encourage youth to attend court hearings and youth are rarely involved in policy development. Professionals typically don’t tell youth how engagement in case planning, court hearings, and policy development is for their and other youth’s futures. And even when youth involvement is sought, many professionals do not know how to engage youth in age appropriate ways.

a. Fundamental training delivered when a child welfare professional or advocate initially enters the field must involve education on why and how to engage youth in permanency planning and court hearings.

There is a high turnover rate among child welfare professionals. When new professionals enter the field, they should be taught that without youth involvement the plan is not likely to be successful and may result in further harming the youth and family.

There should also be more skills based child advocacy training in post secondary education. Aside from basic theory, students should be required to work with youth before they earn degrees in social work and child advocacy.

b. Child welfare advocates and professionals should receive ongoing training on methods for effective communication with youth and ways to effectively support and promote youth engagement.

Attorneys, judges, and other child welfare professionals should be required to attend both initial and ongoing trainings from clinicians and experts on issues including:

- Child development;
- Child interviewing skills;
- Helping youth figure out what they want;
- Listening skills;
- Cultural competency; and
- Need for permanency and life-long connections.

Child welfare professionals can also benefit from the insights of more experienced advocates. There should be a formal mentoring program or a list serve dedicated to providing assistance to new child welfare professionals for each specific discipline. When they see how others successfully involve and engage youth they will be more likely to adopt best practices.

3. Youth must be provided with the training, information, knowledge and power to become engaged participants in court, case planning, and policy arenas.

Youth can feel overwhelmed. They are not always prepared for what to expect in court or elsewhere and they don't always have realistic expectations about what they can accomplish.

Most youth learn to self advocate from their families. If they are not getting that education at home, child welfare professionals must provide it. Otherwise, youth will not know on their own why it is important to be engaged and how to effectively advocate for their own interests. Since there is no general handbook on how to be in foster care and how to become involved in case planning, court hearings, or in policy, training, support and encouragement must be provided to youth to enable them to be effective advocates.

Youth should also be trained on strategic sharing. The youth own their stories and should only share their experiences when they are comfortable and when they feel they are benefiting from it.

“Foster youth have to do so many things for themselves that other teens don't have to worry about, like calling your social worker for permission to get a job or meet with your siblings, and speaking up for yourself in court. You have to work really, really hard to get support and what you need from the system.”

Anonymous

“I was sixteen years old and eight months pregnant when I learned about the Youth Advocacy Center (YAC)... I was taught self advocacy and how to set future goals for my life beyond foster care... today, I apply what I learned... to my everyday life.”

FosterClub member Allison H.

a. Youth must be told consistently that they have the right to be involved in their planning and in the court process.

Youth should hear this message and be informed of their rights from the moment the child welfare system gets involved. One page reminders of rights and responsibilities should be posted wherever youth regularly congregate (foster homes, group homes, independent living programs, law offices, courtrooms).

b. Agencies should develop age-appropriate training and written materials to inform youth about their rights and provide descriptions on how they can be involved.

Youth should be provided samples of case plans and court orders so they know what to expect before entering a case planning meeting or a hearing. In addition to written training materials, youth should be both formally and informally educated on their rights and how to enforce them. Independent living programs hold regular classes on fi-

nances, hygiene, and parenting skills. They should also be required to hold classes for youth on how to be involved in case planning, the court process, and policy development. Youth advisory councils should have a curriculum for youth that includes hands on youth engagement training.

Youth should also be told who the different players in the child welfare system are and about their roles, including who the judge is and what the judge does for the youth. Other areas the youth should be trained on before becoming involved in court hearings and case planning meetings include:

- What to wear;
- Where everyone sits;
- How to speak to a judge or casework supervisor;
- How to get in touch with the advocates (attorneys, case workers, etc); and
- What may be said in the courtroom or case planning meetings about past events, school, and future decisions.

c. The court, the child welfare agency, or the child’s attorney must provide age appropriate notices to youth concerning upcoming meetings and hearings.

Professionals get notice of most events that impact the child in foster care. They receive court notices, foster care review board notices, emails requesting input on legislative changes, etc. Most jurisdictions, however, lack a consistent method for youth notification. They rely on the professionals to use their discretion in letting youth know about important decision making events.

Youth should be involved in creating these notices. The notices can be sent to the fos-

ter home, the group home, or wherever the youth regularly receives mail or gets information. The notices must be sent timely so youth have an opportunity to prepare.

d. Lawyers and advocates should help youth determine what they want, how to ask for it, and the best way to share their experiences effectively.

Youth can be more effectively involved if they have meaningful representation. Youth must have someone who keeps their confidences and zealously advocates for their wishes.

Unfortunately, however, there is not enough client-directed advocacy. Advocates can help youth speak up and voice their opinions. Professionals are often not tolerant of youth making decisions adults don't agree with. For youth to engage meaningfully professionals must be willing to accept that youth may say things they do not want to hear.

4. Child welfare professionals should develop and promote services and programs that support effective youth involvement.

Youth need a wide array of support mechanisms to facilitate and enable their involvement. These incentives and support might include:

- Compensation for travel;
- Compensation for time and work;
- Assurances that time spent being involved will not negatively impact school attendance (e.g. give extra credit for a day in court);
- Meetings and court dates set at times when youth can attend and not miss school/work; and
- Constant reminders that their help in policy development will impact future youth.

a. Contracts for services should include a requirement for service providers to include youth as a condition of payment.

All service providers, when developing case plans, must include youth in discussions and decision making. Youth should be driving discussions about their future. Child welfare agencies that contract with private providers should ensure that youth are involved by making it a condition of the contract and of payment. The child welfare agency should monitor whether youth are involved and consider the contract met and the service satisfactorily provided only if the youth was significantly involved in decisions about her future.

b. Youth and professionals should use VirtualTeen.org, Facebook, and other internet based social networking sites to learn and teach about youth engagement.

Youth have become increasingly computer savvy. Youth can blog about their experiences in court and with policy development. Youth can inform other youth how to get involved. Professionals can use the sites to educate youth on their options for involvement.

5. Youth who have been involved in the child welfare system should educate their peers on the benefits of being involved.

Youth will be more likely to listen if former foster youth who have been through similar experiences talk about why it's important. There is a stigma associated with being in foster care. Youth feel it more when they are isolated and don't have peer support. Special populations (lesbian, gay, bisexual, transgender or questioning (LGBTQ) youth; immigrant children; and minorities) feel particularly alone and isolated. Adults have peer support for everything but it is rare to see support groups for youth who want to be involved or want to learn. Peer support groups can help youth not feel alone.

a. Child welfare professionals and the broader community must dispel stigmas associated with foster care by making the plight of foster youth more visible and helping promote alumni and peer support networks.

Some youth are hesitant about becoming involved because of the stigma attached to foster care. Youth have reported that people assume they have done something wrong if they are involved in the child welfare system and the court.

Alumni must have opportunities to meet and socialize with other alumni. This allows youth to feel connected, not alone, and less stigmatized. The state and child welfare agencies should create these meeting opportunities and financially support youth in attending youth conferences.

b. States and communities should support youth organizations like Foster Club, Foster Care Alumni of America, youth leadership councils and other organizations that assist youth in becoming engaged.

Successful former foster youth should act as role models and be available to current and recent alumni. Seeing people who have been in foster care and are now successful can encourage young people as they navigate the foster care system.

6. Child welfare professionals should be required in standards of practice to meet with and involve youth in their permanency planning and in other aspects of their case.

Foster youth generally do not have the resources to demand that they be involved or to insist that they be brought to court hearings. There must be a check on the advocates and child welfare professionals to ensure that youth are effectively engaged.

a. Judicial standards and practices should promote youth engagement.

Judges should be expected to regularly inquire about and document each youth's attendance at court hearings and if the youth isn't present inquire into and document the reasons for the youth's absence. Judges should consider postponing hearings if the youth wanted to attend but was not given proper notice, provided transportation or has an unavoidable scheduling conflict precluding court attendance.

b. Outcome measures should assess the effectiveness of youth engagement, and professionals should be held accountable by the court and their superiors.

There are no studies on outcomes when youth are appropriately engaged. The child welfare system must collect national and local data on how and when youth participate and the challenges and benefits that flow from that participation. This data can be used to get more resources to aid effective youth engagement. They should measure youth satisfaction when they are involved and whether outcomes improve when youth are involved. Data will also help convince other child welfare professionals how important it is to include youth.

c. The Child and Family Service Review (CFSR) process must better involve youth in assessing child welfare challenges and crafting effective systemic solutions.

The Children's Bureau interviews youth during the CFSR process but rarely involves them in reviewing the results and discussing how to better serve families. Youth are not required to be involved in program improvement plan development. The process should be modified to create a meaningful role for youth input and involvement.

State Implementation of the Fostering Connections Act



Chapter Eight

Background

The FCA presents a number of opportunities for states to enact policies and practices that can improve outcomes for older youth in foster care. The voices of young people who often age out with limited connections to family, few resources, and face many challenges including homelessness and unemployment resonated with policymakers as they developed the most comprehensive child welfare law in years. The needs of older youth are echoed throughout the FCA, from the extension of Chafee Educational and Training Vouchers (ETV) benefits to the phased-in removal of the link between adoption assistance and the income of biological parents whose rights have been terminated. This Report also addresses specific provisions of FCA related to the housing, permanency, education and health needs of older youth. This section will help state policymakers and other community based leaders understand and overcome three common challenges that states may face in implementing the older youth sections of the law.

Identify which Sections of the Law are Mandatory versus Optional

State policymakers and community stakeholders must first identify which older youth sections of FCA are state mandates and which are optional. Certain mandatory sections of the law apply globally to all children in care but have a particular impact on older youth. In many other areas, flexibility is critical to effective implementation. States desire flexibility, but also recognize that too much flexibility in federal law may lead to future challenges if state-implemented programs are later deemed ineligible, inappropriate or outside of federal guidelines. Likewise, vague guidelines could result in inconsistent interpretations across regions.

“The Fostering Connections to Success and Increasing Adoptions Act of 2008 is one step closer to each state reaching its goal of permanency for all of their youth. Making sure that funding is available for family members who want to take in their youth but wouldn’t be able to do so without financial assistance is no longer an obstacle. Financial resources are just as important as youth establishing permanent connections. It is often what bridges the gap.”

FosterClub member Janessa

As states receive additional federal guidance, they will need to make adjustments in their own policies and practices. For instance, if a state chooses to extend foster care to age 21, questions remain about whether foster care payments can go directly to foster youth, unless the youth is in a particular placement where the agency decides to make payments directly to them.⁴³ If they can make direct payments, a state must address such issues as whether direct payments are developmentally appropriate, and what, if any, policy and practice changes are required. The answers to these questions may raise structural questions including how a state would make the necessary changes to state fiscal structures to allow for direct stipends to youth. They may also lead to new, additional costs.

Funding Optional Provisions of FCA

The second major challenge is funding. Although funding is a challenge for the implementation of the mandatory provisions, it is particularly difficult for state policymakers as they consider adopting the optional provisions. In the current economic climate, many states may be reluctant to pursue the option to extend foster care to 21 based

on a perception that it is cost prohibitive. In addition, many states believe that they are already serving this population through independent living programs and other programs for transitioning youth and do not see the need to implement it, especially with the potential added costs.

Managing Potential Unintended Consequences of FCA

All youth in care—adolescents, teens, and young adults—need connections to loving and permanent families to thrive in adulthood. The option to extend foster care to 21 raises concerns that it will create a disincentive to finding permanency for older youth. There also is concern that in the absence of thoughtful planning and an integrated approach to implementing all sections of FCA, the negative outcomes associated with aging out of foster care will simply be delayed rather than mitigated. In addition, there is concern that new policies will not serve the unique developmental needs of older youth in care (particularly those with disabilities), increasing the odds that many youth will be dependent on the state post-emancipation.

43. In Program Instruction ACYF-CB-PI-10-11, issued on July 9, 2010, the Children’s Bureau indicated that “For a youth age 18 or older living independently in a supervised setting, there may be situations in which no actual provider or other child placing intermediary is involved. In those situations the title IV-E agency may (but is not required to) pay all or part of the foster care maintenance payment directly to the youth.”

44. The ACF guidance is available at http://www.acf.hhs.gov/programs/cb/laws_policies/implementation_foster.htm (last visited on October 1, 2010).

Finally, states must evaluate how they will utilize the flexibility granted to them by the U.S. Department of Health and Human Services, Administration for Children and Families (HHS) in their recent guidance on the FCA.⁴⁴ In weighing their options, states should seek to avoid exacerbating existing inequities in the system. Often those youth who face the greatest obstacles in foster care—youth involved with the juvenile justice system, youth with disabilities and other special needs, LGBTQ youth, and youth of color, for example—are those who are left behind. States should seize the opportunities the FCA provides to rectify these inequities.

Recommendations

1. States should identify which areas of the FCA are mandatory and which are optional and take affirmative steps to implement all of these provisions.

There are a number of resources to help states and communities identify which sections of the law are mandatory and which are optional. The Fostering Connections Resource Center website (www.fosterconnections.org) includes a number of fact sheets and resources that can help states understand the older youth sections of the law, including a Frequently Asked Questions paper on the older youth sections and a timeline on the effective dates of various provisions. For optional sections of the FCA, including subsidized guardianship and the extension of care to age 21, states should review their policies and practices to determine whether they already provide such services and assess how they can align their state program to federal guidelines to move toward full implementation of all FCA provisions.

2. HHS should provide more structured guidance to states on certain key issues.

In particular, states need guidance on:

- How to implement the educational provisions for older youth;
- What 90-day transition from foster care plans should include;
- What the role of courts should be in overseeing and implementing FCA-related laws;
- What data states should collect to determine the effectiveness of FCA-related laws;
- What additional training states should provide to child welfare professionals; and
- How to continue permanency planning and services beyond 18.

3. HHS should allow flexibility in how states comply with certain provisions of the FCA.

Certain definitions in the FCA should be broadly interpreted to reflect the wide variety of issues encountered by transitioning youth. For example, a “supervised independent living situation” could be construed to include dorm rooms and apartments. Also, flexible definitions for “educational stability” and “medical condition” might prove crucial to youth.

4. States should provide training to various stakeholders to help them implement FCA.

States can use Title IV-E training monies to cover training-related expenses. States should utilize groups such as Foster Club and others to train the following stakeholders about their roles in implementing FCA, as well as what services and assistance youth are eligible for:

- Youth;
- Child welfare agencies and other involved state agency staff;
- Judges, other judicial administrators, attorneys, and CASA; and
- Child and youth advocates.

Educating child and youth advocates will help them hold states accountable for returning cost savings gained through other FCA provisions (such as subsidized guardianship) to child welfare funding for older youth. States and advocates should also work with youth and the general public to educate them on the law and engage them in creating political will for supporting older youth despite the tendency to invest in younger children.

5. HHS should provide states with information and updates on state challenges and best practices for policy and implementation.

The Fostering Connections Resource Center is a valuable vehicle for disseminating such information. Special populations such as pregnant and parenting foster youth might present particular challenges where one state's progress could be invaluable information for others to use.

6. HHS should provide states with assistance and guidance to clearly and accurately calculate the costs and savings associated with implementing various FCA provisions, including an examination of FCA areas that may offset costs.

The projections about high costs and existing services for older youth may be associated with false assumptions about eligibility and youth participation. Many state programs offer limited assistance to targeted populations. In some states, there is variation between counties. The federal law was designed to streamline various programs and offer assistance to those youth in greatest need. For states to prioritize implementation, they must have a clear understanding of their existing assistance policies and programs to project the fiscal impact of any additional supports. Assistance from HHS might include:

- Helping states quantifying actual costs,
- Providing states some type of matrix/model to project costs, savings and expenditures; and
- Using the Fostering Connections Resource Center as a dissemination and communication vehicle.

In addition, states should take steps to ensure that cost savings generated through other FCA provisions (such as subsidized guardianship reimbursements from the federal rather than state governments) are redirected to assist older youth.

7. HHS should support state efforts to phase in the option to extend care to youth over age 18 until all youth are covered by a specified date and to allow youth to reenter care up until age 21.

A range of flexible options related to eligibility should be made available to states as they seek to craft supports for youth up to age 21. For example, state legislators and governors concerned about fiscal constraints should be encouraged to incrementally phase in populations of youth eligible for assistance so that as state economic situations improve, states may provide assistance to additional youth over time. States lawmakers and agencies should also be allowed to let older youth re-enter care and be eligible for support [*See more information on this topic in Chapter 2 Courts and the Legal Process*]. Finally, states should be able to make payments directly to youth in a developmentally appropriate manner.

8. Youth involvement in FCA planning and implementation should be encouraged, expected and supported.

The inclusion of youth in the planning and implementation of the older youth sections of FCA not only helps states design a set of services and supports that best meet the needs of older youth but also is an important youth developmental opportunity. Child welfare agencies should allow youth to be involved in program design. Courts and child welfare agencies should give youth a significant voice in decision-making, and should consider the social and emotional needs of this population as part of youth engagement and development and oversight of transition plans [*See more information on this topic in Chapter 7 Youth Engagement and Youth Focused Systems*].

9. Courts should consider the older youth sections of the law as part of the total set of opportunities presented by FCA.

The FCA provides a wide range of opportunities to intervene and to help youth connect with siblings and other relatives early in the case, and widens the array of permanency options for all children in care with special attention to older youth. States should consider how to structure policy for older youth so that there are incentives for permanency. In addition, the option to extend care to 21 should not mean that states will not pursue permanency for youth between the ages 18-21. All youth, regardless of age, need a permanent family or connection. Youth, caseworkers, and the courts should be trained to understand the complex needs of this population and the unique opportunities to pursue permanency for older youth in care.

10. Combating disproportionality should be a priority throughout states' planning and implementation of FCA.

Many states have experienced the significant impact of disproportionality and disparity on children of color in child welfare systems. State legislators, governors, child welfare agencies, advocates, and youth should work together to ensure that implementation of FCA's older youth provisions positively impact children of color including tribal members, and directly and aggressively addresses economic and racial disparities.

Appendices

Appendix 1: Summit Events and Issues Addressed

Summit Flyer

Agenda

General Questions

Specific Breakout Questions

Appendix 2: Summit Facilitators, Speakers, and Participants

Breakout Co-Facilitator List

Facilitator and Speaker Biographies

Participant List

Appendix 3: Summit Remarks

Ret. New York Chief Judge Judith Kaye

Congressman James McDermott (D-WA)

Assistant Secretary for Children and Families,
Department of Health and Human Services, Carmen Nazario

Appendix 4: Fostering Connections Resources

National Foster Care Coalition Fostering Connections Act Summary

Sample State Legislation

Appendix 5: Relevant ABA Policies

ABA Policy 2010

ABA Policy 2007

Appendix 1: Summit Events and Issues Addressed

Summit Flyer

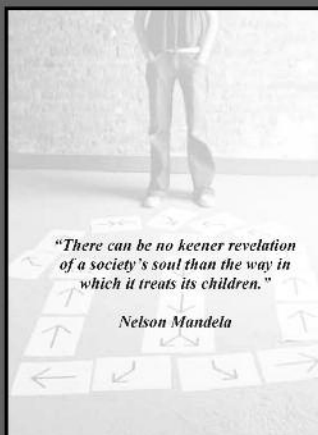
CHARTING A BETTER FUTURE FOR YOUTH

A SPECIAL INVITATION TO
A NATIONAL SUMMIT ON EFFECTIVE
IMPLEMENTATION OF THE
FOSTERING CONNECTIONS TO
SUCCESS AND INCREASING
ADOPTIONS ACT

THURSDAY, APRIL 15TH 2010
KICK-OFF EVENING RECEPTION

FRIDAY, APRIL 16TH, 2010
ALL DAY FORUM

ROOSEVELT HOUSE PUBLIC POLICY
INSTITUTE AT HUNTER COLLEGE NEW YORK,
NY



SPEAKERS

Carmen R. Nazario
Assistant Secretary for
Children and Families
Department of Health and
Human Services

Rep. Jim McDermott (D-WA)
Chairman of the Income
Security and Family Support
Subcommittee of the House
Committee on Ways and
Means and original
cosponsor of Fostering
Connections to Success and
Increasing Adoptions Act

David Berns
Executive Vice President
Child and Family Programs
Casey Family Programs

Hon. Judith Kaye (ret.),
Skadden, Arps, Slate,
Meagher & Flom, LLP

Carolyn B. Lamm,
President, American Bar
Association, White & Case,
LLP

**Youth and Alumni from
Foster Care**

A WORKING DAY FOR OVER 100 INVITED LEADERS AND EXPERTS



The recently enacted "Fostering Connections to Success and Increasing Adoptions Act (PL 110-351)" provides federal resources to support foster youth beyond age 18. This landmark legislation creates new opportunities for addressing many of the ongoing challenges that states face in meeting the unique needs of transitioning youth. This invitation-only summit will bring together over 100 leaders and experts for a day-long "action-oriented" dialogue that will inspire, educate, and produce a blueprint of recommendations for national and state leaders to chart effective changes and implement new approaches for addressing the unique needs of this young adult population.

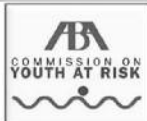
FOCUS AREAS

*The Court & Legal Process for Older Youth
Education, Higher Education & Employment
Permanency & Adult Connections
Youth Engagement & A Youth Focused System*

*Placement Options & Housing Challenges
Health & Mental Health
Crossover Youth
State Implementation & Funding Challenges*

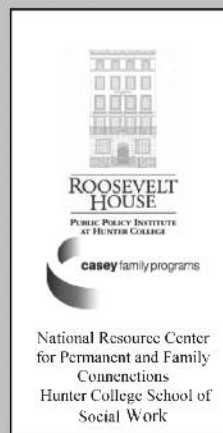
SUMMIT PLANNING ORGANIZATIONS

ABA Center on Children and the Law * ABA Commission on Youth at Risk * ABA Criminal Justice Juvenile Justice Committee * ABA Commission on Homelessness and Poverty * American Humane Association * American Public Human Services Association * Association of Family and Conciliation Courts * Casey Family Programs * Center for Children & Youth Justice * Center for Law and Social Policy * Chapin Hall at the University of Chicago * Children's Defense Fund * Child Welfare League of America * First Focus * The Finance Project * Foster Care Alumni of America * Hofstra University School of Law * National Resource Center for Permanent and Family Connections Hunter College School of Social Work * Juvenile Law Center Philadelphia * National Court Appointed Special Advocates * National Conference of State Legislatures * National Council of Juvenile & Family Court Judges * National Center for State Courts * National Foster Care Coalition * National Governors Association Center for Best Practices * National Resource Center on Legal and Judicial Issues * New York State Permanent Judicial Commission on Justice for Children * O'Melveny & Myers LLP * Partners for Our Children * Roosevelt House Public Policy Institute at Hunter College * Sullivan & Cromwell LLP * National Resource Center for Youth Services University of Oklahoma * UCLA School of Public Affairs * University of Chicago Law School



For more information about the Summit agenda, Fostering Connections, directions to Roosevelt House Public Policy Institute and additional detailed information and resources go to: <http://www.abanet.org/youthatrisk> and <http://www.hunter.cuny.edu/socwork/nrcfcpp>

For specific questions about the Summit contact Alisa Santucci, Director, ABA Commission on Youth at Risk at: Email: santucca@staff.abanet.org Phone: (202) 662-1518



Appendix 1: Summit Events and Issues Addressed

Agenda

Charting A Better Future for Youth A National Summit on Effective Implementation of the Fostering Connections to Success Act

Roosevelt House Public Policy Institute at Hunter College

47-49 East 65th Street, New York, NY, 10065 (212) 650-3174

Thursday, April 15th 2010

5:00 pm **Pre-Registration**

5:30 pm **Welcome**

Laura Farber- *Chair, American Bar Association Commission on Youth at Risk*

Jennifer J. Raab- *President, Hunter College*

Hon. Judith Kaye (Ret.)- *Chair, New York State Permanent Judicial*

Commission on Justice for Children, Member, ABA Commission on Youth at Risk

Carolyn B. Lamm- *President, American Bar Association*

6:00 pm **Plenary Panel**

- Hon. Patricia M. Martin- *Presiding Judge, Circuit Court of Cook County, Illinois*
- JooYeun Chang- *Director of Public Policy, Casey Family Programs*
- Mark Courtney- *Director of Research and Development, Partners For Our Children*
- Erwin McEwen- *Director, Illinois Department of Children and Families*
- Theresa Moy- *Congressional Research Service, Domestic Social Policy Intern*
- Moderator: Miriam Aroni Krinsky- *Lecturer, UCLA School of Public Affairs; Adjunct Professor, Loyola Law School and Member, ABA Youth At Risk Commission Advisory Council*

Panel participants will discuss:

- Key provisions of the Fostering Connections Act
- Current status of implementation in early implementing states
- Challenges and successes in states that have endeavored to move forward with implementation efforts
- Data from states already extending support beyond the age of majority
- Cost/benefit analyses and strategies for addressing fiscal challenges

7:30 pm **Reception**

Co-Sponsored by Skadden, Arps, Slate, Meagher & Flom LLP, New York, NY

Charting A Better Future for Youth A National Summit on Effective Implementation of the Fostering Connections to Success Act

Roosevelt House Public Policy Institute at Hunter College

47-49 East 65th Street, New York, NY, 10065 (212) 650-3174

Friday, April 16th 2010

8:00 a.m. Registration

8:30 am Welcome

Laura Farber- *Chair, American Bar Association, Commission on Youth at Risk*
David Berns- *Executive Vice President of Child and Family Services, Casey Family Programs*

8:45 a.m. Opening Remarks

Carmen R. Nazario- *Assistant Secretary for Children and Families, Department of Health and Human Services*
Rep. Jim McDermott (D-WA)- *Fostering Connections Act Sponsor*

9:15 am Overview of the Day's Events

Miriam Aroni Krinsky- *Lecturer, UCLA School of Public Affairs; Adjunct Professor, Loyola Law School and Member, ABA Commission on Youth at Risk Advisory Council (Summit Co-Facilitator)*
Theo Liebmann- *Clinical Professor of Law and Director of Hofstra Clinical Program, Hofstra Law School (Summit Co-Facilitator)*

9:30 a.m. Breakout Sessions

Participants will meet in one of eight assigned breakout groups; breakout topics will include:

- *Crossover Youth*
- *Placement and Housing*
- *Court and Legal Process*
- *Health and Mental Health Issues*
- *Permanency and Adult Connections*
- *State Implementation and Funding Challenges*
- *Education, Higher Education and Employment*
- *Youth Engagement and Youth "Focused" Systems*

Participants in morning sessions will discuss key issues and challenges in each breakout area. Following the morning session, each group will provide a report to Summit attendees regarding the challenges identified in the morning session. The breakout groups will then reconvene in the afternoon to discuss potential solutions and recommendations.

12:00 p.m. Break (*boxed lunches will be available beginning at 12:15 p.m. in the auditorium*)

12:30 p.m. Working Lunch

Report Back From Breakouts Rooms: Key Issues and Challenges

1:30 pm Breakouts Reconvene: Solution-focused discussion

4:00 p.m. Report Back From Breakout Groups: Recommendations

5:00 p.m. Wrap Up

- Where do we go from here
- Next steps

Miriam Aroni Krinsky- *Lecturer, UCLA School of Public Affairs; Adjunct Professor, Loyola Law School and Member, ABA Commission on Youth at Risk Advisory Council (Summit Co-Facilitator)*

Theo Liebmann- *Clinical Professor of Law and Director of Hofstra Clinical Program, Hofstra Law School (Summit Co-Facilitator)*

5:30 p.m. Adjournment

Appendix 1: Summit Events and Issues Addressed

General Questions

Charting A Better Future for Youth Transitioning From Foster Care A National Summit on Effective Implementation of the Fostering Connections to Success Act

General Issues and Questions Applicable to All Breakouts

General Fostering Connections Act Implementation Challenges and Opportunities

- What are the two or three biggest challenges in regard to your particular breakout area?
- What are the two or three recommendations in this area that can best improve outcomes and attend to the needs and challenges of transitioning youth?
- How can the FCA best promote needed reforms and enhanced practices in this area, and how can states be encouraged to avail themselves of these new resources and opportunities?
- What tools or resources do states most need to implement changes in this area?
- Which constituencies need to be on board and how can their support be achieved?
- How can caseworkers and other key stakeholders best be trained and work to implement these provisions and how can social work, legal and judicial practices best accommodate the forthcoming increase in provision of care and custody by child welfare agencies of young adults?

Legislative and Regulatory Changes Needed; Input on Sample State Legislation and Proposed ABA Resolution

- What state or federal legislative or regulatory changes (if any) are needed to implement improved practices and enhanced support for youth in this area?
- Are there any suggestions you have in regard to the proposed sample legislation or proposed new ABA Resolution?

Role of the Private Bar and the ABA in Supporting Older Youth

- How can private bar, the ABA and/or pro bono attorneys assist in advocacy and reform work?
- What ABA assistance is needed to enable state and local bar associations and individual lawyers to engage in this area, and what suggestions do you have in regard to the proposed ABA pro bono proposal?

Disproportionality

- What strategies are needed, and what are some of the best practices nationally, to properly address the issues and concerns arising from the high number of African American youth still in and emancipating from foster care?

