



FROM FOSTER CARE TO ADULTHOOD

UNIVERSITY OF CHICAGO
LAW SCHOOL
FOSTER CARE PROJECT'S
PROTOCOL FOR REFORM

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This protocol, developed by students and a professor in the course of a workshop at the University of Chicago Law School, is designed to assist those interested in reforming the law and the legal process to improve foster youths' transition from foster care to adulthood.

For an expanded, electronic version of this protocol, see: www.law.uchicago.edu/fostercaretoadulthood

For more state-specific information, see: www.fostercaretoadulthood.wikispaces.com

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First Print Edition

All updates and future editions may be found at <http://www.law.uchicago.edu/fostercaretoadulthood>

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Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book and any forms or charts herein are intended for educational and informational purposes only.

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This Protocol is dedicated to all the foster youth and foster care alumni
who have inspired our efforts at reform.

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OVERVIEW

I. Overview

Young people who grow up in foster care face daunting odds when they “age out” of that system as adults. Many of them find themselves without a job and without a home. Before long, many are incarcerated, and others become parents before they are ready. Staying in school is fraught with obstacles, from unaffordable tuition, to episodic housing, to a lack of academic and emotional supports. Whatever their obstacles and opportunities, foster youth are far more likely than other young people to face those obstacles and opportunities alone.

Clearly, we are failing these young people. Less clear, however, is how we can make things better. The University of Chicago Law School’s Foster Care Project is dedicated to assisting advocates throughout the country to improve the experience of foster youth who are aging out of care. As law students and faculty, we have focused our attention on the law, asking: What changes in the law would benefit these youth? How can current law be best employed for their benefit? What can courts and lawyers do to assist youth to make a successful transition? In answering these questions, we have engaged in countless discussions with experts and with former foster youth; we have researched a broad range of potentially relevant legal topics, and we have observed numerous juvenile court hearings involving older foster youth. We have sought out model programs that others might want to replicate and have identified some recurring problems with standard practice that call for reform.

Our broadest conclusion is that the legal process governing foster youths’ transition should ensure that foster youths’ lives

mimic, as closely as possible, the experience of youth growing up in their own families. More specifically, we conclude that the court process can play a crucial role in replicating some important aspects of that experience.

We know from our own life experience, now well supported by sociological research, that the adulthood acquired at age 18 is, for most of us, an option to be exercised rather than a mandatory transformation. We may declare our independence most forcefully as we blow out our 18 candles, but we will, more likely than not, crawl into bed at our parents’ house when the celebration is over. For most of us, the first decade of adulthood is a patchwork of dependence and independence. We try out jobs, apartments, and relationships, and when they do not work out, we can retreat to the emotional and financial support of our parents. Our ongoing dependence serves as both safety net and stepladder. When we rely on parents to help us gain an advanced education, our independence will be more successful, by many measures, for being delayed.

Our law gives individuals near-complete authority over their own lives at 18, but most of us, whether by design or by necessity, forgo much of that authority in order to reap the considerable benefits of ongoing dependence. Similarly, parents shed many of their legal obligations at 18, but continue to offer support beyond what the law requires out of some combination of love, commitment, and ongoing sense of moral obligation. In contrast, foster children in most states are forced to take full responsibility for themselves the moment the laws allow them to do so, and the state sheds most or all of its involvement the moment foster youth are out of its custodial control.

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While a system of laws, courts, state employees, and their contractors can never match what families provide in unconditional love, single-minded loyalty, powerful attachments, and depth of insight, we owe it to those for whom we have taken over as parent our best attempt to give them what we expect other parents to provide.

While a system of laws, courts, state employees, and their contractors can never match what families provide in unconditional love, single-minded loyalty, powerful attachments, and depth of insight, we owe it to those for whom we have taken over as parent our best attempt to give them what we expect other parents to provide. This requires that the system be flexible and responsive, and that it give young adults the ability to move in and out of relative independence. It also requires that supports be tied to needs and abilities, rather than offered as rewards for those perceived to be doing best. As in any family, budgetary considerations will inevitably have some effect on the supports afforded, but, as in any family, the commitment to support should not end because the dollars are short. Finally, to be effective, the system of supports must engage former foster youth in decision making as adults who are now in charge of their own lives.

In the resource materials that follow, we describe and justify a set of legal rights and rules designed to foster such a system of supports. To make our proposals as useful as possible to advocates, we also offer tools—such as model legislation and 50-state information—that can assist with implementation. In setting out these proposed reforms, we do not claim to be inventing something new. Many of our proposals have already been implemented in some jurisdictions, and we attempt, whenever possible, to identify real-life models that demonstrate their potential for success. Our contributions are (1) to focus particularly on the law and opportunities for change through existing laws or changes in the law; (2) to synthesize various legal reform efforts into an integrated proposal; and (3) to develop legal arguments to support proposals for reform that those

engaged in full-time advocacy work do not have the time or resources to develop. We also take a position on one of the more controversial issues in the area—namely, the role the courts should play in assisting with the transition.

At the core of our recommendations is a conclusion that ongoing court involvement in young adulthood greatly enhances the ability of the system to offer effective and age-appropriate supports to former foster youth. Where the court remains involved, youth are more likely to receive the supports to which they are legally entitled, and they are more likely to be involved in thoughtful planning about their futures. Any court involvement can facilitate these goals to some extent, but a properly designed court process can contribute something of special value to the youth and to the system as a whole. To that end, many of our recommendations, read together, describe a model court process that we have concluded would serve these youth especially well.

Our conclusion that courts can (and sometimes already do) play a key role in enhancing foster youths' transition to adulthood is based on our own research, and on the comprehensive longitudinal research of the Chapin Hall Center for Children. Chapin Hall's ongoing study of approximately 700 youth who are aging out of the foster care system has found that youth who remain in the child welfare system with court oversight beyond age eighteen do significantly better than those who are discharged from that court-involved system. These youth appear to do better than discharged youth, even when both groups are entitled to the same set of supports (such as help with housing and education). Chapin Hall's research does not, however, focus on the

courts, nor does it offer an account of why court involvement might make a difference. Our own observation and interview research helps to fill in the picture, suggesting that court involvement has considerable monitoring and enforcement value and, in the best cases, fosters a relationship between judge and youth that is unique and powerful.

The Protocol is organized as follows: In Section II.A., we set out the relevant insights from developmental psychology, sociology and education that bear on our consideration of foster youths' needs and capabilities in adolescence and young adulthood. Of particular importance are an understanding of how, when, and why people assume relative independence in our society, and how adolescents and young adults learn what they need to function independently. We note that two of the most important aspects of adolescents' preparation for independence—gradually increasing autonomy and the development of meaningful relationships with adults and peers—are often in particularly short supply in foster care.

In Section II.B., we describe the numerous contexts in which the law imposes obligations of support on parents of adult children, and argue by analogy that the state as parent has certain obligations to support its foster children into adulthood. We offer these examples to counter the general assumption that parental obligations always end at 18, and to consider how the law has rationalized imposing ongoing support obligations on parents when issues of dependence are complicated or parents' usual sense of moral obligation to their adult children is attenuated. These laws, we sug-

gest, support imposing a parallel obligation on the state, as parent, to support the foster children who grew up in its care.

In Sections III and IV, we advocate a set of rights and procedures that should be afforded to all foster youth who will age out of foster care without a legally recognized permanent family. We endorse the "checklist" approach that a small number of states have begun to take that sets out a list of tasks the state should complete before it discharges youth from its responsibility. We have found, however, that even in states where such discharge lists are prescribed by law, there is no clear mechanism established for the enforcement of the conditions listed. Moreover, even as written, these statutes focus too exclusively on the discharge moment, and give inadequate attention to developmental benchmarks, throughout adolescence, necessary for a successful transition to independence.

Building on our knowledge of healthy development set out in Section II, Section III considers what adolescents and young adults need to make a successful transition from foster care to independence. We advocate a developmental checklist for adolescents that focuses on their opportunities to practice making and acting on their own decisions, engaging in group activities, and developing long-term relationships with adults and peers. Further, we advocate a discharge checklist that focuses on youths' preparation for independence as well as on developing supportive relationships that youth can draw on through what may be a lengthy transition period. In addition to offering model legislation that captures these obligations, this section offers some possible mechanisms, including a consti-

Court involvement has considerable monitoring and enforcement value and, in the best cases, fosters a relationship between judge and youth that is unique and powerful.

tutional argument, for enforcement of the state's obligation to meet the developmental needs of the oldest foster youth.

Section IV shifts the focus to foster youths' procedural rights. In this section we consider the special contribution juvenile courts can make. At a minimum, they provide valuable monitoring and enforcement of the state's obligations to its oldest foster youth. The focus of this monitoring and enforcement is, of course, the state's child welfare organization. But many courts have also found ways to press other arms of the government into service for foster children and have facilitated badly needed inter-systems coordination that the individual agencies were unable to achieve on their own. At their best, courts offer a unique opportunity for youth to engage with a serious and powerful individual who can help them plan for their futures and act on those plans. In the course of project work we learned of some extraordinary judges who have engaged youth in this way, and it is clear such relationships had a profound impact on these youths' transition to adulthood. Section IV champions a set of procedures and an approach to these cases designed to replicate these model courts and to enhance youths' opportunities for learning and engagement in that process. It proposes a set of obligations for judges and lawyers, and offers both developmental and constitutional arguments to support the imposition of these obligations. This section also proposes some modest changes to the language of Title IV-E governing court reviews, to ensure that the court involvement required under that Act appropriately reflects the special issues and emerging independence of older foster youth.

Section V builds on this discussion, and advocates continuing involvement of the

courts into young adulthood. Whether court jurisdiction should be extended beyond 18 is a subject of considerable disagreement among those seeking to improve foster youths' transition to adulthood. In our view, court involvement is key.

The essence of the argument for ongoing court involvement is as follows: First, we have every reason to expect that the historical problems families faced getting services from the child welfare system before the court engaged in regular review hearings will be at least as serious for young adults leaving the foster care system. For entirely sympathetic reasons, overtaxed bureaucracies with overextended budgets commonly fail to provide the attention and supports to which individuals are entitled unless some external mechanism, such as court review, focuses their attention on those particular individuals. Second, Chapin Hall's findings suggest that youth who stay court involved until 21 do significantly better than their discharged peers. This is true even where discharged youth are entitled to the same range of services, such as educational and housing supports, as those who remain in the system. Third, all the reasons offered in Section IV to applaud the court's involvement and enhance its scope for adolescents apply even more powerfully for young adults. As young adults, foster youth are in a particularly good position to engage with the court in decision-making and planning and to contribute to the process of monitoring and enforcement in a manner that fosters, rather than undermines, their emerging independence. In this Section we endorse proposals to extend federal payments under Title IV-E of the Social Security Act to 21.

Ongoing court involvement also has a special value for young adults, as it offers a

context in which youth can seek intermittent supports, as they move in and out of circumstances of dependence and independence. To accomplish this, we advocate in Section VI a right of re-entry, that is, the right of former foster youth to return to the child welfare system to request assistance, and the continuing authority of the court to compel the provision of services into early adulthood. Again, our aim is to design a process that best approximates the system of supports provided by parents for their adult children. In our view, a court that is available for youth, when they discover their needs exceed their ability to meet them on their own, offers a rough match to one aspect of family support that is difficult to replicate outside the court context: Youths' ongoing "standing" in court mimics the ongoing availability of a family to hear their children's concerns and to help them develop a strategy to address them, even as the family's willingness and ability to provide any particular form of aid to their children come and go.

In Section VII, we consider how lay volunteers, particularly Court Appointed Special Advocates (CASAs), could be employed to best assist youth aging out of the foster care system. CASA programs throughout the country offer an excellent opportunity to engage lay volunteers to assist with the transition and, more particularly, to make the most out of the court's involvement in that transition. We offer some suggestions about how the approach of CASAs, an approach originally designed to address the distinct legal issues facing younger foster children, could be modified to address the special issues facing older youth. We make recommendations that could immediately be implemented by individual CASA volunteers assigned to older foster youth and other recommendations about how CASA

could tailor its recruiting and training to address the special issues facing the older foster care population.

In sum, we recommend that law and practice be reformed to:

- Enhance court hearings for older youth to ensure that they are a central voice in those hearings and are afforded an opportunity to engage directly in the decision making process;
- Extend court jurisdiction to at least twenty-one, and continue court involvement for all youth unless they initiate a request to have their case discharged from the courts;
- Allow youth up to the age limit of court jurisdiction to re-enter the court system and re-access services and supports. Re-involving the court system should happen automatically when requested by the youth.
- Establish foster youths' entitlement to engage in activities throughout adolescence that will give them experience making decisions on their own and opportunities to develop meaningful long-term relationships with peers and adults.
- Establish foster youths' entitlement to receive certain services and supports prior to discharge and to refuse discharge until such services and supports are provided.

Again, none of these proposals is novel. Our contribution is to put them together, and to offer support—support in the forms of data, examples of success, and legal and policy arguments.

While there are countless ways to offer support to youth aging out of care, we are confident that any jurisdiction that implements these proposed legal reforms will substantially advance the interest of those young people for whom it has assumed responsibility as parent.

These proposals will not, working alone, solve all the problems foster youth encounter as they prepare for adulthood, nor are they the only means available to address those problems. Law is a limited tool, most likely to achieve its aims when they align with our social and financial commitments. Moreover, any legal solution is only as good as the people charged with its implementation.

We stress that our advocacy of legal reform, and, particularly, an important role for the courts, is based on the view that these reforms will increase the likelihood that effective extra-legal supports will be provided. Brief, occasional hearings with judges cannot replace the strong and deep relationships foster youth need with caring individuals and communities, but regular hearings that engage youth effectively can ensure that these extra-judicial relationships are nurtured and protected. The Court's brief opportunity to instruct youth on their opportunities and responsibilities cannot replace a post-secondary education, but, again, ongoing court involvement can help ensure that that education is completed. While there are countless ways to offer support to youth aging out of care, we are confident that any jurisdiction that implements these proposed legal reforms will substantially advance the interest of those young people for whom it has assumed responsibility as parent.

HEALTHY TRANSITIONS

II. Comparing the Experience of Youth Who Grow Up in Their Own Families

The experience of foster youth should, to the maximum extent possible, mirror the experience of youth who grow up in their own families and make the transition to independence in that context. In this section, we describe that typical experience and then consider the obligations the law imposes on parents of adult children.

A. Healthy Development in the 21st Century

Youths' experience in two stages of development—adolescence and young-adulthood—are key to their achievement of success in their adult lives. During a normal adolescence, youth develop skills, forge relationships, and embrace an identity that prepares them for the transition to independence. In young adulthood, youth assume that independence intermittently, as they experiment with making choices, and discover the consequences of those choices. At both stages, the experience of foster youth frequently diverges markedly from this healthy developmental model. Here, we describe the experience of youth generally, to establish the baseline to which we should aspire on behalf of foster youth. In subsequent sections, we discuss how the system could be designed to bring the experience of foster youth closer to this normative experience.

1. Preparation for Adulthood in Adolescence

While the planning for foster youths' independence often does not begin until the

youth is at least 16 years old, the preparation, to be successful, must begin well before then. The developmental literature makes clear that the experiences youth have throughout adolescence will have a profound effect on their ability to take responsibility for themselves in adulthood. Moreover, the acquisition of "independent living" skills, generally meaning skills related to money and home management, personal health and the like, is only one aspect of a youth's preparation for adulthood. At least as important is the development of relationships, and the participation in activities that will give young people some practice exercising control over their own lives within a structure that fosters safe learning and growth.

a. The Importance of Relationships

The child welfare system pays a great deal of attention to the relationships foster children have with individuals who may become their "permanent" families through return home, guardianship, and adoption. But the importance of building and sustaining relationships for healthy development, without regard to placement, is largely ignored. The next section considers the importance of strong relationships as a source of support in early adulthood. Here, the focus is on the value of these relationships for adolescents' learning process. Many of the most prominent theories about learning, particularly in adolescence, take for granted the presence of strong relationships on which adolescents can depend. Adolescents need strong, long-term relationships with adults in order to learn how to function independently. They need strong relationships with peers in order to successfully achieve an understanding of themselves.

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Relationships with peers are as important as adult relationships for healthy adolescent development.

i. The Importance of Strong Relationships with Adults

For adolescents, observing the behavior of adults plays a critical role in their preparation for adulthood. Observing adult models not only offers insight into behavioral norms, but also facilitates acquisition of new skills or capacities. Modeling demonstrates what is possible, which encourages the adolescent observer to believe that he, too, can achieve what the model achieves.¹

To be effective, those observations need to occur in a context where the youth has some ongoing familiarity and connection with the adult modeler and some interest in the skills being demonstrated. Families offer natural contexts in which this modeling can occur. For foster youth, particularly those living in group homes, these developmental opportunities may be few and far between.²

Youth are also aided in their development and learning by adults who know them well enough, and are sufficiently invested in their success, to provide guidance calibrated to their current ability and to their potential. Developmental psychologist Lev Vygotsky³ labeled this calibrated guidance “scaffolding.” Vygotsky’s vision of guidance is as follows: At first, the adult contributes significant assistance to a child learning a new skill. As the child becomes more proficient, the adult reduces the degree of assistance offered. Once the child becomes indifferent to, or even irritated with the adult’s interference, the adult withdraws assistance. When the adult’s guidance falls within the child’s “zone of proximal development”⁴—the cognitive gap between one developmental stage and the next—the guidance can help the child bridge the gap and enter the succeeding developmental stage.⁵ The

effectiveness of this developmental tool will depend on the scaffolders—how well they know the children they are assisting, and how continuous their involvement is over the course of children’s development. Again, this developmental opportunity will present itself far less often, and less well, for many adolescents growing up in the child welfare system.

The value to adolescents of the relationships they form with adults is underscored by the social science research on mentoring programs which are particularly targeted at building relationships between youth and adults. Studies on mentoring suggest that well-designed mentoring programs positively affect youths’ academic performance, social adjustment, and future employment.⁶ More generally, meaningful mentoring relationships with adults have been shown to have a positive effect on youths’ self-esteem, interest in school, and mental health.⁷

ii. The Importance of Strong Relationships with Peers

Relationships with peers are as important as adult relationships for healthy adolescent development. At their worst, peers can pull adolescents toward anti-social behavior and undercut their progress toward independence. At their best, however, they can serve as crucial resources for youth engaged in identity development, which is one of the central tasks of adolescence and a key piece of a youth’s preparation for independence.⁸ We cannot expect youth to flourish as adults if they have not developed a sense of who they are—what matters to them, what they like to do, and how they see themselves. Working all this out is done, in large part, through youths’ relationships with their peers.

Adolescents rely on peer interaction to test a wide range of identities and roles. Adolescents “try on” new identities, and assess the identity by observing peers’ reactions. Moreover, adolescents rely on the support of close-knit peer groups to help them cope with the challenges of identity development, which, by its nature, tends to separate them from conventional adult sources of support.

As will be discussed further below, foster youth living in families are frequently restricted in their opportunities to participate in the kinds of after school and social activities that nurture healthy peer relationships. And while foster youth living in group homes clearly have considerable exposure to peers, the instability of such placements limits the opportunity for youth to develop long-lasting relationships with peers either at their group home or at their school.⁹

b. The Importance of Experience

We all recognize that we get better at anything we do with practice. This is also true for skills of independence. Adolescents prepare for adulthood by practicing making their own choices, taking responsibility for themselves, and interacting appropriately with adults and peers. But the role practice plays in preparing youth for adulthood is frequently undervalued for foster youth. The protective orientation of the system, joined with understandable concerns for liability and resource limitations, have led many child welfare systems to limit the opportunities foster youth have to practice for independence in meaningful ways. To prepare foster youth better for independence, these youth must be given opportunities to engage in the sort of activities that educational psychologists have demonstrated

play an important role in children’s development.

i. The Value of Structured Youth Activities

Social Science research confirms the conventional wisdom that participation in structured youth activities is a positive experience for adolescents. Research indicates that participation in extracurricular activities correlates with high academic performance and lower rates of depression,¹⁰ Moreover, social scientists studying the developmental benefits of structured youth activities suggest that these activities facilitate both personal and interpersonal development.¹¹ Activities such as team sports, theater, religious groups, and student government give adolescents an opportunity to build relationships with peers and adults, set goals and follow through, and learn from their mistakes—all experiences that help prepare youth for independence.¹²

Social scientists studying the developmental benefits of structured youth activities suggest that these activities facilitate both personal and interpersonal development.

Research shows that participation in youth activities fosters adolescents’ identity development and helps them to develop emotional, cognitive, and physical skills.¹³ Youth activities provide a safe space where adolescents may try new experiences or endeavors—and try again, if initially unsuccessful.¹⁴ It is primarily through this process of trial and error, rather than through conventional skills training curricula, that adolescents learn how to behave as adults. As one social scientist observed, “[t]he fact that extracurricular activities are structured, challenging, and voluntary makes them an ideal context for developing initiative.”¹⁵ Structured activities also offer a safe context in which to practice exercising important emotional skills. As one young man explained, through his participation in

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youth activities, “I have learned that I have to control my temper. Also I learned how to control my temper.”¹⁶

Research also shows that participation in youth activities allows youth to develop important interpersonal skills, including the ability to work as part of a team, to get along with others, and to build and sustain relationships with peers and adults.¹⁷ As noted in the previous section, ongoing, healthy relationships with peers are essential to an adolescent’s identity development. Relationships with slightly older peers can offer a source of positive modeling. Adult leaders of youth activities also serve as models, and can provide the “scaffolding” for youth described above. Moreover, building relationships with adults connects youth to a wider social network that can continue to afford considerable support for foster youth into adulthood.

While many foster youth do have opportunities to engage in structured extracurricular activities in adolescence, most child welfare systems do not make these experiences a priority.¹⁸ If we are to expect youth to be prepared for independence at the exceptionally early age of 18, or even 21, then it is essential that we ensure they are gaining the necessary practice in supportive and healthy contexts in adolescence.

ii. The Value and Hazard of Unstructured Social Activities

Contemporary youth spend a great deal of time engaged in unstructured social activities. “The largest amount of U.S. youths’ free time is spent playing, talking, hanging out, and participating in other unstructured leisure activities, often with friends.”¹⁹ In contrast to the broad empirical research on developmental benefits of structured activi-

ties, there is little empirical research on developmental benefits of unstructured social activities. This is unsurprising, given the difficulties of controlled inquiry into how youth spend their leisure time. There are legitimate concerns that, without structure, adolescents tend to spend their free time engaged in activities with little developmental value, such as watching television or playing video games—and, more seriously, there is concern that unstructured free time correlates with delinquency and other risky behaviors.²⁰

However, despite the limitations of the social science research, there is a strong case to be made that a reasonable level of participation in unstructured social activities is an important aspect of youths’ preparation for adulthood. Already discussed is the importance of peer interaction to identity development. Informal social interaction provides critical opportunities for youth to experiment with various roles, and gauge peers’ reactions. Moreover, when youth become independent, they are required to negotiate these unstructured social environments entirely on their own. Unless we have given them some practice in the relatively safe and structured context of adolescence, we are setting them up for failure in adulthood. As with children growing up in their own homes, we must ensure that foster youth are given gradually increasing opportunities for unstructured social interaction, and that caring adults are available to help youth process those experiences.

In sum, much of the preparation for adulthood cannot be captured in a life skills training course. Rather, it must be provided to youth over the extended course of their adolescence through the experiences they are offered and the relationships they are encouraged to build. As will be discussed

in Section III.A., services to adolescents in foster care, and the legal system that monitors the provision of services, should be redesigned to encourage these developmentally critical experiences and relationships.

2. The Need for Extensive Support in Early Adulthood

While we conventionally identify adulthood with a precise age, our ability to function independently emerges slowly, over many years. Eighteen (for most purposes) marks the age at which the law permits us to act on our own, but it does not require us to do so, unless we have no other options. Very few people are well prepared to act on their own at 18, and even those who are will likely find greater success in adulthood if they trade complete, immediate self-sufficiency for further education and related opportunities for emotional and intellectual growth. It is now well documented that most young adults spend several years manifesting a mix of dependence and independence, and do not settle into adult lives of job, family, and financial independence until later in their twenties.²¹ In depriving foster youth of that transitional period of emerging independence, we are putting them at a severe and unfair disadvantage.

The gap between legal majority and actual adult independence is relatively new. For much of the twentieth century, the transition to adulthood was swift and complete. The conclusion of schooling, which rarely went beyond high school, was directly followed by marriage and childrearing. Thus, legal recognition of adulthood was matched by the almost immediate assumption of all the primary adult roles.²² In a sense, our foster care regime, which requires youth to take full responsibility for themselves the moment they achieve legal independence,

reflects the norms of this earlier time. Unfortunately, it is a highly destructive anachronism.

a. The Growing Importance of Higher Education

Changes in the economy, and related shifts in cultural expectations, have dramatically slowed and complicated the transition from adolescence to adulthood. As advanced degrees become increasingly necessary for financial independence, more young people are pursuing and completing post-secondary education, some returning to school after hiatuses of varying lengths.²³ Related to this, the average age of marriage has increased from 21 to 25 for females and 23 to 27 for males,²⁴ and women are waiting longer to have children.²⁵

b. The Growing Involvement of Parents in Their Young Adult Children's Lives

Responding to these economic and cultural shifts, parents of young adults are providing their children with considerable financial and emotional support in these transition years. Currently, the average fiscal value of parental support during this transition to adulthood is \$2,200 annually, roughly one-third of what parents provide annually during childhood.²⁶ Moreover, the average time parents spend on their transitioning children including time donated for child-care, time devoted to social or emotional support and motivation, and time spent giving advice and guidance, is 367 hours per year, which is roughly the equivalent of nine full weeks of employment.²⁷ Finally, in part due to the increasing costs of housing, today's young adults are more likely to reside in their parents' home during the transition period than in previous genera-

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That foster youths' prospects for success are also affected by previous exposure to abuse and neglect only adds to the moral urgency of doing what we can to help.

tions.²⁸ Our tax laws encourage parents to maintain this ongoing relationship of dependence, allowing parents to claim their children as dependents until the age of 24 if the youth is a full-time student for at least five months out of the year, has the same residence as the parent at least six months out of the year, and does not provide more than half of his or her own support for the year.