Challenges of Particularly Challenged or Vulnerable Populations

- What challenges arise with particularly vulnerable foster care youth populations, such as pregnant and parenting teens, LGBTQ youth, youth with serious disabilities, and undocumented immigrant youth?

Appendix 1: Summit Events and Issues Addressed

Specific Breakout Questions

Charting A Better Future for Youth Transitioning From Foster Care **A National Summit on Effective Implementation of the Fostering Connections to Success Act**

Issues and Questions Specific to the Youth Engagement Breakout

How should foster care agencies, workers, caregivers and lawyers facilitate active youth engagement in the development of case plans?

What actions can child welfare professionals, CASAs/GALs and caregivers take to ensure youth have the opportunity to attend and meaningfully participate in court hearings?

What accommodations and/or changes can courts make to encourage the participation of youth in court and legal proceedings?

What are effective ways to make policy advocacy worthwhile to youth?

How can child welfare professionals and other adults contribute to a positive youth view regarding policy advocacy?

What are the best methods and/or tools to meaningfully engage youth in advocacy around older youth and transitional services policies?

What steps should be taken in states and localities that do not have youth advisory boards in the implementation planning in regard to the Fostering Connections to Success Act?

How can policy leaders involve youth advisory boards in the implementation planning in regard to the Fostering Connections to Success Act?

What kind of training and support should states provide to foster care youth who are engaged in the implementation planning in regard to the Fostering Connections to Success Act?

Charting A Better Future for Youth Transitioning From Foster Care
A National Summit on Effective Implementation of the
Fostering Connections to Success Act

Issues and Questions Specific to the Permanency and Adult Connections Breakout

What constitutes permanency?

How does the Fostering Connections Act promote the achievement of permanency?

What are potential barriers to states' adoption of the provisions in the Fostering Connections Act that will promote permanency?

What are options and effective strategies for allowing youth who exit care after attaining age 18 to re-enter care and retain title IV-E eligibility until age 21?

What legal relationship, if any, must exist between the child welfare agency and the youth after the age of 18 to receive IV-E reimbursement?

What strategies should child welfare agencies employ to aid older youth in establishing and maintaining significant adult connections?

What are the potential barriers to state or child welfare agencies in achieving the goal of helping youth establish significant adult connections?

What are best practice strategies for achieving permanency for older youth and adults beyond age 18?

After the age of 16 or 18, should there be an increasing number of rights and responsibilities that are transferred from the state to the young person?

Should there be a sliding scale of judicial/DSS/probation/state agency intervention concurrent with the advanced age of the young person?

Charting A Better Future for Youth Transitioning From Foster Care
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Issues and Questions Specific to the Placement and Housing Breakout

Should states and foster care providers lobby the federal government to remove the 30% cap on the use of Chafee dollars for housing for youth aging out of Foster Care?

How can barriers to implementation such as provider capacity and liability be overcome?

As illustrated by the “Lighthouse model”, a continuum of housing options is very important in helping youth transition to independent living.

- What regulations should be developed, pursuant to the federal definition of “semi-supervised setting in which the individual lives independently” that will allow flexibility and individualization of programs for youth?

The Fostering Connections Act requires that workers develop a personal transition plan with youth at least 90 days before the birthday in which the youth will age out.

- What regulations should states adopt to ensure compliance?
- What should these personal transition plans include?

Should states require development of a personal transition plan earlier than the 90 days required by the Fostering Connections Act?

Charting A Better Future for Youth Transitioning From Foster Care
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Issues and Questions Specific to the Health and Mental Health Breakout

What role should health and mental health providers play in working with foster care agencies in the development of individual 205 plans?

- What training is necessary for health care providers to do this?
- Is this provided for under the provisions of the Act?

How can the transition plan provided for in the Fostering Connections Act be used to address the needs of pregnant and parenting foster youth preparing to age out?

- What about youth with disabilities?
- What about LGBTQ youth?

How can states effectively promote the adoption of children with special needs?

Does the Act provide sufficient support with health needs?

What can be done to provide youth who frequently move while in care with consistency and continuity in their treatment and providers?

- How can youth be provided with a greater voice in the provision of their health and mental health care?
- How can/should youth be involved in developing the 205 Plan?

How can communication among parents, child welfare agency workers, and youth be increased to effectively detect and report health and/or mental health issues and to access appropriate, timely, "youth-friendly" services?

How can the Fostering Connections Act be used to facilitate training for child welfare agency workers on establishing the most effective and individualized 205 Plans possible?

How can youth be trained and empowered to be health-care advocates for themselves?

Charting A Better Future for Youth Transitioning From Foster Care
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Issues and Questions Specific to the State Implementation and Funding Breakout

What older youth sections of the *Fostering Connections to Success Act* are state mandates?

Are there certain sections of the *Fostering Connections to Success Act* that are mandatory and apply globally to all children in care but have a particular impact on older youth?

What, if anything, have states reported as barriers to implementing these mandatory sections of the *Fostering Connections to Success Act*?

- If so, what are they and how have states addressed the unique older youth implications?

What are the older youth sections of the *Fostering Connections to Success Act* that are optional?

How many states have taken concrete steps to implement these options?

How many youth will be impacted?

How many states currently extend care past age 18 for reasons other than completion of high school diploma or GED?

How many youth continue to receive IV-E Adoption Assistance because of medical needs?

What are the common barriers to implementation of the options?

What are other non Title IV-E federal funding sources to meet the needs of older youth in care?

Are there any examples at the state or local level where states work collaboratively across agencies to fund and provide services for older youth in care?

Charting A Better Future for Youth Transitioning From Foster Care
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Issues and Questions Specific to the Education & Employment Breakout

What can child welfare agencies do to increase the proximity of foster children's school placements as well as ensure the appropriateness of those schools when placement decisions are made?

Under what conditions might a child welfare agency decide that it is not in a foster child's best interest to remain in his or her school of origin?

- Who should be involved in making that decision?
- Who should ultimately decide?

How can child welfare agencies best coordinate with schools to ensure that foster children are able to remain in the school in which they were enrolled when they were placed?

- How can child welfare agencies provide transportation services, or alternatively, secure immediately enrollment in a new school and the timely transfer of records?

How should child welfare agencies coordinate with schools to monitor the enrollment and attendance of Title IV-E eligible children?

What can child welfare agencies do to encourage foster youth to pursue post-secondary education or vocational training opportunities?

What services and supports are needed to ensure successful entry into and completion of post-secondary education or vocational training?

What can be done to encourage an increase in federal funding for ETVs so that all eligible foster youth can benefit?

How can more states be encouraged to enact tuition waivers programs for current and former foster youth?

What can child welfare agencies do to ensure that foster youth are exposed to a range of educational and employment options?

How should youth be encouraged to assume a more active role in their education and employment planning?

***Charting A Better Future for Youth Transitioning From Foster Care
A National Summit on Effective Implementation of the
Fostering Connections to Success Act***

Issues and Questions Specific to the Crossover Youth Breakout

How can the provisions in the Fostering Connections to Success and Increasing Adoptions Act foster a close connection between the dependency and delinquency systems?

- How can the differing jurisdictional bases and objectives be addressed so that crossover youth are best served?

How can one create “crossover status” for delinquent youth (by giving them opportunities as dependent youth that will make services available under the Fostering Connections Act)?

How can the goals of the Fostering Connections that are meant to ensure permanent placement with relatives, maintain sibling ties, and increase the number of adoption families help dual status youth?

Given the risk factors attributed to foster youth, how can the continued federal support for children in foster care after age 18 be used to create opportunities for crossover youth aging out of the delinquency system?

The Act requires child welfare agencies to help youth make their transition to adulthood by requiring that the child’s caseworker, and other representatives as appropriate, help the child develop a personal transition plan.

- Can the transition plan include behavior management components that will reduce referral of youth to the justice system for normative misbehavior?
- What are the system barriers that would need to be overcome?

Do the new provisions adequately prevent incarceration decisions from being driven by the youth’s foster care status and/or the availability or absence of an appropriate placement for the youth?

What other opportunities are there for delinquent youth, who are not dual-jurisdiction, to obtain services under the Fostering Connections Act?

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Issues and Questions Specific to the Court and Legal Process Breakout

Transition Planning

What role do courts have regarding transition plans for youth mandated by *Fostering Connections*?

What role do youth have in planning their transition, and how will that role be facilitated?

What role do children's attorneys and agency attorneys have regarding the transition plans for youth mandated by *Fostering Connections*?

Extending Foster Care Past Age 18

What form should court oversight and engagement take if a state opts to extend foster care to youth past age 18?

How often should court hearings occur?

In what ways can courts act as conveners for youth past age 18?

How similar or different should hearings for youth past age 18 be compared to permanency hearings for youth under 18?

What is the role of counsel for children, agency attorneys, and parents or other family members at these hearings?

In what ways may youth over age 18 be engaged as leaders in their own court and legal process?

Re-Entry into Foster Care for Youth Over Age 18

Assuming that continued court jurisdiction over youth who leave care is necessary for later re-entry and eligibility for federal Title IV-E funding under *Fostering Connections*, how can states best implement continuing jurisdiction?

Once youth leave foster care after age 18, how do these youth learn about re-entry, start the process of re-entry and advocate for their re-entry?

Will youth over age 18 who seek re-entry into foster care get access to lawyers to assist them in advocating for re-entry? If not, who will advocate for the former foster youth's re-entry?

Appendix 2: Summit Facilitators, Speakers, and Participants

Breakout Session Co-Facilitators/Chapter Authors

Permanency for Older Youth

Beth Davis-Pratt

*Senior Policy Associate—
Child Welfare and Mental Health
Children's Defense Fund*

David Ambroz

*Executive Director
Los Angeles City College Foundation*

Courts and the Legal Process

Emily Buss

*Mark and Barbara Fried Professor of Law
Kanter Director of Policy Initiatives
University of Chicago Law School*

Erik S. Pitchal

*Assistant Clinical Professor of Law
Suffolk University Law School*

Housing and Placement

Jennifer Pokempner

*Supervising Attorney,
Youth in Transition Project
Juvenile Law Center
Philadelphia, PA*

Casey Trupin

*Staff Attorney—
Columbia Legal Services
Seattle, WA*

Education and Employment

Amy Dworsky, Ph.D.

*Senior Researcher
Chapin Hall at the University of Chicago*

Kathleen McNaught

*Legal Center for Foster Care and Education
American Bar Association*

Health and Mental Health

Theresa Hughes

*Post-doctoral Research Scholar
and Child Advocacy Fellow
Columbia Law School*

Nanette Schrandt

*Director, Juvenile Services Unit
The Legal Aid Society
New York, New York*

Crossover Youth

Robert G. Schwartz

*Executive Director—Juvenile Law Center
Philadelphia, PA*

Elizabeth Whitney Barnes, J.D.

*Assistant Director
Permanency Planning
for Children Department
National Council of
Juvenile and Family Court Judges
University of Nevada, Reno*

Youth Engagement and Youth Focused Systems

Andrea Khoury

*ABA Commission on Youth at Risk
American Bar Association*

Justice Bobbe J. Bridge, ret'd

*Founding President/CEO
Center for Children & Youth Justice
Seattle, WA*

State Implementation of the FCA

JooYeun Chang

*Director, Public Policy
Casey Family Programs*

Nina Mbengue

*National Conference of State Legislatures
Child Welfare Program Director*

Appendix 2: Summit Facilitators, Speakers, and Participants

Facilitator and Presenter Biographies

H. J. David Ambroz

Mr. Ambroz is the Executive Director of the Los Angeles City College Foundation raising funds for the disadvantaged to attend college, and this fall launched an innovative Guardian Scholars Program at LA City College. Ambroz graduated from UCLA School of Law, and Vassar College. Emancipating from foster care at seventeen Mr. Ambroz has remained intimately involved with foster care reform efforts since; Ambroz serves as a Gubernatorial/Supreme Court Appointee to the California Child Welfare Council; and is a member of the ABA Youth at Risk Commission.

Mr. Ambroz is a regular contributor to the Huffington Post news-website, writing extensively about foster care. Mr. Ambroz was a founding member of the National Foster Youth Advisory Council (CWLA), current member of the CWLA/Lambda Joint Initiative, and a current member of the Foster Care Work Group per the Youth Transition Funders Group.

Hon. Bobbe J. Bridge (Ret.)

The Honorable Bobbe J. Bridge (ret.) served on the Washington State Supreme Court (2000-2007) and the King County Superior Court (1990-1999). For over twenty years, Justice Bridge has served on a host of committees, commissions, and work groups advising the Governor, the Legislature, and the Department of Social and Health Services on issues relating to children and families. She is the Founding President of the Center for Children & Youth Justice, Immediate

Past Chair of the Board and Co-chair of Community Leadership Council for YouthCare, and serves on the boards and advisory boards for a number of other community organizations. Justice Bridge currently is the co-Chair for the Supreme Court Commission on Children in Foster Care, Chair of the Domestic Violence/Child Maltreatment Statewide Protocol Project, the Washington State Becca Task Force and Board Member with the Reinvesting in Youth Steering Committee.

Emily Buss

Emily Buss is the Mark and Barbara Fried Professor of Law at the University of Chicago Law School, where her research specialty is the rights of children and parents and the division of legal authority over children's development among parent, child and state. As Kanter Director of Policy Initiatives, she headed a two-year project aimed at improving the legal system's treatment of children aging out of foster care, and she continues to do some policy work in this area. Ms. Buss also teaches courses in Civil Procedure and Evidence.

Emily Buss received her B.A. summa cum laude from Yale University in 1982 and her J.D. from Yale Law School in 1986. After graduating from law school, Ms. Buss clerked for Judge Louis H. Pollak of the U.S. District Court for the Eastern District of Pennsylvania and Justice Harry A. Blackmun of the U.S. Supreme Court. From 1989 to 1990, Ms. Buss worked as a staff attorney in the Child Advocacy Unit of the Maryland Legal Aid Bureau. In 1990, Ms. Buss joined the Juvenile Law Center in Philadelphia and from 1993 to 1996 she served as the Center's deputy director.

JooYeun Chang

JooYeun Chang is the Director of Public Policy for Casey Family Programs, the largest foundation focused solely on improving the lives of children and youth in foster care. JooYeun is responsible for the development and implementation of the foundation's public education agenda and strategic planning. She conducts strategic policy analyses, acts as the primary author of memos, briefs, letters, and other documents, and supports and identifies opportunities for innovative partnerships with the public and private sector, academia and government agencies to advance Casey Family Programs projects and services. She educates federal policymakers about effective child welfare practice and policies through the dissemination of research findings on Casey Family Programs projects and services. Prior to joining Casey Family Programs, JooYeun served as Senior Staff Attorney for the Children's Defense Fund (CDF).

JooYeun is a member of the Maryland State Bar; a board member for the National Foster Care Coalition and board vice chair for the National Foster Care Coalition; and a member of the Generations United Policy Committee. She received her J.D. from University of Miami School of Law and her undergraduate degree from North Carolina State University.

Beth Davis-Pratt

Beth Davis-Pratt serves as the Children's Defense Fund's Senior Staff Attorney for Child Welfare and Mental Health. Ms. Davis-Pratt is responsible for researching and analyzing case law, existing and proposed legislation, programs and initiatives with a focus on improving child welfare policies and practices, including those concerning child abuse and neglect, foster care, adoption, and kinship care. She educates congressional staff about child welfare policies designed to keep children safely with their families whenever possible, meet the needs of children in or at risk of entering the child welfare system, and promote permanent families for children in foster care.

Ms. Davis-Pratt holds a Juris Doctorate from the Columbus School of Law at the Catholic University of America and a Bachelors degree in Human Development and Family Studies from the University of Utah.

Amy Dworsky

Amy Dworsky is a Senior Researcher at the University of Chicago's Chapin Hall. Much of her work focuses on youth aging out of foster care. Dr. Dworsky is a Co-Investigator for the Midwest Evaluation of the Adult Functioning of Former Foster Youth, a longitudinal study of young people making the transition from foster care to adulthood in Iowa, Wisconsin and Illinois. Dr. Dworsky is the Principal Investigator for a study that is examining an employment training and job placement program for foster youth in Chicago.

She received her Ph.D. in social welfare from the University of Wisconsin - Madison in 2002. Her dissertation research used state administrative data to examine the self-sufficiency of former foster youth in Wisconsin.

Kathleen R. DeCataldo

Ms. DeCataldo is the Executive Director of the New York State Permanent Judicial Commission on Justice for Children. Under the leadership of its chair, former Chief Judge Judith Kaye, Ms. DeCataldo is responsible for developing and implementing the work of the Commission which aims

to improve the lives and life chances of children involved in the court system. Responding to emerging child welfare, juvenile justice and related health, education and other well being issues, Ms. DeCataldo is responsible for the development of materials, training aids and trainings to enhance judicial and other professionals' knowledge and understanding of the issues as a means to better serve children involved with the court system. Ms. DeCataldo advocates for the Commission's agenda by developing legislative, administrative and other reforms; speaking at state, national and public events; and conducting trainings and forums.

Ms. DeCataldo is a graduate of Albany Law School and the State University of New York at Stony Brook

Andrea Khoury

Andrea Khoury, JD is the director of the ABA Youth at Risk Bar-Youth Empowerment Project focusing on adolescent's access to attorneys, children's right to counsel, and youth involvement in court hearings. She is also an Assistant Director of Child Welfare for the National Child Welfare Resource Center on Legal and Judicial Issues. As part of her position she provides technical assistance to states on issues dealing with the Adoption and Safe Families Act, Child and Family Service Reviews, and other child welfare legislation. Among other topics, she provides numerous trainings across the country on adolescent permanency, the role of the child's representative, involving youth in dependency proceedings, and representing lesbian, gay, bisexual, transgender, and questioning youth. She has also represented children in abuse and neglect cases for over 10 years.

Miriam Aroni Krinsky

Miriam Aroni Krinsky is a Lecturer at the UCLA School of Public Policy and also an Adjunct Professor at Loyola Law School. She is a member of the California Blue Ribbon Commission on Foster Care, the California Judicial Council (the leadership body for the state's judicial branch), and numerous other federal, state and local policy groups. Ms. Krinsky served for five years as the Executive Director and Special Director of Policy and Reform Initiatives for the Children's Law Center of Los Angeles, a 185 person nonprofit organization that represents over 20,000 abused and neglected youth in Los Angeles, and thereafter worked with California government leaders to help launch the state's Child Welfare Council.

Ms. Krinsky has been involved in extensive bar and community activities—she served as President of the Los Angeles County Bar Association (the first lawyer from the public sector to hold that office) and also on the Los Angeles City Ethics Commission, acting as Commission President for three years. After law school, Ms. Krinsky practiced at the law firm of Hufstedler, Miller, Carlson & Beardsley. Thereafter she served for 15 years as a federal prosecutor in the Central District of California (acting as Chief of that office's Appellate and General Crimes Sections) and on an organized crime drug task force in Maryland. While with DOJ, Ms. Krinsky chaired the Solicitor General's Advisory Group on Appellate Issues, served on the AG's Advisory Committee on Sentencing and received Attorney General Janet Reno's highest national award for appellate work. Ms. Krinsky has lectured nationwide and testified extensively before legislative, governmental and judicial bodies on issues relating to children at risk, the criminal justice system, and sentencing and appellate policies. She has authored over 50 articles on foster care, juvenile justice, and criminal law issues.

Theodor S. Liebmann

Professor Liebmann has directed the interdisciplinary Hofstra Child Advocacy Clinic since its inception. In his capacity as Attorney-in-Charge, he supervises law students and mental health trainees working together to advocate on behalf of youth involved in the immigration and child welfare legal systems. Professor Liebmann and his students have represented hundreds of youth in cases involving physical abuse, sexual abuse, and neglect, as well as related delinquency, custody and guardianship matters. Prior to his current position at Hofstra, Professor Liebmann was a lawyer for children in maltreatment and juvenile delinquency cases at the Manhattan office of the Legal Aid Society's Juvenile Rights Division.

Professor Liebmann serves as Director of the National Institute for Trial Advocacy's Training the Lawyer to Represent the Whole Child program, frequently leads workshops on topics such as the role of the law guardian and immigrant youth issues, and co-authors regular columns in the New York Law Journal on children and the law. Professor Liebmann received his B.A. from Yale University and his J.D. from Georgetown University Law Center.

Kathleen McNaught

Kathleen McNaught, J.D., is an Assistant Staff Director of Child Welfare at the American Bar Association's Center on Children and the Law. Kathleen provides training and technical assistance around the country on a variety of legal child welfare issues, in particular issues related to the educational needs of children in foster care. She is the Project Director for the Legal Center for Foster Care and Education, a collaboration between the ABA and Casey Family Programs. She has authored several publications on the topic and has also written on the issue of achieving permanency for older adolescents in care.

Prior to joining the Center, Kathleen spent 7 years practicing law in the state of Maryland. She was a staff attorney for three years for Maryland's Legal Aid Bureau in their Child Advocacy Unit. She then went on to private practice, representing parents and children in child welfare cases, as well as in education, delinquency and custody matters. She received her J.D. from The American University, Washington College of Law in 1994, and her B.A. from Franklin and Marshall College in 1991.

Erik Pitchal

Erik Pitchal joined Suffolk University in Boston in 2007 as Assistant Clinical Professor of Law and founder of the new Child Advocacy Clinic at the Law School. He also teaches Family Law and the Juvenile Defender Clinic. Prof. Pitchal received his J.D. from Yale and his B.A. in public policy from Brown.

Prof. Pitchal's expertise as a practicing lawyer is in the representation of children, primarily in dependency and delinquency cases. Before entering academia, he was an attorney at the Legal Aid Society and Children's Rights, both in New York. He is co-counsel in **Kenny A. v. Perdue**, a federal class action lawsuit in Atlanta in which he represents 3000 foster children. In 2005, he was named Child Advocate of the Year by the American Bar Association's Young Lawyers Division.

Prof. Pitchal is currently leading a research team investigating Nebraska's guardian ad litem system in dependency cases. Prof. Pitchal serves on the board of directors of the National Asso-

ciation of Counsel for Children; the Massachusetts Task Force on Youth Aging Out of DCF Care; and the advisory board of the ABA Center on Children and the Law's Bar-Youth Empowerment Project.

Jennifer Pokempner

Jenny Pokempner is a supervising attorney for Juvenile Law Center's (JLC) Youth in Transition Project. At JLC, Jenny works with youth aging out of foster care and homeless youth. She also teaches at University of Pennsylvania and Temple law schools. Jenny graduated from University of Pennsylvania Law School and clerked for Judge Andre Davis in Maryland.

Nanette Schrandt

Nanette Schrandt is a Licensed Clinical Social Worker and the Director of Juvenile Services at the NYC Legal Aid Society's Juvenile Rights Practice where she oversees the social work, paralegal, and investigative staff. Nanette has 30 years of experience as a forensic social worker and trains extensively in the field. Among other appointments, she has served on the advisory board of the NYC Administration for Children's Services, NYS Court Appointed Special Advocates, the model Children's Law Office Project of the National Association of Counsel for Children, and as co-chair of the Practicing Law Institute's annual Children's Law Institute. She is an adjunct assistant professor at the Columbia University School of Social Work and a member of the school's Contemporary Social Issues Advisory Committee. She holds an MSW degree from Columbia University and a BA degree from Smith College.

Robert G. Schwartz

Bob Schwartz co-founded Juvenile Law Center in 1975 and has been its executive director since 1982. He has represented dependent and delinquent children in Pennsylvania juvenile and appellate courts; brought to improve child welfare and juvenile justice systems; testified in Congress before House and Senate committees; and spoken in over 30 states on matters related to children and the law. From 1992-98, and from 2006-08, he was chair of the Juvenile Justice Committee of the American Bar Association's Criminal Justice Section. In 1993 he co-authored the American Bar Association's report, *America's Children at Risk*; and in 1995 he helped author a follow-up report on juveniles' access to quality lawyers, *A Call for Justice*. Schwartz was a member of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. He is chair of the Advisory Committee to the Children's Rights Division at Human Rights Watch; and chair of the Board of Philadelphia Youth Network.

Casey Trupin

Casey Trupin is a staff attorney at Columbia Legal Services in Seattle, where he advocates for at-risk, homeless and foster youth as well as adults who are homeless. Trupin has handled impact cases in state and federal court involving the rights of these populations and has helped work to pass relevant state and federal legislation. Trupin is a Special Advisor to the American Bar Association's Commission on Homelessness and Poverty, which he chaired from 2006-2009. Trupin has edited a number of books, as well as written articles on legal issues related to homeless children, youth and adults.

In 1997, Trupin co-founded Street Youth Legal Advocates of Washington (SYLAW), and went on to direct the program until 2005. Trupin has also served as Counsel for Special Projects for the Center for Law and Social Policy (CLASP) in Washington D.C. working on federal child welfare policy. In 2005, Trupin was recognized by the Congressional Commission on Adoption Institute as an Angel in Adoption for his work on behalf of homeless and foster youth. Trupin graduated from the University of Washington School of Law with honors in 1999.

Elizabeth Whitney Barnes

Elizabeth Whitney Barnes is the Assistant Director of the Permanency Planning for Children Department (PPCD) of the National Council of Juvenile and Family Court Judges. Ms. Whitney Barnes received her Juris Doctor from the University of San Francisco School of Law.

Through the mission of PPCD and its Model Courts project, Ms. Whitney Barnes facilitates systems change in courts handling child abuse and neglect cases on a local, statewide, and national level. She presents on the Model Courts project at national conferences and trainings, and is the author of the Technical Assistance Brief “Back to Basics: Fundamental Application of the *Resource Guidelines* and *Adoption and Permanency Guidelines* in Child Abuse and Neglect Cases,” and co-author of the Technical Assistance Brief “Children’s Dental Health: The Next Frontier in Well-Being.”

Nina Williams-Mbengue

Nina Williams-Mbengue is currently the Program Director for the Child Welfare Project of the Children and Families Program at the National Conference of State Legislatures (NCSL). Ms. Williams-Mbengue has been a member of the Child Welfare Project for 14 years where she provides a range of informational services to state legislators and legislative staff through technical assistance, publications, legislative educational presentations and testimony and research on issues related to child welfare. She has also provided hearing and committee testimony on various child maltreatment and child welfare issues (such as abandoned infants, child protective services reform, community child protection, the Child and Family Service Reviews, kinship care, child fatality review, outcomes for African-American children adopted from foster care, Fostering Connections for Success Act of 2008) for legislators in Alaska, California, Colorado, Delaware, Georgia, Hawaii, Kentucky, Pennsylvania, Tennessee, Washington and Wyoming.

Appendix 2: Summit Facilitators, Speakers, and Participants

Convening Participants

Victoria Agoglia—*Foster Care Alumni*

Tina Amberboy—*Executive Director, Children's Commission, Supreme Court of Texas Permanent Judicial Commission for Children, Youth and Families*

David Ambroz—*Executive Director, Los Angeles City College Foundation*

Janis Avery—*Executive Director, Treehouse*

Melissa Baker—*Director, Strategic Consulting Services, Casey Family Programs*

Hanifa L. Barnes—*Student Liason, ABA Youth At Risk Commission*

Lauren Barth—*Hofstra Law Student*

David Berns—*Executive Vice President of Child and Family Services, Casey Family Programs*

Laura Berntsen—*Legislative Assistant, Office of Representative Jim McDermott (WA-07)*

Jaime Birk—*Hofstra Law Student*

William Bitter—*Foster Care Alumni*

Judy Blunt—*Director, Adolescent Services Resource Network at Hunter College School of Social Work*

Celeste Bodner—*Executive Director, Foster Club*

Eric Brettschneider—*Coordinator for the New York City Region; Assistant Commissioner, NYS OCFS*

Tim Briceland-Betts—*Co-Director of Government Affairs, CWLA*

Justice Bobbe Bridge (Ret.)—*Founding President and CEO, Center for Children Youth Justice*

Emily Buss—*Professor of Law, University of Chicago Law School*

Elizabeth M. Calvin—*Senior Advocate, Children's Rights Division-Human Rights Watch*

Gladys Carrión—*Commissioner, New York State Office of Children and Family Services*

Zeinab Chahine—*Managing Director, Strategic Consulting Services, Casey Family Programs*

JooYeun Chang—*Director, Public Policy, Casey Family Programs*

Stephanie Conti—*Hofstra Law Student*

Tiffany Conway Perrin—*Senior Policy Analyst, Child Welfare, CLASP*

John Copelan—*Director of Preventive Law, Florida Department of Children and Families*

Mark Courtney—*Director of Research and Development, Partners for Our Children*

Terry Cross—*Executive Director, National Indian Child Welfare Association*

Kathi Crowe—*Executive Director, National Foster Care Coalition*

Michelle Dantuono—*Hofstra Law Student*

Howard Davidson—*Director, ABA Center on Children and the Law*

Beth Davis-Pratt—*Senior Policy Associate, Child Welfare and Mental Health, Children's Defense Fund*

Kathleen DeCataldo—*Executive Director, New York State Permanent Judicial Commission on Justice for Children*

Paul DiLorenzo—*Senior Director, Strategic Consulting, Casey Family Programs*

Lily Dorman-Colby—*Foster Care Alumni*

Hon. Marguerite D. Downing—*Judge, Los Angeles County Superior Court*

Amy Dworsky—*Senior Researcher, Chapin Hall at the University of Chicago*

Dr. Ilze Earner—*Assistant Professor, Hunter College School of Social Work*

Laura Farber—*Chair, ABA Commission on Youth At Risk*

Kay Farley—Executive Director, Government Relations Office, National Center for State Courts

Janet Fink—Deputy Counsel, New York State Unified Court System

Andrew Fois—Managing Director, National Crime Prevention Council

Andrew Ford—Hofstra Law Student

Catherine Friedman—New York City Family Court Alternative Dispute Resolution Coordinator; AFCC, The Child Welfare Collaborative Decision Making Network

Robert Friend—Director of Center for Family Finding and Youth Connectedness, Seneca Center

Christine Garcia—Hofstra Law Student

Rob Geen—Director of Policy, Research, and Communications, Center for Effective Family Services and Systems, The Annie E. Casey Foundation

Susan Getman—Senior Director, Strategic Consulting Services, Casey Family Programs

Kathi Grasso—Senior Juvenile Justice Policy and Legal Advisor, Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice

Jody Grutza—Senior Policy Analyst, Social, Economic, Workforce Programs Division, NGA Center for Best Practices

Theresa Hughes—Post-doctoral Research Scholar, Child Advocacy Fellow, Columbia Law School

Alfreda Iglehart—Associate Professor and Vice Chair, Department of Social Welfare, UCLA School of Public Affairs

Hon. Judith Kaye (Ret.)—Chair, New York State Permanent Judicial Commission on Justice for Children

Kristin Kelly—Staff Attorney, ABA Center on Children and the Law

Susan Kelly—Senior Director, Strategic Consulting, Casey Family Programs

Andrea Khoury—Director, ABA Bar–Youth Empowerment Project

Beyza Killeen—Hofstra Law Student

Howard Knoll—Senior Director, Casey Family Programs

Hon. Dale Koch—Senior Judge, Oregon State Circuit Court

Terri Kook—Director of Child Welfare, The Stuart Foundation

Betsy Krebs—Executive Director, Youth Advocacy Center, Inc.

Miriam Krinksy—Lecturer, UCLA School of Public Affairs; Adjunct Professor, Loyola Law School and Member; ABA Commission on Youth at Risk Advisory Council

Carolyn B. Lamm—President, American Bar Association

Barbara Langford—Vice President, The Finance Project

David Lash—Managing Counsel, Public Interest and Pro Bono Services, O'Melveny & Myers LLP

Marcia Levy—Special Counsel for Pro Bono and Professional Development, Sullivan & Cromwell LLP

Theo Liebmann—Clinical Professor and Director of Clinical Programs, Hofstra Law School

Hon. Katherine Lucero—Dependency Court Supervisor and NCJFCJ Model Court Lead Judge, Santa Clara County Superior Court

Hon. Patricia M. Martin—Presiding Judge, Circuit Court of Cook County, Child Protection Division

John Martinez—Senior Research Associate, MDRC

Karen J. Mathis—President & CEO, Big Brothers Big Sisters of America

Jessica Maxwell—Foster Care Alumni

Nina Mbengue—Child Welfare Program Director, National Conference of State Legislatures

Rep. Jim McDermott (D-WA)

Erwin McEwen—Director, Illinois Department of Children and Families

Kathleen McNaught—Assistant Staff Director of Child Welfare, ABA Center on Children and the Law

Mary Mentaberry—Executive Director,
NCJFCJ

Hon. Edwina Richardson-Mendelson—
Administrative Judge, New York City
Family Court

Sania Metzger—Director, State Child Welfare
Policy Center for Effective Family Services
& Systems, Annie E. Casey Foundation

Sasha Minton—Hofstra Law Student

Nathan Monell—CEO, Foster Care
Alumni of America

Desiree Moore—Foster Care Alumni

Theresa Moy—Foster Care Alumni

Ellen Murray—Research Assistant,
Roosevelt House Public Policy Institute

Hon. Michael Nash—Presiding Judge,
Los Angeles Juvenile Court

Randi O'Donnell-Bennett—Hofstra Law
Student

Clark Peters—Assistant Professor, University
of Missouri School of Social Work

Erik Pichtal—Assistant Clinical Professor
of Law, Suffolk University Law School

Jennifer Pokempner—Supervising Attorney,
Youth in Transition Project, Juvenile Law
Center

Myrna Raeder—Professor Southwestern
Law School and Member, YAR Advisory
Board and CJS Standards Committee on
Crossover and Dual Jurisdiction Youth

Ann Ramsay-Jenkins—Co-Founder &
Vice Chair, College Success Foundation

Rep. Mary Helen Roberts (D-WA)

Hon. Ron E. Richter—Judge, Queens County
Family Court, Child Protection Division

Fay Rosenfeld—Director of Programs,
Operations and Development, Roosevelt
House Public Policy Institute

Timothy Ross—Child Welfare Program
Area Director, Child Trends

Alisa Santucci—Director, ABA Commission
on Youth at Risk

Andrew Schepard—Professor of Law
and Director of the Center for Children,
Families and the Law, Hofstra Law School
and Editor of the Family Court Review

Nannette Schrandt—Director, Juvenile
Services Unit, The Legal Aid Society

Robert Schwartz—Executive Director,
Juvenile Law Center

Rhelda Shabazz—Division Chief,
Los Angeles County Department
of Children and Family Services

Anita Shannon—Director, Strategic
Consulting, Casey Family Programs

William E. Schroeder—Special Counsel,
Sullivan & Cromwell LLP

Frederic Simmens—Senior Director,
Casey Family Programs

Janis Spire—President & CEO,
The Alliance for Children's Rights

Gary J. Stanger—Executive Director,
Jim Casey Youth Opportunities Initiative

Tamara Steckler—Attorney-in-Charge,
Legal Aid Society, Juvenile Rights Division

Misty Stenslie—Deputy Director,
Foster Care Alumni of America

Jim Theofelis—Executive Director,
Mockingbird Society

Hon. Sharon Townsend—JSC Vice Dean,
Family & Matrimonial Law New York
State Judicial Institute

Casey Trupin—Staff Attorney, Columbia
Legal Services and Special Advisor, ABA
Commission on Homelessness and Poverty

Susan A. Weiss—Director, Child Welfare
Policy, Casey Family Programs

Carmela M. Welte—Deputy CEO,
National CASA Association

Ruth White—Executive Director, National
Center for Housing & Child Welfare

Elizabeth Whitney Barnes—Assistant
Director, Permanency Planning for
Children Department, NCJFCJ

Sonia C. Velazquez—Vice President,
Children's Division American Humane
Association

Appendix 3: Summit Remarks

Judith S. Kaye

Former Chief Judge, State of New York

April 15, 2010

6:30 pm

I am delighted to be part of the official welcome this evening, standing alongside colleagues and friends who have my enormous admiration. A hearty welcome to my home City, to the Roosevelt House, and to a National Summit dedicated to charting a better future for youth, by definition also charting a better future for our nation.

Could we be at a better place—this magnificent Roosevelt House, home of Hunter College’s Public Policy Institute. This house is infused with the spirit of my hero, Eleanor Roosevelt. So many of her words, and deeds, resonate in my mind as I stand before you. Most appropriate to this occasion, I think of her statement that: “Nothing can stop us but inaction, lack of imagination and lack of courage.” Plainly, given our subject, we could not be at a better place.

And could we be at a better time? Again, I think not. At long last, we have the direction—the mandate—that is set out in the 2008 Fostering Connections statute. The law creates a whole host of federal rights for children in foster care, including the right to live with their siblings in foster care; the right to have relatives informed of their removal from home and assisted in caring for them; the right to a thoughtful transition plan, developed with their input; the right to health planning and educational stability. States are given the option—sweetened with federal dollars—of providing subsidized kinship guardianship, and of extending the option to remain in foster care to age 21. Then too, there are increased incentives for states to find adoptive families, and more incentives for the adoption of children with special needs. There are supports for American Indian children by allowing tribes to directly participate in available federal funding for foster care and adoption assistance. And lots more.

Plainly we could not be at a better place or a better time. We have the inspiration, we have the direction and we have the data. Boy, do we ever have the data!

Just to stay with a single example, we have the remarkable Chapin data closely following former foster youth, now young adults, telling us chapter and verse what in one sense we instinctively know yet in another sense need to document. Chapin’s study of one group called Struggling Parents—mostly women—for instance, tells us that a startling 98% had at least one child; that 44% had not obtained a high school degree, and a mere 3.4% had even attended college. Not a single person in this group had a college degree, and barely a quarter of them were employed. Pretty sad.

And in another group, called Troubled and Troubling—overwhelmingly male—most of these young people had been convicted of a crime since leaving foster care; more than 70% were in jail, institutionalized, homeless, or had experienced high residential mobility. Forty

percent had not received a high school diploma, and perhaps most tellingly these young people reported that they felt unprepared to live independently when leaving foster care.

Again, I hear echoes of Eleanor Roosevelt's words: "The future belongs to those who believe in the beauty of their dreams." What does the data tell us about these young people? What about their dreams? What about their future?

So I ask: could we be at a better time for reform? I think not. We have the direction. We have the data. And we sure do have the drive, the determination, the will, to make a difference.

Where do we begin? Plainly, there is no wrong answer, as we will see throughout this important summit. One area that for me is vital—and will be a major subject of our discussions—is improving educational outcomes, a subject long neglected when it comes to children in foster care.

We know that children in foster care have far higher rates of grade retention than their peers, higher rates of truancy and absenteeism, lower scores on standardized tests and higher school dropout rates.

One proven way to decrease school dropout rates, of course, is to encourage school connectedness. Students who feel connected to their schools are more likely to succeed academically; more likely to graduate; less likely to be truant or involved in fighting, bullying, and vandalism; and less likely to become pregnant. These are all outcomes we must maximize for children foster care. And indeed, educational stability is both mandated by the Fostering Connections law for children in foster care and sure to make a difference in their lives.

Could anyone for a moment doubt the trauma of removing a child from home—the rupture of relationships with family members, caregivers, loss of friends, familiar surroundings and daily routines? And traumatic as placement in an *appropriate* setting is, just imagine the impact of a placement disruption, let alone multiple placement disruptions.

Astounding, isn't it?, that nationally, children experience, on average, an estimated three to four placement changes while in foster care. And we know that school mobility has long been associated with lower average school achievement, increased need for remedial education and social and psychological difficulties, and increased risk of school dropout. How can we expect kids to keep up with school work when they face the personal anxiety of adjusting to a new home, new school, new friends, new neighborhoods?

For children in foster care, feeling connected to school is a critical factor in promoting resilience and preventing school dropout and other negative outcomes. School stability maintains connections to teachers, friends, counselors—people who may well have provided refuge or support during a difficult home situation, like the school nurse who was always there for a child's repeated visits, or the coach who drove an aspiring athlete home when there was no one to pick her up from practice. And don't you remember your best friend from third grade? I do.

Fostering Connections now actually requires that the case plan maintained by a social services district upon entry into foster care include attention to educational stability. Placement must take into account proximity to the school of origin, and the child cannot be en-

rolled in another school unless a determination is made that it is not in the child's best interests to remain in the school of origin. If that happens, the child's entire educational record must be provided to that school.

These may sound like simple mandates, but the decisions and coordination necessary in each case are difficult, and potentially costly. Is there, for example, a need for a child's location to be kept from his or her parents? Then too, both federal and state laws mandate locating relatives who may be willing to care for a child, and there is no guarantee that a relative will live anywhere near a child's school. Placing siblings together, another mandate, may make it more difficult to find a placement close to a child's current school. And how will transportation be provided? Need I tell you—tough decisions.

Many, many tough decisions across the board. Though I have focused on educational stability, one thing is clear: there is significant work to be done to make the mandates of Fostering Connections more than a paper promise.

I conclude by returning to the words and spirit of Eleanor Roosevelt. Clearly, nothing can stop us from charting a better future for youth in foster care but inaction, lack of imagination and lack of courage. And all of those key qualities—dedication, determination and drive—we have in ample measure in this room, at this place, at this time. We are united in our commitment to foster children, committed to their belief in the beauty of their dreams and a bright future in their life.

Appendix 3: Summit Remarks

Congressman James McDermott (D-WA)

Friday, April 16, 2010

I'm glad you all were able to make it to this summit and I truly appreciate the work you all have done to implement Fostering Connections. In many ways, the passage of the legislation at the federal level was the easy part.

Getting the states and tribes on board is tough work, but we will get there. I'm honored to be here with Carmen Nazario and want to again relay my appreciation for her testimony on TANF last month before the Subcommittee I chair. She came down at the 11th hour before the health care bill was passed, so she and the other panelists had quite a whirlwind experience.

As some of you might know, I completed my medical school residency in child psychiatry at the University of Washington, so the issues that children in the child welfare system face are not foreign to me. I know that what most children want above all else, is to be with their mom or dad.

Foster children need the same things to succeed that all children need— a safe home, a caring family, a good education, and access to health care. And yet we know the foster care system too often unnecessarily disrupts connections to home, family and school. Whether it is expecting foster children to go it alone at the age of 18, or denying assistance to grandparents who become legal guardians, or unnecessarily displacing children from their schools, or separating them from their siblings during a foster placement, the result is to sever or reduce the links that foster children need to successfully navigate their way to adulthood. As comprehensive as the Fostering Connections law was, we know there is more to do.

I'm sure many of you are aware of the study done by Mark Courtney at the University of Washington and in collaboration with Chapin Hall. One of the most notable findings was that by age 24, only six percent of foster kids who had aged out of the system had completed two or four year college degree programs; 37 percent had been homeless; only 40 percent were working and had incomes levels drastically lower than their peers. Providing care to 21 is a critical improvement, but must be accompanied with any necessary physical and mental health care; job services; education services; and most importantly, the human connections that we all need to get by.

These were the issues we set out to address when we crafted the Fostering Connections to Success and Increasing Adoptions Act. I say we because, while the bill has my name on it, I worked with my Republican colleague Jerry Weller in the House and with Senators Max Baucus, Chuck Grassley and Jay Rockefeller to make it happen. It was a rare moment of bipartisanship, especially in retrospect. Given the political dynamics in the current House and Senate, I doubt that the Fostering Connections legislation would have passed the Congress today.

Another program that falls under the jurisdiction of the subcommittee I chair is unem-

ployment insurance (UI). The UI program exemplifies just how hard it is to get anything at all done. Earlier this month, the Senate let the emergency unemployment compensation program expire for almost two weeks leaving unemployed Americans with no assurance that they would see their next benefit check.

It seems like every other week we debate another extension—four weeks, six weeks, and this week, the Senate was feeling especially generous and decided they would maybe even allow a two month extension of the program. Call me a pessimist, but I highly doubt that unemployment will be back down to six percent by June, but we are still forced to scrape together these piecemeal short-term extensions. This is a program that working Americans pay into through every paycheck they receive. If we can't agree on extending unemployment benefits in an economy near 10% unemployment, it's hard to imagine an issue on which we can work together.

I don't share this information to be discouraging, but rather to underscore just how essential it is that we think creatively. Let me give you an example—and I'm going to be a bit of a hypocrite here by applauding something that came out of the Senate.

Some of you may have heard of a little bill Congress passed last month that reformed health care. The Senate-passed legislation contained a provision allowing children to stay on their parents' health insurance until age 26. This was an affirmation of what many of us have long known: children are not independent once they turn 18, nor are they independent when they turn 21. They still need help.

Our financial aid system considers youth dependent until age 24, so why do we think children in foster care will somehow be able to take care of themselves at 18 or even 21? So, my colleague Sen. Mary Landrieu told her leadership that she would be hard pressed to vote for a bill that didn't extend health insurance to 26 for children that don't have parents. How can you argue against that? This is not giving foster children special treatment; it's giving them the same treatment we give our own children.

Fostering Connections took that same approach—we owe our foster kids the same care and support that the law provides for parents and children in biological and adoptive families. And until all states implement Fostering Connections' older youth provisions, we will continue to have a fundamentally unfair and unjust system—that is why the work of this conference is so important.

It is often said that the “Past is Prologue.” That is the message inscribed on the entrance to National Archives on a small granite memorial dedicated to President Franklin Roosevelt.

I think there may be historical lessons we can learn from the implementation of the Adoption Assistance and Child Welfare Act of 1980 as well as the Fostering Connections Act we are discussing at this conference.

Foster care was always envisioned as a temporary solution to family disruptions or dysfunction. In the 1970s, public attention focused on “foster care drift”—children moving endlessly from foster care placement to placement, without hope of either reunification with their families or hope of adoption. I am sure many of you advocates in this room remember how terrible it was for children, who were essentially “lost” in this system.

As a result of your hard work, in 1980, Congress passed the Adoption Assistance and Child Welfare Act which was supposed to remedy many of the problems occurring in the child welfare system. The goal of this law was to find permanent homes for children either by; (1) preventing the need for removal in the first place by providing services to the family, which is the goal of the family preservation programs we see today; (2) by returning children to their families when it was safe to do so; or (3) by placing children up for adoption when families could not be reunified.

Through this law, Congress attempted to shift resources from temporary, out-of-home care, towards either providing services to the child and his or her family, or finding other adoptive permanent homes. The law was passed during the Carter Administration and was implemented during the Reagan and Bush Administrations, neither of which had much interest in ensuring the law's success.

At the same time we were experiencing the Reagan Revolution, this country experienced social and economic crises which we were ill-prepared to handle. We started seeing widespread homelessness, which grew from homelessness among individuals who had been part of the de-institutionalization process but spread to entire families with children. We also saw the explosion of the drug epidemic, which included a boom in the use of crack, crack-cocaine, PCP, and other drugs. This epidemic not only destabilized individuals, but began destroying families with children and entire communities. "Crack baby" became a common phrase in our language, and no one was surprised when women abandoned their babies in hospitals.

Through all of this, the child welfare system struggled to meet these new challenges and keep children safe. One of the major problems with the Adoption Assistance and Child Welfare Act, which was the result of a multitude of litigation, was it failed to define the term "reasonable efforts." Under the law, states had to make, "reasonable efforts" to prevent the need for foster care and to reunify families after placement. But no one could define what efforts that would require.

That imprecision eventually led to the passage of the Adoption and Safe Families Act in 1997, which recognized that reunification is not possible or advisable in all cases. The legislation was designed to reduce the amount of time children spend in foster care, and required states to seek termination of parental rights for children who spent 15 of the last 22 months in foster care.

Eleven years later, we passed Fostering Connections to promote permanent families and increased stability for children in foster care. Now here we are in 2010, talking about a law that was passed in 2008 under very different economic conditions. We could not have predicted the Wall Street debacle and its impact on working men and women, and their children and families or how strapped state budgets would become.

The Adoption Assistance Act in 1980 needed amending and improving after its original passage because the environment in which the law was operating had radically changed. The same thing is happening with Fostering Connections, and I hope we learn the lessons from 1980 as we continue to implement this legislation.

Implementation of many of the new options in the law has been hampered by the severe

budget problems states are now encountering. State budgets for foster care are being slashed, and caseworkers are being laid off and furloughed in every corner of the country. In some states, we've heard that fewer children are being placed into foster care so that governments won't be financially responsible for their care. This is the height of irresponsibility, and we cannot leave children in dangerous and unprotected situations for the sake of keeping down costs.

But as all of you know, this is exactly the right time to implement these programs. Research from Partners for Our Children and Chapin Hall showed that in California, every dollar spent keeping kids in foster care until age 21, yielded \$2.40 return on that investment for the youth who earn a bachelor's degree and a \$2 return on each dollar for those with some college.

We know that we can save money in the long run and help these young people get jobs, access to a good education, and health coverage. Every moment we wait is money lost. Implementing this legislation quickly and thoughtfully is absolutely critical. We can't ask these children to wait any longer.

Looking beyond Fostering Connections, another basic and very crucial problem we must address at the federal level is the fact that progressively fewer foster children are covered by federal dollars because of an outdated formula. That is why I am presently working on legislation to delink federal foster care funding from the 1996 AFDC program. All children in foster care deserve federal support, and it makes no sense that a social worker has to distinguish between kids based on the income of their birth parents.

And of course, there is the ever present elephant in the room of overall finance reform. Why is it that we spend the most money on the least optimal outcome of keeping kids in the foster care system? We must invest resources in services that keep families together and diminish the need for children to be removed from the home in the first place.

Last month, we took a big step in the right direction in the health care bill which included mandatory funding for evidence-based home visitation programs to help new mothers adjust to parenthood. This Administration, more than any other, has put a clear emphasis on funding programs that have proven and measurable results. We know that prevention services work for vulnerable families and kids and also save money in the long-run.

As all of you know, at the federal level there is a tendency to move slow, especially in what I think of as the "do-gooder" issues, meaning the issues that people care about out of the goodness of their hearts and not the fattening of their pocket-books. But fortunately, while the federal government stalls, there are 50 little state labs working away to show us what works and what doesn't. Some of the most promising efforts are coming out of my home State of Washington and I'm pleased to see so many familiar faces in the audience, including Justice Bobbe Bridge, Ann Ramsey-Jenkins, Casey Trupin, Jim Theofelis, Rep. Mary Helen Roberts, and David Berns. I want to thank all of them for their dedication and commitment.

We're also lucky enough to be joined by the greatest experts of them all—former foster youth themselves. We can talk and talk and talk, but unless we listen to the young adults who have been brought up in the foster care system, we won't get anywhere.

Thank you.

Appendix 3: Summit Remarks

Carmen R. Nazario

Assistant Secretary for Children and Families
U.S. Department of Health and Human Services

Friday, April 16, 2010

Introduction

Good morning. Thank you, Miriam, for that gracious introduction. And my thanks to the American Bar Association Commission on Youth at Risk for holding a conference on this important topic. I also want to acknowledge all the young people who are taking part. You inspire me every day.

I'm pleased to be sharing the floor with Congressman Jim McDermott. For 11 terms, he has been a compassionate champion on behalf of vulnerable families. The Congressman is a leader for the social good in so many ways— improving foster care, preventing child abuse, reforming health care, advancing education, promoting nonviolence, ending homelessness, preserving the environment, and more. He is one of our staunchest allies.

The Problem

And we need allies, because reforming the child welfare system so that it works for vulnerable kids is not an easy assignment.

Another reminder of that reality came about ten days ago, with the release of a long-term study led by the University of Washington and the Chapin Hall center in Chicago. The study followed 600 young people in the Midwest who had aged out of foster care. The findings are not heartening.

- Only half of them had jobs by the time they were in their mid 20's.
- Sixty percent of the men had been convicted of a crime.
- Seventy-five percent of the young women, many of whom had children of their own, were receiving some form of public assistance.
- Only six percent had a post-secondary degree.

These bleak results didn't come as a surprise. They are consistent with other recent research— for example, the Adverse Childhood Experience, or ACE, study. This is a major longitudinal project, a partnership between the Centers for Disease Control and Prevention and Kaiser Permanente. It got started about 15 years ago and is following over 17,000 people to find out whether there is a correlation between exposure to childhood trauma and problems later in life. So far, it's finding that indeed, when children are abused or witness domestic violence, when they have no parents or are parented by someone who is depressed or suicidal, they are less likely to finish school, get a job, be healthy, stay out of jail, keep off public assistance, and all the rest.

Still, there is nothing in these studies that should make us run from the problem of charting a better future for our youth. Indeed, results like these challenge us to think more creatively, to look at what we're doing and see how we can change.

This is not to say that there are no exceptions, but these studies confirm our belief that the impact of abuse and neglect is felt over a lifetime, not just in childhood. Too often, early damage is lasting damage, even if we don't see the manifestations immediately. That's why longitudinal studies like these are so important. A study that follows kids over time tells us so much more than point-in-times studies that simply measure one year's situation versus the next.

And that's also why we're excited about implementing the Fostering Connections to Success Act. This law establishes some of the most sweeping federal foster care reforms since the Adoption and Safe Families Act. Even more, it codifies much of what we learned from ASFA.

When the Adoption and Safe Families Act passed in 1997, it too represented a significant change in our approach to child welfare. The focus shifted from putting the needs and rights of the biological family first to considering the health and safety of children first. In implementing ASFA, states have emphasized placing children into permanent settings. While that's important and generally positive, we've learned that even when children move into permanent homes, it may not be enough to counter the ill effects they've already suffered.

So there is a great challenge in moving beyond ASFA. How do we keep from going back to the days when children languished in foster care limbo or worse, but also make sure that each child and adolescent gets the services that really address their difficulties? How do we combine systemic reform with ongoing service intervention strategies that maximize the chances of success in adulthood?

The Response

The Fostering Connections Act will help greatly by extending federal support until the age of 21, by changing kinship guardianship policies, and by improving education and health care for kids in the system. It also offers many American Indian children federal protections and support for the first time.

It's clear that we cannot implement this law effectively unless we consult closely with our partners in this room and others. I assure you that we intend to listen, to promote dialogue and to be open to constructive suggestions as we develop guidance. I feel quite confident that this law is going to make a major positive difference.

Another exciting development that's going to help kids at risk is the passage of health care reform. Not only can parents now keep their children on their health insurance until age 26, but it also allows young adults in the child welfare system to stay on Medicaid until the age of 25. This means that they will continue to have access to the physical and mental health care services that are so critical to healthy development.

I'm also pleased to tell you that we're about to fund a number of projects that focus on children who have experienced long stays in foster care. We will be awarding 100 million dol-

lars over five years for demonstrations that concentrate on developing new interventional techniques to help these kids. I'm hopeful that we'll obtain a wealth of useful information from these projects and that we'll end up with effective models and strategies that can be adopted widely.

In addition, we're taking a close look at the way we run our Child and Family Services Reviews. These reviews were ground-breaking when they were implemented about a decade ago. For the first time, the federal government began investigating whether states were actually getting positive outcomes for kids in care and their families, not only whether they were dotting every "i" and crossing every "t" in the procedural manual. We've gathered much useful information, and in many cases, have improved our working relationships with states and with courts, as well as fostered many system improvements.

However, now it's time to cast an analytical eye on how the process is structured and carried out. We're asking ourselves a number of questions, for example:

- Are the reviews methodologically valid, that is, do they measure what we say we want to measure?
- Even if we agree on outcomes, do we have the right indicators?
- Do the reviews focus on the correct aspects of state child welfare agency operations and outcomes?
- Have we built in the correct incentives and accountability measures?

We're energized about and committed to developing a new approach to the Child and Family Services Reviews, one that reflects the experience of the last decade and moves us forward into the next.

Conclusion

Earlier I mentioned that not all young people who age out of foster care end up in trouble. We know that government can do a great deal to assist, but in the end, what moves us most is the remarkable spirit of resilience and determination that so many young people demonstrate, despite their difficult circumstances. Their stories speak for themselves.

For example, there's Ryan, who aged out of foster care at 18. At 21, he's in college studying social work and advising legislators and policymakers on changes in the child welfare system he knows are needed, because he experienced the problems. Told repeatedly that he would never amount to anything, Ryan took on the challenge to prove his tormentors wrong. As Ryan says, "I took my label they had assigned to me, rejected it, and wrote my own label." Now he's involved in improving the system so more kids in foster care can do the same.

Or take Diana. With a severely depressed mother and a deceased father, Diana's home was horribly dysfunctional. As a teenager, she acted out, attempted suicide and was placed into foster care, with no plan for permanent adoption. Fortunately, her final set of foster parents nurtured her and set high expectations for her, instilling self-esteem and hope. Today Diana is a sales director, adjunct professor, wife, and mother of three. She says, "...one of the best things we can do for foster children is to help them to understand that you are born into your

family and you do not cause bad circumstances. However, you can control the person you become and the path that you choose. A bright future can be created with a little hope, help and inspiration.”

There are lots of young people in this room who are living success stories as well. I just met one of them—Lilly. She earned a full scholarship to Yale where she’s maintaining a 3.5 average. Pretty impressive and pretty inspiring.

We can all take heart from stories like Ryan’s and Diana’s and Lilly’s. Their message is that despite what seem to be impossible odds, change is possible. As policymakers, as legislators, as educators, as administrators and simply as human beings, we must do all we can to help their light to shine.

Thank you.

Appendix 4: Fostering Connections Resources

National Foster Care Coalition
Fostering Connections Act Summary



Sample State Legislation to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older

June 2010

**American Bar Association Center on Children and the Law
Center for Law and Social Policy
Children's Defense Fund
Juvenile Law Center**

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American Bar Association Center on Children and the Law

The American Bar Association's Center on Children and the Law and Commission on Youth at Risk, in partnership with Casey Family Programs and the Eckerd Family Foundation, started the *Bar-Youth Empowerment Project*, focused on transitioning youth. The project aims to improve outcomes for youth currently in foster care as well as young people who have aged out of care by promoting youth participation in court cases that affect them and ensuring access to legal counseling and representation to youth in need of specialized legal assistance. For more information, please contact Kristin Kelly at kellyk@staff.abanet.org or Andrea Khoury at khourya@staff.abanet.org.

Center for Law and Social Policy

CLASP's mission is to develop and advocate for policies at the federal, state and local levels that improve the lives of low income people. In particular, we seek policies that work to strengthen families and create pathways to education and work. CLASP's child welfare work seeks to prevent child abuse and neglect and to ameliorate the trauma experienced by children who are maltreated. We promote policies that empower parents to care for their children when possible and provide alternative, loving homes for children whose parents cannot care for them. For more information on Fostering Connections, contact Tiffany Conway Perrin at tconwayperrin@clasp.org or (202)906-8026.