These shifts in opportunities, supports, and expectations have, in turn, altered the course of development itself. Because society does not expect young adults to take on adult responsibilities right away, they are far less likely to do so. This, in turn, gives young adults the benefit of more time not only to pursue their education but also to explore their professional and social options at little or no cost.

In sum, most young people today do not assume full adult responsibilities until well after they are recognized as adults under the law. Foster youth, in contrast, are routinely deprived of the developmental advantages of a gradual transition. Because they lack financial and emotional supports from parents—as well as a place to go during all the periods when campuses are closed—it is difficult for foster youth to pursue an advanced education. But if foster youth try (or are forced) to become independent without this delay for education, they are likely to find themselves in a life-long struggle to make ends meet, a struggle made especially acute because they lack the safety net families provide to other struggling young people. However difficult their challenges appear in the abstract, they are more so in actual experience, as foster youth must compete for housing, employment, and other opportunities with young

people receiving a host of supports that they are not.

c. The Costs of the Foster Care Disadvantage

Foster youths' experience differs dramatically from the norm, both in adolescence and young adulthood, with predictable bad effects. It is well documented that the outcomes of foster youth are significantly worse in major life areas as compared to their contemporaries in society. Numerous studies reveal that foster youth face a greater likelihood of bad outcomes in the areas of education, health, mental health, criminal justice involvement, family life, housing, and employment.²⁹ Moreover, foster youth are more likely to be socially isolated, and less likely to be engaged in civic participation. Studies suggest that some of the difference in outcomes between foster and non-foster youth can be attributed to the difference in preparation and supports they receive in the transition years.³⁰ That foster youths' prospects for success are also often affected by previous exposure to abuse and neglect only adds to the moral urgency of doing what we can to help.

In Section III, we discuss how changes in law and practice could bring foster youths' preparation for, and support in, the transition years closer to that routinely afforded to youth growing up in their own homes. Before turning to those solutions, we consider what obligations the law imposes on parents to meet the needs of adult children raised in their own homes. At a minimum, we should hold the state, as substitute parent for foster youth, to the same legal standards that we hold other parents.

ENDNOTES

¹ See Albert Bandura, *SOCIAL FOUNDATIONS OF THOUGHT AND ACTION: A SOCIAL COGNITIVE THEORY* (1986). For more on Bandura's theory of learning, see Albert Bandura, *Self Efficacy Mechanism in Human Agency*, *AM. PSYCHOLOGIST* (February 1982).

² Alice Bussiere, *Permanence for Older Foster Youth*, 44 FAM. CT. REV. 231, 236 (2006).

³ See generally Lev Vygotsky, *EDUCATIONAL PHILOSOPHY* (1997).

⁴ Vygotsky defines the zone of proximal development as "the distance between the actual developmental level as determined by independent problem solving and the level of potential development as determined through problem solving under adult guidance or in collaboration with more capable peers." Lev Vygotsky, *MIND IN SOCIETY* 86 (1978).

⁵ See Seth Chaiklin, *Zone of Proximal Development*, in *VYGOTSKY'S EDUCATIONAL THEORY IN CULTURAL CONTEXT* (Alex Kozulin et al. eds., 2003) (Cambridge 2003).

⁶ See Jean E. Rhodes, Jean B. Grossman & Jennifer Roffman, *The Rhetoric and Reality of Youth Mentoring*, 93 NEW DIRECTIONS FOR YOUTH DEV. 9, 9 (Spring 2002).

⁷ *Id.* at 10.

⁸ Theorist Erik Erikson suggested that a well-developed identity is experienced "as a sense of psychosocial well-being." Erik Erikson, *IDENTITY: YOUTH AND CRISIS* 165 (1968). For a summary of the work of Erikson and other identity theorists, see generally Jane Kroger, *Identity Development during Adolescence*, in *BLACKWELL HANDBOOK OF ADOLESCENCE* 205 (Gerald R. Adams & Michael D. Berzonsky eds., 2003). Erikson concluded adolescence was the key life period for identity development, noting that it was during adolescence that youth squarely confront the uncertainty of their future role and status in society.

⁹ The majority of older foster youth have lived in a group placement, and many youth have lived in multiple group placements. In Phase I of Chapin Hall's three-state survey of foster youth aged seventeen years or older, "[a]bout two-thirds of all respondents surveyed had lived in at least one group home, residential treatment center, or child caring institution. Fewer than one-quarter report only one placement and about 14 percent had four or more." Mark E. Courtney, Sherri Terao, & Noel Bost, *MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER CARE YOUTH: CONDITIONS OF YOUTH PREPARING TO LEAVE STATE CARE IN ILLINOIS* 17 (2004). Frequent placement changes translate into frequent school changes. Almost eighty percent of youth surveyed in the study reported one or more school changes due to their foster care situation. Over one third of youth surveyed reported five or more school changes. *Id.* at 41-42.

¹⁰ See Jennifer A. Fredricks & Jacquelynne S. Eccles, *Developmental Benefits of Extracurricular Involvement: Do Peer Characteristics Mediate the Link Between Activities and Youth Outcomes?*, 34 J. YOUTH & ADOLESCENCE 507, 517 (2005).

¹¹ David M. Hansen, Reed W. Larson & Jodi B. Dworkin, *What Adolescents Learn in Organized Activities: A Survey of Self-Reported Developmental Experiences*, 13 J. RES. ON ADOLESCENCE 25, 27-28 (2003).

¹² *Id.*

¹³ *Id.*

¹⁴ See Jodi B. Dworkin, Reed Larson & David Hansen, *Adolescents' Accounts of Growth Experiences in Youth Activities*, 32 J. YOUTH & ADOLESCENCE 17, 22 (2003). See also Jacquelynne Eccles, *Extracurricular Activities and Adolescent Development*, 59 J. SOC. ISSUES 865, 876 (2003).

¹⁵ Joseph L. Mahoney, Beverly D. Cairns & Thomas W. Farmer, *Promoting Interpersonal Competence and Educational Success Through Extracurricular Activity Participation*, 95 J. EDUC. PHIL. 409, 410 (2003).

¹⁶ Dworkin et al. at 22 (cited in note 14).

¹⁷ *Id.* at 28.

¹⁸ Practitioners who work with foster youth report, anecdotally, that many youth face restrictions on participation in structured youth activities and social activities. See *Living a Normal Life: An Interview with Miriam Krinsky*, 24 CHILD L. PRACTICE 61 (2005). For examples of restrictions foster youth face, see also CHILDREN'S LAW CENTER OF LOS ANGELES, LIFE IN FOSTER CARE: THE CHALLENGES OF LEADING A NORMAL LIFE, <http://www.clcla.org> (follow "Training Materials" hyperlink; then follow "State Law" hyperlink; then follow "The Challenges of Leading a Normal Life in Foster Care" hyperlink). In recognition of this problem, the California legislature recently enacted a statute giving foster youth an entitlement to participate in "age-appropriate extracurricular, enrichment, and social activities." CAL. WELF. & INST. CODE § 349 (2004).

¹⁹ Reed W. Larson, *How U.S. Children and Adolescents Spend Time: What it Does (and Doesn't) Tell Us About Their Development*, 10 CURRENT DIRECTIONS IN PSYCHOL. SCI. 160, 162 (October 2001).

²⁰ See *id.* at 160.

²¹ Frank F. Furstenberg Jr., Ruben G. Rumbaut, & Richard A. Settersten, *On the Frontier of Adulthood: Emerging Themes and New Directions*, in ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY (Frank Furstenberg Jr. et al. eds., 2005).

²² *Id.*

²³ D. Wayne Osgood, E. Michael Foster, Constance Flanagan, & Gretchen R. Ruth, *Introduction: Why Focus on the Transition to Adulthood for Vulnerable Populations?*, in ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS (D. Wayne Osgood et al. eds., 2005); See also Frank F. Furstenberg Jr., *The Sociology of Adolescence and Youth in the 1990s: A Critical Commentary*, 62 J. MARRIAGE & FAMILY 896-910 (2000). Other reasons are also offered to account for the increased length of our education: the gender revolution of the 1960s and 70s has expanded women's schooling and employment opportunities, see Elizabeth Fussell & Frank F. Furstenberg, Jr., *The Transition to Adulthood during the Twentieth Century: Race, Nativity, and Gender*, in ON THE FRONTIER OF ADULTHOOD, *supra* note 21, and the increase in our life expectancy has allowed us to devote more time to education early on.

²⁴ Osgood et al. at 5 (cited in note 23).

²⁵ *Id.*; see also Fussell & Furstenberg Jr., *supra* note 23.

²⁶ Furstenberg Jr., et al. (cited in note 21).

²⁷ *Id.*

²⁸ *Id.* Recent census information reveals that one-half of young adults were living with either their parents or other relatives. See Susan Jekielek & Brett Brown, *The Transition to Adulthood: Characteristics of Young Adults Ages 18 to 24 in America*, KIDS COUNT (May 2005).

²⁹ Darcy Sawatzki, *4 Million Youth Face Tough Road to Adulthood Success*, KIDS COUNT (June 3, 2004).

³⁰ Mark E. Courtney & Darcy Hughes Heuring, *The Transition to Adulthood for Youth "Aging Out" of the Foster Care System*, in ON YOUR OWN WITHOUT A NET, *supra* note 23, at 29, 31.

PARENTS' OBLIGATIONS TO ADULT CHILDREN

B. Parents' Legal Obligations to Their Adult Children

In the previous section, we consider the sociological and developmental literature which makes clear that most young people remain dependent upon their parents well into their twenties. In this section, we consider whether, and to what extent, this extended period of dependence is protected and reinforced by the law. While conventional wisdom suggests that parents' legal obligations to their children end at 18, we demonstrate, in this section, that some legal obligations that bear directly on the foster care context continue into adulthood. After analyzing these continuing obligations and other legal provisions that reflect young people's ongoing dependence on their parents, we suggest that these laws, and the justifications that underlie them, should be applied to impose obligations on the state to support the young adults for whom it has served as substitute parent.

There are a number of areas in which our legal system has responded to changing views about the transition from youth to adulthood. Every state has raised the drinking age to 21, and many states have recently enacted laws to extend health care coverage to dependent youth through the early to mid-twenties. The vast majority of states compel support from parents past the age of majority for youth who cannot support themselves due to disability or incapacity, and half the states allow courts to order support for post-secondary education. Beyond this, a number of courts have started to recognize that where someone, such as a stepparent, inserts himself in the place of a parent, these ongoing support duties must attach under general theories of equitable estoppel and implied contract.

Most of the justifications advanced by state courts and legislatures for extending parents' support obligations to their adult children apply with equal, if not greater, force in the foster care context. Thus, automatic discharge from foster care at 18 is not only out of step with current thinking on development and the transition to adulthood, but also is manifestly contrary to a growing body of law which defines emancipation and majority not simply by age, but also by level of independence. Further, conditions which foster youth often must satisfy to remain in care do not qualify the ongoing support obligations of parents, suggesting another way in which we are holding the state to a lower standard than we hold parents.

This section is divided into four parts. Section II.B.1. considers age-based regulations in different contexts and notes the law's recognition of young people's ongoing development and dependency beyond the age of 18. Section II.B.2. considers cases in which parents have pressed to have their children recognized as emancipated and notes that some courts are unwilling to relieve a parent of support obligations, even if the children disobey and disrespect their parents, unless those children are truly able to support themselves. Section II.B.3. examines the situations in which family courts have compelled support for youth beyond the age of majority, and II.B.4. explores cases which have imposed support obligations on a stepparent even after the marriage to the child's birth parent has ended. All four subsections lend support to the argument that the state, serving as substitute parent, should be required to provide continuing support to foster youth beyond age 18.

Two appendices follow this section. The first provides a state-by-state listing of

The law imposes significant obligations upon parents of adult children and should hold the state to at least the same standard.

The American legal system is increasingly endorsing a more expansive definition of dependence, in recognition of the needs of young adults transitioning to independence today.

parents' legal obligations to their children beyond the age of 18. The second offers model legislative testimony that could be adapted and used to advocate for legislation extending the state's obligation to foster youth beyond the age of 18. Both appendices are designed to be used as tools for the purpose of tailoring arguments to fit the particular legal rules that have been applied in each state.

1. *The Changing Concept of "Dependent" in American Law*

a. Child Support

Despite the fact that, in many states, foster youth age out of care at the age of 18 or 19, thirty-six states allow for a longer period of "dependency" where one parent seeks child support from the other parent.¹ Four states, along with the District of Columbia, extend the age of minority up to 21, regardless of whether or not the child is enrolled in school.² Another nine states extend the designation of minority up to at least the age of 20, if the youth is still in high school.³ The remaining twenty-three states will designate youth "dependent," and entitled to support, if the youth are enrolled in post-secondary education, up to an age ranging from 21 to 23.⁴

State definitions of "dependent minors" for child support purposes argue for extending the age at which foster care jurisdiction ends. In those states that set the statutory age of majority at 21, termination of supports for foster youth at 18 or 19 is inequitable and indefensible. Moreover, the fact that the law in almost half the states views youth as "dependent" while they obtain post-secondary education suggests, both, that states value this ongoing education, and that they recognize that pursuing it ap-

propriately slows a young person's achievement of full independence.

b. The Drinking Age

Since the passage of the National Minimum Drinking Age Act of 1984, all states have raised the minimum age for purchase and public possession of alcohol to 21.⁵ This change was initially based largely on data from the developmental literature, and corresponding data about young adult behavior. Data show that brain development continues at least into the early 20s, and that among the last regions to develop is the frontal cortex, which controls planning, complex judgment and information processing.⁶ Because of this, adolescents have been found to be more vulnerable to the effects of alcohol on learning and memory.⁷ Further, proponents of the current drinking age point to statistics which indicate that traffic accidents and fatalities are curbed each year as a result of the higher drinking age.⁸ In enacting legislation to raise the drinking age, Congress and state legislatures were responding to this information about young adult development and demonstrating their inclination to engage in legislative reform when empirical evidence suggests that current legislative policy is putting children at risk. Legislatures concerned enough about adolescent judgment to prevent 18-year-olds from drinking should be similarly concerned about the harm caused by thrusting considerably greater responsibility, with considerably greater associated risks, on 18-year-old foster youth.

c. Insurance Coverage for Dependent Minors

Until very recently, it was typical for a young person to lose dependent insurance

coverage under a legal caregiver at age 19, though full-time students were often given an exception, with dependent status extending until they graduated or reached a specified age. However, recent reform efforts have resulted in sweeping legislation across states to force insurance carriers to extend their coverage of dependent children into their young adulthood. For example, a recent Colorado statute defines a child as dependent for insurance purposes until the age of 25, so long as she or he is unmarried, financially dependent, or shares the same living address as the caregiver insurance holder.⁹ New Mexico also prohibits termination of health insurance for dependents based on age before their twenty-fifth birthday, regardless of enrollment in an educational institution.¹⁰ A nearly identical statute in Utah requires that such coverage continue until the dependent's twenty-sixth birthday.¹¹ And New Jersey has gone furthest of all, requiring that an insured have the option of coverage for his or her dependent until the dependent reaches the age of 30, so long as the dependent has no dependents of his or her own.¹² In all, 14 states have passed laws which prohibit insurance carriers from dropping dependent children past the age of 18.¹³ Another 8 states have similar legislation pending, while 12 more introduced such legislation, even though it did not pass out of legislative committee by the end of 2006.¹⁴

Much of this legislation is in direct response to the significant growth in the uninsured population in this country, many of whom fall between the ages of 19 and 34. In addition to identifying another context in which legislators are demonstrating their awareness of how the transition to adulthood has lengthened in recent years, the insurance context offers a more direct analogy as well: Chapin Hall's evaluation of the adult func-

tioning of former foster youth revealed that while nearly all (perhaps all) youth who remain in foster care at 19 had health insurance, only 47.1 percent of youth who were no longer in care at age 19 had such insurance. Moreover, more than 5 times as many of these youth did not receive medical care that they needed, compared to youth who were allowed to remain in care.¹⁵ It appears that youth who have transitioned out of care at age 19, then, may be among the most likely to be without necessary health insurance. As states continue to draft legislation extending dependency for insurance coverage, attention should be turned toward the youth most likely to lack adequate medical insurance and care.

d. The Tax Code

In 2004, the Internal Revenue Code was amended to refine the definition of dependents who qualify for tax deductions on their parents' tax returns. In this refinement, "dependent child" was defined to include a "student who has not attained the age of 24,"¹⁶ in recognition of the ongoing support provided by parents to children through their post-secondary education. The definition also includes disabled individuals, without regard to age.¹⁷ In providing parents with these deductions, Congress has documented the prevalence of parental support of adult children in these two sorts of circumstances and has manifested its approval of this support.

2. *What it Takes to be "Emancipated"*

Courts directly confront the limits of caregivers' obligations to children on the threshold of adulthood in cases in which a parent seeks to have a child recognized as emancipated to terminate the parent's child support obligations. In these cases,

Recent reform efforts have resulted in sweeping legislation across states to force insurance carriers to extend their coverage of dependent children into their young adulthood.

Emancipation determinations are rarely based on age alone, but typically require a showing of a minimum level of self-sufficiency.

courts' definitions of emancipation track the understanding of developmental psychologists and sociologists. Unlike in the foster care context, emancipation for child support purposes is tied, not only to age, but also to the child's possession of skills that will allow her to make it on her own. Moreover, negative behaviors that frequently lead a foster child to be discharged from the system will generally not be considered valid reasons for terminating a parent's obligation of support.

a. Termination of Support Orders Based on Emancipation

Parents paying child support will sometimes petition for termination of a support order on the basis that their child has become emancipated. In most cases, the question of emancipation for the purposes of terminating child support "is a factual issue dependent upon the circumstances of each case."¹⁸ Such determinations are rarely based on age alone, but typically require a showing of a minimum level of self-sufficiency or independence from parents. Regardless of whether a child has reached the age of 18, in most states, "[e]mancipation of a child cannot be presumed [for child support purposes]; it must be established by competent evidence. The burden of producing such competent evidence falls on the party asserting emancipation."¹⁹ Most courts appear to require substantial evidence of not only an ability to earn income, but also an ability to carry out daily activities with little or no assistance from parents.²⁰

Many courts also seem to recognize, like developmental psychologists, that independence is a process that may happen in stages, or in fits and starts. Some courts, for instance, have declared that "a child who

moves out of a custodial parent's home for a short time is not emancipated if that child continues to be supported by a parent."²¹ Thus, the Nebraska Supreme Court held that a minor daughter's act of moving out of her mother's home into an apartment, out of a desire to "be on her own outside the presence of adults," did not effect an emancipation, where the daughter continued to be supported by her parents.²² Likewise, a New York court affirmed that a young woman of nineteen was not emancipated when she left her mother's home for intermittent periods, casting this action as part of a "searching" process the woman was going through on her way to adulthood.²³ In fact, the unemancipated status of a minor daughter was actually revived, along with a former husband's child support obligation, where the daughter returned to live with his former wife after having moved out on her own, where the daughter was not financially independent, and where the former wife paid for her daughter's food, clothing, and miscellaneous expenses in addition to providing her with a place to live.²⁴

Conversely, courts have sometimes found youth emancipated, and not in need of continuing child support, even when they were still minors, as defined by state statutes. For example, the Alabama legislature, as well as state courts, have set forth that "when a minor is employed and self-supporting, and may properly be expected to continue to be employed and self-supporting, her parents are relieved from the obligation of support."²⁵ The Idaho Supreme Court found a sixteen-year-old boy emancipated, stating that "age of the child is not the controlling factor [in determining emancipation]. Economic self-sufficiency resulting from earnings is a factor" to be considered.²⁶ In this case, the son was working full time while attending high school at

night, had bought a truck and paid for its operating costs and insurance, paid for his own groceries, and even loaned money to his mother. During the time in question, he had received no support from either parent, and neither parent claimed him as a dependent for tax purposes.²⁷ Similarly, an Illinois Appeals Court found a minor son to have emancipated when he left his mother's home to join the Job Corps.²⁸ This was because evidence abounded that the Job Corps enabled him to be self sufficient. He was provided with room and board, clothing, medical care, vocational training, and spending money. He had not asked for financial support from either parent after joining the Corps. Finally, though he was still a minor when he left the Corps, he did not return to his mother's care, custody, or home.²⁹

These cases suggest that most states operate within legal frameworks that recognize emancipation as a set of self-sufficient behaviors, rather than a status conferred by age. Moreover, these cases place the burden on the parents seeking termination of child support obligations to prove, with substantial evidence, that their children are self-sufficient and have been supporting themselves. A foster care system in which youth were not discharged from care at 18 unless the state could demonstrate that they had the skills and capabilities to live on their own would be more in line with this legal framework than is the current system of age-based discharge.

b. Termination of Support Orders Based on Non-Compliant Behaviors

Generally, disobedient, criminal, or disruptive behavior does not emancipate children from their parents. Courts have

refused to relieve parents of their support obligation where their children have acted rudely, disobediently, or even abusively, toward them.³⁰ Courts have also refused to declare a child emancipated because the child has quit school against the parent's wishes,³¹ committed a crime, abused alcohol or other substances, or taken other actions allegedly evidencing a lack of parental control.³² Even when a child's actions lead to his incarceration or placement in state custody, courts have continued to impose support obligations on the child's parents.³³ What matters, courts have explained, is not whether the child has behaved appropriately, but, rather, whether the child continues to be dependent on his parents.

In the foster care context, these same behaviors routinely expedite a young person's discharge from the system. The transition plans devised for many foster youth condition continuing services or support on following rules and behaviors established by foster care agencies and the courts, and a failure to follow these rules can result in termination of support. Thus, even when states provide some transitional support to foster youth, those supports are subject to conditions that parents would generally not be permitted to impose. To be clear, the issue is not whether it is appropriate for parents or the state to make demands on their adolescent children and to even condition certain privileges on the meeting of those demands. Rather, the issue is whether it is appropriate to abandon support of a child based on his behavior, particularly behavior that suggests he is ill-prepared to make it on his own. Under current law, parents are not permitted to abandon such a child, but the state is.

A system which made emancipation from foster care contingent upon obtaining a cer-

A foster care system in which youth were not discharged from care at 18 unless the state could demonstrate that they had the skills and capabilities to live on their own would be more in line with the legal framework for emancipation than is the current system of age-based discharge.

Parents' ongoing duty of support for disabled adult children is based on their inability to support themselves rather than on their age.

tain set of independence skills, and allowed for jurisdiction to extend up until twenty one unless evidence of such skills was presented to the court by the child welfare agency, would bring the foster care system's termination practices more in line with the obligations we impose on parents.

3. Circumstances Under Which Courts Will Compel Post-Minority Support

In 1971, the Twenty-Sixth Amendment lowered the voting age from 21 to 18, to match the age at which young men were eligible for the draft. States, in turn, responded by lowering the age of majority from 21 to 18.³⁴ One potentially unintended consequence of this change was to reduce the period of time to which children were traditionally entitled to support and maintenance from their caregivers by three years.³⁵ Since then, a number of states have re-established 21 as the age of majority in their family law statutes, producing the statistics identified in Section II.B.1.a.

Moreover, though most courts have recognized that parental legal obligations cease as a general matter once a child reaches the state's age of majority, courts have mandated ongoing support for youth beyond this age, even absent agreements between parties to provide such support, in a number of cases. Most of these cases arise under one of two circumstances. First, almost all state courts will compel support past the age of majority when a child is not capable of self support, though these courts vary widely as to the level of capacity that self-support requires. In this context of "incapacity," most courts will compel support from parents regardless of their marital status. Second, half of all state courts will compel support past the age of majority for post-secondary educational expenses. In these circumstances,

courts are willing to compel support from divorced parents even when they do not compel such support from non-divorced parents. In both categories of cases, the courts appear to follow a similar pattern of inquiry: The needs and abilities of a particular youth are balanced against the capacity of his or her parent to provide for those needs. This framework lies in sharp contrast to age-driven foster care termination decisions in many states.

a. Support of Adult Disabled Children

The legal obligation of parents to support their minor children is well recognized in American law. As a general matter, however, it is presumed that once a child reaches the age of majority, the parents' duties, and thus the child's "legal eligibility for support," ends.³⁶ However, this presumption is overcome in the broadest sense where adult children are considered "disabled." In these circumstances, if (a) the child is incapable of earning a livelihood, and (b) the parent has the ability to provide assistance,³⁷ courts will compel support from parents regardless of their marital status. This is so despite the fact that families are generally given great deference in arranging for the support of their children. Very few states follow the traditional rule that a parent's duty to support a child ends at majority without exception.³⁸ (And even two of these states—New York and Rhode Island—have extended the period of "minority" to the child's twenty-first birthday.)³⁹ While the vast majority of states recognize a legal duty to support disabled adult children,⁴⁰ they differ as to whether the disability must arise before the child reaches the age of majority to trigger the obligation.

i. States Requiring Ongoing Support When Disability Arises During Minority

Twenty-four states recognize a duty to support only if the disability arose before the youth reached the age of majority.⁴¹ Courts in these states impose the support obligation in one of three ways: by upholding an explicit statutory mandate, by reading general child support statutes broadly, or through common law adjudication. For example, in Pennsylvania, a parental duty of support is imposed if a child's disability, which arose prior to majority, renders the child incapable of self-support.⁴² In Indiana, on the other hand, an exception clause exists within the child support statutes which grants courts discretion to extend support past the age of majority if "the child is incapacitated."⁴³ In contrast, Alabama courts have interpreted the word "child" broadly to include adult children who are unable to support themselves due to disability.⁴⁴ Finally, the Massachusetts Supreme Court has ordered support for mentally incapacitated adult children under its "general equity powers," taking into account the child's needs and the parent's ability to pay.⁴⁵

ii. States Requiring Ongoing Support Regardless of When the Disability Arises

Beyond this, a full 18 states will impose a support obligation on parents no matter when the child became disabled.⁴⁶ Again, states impose this obligation through a variety of legal mechanisms. In California, for example, state statute mandates that "the father and mother have an equal responsibility to maintain, to the extent of their ability, a child of whatever age who is incapacitated from earning a living and with-

out sufficient means."⁴⁷ Illinois and Iowa have similar statutes.⁴⁸ In Delaware and New Hampshire, by comparison, courts have used general "poor person" statutes to compel support of adult disabled children. These statutes impose a duty of support on immediate family members, if they have sufficient means, when relatives are in need and unable to maintain themselves.⁴⁹ In still other jurisdictions, such as Missouri and the District of Columbia, courts have recognized a common law duty to support children who are disabled regardless of the age of onset.⁵⁰ All of these states move even further from the idea that support for a child should be conditioned on the child's age. Instead, support for children in these states is tied completely to needs and abilities of each child to survive independently. In fact, in a recent landmark decision, the California Superior Court ordered the parents of a man suffering from depression and bipolar disorder to pay their son \$3500 a month—indefinitely—for living expenses, finding he was incapable of supporting himself.⁵¹ This was so despite the fact that the son was fifty years old, had graduated from Stanford Law School, and had practiced family law for 19 years before becoming incapacitated.⁵²

iii. Drawing an Analogy to the Foster Care Context

A. A Self-Sufficiency Based Conception of Majority

Many foster care advocates, including former foster youth, warn, appropriately, against the use of a "disability" paradigm in arguing for extended foster care jurisdiction. Such advocates fear the stigmatizing effects of arguing that foster youth as a group are incapable of taking care of themselves. The aims of foster care reform,

rather, should be promoting a better system of preparation for independence, as youth transition out of care.

While this is a valid concern, the line of cases imposing continuing obligations on parents of adult children with disabilities can be relied upon to support the argument that foster youth should be supported into adulthood, without arguing that foster youth should be thought of as disabled. What matters, for these purposes, is the underlying justification for this ongoing support obligation, namely the courts' recognition that independence is better measured by an individual's ability to support himself than by achievement of a certain age. This underlying justification suggests that courts and legislatures conceive of the transition to adulthood in ways that can benefit youth in foster care.

B. Revived Support Obligations

Moreover, the cases in which courts have held that support obligations revive when disability arises post minority may specifically apply to arguments for a right of return to foster care after discharge from the system. As an illustration, consider Maryland. The Maryland Court of Appeals held that nothing in the state child support statutes precluded "its application to an emancipated child who thereafter becomes a dependent adult child" or "to a destitute adult child who becomes self-supporting and again becomes destitute."⁵³ In a later case, the court explained that this reading was based on the use of words "parent" and "child" in Maryland law, which indicated that the relationship between the parties was the important factor in determining their duties to one another. The relationship between parent and child, the court

reasoned, along with the parents' ability to provide support, should trigger the duty to support, as opposed to forcing a "restricted construction" which would limit the support based on time of disability.⁵⁴

These decisions suggest awareness of a few factors which point toward allowing for a right of re-entry into the foster care system. First, in these cases, the courts again conceive of independence as a state of being, signified by an ability to be self-sufficient. Where the ability to self-support is missing, caregivers who are able should lend support. Beyond this, these courts acknowledge that independence, or self-support, is not guaranteed to continue just because it has begun. In the typical case, children may make several attempts at independence, or may successfully move out on their own, only to have to return home due to unforeseen circumstances. A number of courts seem to recognize this in allowing for revival of parental support obligations. Just as such courts find it appropriate to revive a parent's duty to support their child if the child becomes "destitute," it is appropriate to require the foster care system to allow youth to return to some form of care when they need help. By analogy, it should be the caregiver relationship between state and foster child, rather than the age of the child, that creates the duty.

b. Support for Post-Secondary Education

One of the major changes brought about by the change in age of majority after the adoption of the Twenty-Sixth Amendment was courts' loss of authority to order a divorced parent to pay child support through a young person's college years. Prior to this change, children were still generally considered minors when entering college, and

courts could provide for college expenses by increasing child support as needed.⁵⁵

Following the change, states became sharply divided as to how they handled requests for child support for college expenses for adult children. Some jurisdictions only compel support for children beyond the age of majority when the parties had agreed to do so. Other jurisdictions compel such support even absent an agreement between the parties. Still other jurisdictions refuse to compel any post-minority educational support, even when the parties had agreed to such support.⁵⁶

Currently, according to a recent National Conference of State Legislatures study, only one state—Alaska—falls into the last category, by prohibiting courts from imposing support obligations on parents to fund the post-secondary education of their children.⁵⁷ Conversely, in half of the states, as well as the District of Columbia, courts are permitted to award support for post-secondary expenses past the age of majority, even without prior agreements between the parents to do so.⁵⁸ These states have a variety of means of providing for post-secondary support. The remaining 24 states will enforce child support agreements to provide post-minority educational support, but will do no more.⁵⁹ The focus of this section is on the states whose courts award support for post-secondary educational expenses past the age of majority, even absent parental agreement, because these offer the strongest analogy to the foster care context.

i. Legal Mechanisms for Compelling Post-Minority Support

On one end of the spectrum lie states like Illinois and New York, whose statutes pro-

vide for the payment of educational expenses for “adult” children of divorced parents. In Illinois, the Marriage and Dissolution of Marriage Act allows a court to “make a provision for the educational expenses of the child or children of the parties, whether of minor or majority age.”⁶⁰ These expenses may include, but are not limited to, such items as living expenses, tuition, transportation, books, registration and application costs, and medical expenses both during the academic year and during regular breaks.⁶¹ A New York statute also allows for a trial court to include post-secondary educational expenses in a basic child support order between divorced parents, taking into account the circumstances of each party as well as the best interests of the child.⁶²

Granting similarly broad authority to trial courts to order payment for post-minority educational expenses are states like Alabama and New Jersey, though these states have not codified this specific authority. Instead, for instance, in *Ex parte Bayliss*, the Alabama Supreme court established that the equitable powers of the state courts enabled them to extend parental support obligations to cover college expenses upon consideration of relevant factors, “including primarily the financial resources of the parents and the child and the child’s commitment to, and aptitude for, the requested education.”⁶³ Subsequent cases have construed these standards liberally in favor of ordering support.⁶⁴ Likewise, the New Jersey Supreme Court concluded in 1982 that financially capable parents should be required to contribute to their children’s higher education.⁶⁵ This decision has also subsequently been affirmed and clarified.⁶⁶

At the other end of the spectrum, at least two states (Tennessee and Wisconsin), achieve the ends of providing for post-

Just as such courts sometimes revive a parent's duty to support their child if the child becomes "destitute," the law should require the foster care system to allow youth to return to some form of care when they need help.

secondary educational expenses through indirect means. In these states, courts have authority to require non-custodial parents to establish a college trust fund while the child is a minor, but will not compel ongoing support for higher education expenses in adulthood absent an agreement between the parties.⁶⁷

ii. Legal Justifications for Compelling Post-Minority Support

Commentators critical of imposing post-secondary support obligations on divorced parents sometimes argue that such statutes violate the Equal Protection Clause by holding divorced parents to standards that are not applied to married parents.⁶⁸ Critics also argue that compelling support from divorced parents intrudes on these parents' right to control private decisions about education and imposes values upon them which they may not share.⁶⁹ In compelling divorced parents to provide support for post-secondary education in the face of these arguments, courts point to a number of justifications that apply with at least equal force to the foster care context.

A. The Unique Relationship between Divorced Families and Courts

One justification for imposing a post-secondary support obligation past the age of majority on divorced parents recognizes the unique position of courts as invited "referees" and protectors of children's best interests in the divorce context. The California Appellate Court, for example, ruled that a trial court had the authority to order payment of higher education expenses in *Hale v. Hale*.⁷⁰ The ruling was based on the idea that when divorce proceedings have been initiated, and domestic relations are

strained, trial courts have the authority—and are in the best position—to weigh the evidence and make ultimate decisions regarding the welfare of children.⁷¹ As one family law expert has explained, "divorcing parents give up certain rights over their children when they petition for divorce, and the judge takes over."⁷²

This reasoning applies even more forcefully in the foster care context. For youth in foster care, the state has determined that a complete disruption of the family unit is required to meet the needs of the youth. Once this disruption has occurred, the state, both as child welfare agency and overseeing court, assumes responsibility for ensuring that the needs of the youth are met. Like the courts in the divorce context, the state entities are best positioned to weigh evidence and make decisions to safeguard the welfare of children.

B. Higher Education as a Basic Necessity

Another justification advanced in some courts focuses on the necessity of higher education for successful independence in modern society. A California court, for example, identified an overriding public policy in California for all citizens to receive a college education, supported by the fact that many of the state's higher learning institutions are maintained at the expense of the public.⁷³ Similarly, a New Jersey court ruled in 1988 that imposing a support obligation on divorced parents during a child's college years was in keeping with a changing societal concept of "what constitutes a 'necessary education.'"⁷⁴

This justification, too, can readily be applied to the foster care context. A number of authors have identified "a basic education" as

one of the core “basic needs” that caregivers have a duty to provide for their children.⁷⁵ At the same time, many commentators argue that a post-secondary education has become as necessary and basic today as a high-school education once was.⁷⁶ The argument for compelling support thus goes as follows: 1. Caregivers have long been required to provide for the reasonable care, nurture, and education of their children. 2. What constitutes reasonable and necessary education has changed over time. 3. In order to earn a reasonable wage today, post-secondary education is increasingly essential for children. 4. Caregiver support is often necessary in order to make such an education available. 5. There are strong societal benefits from rules which encourage this ongoing educational support.⁷⁷

Terminating foster care support at age 18 or upon graduation from secondary school amounts to depriving many foster youth of what most courts now recognize as a basic education and an education which states have a strong interest in making available to all citizens. Moreover, because there is no familial decisional privacy concern in the foster care context, states should be more, not less, willing to provide support through post-secondary education to foster youth. And the breadth of educational and training programs covered by court orders for post-secondary support in the divorce context supports an argument that foster youth should be provided with a broad range of training and services past the age of majority so they can continue to develop their skills of independence in a supportive context.

C. The State's Interest in Mitigating Harm to Youth

Still another justification for extending a youth's entitlement to support past the age of majority in the context of divorce relies on research comparing the outcomes of children of divorced parents with those of non-divorced parents. This line of reasoning is policy-based and invokes the courts' authority to use their equitable powers to protect youth from the harmful consequences of decisions over which they had no control. For example, based on evidence of disparate levels of financial support for education between divorced and non-divorced households, the Washington Supreme Court in *Childers v. Childers* stated, “Parents, when deprived of the custody of their children, very often refuse to do for such children what their natural instinct would ordinarily prompt them to do.”⁷⁸ In ruling that state courts had the authority to compel support for college expenses where the natural instinct to do so was missing, the *Childers* court implied that mitigating the effects of divorce on the children of that divorce was a state interest strong enough to justify imposing the financial burden of higher education on a parent capable of paying. The Illinois Supreme court in *Kujawinski v. Kujawinski* more explicitly articulated this reasoning when it upheld an Illinois statute allowing for continuing post-secondary educational support.⁷⁹ The court concluded that the statute was enacted with the legitimate purpose of mitigating the harm that children of divorced parents tended to suffer.⁸⁰

This justification, too, can be applied to argue that the state should be required to support foster youth through their post-secondary education. Foster youth are transitioned out of care with severe educational

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The harm that foster youth face as a result of being placed in state custody is potentially much greater than the harm that youth face as a result of divorce, and therefore the case for ongoing support of foster youth is even more compelling.

deficits compared to non-foster youth. Only 18 percent of foster youth in Chapin Hall's study of Midwestern foster youth were enrolled in an institution of higher education at age 19,⁸¹ whereas 62 percent of their non-foster youth counterparts were enrolled at the same age, according to the National Longitudinal Study of Adolescent Health (Add Health).⁸² In fact, only 63 percent of foster youth in the Chapin Hall study had obtained a high school degree or GED at all by the age of 19, as compared to 90.6 percent of youth in the Add Health study.⁸³ Foster youth are more likely to experience other serious deficits compared to the "average" American youth as well. Foster youth were found to be about twice as likely to experience serious economic hardships like eviction and food insecurity as the nationally representative comparative group, for instance.⁸⁴ Roughly 2.5 times as many youth in foster care had children at age 19.⁸⁵ Finally, 30.9 percent of foster youth at 19 were considered disconnected—that is, not in school and not employed—as compared to 12.3 percent of youth in the Add Health survey.⁸⁶

The harm that foster youth face as a result of being placed in state custody is potentially much greater than the harm that youth face as a result of divorce, and therefore their case for ongoing support is even more compelling. Moreover, data from the Chapin Hall Midwest Study suggest that ongoing support does, in fact, mitigate some of this harm. The Chapin Hall data indicate that youth still in care are generally more likely to receive educational support, housing services, health care education, and job training and assistance than those who are discharged. Because of this, the youth who remain in care at age 19 appear to have better outcomes than youth over whom jurisdiction has been terminated. For ex-

ample, 19-year-old foster youth without a high school diploma or GED were twice as likely to be enrolled in a high school or a GED program as youth no longer in care. Youth in care who had a high school diploma or GED were three times as likely to be enrolled in post-secondary education as those no longer in care.⁸⁷ Furthermore, youth transitioned from care by the age of 19 were twice as likely to experience economic hardship as those for whom care was extended. Likewise, as compared to foster youth remaining in care at age 19, youth no longer in care were more than twice as likely to rely on government support like food stamps, public housing, low income family assistance, or other welfare payments.⁸⁸ Youth still in care were also twice as likely to receive family planning services.⁸⁹ Beyond this, the discharged group was at least twice as likely to experience substance dependence or abuse,⁹⁰ and more than twice as likely to have sold drugs, been arrested, or been convicted of a crime.⁹¹ If states are justified in extending parents' support obligations to mitigate the harms children of divorced parents may incur, they should bear the same obligation to provide ongoing support to foster youth to mitigate the considerable harm suffered by foster youth, as they transition to adulthood.

4. Duties Imposed on Stepparents

Originally, at common law, the stepparent-stepchild relationship did not confer any rights or obligations. Courts began to find that a child was entitled to support, however, where a stepparent voluntarily accepted a child into his or her home, and placed him or herself "in loco parentis" (in the place of a parent). Today, most states either expressly impose a duty of support on stepparents via statute, or interpret existing child-support statutes to include steppar-

ents for the duration of their marriage to the biological parent. The traditional rule is that this duty of support continues for the duration of the marriage only. However, where courts find that a stepparent's involvement with a child has displaced the involvement and support of a birth parent, they sometimes recognize an exception to the general rule and order continuing support.

These exceptions can readily be applied to the foster care context. Where the state, like a stepparent, steps in and assumes parental responsibilities, it displaces the child's birth parents. As courts have found in the step-parent context, this displacement should shift to the state ongoing obligations, including obligations for post-minority support that could otherwise be imposed on a child's parents.

a. Liability Under a Theory of Equitable Estoppel

The New Jersey case of *Miller v. Miller* held that a stepparent could be compelled to support his adult stepchildren under a theory of equitable estoppel, even after his marriage to their biological mother dissolved.⁹² In this case, the children's biological father had supported and maintained a relationship with them and attempted to continue to do so after being incarcerated on a drug charge. Once the children's mother remarried, however, the stepfather refused to allow contact with, or support from, the biological father. The court recognized the generally limited nature of stepparents' obligation to their stepchildren and distinguished the duties imposed on stepparents as affixing "rights and duties temporary in nature" while natural parenthood and adoption "permanently affix rights and duties."⁹³ However, the court

found that when it could be established that children or families relied to their detriment upon the actions of the stepparent, that stepparent could be held liable for support under the principle of equitable estoppel. The court reasoned that "to find otherwise would do irreparable harm and inflict deep injury on the child, the true party in interest."⁹⁴ A previous New Jersey case espoused the same justification, holding a man estopped from denying his duty to support the child he had raised with his wife since infancy.⁹⁵ Of particular concern to the court in this case was the fact that the child had nowhere else to turn for support.⁹⁶

Some recent cases in the paternity support context have applied similar reasoning to impose continuing support obligations on those who have stood "in loco parentis" to a child. In *Monmouth County Div. of Social Services v. R.K.*, for instance, the court held that the *Miller* court's reasoning applied to a paternity support case where the mother's former boyfriend, who had assumed a role akin to stepparent via admission of paternity, could be held liable for a child's support.⁹⁷ Similarly, the Pennsylvania Superior Court held—based on the same theory of equitable estoppel put forth in *Miller*—that when a stepparent has held a child out as his own, he may be estopped from denying paternity and therefore held liable to support the stepchild following a divorce.⁹⁸

b. Liability Under a Theory of Implied Contract

When express provisions for stepchildren are included in marriage agreements, the court will enforce them.⁹⁹ Courts have also recognized verbal agreements between marriage partners as enforceable, based

The logic of the stepparent cases suggests that the state, in cutting off the child's relationship with his family, assumes responsibility for providing the supports necessary to protect the foster youth and society from harm.

Invoking parents' legal obligations to their adult children may help convince state legislatures and courts that it is both legally appropriate, and only fair, to impose similar obligations on the state to meet the ongoing needs of its foster youth.

again on principles of equitable estoppel.¹⁰⁰ Potentially most applicable in the foster care context, however, some courts have gone so far as to recognize an implied contract, based on a child or parent's reliance upon the actions of the stepparent. In these cases, though the courts theoretically distinguish between implied contract and equitable estoppel, most of their reasoning employs the language of both doctrines. In Mississippi, for example, a court held that the best interests of the child require a child support decree against the stepfather, where the stepfather supported children of a previous marriage over a period of time, and the family in good faith relied on that support.¹⁰¹ Likewise, in *Wiese v. Wiese*, the Supreme Court of Utah indicated that implied contract would be an appropriate theory on which to base an order of child support for a stepparent, even if liability had been denied under a theory of equitable estoppel.¹⁰²

Courts have justified compelling support from stepparents under theories of both equitable estoppel and implied contract by focusing on the harm to the child¹⁰³ and to society (in the form of public burdens imposed)¹⁰⁴ that would come from leaving the child without support. Particularly where a stepparent has cut a child off from other relationships of support, the courts reason, he has assumed a parent-like obligation to mitigate those twin harms.

In the foster care context, it is the state that has assumed the role of parent and has actively cut off the child's relationship with his family. The logic of the stepparent cases suggests that the state, in so doing, assumes responsibility for providing the supports necessary to protect the foster youth and society from harm. As the exclusive entity in charge of the youth's upbringing, only

the state is in a position to help prepare foster youth for independence. Principles of equity therefore require the state to be held accountable for assuming such responsibility by ensuring that foster youth are prepared to transition to independence successfully.

In sum, the justifications advanced by state courts and legislatures for extending the age of dependency and accompanying parental support obligations beyond a child's eighteenth birthday apply with equal, if not greater, force in the foster care context. A system which terminates jurisdiction at the age of 18—or even at 19 so that a youth can graduate from high school—is not only out of step with our current understanding of development, but is also manifestly contrary to a growing body of law which ties support obligations to functional level of independence rather than age or some assessment of deserts.

Invoking parents' legal obligations to their adult children may help convince state legislatures and courts that it is both legally appropriate, and only fair, to impose similar obligations on the state to meet the ongoing needs of its foster youth. Although the strength of such arguments by analogy will vary from state to state, some support for imposing these ongoing obligations can be derived from the family law of nearly every state. For detailed, state-specific information that can form the basis of an argument by analogy to foster care, see Appendix: Parents' Obligations, State by State. For suggested language that can be used to make the argument by analogy, see Appendix: Parents' Obligations; Model Legislative Testimony.

ENDNOTES

- ¹ See National Conference of State Legislatures, *Termination of Child Support and Support Beyond Majority*. Available at www.ncsl.org/programs/cyf/educate.htm (visited Apr. 27, 2007).
- ² In D.C., Indiana, Mississippi, New York, and Utah, the age of majority, at which point child support can be terminated, is 21. See National Conference of State Legislatures, *Termination of Child Support and Support Beyond Majority*. Available at www.ncsl.org/programs/cyf/educate.htm (visited Apr. 27, 2007).
- ³ *Id.*
- ⁴ *Id.*
- ⁵ MADD Online: *Minimum Drinking Age Laws*. Available at <http://maddtx.org/stats/4565> (visited Dec. 17, 2007).
- ⁶ Jay N. Giedd et al., *Brain Development During Childhood and Adolescence: A Longitudinal MRI Study*, NATURE NEUROSCIENCE Vol. 2 No. 10 (Oct. 1999).
- ⁷ Aaron M. White, ALCOHOL AND ADOLESCENT BRAIN DEVELOPMENT (Duke University Medical Center 2001).
- ⁸ NHTSA, *Underage Drinking Prevention Project* (Dec. 1999). Available at www.nhtsa.dot.gov/UnderageDrinkingPrevent/org (visited on May 2, 2007).
- ⁹ COLO. REV. STAT. § 10-16-104.3 (2006).
- ¹⁰ N.M. STAT. ANN. § 13-7-8 (2007).
- ¹¹ UTAH CODE ANN. § 31A-22-610.5 (2006).
- ¹² NEW JERSEY L. 2005, c.375 (The insurance provider may charge a higher rate for this coverage, but the increase is not to exceed three percent of the premiums).
- ¹³ National Conference of State Legislatures, *The Changing Definition of 'Dependent': Who is Insured and For How Long?* March, 2007. Available at www.ncsl.org/programs/health/dependentstatus.htm (visited April 27, 2007).
- ¹⁴ *Id.*
- ¹⁵ Mark E. Courtney, et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19*, 44 CHAPIN HALL WORKING PAPER (2005). Available at www.chapinhall.org (visited Apr. 17, 2007).
- ¹⁶ INTERNAL REVENUE CODE § 152(c)(3)(A)(ii).
- ¹⁷ INTERNAL REVENUE CODE § 152(c)(3)(B).
- ¹⁸ *Riggs v. Riggs*, 578 S.E.2d 3, 5 (S.C. 2003); S.C. CODE 1976 §20-7-420(17).
- ¹⁹ *Sutton v. Sutton*, 773 N.E.2d 289, 293 (Ind. Ct. App. 2002).
- ²⁰ For example, a young woman of 20 was properly held to be unemancipated in the Missouri case of *Orth v. Orth*, 637 S.W.2d 201, 203-206 (Mo. Ct. App. E.D. 1982) (refusing to declare a young person emancipated who, despite living in another state with a boyfriend and others and working for a retail florist, had had a "hard time getting on her feet financially," and to whom the father, seeking the declaration, had been paying monthly support, college tuition, and had provided a car); *Phifer v. Phifer*, 845 P.2d 384 (Wyo. 1993) (refusing to find emancipated an 18-year-old girl who had graduated from high school, had a part-time job, and was not living at home, because she was still financially and otherwise dependent on her mother).

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²¹ *Palagi v. Palagi*, 627 N.W.2d 765, 772 (Neb. App. 2001).

²² *Hildebrand v. Hildebrand*, 477 N.W.2d 1, 5 (Neb. 1991).

²³ See *Collins v. Collins*, 426 N.Y.S.2d 56, 56 (N.Y.A.D. 1980).

²⁴ See *Bogin v. Goodrich*, 696 N.Y.S.2d 317 (N.Y.A.D. 1999).

²⁵ *Miller v. Miller*, 866 So.2d 1150, 1157-58 (Ala. Civ. App. 2003).

²⁶ *Ireland v. Ireland*, 123 Idaho 955, 958 (1993).

²⁷ *Id.*

²⁸ *Meyer v. Meyer*, 583 N.E.2d 716, 720 (Ill. App. 1991).

²⁹ *Id.* at 719.

³⁰ See, e.g., *In re Thomas C.*, 691 A.2d 1140 (Conn. Super. 1996) (where 16-year-old held not emancipated despite defiance of parental, school and legal authority and abusive behavior toward parents because child was completely dependent upon parents, would be without support if emancipated and it was not in the child's best interests). *Borden v. Borden*, 550 So.2d 901 (La. App. 1989) (holding that a parent's duty to support a minor child is unilateral, and that behavior of the child, including physical and verbal abuse toward the parent and refusal to work or attend school, was irrelevant in an action to determine the parent's duty to provide support). *Jennifer S. v. Marvin S.*, 568 N.Y.S.2d 515 (N.Y. Fam. Ct. 1991) (where court determined 16 and 1/2-year-old girl did not become emancipated and forfeit her right to parental support by refusing to submit to in-patient psychiatric evaluation and treatment per her parents' wishes).

³¹ See, e.g., *McNair v. Jones*, 892 S.W.2d 338 (Mo. App. 1995); *Mayes v. Fisher*, 854 S.W.2d 430 (Mo. App. 1993); *In re Marriage of Wilde*, 490 N.E.2d 95 (Ill. App. 1986).

³² See, e.g., *Sutton v. Schwartz*, 860 S.W.2d 833 (Mo. App. 1993); *Trosky v. Mann*, 581 A.2d 177 (Pa. Super. 1990).

³³ See, e.g., *Conley v. Conley*, 651 N.Y.S.2d 802 (N.Y. App. Div. 1996); *In re Marriage of Bordner*, 715 P.2d 436 (Mont. 1986); *Van Winkle v. Van Winkle*, 437 N.E.2d 358 (Ill. App. 1982).