Children's Defense Fund

The Children's Defense Fund Leave No Child Behind® mission is to ensure every child a *Healthy Start*, a *Head Start*, a *Fair Start*, a *Safe Start* and a *Moral Start* in life and successful passage to adulthood with the help of caring families and communities. CDF provides a strong, effective and independent voice for *all* the children of America who cannot vote, lobby or speak for themselves. We pay particular attention to the needs of poor and minority children and those with disabilities. CDF educates the nation about the needs of children and encourages preventive investments before they get sick, drop out of school, get into trouble or suffer family breakdown. CDF began in 1973 and is a private, nonprofit organization supported by foundation and corporate grants and individual donations. We have never taken government funds. For more information about Fostering Connections, please contact Beth Davis-Pratt at edavis-pratt@childrensdefense.org.

Juvenile Law Center

Founded in 1975 as a non-profit legal service, Juvenile Law Center (JLC) is one of the oldest multi-issue public interest law firms for children in the United States. In its Transitions to Adulthood work, JLC promotes policies and practices that are informed by the latest research on adolescent development and research which confirms every child's need for healthy attachments to caring and consistent adults in their lives. JLC is working with the child welfare and juvenile justice systems to aid older youth in their transition out of these public systems that have supported them, and into successful, stable, healthy, and productive lives as adults in the community. For more information, please contact Jennifer Pokempner at JPokempner@jlc.org.

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**Sample State Legislation¹ to Extend Foster Care, Adoption and Guardianship
Protections, Services and Payments to Young Adults Age 18 and Older²**

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² This sample legislation focuses on children and young adults in the dependency system. However, because many states claim IV-E reimbursement for children in the delinquency and status offense systems, states wishing to extend care beyond age 18 for these populations should consider the applicability of these provisions, especially as they relate to IV-E eligibility for children other than those in dependency cases.

PART I - INTRODUCTION

On October 7, 2008, the *Fostering Connections to Success and Increasing Adoptions Act* (Public Law 110-351) was signed into law. Unanimously passed by both houses of Congress, Fostering Connections represents the most significant child welfare reform legislation in more than a decade. The act's numerous improvements are intended to achieve better outcomes for children and young adults who are at risk of entering or have spent time in foster care. Fostering Connections promotes, among other things, extension of foster care, adoption and guardianship beyond age 18; permanent families for children; important links to family; sibling connections; educational stability and coordinated health planning; expanded protection and supports for American Indian children; and new training opportunities for a broad group as individuals working with children and young adults involved with the child welfare system. A number of important provisions in Fostering Connections are designed to positively impact the lives of, and outcomes for, older children and young adults in foster care and those transitioning out of care. The new law recognizes important steps that are needed to meet the needs of older children and young adults as they prepare to leave foster care. Congress heard from young people who were alumni of foster care, from states that are responding to the needs of older youth in care, and from researchers who have documented the benefits to youth who stay in foster care longer and have improved their chances of success when they leave care.

Fostering Connections presents an unprecedented opportunity to provide care and support to young adults who are in foster care or who exited foster care to guardianship or adoption. Beginning October 1, 2010, under the act, states have the option to amend their Title IV-E state plans to claim federal funds for young adults in foster care beyond their 18th birthday, or for those who exited foster care after age 16 to guardianship or adoption, to age 19, 20, or 21. With limited exceptions, states can currently only claim federal assistance for children up to their 18th birthday. States will be federally reimbursed for those young adults who are eligible for IV-E maintenance payments³ and who are:

- Completing secondary education or in a program leading to an equivalent credential;
- Enrolled in an institution that provides post-secondary or vocational education;
- Participating in a program or activity designed to promote, or remove barriers to, employment;
- Employed for at least 80 hours per month; or
- Incapable of doing any of the activities described above due to a medical condition, which incapability is supported by regularly updated information in the case plan of the child.

For young adults in foster care, this extension should be used by states as additional time to identify a permanent family, and to provide the young adult with the services, supports, and skills needed to transition successfully to adulthood. The extension of guardianship and adoption support provides important options for young adults, allowing them to pursue the most

³ To be eligible for IV-E reimbursement, the child must meet all eligibility requirements under Title IV-E of the Social Security Act for foster care, including removal from an income-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

appropriate permanency option without having to make the difficult choice between permanency and needed assistance.

Fostering Connections also requires that, in the 90-day period immediately before a child turns 18 (or 19, 20 or 21 as the state may elect), a caseworker and any other appropriate individuals work with him or her to develop a personalized transition plan that is as detailed as the child chooses. The plan must include specifics on housing, health insurance, education, local opportunities for mentors and continuation of support services, workforce supports and employment services. This transition plan is required for *all* children and young adults for whom foster care maintenance payments are being made. Children and young adults who have returned home or for whom kinship guardianship assistance or adoption assistance payments are being made must also have a transition plan if they are receiving Chafee Program benefits or services. These provisions build on the good work that has long been underway in a number of states. Prior to Fostering Connections, a number of states provided some measure of services and supports to young adults in, or who had been in, foster care.

Like many of their counterparts in the general population, few young adults in foster care are prepared to support themselves at age 18. Approximately half of all young people between the ages of 18 and 24 still live with their parents, and most rely on their parents for some financial support until they are well into their twenties.⁴ But, such support is often unavailable to young adults who age out of foster care. Instead, they often report being told, on the morning of their 18th birthdays, that they must leave their foster homes. Two major studies⁵ – the Midwest Evaluation of the Adult Functioning of Former Foster Youth and California’s Fostering Connections to Success Act and the Costs and Benefits of Extending Foster Care to 21 – have examined the impact of extending foster care to young adults older than 18. They found that, compared to those who age out of foster care, young adults age 18 and older who remain in care are better off, as is society.⁶ There may be fiscal benefits realized for states that extend support to

⁴ See, e.g., Frank F. Furstenberg, Jr., Sheela Kennedy, Vonnice C. Mcloyd, Rubén G. Rumbaut & Richard A. Settersten, Jr., *Growing Up is Harder to Do*, 3 CONTEXTS 33 (Summer 2004), available at <http://contexts.org/magazine/docs/furstenberg.pdf>; Robert Schoeni & Karen Ross, *Family Support During the Transition to Adulthood*, National Poverty Law Center, Policy Brief #3 (Aug. 2004), available at http://www.npc.umich.edu/publications/policy_briefs/brief3/brief3.pdf.

⁵ Currently, limited research or data exists on outcomes for young adults previously in the foster care system. Beginning on October 1, 2010, states must begin collecting data for the National Youth in Transition Database (NYTD). NYTD will collect case-level information on youth in care including the services paid for or provided by the state agencies that administer the Chafee Foster Care Independence Program (CFCIP), as well as the outcome information on young adults who are in or who have aged out of foster care. This is an important opportunity to gain much-needed information about this population and evaluate the programs and services needed to support positive transitions to adulthood.

⁶ See, e.g., Mark Courtney, Amy Dworsky, Gretchen Cusick, Judy Havlicek, Alfred Perez, Tom Keller, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, Chapin Hall Research Center for Children, University of Chicago, (December 2007): 68-70. http://www.jimcaseyyouth.org/docs/ch_midwest_study121207.pdf; Peter Pecora, Ronald Kessler, Jason Williams, Kirk O’Brien, Chris Downs, Diana English, James White, Eva Hiripi, Catherine White, Tamera Wiggins & Kate Holmes, *Improving Foster Family Care: Findings from the Northwest Foster Care Alumni Study*. Casey Family Programs, (2005). <http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/375/CaseyAlumniStudyupdated082006.pdf>; M.B. Kushel, I.H. Yen, L. Gee & M.E. Courtney, *Homelessness and Health Care Access After Emancipation: Results from the Midwest Evaluation of Adult*

young adults age 18 and older.⁷ For example, extended support can reduce incarceration and reliance on public assistance, and increase positive outcomes, like higher education completion and enhanced employability, which can create concrete fiscal benefits.

How to Use this Sample Legislation

This sample legislation is a tool that state policymakers, administrators and advocates can use as they advocate for and develop legislation to extend support to young adults beyond age 18 in response to Fostering Connections. It can be the basis for new legislation or help in evaluating current state laws or pending legislation.

This sample legislation takes full advantage of the federal support offered by Fostering Connections in two key areas. First, though Fostering Connections allows states to extend care to age 19, 20 or 21, this sample legislation assumes that care and support would be extended to age 21. Second, the act permits states to extend foster care, adoption assistance, kinship guardianship assistance or any combination of the three to age 19, 20 or 21. This sample legislation extends all three forms of assistance to age 21. This sample legislation also goes beyond Fostering Connections in critical areas affecting young adults. It extends care and support to all young adults up to age 21, regardless of IV-E eligibility whereas Fostering Connections provides federal support only for those young adults who are IV-E eligible.⁸ It also gives young adults age 18 and older the option to re-enter care after exiting, even though it is not clear that federal support would be available to them.

The remainder of the sample legislation is consistent with the requirements in Title IV-E of the Social Security Act (Title IV-E),⁹ as amended by Fostering Connections. However, recognizing that the provisions in Fostering Connections do not by themselves make for a coherent state law, additional language was needed to flesh out policies regarding case plans, transition plans and court oversight. Where possible, language used is precisely what is required by Fostering Connections. However, in some instances the sample legislation includes additional detail that, while not required under the new law, creates sound policy that incorporates best practice. Departures from the letter of the law are clearly identified in the commentary.

This sample state legislation provides states with language to:

- Extend foster care, guardianship and adoption assistance for young adults to age 21;
- Make the most of federal support available under Fostering Connections to free up state and local funding to offer young adults additional supports;

Functioning of Former Foster Youth. Archives of Pediatric Medicine 161 no. 10 (2007). <http://archpedi.amaassn.org/cgi/content/full/161/10/986>.

⁷ For more information about the fiscal advantages for states extending assistance to young adults past age 18, see the National Foster Care Coalition's "Frequently Asked Questions on the Provisions Designed to Impact Older Youth" at www.nationalfostercare.org.

⁸ Throughout this document, the term "IV-E eligible" means that a child or young adult qualifies for IV-E reimbursement by fulfilling the requirements for federal foster care, adoption assistance, or guardianship assistance. For a complete description of these eligibility requirements, please see Appendix A.

⁹ Throughout this document, "Title IV-E" or "IV-E" refers to the programs and requirements under the Social Security Act that encompass federal foster care, guardianship and adoption assistance.

- Extend care and support to young adults who are not IV-E eligible;¹⁰
- Embed in statute best practices derived from research, policy, and existing programs that support permanent families and better outcomes for young adults while they are in and after they exit care; and
- Extend required court oversight for young adults in foster care beyond age 18.

The sample legislation is provided without commentary on pages 6-14. The sample legislation paired with detailed commentary is available on pages 15-33.

PART II – SAMPLE LEGISLATION

ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE

This “Sample State Legislation to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older” is herein referred to as “sample legislation” or “legislation.”

SECTION 102. DEFINITIONS

For the purposes of this legislation:

1. “Administrative review” means a review open to the participation of the child or young adult and the parents, guardians, or other caretakers of the child, unless a court determines participation is not in the best interests of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or young adult or the parents who are the subject of the review, and which is equivalent to the review in which issues are addressed at permanency hearings required by 42 U.S.C. § 675(5)(C).
2. “Child” means an individual who has not attained 21 years of age.
3. “Department” means the state, county, or tribal agency responsible for rendering child welfare services.
4. “Dependency” means the basis for jurisdiction by a state, local or tribal court that encompasses civil protection and oversight of a child who has been found to be abused, neglected, or abandoned, or who has otherwise been found dependent upon Department care and support, or who has been placed in Department care through a voluntary placement agreement executed by a parent or legal guardian..
5. “Fostering Connections” refers to the federal Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.
6. “Independent living agency” means a non-profit organization with expertise in the placement and supervision of young adults that meets any relevant licensing requirements of the state and that is operating under contract with the Department to provide placement, case management and supervision services to young adults in foster care. Primary responsibility for the young adults remains with the Department, but those responsibilities can be carried out under contract with appropriate private non-profit service providers.
7. “Independent Living Plan” means a written description of the programs and services which will help a child or young adult prepare for the transition from foster care to independent living as described in 42 U.S.C. § 675(1)(D) and Section 401(b) of this Sample Legislation.
8. “Juvenile court” means any court having dependency jurisdiction.
9. “Medical Condition” means a mental, physical, or emotional condition, including cognitive impairment or addiction.
10. “Supervised setting in which the individual lives independently” means a living arrangement, approved by the Department or an “independent living agency” where the individual lives independently, but in which he or she is provided supervision, case management and supportive services by the Department or “independent living agency” that offer

- developmentally appropriate freedom and responsibility to prepare him or her for adulthood. To approve a setting the Department or “independent living agency” must ensure that:
- a. Young adults are provided with a level of supervision commensurate with their individual needs, as assessed by the Department or “independent living agency,” consistent with the young adult’s medical treatment plan, including physical, mental health, and substance abuse treatment plans; permanency plan and independent living goals. Less than 24 hour on-site supervision is permitted, however, 24 hour crisis intervention and support must be available.
 - b. All requirements related to the case plan as established in 42 U.S.C. § 675(1), including the transition plan, and the case review system established in 42 U.S.C. § 675(5) and its required continued pursuit of permanency consistent with the permanency goal, are satisfied and integrated with the goals of the supervised setting in which the individual lives independently.
 - c. Young adults living independently in supervised settings are offered, at a minimum, supportive services in: life skills instruction and counseling; educational support and progress; employment preparation and placement; development and maintenance of support networks, including family; health and wellness; and housing search and placement. The determination of what services will be provided and for how long will be based on the young adult’s assessed needs, interests, and input and will be consistent with the goals set in the young adult’s case plan. Acceptance of supportive services beyond those required in section 202 by the young adult shall not be considered a condition of eligibility for placement or continuation in a supervised setting in which the individual is living independently. Provision and delivery of supportive services shall be in coordination with the local Independent Living Program.
 - d. Approved living settings are in compliance with all state or local health and housing codes. Approved living settings do not have to be contracted with or in the legal control of the Department or independent living agency providing supervision, case management, or supportive services, however, responsibility for the young adult remains with the Department.
11. “Transition Plan” means a personalized plan developed at the direction of a child or young adult, with the assistance and support of a caseworker and, as appropriate, other representatives of the child or young adult as described at 42 U.S.C. § 675(5)(H) and Section 402 of this Sample Legislation.
 12. “Young adult” means a child who has attained 18 years of age but who has not attained 21 years of age.

ARTICLE 2. EXTENSION OF CARE

SECTION 201. ADOPTION AND GUARDIANSHIP ASSISTANCE SHALL BE EXTENDED TO AGE 21 FOR ELIGIBLE YOUNG ADULTS

With respect to a young adult for whom an adoption assistance or kinship guardianship agreement is executed after the young adult attained 16 years of age or older, the Department shall continue making adoption and guardianship assistance payments on behalf of that young adult until age 21.

SECTION 202. FOSTER CARE SHALL BE EXTENDED TO AGE 21

1. Unless care and responsibility are terminated pursuant to Sections 203 or 204, the Department shall retain care and responsibility for a young adult in foster care between the ages of 18 and 21 if that young adult is:
 - a. Completing secondary education or a program leading to an equivalent credential;
 - b. Enrolled in an institution which provides post-secondary or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to, employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the activities described in subclauses a. through d. due to a medical condition, which incapability is supported by regularly updated information in the case plan of the young adult.
2. A juvenile court shall, except as provided in Sections 203 and 204, retain jurisdiction over a young adult in foster care between ages of 18 and 21 if the court assumed jurisdiction over the young adult before his or her 18th birthday.
3. Nothing in this statute shall abrogate any responsibilities of the Department or the court on behalf of the young adult, including the protections required under Section 303, or responsibilities of the young adult under state or federal law or regulation.

SECTION 203. TERMINATION OF CARE—GENERAL PROVISIONS

1. The extended jurisdiction of the court and continued care and responsibilities of the Department provided for in Section 202 terminate on the earliest of:
 - a. The date the young adult knowingly and voluntarily withdraws consent as set forth in Section 204;
 - b. The young adult exits foster care to a permanent home consistent with his or her permanency plan; or
 - c. The young adult's 21st birthday.
2. Notwithstanding the foregoing, the court shall not terminate its jurisdiction until it finds, following a hearing held after notice to all parties, that:
 - a. The Department has complied with the provisions of Section 402; or
 - b. The young adult has attained the age of 21 and despite ongoing reasonable efforts on the part of the Department to provide him or her services and inform him or her of the right to remain in care beyond age 18, the young adult has not participated in the development of the Transition Plan under Section 402.

SECTION 204. VOLUNTARY TERMINATION OF CARE

1. If the young adult withdraws consent to extended court jurisdiction and continued care and responsibility by the Department under Section 202, a court hearing must be held before court jurisdiction can be terminated and before the Department may close its case.
2. At the hearing, the following criteria must be met before court jurisdiction can be terminated and before the Department may close its case:
 - a. Attendance of the young adult's attorney at the hearing; and
 - b. Attendance of the young adult at the hearing; or
 - c. Findings by the court that:
 - i. The young adult has been informed by his or her attorney of his or her right to attend the hearing and has provided written consent to waive this right;

- ii. The young adult has been informed of the potential negative effects of terminating care early, the option to re-enter care before reaching age 21, the procedure and limitations on re-entering care, the availability of aftercare services, and that the young adult has signed a document attesting that he or she has been so informed and understands these provisions, and
 - iii. The Department has complied with Section 402.
3. All provisions under Section 304 shall apply to hearings under this Section.

SECTION 205. OPPORTUNITY TO RE-ENTER CARE

1. A young adult who exited foster care at or after reaching his or her 18th birthday, but before reaching age 21, may petition the court to resume dependency jurisdiction and the Department to re-open its case. The court shall resume jurisdiction and the Department shall re-open the case if the young adult is engaged in the activities described in Section 202(1).
2. The Department shall create a clear and developmentally-appropriate notice discussing the rights of young adults' who were formerly in foster care to services under this sample legislation. The notice shall include information about what services they will be eligible for and how such services may be obtained. The Department shall disseminate this information to all young adults in foster care at their last court review before exiting care as described in Section 302 and at the hearing on their petition to resume dependency jurisdiction as described in this section.

ARTICLE 3. COURT SUPERVISION

SECTION 301. LEGAL REPRESENTATION AND CASA ADVOCACY FOR THE YOUNG ADULT IN HIS OR HER DEPENDENCY CASE

1. All young adults shall be appointed an attorney who has received training appropriate to the role, and who has adequate time and resources to provide effective legal representation in the proceeding.
2. The attorney's representation of the young adult shall be client directed, and the attorney shall be bound by the state's Rules of Professional Responsibility.
3. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the young adult receives the services required under this sample legislation.
4. For young adults who were appointed a guardian *ad litem* (GAL) attorney before age 18, appointment may be continued but under a client directed model of representation.
5. If the young adult re-enters care under Section 204 and does not have an attorney, the court shall appoint one for the young adult.
6. In addition, the judge has discretion to appoint a court appointed special advocate (CASA volunteer), or continue the appointment of a CASA volunteer, with the young adult's consent.

SECTION 302. LAST COURT REVIEW PRIOR TO CHILD TURNING 18

1. During the last review hearing before the child turns 18, the court shall:
 - a. Address whether the child plans to remain in foster care, and if so, ensure the child's transition plan includes a plan for meeting one or more of the criteria listed in Section 202(1); and

- b. Ensure the child has been informed of:
 - i. The right to request termination of dependency jurisdiction and discharge from the Department's care;
 - ii. The right to continued services, which include the Department's obligations under Sections 202, 401 and 402; and
 - iii. The opportunity to re-enter care in accordance with Section 205.
- c. If the young adult requests termination of dependency jurisdiction and discharge from the Department's care, the court shall ensure the young adult has been informed of:
 - i. Any services or benefits for which the young adult may be eligible based on being formerly in the care and custody of the Department including, but not limited to, services or benefits available under the Chafee Foster Care Independence Act, 42 U.S.C. § 677;
 - ii. Any services or benefits that may be lost through termination of dependency jurisdiction; and
 - iii. Any other federal, state, local, tribal or community-based services or supports available to the child.

SECTION 303. PERIODIC REVIEWS FOR YOUNG ADULTS

With respect to any young adult who receives continued care from the Department at or after age 18 under Sections 202 and/or 205, the state shall ensure that:

1. A case review system is in place that includes:
 - a. Judicial findings regarding:
 - i. The status of the issues described in 42 U.S.C. § 675 (5)(A), (D), (E), (G) and (H); and
 - ii. Whether reasonable efforts have been made to place siblings together unless the state documents that such a joint placement would be contrary to the safety and well being of any of the siblings, and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved unless it is found that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings.
 - b. The frequency and mechanism for review described in 42 U.S.C. § 675 (5)(B),
 - c. The procedural protections described in 42 U.S.C. § 675 (5)(C), including that in all permanency hearings or hearings regarding the transition of the young adult from foster care to independent living, that the court or administrative body consults, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult; and
 - d. Any other procedural protections that apply to children under 18 under existing state or tribal law.
2. The court maintains oversight to ensure the Department is coordinating with the appropriate agencies, and, as otherwise permitted, maintains oversight of other agencies involved in implementing the young adult's case plan, including the independent living plan and, when applicable, the transition plan.
3. The Department prepares and presents to the court a report, developed in collaboration with the young adult, addressing the young adult's progress in meeting the goals in the case plan, including the independent living plan and transition plan, when applicable, and shall propose modifications as necessary to further those goals.

4. The court determines whether the Department and any service provider under contract with the Department is providing the appropriate services as provided in the case plan including the independent living plan, and when applicable, the transition plan.
 - i. If the court believes that the young adult is entitled to additional services to achieve the goals enumerated in the case plan, under the Department's policies, or under a contract with a service provider, the court may order the Department to take action to ensure that the young adult receives the identified services.
5. The young adult or any other party to the dependency case can request an additional hearing or review.

SECTION 304. RIGHTS OF THE YOUNG ADULT

1. Nothing in this sample legislation shall be construed to abrogate any other rights that a person, who has attained 18 years of age, may have as an adult under state law.
2. Young adults have a right to:
 - a. Receive notice of case and permanency plan meetings, team decision-making meetings, administrative reviews, court hearings, and any other case-related proceedings or meetings;
 - b. Be involved in the development of a personalized transition plan as described in Section 402;
 - c. Be present and address the court;
 - d. Legal representation as described in Section 302; and
 - e. Any other privileges afforded to parties to dependency proceedings under state or tribal law.
3. If the young adult is not present at any hearing, the court shall make a finding as to whether the young adult was given notice and made an informed decision not to attend, in order to proceed with the hearing, or postpone the hearing until the young adult may attend.

ARTICLE 4. PROGRAM STRUCTURE

SECTION 401. SERVICES THAT SHALL BE PROVIDED TO THE YOUNG ADULT

1. The Department shall revise the written case plan for each young adult in foster care, after consultation with the young adult to ensure it includes at least the following:
 - a. A description of the type of foster family home, institution or "supervised setting in which the individual lives independently," in which a young adult is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the young adult plans to carry out the voluntary placement agreement entered into, or judicial determination made, with respect to the young adult in accordance with 42 U.S.C. § 672(a)(1) and
 - b. A plan for assuring that the young adult receives safe and proper care and that services are provided to the young adult, parents, and foster parents in order to improve the conditions in the parents' home, facilitate return of the young adult to his own safe home or the permanent placement of the young adult, and address the needs of the young adult while in foster care, including a discussion of the appropriateness of the services that have been provided to the young adult under the plan.
 - c. Documentation of the reasonable efforts that have been made to place siblings together, or documentation that such a joint placement would be contrary to the safety and well

being of any of the siblings; and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved or documentation that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings. This documentation shall be updated in accordance with the review and updating of the case plan.

- d. The health and education records of the young adult, including the most recent information available regarding:
 - i. The names and addresses of the young adult's health and educational providers;
 - ii. The young adult's grade level performance;
 - iii. The young adult's school record;
 - iv. A record of the young adult's immunizations;
 - v. The young adult's known medical problems;
 - vi. The young adult's medications; and
 - vii. Any other relevant health and education information concerning the young adult determined to be appropriate by the Department.
- e. A written description of the programs and services that will help the young adult prepare for the transition from foster care to independent living, including, but not limited to, documentation that assistance has been provided to:
 - i. Complete applications for health insurance, including applications for Medicaid;
 - ii. Obtain referrals for, apply for, and obtain safe, stable, and age appropriate housing;
 - iii. Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;
 - iv. Access information about maternal and paternal relatives including any siblings, unless contrary to the safety and well-being of the young adult;
 - v. Obtain employment or other financial support;
 - vi. Obtain a government issued identification card;
 - vii. Open and maintain a bank account;
 - viii. Obtain appropriate community services and programs including health, mental health, developmental disability, and other disability services and supports; and, where appropriate:
 - ix. Satisfy any juvenile justice system requirements and assist with expunging the young adult's juvenile's record;
 - x. Complete secondary education;
 - xi. Apply for admission and aid for postsecondary educational or vocational programs;
 - xii. Obtain the necessary state court findings and then apply for Special Immigrant Juvenile Status, or apply for other immigration relief that they may be eligible for, including achievement of citizenship status;
 - xiii. Create a health care power of attorney as required by P.L. 111-148;
 - xiv. Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including but not limited to TANF, SSI, SSDI, Survivor's Benefits, WIC, Food Stamps, LIHEAP; and, if applicable,
 - xv. Assist with applying for a legal name change.
- f. In the case of a young adult whose permanency plan is adoption or placement in another permanent home, documentation of the steps the Department is taking to find an adoptive family or other permanent living arrangement for the young adult to place him or her with an adoptive family, a fit and willing relative, a legal guardian, or in another planned

permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include young adult-specific recruitment efforts such as the use of State, regional and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state or interstate placements and intensive family finding efforts designed to facilitate connections with adult relatives or others with a significant relationship to the young adult.

- g. In the case of a young adult with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under 42 U.S.C. § 673(d), a description of:
 - i. The steps that the agency has taken to determine that it is not appropriate for the young adult to be returned home or adopted;
 - ii. The reasons for any separation of siblings during placement;
 - iii. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the young adult's best interests;
 - iv. The ways in which the young adult meets the eligibility requirements for a kinship guardianship assistance payment;
 - v. The efforts the agency has made to discuss adoption by the young adult's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and the efforts made by the Department to discuss with the young adult's parent or parents the kinship guardianship assistance arrangement, or the reasons why those efforts were not made.
- h. A plan for ensuring the educational stability of the young adult while in foster care, including:
 - i. Assurances that the placement of the young adult in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the young adult is enrolled at the time of placement; and
 - ii. If the young adult has not completed secondary education, an assurance that the Department has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the young adult remains in the school in which the young adult is enrolled at the time of placement; or
 - a. If remaining in such school is not in the best interests of the young adult, assurances by the Department and local educational agencies that they will provide immediate and appropriate enrollment in a new school, with all of the educational records of the young adult provided to that school.

SECTION 402. TRANSITION PLAN

During the 90-day period immediately prior to the date on which the young adult in foster care will attain 21 years of age, or the date on which a child or young adult will exit foster care pursuant to Section 203 or 204, whether during that period foster care maintenance payments are being made on the child or young adult's behalf, or the child or young adult is receiving benefits or services under 42 U.S.C. § 677, a caseworker on the staff of the Department shall:

- 1. In collaboration with, as appropriate, other representatives of the child or young adult, provide the child or young adult with assistance and support in developing a transition plan that is personalized at the direction of the child or young adult, and that includes specific

- options for the child or young adult on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services, and that assists the child or young adult in applying for Special Immigrant Juvenile Status or other appropriate immigration relief and citizenship status, if necessary, and that this plan is as detailed as the child or young adult may elect and ensures that the child or young adult has permanent adult connections;
2. Provide the child or young adult with the following documentation:
 - a. Copy of the child's or young adult's credit report;
 - b. Copy of the child's or young adult's social security card;
 - c. Certified copy of the child's or young adult's birth certificate;
 - d. Copy of the child's or young adult's driver's license or government issued ID card;
 - e. Letter including the dates that the child or young adult was within jurisdiction of the court;
 - f. Letter including a statement that the child or young adult was in foster care, in compliance with financial aid documentation requirements;
 - g. The child's or young adult's entire educational records, obtained through a court order if necessary;
 - h. The child's or young adult's entire health and mental health records, obtained through a court order if necessary;
 - i. Documentation of the child's or young adult's health insurance or Medicaid;
 - j. Documentation of a health power of attorney for the child or young adult;
 - k. Proof of the child's or young adult's citizenship or legal residency;
 - l. Clear and age appropriate written instructions on filing a petition for the child or young adult to re-enter care, including a completed sample petition; and
 - m. The process for accessing their case file, and where applicable:
 - n. Death certificates of the child's or young adult's parents; and
 - o. Termination of Parental Rights orders.
 3. Coordinate with appropriate local public and private agencies in designing the Transition Plan.
 4. Coordinate the Transition Plan with any other appropriate plans, including but not limited to the Independent Living Plan (as described at 42 U.S.C. § 675(1)(D) and Section 401(b) of this sample legislation), and an Individuals with Disabilities Education Act transition plan (as described at 34 CFR § 300.347).
 5. Amend and update the Transition Plan for any young adult re-entering care under Section 205.