³⁴ Kathleen Conrey Horan, *Postminority Support for College Education: A Legally Enforceable Obligation in Divorce Proceedings?*, 20 FAM. L.Q. 589, 590 (1987).

³⁵ *Id.*; Leah duCharme, *The Cost of A Higher Education: Post-Minority Child Support in North Dakota*, 82 N. DAK. L. REV. 235, 236 (2006).

³⁶ Sande L. Buhai, *Parental Support of Adult Children With Disabilities*, 91 MINN. L. REV. 710, 713-15 (February 2007).

³⁷ *Id.* at 716-17.

³⁸ *Id.* at 721.

³⁹ *Id.* at 723.

⁴⁰ *Id.* at 721.

⁴¹ *Id.* at 723 n. 77.

⁴² 23 PA. CONS. STAT. ANN. § 4321(3) (2001); *Hanson v. Hanson*, 625 A.2d 1212, 1214 (Pa. Super. Ct. 1993).

⁴³ IND. CODE ANN. § 31-14-11-18(2) (2003).

⁴⁴ See, e.g., *Ex parte Cohen*, 763 So.2d 253 (Ala. 1999); *DeMo v. DeMo*, 679 So.2d 265 (Ala. Civ. App. 1996); *Ex parte Brewington*, 445 So.2d 294, 297 (Ala. 1983).

⁴⁵ *Feinberg v. Diamant*, 389 N.E.2d 998, 1001-02 (Mass. 1979).

⁴⁶ *Buhai*, 91 MINN. L. REV. at 731 n. 133 (cited in note 36).

⁴⁷ CAL. FAM. CODE §3910(a) (2007).

⁴⁸ See 750 ILL. COMP. STAT. ANN. 5/513 (2007); IOWA CODE ANN. § 598.1(9) (2006); MD. FAMILY LAW CODE ANN. § 13-102(b) (2007).

⁴⁹ See 13 DEL. C. § 503 (2007); N.H. REV. STAT. ANN. § 546-A:2 (2007).

⁵⁰ See, e.g., *Denney v. Winton*, 184 S.W.3d 110 (Mo. Ct. App. 2006); *Nelson v. Nelson*, 548 A.2d 109, 111 (D.C. 1988).

⁵¹ Petition to Enforce Parental Duty to Support Adult Indigent Child, *Culp v. Culp*, D279304 at 2 (Cal. Super. Ct. Dec. 29, 2000).

⁵² *Id.* at 1.

⁵³ *Stern v. Stern*, 473 A.2d 56, 63 (1984).

⁵⁴ *Sininger v. Sininger*, 479 A.2d 1354, 1359 (1984).

⁵⁵ *duCharme*, 82 N. DAK. L. REV. at 236 (cited in note 34).

⁵⁶ *Horan*, 20 FAM. L.Q. at 591 (cited in note 33).

⁵⁷ National Conference of State Legislatures, *Child Support* (cited in note 1).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ 750 ILL. COMP. STAT. ANN. 5/513(a)(2) (2007).

⁶¹ *Id.*

⁶² N.Y. C.L.S. DOM. REL. § 240(1-b)(c)(7) (2007).

⁶³ 550 So.2d 986, 987 (Ala. 1989).

⁶⁴ See, e.g., *Spencer v. Spencer*, 812 So.2d 1284, 1286 (Ala. Civ. App. 2001)(holding that a finding of undue hardship as a limitation on a parent's obligation to contribute to post-secondary expenses did not mean without personal sacrifice); *Wallace v. Condo*, 656 So.2d 833, 834-35 (Ala. Civ. App. 1994)(finding parental disagreement over choice of college to be irrelevant in determination of support award); *Kent v. Kent*, 587 So.2d 409, 411-13 (Ala. App. 1991)(upholding support order even though father was not wealthy, had an insubstantial relationship with the son, and the son maintained only a "C" average in his first quarter at college).

⁶⁵ *Newburgh v. Arrigo*, 443 A.2d 1031, 1038 (N.J. 1982).

⁶⁶ See, e.g., *Weitzman v Weitzman*, 549 A.2d 888 (N.J. Super. Ct. App. Div. 1988)(reiterating that financially capable parents should contribute to the higher education of children who are qualified students, and setting out a list of relevant factors to apply in determining whether post-majority support should be awarded).

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- ⁶⁷ William V. Fabricius, Sanford L. Braver, and Kindra Deneau, *Divorced Parents' Financial Support of Their Children's College Expenses*, 41 FAM. CT. REV. 224, 224 (April 2003).
- ⁶⁸ See generally Ryan C. Leonard, *New Hampshire Got it Right: Statutes, Case Law and Related Issues Involving Post-Secondary Education Payments and Divorced Parents*, 4 PIERCE L. REV. 505, 506 (2006).
- ⁶⁹ See generally Judith G. McMullen, *Father (or Mother) Knows Best: an Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 IND. L. REV. 343 (2001).
- ⁷⁰ 132 P.2d 67 (Cal. App. 3d Dist. 1942).
- ⁷¹ *Id.* at 68-69.
- ⁷² Fabricius, Braver, and Deneau, 41 FAM. CT. REV. at 224 (cited in note 67).
- ⁷³ *Hale*, 132 P.2d at 69 (cited in note 70).
- ⁷⁴ *Weitzman*, 549 A.2d at 893 (cited in note 66).
- ⁷⁵ Peter Vallentyne, *Rights and Duties of Childrearing*, 11 WM. & MARY BILL OF RIGHTS J. 991, 1007 (Apr. 2003).
- ⁷⁶ See, e.g., Carol R. Goforth, *The Case for Expanding Child Support Obligations to Cover Post-Secondary Educational Expenses*, 56 ARK. L. REV. 93 (2003).
- ⁷⁷ *Id.* at 96.
- ⁷⁸ 575 P.2d 201, 208 (Wash. 1978).
- ⁷⁹ 376 N.E.2d 1382 (Ill. 1978).
- ⁸⁰ *Id.* at 1389-90.
- ⁸¹ Courtney, et al., *Outcomes at Age 19*, 22 (cited in note 15).
- ⁸² *Id.*
- ⁸³ *Id.*
- ⁸⁴ *Id.* at 28, 31.
- ⁸⁵ *Id.* at 54.
- ⁸⁶ *Id.* at 66.
- ⁸⁷ *Id.* at 21.
- ⁸⁸ *Id.* at 33.
- ⁸⁹ *Id.* at 45-46.
- ⁹⁰ *Id.* at 42-43.
- ⁹¹ *Id.* at 58, 61.
- ⁹² 97 N.J. 154 (1984).
- ⁹³ *Id.* at 162.

⁹⁴ *Id.* at 164.

⁹⁵ *A.S. v. B.S.*, 139 N.J. Super. 366, 371-72 (Ch. Div. 1976).

⁹⁶ *Id.*

⁹⁷ 334 N.J. Super. 177 (Ch. Div. 2000).

⁹⁸ *L.S.K. v. H.A.N.*, 813 A.2d 872 (Pa. Super. Ct. 2002).

⁹⁹ See, e.g., *Dewey v. Dewey*, 886 P.2d 623 (Alaska 1994) (enforcing explicit agreement to provide for stepdaughter even though the general rule was that no such duty existed); *Brown v. Brown*, 287 Md. 273 (1980) (enforcing weekly support agreement made in divorce decree until stepchild reached majority).

¹⁰⁰ See, e.g., *Lewis v. Lewis*, 497 S.W.2d 840 (Mo. App. 1973) (where husband through promises and actions placed himself in the same position as a biological father, he was obligated to continue to support the child like a biological father after divorce); *T. v. T.*, 216 Va. 867 (1976) (where husband promised to treat child as his own and listed himself as father on birth certificate, he was estopped from denying existence of valid contract).

¹⁰¹ *Logan v. Logan*, 730 So.2d 1124 (1998).

¹⁰² 699 P.2d 700 (Utah 1985).

¹⁰³ See, e.g., *Ross v. Ross*, 135 N.J. Super. 35 (App Div 1975) (recognizing the stepchild's relationship with her stepfather as a major factor in its decision to impose a continuing support obligation on the stepfather); *A.S. v. B.S.*, 139 N.J. Super at 366 (cited note 95) (finding the stepfather liable for ongoing support to protect a child from irreparable harm).

¹⁰⁴ See, e.g., *Jones v. Satutz*, 159 N.Y.S.2d 903 (1957); *Rann v. Rann*, 283 N.Y.S.2d 246 (1967); *Sugarman v. Burns*, 350 N.Y.S.2d (1973).

PARENTS' OBLIGATIONS TO ADULT CHILDREN

PREPARING TEENS FOR INDEPENDENCE

III. Foster Youths' Entitlement to Help During the Transition from Childhood to Adulthood

In this section, we address the preparation for independence that foster youth should receive throughout adolescence and at the time of discharge and suggest how state laws and court practice could be modified to help promote this preparation. We advocate the use of two checklists by agencies and reviewing courts, one focused on ensuring that foster youth gain the necessary preparation for independence throughout their adolescence, and another focused on what must be provided to all foster youth before they are discharged from the system. At the end of this section, we argue that federal law entitles youth to some level of preparation for independence.

A. The State's Obligation to Foster Youth Throughout Their Adolescence

In Section II.A., we discuss healthy adolescent development, and, in particular, the importance of ongoing relationships with adults and peers and of having opportunities to “practice” independence by taking responsibility for oneself and exercising certain decision-making control. Because meaningful relationships develop over time, and personal responsibility and control is acquired gradually, proper preparation for adult independence occurs over many years, and should begin early in adolescence.¹

Child Welfare programs designed to prepare youth for independence tend to be deficient in two respects: First, they focus too exclusively on the development of concrete skills, and, second, they are too short and

start too late. After briefly considering some of the reasons why foster care programs fail to meet adolescents’ developmental needs, we address how the law and practice could be reformed to improve adolescents’ preparation for independence.

We recommend adding to case planning and review processes a “developmental checklist” that expressly assesses efforts made to:

- (1) develop and maintain important relationships with peers and adults;
- (2) involve and support adolescents in activities and associations of interest; and
- (3) give adolescents experience taking responsibility for themselves and exercising decision-making control.

1. Foster Youths' Preparation for Independence is Inadequate

Recognizing the serious need, and spurred by federal legislation, states have implemented programs intended to prepare youth for independence. These programs often take the form of “life skills” instructional courses which fail to provide the emotional and psychological preparation and the necessary experience to prepare adolescents to take responsibility for themselves. Independent Living Programs often focus on training adolescents to do concrete tasks like wash their clothes, prepare a meal, and balance a checkbook. These are valuable skills, to be sure, but they are hardly the most important things adolescents need to learn before they take full responsibility for themselves at 18. Such skills are likely the focus in part precisely because they are so concrete—the tasks can be identified, packaged into a curriculum and taught, and the program and participants can be evaluated

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The statutory goals of establishing permanent connections and preparing youth for independence should be viewed as distinct, with both aims pursued for all youth.

for their training and learning. Related to this, the time required to accomplish these concrete goals is far less than that required to provide more meaningful preparation for independence. In contrast, achieving the aims of “developing relationships,” and “gaining experience exercising decision-making control” requires considerable individualized effort over a significant period of time.²

We might expect foster families to provide the opportunities for adolescent development championed here, but, for a number of reasons, this often does not occur. First, states’ understandable concern for their wards’ safety and their own liability leads states to impose significant restrictions on youths’ involvement in activities outside of school. House and agency rules, and exhaustive background check requirements, have prevented young people from going to sleepovers, participating in sports, or even attending youth events at a church.³ Second, many youth in care shuttle from placement to placement, school to school, and community to community. Such instability makes it difficult for youth to develop and sustain meaningful friendships, develop lasting relationships with adult role models, or stay involved in an activity long enough to gain competence, let alone take on a leadership role.⁴ Moreover, many adolescents in foster care live in group homes, where a focus on discipline and behavioral control imposes rules on residents that significantly limit their freedom to pursue activities outside the home. Limited resources also play a part, discouraging agencies from taking on additional responsibilities on behalf of foster youth.

a. The False Conflict Between Independence and Permanency

The structure of child welfare law may also contribute to states’ inclination to treat planning for independence as a time-limited, late-teen-only effort. Federal law, reinforced through its state law counterparts, rightly places great emphasis on finding a permanent home for each child in foster care. Where possible, this permanent home is with the child’s family of origin. Where this is not possible, a permanent home is to be sought for every foster child through adoption, guardianship, or some other permanent family placement. Only when the agency and the child determine that adoption and similar arrangements are inadvisable, does the law allow the state to identify “another planned permanent living arrangement” as the child’s goal.⁵ The intention of this structure is to ensure that all efforts are made to place every child in a permanent family. The unintended by-product of this structure is a suggestion that, first, the state is to make efforts to nurture family connections, and second, and only when all else fails, is the state to make efforts to prepare a child to live independently. This last resort, last-minute provision for planning for independence is reinforced by Title IV-E’s case planning provisions, which only call for planning for independence “[w]here appropriate, for a child age 16 or over.”⁶

In our view, the goals of establishing permanent connections and preparing youth for independence should be viewed as distinct, with both aims pursued for all youth. For those youth who will not return home or be adopted, it will be particularly important for the state to nurture relationships that can help support the youth when he is discharged from the system, whether

family, friends, or (preferably) both. Moreover, studies suggest that many young adults, even if never reunited with their families formally in juvenile court, find their way back to each other after they are discharged.⁷ While there is much that is positive that can come from these reunited families, a failure to help adolescents work on these relationships while still in care can set them up for serious disappointment, and potentially destructive consequences, when they are on their own.

Conversely, beginning early in adolescence every foster youth should get help from the state preparing for independence. For those who eventually go home or are adopted, their permanent families can pick up where the state left off in the gradual, multi-year developmental process. Facilitating children's development while they await permanent placement can only help them transition successfully to those homes. For those who remain in care, the state should be expected to complete the job, to prepare them for a transition that will prove particularly difficult, even if the state has worked to foster relationships, because their network of support will likely still be thinner than that provided by a family that assumes full custodial responsibility in adolescence.

2. Employing A Developmental Checklist to Improve Adolescents' Preparation for Independence

a. The Value of a Checklist

Because all youth in foster care should have opportunities to develop their ability to act independently and because it takes considerable time and practice to gain this ability,

case planning for all adolescents should include a description of the youths' opportunities to: (1) develop meaningful and lasting relationships with peers and supportive adults, (2) engage in youth activities of interest, and (3) gain experience with decision making and the assumption of responsibility. Case planning should also include the steps the agency plans to take to support these opportunities. The agency could provide assistance finding and making contact with individuals, provide transportation and other logistical support to get youth to activities and to people, provide help enrolling youth in appropriate activities, and provide financial assistance for purchasing required equipment. Later in this section we will consider some model programs that have helped youth achieve these developmental goals.

Because these three developmental goals are difficult to achieve and monitor, it is essential that courts add these goals to whatever form or otherwise regularized "checklist" they use for review of agency case plans and permanency plans. At every review hearing, courts should be asking: Who are the most important adults in the foster youth's life? What efforts are being made to find and maintain a connection with these adults? What opportunities does the youth have to engage in ongoing activities with peers? What opportunities does the youth have to socialize with friends? What opportunities does the youth have to take responsibility for activities or projects that matter to the youth? What role has the youth played in decision making about the agency's case plan? What role has the youth played in decision making about other matters of importance to the youth? See Appendix A: Model Legislation; Preparation for Independence.

Courts can serve, not only as monitors, but also as providers of opportunities themselves. As we will discuss in Section IV, judges and lawyers should ensure that the court hearings themselves give youths experience taking responsibility and playing a central role in the discussion and decision-making process.

While we advocate that courts employ a checklist at every review hearing to ensure that these developmentally important goals are being met throughout a foster youth's adolescence, we are not suggesting that a checklist is needed to establish children's entitlement to developmentally appropriate services in foster care. Under current state and federal law, agencies are required to provide for, and courts are required to monitor, services to meet the needs of youth in foster care. Clearly, children's needs include being provided with opportunities for normal development. Title IV-E speaks generally about a state's obligation to "address the needs of the child while in foster care," and then more specifically about "programs and services which will help [youth 16 and older] prepare for the transition from foster care to independent living."⁸

State legislative language often goes further in recognizing the child welfare agency's obligation to meet foster children's developmental needs, and the juvenile court's obligation to ensure that these needs are, in fact, being met. The "purposes" language of New Mexico's child welfare statute offers an example of state legislation that expressly recognizes the importance of meeting foster children's developmental needs:

The Children's Code shall be interpreted and construed to effectuate the following legislative purpose[]:

... to provide for the care, protection, and wholesome mental and physical development of children coming within the provisions of the Children's Code.⁹

And the Maryland Code on Courts and Judicial Procedure provides an example of authorizing legislation that directs courts to attend to developmental needs, particularly of youth aging out of care:

At a permanency planning hearing, the court shall determine the child's "permanency plan," which, if return to parent, kinship placement, or adoption is not possible, should be a "permanent living arrangement" that "addresses the individualized needs of the child, including the child's educational plan, emotional stability, physical placement, and socialization needs; and . . . promotes the continuity of relations with individuals who will fill a lasting and significant role in the child's life."¹⁰

More broadly, all states call on their child welfare agencies and reviewing courts to ensure that the services provided to foster children serve the children's best interests.¹¹ It goes without saying that providing adolescents with the services necessary to foster healthy development is in their best interest.

b. Some Programs Designed to Meet These Developmental Goals

In this section, we offer some examples of programming designed to help adolescents meet the checklist goals of relationship building, involvement in activities, and the exercise of decision-making control. In of-

ferring these examples, we do not mean to suggest that these are the only or even the best ways of pursuing these goals. Rather, they are a small set of examples of programs that have shown some success, offered to give a sense of the possibilities.

i. Building and Sustaining Supportive Relationships

Many states, whether through legislation or department policy, have begun to acknowledge the need for youth to develop connections with adults outside of the foster care system even if those adults are not realistic “placement options” for a child. Perhaps the most comprehensive legislative action has occurred in California, where Assembly Bill 408 (AB408) now requires child welfare agencies to identify adults who are important to certain youth in care. This provision of AB 408 applies to children ten or older who are placed in a group home. AB408 requires the child welfare agency to ask such youth to identify the most important adults in their life other than parents or siblings. The child welfare agency then has the obligation to facilitate an ongoing relationship between the youth and adults the youth views as important. AB 408 also prescribes a role for the court—it requires the court to determine whether the child welfare agency has made reasonable efforts to identify important adults and worked to maintain ongoing relationships. The court is also authorized to issue orders to facilitate such relationships.¹²

Other efforts to foster relationships between foster youth and supportive adults focus on recruiting and supporting “mentors.” For example, Texas has legislation encouraging recruitment of senior citizen mentors to broaden the age range of participants in the mentoring program.¹³ In

other states, efforts to develop mentoring relationships for foster youth have been developed through child welfare policymaking at the local level. In New York City, the Administration for Children’s Services has established a set of “best practices,” which offer some direction to those interested in starting a mentoring program.¹⁴ Because these mentors often have no historical connection or natural affinity with the youth to whom they are assigned, their ability to develop close and lasting relationships with foster youth is somewhat limited. At a minimum, however, they expand the range of caring adults in a position to help, and in a number of cases, that initial concern and help develops into a deeper relationship over time.

Aiming to connect each foster youth with one adult source of support is an important first step in moving agency efforts toward relationship building, but it should not be considered the final goal. Most young adults who grow up outside the foster care system have an entire network of support to call upon when they leave home, including multiple family members, friends, teachers or coaches, and neighbors. This network may include a number of people who are not active participants in the teenager’s everyday life, but who would be ready to assist in one form or another if that teenager told them she needed their help. Foster youth will have at least as great a need for an extended network of support. This is so, in part for the obvious reason already discussed: They will become adults most precipitously and with the least preparation for independence.

A broader network of support may also be especially important for foster youth because some of the people to whom they are most likely to turn will present challenges

Research indicates that youth who grow up in foster care commonly return, when they age out of the system, to the very birth families from whom they were removed.

If we are to provide meaningful support to youth who age out of care, we must validate and support the relationships that mean the most to them.

of their own. Research indicates that youth who grow up in foster care commonly return, when they age out of the system, to the very birth families from whom they were removed. Chapin Hall's Midwest Study¹⁵ suggests that many identify these relationships as primary. If we are to provide meaningful support to youth who age out of care, we must validate and support the relationships that mean the most to them. We may also need to equip them, however, to deal with ongoing difficulties with these relationships. One way to do this is to ensure their access to additional relational resources, ideally extended family or friends who understand the intra-family dynamic and can help the young person learn how to manage these complicated relationships in a healthy and effective manner.

One model that seeks to connect a foster youth to an entire system of support is the Youth Circles model.¹⁶ Youth Circles are a youth-focused variant of the Family Group Conferencing model that has achieved considerable success for older foster youth in Hawaii and California. Youth Circles are designed to bring the youth and her circle of support together to plan for the future. What the precise Youth Circle model looks like will vary in detail, but the central elements remain the same. The youth is given control over all aspects of the process and is encouraged to involve as many potential supporters as possible.

Although the facilitator may encourage the youth to invite certain people to participate in the Circle, the youth also has the final say over who is invited. Facilitators encourage the youth to think broadly about who might participate and help the youth to locate and invite those the youth identifies. Often youth and professionals are all surprised at how many individuals

can be located and are willing to offer substantial support. The facilitator also helps to prepare all participants, ensuring that they understand the purpose of the Circle and the fact that the youth will be in charge of the process. To facilitate the youth's development of a network of support, some Youth Circles provide for private time during which all professionals, including the facilitator, leave the room.

ii. Youth's Long-Term Involvement in Meaningful Activities

This goal is the most concrete of the three, and in this sense it might most easily be added to any list of items already used by child welfare agencies or by courts in the case planning and review process. An agency that routinely considers what assistance it needs to provide to enroll a child in school and help ensure that the school placement is successful, might just as routinely locate appropriate activities for a youth and assist with enrollment, transportation, the purchase of equipment and the like. Similarly, courts could routinely inquire about a youth's interests and activities and ensure that the agency was, in fact, providing support that enabled the youth to initiate and maintain involvement in activities of interest.

Youth's participation in activities outside of school is not made a priority by either agencies or courts in most jurisdictions. Indeed, enrolling youth in such activities likely would strike many as a luxury when a youth's school performance is shaky or when a youth's school placement is continually changing. We know from educational and psychological literature, however, that the issue is somewhat circular: Youth may well do better in school if they become involved in an activity that they enjoy and at

which they can excel. Moreover, as noted in Section II, ongoing involvement in an activity at school, through a neighborhood club, or at church, will help the youth connect with caring adults who can, in turn, serve as models and supports that can carry over to other aspects of the youth's life, such as school.¹⁷

These youth do not have months to spare. Sequencing their priorities—first school stability then other activities later on—only sets them behind, and makes it less likely that they will successfully engage in activities in the future. Finally, demonstrating to a youth a commitment to help her do something she wants to do—rather than only what the law requires her to do—can help make more plausible to the youth other agency and court efforts to begin shifting decision-making authority to that youth.

States have begun to take affirmative steps to try to ensure that foster youth can experience normal life, including normal opportunities for socializing and participating in activities outside the supervision of a foster family and the child welfare agency. California's AB 408, which, as discussed above, promotes ongoing relationships for foster youth, also aims to ensure that foster youth can develop normally through adolescence. The statute provides that caregivers must allow youth to participate in age-appropriate school and community activities including social activities. Caregivers must act as "prudent parents" in deciding whether to permit participation in a given activity.¹⁸ AB 408 also offers a model for more general provisions. For example, under the statute, state laws and regulations must not create a barrier to youths' participation in school and community activities.

iii. Youths' Central Involvement in Decision Making

None of us can expect to function as good decision makers as young adults if we have not had substantial experience making decisions for ourselves in adolescence. Moreover, we are far more likely to be successful, in pursuing plans in young adulthood, if we have made the plans for ourselves. In this section we consider three mechanisms—Youth Circles, self-advocacy seminars, and participation in youth advocacy organizations—that have shown some success in giving youth real experience exercising control over their own lives. In Section IV, we consider a fourth: youth participation in court hearings.

Youth Circles

As already noted, the Youth Circles model is committed to giving youth control over the transition planning process. Youth choose who to invite, what issues to discuss, and, ultimately, what plans to make for the future. Because the youth lacks experience exercising this level of control, and adults may be inclined to take over control, extensive pre-conference preparation and a well-trained facilitator are essential to the Youth Circle's success. The facilitator is required to spend time before the conference talking with each participant, explaining the conference and ground rules, and determining any potential conflicts among participants to ensure that the atmosphere stays positive and the youth remains in control. While a facilitator can assist by bringing considerable knowledge of the youth's circumstances to the discussion, the facilitator must take care not to use that knowledge to reach conclusions about what makes sense, what goals are attainable, and the like. Instead, the facilitator can bring realistic con-

The Youth Circles model is committed to giving youth control over the transition planning process.

Replicating healthy development in intact families, youth must first gain experience making and acting on choices in a supportive environment before they will be ready to do so with greater independence.

straints and obstacles into the discussion by way of questions that can help a youth develop a back-up plan, think more deeply about his options, and consider what he needs to do to attain his goals. Facilitators also help youth with the logistics associated with pursuing their goals. If a youth has expressed interest in a particular school, for example, the facilitator provides the application, website, phone number, and any other necessary tools to make it as easy as possible for the youth to follow through.¹⁹

As this description makes clear, giving a youth experience exercising decision-making control does not mean abandoning the youth to those choices. Replicating healthy development in intact families, youth must first gain experience making and acting on choices in a supportive environment before they will be ready to do so with greater independence from their system of supports. A family is valuable for more than the reassurance that there will be someone to catch us when we fall. We all rely upon our families to help us make decisions—learning from their experience or expertise, seeking advice, and gathering information. Children learn how to make decisions by trying out different ideas and possibilities and asking questions in a safe environment and watching their families model successful decision making. Youth Circles aim to replicate this decision-making context for foster children.