PART III – SAMPLE LEGISLATION WITH COMMENTARY

ARTICLE 1. GENERAL PROVISIONS

SECTION 101. SHORT TITLE

This “Sample State Legislation to Extend Foster Care, Adoption and Guardianship Protections, Services and Payments to Young Adults Age 18 and Older” is herein referred to as “sample legislation” or “legislation.”

SECTION 102. DEFINITIONS

For the purposes of this legislation:

1. “Administrative review” means a review open to the participation of the child or young adult and the parents, guardians, or other caretakers of the child, unless a court determines participation is not in the best interests of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or young adult or the parents who are the subject of the review, and which is equivalent to the review in which issues are addressed at permanency hearings required by 42 U.S.C. § 675(5)(C).
2. “Child” means an individual who has not attained 21 years of age.
3. “Department” means the state, county, or tribal agency responsible for rendering child welfare services.
4. “Dependency” means the basis for jurisdiction by a state, local or tribal court that encompasses civil protection and oversight of a child who has been found to be abused, neglected, or abandoned, or who has otherwise been found dependent upon Department care and support, or who has been placed in Department care through a voluntary placement agreement executed by a parent or legal guardian..
5. “Fostering Connections” refers to the federal Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351.
6. “Independent living agency” means a non-profit organization with expertise in the placement and supervision of young adults that meets any relevant licensing requirements of the state and that is operating under contract with the Department to provide placement, case management and supervision services to young adults in foster care. Primary responsibility for the young adults remains with the Department, but those responsibilities can be carried out under contract with appropriate private non-profit service providers.
7. “Independent Living Plan” means a written description of the programs and services which will help a child or young adult prepare for the transition from foster care to independent living as described in 42 U.S.C. § 675(1)(D) and Section 401(b) of this Sample Legislation.
8. “Juvenile court” means any court having dependency jurisdiction.
9. “Medical Condition” means a mental, physical, or emotional condition, including cognitive impairment or addiction.
10. “Supervised setting in which the individual lives independently” means a living arrangement, approved by the Department or an “independent living agency” where the individual lives independently, but in which he or she is provided supervision, case management and supportive services by the Department or “independent living agency” that offer

- developmentally appropriate freedom and responsibility to prepare him or her for adulthood. To approve a setting the Department or “independent living agency” must ensure that:
- a. Young adults are provided with a level of supervision commensurate with their individual needs, as assessed by the Department or “independent living agency,” consistent with the young adult’s medical treatment plan, including physical, mental health, and substance abuse treatment plans; permanency plan and independent living goals. Less than 24 hour on-site supervision is permitted, however, 24 hour crisis intervention and support must be available.
 - b. All requirements related to the case plan as established in 42 U.S.C. § 675(1), including the transition plan, and the case review system established in 42 U.S.C. § 675(5) and its required continued pursuit of permanency consistent with the permanency goal, are satisfied and integrated with the goals of the supervised setting in which the individual lives independently.
 - c. Young adults living independently in supervised settings are offered, at a minimum, supportive services in: life skills instruction and counseling; educational support and progress; employment preparation and placement; development and maintenance of support networks, including family; health and wellness; and housing search and placement. The determination of what services will be provided and for how long will be based on the young adult’s assessed needs, interests, and input and will be consistent with the goals set in the young adult’s case plan. Acceptance of supportive services beyond those required in section 202 by the young adult shall not be considered a condition of eligibility for placement or continuation in a supervised setting in which the individual is living independently. Provision and delivery of supportive services shall be in coordination with the local Independent Living Program.
 - d. Approved living settings are in compliance with all state or local health and housing codes. Approved living settings do not have to be contracted with or in the legal control of the Department or independent living agency providing supervision, case management, or supportive services, however, responsibility for the young adult remains with the Department.
11. “Transition Plan” means a personalized plan developed at the direction of a child or young adult, with the assistance and support of a caseworker and, as appropriate, other representatives of the child or young adult as described at 42 U.S.C. § 675(5)(H) and Section 402 of this Sample Legislation.
 12. “Young adult” means a child who has attained 18 years of age but who has not attained 21 years of age.

Commentary

Administrative Review

42 U.S.C. § 675(6) defines administrative reviews as open to the parents of the child. However, for a child age 18 or older, who is legally an adult, participation by the parents may not be appropriate. Balancing young adults’ status as legal adults with the importance of parents’ rights in a dependency case, the presumption should be that parents, guardians, or other caretakers should participate in “administrative reviews” or hearings consistent with federal or state law, but judges may exclude them when appropriate, including at the request of the young adult. Even though the federal definition of administrative review does not explicitly require the

participation of the child, because the law now extends foster care to individuals who are legal adults, those young adults should participate in all administrative reviews.

Child/Young Adult

To acknowledge that young people, whether in or out of foster care, are legal adults at age 18, “young adult” is used to refer to a youth between ages 18 and 21. The definition of “child” is retained because Fostering Connections only refers to a “child” to describe the population of individuals for whom the state may continue to provide care until age 21 and because, at times, a term encompassing both young adults as well as teenagers is necessary. In some cases, the term “child” is important in reflecting that a given provision applies or may apply to not only young adults but also to children under age 18. For example, the term “child” is used in Section 402 Transition Plan because the transition plan is required 90 days prior to the child/young adult leaving foster care. If a child chooses to exit care at age 18, this transition plan is still required and would be developed when he or she is 17. If a state chooses to extend care to age 21 and a young adult remains in care until that time, then the transition plan would be developed when the “young adult” is 20 years old. Even when the word “child” is used to include young adults, this in no way limits the federal or state rights individuals have as legal adults.

Medical Condition

The definition of “medical condition” clarifies the scope of impairments that can be considered when determining whether a young adult is incapable of fulfilling the requirement to engage in activities outlined in Fostering Connections codified at 42 U.S.C. § 675(8)(B). This definition eliminates potential confusion that a “medical condition” would only be interpreted as a physical health impairment, rather than also including the various behavioral health, developmental, and cognitive disabilities or impairments that can serve as barriers to consistent employment and education. Currently, there is no federal definition or interpretation of “medical condition,” but consistent with providing all children and young adults the services and supports needed for a successful transition to adulthood, states are encouraged to define the term broadly. It is also important that steps be taken to help these young adults move towards independence while in care.

Supervised Setting in which the Individual Lives Independently

Fostering Connections requires Department of Health and Human Services (HHS) to issue regulations defining “supervised setting in which the individual lives independently” for purposes of Title IV-E. As of June 23, 2010, regulations have not been issued. The definition provided here was informed by existing effective programs and is intended to allow for a continuum of options that meet the needs of young adults at different developmental phases. This definition may need to be modified once regulations are published.

ARTICLE 2. EXTENSION OF CARE

SECTION 201. ADOPTION AND GUARDIANSHIP ASSISTANCE SHALL BE EXTENDED TO AGE 21 FOR ELIGIBLE YOUNG ADULTS

With respect to a young adult for whom an adoption assistance or kinship guardianship agreement is executed after the young adult attained 16 years of age or older, the Department

shall continue making adoption and guardianship assistance payments on behalf of that young adult until age 21.

Commentary

Fostering Connections allows states to extend Title IV-E foster care, adoption assistance, kinship guardianship assistance or any combination of the three to age 19, 20 or 21 for Title IV-E eligible young adults. This sample legislation extends foster care, adoption and kinship guardianship assistance to age 21 for all young adults, regardless of Title IV-E eligibility.

State Considerations about Extending Kinship Guardianship and Adoption Assistance

Unlike the Title IV-E eligibility requirements for “foster care maintenance payments,” which include continued agency obligations and court review, continuing adoption and kinship guardianship assistance to young adults does not add any additional obligations or responsibilities on the Department or court. These young adults have reached permanency, and their dependency case is already, or should be, closed.

The opportunity to extend adoption and kinship guardianship assistance under Fostering Connections complements the option states have long had to extend adoption assistance to age 21 for young adults with mental or physical disabilities. While this section discusses the provision of Fostering Connections that allows states to extend adoption and kinship guardianship assistance to young adults age 18 and older, nothing in Fostering Connections alters the ability of states to extend IV-E adoption assistance to young adults with mental or physical disabilities. Effective October 1, 2010, states may now also extend kinship guardianship assistance to young adults with mental or physical disabilities to age 21 regardless of when guardianship began or whether that state decides to extend kinship guardianship assistance to youth exiting to guardianship at age 16 or older.

Under Fostering Connections, states can choose to extend only foster care for young adults age 18 and older but that may provide a disincentive to move children to permanent families from foster care. States can remove that disincentive by also extending kinship guardianship assistance and adoption assistance for young adults to age 19, 20, or 21, provided they exited from foster care at age 16 or older. Extending all three types of assistance allows young adults to pursue the most appropriate permanency option without having to make the difficult choice between permanency and receiving needed supports.

In extending kinship guardianship assistance, states may need to review their guardianship laws to determine whether amendments are needed. To ensure that children who exit to guardianship at age 16 or older can continue assistance after age 18, there must be a procedure in state law to allow kinship guardianship assistance beyond age 18. This procedure should recognize these young adults as adults with legal rights of their own but also recognize the need for continued support.

Elimination of Income Eligibility Requirements for Title IV-E Adoption Assistance

This sample legislation extends support to the age of 21 for all young adults who exited foster care to adoption or kinship guardianship after attaining age 16 regardless of IV-E eligibility.

Fostering Connections eliminates, on a phased-out basis, all income and resource requirements associated with eligibility for IV-E adoption assistance, including those established as part of Aid to Families with Dependent Children (AFDC). Thus states choosing to extend adoption assistance to all youth who exit foster care at age 16 or older can expect many of those costs to be eligible for IV-E reimbursement. The phase-out began October 1, 2009 with any child age 16 or older or who has spent at least 60 consecutive months in care at the time his or her adoption assistance agreement is finalized. Siblings of these children are also immediately eligible.

SECTION 202. FOSTER CARE SHALL BE EXTENDED TO AGE 21

1. Unless care and responsibility are terminated pursuant to Sections 203 or 204, the Department shall retain care and responsibility for a young adult in foster care between the ages of 18 and 21 if that young adult is:
 - a. Completing secondary education or a program leading to an equivalent credential;
 - b. Enrolled in an institution which provides post-secondary or vocational education;
 - c. Participating in a program or activity designed to promote, or remove barriers to, employment;
 - d. Employed for at least 80 hours per month; or
 - e. Incapable of doing any of the activities described in subclauses a. through d. due to a medical condition, which incapability is supported by regularly updated information in the case plan of the young adult.
2. A juvenile court shall, except as provided in Sections 203 and 204, retain jurisdiction over a young adult in foster care between ages of 18 and 21 if the court assumed jurisdiction over the young adult before his or her 18th birthday.
3. Nothing in this statute shall abrogate any responsibilities of the Department or the court on behalf of the young adult, including the protections required under Section 303, or responsibilities of the young adult under state or federal law or regulation.

Commentary

Fostering Connections allows states to extend Title IV-E foster care, adoption assistance, kinship guardianship assistance or any combination of the three to age 19, 20 or 21 for Title IV-E eligible young adults. This sample legislation extends foster care, adoption and kinship guardianship assistance to age 21 for all young adults, regardless of Title IV-E eligibility.

IV-E Eligibility

While this sample legislation extends care to all young adults to age 21, regardless of Title IV-E eligibility, under Fostering Connections only those children who meet Title IV-E eligibility criteria can be supported with Title IV-E dollars. States that extend care and support to young adults who are not IV-E eligible will have to do so with state, local or other federal dollars. A number of states already provide some measure of services and supports to young adults in, or who had been in, foster care beyond age 18.

If states choose to extend federal support for young adults age 18 and older under Fostering Connections, the young adults must meet the eligibility criteria that apply to all children in foster care under 42 U.S.C. § 472, and also be engaged in one of the IV-E eligibility criteria listed in Section 202 (1)(a-e). Fostering Connections does not further clarify what “program or activity

designed to promote, or remove barriers to, employment” means. In the absence of specific federal guidance on the interpretation of this provision, states should consider including at least mental health and substance abuse treatment programs, services and supports to address domestic violence, job training activities, activities to obtain or stabilize housing or child care, English as a Second Language (ESL) instructional programs, and activities designed to eliminate legal barriers to work, keeping in mind that barriers vary based on the individual needs and circumstances of the young adult. In addition, for a child or young adult to be IV-E eligible, he or she must be living in a IV-E reimbursable placement setting, which means a foster home or child care institution, including, for young adults, a “supervised setting in which the individual lives independently.”

Once the state decides to extend assistance to young adults age 18 and older, the state is obligated to serve all who are Title IV-E eligible and are participating in one of the activities above or excused from participating because of a medical condition. A state cannot pick and choose among these five categories and decide, for example, that it will only support young adults who are completing postsecondary education, but not those who are working. States do, however, have the option under Fostering Connections to limit eligibility based on age (i.e. only to young adults to age 19 or 20). Some states already use state and local funds to extend care for all young adults in foster care or all who are eligible for adoption assistance or guardianship assistance to age 21,¹¹ though many of these states will have to make changes to their programs to qualify for federal support.

Extension of Court Jurisdiction

If a state opts to extend care for young adults age 18 and older as part of their Title IV-E state plan, all of the requirements of Title IV-E apply to young adults in foster care, including court oversight. This includes requirements such as holding a permanency review hearing at least once a year at which the court must make findings regarding whether reasonable efforts were made to finalize the permanency plan and what services were needed for a child age 16 or older to transition from foster care to independence. The court or administrative body must also review the child’s case plan at least once every 6 months. These hearings and reviews, coupled with transition planning efforts (described in Sections 401(b) and 402), help ensure that youth have supports, services, and permanent families or, at least, permanent connections to appropriate adults when they leave care.

Because of the need for court hearings and reviews as a mandatory element for federal IV-E reimbursement, it will be necessary for states to extend court jurisdiction for young adults age 18 and older.¹² While some states already allow for continued court jurisdiction beyond age 18 by

¹¹ See, e.g., California, Florida, New York, Washington, D.C., Illinois, and Pennsylvania.

¹² In addition to being required by law, research has shown that continued court oversight for youth who stay in care past age 18 is correlated with positive outcomes for older youth in care. Research also demonstrates that strong client representation and active youth involvement in court are critical. See e.g., Clark Peters, et al., Continuing in Foster Care Past Age 18: How Courts Can Help (Chapin Hall Issue Brief July 2008), located at <http://www.chapinhall.org/sites/default/files/publications/Beyond%2018%20Issue%20Brief%20redesign%2002-04-09.pdf> (demonstrating the importance of court advocacy and oversight in availability of placements and services, involvement of caseworkers and older adults and a more positive attitude about remaining in care beyond age 18).

court rule or statute,¹³ many states will need to extend court jurisdiction to meet Fostering Connection's requirements.

SECTION 203. TERMINATION OF CARE—GENERAL PROVISIONS

1. The extended jurisdiction of the court and continued care and responsibilities of the Department provided for in Section 202 terminate on the earliest of:
 - a. The date the young adult knowingly and voluntarily withdraws consent as set forth in Section 204;
 - b. The young adult exits foster care to a permanent home consistent with his or her permanency plan; or
 - c. The young adult's 21st birthday.
2. Notwithstanding the foregoing, the court shall not terminate its jurisdiction until it finds, following a hearing held after notice to all parties, that:
 - a. The Department has complied with the provisions of Section 402; or
 - b. The young adult has attained the age of 21 and despite ongoing reasonable efforts on the part of the Department to provide him or her services and inform him or her of the right to remain in care beyond age 18, the young adult has not participated in the development of the Transition Plan under Section 402.

Commentary

Fostering Connections does not include a mechanism for terminating care. This sample legislation offers an approach that fully recognizes the rights of the young adult as a legal adult.

This provision makes clear that, while a young adult may at any time withdraw his or her consent to extended court jurisdiction and continued care and responsibility by the Department pursuant to Section 204, a young adult should otherwise only be discharged from the system to an arrangement where they have permanency, are safe, and will have their needs met (see Sections 401 and 402 for additional information about the need for accountability in discharge planning). Discharge from the system should be contingent on the achievement of outcomes rather than age. The option for young adults to remain in care until age 21 allows more time to achieve permanency.

This Section also emphasizes the importance of respecting the autonomy and legal rights of young adults. If, after weighing all their options and understanding the consequences of their decision, a young adult decides to leave the system, that decision must be respected.

SECTION 204. VOLUNTARY TERMINATION OF CARE

1. If the young adult withdraws consent to extended court jurisdiction and continued care and responsibility by the Department under Section 202, a court hearing must be held before court jurisdiction can be terminated and before the Department may close its case.

¹³ For complete list, please see <http://www.childwelfarepolicy.org/pages/map.cfm?id=347&tab=&curtab=&state=#jump347>.

2. At the hearing, the following criteria must be met before court jurisdiction can be terminated and before the Department may close its case:
 - a. Attendance of the young adult's attorney at the hearing; and
 - b. Attendance of the young adult at the hearing; or
 - c. Findings by the court that:
 - i. The young adult has been informed by his or her attorney of his or her right to attend the hearing and has provided written consent to waive this right;
 - ii. The young adult has been informed of the potential negative effects of terminating care early, the option to re-enter care before reaching age 21, the procedure and limitations on re-entering care, the availability of aftercare services, and that the young adult has signed a document attesting that he or she has been so informed and understands these provisions, and
 - iii. The Department has complied with Section 402.
3. All provisions under Section 304 shall apply to hearings under this Section.

Commentary

Fostering Connections does not include a mechanism for voluntary termination of care. Acknowledging young adults' rights as legal adults, this sample legislation details an approach that balances those rights with important protections.

This Section specifies criteria for ensuring that, when a young adult withdraws consent to remain in care before turning 21, that the decision is truly knowing and voluntary. Several states require that a hearing be held before terminating jurisdiction of a young adult's case. By requiring the young adult's attendance at the hearing to terminate jurisdiction and assuring the right to legal counsel, the young adult is provided clear and specific information about his or her choice so that he or she can better plan for the future. If a young adult gives up an important legal right, necessary protections must be in place to ensure that the decision is as informed as possible. This section also ensures that a young adult who does withdraw his or her consent is fully apprised of options to re-enter care or receive other aftercare services.

SECTION 205. OPPORTUNITY TO RE-ENTER CARE

1. A young adult who exited foster care at or after reaching his or her 18th birthday, but before reaching age 21, may petition the court to resume dependency jurisdiction and the Department to re-open its case. The court shall resume jurisdiction and the Department shall re-open the case if the young adult is engaged in the activities described in Section 202(1).
2. The Department shall create a clear and developmentally-appropriate notice discussing the rights of young adults' who were formerly in foster care to services under this sample legislation. The notice shall include information about what services they will be eligible for and how such services may be obtained. The Department shall disseminate this information to all young adults in foster care at their last court review before exiting care as described in Section 302 and at the hearing on their petition to resume dependency jurisdiction as described in this section.

Commentary

Fostering Connections does not include a mechanism for re-entry into foster care after age 18. As a result, it appears that when a young adult age 18 or older leaves care and court jurisdiction is terminated they cannot later be Title IV-E eligible. This sample legislation allows young adults exiting care after age 18 to re-enter and resume court jurisdiction, though the state may not be able to obtain Title IV-E reimbursement on their behalf.

Many States Provide Some Support to Young Adults after Discharge

A number of states already permit young adults age 18 or over to obtain some measure of services and supports after they leave foster care by law or policy. Many of the states that offer young adults services and supports that would be associated with re-entering care do so through an agency administrative process that does not involve the court.¹⁴ Alternatively, some states allow for a full re-entry by resuming responsibility for care and placement of the young adult and providing all associated services and supports, including court oversight¹⁵. Fostering Connections does not interfere with these state laws or policies. However, for young adults to remain eligible for Title IV-E and, therefore, for the state to claim federal reimbursement for a young adult's care, they must meet all Title IV-E requirements including original removal from an income eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in that home would be contrary to the welfare of the child.

Allowing Young Adults to Re-enter Care Provides a Safety Net

A policy that allows young adults to re-enter care after age 18 provide these young adults a safety net that is similar to that provided to young adults who grow up in their own families and are able to return home when they need assistance or moral support. Young adults raised in families often have the luxury of returning home well past age 21. This same privilege should be available to young adults in foster care at least until age 21.

Maintaining IV-E Eligibility for Youth Who Want to Live Independently

The Department may want to keep a young adult's case open to maintain IV-E eligibility, even though the young adult wishes to live independently. The Department may be able to keep a case open by allowing a trial discharge from care or crafting some other mechanism to maintain ongoing agency and court jurisdiction even while the youth is living independently with supervision or services.¹⁶ Absent some mechanism for keeping a case open, states seeking to

¹⁴ See, e.g., Connecticut Department of Children and Families, Policy Manual, Adolescent Services, Re-Entry to Adolescent Services, 42-20-50 at: <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=327788>; Arizona Department of Economic Security, Reentry into Voluntary Foster Care at: <https://www.azdes.gov/main.aspx?menu=150&id=1774>.

¹⁵ See, e.g., 18 N.Y.A.D.C. § 430.12(1); 705 I.L.C.S. § 405/2-33; A.C.A. § 9-27-306(a)(1)(B)(ii)

¹⁶ On April 6, 2010, the Children's Bureau issued ACYF-CB-PIQ-85-06 that included guidance related to continued IV-E eligibility when a youth resumes care after a "break in placement" such as when a child in foster care exits care either through a trial home visit or through a discharge, and then later re-enters care. The guidance states that "the criteria in determining whether re-establishing a children's eligibility for foster care maintenance payments under title IV-E hinges on whether the child is continuously in foster care status and remains under the responsibility of the [agency] for placement and care." To make this determination, the agency must ask: "(1) Is the child in foster care? (2) Is the original court order or voluntary placement agreement still in effect in relation to removal of the child from his home? (3) Is the child still under the responsibility of the [agency] for placement and care?" Per the guidance, if

support young adults who exit care and then want to re-enter may be unable to receive federal IV-E funding reimbursements. Maintaining young adults' IV-E eligibility is critical to their receiving federal support and the protections under Title IV-E.

ARTICLE 3. COURT SUPERVISION

SECTION 301. LEGAL REPRESENTATION AND CASA ADVOCACY FOR THE YOUNG ADULT IN HIS OR HER DEPENDENCY CASE

1. All young adults shall be appointed an attorney who has received training appropriate to the role, and who has adequate time and resources to provide effective legal representation in the proceeding.
2. The attorney's representation of the young adult shall be client directed, and the attorney shall be bound by the state's Rules of Professional Responsibility.
3. The attorney shall protect the young adult's legal rights and vigorously advocate for the young adult's wishes and goals, including assisting the young adult as necessary to ensure that the young adult receives the services required under this sample legislation.
4. For young adults who were appointed a guardian *ad litem* (GAL) attorney before age 18, appointment may be continued but under a client directed model of representation.
5. If the young adult re-enters care under Section 204 and does not have an attorney, the court shall appoint one for the young adult.
6. In addition, the judge has discretion to appoint a court appointed special advocate (CASA volunteer), or continue the appointment of a CASA volunteer, with the young adult's consent.

Commentary

Fostering Connections is silent on a young adult's right to legal representation in his or her own dependency case. This sample legislation requires young adults to be represented by an attorney upon reaching age 18.

each of these criteria is met, then IV-E eligibility would not need to be re-established. This guidance is consistent with the sample legislation that suggests that a young adult's child welfare case and court case must remain open to continue IV-E eligibility. The guidance later explains that if a child is *discharged* to the home from which he was removed, even if ongoing agency services continue, then he would not be in foster care status. However, "short trial visits" to his home or to the home of a relative would not be considered interruptions in foster care status. Additionally, previous regulations indicate that the state may continue IV-E eligibility of a child, without a re-determination, as long as the trial home visit does "not exceed six months in duration, unless a court orders a longer trial home visit." If a trial home visit extends beyond six months and has not been authorized by the court, or exceeds the time period the court has deemed appropriate, and the child is subsequently returned to foster care, that placement must then be considered a new placement and title IV-E eligibility must be newly established. Under these circumstances the judicial determinations regarding contrary to the welfare and reasonable efforts to prevent removal are required. 45 C.F.R. 1356.21 (e). Read together, the new guidance and previous regulations seem to hold out the possibility that a young adult could agree to a trial discharge of less than 6 months, or longer by court order, which could facilitate the continuation of IV-E eligibility of a formerly IV-E eligible youth who resumes care. Of course, as the new guidance also makes clear, federal financial participation is only allowed during the time a child or young adult is in a licensed or approved foster care facility, which may include a supervised setting in which a child is living independently.

Need for Legal Representation

Children and young adults in care value having an advocate involved in their case to speak up for their needs in court, the dependency system and in the community. By acknowledging the importance of participation in every aspect of their case and planning, Fostering Connections reinforces the role of the advocate in helping children and young adults develop self advocacy skills. Attorney representation is essential for young adults to ensure that their legal rights as adults are being met, and that they are receiving the services and supports they critically need for a successful transition to adulthood. An attorney appointed to represent a young adult's wishes is obligated to zealously advocate on behalf of his or her client. In addition to establishing a trusting relationship with the client, the attorney must provide the young adult all confidentiality protections typical of an attorney-client relationship except in very limited circumstances. The attorney appointed to represent the young adult's wishes also acts as his or her voice in court.

Using a Client-Directed Model of Representation

The GAL or "best interests" model of representation for attorneys cannot be reconciled with the representation of adult clients. In the case where a state requires the attorney to act as a "best interests" advocate or GAL, legal ethics rules require that the manner of representation should change to client-directed when the child becomes a legal adult. The attorney should focus on ensuring that the young adult receives services and supports he or she wants and on providing the young adult with good counsel about his or her options, advocating for his or her legal interests, and preserving confidentiality. Importantly, the attorney will also support the young adult's attendance and participation in court by preparing him or her beforehand and debriefing him or her afterwards. States may find that ensuring a young adult's right to client-directed legal representation may best be accomplished through the amendment of court rules or state statute.

Standards on Effective Advocacy

Especially for this vulnerable population of young adults, effective legal representation by a well-trained attorney with adequate time and resources is essential. For purposes of this section, an attorney who "has adequate time and resources" means that the attorney does not have an excessive caseload size or other responsibilities rendering him or her unable to meet his or her obligations as the child's lawyer pursuant to standards of practice promulgated by the American Bar Association and the National Association of Counsel for Children. It also means that the attorney receives reasonable and appropriate compensation for his or her time and efforts as well as expenses in connection with that representation. Furthermore, adequate and appropriate training means training that comports with recommendations in standards promulgated by the American Bar Association, the National Association of Counsel for Children, and the National Court Appointed Special Advocate Association. Fostering Connections expands the use of federal Title IV-E training funds to include training of court personnel including judges, attorneys for parents and children, court appointed special advocates, and guardians ad litem. Training for these groups will be reimbursed in FY 2010 at a 60% match and will continue to increase annually, reaching the maximum of 75% in 2013 and beyond.

CASA Advocacy

Many young adults are appointed a court appointed special advocate (CASA volunteer) before turning 18 to represent their best interests. CASA volunteers can effectively support young adults and form close relationships with them and their relatives. They can also advocate for young adults in the community, with service providers, with educational systems, with employers, and with those other individuals who play an important role in the young person's life. CASA volunteers can provide important advice to young adults. They may continue to discover new information and alternative options, help the young adult weigh those options, better understand what else is going on in the system around them, and help make sure their transition plan is progressing as the young adult wants and expects. Furthermore, and most importantly, a CASA volunteer may provide a critical permanent adult connection for the young adult. Therefore, it is important that, if a young adult consents to the continued involvement or new appointment of a CASA volunteer, that the court be given clear authority to make and continue such appointments.

SECTION 302. LAST COURT REVIEW PRIOR TO CHILD TURNING 18

1. During the last review hearing before the child turns 18, the court shall:
 - a. Address whether the child plans to remain in foster care, and if so, ensure the child's transition plan includes a plan for meeting one or more of the criteria listed in Section 202(1); and
 - b. Ensure the child has been informed of:
 - i. The right to request termination of dependency jurisdiction and discharge from the Department's care;
 - ii. The right to continued services, which include the Department's obligations under Sections 202, 401 and 402; and
 - iii. The opportunity to re-enter care in accordance with Section 205.
 - c. If the young adult requests termination of dependency jurisdiction and discharge from the Department's care, the court shall ensure the young adult has been informed of:
 - i. Any services or benefits for which the young adult may be eligible based on being formerly in the care and custody of the Department including, but not limited to, services or benefits available under the Chafee Foster Care Independence Act, 42 U.S.C. § 677;
 - ii. Any services or benefits that may be lost through termination of dependency jurisdiction; and
 - iii. Any other federal, state, local, tribal or community-based services or supports available to the child.

Commentary

Fostering Connections does not articulate any unique requirements for the last court review prior to a child turning 18. This sample legislation provides an approach that helps ensure that the child is fully informed of the available options to them after attaining age 18 and that the child is fully engaged in planning for the future.

To make the most of the federal support available under Fostering Connections on behalf of young adults who remain in care, states should, during the last review hearing before the child

turns 18, ensure that the child's transition plan includes a plan for him or her to meet one or more of the criteria listed in Section 202(1).

SECTION 303. PERIODIC REVIEWS FOR YOUNG ADULTS

With respect to any young adult who receives continued care from the Department at or after age 18 under Sections 202 and/or 205, the state shall ensure that:

1. A case review system is in place that includes:
 - a. Judicial findings regarding:
 - i. The status of the issues described in 42 U.S.C. § 675 (5)(A), (D), (E), (G) and (H); and
 - ii. Whether reasonable efforts have been made to place siblings together unless the state documents that such a joint placement would be contrary to the safety and well being of any of the siblings, and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved unless it is found that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings.
 - b. The frequency and mechanism for review described in 42 U.S.C. § 675 (5)(B),
 - c. The procedural protections described in 42 U.S.C. § 675 (5)(C), including that in all permanency hearings or hearings regarding the transition of the young adult from foster care to independent living, that the court or administrative body consults, in an age-appropriate manner, with the young adult regarding the proposed permanency or transition plan for the young adult; and
 - d. Any other procedural protections that apply to children under 18 under existing state or tribal law.
2. The court maintains oversight to ensure the Department is coordinating with the appropriate agencies, and, as otherwise permitted, maintains oversight of other agencies involved in implementing the young adult's case plan, including the independent living plan and, when applicable, the transition plan.
3. The Department prepares and presents to the court a report, developed in collaboration with the young adult, addressing the young adult's progress in meeting the goals in the case plan, including the independent living plan and transition plan, when applicable, and shall propose modifications as necessary to further those goals.
4. The court determines whether the Department and any service provider under contract with the Department is providing the appropriate services as provided in the case plan including the independent living plan, and when applicable, the transition plan.
 - i. If the court believes that the young adult is entitled to additional services to achieve the goals enumerated in the case plan, under the Department's policies, or under a contract with a service provider, the court may order the Department to take action to ensure that the young adult receives the identified services.
5. The young adult or any other party to the dependency case can request an additional hearing or review.

Commentary

By virtue of extending care for young adults beyond age 18, Fostering Connections requires the same protections, including periodic court reviews, for all children and young adults in

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care. Fostering Connections does not articulate any additional details about these periodic reviews for young adults. This sample legislation offers important details that take into account the unique needs of young adults.

Judicial Findings in Key Areas

If a state opts to extend care for young adults age 18 and older, all of the court related requirements of Title IV-E apply, including all of the protections guaranteed as part of the case review system defined in 42 U.S.C. § 675(5). While Fostering Connections requires continued judicial oversight of young adults' cases, this sample legislation goes beyond it by requiring judicial findings in a number of key areas for which the Department is already held responsible. States should consider requiring these same judicial findings for all children in care.

Importance of Periodic Reviews

In addition to assuring compliance with the law, periodic reviews can help the young adult achieve his or her independent living and permanency planning goals through court oversight of established goals and services provided. Active engagement of the young adult as well as all parties will ensure accountability and forward movement in the case.

Maintaining Family Connections

Section 303(1)(a)(ii) embeds in court practice the Fostering Connections requirement related to sibling placement and visitation or other frequent ongoing contact. It does so to further promote accountability and ensure older children and young adults experience the benefits of these provisions in their efforts to achieve permanency. Likewise, identifying and notifying relatives, as is required under Fostering Connections within the first 30 days of a child or youth's removal from his or her parents, may continue to be helpful in maintaining a young adult's connection to his or her family and in the pursuit of permanency even after the required 30 days.

SECTION 304. RIGHTS OF THE YOUNG ADULT

1. Nothing in this sample legislation shall be construed to abrogate any other rights that a person, who has attained 18 years of age, may have as an adult under state law.
2. Young adults have a right to:
 - a. Receive notice of case and permanency plan meetings, team decision-making meetings, administrative reviews, court hearings, and any other case-related proceedings or meetings;
 - b. Be involved in the development of a personalized transition plan as described in Section 402;
 - c. Be present and address the court;
 - d. Legal representation as described in Section 302; and
 - e. Any other privileges afforded to parties to dependency proceedings under state or tribal law.
3. If the young adult is not present at any hearing, the court shall make a finding as to whether the young adult was given notice and made an informed decision not to attend, in order to proceed with the hearing, or postpone the hearing until the young adult may attend.

Commentary

Implicit in Fostering Connections is the fact that the federal law does not take away young adults' legal rights once they turn 18. This sample legislation makes explicit that continuing in foster care does not abrogate any of young adult's rights and, because of their adult status, makes them parties to ongoing court proceedings, if they were not already, and ensures their participation in planning for the future.

Continuing in care as an adult presents unique, but manageable challenges to a system accustomed to the care of "children." While the dependency system is designed to protect children and support families, a system that allows for ongoing care and supervision of legal adults must reflect a new focus on young adults' rights. Remaining in care after turning 18 should not affect the rights that all individuals gain when they become legal adults. This is similarly true for young adults 18 and older who remain in the home of their parents—the parent can establish some conditions for the young adult to remain in the home, but the parent cannot usurp the young adult's rights to, for example, consent to their own medical care or make their own educational decisions. This Section emphasizes this concept in the realm of court procedures and permanency reviews as well as in the service system.

ARTICLE 4. PROGRAM STRUCTURE

SECTION 401. SERVICES THAT SHALL BE PROVIDED TO THE YOUNG ADULT

1. The Department shall revise the written case plan for each young adult in foster care, after consultation with the young adult to ensure it includes at least the following:
 - a. A description of the type of foster family home, institution or "supervised setting in which the individual lives independently," in which a young adult is to be placed, including a discussion of the safety and appropriateness of the placement and how the agency which is responsible for the young adult plans to carry out the voluntary placement agreement entered into, or judicial determination made, with respect to the young adult in accordance with 42 U.S.C. § 672(a)(1) and
 - b. A plan for assuring that the young adult receives safe and proper care and that services are provided to the young adult, parents, and foster parents in order to improve the conditions in the parents' home, facilitate return of the young adult to his own safe home or the permanent placement of the young adult, and address the needs of the young adult while in foster care, including a discussion of the appropriateness of the services that have been provided to the young adult under the plan.
 - c. Documentation of the reasonable efforts that have been made to place siblings together, or documentation that such a joint placement would be contrary to the safety and well being of any of the siblings; and in the case of siblings who are not jointly placed, a detailed plan for how ongoing frequent visitation or interaction will be achieved or documentation that frequent visitation or interaction would be contrary to the safety and well being of any of the siblings. This documentation shall be updated in accordance with the review and updating of the case plan.
 - d. The health and education records of the young adult, including the most recent information available regarding:
 - i. The names and addresses of the young adult's health and educational providers;

- ii. The young adult's grade level performance;
 - iii. The young adult's school record;
 - iv. A record of the young adult's immunizations;
 - v. The young adult's known medical problems;
 - vi. The young adult's medications; and
 - vii. Any other relevant health and education information concerning the young adult determined to be appropriate by the Department.
- e. A written description of the programs and services that will help the young adult prepare for the transition from foster care to independent living, including, but not limited to, documentation that assistance has been provided to:
- i. Complete applications for health insurance, including applications for Medicaid;
 - ii. Obtain referrals for, apply for, and obtain safe, stable, and age appropriate housing;
 - iii. Maintain relationships with individuals who are important to the young adult, including searching for individuals with whom the young adult has lost contact;
 - iv. Access information about maternal and paternal relatives including any siblings, unless contrary to the safety and well-being of the young adult;
 - v. Obtain employment or other financial support;
 - vi. Obtain a government issued identification card;
 - vii. Open and maintain a bank account;
 - viii. Obtain appropriate community services and programs including health, mental health, developmental disability, and other disability services and supports; and, where appropriate:
 - ix. Satisfy any juvenile justice system requirements and assist with expunging the young adult's juvenile's record;
 - x. Complete secondary education;
 - xi. Apply for admission and aid for postsecondary educational or vocational programs;
 - xii. Obtain the necessary state court findings and then apply for Special Immigrant Juvenile Status, or apply for other immigration relief that they may be eligible for, including achievement of citizenship status;
 - xiii. Create a health care power of attorney as required by P.L. 111-148;
 - xiv. Apply for any public benefits or benefits that he or she may be eligible for or may be due through his or her parents or relatives, including but not limited to TANF, SSI, SSDI, Survivor's Benefits, WIC, Food Stamps, LIHEAP; and, if applicable,
 - xv. Assist with applying for a legal name change.
- f. In the case of a young adult whose permanency plan is adoption or placement in another permanent home, documentation of the steps the Department is taking to find an adoptive family or other permanent living arrangement for the young adult to place him or her with an adoptive family, a fit and willing relative, a legal guardian, or in another planned permanent living arrangement, and to finalize the adoption or legal guardianship. At a minimum, such documentation shall include young adult-specific recruitment efforts such as the use of State, regional and national adoption exchanges including electronic exchange systems to facilitate orderly and timely in-state or interstate placements and intensive family finding efforts designed to facilitate connections with adult relatives or others with a significant relationship to the young adult.

- g. In the case of a young adult with respect to whom the permanency plan is placement with a relative and receipt of kinship guardianship assistance payments under 42 U.S.C. § 673(d), a description of:
 - i. The steps that the agency has taken to determine that it is not appropriate for the young adult to be returned home or adopted;
 - ii. The reasons for any separation of siblings during placement;
 - iii. The reasons why a permanent placement with a fit and willing relative through a kinship guardianship assistance arrangement is in the young adult's best interests;
 - iv. The ways in which the young adult meets the eligibility requirements for a kinship guardianship assistance payment;
 - v. The efforts the agency has made to discuss adoption by the young adult's relative foster parent as a more permanent alternative to legal guardianship and, in the case of a relative foster parent who has chosen not to pursue adoption, documentation of the reasons therefore; and the efforts made by the Department to discuss with the young adult's parent or parents the kinship guardianship assistance arrangement, or the reasons why those efforts were not made.
- h. A plan for ensuring the educational stability of the young adult while in foster care, including:
 - i. Assurances that the placement of the young adult in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the young adult is enrolled at the time of placement; and
 - ii. If the young adult has not completed secondary education, an assurance that the Department has coordinated with appropriate local educational agencies (as defined under section 9101 of the Elementary and Secondary Education Act of 1965) to ensure that the young adult remains in the school in which the young adult is enrolled at the time of placement; or
 - a. If remaining in such school is not in the best interests of the young adult, assurances by the Department and local educational agencies that they will provide immediate and appropriate enrollment in a new school, with all of the educational records of the young adult provided to that school.

Commentary

Fostering Connections extends to young adults all of the protections that are afforded to younger children. These include the development of a case plan consistent with 42 U.S.C. § 675 (1). This sample legislation provides additional detail in a few key areas to incorporate other requirements under Fostering Connections and to better accommodate the needs of young adults.

All children in foster care are entitled to certain protections under Title IV-E including a case plan. If a state chooses to extend care to young adults, they must be afforded these same protections. This section is taken verbatim from the definition of "case plan" at 42 U.S.C. § 675(1) except in a few areas. In Section 401(a), the reference to "supervised setting in which the individual lives independently" is added to reflect that such placements will be Title IV-E reimbursable beginning October 1, 2010 pursuant to Fostering Connections. Section 401(e) includes the federal requirement for the independent living plan described at 42 U.S.C.

675(1)(D), but additional detail is provided to assist states in developing independent living plans that are responsive to the unique needs of young adults. To make the most of the federal support available on behalf of young adults in care, states may also wish to assist the young adult in engaging in one of the Title IV-E required activities listed in Section 202(1). Finally, Section 401(c) integrates the new Title IV-E state plan requirements of Fostering Connections regarding sibling placement to help states demonstrate compliance with these provisions.

SECTION 402. TRANSITION PLAN

During the 90-day period immediately prior to the date on which the young adult in foster care will attain 21 years of age, or the date on which a child or young adult will exit foster care pursuant to Section 203 or 204, whether during that period foster care maintenance payments are being made on the child or young adult's behalf, or the child or young adult is receiving benefits or services under 42 U.S.C. § 677, a caseworker on the staff of the Department shall:

1. In collaboration with, as appropriate, other representatives of the child or young adult, provide the child or young adult with assistance and support in developing a transition plan that is personalized at the direction of the child or young adult, and that includes specific options for the child or young adult on housing, health insurance, education, local opportunities for mentors and continuing support services, work force supports and employment services, and that assists the child or young adult in applying for Special Immigrant Juvenile Status or other appropriate immigration relief and citizenship status, if necessary, and that this plan is as detailed as the child or young adult may elect and ensures that the child or young adult has permanent adult connections;
2. Provide the child or young adult with the following documentation:
 - a. Copy of the child's or young adult's credit report;
 - b. Copy of the child's or young adult's social security card;
 - c. Certified copy of the child's or young adult's birth certificate;
 - d. Copy of the child's or young adult's driver's license or government issued ID card;
 - e. Letter including the dates that the child or young adult was within jurisdiction of the court;
 - f. Letter including a statement that the child or young adult was in foster care, in compliance with financial aid documentation requirements;
 - g. The child's or young adult's entire educational records, obtained through a court order if necessary;
 - h. The child's or young adult's entire health and mental health records, obtained through a court order if necessary;
 - i. Documentation of the child's or young adult's health insurance or Medicaid;
 - j. Documentation of a health power of attorney for the child or young adult;
 - k. Proof of the child's or young adult's citizenship or legal residency;
 - l. Clear and age appropriate written instructions on filing a petition for the child or young adult to re-enter care, including a completed sample petition; and
 - m. The process for accessing their case file, and where applicable:
 - n. Death certificates of the child's or young adult's parents; and
 - o. Termination of Parental Rights orders.
3. Coordinate with appropriate local public and private agencies in designing the Transition Plan.

4. Coordinate the Transition Plan with any other appropriate plans, including but not limited to the Independent Living Plan (as described at 42 U.S.C. § 675(1)(D) and Section 401(b) of this sample legislation), and an Individuals with Disabilities Education Act transition plan (as described at 34 CFR § 300.347).
5. Amend and update the Transition Plan for any young adult re-entering care under Section 205.

Commentary

Fostering Connections requires that a transition plan be developed 90 days before a child or young adult exits foster care. The plan must be personalized at the direction of the child or young adult and include specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employments services. This sample legislation includes additional detail on other important elements that should be included in a transition plan and how the Department should support the child or young adult in developing this plan.

Mandatory Transition Plans

Fostering Connections created a mandatory requirement that, as part of the case review system, the Department must ensure that a transition plan is developed for the child or young adult before they exit care. While the transition plan must be personalized at the direction of the child or young adult, the creation of a transition plan is mandatory and there are important steps states can take beyond what is required by Fostering Connections to ensure that a realistic and viable plan is developed.

Providing Children and Young Adults Key Documentation

States are encouraged to provide children and young adults with key documentation to assist them in their planning process. These documents are often critical to obtaining necessary services and accessing opportunities in adulthood—from purchasing a car to receiving medical attention to applying for employment. Children or young adults with special needs who will need to apply for SSI or supportive housing or services will be required to submit these identification documents as well as medical and other records. For children and young adults in foster care—particularly those who experienced multiple placements—these records may be difficult to locate and obtain. To execute their transition plan successfully, children and young adults should be provided with documentation that is critical to their efforts. Also to help children and young adults transition successfully, states are encouraged to coordinate the transition plan described in this Section with other transition plans and the independent living plan described in Section 401(e).

APPENDIX A**Eligibility Requirements for Title IV-E**

Eligibility requirements for young adults in Title IV-E foster care - States have the option to amend their Title IV-E state plans and, if the state plan amendments are approved, states may claim federal funds for young adults in foster care beyond their 18th birthday to the age of 19, 20, or 21 beginning on October 1, 2010. With limited exceptions, states can currently only claim federal assistance for children and youth up to their 18th birthday. States will only be federally reimbursed for those young adults in foster care eligible for IV-E maintenance payments. These eligibility criteria include removal from an income-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child, being under the placement and care of the child welfare agency, and placement in a licensed foster family home or child-care institution, and who are:

- Completing secondary education or in a program leading to an equivalent credential
- Enrolled in an institution that provides post-secondary or vocational education
- Participating in a program or activity designed to promote, or remove barriers to, employment
- Employed for at least 80 hours per month, or
- If a child's medical condition makes him or her incapable of engaging in these activities, updated information on their condition must be maintained in the child's case plan.

Eligibility requirements for Title IV-E adoption assistance - Fostering Connections makes two important changes to the eligibility requirements for Title IV-E adoption assistance. First, upon enactment of the new law, children who would be eligible for Supplementary Security Income (SSI) benefits based solely on the medical and disability requirements are automatically considered children with special needs and eligible for adoption assistance without regard to the SSI income requirements. Second, the new law will "de-link" over time children's eligibility for federal adoption assistance payments from outdated AFDC income requirements. Under pre-existing law, a child in foster care is eligible for federal adoption assistance only if the home they are removed from has an income that meets the state's Aid to Families with Dependent Children (AFDC) income eligibility standard in place on July 16, 1996. As of October 1, 2009, states with federal adoption assistance programs will be able to claim federal funds for more children with special needs through phased-in de-linking of a child's eligibility from the AFDC income criteria. In the first year, states must begin phasing in an expansion of the program to reach more eligible children with special needs, beginning with youth age 16 or older and children who already have been in care for five years, who are often the most difficult to place for adoption, as well as siblings of children who meet either of these criteria.

Other children will be phased in by age over the next nine years, so that all eligible children with special needs will be eligible for Title IV-E adoption assistance by October 1, 2017.

Currently, youth are eligible for Title IV-E adoption assistance if the youth:

- Was removed from an income-eligible home and placed into foster care pursuant to a voluntary

placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child and the child meets the definition of a child with special needs;

- Was removed from an income-eligible home and placed into foster care pursuant to a voluntary placement agreement and, while in foster care, Title IV-E foster care maintenance payments were made on the child's behalf;
- Meets the medical and disability requirements of SSI;
- Is the child of a minor parent that meets the definition of a child with special needs; or,
- Is adopted following the dissolution of an adoptive placement in which the child was receiving Title IV-E adoption assistance.

Once the de-link is phased in, the same criteria will apply with the exception of the income requirements, which will no longer apply.

Eligibility requirements for Title IV-E kinship guardianship assistance

Child's eligibility –

Children in relative foster homes who have resided with their prospective relative guardians for at least six consecutive months while eligible for Title IV-E maintenance payments are eligible for kinship guardianship assistance. This means that a child must meet all eligibility requirements for Title IV-E foster care, including the requirement that they were removed from an AFDC-eligible home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child and placed in a licensed or approved home. These children must also demonstrate a strong attachment to the prospective relative guardian. If age 14 or older, youth must be consulted about the guardianship arrangement before it is finalized. Siblings of children eligible for kinship guardianship assistance are also eligible for federal kinship guardianship assistance if placed in the same guardianship arrangement even when they do not meet other eligibility requirements. Additionally, all children who, as of September 30, 2008, were receiving assistance or services under a Title IV-E waiver demonstration project can continue to receive that same assistance and services when the waiver is terminated. The state expenditures on behalf of these children will continue to be eligible for federal reimbursement under Title IV-E regardless of whether the state establishes a Kinship Guardianship Assistance Program.

Relative guardian's eligibility –

An eligible guardian must be a relative of the child, as defined by the state, who has a strong commitment to caring permanently for the child and has undergone criminal record checks and child abuse registry checks. The relative must also be licensed as a foster parent because the Administration for Children, Youth and Families currently requires the home to be licensed in order for the child to be eligible for Title IV-E maintenance payments and, therefore, qualify for guardianship assistance.

APPENDIX B

**Additional Resources for State Implementation of the Option to
Extend Foster Care and Adoption and Guardianship Assistance to
Young Adults Under the Fostering Connections to Success and
Increasing Adoptions Act of 2008**

**Frequently Asked Questions (FAQ) on the Provisions Designed to Impact Youth and
Young Adults**

www.nationalfostercare.org

Older Youth Provisions Principles of Implementation

www.nationalfostercare.org

**Judicial Guide to Implementing the Fostering Connections to Success and Increasing
Adoptions Act of 2008 (PL 110-351)**

www.grandfamilies.org

New Help for Children Raised by Grandparents or Other Relatives

<http://www.clasp.org/admin/site/publications/files/NewHelpForChildrenRaisedbyGrandparentsandOtherRelatives.pdf>

**Need for Extended Dependency Court Jurisdiction Beyond Age 18 and State Chart of
Jurisdiction**

www.abanet.org/child/empowerment

State Legislation Passed in the Wake of the Fostering Connections Act

www.abanet.org/child/empowerment

Other resources available at:

- www.abanet.org/child
- www.clasp.org
- www.childrensdefense.org
- www.fosteringconnections.org
- www.jlc.org

Appendix 4: Fostering Connections Resources

Sample State Legislation

national foster care coalition 

Fostering Connections to Success and Increasing Adoptions Act (PL 110-351)

On October 7, 2008, in response to the growing need for federal foster care reform, President George W. Bush signed into law the Fostering Connections to Success and Increasing Adoptions Act (P.L. 110-351). The act will promote permanency for children waiting to be adopted and enable more children to leave foster care safely and permanently to the security of relative guardians. In addition, provisions in this act will greatly contribute to improving the lives of children currently in foster care by extending and enhancing previously available services.

Achieving Permanency

P.L. 110-351 makes it possible for more children and youth to leave foster care permanently to live with relative guardians or through adoption, to remain with or return safely to their birth families, and to experience better outcomes through provisions including:

Relative Guardian Provisions

- Due diligence requirement mandating states to identify relatives within 30 days of a child's removal from their family. In order to fulfill this requirement, state child welfare agencies will be allowed access to the Child Support Parent Locator Service.
- Waives certain non-safety licensing standards on a case-by-case basis.
- Establishes Kinship Navigator Programs through Family Connections Grants to help relative guardians know what services are available.
- Provides federal dollars for states opting to implement guardianship subsidy programs.
- Extends Medicaid to children living with relative guardians and receiving guardianship assistance.
- Extends Independent Living Program services and Education Training Vouchers for youth living with their relative guardians.

Adoption Provisions

- Extends the Adoption Incentives Program for an additional five years ending in September 30, 2013, while changing the baseline year for adoptions from 2003 to 2007. In addition, the law expands current incentives provided to states for the adoption of special needs children from foster care.
- Delinks eligibility for federal adoption assistance (Title IV-E of the Social Security Act) from eligibility for the outdated welfare program Aid to Families with Dependent Children (AFDC) resulting in the federal government sharing the responsibility for caring for all children who are adopted from foster care.
- Requires states to inform adoptive and prospective adoptive parents of the federal Adoption Tax Credit.

Family Connection Grants

- In addition to establishing Kinship Navigator Programs, states may apply for Family Connection Grants to provide intensive family finding activities and residential family-based substance abuse treatment to help children and families stay together or return home safely once removed from care.



Improved Outcomes

Promoting Better Outcomes for Youth in Care

- Requires states to ensure educational stability for children and youth in foster care by mandating that all children receiving Title IV-E foster care, adoption, or guardianship assistance be enrolled in school full time unless they have completed high school. In addition, states must arrange for children to remain in their “school of origin” and will be permitted to claim federal reimbursement for associated costs.
- States must develop health care service plans for children and youth in foster care. These plans must include mental, physical, and dental health services including health screens and continued treatment possibly through the establishment of a “medical home.” In addition, state plans must address how physicians and other professionals will be consulted in the evaluation of the health and wellbeing of the child and to determine an appropriate treatment.

Older Youth Provisions

- Allows states to extend foster care, adoption, and guardianship to age 21 to Title IV-E eligible youth who are enrolled in school, employed, in an activity promoting or removing barriers to employment, or who are unable to participate in employment or education due to a mental or physical illness.
- Mandates the development of a personal transition plan for youth aging out of foster care to begin at least 90 days prior to the youth’s exit from foster care at age 18, 19, 20 or 21.

Training

- States may now expand Title IV-E reimbursable training programs to prospective guardianship parents, private child serving organization staff, court personnel, attorneys, guardian ad litem, and Court Appointed Special Advocates (CASAs).
- The federal reimbursement rate for the expanded trainings begins at 55% and expands 5% points each year until a 75% reimbursement rate is achieved.

Maintaining Sibling Connections

Sibling Provisions

- Requires reasonable efforts to be made to place siblings in the same foster, guardianship, and guardianship homes unless otherwise harmful to the children.
- If the state cannot place siblings together, efforts must be made to ensure frequent visits and other interaction between the siblings unless such contact is found harmful to the children’s safety and well-being.

Supporting Tribal Nations

Tribal Authority

- Tribal nations will be able to directly claim Title IV-E for children and youth in their care from the federal government.

Technical Assistance

- Tribal nations will receive technical assistance for the administration, training, and Tribal/State interaction, and implementation of services related to preparing a plan for Title IV-E.
- Services provided for implementation may receive a one-time grant.



Appendix 5: Relevant ABA Policies

ABA Policy 2010

RECOMMENDATION

RESOLVED, That the American Bar Association urges federal, state, local, territorial and tribal governments, as well as state, local, territorial and tribal child welfare agencies and dependency courts and judges to enact laws and rules, and to develop policy and practice changes that:

(1) Promptly, fully, and expansively implement the older youth provisions of the federal Fostering Connections to Success and Increasing Adoptions Act and, in particular, extend foster care, independent and transitional living services, adoption assistance, and guardianship assistance to all youth and young adults through at least age 21;

(2) Ensure that dependency court jurisdiction is extended for young adults who elect to remain in child welfare agency care until at least the age of 21 (or any earlier time the young adult may elect to leave care) and that all Title IV-E requirements including case planning, transition planning, and court oversight are met;

(3)(a) Give young adults the option to exit care upon the age of 18 or at any age afterwards, but ensure that these young adults fully understand the implications and magnitude of any decision to exit care and are provided support and services to ensure a smooth transition to adulthood, and (b) create a mechanism for young adults who exit care after attaining age 18 to re-enter care through age 21; and

(4) Ensure that young adults in child welfare agency care are: (a) actively involved in all phases of permanency, independent living, and transition planning; (b) present at, and actively engaged and informed participants in, their own dependency court proceedings; and (c) represented by a well trained, competent and effective client-directed lawyer in all dependency court proceedings through the termination of their case and in any reentry into care thereafter.

FURTHER RESOLVED, That the American Bar Association urges the development of regulations and guidelines in regard to the Fostering Connections to Success and Increasing Adoptions Act, including but not limited to: (a) a broad and flexible definition of federally reimbursable “supervised settings” in which young adults are “living independently” based on the best practice experiences of states with effective models; (b) an expansive interpretation of the Act’s language defining the youth and young adults eligible for federal funding for care, support and services through age 21; and (c) clarification that all Title IV-E requirements, including representation and court supervision, are applied to young adults who remain in child welfare agency care through age 21.

FURTHER RESOLVED, That the American Bar Association urges state and local bar associations, law firms, and individual lawyers to develop and promote pro bono programs to ensure that youth and young adults have access to needed transitional supports and services and that the rights of youth and young adults are fully preserved while in, transitioning from, or after exiting child welfare agency care.

REPORT

Each year, approximately 26,000 youth “age out” of foster care in the U.S., the majority leaving foster care at the ill-prepared age of 18.¹ Youth who leave the foster care system at age 18 are more likely to experience homelessness, unemployment, unplanned pregnancy, justice system involvement, substance abuse, and lack of health care than those youth who are allowed to stay in foster care past age 18.² Despite these outcomes, however, many states do not allow youth to remain in care beyond age 18, often due to the lack of resources – especially in difficult fiscal times -- to support older youth as they transition into adulthood. While few parents would turn their children out and force them to manage the challenges of independence completely alone at the age of 18, many state systems force foster youth to grapple with exactly that scenario.

Beginning October 1, 2010, the *Fostering Connections to Success Act*³ (the FCSA) allows states to amend their Title IV-E plans to extend foster care to youth up through age 21.⁴ If the state plan amendments are approved, states may claim federal funds for youth in foster care beyond their 18th birthday to the age of 19, 20, or 21.⁵ States may also extend adoption assistance and/or guardianship payments on behalf of youth up to ages 19, 20, or 21.⁶ The protections and requirements currently in place for younger children in foster care would continue to apply for youth ages 18 to 21.⁷ Youth ages 18 to 21 could be placed in a supervised setting in which they are living independently, as well as in a foster family home or group home.⁸

The *Fostering Connections to Success Act* requires that in order for states to be reimbursed for the care of youth over age 18, youth remaining in care must meet one of the following conditions: the youth is completing secondary education or is in a program leading to an equivalent credential; the youth is enrolled in an institution that provides post-secondary or vocational education; the youth is participating in a program or activity designed

1. See Clark M. Peters, et al., *Extending Foster Care to Age 21: Weighing the Costs to Government Against the Benefits to Youth*, Chapin Hall Issue Brief, at 1 (Chapin Hall Center for Children, Chicago, IL, 2009).

2. See Mark E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19* (Chicago: Chapin Hall at the University of Chicago, 2005); see also, Peter J. Pecora, et al., *Educational and Employment Outcomes of Adults Formerly Placed in Foster Care: Results from the Northwest Foster Care Alumni Study*, 29 CHILD. & YOUTH SERVICES REV. 1459 (2006).

3. *Fostering Connections to Success and Increasing Adoptions Act of 2008*, Pub. L. No: 110-351 § 201.