Teaching Self-Advocacy

In response to their dissatisfaction with the preparation for independence their clients received from the child welfare system, two lawyers, Betsy Krebs and Paul Pitcoff, developed a curriculum that focuses on teaching foster youth how to advocate for themselves. Krebs and Pitcoff concluded that:

Teens in foster care typically lack rudimentary self-advocacy skills. Teaching teens to negotiate and advocate is not a goal in the foster care system, where teens rarely get a chance to negotiate with adults or advocate their position in an environment that would teach them these skills.... In trying to assert their rights or merely trying to garner appropriate support, teens in foster care have observed and learned that acting out and presenting themselves as victims has a better chance of getting attention than just about any other method. Although this behavior brings attention, it rarely helps the teen in any long-term, substantive way.²⁰

Krebs and Pitcoff's self-advocacy curriculum focuses on teaching youth to know their rights, set goals for themselves, understand the relevant chain of command, seek out others for support, document relevant events, and be persistent in seeking what they want. While these ideas may seem obvious, youth raised in care often need to be taught these lessons, through education, modeling, and practice facilitated by all the adult actors in the system.

Krebs and Pitcoff have developed, implemented, and reproduced a curriculum for youth that they have entitled the "Getting Beyond the System Self Advocacy Seminar." This seminar communicates to youth that it has high expectations of them and for them. Young people must apply for admission, and in the application they must identify some long term goals, including possible career goals and personal strengths. This type of activity replicates the process that they will have to undertake to gain admission to a school or find employment.

Additionally, youth are required to sign a contract upon admission. This contract states that participants must complete all written assignments, participate in class discussions, and respect the facilitators. It only allows one absence before removal from the program. If a youth does not meet the expectations of the contract, she is asked to withdraw from the program, but she can reapply in the next cycle. The aim is to give youth a clear understanding of program expectations and to shift control to the youth to manage her participation.

The curriculum is designed to focus youth on their future, and to teach them how to plan for that future as well as act on those plans. From the application at the beginning to the interview with a professional at the end, the participant is making choices based on goals that she has set for herself. The session topics include planning for and reaching goals, how organizations work, making transitions, finding mentors, and recognizing the needs of others. All of these topics help the youth develop an understanding of the advocacy process, and the class work gives youth an opportunity to role play in preparation for using these skills in or out of care. The curriculum also encourages youth to be ambitious, urging them to build their plans around long-term aims such as career ambitions, rather than short-term practical constraints.

The methods used by the Krebs-Pitcoff Model focus on the youth's knowledge and experience rather than that of the instructor. Inspired by their own law school experiences, Krebs and Pitcoff designed the curriculum to be taught by "Socratic Method." Under this method, facilitators do not lecture their students, but rather ask them questions which prompt students to formulate a position and defend that position

before the class. The curriculum uses case studies with which the youth can identify, which increases their interest in the materials and, in turn, makes them better advocates. Using case studies also allows youth to feel less isolated, as it tells the stories of adults and older peers who struggled to achieve and maintain their independence.

The culmination of the Getting Beyond the System Seminar is a youth-driven interview with a professional in a career field in which the youth is interested. "The concept is that these adults can become valuable advocates and, at the same time, that the teen has an active role to play in making that relationship happen. In other words, we teach that mentors, allies, and advocates are not always appointed by the court or matched through a program."²¹ Again, this empowers youth to begin seeking out people who will enable them to meet their goals.

After the program helps match the youth with an experienced and passionate professional in her field of interest, the youth takes over the process. She is expected to learn actively and willingly from the professional. By practicing advocacy skills in this way, students learn by trial and error in a supportive context where errors are instructive but not devastating.

Youth Advocacy Organizations

Youth advocacy organizations are a growing source of opportunities for foster youth to practice their self-advocacy skills in real world situations where they have special expertise. Most states have at least one such organization and some have several. Some youth organizations are more focused on effecting large scale policy change while others serve as a supportive forum for youth who have experience with the

The methods used by the Krebs-Pitcoff model focus on the youth's knowledge and experience rather than that of the instructor.

Youth advocacy organizations have been instrumental in passing state legislation, developing training materials, and providing a support network among current and former foster youth.

system. These advocacy organizations have been instrumental in passing and amending state legislation, developing training materials for independent living skills instructors, and providing a support network among current and former foster youth. In addition to these state-based organizations, FYI3 offers youth a means of becoming “involved, informed and independent” in cyberspace.²² See Appendix: Youth Advocacy Organizations.

California Youth Connection (CYC) has served as a model for states that are developing opportunities for youth to practice advocacy skills. Members are current and former foster youth between the ages of 14 and 24. The organization began in 1988 and “promotes the participation of foster youth in policy development and legislative change to improve the foster care system, and strives to improve social work practice and child welfare policy.”²³ In 1992, CYC proposed its first piece of legislation, which was passed and signed into law, easing some of the restrictions foster youth face in obtaining a driver’s license. They have gone on to become a central player in legislative reform efforts, including the enactment of AB408, discussed above. Members of the CYC attend meetings of their local chapters twice each month and statewide meetings twice each year. This allows the youth to solve problems unique to their locality while also collaborating with other chapters to focus on more widely applicable issues. With 13 chapters throughout California, the CYC offers foster youth an opportunity to effect change in areas of greatest concern to them.

ENDNOTES

¹ Independent Living programs offer little support for younger adolescents. Although states may use federal Chafee funding to include youth age 14 and up, the bulk of IL services go to youth 16 and over. See Carrie Zweibel & Chris Strnad, *HOW STATES ARE HELPING FOSTER CARE YOUTH “AGE OUT”: AN ASSESSMENT OF STATE PLANS FOR USE OF CHAFEE FUNDS* (2002).

² Cf. Brenda Jones Harden, *Safety and Stability for Foster Children: A Developmental Perspective* 14 FUTURE CHILD. 31, 37, 40 (2004) (“[T]he child welfare system has historically been concerned with shaping the experiences of children, not their functioning. Thus, the system focuses on outcomes relevant to safety and permanency, not to developmental outcomes. . . . [T]he evidence suggests that foster care placement and the foster care experience more generally are associated with poorer developmental outcomes for children.”).

³ These examples of unfair and unnecessary restrictions are taken from CHILDREN’S LAW CENTER OF LOS ANGELES, LIFE IN FOSTER CARE: THE CHALLENGES OF LEADING A NORMAL LIFE, <http://www.clcla.org> (follow “Training Materials” hyperlink; then follow “State Law” hyperlink; then follow “The Challenges of Leading a Normal Life in Foster Care” hyperlink).

⁴ See Ana España & Tracy Fried, *The Expanding Role of the Juvenile Court in Determining Educational Outcomes for Foster Children*, 5 J. CENTER FOR FAM. CHILD. & CTS. 83 (2004) (“Multiple changes in school placements are also frustrating for children who want to participate in extracurricular school activities. For example, many youth want to play on high school sports teams but end up missing either all or part of the season because of a new placement”).

⁵ 42 U.S.C. § 675(5)(C) (providing for a permanency plan of “another planned permanent living arrangement” only “in cases where the State agency has documented to the State court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian”).

⁶ 42 U.S.C. § 675(5)(D).

⁷ See Mark E. Courtney & Darcy Hughes Heuring, *The Transition to Adulthood for Youth “Aging Out” of the Foster Care System*, in ON YOUR OWN WITHOUT A NET: THE TRANSITION TO ADULTHOOD FOR VULNERABLE POPULATIONS (D. Wayne Osgood et al. eds., 2005) 27, 41 (citing studies finding that many foster youth have ongoing contact with their family of origin after leaving foster care); see also Mark E. Courtney et al., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 19 (2005) (finding that, among respondents who were no longer in care, over two-thirds reported feeling “somewhat close” or “very close” to their biological mother, over seventy percent reported feeling “somewhat close” or “very close” to a grandparent, and over eighty percent reported feeling “somewhat close” or “very close” to a sibling or siblings).

⁸ 42 U.S.C. § 675(1) (B) & (D).

⁹ N. M. STAT. § 32A-1-3.

¹⁰ MD. CODE ANN., CTS. & JUD. PROC. § 3-823 (emphasis added); see also CAL. WELF. & INST. CODE § 350 (providing that, in hearings respecting dependent minors, “[t]he judge of the juvenile court shall control all proceedings during the hearings with a view to . . . the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought”).

¹¹ See, e.g., CAL. WELF. & INST. CODE § 202 (“Courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public . . . and the best interests of the minor in all deliberations pursuant to this chapter.”); GA. CODE ANN. § 15-11-1 (“This chapter shall be liberally construed to the end . . . [t]hat each child coming within the jurisdiction of the court shall receive . . . the care, guidance, and control that will be conducive to the child’s welfare and the best interests of the state”); 705 ILL. COMP. STAT. 405/1-2 (“The purpose of this Act is

to secure for each minor subject hereto such care and guidance . . . as will serve the safety and moral, emotional, mental, and physical welfare of the minor and the best interests of the community.”).

¹² For a summary of AB 408’s provisions respecting maintenance of important relationships, *see PROMOTING PERMANENCE FOR FOSTER CARE YOUTH*, <http://www.clcla.org> (follow “Training Materials” hyperlink; then follow “State Law” hyperlink; then follow “Promoting Permanence for Foster Care Youth” hyperlink).

¹³ TEX. FAM. CODE ANN. § 264.116.

¹⁴ BEST PRACTICE GUIDELINES FOR FOSTER YOUTH CARE MENTORING, http://www.nyc.gov/html/acs/html/become_mentor/best_practices_addition.shtml.

¹⁵ See Courtney et al. (cited in note 7).

¹⁶ For more information on Youth Circles, see Karin Gunderson, Anita Horner Washington & Lorenn Walker, E MAKUA ANA YOUTH CIRCLES: A TRANSITION PLANNING PROCESS FOR YOUTH EXITING FOSTER CARE.

¹⁷ See, e.g., David M. Hansen, Reed W. Larson, & Jodi B. Dworkin, *What Adolescents Learn in Organized Youth Activities: A Survey of Self-Reported Developmental Experiences*, 13 J. RES. ON ADOLESCENCE 25, 27-28 (2003).

¹⁸ AB 408, codified as CAL. WELF. & INST. CODE § 362.05.

¹⁹ This description of Youth Circles was based in large part on interviews with several individuals with considerable experience with Youth Circles and Family Group Conferences, including Randy Shiraishi, Program Manager, EPIC, Inc. E Makua Ana Youth Circle Program in Hawaii; Anita Horner, Manager of Practice Advancements, Children’s Services, American Humane Association and the National Center on Family Group Decision Making; Laura Rush, Coordinator, Conferencing Services, Community Service Foundation, Buxton, PA; Lori McKeon, Family Group Conferencing Coordinator, Concord Center, Nebraska.

²⁰ Betsy Krebs & Paul Pitcoff, BEYOND THE FOSTER CARE SYSTEM: THE FUTURE FOR TEENS 52-53 (2006).

²¹ Krebs & Pitcoff at 53.

²² <http://www.fyi3.com>. FYI3 is a partnership web project between FosterClub.com and the Jim Casey Youth Opportunities Initiative.

²³ CALIFORNIA YOUTH CONNECTION: CYC HISTORY, <http://www.calyouthconn.org/site/cyc/section.php?id=90>.

ASSISTANCE AT DISCHARGE

B. State Obligations to Foster Youth at Discharge

As foster youth age out of care, they face a host of challenges. Already discussed are the range of services and opportunities the state should provide to adolescent foster youth to help prepare them for adulthood. In this section we address the states' obligations to youth on the verge of discharge and opportunities for court enforcement of these obligations. Our aim is to propose a model discharge procedure that will encourage the state to provide the appropriate assistance well in advance of discharge. We conclude that a well-defined and properly enforced "discharge checklist" can substantially advance this goal.

In most states, discharge decisions are based primarily or exclusively on age. When a youth reaches a certain age, most commonly 18, he is discharged from the system, without regard for his ability to function—or even survive—on his own. California and New York have taken the lead in establishing "discharge checklists" which identify core services and information that should be provided to foster youth at or before the time they are discharged from the system. After briefly describing the approach taken in New York and California and in other states experimenting with some form of discharge checklist, this section reflects upon the strengths and limitations of the checklist approach and offers some suggestions about how to design and implement a checklist to maximize its value.

1. State Models

a. The New York Statute

The New York discharge statute¹ requires the child welfare agency to make "diligent efforts" to help a foster youth "achieve permanent discharge." The bulk of the statute focuses on defining what actions constitute "diligent efforts" which are to be manifested in the youth's "discharge plan." While foster youth are still in the system, the statute requires the child welfare agency to provide vocational and independent living skills training as well as a gradually increasing stipend beginning at 16.² Before discharge, the law also requires the agency to provide contact information for services, agencies, and individuals (including parents and former foster parents) who could provide support to the foster youth after discharge, and a copy of the complete case record of that youth's time in foster care.³

Although the statute does not state the consequences of failing to provide this preparation for discharge, its legislative history, including the 1985 landmark case of *Palmer v. Cuomo*, suggests that the state may remain responsible for foster youth until these "diligent efforts" are made.⁴

The statute is more explicit in conditioning discharge on the provision of at least 90 days' notice to a foster youth. Moreover, no youth is to be discharged unless he has a place to live which he can "reasonabl[y] expect[] [to] remain available for at least the first 12 months after discharge."⁵ The place to live cannot be a homeless shelter, a single-room occupancy hotel, or "other congregate living arrangement which houses more than 10 unrelated persons."⁶

Our aim is to propose a model discharge procedure that will encourage the state to provide the appropriate assistance well in advance of discharge.

Several states have begun to develop some form of checklist procedure, whether through statute, court rule or agency policy, to help ensure that youth are properly prepared for discharge.

See Appendix B: Model Legislation; Preparation for Independence.

b. The California Statute

The text of California's statute⁷ is much shorter, but it requires at least as much as the New York discharge checklist. Like New York, California requires that the county welfare department provide a report that verifies that a list of information, documents, and services are provided to the foster youth prior to discharge. In addition, California requires the foster youth to be present in court when the case is discharged.

The required discharge report covers five broad sections: case history, documentation, case worker assistance, training, and relationship assistance. The first section requires the foster care agency to provide detailed written information about the youth's case, including family history, placement history, and "the whereabouts of any siblings under jurisdiction of the juvenile court."⁸ The second section requires the agency to provide basic documents—a social security card, a birth certificate, health and education records, an identification card (such as a driver's license), and proof of citizenship or residence.⁹ The third section mandates that the child receive assistance in applying for health insurance, housing, and employment.¹⁰ The fourth section covers educational or vocational training assistance,¹¹ and the fifth section requires the child welfare agency to assist the youth in setting up and maintaining important relationships.¹²

California's statute provides more explicitly than New York's for a continuation of jurisdiction. If the county has not achieved all the requirements itemized on the checklist

by the expected time of discharge, and the court finds that "termination of jurisdiction would be harmful to the best interests of the child," the youth will not be discharged from care.¹³ This continuation of the state's jurisdiction is only "for that period of time necessary for the county welfare department to meet the requirements of the [statute]."¹⁴ Moreover, jurisdiction will terminate if the required services have been offered but the youth refused them, or if the county has been unable to locate the youth after making reasonable efforts.¹⁵ See Appendix C: Model Legislation; Preparation for Independence.

c. Other Efforts

Several other states have begun to develop some form of checklist procedure, whether through statute, court rule, or agency policy, to help ensure that youth are properly prepared for discharge. Oregon, for example, has enacted legislation prescribing a planning process focused on the "needs and goals" of transitioning youth.¹⁶ Physical and mental health, education, employment, community connections, and supportive relationships are all identified as areas to be addressed. The statute directs that all wards must have safe and stable housing when they leave foster care.¹⁷ Unlike New York and California, however, Oregon does not provide for the possibility of continued jurisdiction or other mechanism of enforcement.

In Philadelphia, a section of the Court Improvement Project Committee, consisting of court personal, child advocates, parents' attorneys, and child welfare professionals, has developed a model checklist that the Family Court in Philadelphia has agreed to pilot in a single courtroom. While the pilot is just getting underway, one participant

in the section reports that there is already some evidence that the checklist is changing the child welfare agency workers' out-of-court behavior. Inspired by the checklist format of the court protocol, these workers have begun to schedule transition planning meetings in anticipation of youths' court reviews.¹⁸ See Appendix A: Model Court Checklists; Preparation for Independence. The aim is to promote adoption of the checklist process for adolescents in foster care in all juvenile courts throughout Pennsylvania. The Juvenile Court in Cook County (Chicago) has developed a similar checklist as part of its specialized Benchmark Hearings, discussed in Section IV.B., below. See Appendix B: Model Court Checklists; Preparation for Independence.

Other states have developed a discharge checklist through agency policy making. For example, in Connecticut, the Department of Children and Families provides a guideline for adolescent discharge based on the Adolescent Discharge Plan, under state policy 42-10-3.¹⁹ The state cross references this with an Adolescent Planning Conference under policy 42-10-2.²⁰ The Adolescent Discharge Plan is a written working document, which includes the estimated date the youth will leave care, the youth's anticipated living arrangements, budget, source of income, and follow-up schedule.

Some of these checklist procedures, while commonly framed in terms of "discharge," are designed to begin being applied at least two years prior to a youth's discharge from care. While we suggest, in Section III.A., that preparation for independence needs to start even earlier in adolescence, any design that provides for advance planning is a step in the right direction.

2. The Value of a Discharge Checklist

All of the checklist provisions described above currently suffer from underimplementation. Indeed, many workers and advocates we interviewed in these states, including California and New York, had not yet seen the checklists applied to any youth prior to or at the time of discharge. Clearly, a key aim of judges, lawyers, and other advocates should be to publicize the existence of these checklists and press for their implementation.

Even assuming successful implementation, a discharge checklist cannot, by itself, ensure that youth leave care ready to be on their own. A checklist can, however, help to establish a baseline. A checklist helps to ensure that certain concrete services and information (such as a case record and basic forms of identification necessary for job applications, apartment rentals, and the like) are provided to everyone; that a realistic plan is in place to secure all basic needs, most particularly food, shelter and medical coverage; and that meaningful assistance has been offered to help the youth plan for education and job preparation and to make connections with family and other sources of support.

Some of the particular items on this list—such as social security cards and case records—might be provided at or within weeks of discharge. Others—such as stable housing and adequate means of support—might be finalized then, but to be successful, efforts to secure these items must begin well in advance of discharge. Still other assistance—such as assistance building and maintaining relationships and assistance with educational planning and achievement—will be far more meaningful if addressed throughout a youth's adolescence.

A discharge checklist cannot, by itself, ensure that youth leave care ready to be on their own. A checklist can, however, help to establish a baseline.

(See our previous discussion, in Section III.A., of a Developmental Checklist to be applied throughout adolescence.) That being said, including these more long-term forms of assistance on the discharge checklist can only reinforce the nature of the agency's obligations and the importance of achieving these long-term goals to the success of a youth's transition.

Including these long-term tasks on a discharge checklist is particularly worthwhile, because these checklists offer a special mechanism for enforcement. If the items on the list are to be seen as, in any meaningful sense, a condition of discharge,

discharge should not be permitted absent satisfaction of the conditions listed. California's statutory exceptions (a youth's desire to be discharged without receiving the itemized assistance, or the inability to find a youth despite agency efforts) are appropriate exceptions, but courts and lawyers for youth should not rely on the child welfare agency's invocation of the exceptions. Rather, courts and lawyers should make their own efforts to contact youth and inform them of the stakes. In sum, while any discharge checklist can help spur a child welfare agency to better prepare youth for independence, the most effective checklists would have the features listed below.

Features of an Effective Discharge Checklist

- Courts should have the obligation and authority to apply the checklist and to continue jurisdiction until the conditions set out in the checklist are satisfied.
- No discharge should occur without a hearing, and the youth's presence should be required at the hearing.
- The checklist should be as clear and listlike as possible to help ensure that the relevant conditions are broadly communicated and enforced.
- At a minimum, the checklist should include:
 - the provision of identification documents and case records,
 - arrangements for stable housing and medical coverage,
 - assistance in developing relationships with individuals and organizations that are potential sources of support (including contact information), and
 - assistance in planning and arranging for ongoing education and employment.

See Appendix D: Proposed Model Legislation; Preparation for Independence.

ENDNOTES

¹ 18 N.Y.C.R.R. § 430.12(f)

² 18 N.Y.C.R.R. § 430.12 (f)(3)(i)(a) & (f)(2)(i)(b).

³ 18 N.Y.C.R.R. § 430.12 (f)(3)(i)(a).

⁴ In *Palmer v. Cuomo*, the court determined that the state has a *parens patriae* burden, or affirmative duty to provide aid, to children aging out of foster care. 503 N.Y.S.2d 20, 21. The first part of the court's holding set up the discharge plan now set out in § 430.12. The court granted a preliminary injunction that enjoined the state from discharging three youths from foster care until they had 1) a discharge plan, 2) reasonable preparation including independent living skills training, and 3) reasonable notice of the impending discharge, as well as supervision or follow-up services until 21. *Id.* The second part of the holding dealt with seven additional foster youth, who had already been discharged to independent living without adequate protection. In that situation, the court ordered monetary damages and also enjoined the City and State to provide the youths with the same benefits of the discharge plan, even though they had already been discharged. *Id.* at 22. In New York, then, if a district is found to have been inadequate in preparing the youth for discharge, the youth should be able to return to care or receive the services he should have received while in care.

⁵ 18 N.Y.C.R.R. § 430.12 (f)(3)(i)(c).

⁶ *Id.*

⁷ CAL. WELF. & INST. CODE § 391.

⁸ CAL. WELF. & INST. CODE § 391(b)(1).

⁹ CAL. WELF. & INST. CODE § 391(b)(2).

¹⁰ CAL. WELF. & INST. CODE § 391(b)(3).

¹¹ CAL. WELF. & INST. CODE § 391(b)(4).

¹² CAL. WELF. & INST. CODE § 391(b)(5).

¹³ CAL. WELF. & INST. CODE § 391(c).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ OR. REV. STAT. § 419B.337(6)(B)(i).

¹⁷ OR. REV. STAT. § 419B.337(6)(B)(v).

¹⁸ Interview with Jennifer Pokempner of the Juvenile Law Center, Sept. 20, 2007.

¹⁹ STATE OF CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES POLICY MANUAL 42-10-3, <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=327718>.

²⁰ STATE OF CONNECTICUT DEPARTMENT OF CHILDREN AND FAMILIES POLICY MANUAL 42-10-2, <http://www.ct.gov/dcf/cwp/view.asp?a=2639&Q=327716>.

ASSISTANCE AT DISCHARGE

YOUTHS' RIGHT TO ADEQUATE PREPARATION

C. The Federal Legal Basis for the States' Obligations

In the previous sections we document the importance to foster youth of supports in adolescence and young adulthood and suggest legal steps that state legislatures and courts can take to improve foster youths' preparation for independence. Here, we consider sources of legal authority on which lawyers and judges can rely in pressing for the provision of these services. We first consider the legal requirements set out in Title IV-E, and then suggest that some basic level of preparation for independence is constitutionally required.

1. *Title IV-E of the Social Security Act*

Under Title IV-E of the Social Security Act, states are required to develop a case plan for each child in foster care that "assure[s] that the child receives safe and proper care and that services are provided... to address the needs of the child while in foster care, [and that] include[s] a discussion of the appropriateness of the services ... provided."¹ As discussed in Sections III.A. and B., the services and supports set out in our proposed developmental and discharge checklists are essential to provide "proper care" and to "address the needs" of adolescents who are in foster care. These obligations are made even plainer with the requirement that the state include in a case plan for a child 16 years or older "where appropriate... a written description of the programs and services which will help such child prepare for the transition from foster care to independent living."¹

As discussed in Sections III.A. and IV.A., this language could be improved. Most ba-

sically, there is no foster youth age 16 or older whom it is *not* appropriate to assist in preparing for the transition to independent living. While we favor amendment to eliminate the phrase "where appropriate," current language is sufficient to establish the state's obligation to develop and implement a plan designed to meet the needs of older foster youth.

The extent to which the state's obligations are legally enforceable is somewhat less clear. At a minimum, these obligations can be pressed by or before the reviewing juvenile court which is obligated under federal regulations to assess whether the state has made "reasonable efforts to finalize the permanency plan that is in effect,"³ including the permanency plan of "another planned permanent living arrangement," which is Title IV-E's current language for the permanency plan of youth expected to age out of the system. Because a finding of "no reasonable efforts" causes a state to lose federal reimbursement for that case,⁴ the reasonable efforts requirement offers advocates and judges a mechanism for compelling the child welfare agency to provide the services necessary to prepare a youth for independence.

Less clear is whether foster youth would have a private right of action to enforce the state's obligation to meet their needs in federal court. In *Artist M. v. Suter*,⁵ the Supreme Court determined that foster children did not have a private right of action to enforce Title IV-E's requirement that the state make reasonable efforts to prevent the need for removing children from their homes and to make it possible for children to return safely.⁶ It did not, however, address the enforceability of claims brought under other provisions of Title IV-E, leav-

The reasonable efforts requirement offers advocates and judges a mechanism for compelling the child welfare agency to provide the services necessary to prepare a youth for independence.