4. National Foster Care Coalition, *Frequently Asked Questions on the Provisions Designed to Impact Youth and Young Adults*, 55 (June 2009).

5. *Id.* at 21.

6. *Id.* at 22-23.

7. *Id.*

8. *Id.*

to promote, or remove barriers to, employment; the youth is employed for at least 80 hours per month; or the youth has a medical condition which makes him or her incapable of engaging in these activities (updated information on the condition must be maintained in the child's case plan).⁹

States should strive to ensure that the youth meet one of these conditions so that they are covered by federal funding. Moreover, even if youth are unable to meet these conditions at age 18, states should support these youth who are struggling—even absent federal IVE funds to defray these costs—and work to put the youth on a more stable path of schooling or employment.

As states consider—and advocates advance—strategies that will hopefully include full and expansive implementation of this new federal legislation, a variety of questions and challenges are likely to arise. The American Bar Association can play a key role in encouraging states to seize this new opportunity to support foster youth beyond age 18 and implement the *Fostering Connections to Success Act* in an expansive and inclusive manner. The American Bar Association can also be instrumental in advocating for clear guidance that will encourage states to enable youth in foster care to receive ongoing support beyond age 18.

I. Extending Foster Care, Independent and Transitional Living Services, Adoption Assistance, and Guardianship Assistance To Youth and Young Adults in Foster care Until At Least Age 21 Is Both An Appropriate and Fiscally Sound Strategy

Some states have opted to use their own resources in past years to support youth in foster care beyond age 18. Those states often provide a network of services and resources, such as subsidized housing, job training and counseling, educational opportunities, substance abuse treatment, and access to health care and mental health counseling, which are critical in improving long-term outcomes for youth between the ages of 18 to 21.¹⁰ Research has shown that youth who remain in care beyond age 18 are able to achieve significantly improved outcomes in increased postsecondary educational attainment, delayed pregnancy, and higher earnings, and a greater likelihood of receiving independent living services.¹¹

Extending care to age 21 is not just the right thing to do for the success of young adults in foster care, but is also the fiscally responsible policy for state government. With more young adults attending and completing college by remaining in care, researchers have concluded that expected work-life earnings will increase an average of \$72,000 and that the average per-youth cost of extending foster care for 2 years, net cost offsets associated with public assistance receipt, will be approximately \$37,948.¹² Thus, by extending care to age 21,

9. Fostering Connections to Success and Increasing Adoptions Act of 2008, *supra* note 3.

10. See Mark E. Courtney, et al., *When Should the State Cease Parenting? Evidence from the Midwest Study* (Chapin Hall Center for Children, Chicago, IL, 2007).

11. *Id.*

12. See Clark M. Peters et al., *The benefits and costs of extending foster care to age 21*, 27 (Chicago: Chapin Hall at the University of Chicago, 2009).

state governments gain a return of almost \$2 for every \$1 spent on young adults.¹³ And, extending care to young adults through age 21 is better for society at large because it reduces homelessness, crime and dependency on the state.¹⁴

This data underscores the need for prompt action by states to seize the new opportunity available to them to get federal funding if they extend foster care to age 21 through implementation of the *Fostering Connections to Success Act*. Moreover, this data shows that when states implement the *Fostering Connections to Success Act*, it is in their best interest to interpret the Act expansively.

There are, however, some open questions that remain as state implementation of the *Fostering Connections to Success Act* moves forward, such as: What are effective ways for states to put youth on a path to meet the conditions set out in section 201 of the *Fostering Connections to Success Act*, the federal eligibility requirement that youth need to fulfill in order for states to receive federal reimbursement for youth staying in care over age 18? How can we ensure that youth over age 18 have adequate legal representation and effectively advocate for their positions in the court and legal process? How can courts most effectively act as conveners, centers of accountability, and outlets for encouragement for youth over age 18? What kinds of housing options are best suited to youth over age 18 and how can we ensure that federal implementing regulations for the *Fostering Connections Act* support these options? How can states encourage young adults to take a leadership role in their preparation for adulthood when they stay in care past age 18? The ABA should work with government, court and child welfare leaders and advocates to satisfactorily answer these and related questions as the *Fostering Connections Act* enters its implementation phase. In particular, the ABA should advocate for and help promote the development of regulations and guidelines that provide for both a broad and flexible definition of federally reimbursable “supervised settings” in which young adults are “living independently” based on the best practice experiences of states with effective models, as well as an expansive interpretation of the Act’s language defining the youth and young adults eligible for federal funding for care, support and services through age 21 (as discussed below).

II. The Benefits of Maintaining Dependency Court Jurisdiction Over Older Youth

Under the *Fostering Connections to Success Act*, states will only be federally reimbursed for youth in foster care who are eligible for Title IV-E maintenance payments.¹⁵ In order for youth over age 18 to remain eligible for Title IV-E and, therefore, for federal reimbursement, they must meet all Title IV-E requirements.¹⁶ An essential part of the Title IV-E requirements includes court jurisdiction over the youth in care.¹⁷

13. *Id.*

14. See Mark E. Courtney, et al., *supra* note 2; see also, Peter J. Pecora, et al., *supra* note 2.

15. National Foster Care Coalition, *supra* note 4, 22-23.

16. *Id.*

17. *Id.*

Court oversight and engagement is important for youth who elect to remain in child welfare agency care between the ages of 18 to 21. In particular, courts can be instrumental in helping ensure that youth in foster care receive the support to which they are entitled.¹⁸ Courts also can serve as effective conveners of the multiple systems through which youth must navigate.¹⁹ Courts also can contribute substantially to development by foster youth of the decision-making skills that are essential to a successful transition to adulthood by insisting on youth participation and leadership in the implementation of their service plans and in the court and legal process.²⁰

III. The Need to Maintain Flexibility For Youth Who Opt to Exit Care to Reenter Up to Age 21

Even in state which have extended foster care to age 19, 20 or 21, youth at age 18 may want to assert their independence by leaving the foster care system.²¹ The foster youth who is about to turn 18 must be fully informed of the consequences of existent care and thereafter have the option to return to the foster care system because, as one former foster youth explains about her decision to leave care at age 18, “I thought it was going to be easier ... that I would have all this freedom. But no one knows ... being an adult is really hard.”²² The transition to adulthood is not a linear process and policy should reflect this principle.²³

While the *Fostering Connections to Success Act* does not specifically speak to re-entry for youth over age 18, it provides no barriers to implementation of this practice.²⁴ Indeed, recent federal guidance has confirmed that allowing youth to reenter care after age 18 is consistent with the Act.²⁵ In order for youth who re-enter after 18 to remain eligible for Title IV-E and, therefore, for federal reimbursement, they must meet all Title IV-E requirements,²⁶ including court jurisdiction over the youth in care.²⁷ To that end, states should consider keeping open the cases of youth ages 18 and older who exit care or crafting a process of transitional discharge that preserves the option for re-entry and at the same time maintains federal reimbursement for care of these youth.²⁸

18. See Emily Buss et al., *From Foster Care to Adulthood: The University of Chicago Law School Foster Care Project's Protocol for Reform*, 65-69, (2008), available at <http://webcastlaw.uchicago.edu/pdfs/fostercareprotocol.pdf>.

19. *Id.*, 69-73.

20. Emily Buss, *Juvenile Court for Young Adults? How Ongoing Court Involvement Can Enhance Foster Youths' Chances for Success*, 48 FAM. CT. REV. 262 (2010).

21. See Erik S. Pitchal, *Thickening the Safety Net: Key Elements to Successful Independent Living Programs for Young Adults Aging Out of Foster Care*, 23 ST. JOHN'S J. LEGAL COMMENT. 447, 455-56 (2008); see also, Robert Schwartz & Jennifer Pokempner, *Commentary*, 23 SOC. POL'Y REP. 13, n. 1 (2009).

22. Bonnie Miller Rubin, *An Adult Too Soon: New Law Offers Help; If Ex-Wards Want to Go Back Into System, State Must Comply Until Age 21*, CHI. SUN TIMES, June 18, 2009, at C6.

23. See Robert Schwartz & Jennifer Pokempner, *supra* note 26.

24. National Foster Care Coalition, *supra* note 4, 53-54.

25. ACF Guidance issued on April 7, 2010.

26. *Id.*

27. *Id.*

28. *Id.*

IV. The Value of Early and Expansive Transition Planning

The *Fostering Connections to Success Act*²⁹ adds a new mandate that all youth³⁰ who are receiving foster care maintenance payments under Title IV-E be provided a personalized transition plan during the 90-day period before the youth ages out of care.³¹ The transition plan must be developed with the youth by a caseworker on the staff of the State agency and, as appropriate, other representatives who work closely with the youth.³² The transition plan must include at a minimum specifics on: housing, health insurance and education; local opportunities for mentors and continuing support services; and workforce and employment services. The plan must be personalized at the direction of the youth and be as detailed as the youth elects.

The courts will be essential to ensuring that this new transition planning requirement under the *Fostering Connections to Success Act* is meaningful. Courts need to provide oversight of transition plans to ensure the goals contained in the plan are viable; the plan is coordinated meaningfully with any previous independent living plans; the youth actively participate in the plan's creation; the plan is tailored to meet the individual needs of the youth; the plan contains the supports and services identified as important by the youth; the plan is as specific as the youth wants and needs to successfully transition from care; and that there is sufficient follow up with the caseworker and the youth to ensure that the services and supports written in the transition plan are implemented. States should, therefore, consider enacting laws or policies that explicitly require additional court monitoring of compliance with the *Fostering Connections to Success Act*, and condition discharge from foster care on the successful satisfaction of these new discharge planning conditions.³³

V. Mechanisms for Ensuring Active and Engaged Older Youth Involvement

In order to effectively improve outcomes for older youth and young adults in foster care, states must actively engage them in case planning and court hearings. As discussed above, the *Fostering Connections to Success Act* mandates that states must provide and implement a detailed transition plan 90 days before the youth exits out of foster care.³⁴ The statute emphasizes that the new transition plan must be personalized at the direction of the youth, be as detailed as the youth elects it to be, and include input from people that the youth identifies

29. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No.: 110-351 § 202.

30. "Youth who have returned home or for whom kinship guardianship assistance or adoption assistance payments are being made must also have a transition plan if they are also receiving Chafee Program benefits or services." National Foster Care Coalition, *supra* note 4, 38.

31. When the youth ages out of care, the youth could be age 18 or age 19, 20, or 21 if the state in question extends care up to one of those ages and the youth chooses to remain in care.

32. These additional representatives may include independent living program staff, lawyers, foster parents, relative caregivers, CASA volunteers, doctors, mental health professionals, teachers, vocational counselors, mentors, biological family members, friends and others identified by the youth as helpful to the process of planning for a successful transition.

33. National Foster Care Coalition, *supra* note 4, 55.

34. Fostering Connections to Success and Increasing Adoptions Act of 2008, *supra* note 21.

as important in his/her life.³⁵ Moreover, as part of successful implementation of the *Fostering Connections to Success Act*, states must ensure that youth and young adults are present at, actively engaged in, and informed participants of their court proceedings. The purpose of this new federal law is to encourage states to provide the tools foster youth need in preparing to take control of and responsibility for their own lives. Therefore, foster youth must play a central role in informing, guiding and leading the court and legal process that oversees this process of preparation for their successful transition to adulthood.

States need to consider the importance of youth being represented by a client-directed lawyer in all dependency court proceedings through the termination of their case and in any reentry into care thereafter. Currently, more than half of states require the appointment of an attorney or guardian ad litem by statute or case law and about a dozen other states regularly appoint attorneys for children as a matter of practice.³⁶ Requiring the appointment of lawyers for youth is critical to ensuring youths' legal rights are adequately articulated and protected.³⁷ The appointment of *client-directed* lawyers should be considered by all states and mandated for young adults who remain in care beyond age 18. Youth and young adults deserve lawyers who can enable and empower their voice in the legal process that will define their futures.³⁸ Moreover, under the professional rules that govern attorney representation, the guardian ad litem model is inappropriate for lawyers representing foster youth who are ages 18 or older.

VI. Promoting Pro Bono Programs to Assist Older and Transitioned Foster Youth

Youth transitioning out of foster care often have traumatic histories and a range of personal and legal issues that cannot be resolved within their dependency court cases. The legal issues they face range from obtaining housing and public benefits to addressing criminal collateral consequences, to matters involving trusts and estates. In some states, youth have no legal representation. However, even in states where youth are guaranteed legal representation while in foster care, once they exit or age out of the system and their dependency case is dismissed, they will likely no longer have access to an attorney.

A proposed American Bar Association pro bono initiative will partner volunteer attorneys with state foster alumni groups to target the legal needs of youth in foster care who are over age 18, as well those youth who have aged out of foster care up to the age of 23. It will pursue funding through the support of individual fellowship applications and by approaching those foundations already engaged in promoting the work of foster youth serving organizations. Providing these youth with the advice and counsel of pro bono attorneys with expertise on the legal issues they face, is critical to ensure that they can transition successfully to adulthood.

35. *Id.*

36. Andrea Khoury, *Why a Lawyer? The Importance of Client-Directed Legal Representation For Youth*, 48 FAM. CT. REV. 277, 280 (2010).

37. *Id.*

38. *Id.*

VII. CONCLUSION

The outlook for the teens who exit or “age out” of foster care without effective legal representation, support from the system, and a viable and permanent plan for their future, is bleak. These teens are more likely to face homelessness, joblessness, drug addiction, early pregnancy, mental health problems, and involvement with the justice system.³⁹ *The Fostering Connections to Success Act* provides for the first time federal resources to support foster youth beyond age 18. Through this resolution, the American Bar Association hopes to reinforce and advocate for full implementation of the provisions of the Act most relevant to older youth and the development of policies and procedures that will improve outcomes for older youth. This resolution reaffirms the American Bar Association’s commitment to youth at risk. It addresses the challenges these youth face and offers specific suggestions to provide them with the support and services they need in order to make successful transitions to adulthood.

39. Clark M. Peters, *supra*, note 1.

Appendix 5: Relevant ABA Policies

ABA Policy 2007

RECOMMENDATION

RESOLVED, That the American Bar Association encourages bar associations, judges, and attorneys to lead and promote efforts to create comprehensive support and services for youth who age out of foster care (“transitioning youth”) and other former foster youth until at least age 21, and urges amendment of applicable law, and court and child welfare practices, to:

1. Mandate provision of comprehensive post-majority child welfare services to transitioning and former foster youth until age 21 or older, with the option for renewal of support after exit from care;
2. Ensure each transitioning youth has a permanent, significant connection to an appropriate adult;
3. Provide all youth with the ability and right to attend and fully participate in all hearings related to their cases;
4. Mandate a court review hearing and judicial findings specifically setting forth a transition plan before the case of any transitioning youth is legally terminated;
5. Ensure that participation in school and extracurricular activities are actively promoted and ensure a youth’s participation in child welfare case and court activities does not result in academic penalties;
6. Ensure all foster youth are afforded the same rights to and support of educational attainment—including enrollment, educational stability, and school continuity—as homeless youth under federal law;
7. Mandate the maintenance, appropriate sharing, and timely transfer of all necessary education records relating to school progress, attendance and placement by all agencies, including providing a copy of records to transitioning youth;
8. Assist youth with accessing and completing postsecondary education and receiving financial assistance;
9. Ensure availability of a continuum of housing options for transitioning and former foster youth;
10. Assist transitioning and former foster youth in attaining financial health and stability; address barriers to obtaining proper identification, clean credit histories, needed transportation and participation in age-appropriate activities; and
11. Provide educational and vocational assistance and support for all transitioning and former foster youth over age 16 and promote incentives to encourage the employment of current and former foster youth.

FURTHER RESOLVED, That the American Bar Association urges Congress to amend federal law to expand services and support for transitioning youth by:

1. Amending Title IV-E of the Social Security Act to allow states to be reimbursed for care and services provided to current and former foster youth after their 19th birthday;
2. Providing clear and broad definitions in federal law regarding financial aid pertaining to “ward/dependent of the court” and “emancipation” to ensure that youth may receive financial aid without the requirement of a parental signature or parental income information;
3. Amending Title X, Part C of the McKinney-Vento Homeless Assistance Act to cover all children in out-of-home care.
4. Clarifying the Family Educational Rights and Privacy Act as it pertains to sharing health and education information among agencies, judges and advocates involved with the care and education of and legal proceedings involving foster youth; and
5. Implementing requirements to preserve every foster youth’s Social Security Act entitlements and other financial assets for use directly by that youth.

REPORT

I. Introduction

State courts and child welfare agencies are responsible for the safety and well-being of more than a half a million children in foster care at any given time and over 800,000 in a year. Of those youth approximately 19 percent are aged 16 or older. While many youth eventually return to their biological families or find another permanent home through adoption or guardianship, approximately 20,000 foster youth age out of the child welfare system each year, having no permanent family of their own.¹ While most 18-year-olds in intact families can expect emotional and financial support for years to come, with nearly two-thirds of young adults in their early 20s receiving economic support from their parents,² foster youth in most states lose access to many—and in some cases all—of the supports provided by the foster care system when they are released from state custody at age 18.³

Since 1985, federal law has recognized that older youth in foster care deserve special attention and programming. In that year, the Independent Living program was added to the Social Security Act. In 1999, the law was further amended by the Chafee Foster Care Independence Act (FCIA), 42 U.S.C. §677, to respond to the limitation and perceived ineffectiveness of the Independent Living Program. Of the approximately 20,000 youth who

1. FY 2003 data. U.S. Department of Health and Human Services, Administration for Children and Families, Children’s Bureau (2005), p. 1. http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report13.htm.

2. Frank F. Furstenberg Jr., Sheela Kennedy, Vonnice C. Mcloyd, Rubén G. Rumbaut, and Richard A. Settersten, Jr., “Growing Up is Harder to Do,” *Contexts*, vol. 3, no. 3 (summer 2004): 33-41, *article available at* http://www2.asanet.org/media/furstenberg_adulthood.pdf.

3. Eyster, Lauren and Sarah Looney Oldmixon, *State Policies to Help Youth Transition Out of Foster Care*, NGA Center for Best Practices—Issue Brief, January 2007, *article available at* <http://www.nga.org/Files/pdf/0701YOUTH.PDF>; *see also* <http://www.pbs.org/wnet/agingout/agingoutbrief.pdf>.

age out of foster care each year (“transitioning youth”), many are not prepared to live independently: often youth are discharged from care without attaining basic education goals or learning critical life skills and, as a result, many become unemployed, homeless, and dependent on public assistance.⁴

Most youth who leave the foster care system do not receive adequate preparation and support for their transition to independent living. Compared to other youth, foster youth are more likely to be homeless, incarcerated, unemployed, and unskilled. They are also more likely to experience physical, developmental, behavioral, and mental health challenges.⁵

It is critical that these young people be adequately supported and served, and that the ABA encourage lawmaking bodies to amend relevant laws, and agencies and courts to alter practices so that current and former foster youth are prepared for a successful adulthood.

II. Recommendations for Law, Court, and Child Welfare Practice Changes

1. Critical Post-Majority Services to Foster Youth.

A growing body of research suggests that allowing youth to remain in foster care voluntarily after age 18 is critical to ensuring positive outcomes for these young adults. The Midwest Evaluation of the Adult Functioning of Former Foster Youth (Midwest Study), a longitudinal study of youth in Illinois, Iowa, and Wisconsin, compared the outcomes of young adults who were still in care at age 19 to the outcomes of youth who had already been discharged. The report found that those youth remaining in state custody for an additional year were more likely to advance their education, have stable housing, stay out of the juvenile justice system, receive independent living services, and have access to health and mental health services.⁶

While some states only allow foster youth to remain in care if they are enrolled in an educational activity (such as finishing high school or attending a postsecondary institution) or have a special need or disability, states should follow the lead of Arizona, Idaho and Illinois which allow youth to remain in care without any conditions. Even when full post-majority services are offered, some transitioning youth may choose not to accept those services but may later find themselves needing support. Therefore, it is important that states also implement a “return policy” for youth who leave foster care at age 18, which allows transitioning youth to receive foster care services after initially rejecting them.⁷

4. See U.S. Department of Health and Human Services, Title IV E Independent Living Programs: A Decade In Review (U.S. Government Printing Office, 1999); U.S. Department of Health and Human Services, Foster Care: Effectiveness of Independent Living Services Unknown (GAO/HEHS-00-13) (U.S. General Accounting Office, November 1999); R. Cook, A National Evaluation of Title IV: Foster Care Independent Living Programs for Youth: Phase 2 (Westat, Inc., Contract No. OHDS 105-87-1608, U.S. Department of Health and Human Services, 1991).

5. See <http://www.nga.org/Files/pdf/0701YOUTH.PDF>.

6. M. Courtney and A. Dworsky, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19: Executive Summary* (Chicago, Illinois: Chapin Hall Center for Children at the University of Chicago, 2005), available at http://www.chapinhall.org/content_director.aspx?arid=1355&afid=240&dt=1.

7. L. Eyster and S. Looney Oldmixon, *State Policies to Help Youth Transition Out of Foster Care*, NGA Center for Best Practices—Issue Brief, January 2007, available at <http://www.nga.org/Files/pdf/0701YOUTH.PDF> (“Data on these policies were gathered through surveys of the states in 2002 and 2005 by the National Child Welfare Resource Center for Youth Development, a service of the U.S. Department of Health and Human Services’ Children’s Bureau”).

FCIA also allows states to extend Medicaid coverage for transitioning youth until age 21. Since the enactment of Chafee, at least 18 states have extended their Medicaid programs using this provision to cover these youth.⁸ Given the significant medical and mental health needs of these youth, all states should implement the Medicaid expansion option.

To prepare youth for the transition to independence, researchers recommend that independent living services be provided to youth as early as age 13 and continued through their early-to-mid 20s.⁹ States are required to use at least a portion of their *Chafee* funds¹⁰ for older youth who have left the foster care system but have not yet reached age 21.¹¹ In addition, while previous law limited services to children 16 and older, Chafee now allows states to provide independent living services to children of younger ages when appropriate.

2. Permanent Connections to Appropriate Adults

In addition, transitioning youth need strong social ties to other adults. Social ties can smooth the transition by providing emotional support, assistance with employment, education, and relationship issues; and help in emergencies. Strong, stable relationships also promote a sense of normalcy and security. Relationships that non-foster youth have with their biological parents are not assured for foster youth. Those involved with foster youth should ensure that they have a lifelong connection to some caring adult in the youth's life.¹²

3.-4. Youth Participation at Hearings and in Transition Planning

Legislative bodies and courts should ensure that youth transitioning from foster care are afforded a meaningful opportunity to participate in the court hearings that will chart their adult path. Courts should conduct meaningful hearings that specifically address a youth's transition out of care before discharge. Existing ABA policy supports and encourages the participation of youth in these court proceedings. In 1996, the Association approved the *Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases*. The standards specify criteria for children's attorneys to decide whether to bring youth to court, including whether a child wants to attend, the child's age and potential trauma to the child. The commentary accompanying the standards explains the importance of youth participa-

8. *Medicaid Access for Youth Aging Out of Foster Care*, The American Public Human Services Association, 2007 available at <http://www.aphsa.org/Home/Doc/Medicaid-Access-for-Youth-Aging-Out-of-Foster-Care-Rpt.pdf>. The report indicates 17 states had implemented the Medicaid extension, however, in April 2007, Washington State's legislature voted to extend Medicaid, and the bill is expected to be signed into law.

9. *Id.*

10. Congress attempted to address some of these problems through the Foster Care Independence Act of 1999 (FCIA). The act doubled federal funding for the John H. Chafee Foster Care Independence Program, which provides states with funds to assist foster youth with life skills training, education and employment supports, healthcare, permanency, housing assistance, mentoring, and counseling activities. States are required to contribute a 20 percent state match for Chafee funds.

11. L. Eyster and S. Looney Oldmixon, *State Policies to Help Youth Transition Out of Foster Care*, NGA Center for Best Practices—Issue Brief, January 2007, available at <http://www.nga.org/Files/pdf/0701YOUTH.PDF> (“Data on these policies were gathered through surveys of the states in 2002 and 2005 by the National Child Welfare Resource Center for Youth Development, a service of the U.S. Department of Health and Human Services’ Children’s Bureau”).

12. *Id.*

tion by noting that a youth's presence in court emphasizes for the judge and parties that the proceedings are about that child.

In addition, at the 2006 planning conference for the ABA Youth at Risk Initiative, 60 child welfare and juvenile justice professionals convened and agreed that "youth must always be given notice of and afforded [an] opportunity to be present at all court proceedings affecting them. Their voices need to be heard throughout the judicial process, through the assistance of competent attorneys, and directly as appropriate." Conference participants further noted "youth must be included in discussions of what may happen in court, the consequences of court actions, and the resolution of intra-familial problems that relate to their court involvement. Judges, lawyers, social workers, and other professionals responsible for cases involving a youth's well-being should develop alternative ways of hearing his/her voice" such as providing youth with an alternative way to communicate orally or in writing with the court and/or emphasizing the importance of youth-guided representation.¹³

The importance of meaningful youth participation in child welfare court proceedings, particularly youth transitioning from care, has also been supported by other major child welfare policy entities. For example, in 1999, the National Association of Counsel for Children adopted standards of practice similar to the ABA's, which encourages youth presence at significant court proceedings.¹⁴ In 2004, the Pew Commission on Children in Foster Care issued a report, *Fostering the Future: Safety, Permanency and Well-Being for Children in Foster Care*. The Pew Report states that more must be done to promote the direct and meaningful participation of youth in court proceedings that affect their lives. The report notes that courts should enable children and parents to participate in a meaningful way in their court proceedings and that children benefit when they have an opportunity to participate actively and courts benefit when judges can hear from all the key parties.¹⁵

The federal *Adoption and Safe Families Act* (ASFA) requires states to hold review hearings every six months and permanency hearings at least every 12 months after entering care.¹⁶ Under ASFA, states and courts are free to hold more periodic reviews and hearings to ensure the best interest of the child.¹⁷ Recent changes in federal law now also encourage youth participation in court proceedings and review hearings relating to their transition from care. The *Child and Family Services Improvement Act of 2006* (S. 3525; Public Law 109-288), requires courts or administrative bodies to consult "in an age-appropriate manner" with every youth in foster care age 16 or older about their proposed permanency or transition plan at

13. See March 22, 2006 "Recommendation for the ABA Youth at Risk Initiative Planning Conference at <http://www.ocfs.state.ny.us/main/legal/statewide/ABAYARrecs.doc>.

14. National Association of Counsel for Children. *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (NACC Revised Version). April 21, 1999, D-5, D-6.

15. Pew Commission on Children in Foster Care. *Fostering the Future: Safety, Permanence and Well-Being for Children in Foster Care* (2004), available at: <http://pewfostercare.org/research/docs/FinalReport.pdf>.

16. 42 U.S.C.A. §§ 620-679.

17. For example, Kansas, Minnesota, New Mexico, Florida, Virginia, California and Michigan each ensure some level of participation or notice afforded to youth in care. Kathleen McNaught and Lauren Onkeles, "Improving Outcomes for Older Youth, What judges and attorneys need to know," National Resource Center for Youth Development, United States Department of Health and Human Services (2004), available at <http://www.nrcys.ou.edu/yd/resources/publications/pdfs/improveoutcomes.pdf>.

any permanency or other hearing held with respect to the youth's transition from foster care to independent living. Several states have also addressed the importance of youth participation in child welfare proceedings through statute, ensuring a right to full or partial participation and/or notice to youth in care, sometimes depending on the age of the youth. California law states that youth in foster care have a right to attend court hearings and speak to the judge.¹⁸

Child welfare research also supports the need to include youth in child welfare proceedings and ensure their meaningful participation in the development of court and agency plans regarding their transition from care. A recent article in the *Guardian* by a former foster youth points out that it is common for foster youth to feel frustrated when they are not allowed to participate in decisions affecting their lives.¹⁹ A recent Casey Family Services publication argues that youth involvement in permanency planning and decision-making is essential and that planning must genuinely be guided by each youth's wishes, hopes and dreams and must respectfully honor their feelings about past and current relationships.²⁰

Finally, a 2006 national study by Home At Last encourages the meaningful participation of youth in court proceedings and transition planning. The study surveyed transitioning and former foster youth. Many of these youth reported that they did not know what the permanency goal for their case had been (e.g., reunification, adoption, guardianship by a relative, or another planned living arrangement, such as independent living) or they did not think they even had a permanency case goal. Many reported that they were not included in discussions regarding their permanency goal and those that were involved complained that they were not given sufficient information about their options. Many child welfare professionals surveyed echoed youths' statements, stating that information is not shared with youth about the range of permanency options and the role they and their parents may play in the goal-setting process. The study suggests that youth and family participation in the court process should be maximized to help courts make decisions that take into account the individual needs of children and youth.²¹

Laws and policies must be crafted to ensure that these voices are part of the process and that we support and empower youth in their efforts to become an engaged participant in the charting of their own future. The mantra of the California Youth Connection and other foster youth advocacy groups aptly encapsulates the view of many youth aging out of care: "Nothing about us without us."

18. *Id.* (citing Minn. Stat. Ann. § 260C.163 (West 2007), N.M. Stat. Ann. § 32A-3B-13(c) (West 2007), Cal. Welf. & Inst. § 16001.9 (West 2007)).