When the state takes individuals into its custody, it takes on special constitutional obligations to protect them from harm and to provide them with basic care.

ing open the possibility that the other provisions of IV-E that impose planning requirements on the States could be privately enforceable. Moreover, subsequent federal legislation has complicated the analysis. Some courts have read these subsequent developments to allow for private rights of action to enforce the state's case planning and implementation obligations under Title IV-E.⁷

2. Foster Youths' Constitutional Right to a Minimally Adequate Preparation for Independence

The United States Constitution generally provides no affirmative right to government aid. However, when the state takes individuals into its custody, it takes on special constitutional obligations to protect them from harm and to provide them with basic care. Several courts have applied this rule to foster children and imposed constitutional liability on child welfare agencies that failed to provide adequate protection or care.⁸ Under this rule, states should be held constitutionally obligated to help prepare older foster youth to function on their own.⁹

The Supreme Court first imposed a constitutional obligation of care and protection on the state in the prison context. In *Estelle v. Gamble*, the Supreme Court held that the government has an "obligation to provide medical care to those for whom it is punishing by incarceration."¹⁰ The Court based its holding on the Eighth Amendment right to be free of cruel and unusual punishment. The standard of government action which would violate the right was stated as "deliberate indifference to serious medical needs of prisoners."¹¹

The Supreme Court next addressed the issue in *Youngberg v. Romeo*, in the context of an involuntarily committed mentally disabled adult.¹² The Court held that under the Fourteenth Amendment right to substantive due process, a mentally retarded individual in state custody "enjoys constitutionally protected interests in conditions of reasonable care and safety, reasonably nonrestrictive confinement conditions, and such training as may be required by these interests."¹³ The Court further elaborated that the "State must provide minimally adequate or reasonable training to ensure safety and freedom from undue restraint."¹⁴ The Court also held that the standard to be applied was whether the state actors had exercised "professional judgment." The Court explained that it did not intend to step in and specify the appropriate choices for professionals, but to ensure that those choices were made and did not significantly depart from accepted standards. The Supreme Court stated that a court may reject the decisions made by professionals when they are "such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment."¹⁵

In *DeShaney v. Winnebago*, the Supreme Court refused to impose constitutional liability on the state for the injuries inflicted on a boy by his father.¹⁶ The Court did suggest, however, that a child might be entitled to protection where the state has removed the child from his parents and placed the child in foster care.¹⁷ Every appellate court that has considered this issue has determined that foster youth have a substantive due process right to some level of care from the state. Courts have held that this right extends not only to freedom from physical violence but also to "adequate medical care,

protection and supervision.”¹⁸ Additionally, the Seventh Circuit recently held that this right to safety and well-being includes protection from emotional and psychological harm, stating that “the extension [of the due process right] to the case in which the plaintiff’s mental health is seriously impaired by deliberate and unjustified state action is straightforward.”¹⁹

These cases make clear that it is not only affirmative actions such as placing a child in an unsafe placement that can result in liability, but also a failure by a child welfare agency to act and take the appropriate protective action. In *Doe v. New York City Dept. of Soc. Serv.*,²⁰ the caseworker’s failure to investigate led to state liability. In *Yvonne L. v. New Mexico Dept. of Human Services*, the alleged failure to supervise gave rise to the claim. Although the precise scope of the state’s obligations to youth in its care has not been well defined, relevant professional standards suggest that the state’s failure to provide foster youth with some basic preparation for independence before discharging them from its care could also subject it to liability.

To establish a claim of constitutional liability, a youth would need to show (1) that the state’s obligations extend to providing foster youth with proper preparation for independence; (2) that the state’s preparation of foster youth fell below professional standards; (3) that the (former) foster youth suffered harm; and (4) that the harm was caused by the state’s actions or inaction. As already discussed at some length here and elsewhere, evidence of the harm suffered by foster youth who are discharged without adequate preparation is tragically plentiful. Whether a substantive due process claim would be successful rests on a plaintiff’s

ability to establish the other three prongs of the claim: the state’s duty, the state’s unprofessional treatment, and the causal connection between state action and harm.

a. The State’s Duty to Youth Aging Out of Care

When the State by the affirmative exercise of its power “so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs—e.g., food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.”²¹ Appellate courts agree that a youth’s placement in foster care qualifies as a “restraint on an individual’s liberty” and equates a child’s removal from his or her parents with an act “rendering him unable to care for himself.” In removing foster youth from their own homes, the state takes on responsibility for their safety and well-being.

Courts have concluded that the state’s duties extend to its investigation of foster care placements, its provision of medical care, its investigations of allegations of abuse, and its case supervision.²² Particularly relevant for our analysis is the court’s finding in *Thomas S. v. Morrow*, that the state had an obligation to enable a developmentally disabled 18-year-old to “mature and develop through a natural progression to adulthood.”²³ Like Thomas, foster youth should be found to have a right to develop through a natural progression to adulthood. Also useful in describing the duty states owe to foster youth as they grow up is the duty described by the Supreme Court in *Youngberg* of the state to provide at least

that level of training needed to keep those in its care safe and restrictions on their liberty at a minimum.²⁴

b. The Standard of Care

There is currently a split among federal appellate circuits regarding whether to apply the “deliberate indifference” standard set out in *Estelle* or the “professional judgment” standard set out in *Youngberg* to determine if the state actors violated their constitutional duty to foster youth. In our view, the professional judgment standard is the more appropriate standard to apply. That being said, the tests would likely lead to similar results and both would support a finding of state liability in the circumstances we describe here.

i. The Professional Judgment Standard

Why The Professional Judgment Standard Applies

Although *Estelle* and *Youngberg* rely on the same rationale for the constitutional right they establish, the Supreme Court in *Youngberg* did acknowledge a difference between those who are institutionalized by the state and those who are incarcerated. “[P]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.”²⁵ This statement immediately followed the Supreme Court’s adoption of the professional judgment standard. This suggests that the Supreme Court perceives a practical difference in the effect of the standard employed. In fact, the Supreme Court held that it was error for the trial judge to apply a “deliber-

ate indifference” standard at an earlier stage in the proceedings.²⁶

The professional judgment standard should be applied to judge state action in the context of foster youth. The situation in which foster youth find themselves is much more analogous to the circumstances of an institutionalized individual than it is to a prisoner. Like the institutionalized adult in *Youngberg*, foster youth have been taken into the state’s custody through no fault of their own and they are thus “entitled to more considerate treatment” than prisoners. And, as in *Youngberg*, foster youths’ claims would be substantive due process claims, not claims of “cruel and unusual punishment” under the Eighth Amendment.

Most of the courts that have expressly considered the question of which standard applies in the foster care context have adopted the professional judgment standard. In *Yvonne L.*, the Tenth Circuit Court of Appeals concluded that “to the extent there is a difference in the standards, we agree ... that the *Youngberg* standard applies.”²⁷ Also reaching this conclusion was the D.C. Circuit in *LaShawn A. v. Dixon*, which explained:

As the *Youngberg* decision recognizes, the rights of a person in the civil custody of the state are greater than the rights of a person in the state’s criminal custody. The foster children that make up the plaintiff class in this case have done society no wrong and they deserve no punishment. It would be inappropriate to force them to endure constitutional deprivations absent a showing of “deliberate indifference.”²⁸

The Supreme Court of Washington explained the choice to adhere to a professional judgment standard in the following manner:

Foster children need both care and protection. The State owes these children more than benign indifference and must affirmatively take reasonable steps to provide for their care and safety.²⁹

What the Professional Judgment Standard Requires

Under the “professional judgment” standard, “the Constitution only requires that the courts make certain that professional judgment in fact was exercised. It is not appropriate for the courts to specify which of several professionally acceptable choices should have been made.”³⁰ Applying this standard in the foster care context, courts have protected child welfare workers and their supervisors from liability when they exercised a “bona fide professional judgment.”³¹ The Supreme Court does not, however, require blind adherence to state decisions, allowing the court to reject such a decision when it “is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.”³²

It is well recognized among child welfare professionals that a minimum of services, training, and support must be provided to foster youth as they transition out of the foster care system to protect them from serious harm. In this section we consider some of the sources of professional standards that courts could consult and the guidance these standards might provide in

determining the state’s constitutional obligation to these youth.

Child Welfare League of America's Standards

The Child Welfare League of America (CWLA) has promulgated “standards of excellence” to address how child welfare agencies can meet the needs of older foster youth.³³ As stated in the standards “Foster children and youth in particular need supplemental supports and services that enable them to learn life skills, facilitate social and community connections, learn about resources they can access once on their own, and build educational and vocational competency.”³⁴ The CWLA standards contain a number of goals for the areas and types of services that should be provided, and they explain their necessity. The major themes which emerge from the CWLA standards are health and mental health needs, education, employment, housing, and support networks.³⁵ For example, with regard to housing, the standards state, “programs should assist youth leaving care in exploring and securing safe, stable, and affordable living situations. Discharge to homelessness or precarious housing is never appropriate.”³⁶ The standards also list a variety of possible housing options and how to ensure that they will be both safe and supportive for foster youth. Additionally, the standards state that the “program should ensure that each youth has in place a plan for alternative housing should a particular setting not work out.”³⁷ These specific guidelines offer a set of standards against which to measure a child welfare agency’s actions.

It is well recognized among child welfare professionals that a minimum of services, training, and support must be provided to foster youth as they transition out of the foster care system to protect them from serious harm.

Courts have allowed accreditation standards to be admitted into evidence to demonstrate that state action fell below the constitutionally required standard.

Accreditation Standards

The Counsel on Accreditation (COA) has promulgated national standards for a variety of private and public agencies, including those that provide child protective services and foster care. COA accreditation is formally recognized in forty-four states and the District of Columbia. Courts have allowed accreditation standards to be admitted into evidence to demonstrate that state action fell below the constitutionally required standard.³⁸

On the topic of Child Protective Case Management Services, the Council's standard explains agency obligations as follows: "the organization directly provides, refers, contracts, or otherwise arranges for needed therapeutic, educational, and support services including:.... education, employment, and housing services."³⁹ Additionally, the Council on Accreditation contains a number of Foster Care Standards that specifically address the transition to independence. These standards are found in the Foster Care Standards.⁴⁰ Two standards address housing, requiring that there be a housing consultation and requiring that the agency take action to ensure that a living arrangement is in place for youth being discharged from the system.⁴¹ Like the CWLA standards, these standards could be relied upon to argue that the state had failed to meet its obligation to provide the educational and support services required to prepare a youth to live, work, and continue his education as a young adult.

Other States' Initiatives

Courts have found that practices in other states are relevant in setting professional standards for purpose of substantive due process analysis.⁴² The discharge checklists

discussed in Section III.B. are a source of information about state practice that clearly sets out the child welfare agency's obligations. As discussed, these checklists require the agency to assist foster youth in planning for their education, ensure that youth are discharged to suitable housing, provide youth with basic identification documents and case records, and help facilitate foster youths' connection with meaningful and supportive adults. These checklists help to define the minimum that these states consider necessary for their child welfare agencies to provide to youth aging out. As such, they offer a useful tool in assessing whether agency conduct comports with professional judgment.

ii. The Deliberate Indifference Standard

Those federal appellate courts that have applied a deliberate indifference standard in cases alleging that the state failed to meet its constitutional obligations to foster youth typically did not consider the applicability of a professional judgment standard. However, these cases demonstrate that if courts decide to apply the deliberate indifference standard, failure to provide services, training, and support in preparation for discharge can still result in liability.

In *Doe v. New York City Department of Social Services*, the Court of Appeals for the Second Circuit stated that a showing of deliberate indifference is required to find a state actor liable for violating a foster youth's constitutional rights. Notably, this case extended substantive due process analysis to foster care before the Supreme Court's decision in *Youngberg* created and explained the professional judgment standard. The court instead focused its analysis on the proper application of the deliberate

indifference standard, concluding that “repeated acts of negligence could be evidence of indifference.”⁴³

The Eleventh Circuit also applied a standard of deliberate indifference in *Taylor v. Ledbetter*. That court referred to both *Youngberg* and *Estelle* and likened the circumstances of the plaintiffs in those two cases to the situation of a foster child. Its reliance on *Doe*, however, led the court to apply the deliberate indifference standard without acknowledging *Youngberg*'s distinct standard. The Third Circuit noted the potential difference in the standards in *Nicini v. Morra*, but applied only the deliberate indifference test, because neither the plaintiff nor the defendant had suggested that the professional judgment test was more appropriate.⁴⁴

All these cases found constitutional liability despite their application of the deliberate indifference test. Indeed, as some courts have acknowledged, there seems to be little, if any, difference in how the two standards are applied in the foster care context.⁴⁵ While the Supreme Court has established a subjective test for deliberate indifference, requiring actual knowledge of risk, it has also made clear that ignoring an obvious risk demonstrates deliberate indifference.⁴⁶ Thus, courts have found liability, or allowed claims to go forward, under this standard, where, for example, an asthmatic child died because he was given improper medical care in a foster home.⁴⁷

c. Causation

To prevail, plaintiffs must establish a causal connection between the state's actions and the harm suffered. The harm itself need not occur at the hands of the state if the state had significant control over the rel-

evant circumstances and the risk of harm associated with those circumstances was widely recognized. More problematic for the claims of youth aging out of foster care might be establishing a causal connection between agency actions (improper preparation and discharge) and harms (such as homelessness) that do not occur until after the state is no longer involved in the case.

A recent case in the Northern District of Illinois brought by those institutionalized in state mental health facilities hints at the viability of the claims discussed here. In *K.L. v. Edgar*, the plaintiffs alleged that the state was discharging institutionalized patients without ensuring that they had adequate post-discharge care.⁴⁸ While the court held that the plaintiffs failed to state a claim because the state was not required to provide post-discharge care, it premised this conclusion on the fact that the plaintiffs' complaint did “not allege that, by discharging its patients to inadequate facilities or to the streets, the state has created a dangerous situation that otherwise did not exist.” Nor had plaintiffs alleged that “the state, through affirmative act, made its patients more vulnerable to dangerous conditions outside the institutions.”⁴⁹ These are precisely the sort of allegations that foster youth would include in their claim. The claim would be that, in first removing them from their families and then failing to prepare them adequately for independence and discharging them before they are prepared, the state has helped to create the dangerous situation and left the discharged youth more vulnerable to dangerous conditions than they would have been, had the state not intervened.

Additionally, cases demonstrate that an injury suffered when an individual is no longer in care could still create a cause of

The claim would be that, in failing to prepare youth adequately for independence, and in discharging them before they are prepared, the state has helped to create the dangerous situation.

The court concluded that inappropriate community placement, which parallels foster youths' premature and poorly planned discharge from foster care, could amount to a violation of the discharged individual's constitutional rights.

action. In *Thomas S. v. Flaherty*, the Fourth Circuit allowed a class action to go forward even though some plaintiffs were no longer in state care.

Here all members of the class were institutionalized patients on the date of certification. The evidence discloses that in some instances treatment recommended by professionals, which would have satisfied the constitutional requirements explained in *Youngberg*, was either not implemented or implemented improperly resulting in harm to the patients. In other instances the treatment *Youngberg* contemplated was not even recommended. The district court sought to remedy the harm suffered by the class members whether they remained in the institution or had been discharged. The object of the court's order is two-fold: to ameliorate the lingering effects, if any, of improper treatment; and to remedy inappropriate community placements.⁵⁰

In other words, the court concluded that inappropriate community placement, which parallels foster youths' premature and poorly planned discharge from foster care, could amount to a violation of the discharged individual's constitutional rights. Similarly, in *K.L.* the district court hinted that there could be circumstances of discharge that would be actionable.⁵¹

d. Remedies

Establishing a constitutional right to minimal preparation for independence could lead to an increase in the provision of services for foster youth, which would protect many youth from a number of harms. For

those shown to have suffered as a result of the state's failure to meet the constitutional standards, there are two ways to proceed. The first is to sue state officials in their official capacity, in which case the remedy would be limited to prospective relief.⁵² In this type of suit, if the case was brought as a class action with some individuals still in care and others not in care, the court could issue an injunction to force the child welfare agency to change its procedures for those in care. If the plaintiffs only include youth who have been discharged from care, they would be limited to seeking prospective remedial relief of the sort contemplated in *Thomas S. v. Flaherty*.⁵³

The second option available to plaintiffs would be to sue officials in their individual capacity for monetary damages, as authorized by 42 U.S.C. §1983. *Youngberg* itself was such a suit. To succeed in a damages action, plaintiffs would need to demonstrate that their legal rights were clearly established. While foster youth could plausibly claim that their right to case planning, protection, and training is already clearly established,⁵⁴ injunctive claims can help establish these rights more clearly, and pave the way for successful claims for monetary compensation in the future.⁵⁵

In sum, foster youth have a constitutional right to minimally adequate training, services, and support in preparation for independence. This right is grounded in the substantive due process component of the Fourteenth Amendment. A right to protection, services, and medical care is already well established by the lower courts as applied to foster youth and should be extended to cover services and supports from the system to protect youth from predictable harms when they are discharged to independence.

ENDNOTES

¹ 42 U.S.C. § 675(1)(B).

² 42 U.S.C. § 675(1)(D).

³ 45 C.F.R. § 1356.21(b)(2)(i).

⁴ 45 C.F.R. § 1356.21(b)(2)(ii).

⁵ 503 U.S. 347 (1992).

⁶ The court's holding in *Suter* applied specifically to 42 U.S.C. 671(a)(15).

⁷ See, e.g., *Brian A. v. Sundquist*, 149 F. Supp. 2d 941 (M.D. Tenn. 2000) (finding that the provisions of IV-E mandating written case plans and a periodic system of reviews create rights enforceable by individuals in federal court); *Ocean v. Kearney*, 123 F. Supp. 618 (S.D. FL 2000).

⁸ See *Nicini v. Morra*, 212 F.3d 798, 808 (3d Cir. 2000) ("we now hold that when the state places a child in state-regulated foster care, the state has entered into a special relationship with that child which imposes upon it certain affirmative duties."); *Lintz v. Skipski*, 25 F.3d 304, 305 (6th Cir. 1994) ("due process extends the right to be free from the infliction of unnecessary harm to children in state-regulated foster homes") (citation omitted); *Norfleet v. Arkansas Dept. of Human Services*, 989 F.2d 289, 293 (8th Cir. 1993) (holding that "it was clearly established in 1991 that the state had an obligation to provide adequate medical care, protection and supervision"); *Yvonne L. v. New Mexico Dept. of Human Services*, 959 F.2d 883, 893 (10th Cir. 1992) (holding that there is a clearly established right to protection while in foster care which includes a claim for inadequate staffing and supervision at a foster care facility, which resulted in sexual assault of the plaintiff); *K.H. ex rel. Murphy v. Morgan* 914 F.2d 846, 853 (7th Cir. 1990) (holding that the constitutional "right not to be placed with a foster parent who the state's caseworkers and supervisors know or suspect is likely to abuse or neglect the foster child" is clearly established); *Taylor v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987) (holding that a child who was severely injured by foster mother stated a valid claim under §1983 alleging violation of substantive due process); *Doe v. New York City Dept. of Social Servs.*, 649 F.2d 134 (2d. Cir. 1981) (holding government officials could be liable under Section 1983 for failure to investigate alleged sexual abuse of plaintiff by her foster father).

⁹ For articles discussing foster youths' constitutional right to be prepared for independence, see Michele Benedetto, *An Ounce of Prevention: A Foster Youth's Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. OF JUV. L. & POL'Y 381 (2005), and Katherine Swift, *A Child's Right: What Should the State Be Required to Provide to Teenagers Aging Out of Foster Care?*, 15 WM. & MARY BILL RTS. J. 1205 (2006-2007).

¹⁰ 429 U.S. 97, 103 (1976).

¹¹ *Id.* at 104.

¹² 457 U.S. 307 (1982).

¹³ *Id.* at 324.

¹⁴ *Id.* at 319.

¹⁵ *Id.* at 323.

¹⁶ 489 U.S. 189 (1989).

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¹⁷ *Id.* at 201 n. 9.

¹⁸ *Norfleet v. Arkansas Dep't of Human Servs.*, 989 F.2d 289 (8th Cir. 1993) (holding that the substantive due process right was clearly established in 1991 when plaintiff died as a result of inappropriate supervision and medical care while in foster care). See also *Yvonne L. v. New Mexico Dep't of Human Servs.*, 959 F.2d 883 (10th Cir. 1992) (holding that there is a clearly established constitutional right to protection while in foster care which includes a claim for inadequate staffing and supervision at a foster care facility, which resulted in sexual assault of the plaintiff).

¹⁹ *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 853 (7th Cir. 1990) (holding that the constitutional "right not to be placed with a foster parent who the state's caseworkers and supervisors know or suspect is likely to abuse or neglect the foster child" is clearly established).

²⁰ 649 F.2d 134 (2d Cir. 1981).

²¹ *DeShaney*, 489 U.S. at 200.

²² *Nicini* (placement investigation); *Norfleet* (medical care); *Doe* (investigation of abuse); and *Yvonne* (supervision) (cited in note 8).

²³ 781 F.2d 367, 371 (4th Cir. 1986).

²⁴ 457 U.S. at 315.

²⁵ *Id.* at 321-22.

²⁶ *Id.* at 312 n.11 ("Although the District Court did not refer to *Estelle v. Gamble* in charging the jury, it erroneously used the deliberate-indifference standard articulated in that case.").

²⁷ 959 F.2d 883, 894 (10th Cir. 1992) ("[F]oster children, like involuntarily committed patients, are entitled to more considerate treatment and conditions than criminals... these are young children, taken by the state from their parents for reasons that generally are not the fault of the children themselves. The officials who place the children are acting in the place of the parents.") For other cases adopting the professional judgment standard see *Braam v. State of Washington*, 81 P.3d 851 (Wash. 2003); *Kara B. v. Dane County*, 555 N.W.2d 630 (Wis. 1996); *LaShawn A. v. Dixon*, 762 F.Supp. 959 (D.D.C. 1991).

²⁸ *LaShawn A. v. Dixon*, 762 F. Supp. at 996.

²⁹ *Braam v. State of Washington*, 81 P.3d 851 (Wash. 2003).

³⁰ *Youngberg*, 457 U.S. at 321 (quoting and adopting the standard articulated by Chief Judge Seitz of the Third Circuit in his concurring opinion, 644 F.2d 147, 178 (3rd Cir. 1980)).

³¹ *K.H.*, 914 F.2d at 854.

³² *Youngberg*, 457 U.S. at 323.

³³ CWLA, STANDARDS OF EXCELLENCE FOR TRANSITION, INDEPENDENT LIVING, AND SELF-SUFFICIENCY SERVICES (Rev. Ed 2005).

³⁴ *Id.* at 8.

³⁵ *Id.* at 11-13.

³⁶ *Id.* at 137.

³⁷ *Id.* at 166.

³⁸ See *Braam v. State of Washington*, 81 P.3d 851, 861 n.7 (Wash. 2003) (“[E]vidence of standards promulgated by the Counsel [sic] on Accreditation were admitted at trial. DSHS does not challenge these standards on appeal.”)

³⁹ COA Standards, Child Protective Services, CPS 9.01, http://www.coastandards.org/standards.php?navView=private&core_id=944.

⁴⁰ COA Standards, Foster Care, http://www.coastandards.org/standards.php?navView=private&core_id=789.

⁴¹ COA Standards, Foster Care, FC 13.03 & 13.04. (“[T]he organization ensures that an adequate living arrangement is in place for every person transitioning to independence.”).

⁴² *Schall v. Martin*, 467 U.S. 253, 268 (1984).

⁴³ 649 F.2d 134 (2d Cir. 1981) at 142. Similarly the Eighth Circuit in *Norfleet v. Arkansas Dep’t of Human Servs.* appears to apply a standard of deliberate indifference to a claim of medical neglect framed in those terms. 989 F.2d 289, 291 (8th Cir. 1993).

⁴⁴ 212 F.3d 798, 811 (3d Cir. 2000) (noting that it had applied the professional judgment standard in earlier cases including *Shaw v. Strackhouse*, 920 F.2d 1135, 1142-46 (3d Cir. 1990) (claim on behalf of an institutionalized plaintiff), as well as in *Winston v. Children & Youth Servs.*, 948 F.2d 1380, 1390-91 (3d Cir. 1991) (claim by parents alleging child protection agency did not allow enough visitation with child)).

⁴⁵ See, e.g., *Yvonne L. v. New Mexico Dep’t of Human Servs.*, 959 F.2d 883, 894 (“[A]s applied to a foster care setting, we doubt there is much difference in the two standards.”).

⁴⁶ *Farmer v. Brennan*, 511 U.S. 825, 842 (1994) (“A factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.”).

⁴⁷ *Norfleet v. Arkansas Dep’t of Human Servs.*, 989 F.2d 289 (8th Cir. 1993).

⁴⁸ 941 F. Supp. 706 (N.D. Ill. 1996).

⁴⁹ *Id.* at 716.

⁵⁰ 902 F.2d 250, 254 (4th Cir. 1990).

⁵¹ 941 F. Supp. 706 (N.D. Ill 1996).

⁵² The Supreme Court has held that the Eleventh Amendment provides immunity to states for lawsuits, including those by their own citizens. However, in *Edelman v. Jordan*, the Court did allow a remedy of prospective injunctive relief. 415 U.S. 651 (1974).

⁵³ 902 F.2d 250, 254 (4th Cir. 1990). In that case the Fourth Circuit ordered services for individuals who were no longer in care stating that “the object of the Court’s order is twofold: to ameliorate the lingering effects, if any, of improper treatment and to remedy inappropriate community placements … that were not anticipated by professionals in the institutions.” The Court held that this did not violate the prohibition on retrospective damages in *Edelman*. “The court did not order injunctive relief simply to compensate for past violations of a patient’s constitutional rights … The decree addresses the present needs of the patients.” *Id.* at 255.

⁵⁴ A claim need not have been addressed explicitly by a court with precedential value to become clearly established law. In *Benson v. Allphin*, 786 F.2d 268, 275 (7th Cir. 1986), cert. denied 479 U.S. 848, the Seventh Circuit recognized a right based on decisions in other circuits.

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⁵⁵ The Seventh Circuit stated in *K.H.* that for a claim which was not clearly established (the right not to be moved frequently to multiple placements) the appropriate venue to clarify the boundaries of substantive due process was in a suit for injunctive relief. 914 F.2d 846, 853 (“[T]he outer bounds of judicial competence to remedy deep-seated problems of public responsibility are to be explored not in damages suits but in equity actions”).

THE COURT'S ROLE IN SUPPORTING YOUTHS' TRANSITION

IV. The Court's Role in the Transition Process—A Unique Opportunity

It is not enough to create supportive programming for youth aging out of care, or even to establish an entitlement to certain supports.

Effective implementation requires the development of a process that ensures

1. effective oversight and enforcement,
2. coordination among service systems, and
3. youths' central involvement in the planning process.

Juvenile courts represent the single best entity for achieving these three goals together. While there are superb examples of extra-judicial decision making and programs of self advocacy, these programs are most likely to be successful if supported by the juvenile court process. Moreover, the juvenile courts can accomplish certain things that no other entity can accomplish because of their unique stature and legal authority.

This is not to say that simply scheduling court hearings is sufficient to create these benefits for youth aging out of care. Indeed, courts are making considerable efforts to improve their effectiveness in cases involving youth who age out of the system.¹ Our own ongoing interview and court observation research has allowed us to observe some of these efforts, and has helped us to identify the special attributes of courts that can produce the greatest value for older foster youth. At a minimum, the court review process can help ensure that the child welfare agency meets its basic obligations to foster youth as they age out of care. At a

maximum, the court process can nurture a relationship between judge and youth that can dramatically improve the youth's prospect of a successful transition to independence.

In this section we consider some of the aspects of court involvement that are most valuable to foster youth and champion a system that fosters rather than stifles foster youths' emerging independence. In Sections V and VI that follow, we advocate extending these advantages to young adults by extending court jurisdiction and allowing youth who have left the system to re-enter through the courts. In sum, we advocate court hearings that monitor and enforce child welfare agencies' obligations to help prepare youth for adulthood, that engage the youth in direct discussions with the judge, that facilitate intra-systems coordination, and that remain available to youth after they have begun to function as adults. As part of this discussion, we consider sources of the courts' authority, including state law, Title IV-E of the Social Security Act, and the Due Process Clause of the United States Constitution. While ample legal authority exists under current law to support an active role for juvenile court judges in promoting youths' preparation for independence, we suggest some modest amendments to Title IV-E that would improve courts' effectiveness in addressing the special needs of this population.

A. The Court's Unique Authority

1. *The Court's Monitoring and Enforcement Role*

a. The Need for Court Monitoring

Lawmakers have increasingly turned to the courts to ensure that child welfare agencies

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Requiring the courts to review case plans and implementation efforts, while not solving all problems, has clearly improved child welfare agencies' achievement of its legal obligations to children and their families.

meet their obligations to children and their families. In 1980, concerned that many children were languishing in foster care, Congress enacted the Adoption Assistance and Child Welfare Act (AACWA).² The AACWA established Title IV-E, which linked federal foster care funding to a comprehensive system of court monitoring and enforcement. When Congress concluded, 17 years later, that further improvements in state child welfare systems were required, it amended Title IV-E to increase the courts' monitoring role.³ States have enacted complimentary legislation to improve their child welfare systems, and this legislation, too, has assigned increasing oversight responsibility to their judges.⁴ Legislators' growing reliance on the courts at both the state and federal level suggests that judicial oversight is necessary to ensure that children and families receive the benefits to which they are entitled.

While state child welfare agencies bear primary responsibility for delivering services to family members and for taking the lead in long-term planning, the press of day-to-day work under tight budgets threatens to undermine the quality of case planning and delay or prevent the provision of needed supports. Requiring the courts to review case plans and implementation efforts, while not solving all problems, has clearly improved child welfare agencies' achievement of its legal obligations to children and their families.

Court monitoring helps to ensure effective service delivery in a number of ways. Most basically, it creates and enforces deadlines for planning and implementation. As one judge we interviewed explained, requiring agency plans and progress reports to be reviewed by the court at regular intervals is like giving overworked college students

deadlines for their term papers. Unless and until a meaningful deadline with consequences exists, even the best-intentioned workers will often fail to meet their obligations.

What occurs at those regular reviews is also, of course, important. Under federal law, which is often mirrored or elaborated in state law, judges are required to assess the short and long-term goals in each case and the progress made toward those goals.⁵ While a host of individuals have an interest in effective planning and service delivery for families, judges have a number of advantages as monitors and enforcers of the child welfare agency's obligations. First, judges stand apart from the agency, the family, and others involved in the case, bringing an important objectivity to the reviewing process. Second, judges are the only individuals with authority to order people to act. Judges can compel a child welfare agency to provide a certain service or to change the long-term plan in a case. They can also compel family members to take certain steps as a condition of achieving desired ends. Third, and related to this, judges also have the authority to compel individuals to appear before them. This allows for a more comprehensive consideration of the issues at stake and, in the case of older foster youth, creates an opportunity to develop the special youth-court relationship discussed in Section IV.A.3. below. Fourth, courts have an established process of fact finding and record keeping that helps to hold people (government actors, private agencies, and families) accountable and ensures a more coherent planning process over time.

b. Applying IV-E's Monitoring Requirements to Cases of Older Foster Youth

Courts can and should employ these advantages to help foster youth make a successful transition to adulthood. The court review processes set out in Title IV-E apply equally to youth aging out of care, and courts have the same obligation in these cases to assess the quality of the plans developed for these youth and the progress made to implement those plans. Federal law expressly requires that case plans for foster youth 16 and older include, “where appropriate . . . a written description of the programs and services which will help such child prepare for the transition from foster care to independent living,”⁶ and requires permanency hearings in these cases to “determine . . . the services needed to assist the child to make the transition from foster care to independence.”⁷ Moreover, as discussed in Sections III.A. and III.B., some states have enacted legislation or court rules to improve the court’s monitoring of these cases.⁸ In sum, courts committed to assisting youth who will age out of care have ample authority under current law to monitor and enforce child welfare agencies’ obligation to help prepare youth for their independence.

Despite its strengths, Title IV-E was not primarily designed to address the special circumstances of youth aging out of care, and to some extent these youths’ circumstances are awkwardly captured in the law. Modest amendments to Title IV-E and its implementing regulations would enhance courts’ effectiveness in monitoring the supports provided to youth aging out of care. In this section we discuss legislative changes that would bear most directly on that monitoring function. In Section IV.A.3., below, we discuss an amendment

that would improve youths’ participation in the hearing process. And in Section V, we endorse a proposed amendment to extend the reach of IV-E to age 21.

The focus of Title IV-E, and of the judicial review it establishes, is on children’s safety and permanency. As these terms are defined, they do not capture the full range of issues confronting foster youth who will age out of the system. Most significantly, the permanency planning that is at the core of the court’s reviewing authority focuses on the placement of children in permanent homes. By definition, youth aging out of the system will not achieve this form of permanency. The mismatch between the primary aims of the legislation and the life-circumstances of these foster youth fails to maximize the value of the court review process for these youths. The law should be amended to more clearly identify and regulate the permanency planning process for youth aging out of care.

Title IV-E provides for permanency planning for youth aging out of care primarily in the negative: It forbids establishment of “another planned permanent living arrangement” or “APPLA” as the permanency plan absent a court finding that there is a “compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian.”⁹ We do not quarrel with the law’s preference for children’s placement in permanent families. We do, however, object to the law’s failure to describe in positive terms the permanency plan for youth who will not achieve permanent family placements. The plan for these youth should not be “another placement;” it should be successful independence. While

Courts committed to assisting youth who will age out of care have ample authority under current law to monitor and enforce child welfare agencies’ obligation to help prepare youth for their independence.

Statutory language limiting case planning for independence to youth 16 and older “where appropriate,” improperly suggests that there are any older foster youth for whom preparation for independence would be inappropriate.

this may sound like quibbling over words, the way a permanency plan is identified is important, as federal regulations require courts to assess whether “reasonable efforts have been made to finalize the permanency plan that is in effect.”¹⁰ A requirement that the agency make reasonable efforts to finalize a plan to place a youth in “another planned permanent living arrangement,” or even to give a youth independence, is far weaker than one that requires reasonable efforts to finalize a plan for a successful transition to independence. Accordingly, making this modest change in Title IV-E would enhance the court’s authority to monitor and enforce the agencies’ obligations to its oldest foster youth.

Court monitoring would be made more effective, still, if the law and regulations were modified to describe the agencies’ obligations in somewhat different terms. The concept of “finalizing” a plan of independence is somewhat incoherent and certainly out of step with contemporary understandings of how our independence emerges. To make clear that the questions the court should be asking to assess youths’ preparation for independence are materially different, states should be required to make, and courts required to assess whether they have made, reasonable efforts to “provide the supports required to prepare the youth for successful adult functioning.”

This change in language would have the additional benefit of making it applicable to all adolescents in foster care, not simply those youth expected to age out of the system. Related to this, Title IV-E’s language governing case planning for independence should be amended to apply to all youth, 16 or older (if not younger). As noted in III.C., the language limiting case planning for independence to youth 16 and older

“where appropriate,” improperly suggests that there are any older foster youth for whom programs and services in preparation for independence would be inappropriate.

These three modest changes to Title IV-E would bring the court role in reviewing these cases more in line with its reviewing function in cases with other permanency plans. It would help ensure that, for these youth, the court was asking the right questions to determine whether the plan in place was a good one and one that was being implemented effectively.

c. Ensuring that Courts Fulfill their Monitoring Responsibilities

Courts around the country have taken steps to ensure that they are effectively monitoring child welfare agency action and enforcing agency obligations under Title IV-E and related state legislation. Where advocates are concerned, however, that the courts are not exercising their full authority to ensure that older foster youth are being adequately supported, three legal mechanisms to press for greater court involvement are potentially available. First, are reasonable efforts arguments, arguments made in juvenile court to spur action by the child welfare agency in a particular case. As just discussed, the state has an obligation to make reasonable efforts to finalize foster youths’ permanency plan, and courts have a regulatory obligation to assess agency efforts for reasonableness. Filing a reasonable efforts challenge calls on the court to fulfill its monitoring and enforcement role. Specific evidence and arguments supporting a claim that the agency has failed to meet its obligations can force a court to attend more closely to issues that might otherwise get less or no attention.

Advocates can also press for state court monitoring and enforcement through federal litigation. As discussed in Section III.C.1., the ability of a foster youth to enforce the state's obligations under Title IV-E in federal court is uncertain, and various federal courts have ruled differently on the question. As with the state's obligation to plan and provide services discussed in III.C.1., the state's obligation to provide an effective "case review system," has been found to create enforceable rights in some federal courts.¹¹ These determinations can serve as a model for those who seek to press for greater juvenile court involvement through federal litigation. While there is no question that Title IV-E imposes binding obligations on the state to provide this review system, a private right of action would give foster youth and their advocates an additional tool to enforce these obligations.

Finally, foster youth's right to a meaningful process of court oversight is protected by the Due Process Clause of the United States Constitution. The Due Process Clause forbids the state from depriving anyone, including children, of their life, liberty, or property without due process. Where a state provides for assistance to foster youth and specifies the conditions under which assistance will be provided, the Constitution requires the state to afford some form of hearing to ensure the fairness of any decisions made that affect a youth's access to those services. State discharge checklists are an example of the sort of provisions that establish a youth's property interest in certain supports. Title IV-E's case planning and implementation requirements have also been found to create such an interest, although this question is closely linked to the question whether provisions of IV-E create a private right of action, and therefore the fate of due process claims resting on these

Title IV-E requirements are equally uncertain.

Where a protected liberty or property interest is implicated, an advocate can argue that court monitoring and enforcement of the sort contemplated in Title IV-E with its minimum of costly formalities and its focus on the state's compliance with its core obligation to plan for and meet foster youth's needs, is well-designed to achieve the fundamental fairness the Due Process Clause is intended to safeguard.¹² In Section IV.A.3. we will argue that due process also requires that foster youth play a central role in these proceedings.

2. The Courts' Role as Facilitator of Multi-Systems Coordination

As youth prepare to transition to adulthood, their potential sources of support are increasingly located in agencies outside the child welfare system. Ensuring that all the relevant entities are working together and bearing their share of responsibility for a young person presents a serious coordination challenge. Courts have proven uniquely able to engage other systems on behalf of older foster youth, whether expressly authorized to do so or through the creative use of more conventional court tools.

For many youth, a successful transition will require the involvement of multiple systems. For some, the involvement of the agency overseeing mental health programs will be a necessary piece of securing stable housing. For others, the engagement of the school system will be essential to ensuring that needed special education services, which can continue to age 21, are provided even after the youth is discharged from the child welfare system. While many entities

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Some courts have express statutory authority over other government agencies.

are assigned some responsibility for youth aging out of care, they are rarely given any authority to share funding or compel one another's participation. Absent a mechanism of coordination, many well-intentioned agencies may fail to provide effective planning and support to youth aging out of care.

Courts, as a powerful arm of the government that stands apart from the systems charged with serving youth directly, are in a unique position to facilitate inter-systems coordination. Through our observation, interview, and case research, we learned of three different legal mechanisms relied upon by courts to accomplish this. First, at least two states expressly authorize juvenile courts to exercise authority over any government agency whose duties include providing services to foster youth. Second, many courts have exercised their authority over child welfare agencies to compel those agencies to pay for services that fall outside the agencies' direct responsibility. Finally, judges have exercised their subpoena power to call other agency representatives into court, which has the effect of bringing those agencies into the planning process and focusing their attention on a child's needs.

a. Courts with Statutory Authority Over Other Government Agencies

The scope of the court's statutory authority over any state agency is determined by a combination of the court's own authorizing legislation and the legislation defining the duties of that agency. In California and Virginia, the statutes that define the juvenile court's power expressly grant the court authority over state agencies other than their child welfare agencies to order any action that falls within those agencies' duties. The California statute provides:

When a child is adjudged a dependent child of the court . . . the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies or private service providers, or both, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency or private service provider that the court determines has failed to meet a legal obligation to provide services to the child.¹³

The language permitting the court to make "any and all reasonable orders" confers broad statutory power, especially when paired with the court's ability to make a state agency party to a suit in order to compel the agency to meet its statutory duty, as defined elsewhere in the Code.

As an example, consider the court's authority to order certain educational services. California law provides that any county in California "may institute a program of [educational] advocates for pupils in foster care placement."¹⁴ The advocates' duties include:

- (a) Facilitating the school enrollment of pupils in foster care. (b) Locating a pupil's transcripts, immunization and school health records, individual education plans, and having these documents sent to the school to which the child is applying for enrollment, and to the department so that the information can be included in the child's

health and education passport. (c) Educating foster parents regarding how to enroll the pupil in school and what educational services are available.¹⁵

In a county with an advocate program in place, section 362(a) of the California Code would empower a juvenile court judge to direct the educational advocate to provide these services to a foster youth in need. Should the advocate fail, the court would have the power to join the advocate in the juvenile court proceedings.

Like California, Virginia is a state in which the foster care statute grants the juvenile court judge broad authority. The Virginia statute gives the juvenile court the power to "order, after notice and opportunity to be heard, any state, county or municipal officer or employee or any governmental agency or other governmental institution to render . . . such information, assistance, services and cooperation as may be provided for by state or federal law or an ordinance of any city, county or town."¹⁶ And like California's, Virginia's statute is explicit in providing the court with broad authority to compel a range of agencies to help meet a foster youth's needs:

The court is authorized to cooperate with and make use of the services of all public or private societies or organizations which seek to protect or aid children or families, in order that the court may be assisted in giving the children and families within its jurisdiction such care, protection and assistance as will best enhance their welfare.¹⁷

b. Courts' Use of Their Authority to Compel Child Welfare Agency Spending

Most statutes do not have language like California's or Virginia's expressly addressing the scope of the juvenile court's authority over entities other than the child welfare agency. In some states, courts have involved other entities indirectly, by compelling the child welfare agency to pay for needed services for a child.

In *In re Tameka M.*, the Supreme Court of Pennsylvania upheld a juvenile court's order directing the Children and Youth Services (CYS) agency to pay for Tameka M., a three-year old girl with severe emotional and behavioral problems, to attend a Montessori school selected by Tameka's foster parents.¹⁸ The order followed the court's determination that Tameka's condition had deteriorated in her old school, but improved when she began attending the Montessori school at the foster parent's expense. CYS disputed the order because such school expenditures were not within its budget. The Court based its holding on a prior Superior Court ruling that the juvenile court had "power under § 6351 of the [Pennsylvania] Juvenile Act to exercise continuing independent and original supervision of a dependent child and to order a public agency which has been given supervision of the child to pay for a treatment plan which the court found to be in the child's best interest."¹⁹ It concluded that its authorizing legislation gave the court the power to "vindicate the fundamental statutory right of a dependent child to her own protection and physical, mental and moral welfare."²⁰ So fundamental was Tameka's right to have the court make this order that the Supreme Court concluded: "[t]o order Tameka M. to attend a school where

Some courts have used their authority over the child welfare agency to compel spending that facilitates multi-systems involvement.

Some courts have used their subpoena power to prompt cooperation from other entities.

she would not receive proper treatment would be to deprive her of due process and of her fundamental rights under the laws of Pennsylvania.”²¹

Other states have also recognized juvenile court judges’ power to compel a child welfare agency to pay for services outside its own programming. In Illinois, an appellate court upheld a juvenile court’s authority, under the Illinois Juvenile Court Act,²² to order the Department of Child and Family Services (DCFS) to pay for “in-patient drug treatment services for mothers whose children were removed from their custody due to the mothers’ drug related neglect of them.”²³ The Appellate Court emphasized that the juvenile court orders “were entered only after finding that DCFS had not made reasonable efforts to reunite the family pursuant to the Juvenile Court Act.”²⁴ Thus, as in *Tameka M., Lawrence M.* tied the juvenile court’s authority to compel payment for a specific service to its duty to ensure that basic child welfare goals were met.

Notably, the *Lawrence M.* opinion also contains language suggesting the juvenile court could have authority to order agencies other than the child welfare agency to provide services directly. Protesting that DCFS was not the agency responsible for paying for the court-ordered drug treatment, DCFS argued that the court should compel the Department of Alcoholism and Substance Abuse (DASA) to cover the cost of the services. Ultimately, the court declined to do so; but significantly, the court did not reach this conclusion based on a determination that it lacked the power to compel action from DASA. Rather, the court noted that because DCFS failed to bring DASA before the court, the court would not issue such an order.

c. Courts’ Use of Their Subpoena Power

One of the unique features of the court’s authority is its ability to compel people to appear before it. Some judges have employed this subpoena power to get agencies other than the child welfare agency involved to help youth transition to adult independence. Clearly, there are limits to the appropriate use of this power. The subpoena must be designed to secure information that can help the court oversee those over whom it has more direct authority, typically the child welfare agency. But this information seeking by the court often has the added benefit of focusing the attention of the subpoenaed individual and the entity she represents on the problem and motivating them to fix it.

A former judge, whose caseload consisted exclusively of youth aging out of care, offered an example of how the court’s use of its subpoena power can stimulate inter-systems coordination. She recounted the story of a foster youth whose grades plummeted when he was moved to a part of the city where schools prohibited students from bringing home their school books. When she was unable to address the problems created by this policy directly through the child welfare worker, she offered to subpoena the superintendent of schools to inquire further about the policy and the potential to create exceptions. In this case, the actual exercise of her subpoena power proved unnecessary, as the prospect of its exercise was sufficient to inspire the school system to change its policy.

While juvenile court judges’ use of their subpoena power in this way has rarely been reviewed by appellate courts, there is a Florida appellate decision that offers some

support for this approach. *In the Interest of W.C.J. et al.*²⁵ reviewed two juvenile court orders compelling the appearance of the Department of Health and Rehabilitative Services ("Department") Secretary "to explain why the Department did not have sufficient funding to place [foster children] in psychiatric/therapeutic residential placement as recommended by the Case Review Committee." The juvenile court judges had ordered six foster children to be placed in therapeutic residential placements, but the Department had refused to do so, citing its lack of funds as legal justification for its refusal. Although the Court of Appeals ultimately denied the juvenile court judges' authority to subpoena the Department Secretary in these particular cases, it recognized the validity of the approach under different circumstances. The Court held that because "the record has already established the relevant information, it was an abuse of the trial court's discretion to demand that [the] Secretary appear before it under pain of contempt to provide information that is largely within the realm of the secretary's discretionary authority."²⁶ But the court went on to say that a juvenile court "certainly" was not precluded from "calling before it a member of the executive branch" to obtain information "relevant to the issues before it."²⁷

In summary, any court with subpoena power and the general authority to oversee a foster child's well being can exercise significant influence over other agencies. Many judges, however, will be reluctant to take this approach absent express statutory authority. To encourage judges to play the important role of inter-agency coordinator and help foster youth meet their most basic needs as they transition to independence, states should define their juvenile courts' jurisdiction to include the authority to

order other government agencies to meet their legal duties to these youth.

3. The Court's Role in Involving Youth in the Decision Making Process

a. The Value of Youth Participation in Court

No effective plan for independence can be developed or implemented for a youth without the youth's extensive involvement. Youth participation in the planning process serves two important values: First, and most obviously, it helps ensure that the youth's plan accurately captures the needs and wishes of the youth. Less obvious is the developmental value youth can derive from the process of participation itself. As discussed in Section II, providing youth with opportunities to take on decision-making responsibility and gain experience with self advocacy will help them develop the skills necessary to function independently in adulthood. Because of the court's special role in the child welfare system, judges are in a particularly good position to foster both of these values when they facilitate youths' participation in their hearings.

The importance of youth's participation in the planning process may seem too obvious to mention, but the experience of many former foster youth suggests that their participation in transition planning was minimal. While, in the worst cases, child welfare agencies may fail to even solicit their views, in most cases the failure is more subtle. Youth are given a chance to express their views and even influence some choices, but they are clearly not in control of the planning process and their experience is largely passive. Youth cannot be expected to embrace the plans developed, let alone to take responsibility for those plans

Youth participation serves two important values: First, it helps ensure that the youth's plan accurately captures the needs and wishes of the youth. Less obvious is the developmental value youth can derive from the process of participation itself.

In the supportive environment of the courtroom, youth can gain experience articulating their needs, assessing and responding to agency concerns, and negotiating compromises.

and their implementation, unless they perceive themselves as primary actors in the planning process.

Courts, for a number of reasons, can play a special role in facilitating a youth's central involvement in planning for that youth's future. First, a judge can require a youth to be present, or compel a child welfare agency to help a youth get to court. Second, a judge can amplify the youth's voice in the planning process by structuring hearings to give prominent attention to the youth's views and questions. Attorneys can further enhance the effectiveness of a youth's

participation in discussions, but, as we will discuss later in this section, attorneys must take care not to undermine the youth's opportunity to be actively involved. Third, a judge can compel actions in support of a youth's plan that a child welfare agency might not take on its own initiative, whether because the agency is overwhelmed with work, encumbered by its own bureaucratic limitations, skeptical of the youth's plan, or simply not accustomed to taking the desired action.

Facilitating the youth's active participation during his court hearings also provides an

What a Judge Can Do

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invaluable opportunity for the young person to practice the skills that he will need when he becomes responsible for himself. In the supportive environment of the courtroom, a youth can gain experience articulating his needs, assessing and responding to agency concerns, and negotiating compromises. Although these skills can be taught through role playing in the classroom, practicing these skills in real life will be far more meaningful, and thus effective.

Participating in court hearings is also likely to have special developmental value for youth because judges are broadly recognized as important government actors with significant power. When a judge engages a youth in serious, ongoing, discussions

about the youth's plans for the future, the youth is more likely to perceive the importance of his participation and the respect he is being shown than in other planning contexts. And when a judge invokes his judicial power to help a youth pursue his ambitions, the effect on the youth's developing sense of self can be profound.

In our work on this project, we heard several former foster youth single out a conversation with a judge as a formative moment in their development of self-confidence and a commitment to a successful future. The point of these stories was not that these judges became central figures in their lives; they did not. Rather, the importance of the event was derived from the stature of the judge, and the genuine interest the

judge showed in the youths' aspirations for the future. Courts can play an important role in these youths' lives, within the considerable limitations of their relationships of only brief and occasional contact, when they transform a boilerplate review hearing into a meaningful conversation whose central participants are the judge and the youth.²⁸

In recent years, professional organizations of lawyers, judges, and child welfare specialists have called repeatedly for the improved involvement of foster youth in their court proceedings. The American Bar Association's Commission on Youth at Risk, for example, has recently issued a lengthy list of recommendations in the face of the finding that “[m]ore must be done to promote the direct and meaningful participation of youth in court proceedings that affect their lives.²⁹ As another example, the Pew Commission on Children in Foster Care called on courts to organize the process of reviews for child welfare cases to ensure that foster children could participate in a meaningful way. Recognizing that in many cases youth are not even present for their hearings, numerous professional groups have identified increased court attendance as a central aim in their reform efforts.³⁰

b. Legal Authority for Youths' Court Participation

While there is broad consensus among legal professionals and youth advocates that young people should participate extensively in the court decision-making process, actual practice lags far behind. Through discussions with former foster youth and court personnel, review of survey data,³¹ and court observations, we have learned that youth frequently do not come to court at all. On at least two occasions, former fos-

ter youth speaking to us about their experience in the system expressed surprise when they learned that there had been ongoing court reviews in their cases.