19. Rodriguez, Jennifer, "Empowering Foster Youth: Inclusion in Court Hearings and Decision-Making," *The Guardian*, 27(2), 2005, p. 11. Available at <http://www.naccchildlaw.org/>.

20. Frey, Lauren, *Strengthening Families and Communities, A Call to Action: An Integrated Approach to Youth Permanency and Preparation for Adulthood* Casey Family Services, The Casey Center for Effective Child Welfare Practice April 2005 publication; available at http://www.caseyfamilyservices.org/pdfs/casey_permanency_0505.pdf

21. Madelyn Freundlich, et al, "Permanency Options and Goals: Considering Multifaceted Definitions," *Child and Youth Care Forum*, Springer Netherlands, Vol. 35, Numbers 5-6/December, 2006, p. 355-374; Home at Last. My Voice, My Life, My Future Foster Youth Participation in Court: A National Survey, 2006, available at: www.fostercarehomeatlast.org.

5. Case Participation Without Educational Penalties

The child welfare system should attempt at all times possible to not have a youth's participation in case or court related activities interfere with school. An example of efforts made by the child welfare system to accommodate a youth's school schedule would be judges setting hearings on late afternoon dockets, in order to ensure youth's participation will occur after school hours. However, there are times when case or court activities need to be scheduled during school hours. These activities may include mental health or therapy evaluations, family team meetings, court hearings, and sibling or parent visitation. Child welfare agencies must work in collaboration with education agencies to develop policies and practices that do not penalize youth who miss class time or assignments due to child welfare case or court involvement. An example can be found in California, where state law prohibits schools from penalizing youth for absences due to foster care placement changes, court appearances, or related court-ordered activities.

6. School Enrollment and Continuity

Most foster care youth hope to achieve postsecondary education or training, but are too often hindered in graduating from high school by frequent moves and lack of agency coordination.²² Sixty-five percent of foster care youth experienced seven or more school transfers during elementary school through high school.²³ Research indicates that children lose an average of four to six months of educational attainment each time they transfer schools.²⁴ In addition to the academic consequences, changing schools reinforces a cycle of emotional trauma plagued by repeated separations from adults and friends.²⁵

The McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.) is designed to address the problems that homeless students face in enrolling, attending, and succeeding in school. Currently some foster children are being served under this law, through various interpretations of "awaiting foster care placement," part of the eligibility definition. In addition the reauthorization and expansion of McKinney-Vento, this policy also supports the efforts numerous states have made to provide school stability and continuity protections to all children in foster care through specific state legislation. For example, California permits foster children to remain in their school of origin for the remainder of the school year, mandates prompt transfer of educational records, and requires the appointment of an educational liaison for foster children.²⁶ Oregon law provides that children may remain in their school of origin if a juvenile court determines it is in the child's best interest to do so and places responsibility for transportation to the school of origin on the child welfare agency. States

22. Alice Bussiere, Jennifer Pokempner & Jennifer Troia, *Adolescents, the Foster Care System, and the Transition to Adulthood: What Legal Aid Lawyers Need to Know*, CLEARINGHOUSE REV. OF POVERTY L. & POL'Y 159, 166 (July-Aug. 2005).

23. See <http://www.nga.org/Files/pdf/0701YOUTH.PDF> at p. 2.

24. Thomas R. Wolanin, *Higher Education Opportunities for Foster Youth: A Primer for Policymakers*, p. vi (2005), available at <http://www.ihep.org/Pubs/PDF/fosteryouth.pdf>.

25. *Id.*

26. Children's Advocacy Institute, *AB 490 (Steinberg) Fact Sheet: Helping Foster Children Make the Grade*, available at [http://www.caichildlaw.org/Misc/AB_490_\(Steinberg\)_FactSheet.pdf](http://www.caichildlaw.org/Misc/AB_490_(Steinberg)_FactSheet.pdf).

should consider amending state law and practice to address important issues such as: how to allow children to remain in their school of origin even when living placements change or are disrupted; how to ensure immediate enrollment into a new school when a school move is necessary; how to ensure complete and accurate education records are transferred timely and follow the youth; and how to ensure that there are staff resources in schools devoted to helping overcome barriers to educational success.

Critical for educational success for transitioning youth is the capability to access complete education records and documentation. Federal legal barriers (such as FERPA, see discussion below) must be overcome so that youth in care and exiting care have access to their complete education file. States must create clear policies that enable those records to follow youth when they move from school to school. Several states have created such policies that require timely and accurate transfer of education records. For example, in California, state law spells out the specific responsibilities of all agencies and timelines for completion (i.e. county placing agency must notify school immediately when student leaves and request transfer; sending school must deliver record to receiving school within 2 days; receiving school must contact sending school and request record within 2 days of enrollment). Several other states have similar expedited record transfer requirements.²⁷

7. School Record Maintenance and Transfers

Foster care youth who age out are significantly less likely than their peers to graduate from high school and rarely obtain higher education. The Midwest Study found that, at age nineteen, one-third of former foster care youth did not hold a high school diploma or general equivalency degree (GED) compared to fewer than 10% of their same-age peers in a comparable national sample.²⁸ Youth who were able and opted to remain in foster care past the age of majority were twice as likely as those who aged out to be enrolled in school or vocational training.²⁹ National research indicates that foster care youth, even after controlling for grades and test scores, are more likely to be in a general high school track than in a college preparatory program.³⁰

8. Postsecondary Education

Despite the negative outcomes for transitioning youth completing high school, most youth have hopes of a higher education. A three-state study of youth aging out of care conducted by Chapin Hall revealed that the majority of 17-18 year old youth hoped and expected to graduate from college eventually.³¹ However, only 5% of foster youth complete a postsec-

27. For a complete chart of state statute and regulation provisions related to record transfers see http://www.abanet.org/child/rcfji/education/fostercareeducation_legislation_draft1.doc.

28. Mark E. Courtney and Amy Dworsky, *Early Outcomes for Young Adults Transitioning From Out-of-Home Care in the USA*, 11 CHILD AND FAM. SOC. WORK, 209, 212 (2006).

29. *Id.* at 212-213.

30. Wendy Whiting Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non-Foster Care Youth*, 14 CHILD AND ADOLESCENT SOC. WORK J., 41, 47 (1997).

31. Courtney, et al., 2004, p39.

ondary educational degree, compared with 20% of their peers. Many programs designed to assist them do not adequately account for their unique circumstances. For example, foster care youth are temporarily displaced from their student housing during academic breaks, but with no familial support they often have nowhere to reside during this time.³²

Fundamental issues that interfere with the pursuit of post secondary education by transitioning youth include lack of exposure to career options, failure to plan for future education, and lack of emotional supports leading into, and throughout, education pursuits. Efforts must be pursued to ensure that youth have a supportive adult, mentor, or advocate that is working to assist with their education goals. This adult can assist with applying and enrolling in postsecondary education, completing financial aid forms, and successfully completing post-secondary education.³³

Another major obstacle for transitioning youth is the high cost of post-secondary education. It is critical that all youth, but especially transitioning youth, have access to financial assistance to make higher education a reality. Transitioning youth struggle with the traditional financial aid channels due to their unique circumstances. Specifically, the Free Application for Federal Student Aid (FAFSA) can be a complicated document for transitioning youth to complete. Mentors and supports should assist transitioning youth with this important financial aid form. States must clarify when youth should be identified as ward/dependent of the court for purposes of the FAFSA, and ensure that transitioning youth are being identified appropriately on the financial aid form and that confusion around the terminology “ward/dependent of the court” does not interfere with transitioning youth receiving appropriate financial aid benefits (see additional discussion below).

Transitioning youth should also have access to specialized supports designed specifically to assist youth coming from the foster care system. Many states, including Kansas and Minnesota, have developed special supports for transitioning youth through creation of tuition waivers for children who are aging out of care.³⁴ Other states have expanded their tuition waiver programs to be available to youth prior to exiting care, to ensure that tuition waivers are not acting as a disincentive to adoption of older youth. For example, Maryland expands eligibility to all youth adopted out of foster care over age 14, and Virginia expands eligibility to youth in care at the time of high school graduation or a special needs adoption.³⁵ More states should consider tuition waiver programs for transitioning youth, and also consider expanded eligibility so as not to create a disincentive for permanent guardianships or adoption of older youth.

Another method for providing support for higher education is the creation of specific scholarships and financial supports for youth who have been involved in the foster care sys-

32. Thomas R. Wolanin, *Higher Education Opportunities for Foster Youth: A Primer for Policymakers*, p. vii (2005), available at <http://www.ihep.org/Pubs/PDF/fosteryouth.pdf>.

33. See generally Casey Family Programs. “It’s My Life: Postsecondary Education and Training” 2006.

34. National Resource Center for Youth Services. “State by State,” 2003. <http://www.nrcys.ou.edu/nrcyd/state/html>.

35. See Maryland Higher Education Commission. “High School Counselors Frequently Asked Questions,” 2003. www.mhec.state.md.us/financialAid/hs_faq.asp and Virginia Community College System. “Tuition Grant,” 2003. <www.so.cc.va.us/vccsacr/Tuitiongrant/tuitiongrant.html>.

tem. At the federal level, an amendment in Title IV of the Social Security Act in 2002 added a sixth purpose to the Foster Care Independence Act, which was the creation of the Education and Training Vouchers (ETV) program and authorization of an additional \$60 million for states to provide up to \$5,000 per year per youth for postsecondary education. At the state level there are other examples of scholarships for transitioning youth. Examples include Washington State's Guardian Scholars Program (geared toward youth in foster care or kinship care), Arizona's Friends of Foster Children Foundation (for children who are still wards of the state), and Illinois (monthly stipend to youth in care, adopted from care or in guardianship through a child welfare case).³⁶ More states and programs need to follow this lead in order to have enough financial support for all transitioning youth to pursue and complete their higher education ambitions.

9.-11. Housing, Employment, and Financial Stability

Given their poor education outcomes, high unemployment rates, and lack of family support, it may come as no surprise that former foster care youth suffer disproportionately from economic instability.³⁷ Over half of the youth in the Midwest Study reported suffering from at least one of the following economic hardships: homelessness, lack of food, eviction, disconnected phone service, having their gas or electricity shut off, not having enough money to pay utility bills, not having enough money to pay rent, or not having enough money for clothing.³⁸ Foster youth often age out unprepared with basic skills necessary for successful independence such as keeping appointments, managing a bank account, or finding housing.³⁹

Transitioning youth are given less financial support than their same age peers. About half of youth ages 18-24 live at home and close to two-thirds of young adults in their twenties receive economic support from their families.⁴⁰ Given the lack of financial support, it comes as no surprise that maintaining stable housing presents a major barrier to emancipated foster care youth. The Midwest Study found that its participants were twice as likely as their same age peers to not have enough money to pay rent.⁴¹ One large-scale longitudinal study found that more than one-fifth of the former foster care youth in their study experienced homelessness for one day or more within a year of aging out. This is in contrast to one percent of the general population experiencing homelessness in a given year.⁴² A 1999 report

36. Washington Education Foundation, 2003 <http://www.waedfoundation.org/gs/index/htm>; Arizona Friends of Foster Children Foundation, 2003. www.affcf.digital-dogs.com/awards; Illinois Department of Children and Families Services. "Crossroads, A Handbook for Youth in Transition to Adulthood," 2003. <http://www.state.il.us.dcfs.docs.crossroads.pdf>.

37. M. Courtney and A. Dworsky, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19: Executive Summary*, p. 8 (Chicago, Illinois: Chapin Hall Center for Children at the University of Chicago, 2005), available at http://www.chapinhall.org/content_director.aspx?arid=1355&afid=240&dt=1.

38. *Id.* at 9.

39. Thomas R. Wolanin, *Higher Education Opportunities for Foster Youth: A Primer for Policymakers*, p. vi (2005), available at <http://www.ihep.org/Pubs/PDF/fosteryouth.pdf>.

40. Eyster, Lauren and Sarah Looney Oldmixon, *State Policies to Help Youth Transition Out of Foster Care*, NGA Center for Best Practices—Issue Brief, January 2007, p. 10, download article at <http://www.nga.org/Files/pdf/0701YOUTH.PDF>; see also <http://www.pbs.org/wnet/agingout/agingoutbrief.pdf>.

41. M. Courtney, at 9.

42. Casey Family Programs, "Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study" (2005), available at <http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/923/CaseyAlumniStudyupdated082006.pdf>.

found that 40% of persons in federally funded homeless shelters were former foster youth.⁴³ In California, a study found that sixty-five percent of former foster care youth age out without secured housing.⁴⁴ Foster youth in congregate care or institutions are especially in danger of emancipating with inadequate preparation for adult living.⁴⁵ To address these issues, states should offer a continuum of housing options to former and transitioning foster youth, including rental assistance or housing programs.

Foster care youth face obstacles in signing leases, obtaining loans, and acquiring important government documents because they cannot obtain parental consent or an adult cosigner. For example, foster care youth report difficulties in securing housing because of their lack of a credit history or a willing cosigner. Allowing caseworkers and foster parents to sign paperwork without accepting legal responsibility for the youth would allow youth to obtain driver's licenses, open bank accounts, and expand access to healthcare and other services.⁴⁶ States should ensure that all former foster youth and transitioning youth have important documents, including state identification, before leaving care.

Former foster youth face unstable employment prospects and often work for low wages. The Midwest Study found that only 40% of its participating 19 year olds were employed. Of the participants who were employed in the prior year, over three quarters earned less than \$5,000 and 90% earned lower than \$10,000. The Midwest Study found that only 46% of the former foster care youth had a savings or checking account, compared with 82% of their peers in a national sample. One quarter were categorized as food insecure on a composite measure of food security. Almost half of the females and 24% of the male study participants had received some form of government assistance in the last year.⁴⁷ Providing tax incentives, civil service job preferences, or other encouragement to employers to hire foster care youth would help them overcome the major obstacle of obtaining their first job.⁴⁸ An initial entry-level position it will make it easier to obtain future work. These financial incentives will make foster youth more competitive in the job market and prepare them for independence. Additionally, states should ensure that each foster youth over age 16 has access to assistance and support, such as an educational and vocational manager, to help them with their transition into the work world or higher education.

States should also take measures to ensure that foster youth, who are vulnerable to being victims of identity theft by parents or relatives, are able to clear their credit history before leaving care.

43. Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. JUV. L. & POL'Y 381, 387 (2005).

44. California Department of Social Services, *Report on the Survey of the Housing Needs of Emancipated Foster/ Probation Youth*, at 6 (2002), available at <http://www.childsworld.ca.gov/res/pdf/rptonthehousingneeds.pdf>.

45. Alice Bussiere, Jennifer Pokempner & Jennifer Troia, *Adolescents, the Foster Care System, and the Transition to Adulthood: What Legal Aid Lawyers Need to Know*, CLEARINGHOUSE REV. OF POVERTY L. & POL'Y 159, 165 (July-Aug. 2005).

46. Breanne Gilpatrick, *Foster Kids Call for the Right to Drive: Legal Hurdles Could Derail a Proposal Intended to Make it Easier for Foster Children to Obtain their Driver's Licenses*, Miami Herald, Apr. 9, 2007, available at <http://www.miami-herald.com/569/story/67762.html>.

47. *Id.*

48. Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. JUV. L. & POL'Y 381, 422 (2005).

Finally, to help assure that transitioning foster youth become aware of and obtain the services they are entitled to by law, or should be receiving, states should create a unit within public and privately contracted foster care programs to help educate teens in care on the aid that can be helpful to them in making successful transitions to independence. Such a unit would, utilizing both agency staff and former foster youth, provide orientation sessions on various aspects of transition, such as finances, higher education and vocational training, job placement, housing opportunities, etc. In increasing numbers of states, former foster youth have joined together to aid youth in care, providing another resource that foster youth should be made aware of. Another important option is for the states to establish, within the public child welfare agency or external to it, a Foster Care Ombudsman that can be serve as an independent resource for youth to turn to with problems or barriers they face in transitioning.

III. Recommendations for Federal Reform

In order to fully support former foster youth and transitioning youth, Congress should amend federal law in a number of areas:

1. Amend Title IV-E of the Social Security Act to allow states to be reimbursed for care and services provided to current and former foster youth after their 19th birthday

Title IV-E provides open-ended, entitlement funds to states towards the costs of maintaining certain eligible children in foster care (and associated costs). Under the program, states are eligible for federal matching funds. Currently, matching funds are available to support children in foster care up to 18 years old (or 19 if the youth is still in high school). Eligibility is restricted to those children who have been separated from families receiving Supplemental Security Income (SSI) or families who would have been eligible to receive welfare benefits under the AFDC program as it existed on July 16, 1996. Federal funding for foster care maintenance payments are provided for any eligible child at a federal matching rate from as high as 80% to as low as 50%, depending on the state. Expenditure data from HHS indicates that states received \$1.690 billion for foster care maintenance payments in FY 2003, for an average monthly number of 242,200 children.⁴⁹ This proposal would allow states to receive federal matching funds for the purpose of maintaining youth in foster care placements up to age 21.

2. Provide clear and broad definitions in federal law regarding financial aid pertaining to “ward/dependent of the court” and “emancipation” to ensure that youth may receive financial aid without the requirement of a parental signature or parental income information

Foster care youth face problems with obtaining educational financial aid related to reporting their parents’ income and obtaining their parents’ signature on financial aid forms. This

49. Child Welfare League of America at <http://www.cwla.org/advocacy/financinghr3576-summary.htm>.

is due to the unclear definition of who is a ward or dependent of the court in Federal law, and the fact that the definition for ward or dependent of the court can vary from state to state. The restrictions placed on former and current foster care youth affect many areas, and the inability to complete and file a FAFSA without a parental signature is one of them.⁵⁰

The practical effect of including parents' financial information in calculating aid for foster youth is that those with higher levels of economic instability are penalized for income from which they see no benefit, or cannot file for financial aid at all due to the inability to obtain a parental signature. The other effect is that foster care youth, who already have vastly unequal achievements in education by the age of 18, are more likely to lose out on opportunities for higher education.⁵¹ Foster youth are also often required to provide documentation of ward or dependent of the court status for financial aid purposes, in the form of a copy of the relevant court order.

20 U.S.C. § 1087vv (d) provides that “the term ‘independent,’ when used with respect to a student, means any individual who . . . (2) is an orphan or ward of the court or was a ward of the court until the individual reached the age of 18.” This is unclear in language and in effect because of many issues. First, it is unclear whether or not someone who has foster parents is a ward or dependent of the court, and whether or not this status is dependant on the foster care funds provided to the foster parents. Second, it is unclear whether or not a child with court-appointed legal guardians is considered a ward or dependent of the court for purposes of financial aid. These problems are exacerbated by the fact that, apart from proving ward or dependent of the court status, children applying for financial aid are expected to provide parents' financial information until the age of 24.

Furthermore, the definition of “ward of the court” differs from state to state. For example, in California, one who becomes a ward of the court through the California probation system as a result of a criminal offense as a juvenile does not meet the definition of “ward of the court” for financial aid purposes.⁵² In other states, becoming a ward of the court through any process leads to one being a “ward of the court” for financial aid purposes. If one consulted some sources on financial aid, the impression would be that becoming a ‘ward of the court’ through other criminal convictions as a juvenile leads to the same status for financial aid in all states.⁵³ There are also problems many foster care youth have run into related to their schools being unaware or misinformed of the nuances of the system that can lead to different definitions of these terms.

These problems could be alleviated by providing a uniform federal law regarding ward or dependent of the court status. This would eliminate the problem of differences between states, as well as resolve questionable issues such as whether those with legally appointed

50. Breanne Gilpatrick, *Foster Kids Call for the Right to Drive: Legal Hurdles Could Derail a Proposal Intended to Make it Easier for Foster Children to Obtain their Driver's Licenses*, Miami Herald, Apr. 9, 2007, available at <http://www.miami-herald.com/569/story/67762.html>.

51. M. Courtney and A. Dworsky, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19: Executive Summary*, p. 8 (Chicago, Illinois: Chapin Hall Center for Children at the University of Chicago, 2005), available at http://www.chapinhall.org/content_director.aspx?arid=1355&afid=240&dt=1.

52. See http://www2.ucsc.edu/fin-aid/0708forms&pubs/ORPH_08.pdf.

53. See <http://www.finaid.org/questions/glossary.phtml>.

guardians still remain wards of the court, whether those with foster parents are still wards of the court, and whether or not the status is dependent on the existence or amount of foster care payments made to the foster parents.

3. Amend Title X, Part C of No Child Left Behind (NCLB) McKinney-Vento Homeless Assistance Act (McKinney-Vento) to include all children in out-of-home care

The McKinney-Vento Homeless Assistance Act (42 USC 11431 et seq.) is designed to address the problems that homeless children and youth face in enrolling, attending, and succeeding in school. The Act requires that school districts meet these needs in a variety of ways. Students are granted the right to enroll in school immediately, without waiting for documents that are usually required for school enrollment, such as medical and educational records, to be transferred to the new school. Perhaps most significantly, the Act requires school districts to allow children to remain in their home school, despite their residential mobility, to the extent that it is feasible. School districts are also required to provide transportation to the student's original school.⁵⁴

Numerous studies have confirmed that educational outcomes for all children in foster care, not just those with temporary placements, are significantly worse than those for students in the general population. For example, a national study showed that less than 70 percent of youth in foster care finish high school before leaving care and over a third of young adults who aged out of foster care reported having had five or more school changes.⁵⁵ One state study showed that students in foster care score 16 to 20 percentile points below others in statewide standardized tests and that only about three percent obtain a bachelor's degree within a few years of emancipation.⁵⁶ The educational deficits of children in foster care are also reflected in higher rates of grade retention; higher absenteeism, tardiness, truancy and dropout rates. The poor academic performance of these children affects their lives after foster care and contributes to higher than average rates of homelessness, criminality, drug abuse, and unemployment among foster care graduates.⁵⁷

In its definition of homeless, the Act includes children and youth "who lack a fixed, regular, and adequate nighttime residence", and specifically includes children and youth "awaiting foster care placement." 42 U.S.C. §11434A(2)(A) and (B)(i). However, there is no definition of this particular phrase in the statute. States vary widely in their interpretation of "awaiting foster care placement", from including all children in foster care in that definition (e.g., Delaware) to limiting eligibility to a subset of children and youth in state care or cus-

54. National Coalition for the Homeless, *McKinney-Vento Act* (June 2006); available at <http://www.nationalhomeless.org/publications/facts/McKinney.pdf>.

55. Casey Family Programs, *Foster Care and Education: Tools and Resources for Improving the Education Success of Children and Youth in Foster Care* (2006) at <http://www.casey.org/NR/rdonlyres/A8991CAB-AFC1-4CF0-8121-7E4C31A2553F/1138/NationalEducationBrochure1.pdf>.

56. Mason Burley and Mina Halpern, *Educational Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care* (November 2001), p. 13.

57. Steve Christian, *Educating Children in Foster Care*, National Conference of State Legislature, Children's Policy Initiative, 1 (December 2003) available at <http://www.ncsl.org/programs/cyf/cpieducate.pdf>.

tody who have been placed out of their homes into temporary, transitional, or emergency living placements (e.g., Massachusetts⁵⁸). The ABA has already adopted a resolution supporting the limited expansion of the McKinney-Vento definition of “awaiting foster care placement.”⁵⁹ This proposal would support the reauthorization of the McKinney-Vento Act to include all dependent children in out-of-home care within the protections of the law. This important expansion of McKinney-Vento protections to all children in foster care would more appropriately address the significant education needs of foster children and youth, as detailed above.

4. Clarify the Family Educational Rights and Privacy Act (FERPA) as it pertains to sharing health and education information among agencies, judges and advocates involved with the support, care and education of foster youth

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) protects the privacy of student education records and specifies the limited situations when schools can release such records to third parties. In general, FERPA prohibits the disclosure or release of a student’s education records unless the student’s parent consents in writing, or the release is specifically authorized through one of the FERPA exceptions to parental consent. FERPA rights transfer to the youth at the age of 18.

Education records may be released to a “parent,” which is defined in FERPA regulations to include a “natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.” This definition has sometimes been interpreted to include a foster parent or a child welfare agency representative with legal custody of a child, but such interpretation is not consistently applied. School records also may be released without parental consent if in compliance with a court order or subpoena, a specific exception listed under FERPA. However, such court ordered releases still include cumbersome notice requirements that often delay or create significant barriers to child welfare agencies and courts from receiving the education records for children in the agency’s care and under the court’s supervision.

Although FERPA restricts the school’s authority to release student records, child welfare agencies are required by Title IV-E of the Social Security Act to include health and education records in the case plans of children in foster care. That statute also requires that child welfare agencies give copies of the education records to foster care providers at the time of each placement, and to youth exiting care.⁶⁰

Federal law must be clarified to ensure that agencies, courts and child advocates can access these education records and thereby adequately address and serve the education needs of children in care.

58. Massachusetts Department of Education, *Homeless Education Advisory 2004 - 9: Children and Youth in State Care or Custody* (2004) at http://www.doe.mass.edu/mv/haa/04_9.html.

59. The current resolution recommends that the U.S. Department of Education expand the definition of “awaiting foster care placement” to include children and youth placed by agencies in interim, emergency, or short-term placements to assure such children and youth in temporary out-of-home settings have uninterrupted educational access.

60. *Id.*

5. Implement requirements to help preserve every foster youth's Social Security Act entitlements and other financial assets for use directly by that youth

In February, 2002, the ABA approved policy stating that agencies seeking to become “representative payees” of minors entitled to Social Security benefits provide advance notice of their intention to family members (parents, siblings, children, and grandparents) of the beneficiaries and to other legal representatives and, in so doing, advise such parties of the Social Security Administration’s general preference for appointment of individual payees, with a demonstrated interest in the beneficiary, over organizational payees. However, the U.S. Supreme Court, in *Washington v. Keffeler*,⁶¹ allowed child welfare agencies that petition for Supplemental Security Income (SSI) on behalf of foster children who are living with a relative foster parent, in certain circumstances, to receive and keep all or a portion of the child’s SSI payments to cover the costs of care. While the *Keffeler* decision supports the states’ practice of using SSI and other Social Security benefits for reimbursement of foster care, there remain many concerns that this practice is misguided. By using a child’s SSI or other Social Security benefits to reimburse the cost of foster care, the state agency is denying these children funding that rightly belongs to them. Rather than paying for a child’s foster care, SSI and other Social Security benefits that a child is eligible to receive, should be invested or otherwise put toward the child’s future use for expenses such as education and housing. Transitioning youth often have a difficult time securing housing and income sufficient to support themselves. SSI-eligible youth who exit foster care would arguably have an even more difficult time and thus may need additional resources that SSI provides. Allowing the benefits to be transferred to youth upon leaving care would ease the transition to adulthood for these youth at a time when they are expected to become financially independent.⁶²

Some advocates have argued that states are not using these benefits for the direct and sole benefit of the child but instead to defray child welfare or foster care expenses for the state generally.⁶³ This amounts to having the child pay for their own stay in foster care, while other children in care (including those with assets or income other than Social Security or those who receive Social Security benefits but have a representative payee other than the child welfare agency) are not required to repay the costs.⁶⁴

Additionally, child welfare agencies are often automatically assigned as the representative payee for children in foster care. Under the SSA’s own regulations these agencies should be the least preferred representative payee; related to this is the fact that SSA currently does not perform adequate investigations to determine whether a more suitable payee is available.⁶⁵

61. *Washington v. Keffeler*, 537 U.S. 371, 123 S.Ct. 1017 (2003).

62. Patrick Gardner, “Keffeler v. DSHS: Picking the Pockets of America’s Neediest Children,” *Youth Law News*, July-September, 2002, p. 10.

63. See, generally, Elizabeth Oppenheim, “Funding for children in Foster Care: The Keffeler Case,” *Policy and Practice of Public Human Services*, March 2003, pp. 22-28.

64. Daniel L. Hatcher, “Foster Care Children paying for Foster Care,” *Cardozo Law Review*, vol. 27, no. 4(2006), p. 1835.

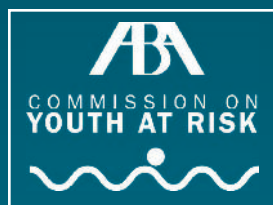
65. Jim Moye, “Get Your Hands Out of Their Pockets: The Case Against State Seizure of Foster Children’s Social Security Benefits,” *Georgetown Journal on Poverty Law & Policy*, Winter 2003, p. 5.

Agencies that receive a poor review by SSA or fail to submit payee accounting reports to SSA continue to serve as payees.⁶⁶

IV. Conclusion

The American Bar Association has a long history of promoting access to justice through policy based advocacy on behalf of youth and young adults. This policy reaffirms the Association's commitment to youth at risk by highlighting the need for those involved in the care of foster children to implement policies and practices that support these youth after age 18. Given the vulnerability of transitioning and former foster youth, youth who have relied on the state to parent them should receive the full benefits of that *parens patriae* relationship. Youth should not be abandoned at age 18, given the moral responsibility of the state as parent, as well as the economic and social benefits gained by a continuation of services to these youth. The ABA's support of this policy illustrates the Association's commitment to *defending liberty and pursuing justice*.

66. Daniel L. Hatcher, "Foster Care Children paying for Foster Care," *Cardozo Law Review*, vol. 27, no. 4(2006), p. 1814.



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