When they do attend, youth often sit passively, offered little or no opportunity to participate meaningfully. And if they are invited to speak, the invitation often seems pro forma. Well meaning judges turn to the foster youth at the end of the hearing, and ask “Is there anything you'd like to add?” or “Do you understand what we're asking you to do?” For some young people, this invitation is enough to get them talking, but their words seem somewhat beside the point, as the hearing is essentially concluding. For most, whether because they are unaccustomed to participation, or because they sense the unimportance of their contribution, or both, they decline the judge's invitation and sit silent. In Section IV.B. that follows, we describe some model courts that have succeeded in involving youth extensively in the court's decision-making process. In this section, we consider possible legal arguments that attorneys can make to press for greater youth participation in their hearings.

i. Title IV-E and Federal Regulations

As discussed earlier in this section and in Section III, Title IV-E of the Social Security Act³² requires states to provide for certain processes of review in every child welfare case to determine whether the state is meeting its obligations to those children and their families. At least two aspects of these federal procedural requirements, one general and one specific, can be invoked by lawyers for foster youth to press for their clients' meaningful participation in court. The more general provisions are those that require judges to assess the state's efforts

Courts can play an important role in these youths' lives when they transform a boilerplate review hearing into a meaningful conversation whose central participants are the judge and the youth.

Lawyers can invoke the prospect of a “no reasonable efforts” finding to press for the youth’s presence and meaningful participation in court.

to achieve the intended permanency plan for each child in care. The more specific requirement, just added to Title IV-E in 2006, requires that permanency hearings assure that youth are consulted regarding the planning process.

In all cases where children have been in foster care for 12 months or more, courts are required to assess annually whether the state has made “reasonable efforts to finalize the permanency plan that is in effect” for each child including the plan of “another planned permanent living arrangement,” which is the permanency plan for foster youth who are expected to age out of the system.³³ In addition, for youth aging out of care, the state is required to include, “for a child age 16 or over, a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.”³⁴ Courts cannot effectively review the quality of plans made or the effectiveness of services provided to older foster youth without hearing from those youth. Thus, lawyers for youth should ask courts to decline to find “reasonable efforts to finalize the permanency plan” whenever their clients are inadequately involved in the planning and hearing process. More productively, lawyers can invoke the prospect of a “no reasonable efforts” finding to press for the youth’s presence and meaningful participation in court.

It should be noted that the required reasonable efforts assessment can be invoked to improve the practice of courts as well as state agencies. While the youth’s attendance at court will frequently hinge on the decisions made and steps taken by the child welfare agency, the court’s own policies and practices can also affect a youth’s ability to attend. Lawyers could argue, for example,

that a judge should schedule hearings involving adolescents for after-school hours in order to ensure an effective review of the agency’s planning and service delivery process.

A recent amendment to Title IV-E offers additional support for the lawyer pressing for his young client’s greater involvement in the court process. The legislative provisions governing the permanency review process now include a requirement that:

procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.³⁵

In the case of the oldest adolescents, particularly those whose permanency plan is “another planned permanent living arrangement,” or independent living, “age-appropriate consultation” should include providing the young person with an opportunity to speak directly to the judge about his views and concerns about agency action on his behalf.

Unfortunately, the Administration for Children and Families (ACF) of the U.S. Department of Health and Human Services currently states in its Child Welfare Policy Manual that:

Any action that permits the court to obtain the views of the child in the context of the permanency hearing

could meet the requirement. ... We do not interpret the term “consult” to require a court representative to pose a literal question to a child or require the physical presence of the child at a permanency hearing. However, the child’s views on the child’s permanency or transition plan must be obtained by the court for consideration during the hearing. For example, a report to the court in preparation for a permanency hearing that clearly identifies the child’s views ... could meet the requirement. Also, an attorney, caseworker, or guardian ad litem who verbally reports the child’s views to the court could also meet the requirement.³⁶

However appropriate this policy may be for younger children, it cannot be appropriate for adolescents expected to take responsibility for themselves in a few years or even months. Views that have been “obtained” by a caseworker or lawyer in a conversation apart from the court process, and then simply reported to the court, cannot be tested by the court for their completeness, accuracy, and currency. Even if the reported views reasonably capture those of the youth, there will be no opportunity to flesh out those views, or ascertain new views, as the court discussion evolves. As important, a youth whose views have been “obtained” and “reported,” will not experience that (likely unseen) repetition of his views as a form of participation, and thus he will gain little or none of the developmental value that can come with it. To make clear that the ACF’s interpretation is inappropriate, particularly for older youth, Title IV-E should be amended to establish a requirement of youth attendance at court that, for older youth, can only be rebutted

by a court’s express finding that the youth, having been well informed of the issues to be considered at the hearing, chose not to attend.

Even as written, lawyers can point to the “age-appropriate consultation” requirement to press for more client involvement in the planning process, generally, and the court hearings, particularly. Moreover, it is possible that a claim asserting a violation of this section could be maintained in federal court. As noted in Section III.C.1., one of Title IV-E’s reasonable efforts requirements was found not to create a private right of action,³⁷ but subsequent federal legislation suggests that other provisions of Title IV-E, including Section 675’s age-appropriate consultation requirement, may be enforceable through litigation.³⁸ The language used in the federal legislation is not entirely clear, however, and, as a result, has produced inconsistent rulings in federal courts. Some courts have identified broad rights of private enforcement, while others have declined to do so.³⁹

Even in jurisdictions taking a narrower view, it could be argued that Section 675’s consultation requirement qualifies for private enforcement. To determine whether a federal law gives individuals a right to sue to enforce the law in federal court, courts have asked (1) was the law intended to benefit the plaintiffs? (2) does the law impose a binding obligation on the state? and (3) is the law specific enough to be enforced competently by judges.⁴⁰ The requirement that courts consult with youth in conducting permanency review hearings is one of the provisions of Title IV-E that can most readily satisfy all three prongs of the test. There is no doubt that this provision, like many others, (1) was intended to benefit foster youth, or that the require-

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Lawyers can also press for youths' greater participation in their hearings by bringing due process claims.

ment (2) imposes a binding obligation on the states, as a condition of their receipt of federal money. Moreover, the consultation requirement is (3) fairly specific, and to the extent it leaves what is “age appropriate” undefined, it defers to judges to make that assessment. Thus, any vagueness in the language can be expected to be interpreted by judges without “straining their competence” or interfering with state agencies’ exercise of their discretion—the twin concerns behind this prong of the test.⁴¹

ii. Due Process

Lawyers can also press for youths’ greater participation in their hearings by bringing due process claims. Such claims, discussed briefly in IV.A.1., require plaintiffs to establish, first, that they have a protected liberty or property interest at stake in the review hearings, and, second, that whatever process they are challenging is inadequate to protect those interests. In Section IV.A.1., we briefly describe the source of the youth’s protected interests and consider the basic protections afforded those interests where the reviewing court takes seriously its monitoring and enforcement obligations. Here, we argue that any such monitoring and enforcement, while valuable, will fall short of due process requirements if the youth is not an active part of the hearing process. This is so because the Due Process Clause protects the two interests associated with youth involvement discussed at the beginning of this section—accuracy in decision making and the validation of the youth as an important player in the decision-making process.

The connection between participation and accuracy of decision making is well recognized in the Supreme Court’s due process rulings. In *Matthews v. Eldridge*, the

Court set out a balancing test that ties the strength of a due process claim to the accuracy-enhancing effect of proposed procedural alternatives.⁴² While the *Matthews* test also takes account of the cost of the proposed procedure and the importance of the interests at stake, the central due process value recognized in *Matthews* is the value of accuracy. In applying *Matthews*, the Court repeatedly reflects the conclusion that securing an individual’s greater participation—through adequate notice, presence at the hearing, representation by competent counsel, and the like—will serve to enhance the accuracy of a court’s decision making.

While less clearly articulated, the value individuals derive from the experience of meaningful participation has also been recognized by both courts and commentators as a value protected by the Due Process Clause.⁴³ While the significance of this experience is generally recognized in the context of adult due process claims, the experience can be expected to have particular significance for young people, who are just developing their sense of themselves and of their relationship to their government and their society. In this sense, the Due Process Clause can be understood to protect youths’ developmental interest, discussed in Section III.A., in gaining experience exercising decision-making control and being recognized as competent decision makers by systems of authority. Foster youth have a strong interest in participation in judicial hearings that will have a profound effect on the course of their lives, and participation in such hearings will increase their sense of both system fairness and self efficacy.

Courts frequently repeat that “[t]he fundamental requisite of due process of law is the opportunity to be heard.”⁴⁴ Providing

young people, whose entire futures are under consideration at their review hearings, with an opportunity to participate in those hearings is essential, both to ensure that the plan being developed is a good one and to facilitate a youth's assumption of control over that future.

ENDNOTES

¹ See, e.g., the Promoting Safe and Stable Families Amendments of 2001, P.L. 107-133 (providing specifically for certain state court improvements); National Council of Juvenile and Family Court Judges Model Courts Program, <http://www.ncjfcj.org/content/view/81/145/> (describing programs in designated jurisdictions designed to improve court practice and serve as models for other juvenile courts on a variety of issues, including those affecting older youth).

² Adoption Assistance and Child Welfare Act, P.L. 96-272 (1980) (codified as amended, 42 U.S.C. Sec. 670 et seq.).

³ Adoption and Safe Families Act of 1997 (ASFA) (P.L. 105-89) (codified as amended in various sections of 42 U.S.C.).

⁴ See, e.g., Katherine A. Hort, *Is Twenty-Two Months Beyond the Best Interest of the Child? ASFA's Guidelines for the Termination of Parental Rights*, 28 FORDHAM URB. L.J. 1879, n. 27 (2001) (documenting the range of state legislation enacted in the wake of ASFA).

⁵ 42 U.S.C. § 675(5) (B) & (C).

⁶ 42 U.S.C. § 675(1)(D).

⁷ 42 U.S.C. § 675(5)(C)(i).

⁸ See discussion of checklists designed to be assessed and enforced through the court process in Sections III.A. and III.B.

⁹ 42 U.S.C. § 675(5)(C)(i).

¹⁰ 45 C.F.R. § 1356.21(b)(2)(i); see also 42 U.S.C. § 671(a)(15)(C).

¹¹ See, e.g., *Brian A. v. Sundquist*, 149 F. Supp. 2d 941 (M.D. Tenn. 2000) (holding that provisions of the AACWA requiring a written case plan, periodic review system, and establishing of a State authority responsible for maintaining standards for foster family homes and child care institutions created enforceable rights under 42 U.S.C. § 1983).

¹² Cf. Redish and Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 YALE L.J. 455 (1987) (concluding generally that a core element of due process is decision making by an independent adjudicator).

¹³ CAL. WELF. & INST. CODE § 362(a).

¹⁴ CAL. WELF. & INST. CODE § 400 & 401.

¹⁵ CAL. WELF. & INST. CODE § 401.

¹⁶ VA. CODE ANN. § 16.1-278A.

¹⁷ VA. CODE ANN. § 16.1-278B.

¹⁸ 580 A.2d 750 (Pa. 1990).

¹⁹ *Tameka M.*, 580 A.2d 750 at 751-52 (citing *In re Lowry*, 484 A.2d 383 (Pa. Super. Ct. 1984)). Section 6341 of the Pennsylvania Juvenile Act provides: "(a) General rule. – If a child is found to be a dependent child the court may make any of the following orders of disposition best suited to the protection and physical, mental, and moral welfare of the child . . ." 42 PA. C.S.A § 6351(a).

²⁰ 580 A.2d at 753-54 (internal quotations omitted).

²¹ *Id.* at 755.

²² The Illinois Juvenile Court Act provides:

[If a] minor is ordered placed in a shelter care facility of the Department of Children and Family Services or a licensed child welfare agency . . . the court may enter such other orders related to the temporary custody as it deems fit and proper, including the provision of services to the minor or his family to ameliorate the causes contributing to the finding of probable cause or to the finding of the existence of immediate and urgent necessity.

705 ILL. COMP. STAT. 405/2-10(2) (West 1992).

²³ *In the Interest of Lawrence M., et al.*, 645 N.E.2d 1069 (Ill. App. Ct. 1995).

²⁴ *Id.*

²⁵ 573 So. 2d 363, 365 (Fl. Dist. Ct. App. 1991).

²⁶ *Id.* at 371.

²⁷ *Id.*

²⁸ Psychologists have long recognized the value individuals derive from participating in the court process. See Gary Melton, *A New Juvenile Court*, 68 NEB. L. REV. 146, 168 & n. 110 (1989) (summarizing the research on individual's perception of procedural justice and noting that "process control," defined as "the opportunity for each disputant to have a say and to present one's case as one sees fit," and "ethical appropriateness," defined as "treating the parties with respect for their personal dignity," are considered the most important elements of procedural justice.) Gary Melton has noted that the values people derive from experiencing procedural justice can be expected to have considerable developmental importance for children. While much of the psychological research concerning procedural justice has focused on the delinquency and criminal justice systems, the same elements—meaningful participation and respectful treatment—can be expected to have some of the same developmental value for foster youth, whose stakes in the court process are also high.

²⁹ 45 FAM. CT. REV. No. 3 (2007).

³⁰ See Andrea Khoury, *Seen and Heard: Involving Children in Dependency Court*, 25 CHILD LAW PRACTICE, 145 (2006) (listing several initiatives of professional organizations calling for children's court attendance in child welfare cases).

³¹ A survey conducted by the Home At Last Project revealed that, among the youth who responded, 29% reported that they never attended court and 73% reported that they attended court only some of the time, *My VOICE, My FUTURE; FOSTER YOUTH PARTICIPATION IN COURT: A NATIONAL SURVEY* (2006) (note that all responses together totaled more than 100%); and another survey reported in Claire Sandt Chiamulera, *Foster Children are Talking—Are You Listening?* reported that "children are often excluded from participating in their case planning process," and that "75% of foster youth said they did not help their caseworkers decide their futures." 26 ABA CHILD LAW PRACTICE 94, 95 (2007).

³² 42 U.S.C. § 670 et seq.

³³ 42 U.S.C. § 671(a)(15)(C) requires the state to make "reasonable efforts . . . to complete whatever steps are necessary to finalize the permanent placement of the child," for all children for whom the plan is not return home, and 45 C.F.R. § 1356.21(b)(i) provides that "the State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect . . . within twelve months [of the child's entering foster care] and at least once every twelve months thereafter while the child is in foster care."

³⁴ 42 U.S.C. § 675(1)(D).

³⁵ 42 U.S.C. § 675(5)(C)(iii).

³⁶ Available at: http://www.acf.hhs.gov/j2ee/programs/cb/laws_policies/laws/cwpm/policy_dsp_pf.jsp?id=8.

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³⁷ *Artist M. v. Suter*, 503 U.S. 347 (1992) (holding specifically that Sec. 671(a)(15) did not provide a private right of action).

³⁸ See 42 U.S.C. Sec. 1320a-2 (providing that provisions of chapter 7, which includes Title IV-E, are “not to be deemed unenforceable because of [their] inclusion in a section of [chapter 7] requiring a State plan or specifying the required contents of a State plan,” and modifying the grounds applied in *Suter* in determining the availability of a private right of action).

³⁹ See, e.g., *Brian A. v. Sundquist*, 149 F. Supp. 2d 941 (M.D. Tenn. 2000) (granting a right of action based on certain provisions of Title IV-E including §675(5)); cf. *Whitley v. N.M. Children, Youth and Families Dept.*, 184 F. Supp. 2d 1146 (D.N.M. 2001) (denying a right of action under some of the same provisions including §675(5)).

⁴⁰ See *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 509 (1990). Although the ongoing validity of this test was called into question by *Suter*, Congress's subsequent action has been read by most courts as an endorsement of the pre-*Suter* test.

⁴¹ *Id.* at 509.

⁴² *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976).

⁴³ See, e.g., Redish and Marshall, *Adjudicatory Independence and the Values of Procedural Due Process*, 95 YALE L.J. 455, 487 (identifying participation as one of several key values inhering in due process); see also *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring) (noting that a right of participation is of singular value in “generating the feeling, so important to a popular government, that justice has been done”).

⁴⁴ The Court first made this statement in *Grannis v. Ordean*, 234 U.S. 385, 394 (1914), and has repeatedly invoked this phrase in subsequent due process decisions. See, e.g., *Nelson v. Adams, U.S.A., Inc.*, 529 U.S. 460, 466 (2000); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

MODEL COURTS AND BEST PRACTICES

B. Model Courts and Best Practices

Throughout the country there are individual judges, and sometimes entire court systems, attempting to change their practices to improve the assistance they provide to foster youth aging out of care. Here we highlight only a few examples, focusing special attention on Cook County's Benchmark Hearings, to give a sense of what is possible.

What the model programs have in common is:

- central youth involvement,
- direct communication between judge and youth, and
- a commitment to developing a system of supports that serves the youth's own goals for young adulthood.

1. Cook County's Benchmark Hearings

Since 2001, the Juvenile Court of Cook County has provided for special hearings, called "Benchmark Hearings," for older youth who have been referred by their caseworker or by their legal representative. The aim of these hearings is to facilitate direct communication between judge and young person and the development of a relationship between them that allows the judge to serve as a valued advisor and effective source of assistance for the young person. The focus of discussions is on the youth's plans for the future and how those plans can be accomplished.

Youth participation is a key element of the Benchmark Hearings, and the youth's attendance is mandatory. The Department of Children and Family Services (DCFS) worker is responsible for informing the

youth of the court dates, encouraging the youth to think ahead about the issues that will be discussed, and seeing that the youth has the assistance needed to actually get to court. Youth who refuse to go to court (or who run away from placements so often that their whereabouts is frequently unknown) are not good candidates for Benchmark Hearings, but resistant youth, who can be convinced to go to a single hearing, have often turned into consistent attendees after seeing what is involved.

The Benchmark Hearings have their own judge (currently a single judge for Cook County) and their own docket. To be placed on the Benchmark docket, youth must be at least 16 years old and at least 9 months away from mandatory emancipation. Once on the docket, youth continue to go to the Benchmark judge for all review hearings until they are discharged from the system.

In Cook County, discharge from the foster care system commonly does not occur until a young person turns 21, which means that these hearings are held for many young adults as well as older adolescents. The seriousness of the discussion between judge and young person, and the shared understanding that the young person bears ultimate responsibility for his future, minimize concerns that the continuing involvement of juvenile court somehow compromises the young person's experience of independence. To the contrary, these hearings reinforce the young people's perception of themselves as mature individuals who are taken seriously and of whom much is expected.

Everything about the hearing process is designed to communicate this message. Benchmark Hearings are held at a table,

Youth participation is a key element of the Benchmark Hearings, and the youth's attendance is mandatory.

These hearings reinforce foster youths' perception of themselves as mature individuals who are taken seriously and of whom much is expected.

with the judge and young person seated directly next to one another. The judge engages the young person in a discussion about her current status, her plans for the future, and her concerns. At the end of the hearing, the judge and the youth sign a “Benchmark Agreement,” memorializing plans made and commitments undertaken. While others attend the hearings, the roles of many of those in attendance, including representatives from the Chicago Public School system, the state’s attorney’s office, and DCFS, are largely to provide information and to help follow up where the judge requests additional assistance or expresses concern with the services provided.

Also in attendance are those intended as direct supports for the young person. These include the youth’s legal representative from the Office of the Public Guardian, and, whenever possible, a responsible adult identified by the youth as someone who would be a welcome source of support into young adulthood. The efforts made to involve a supportive adult in the hearings reflect a recognition that involvement in the formal planning process that occurs in court will help ensure that adults are identified and available to assist the youth outside of court and throughout young adulthood.

The direct involvement of the judge and the time and attention she gives to the youth are readily apparent to the youth during the proceeding. Where the judge identifies ways in which others present can help a youth accomplish an important goal, the power of the judge as a source of support is clearly demonstrated by the immediate response her questions and directions get from these other participants. As noted in Section IV.A.2., the Benchmark Judge can play an important role in spurring inter-systems coordination by involving repre-

sentatives of other systems in discussions, or by calling them to account for relevant policies and practices.

While the Benchmark Hearings are designed to give the youth a sense that the judge is prepared to act as the youth’s champion, they also give the court a mechanism for imposing some accountability on the youth. The court can, and commonly does, call a case back in on a monthly or even more frequent basis to ensure that plans made and tasks assigned are accomplished and to remind all those involved of the ongoing interest the court takes in the case. Thus, the court is in a good position to hold a youth to a commitment made at the last hearing and to help the youth see the connection between his behavior and the options available. In this limited sense, the Benchmark judge can take on a quasi-parental role—pressing the youth to shoulder his share of responsibility, while pressing the rest of the system to step in and help.

The Benchmark Hearings use a version of the checklist approach, which includes both ongoing components (see our discussion in Section III.A.) and at (or near) discharge components (see our discussion in Section III.B.), to ensure that youths are receiving the services and information they require in preparation for adulthood. In preparation for each hearing, caseworkers are required to develop a plan that addresses a youth’s “needs and current self-sufficiency,” services currently provided, plans for future services, and, perhaps most notably:

[the] status of the youth’s relationships with members of his/her immediate and extended birth family and recommendation on how those relationships can be facilitated in

the best interest of the youth (i.e. visiting, counseling, therapy).

In anticipation of case closure, caseworkers are also required to:

assure that the young person has the documents necessary to function as an independent adult including social security card, driver's license/ state i.d., medical records and documentation, birth certificate, list of known relatives with addresses and telephone numbers, educational records, and documents or information on religious background.

The youth has a parallel checklist to work through in advance of the hearing, that asks her to identify her goals for future years (by year), her challenges, and her proposed plan.

While there has not been any systematic study to date of the effect of the Benchmark Hearings on youths' outcomes in young adulthood, anecdotal information is extremely positive. Moreover, the Chapin Hall Midwest Study offers some indirect support. Those who were doing best in the study at 19 were those who remained in the system. Those who remained in the system were dominated by foster youth in Cook County, many of whom were participating in Benchmark Hearings.

For Cook County Forms and Procedures for its Benchmark Hearings, see Appendix: Benchmark Hearings.

2. Other Court Models

The Benchmark Hearings have served as a model for many courts throughout the country seeking to improve how they assist

youth aging out of care. This can be done systemwide or by an individual judge.

Judge Juliet McKenna of the Superior Court of the District of Columbia piloted a Family Court Benchmark Permanency Hearing Program in her own courtroom. She set aside certain days for these hearings so that she could ensure the presence of representatives from relevant agencies and so that she could set up the courtroom to facilitate the direct conversation between judge and youth. As in Cook County, the hearings were designed to focus on the youths' goals and how they could be accomplished. Hearings, which commonly lasted for an hour, were held every two or three months, and more frequently as a youth's discharge date drew near. To a greater extent than in Cook County, youth remain in the foster care system and court involved in Washington, D.C. until they turn 21.

Judge McKenna noted that, for many older foster youth whose younger siblings were being placed for adoption or reunified with birth parents, having their own hearing, which was exclusively focused on their issues, was very important. She also noted that many youth who had been poor court attendees began to come regularly after they experienced the Benchmark process.

During our court observations, we also observed several judges who aimed to achieve many of the goals of Benchmark Hearings in the ordinary course of conducting case plan and permanency plan reviews in cases involving older foster youth. Some judges made considerable efforts to engage youth directly in discussions and to ensure that they had an opportunity to express interests and concerns. The efforts of these judges were impressive, and often succeeded in encouraging youth to speak. But

Many youth who had been poor court attendees began to come regularly after they experienced the Benchmark process.

Hearings should generally be held after school hours for youth and be arranged around job commitments and other youth responsibilities.

the ability of these judges to truly engage youth was somewhat encumbered by the traditional court process and the expectations it created. Following standard form for reviews in all child protection cases, an attorney for the state began by introducing the report and recommendations of the caseworker, sometimes in considerable detail, and all lawyers (a guardian ad litem for the youth, and lawyers for the parents) as well as some witnesses (caseworkers, therapists, and other participants) were offered an opportunity to address the court, before a youth's participation was invited. Coming as it did at the end of the hearing, after the issues were presented and discussed by others, the impact of the youth's participation was minimized. It was our impression that youth likely left the hearings with a sense that the judge cared about them and took an interest in their views, but not with a sense that they had taken an active role in planning for their futures.

Youth often do not attend court for good reasons. For example, many youth do not want to miss school or their job to come to court. It is appropriate, indeed, a sign of maturity, for youth to set such priorities when faced with these conflicts. It is incumbent on the court system, however, to avoid forcing youth to make these choices whenever possible. Hearings should generally be held after school hours for youth still in school, and should be arranged around job commitments and other youth responsibilities.

For youth for whom things are going particularly well, youth and judge can agree to schedule hearings somewhat less frequently. But in all cases there should be occasional opportunities for the court and youth to meet. It is only through these meetings that the court can ensure that the youth is, in fact, in agreement with plans, as report-

ed by agency workers and lawyers. Moreover, it is only through these face-to-face meetings that the court can ensure that the youth is aware of the resources that might be available through the hearing process. Finally, it is only by insisting on some face-to-face meetings that the court can convey to the youth the importance the court places on the youth's goals for the future.

3. The Role of Attorneys for Older Youth

Attorneys for older foster youth, including young adults still engaged in the court system, should serve as zealous advocates for their clients, just as they would for other adult clients. However strong the justifications for taking a more protective, best interest, approach to the representation of younger children, those justifications do not apply to representing youth on the brink of independence.¹ Youth cannot get the benefits of the court process—particularly the opportunity to participate centrally in the planning process—if their attorneys are substituting their judgment for that of the youth.

The Child Abuse Prevention and Treatment Act (CAPTA) includes language that can be read to require lawyers to engage in “best interest” representation of all foster youth, regardless of their age.² Lawyers who believe themselves to be bound, by professional ethics, to serve as zealous advocates of their child and young adult clients have interpreted this CAPTA language in accordance with these professional commitments, concluding that, for older youth, client-centered advocacy is always in the client’s best interests. A better, more stable, solution would be an amendment to CAPTA, expressly providing for client-centered representation of older youth.³

Like judges, lawyers should make special efforts to help their young clients to understand that they are expected to control decisionmaking in the lawyer-client relationship and to help their clients to do this effectively. This means that lawyers must devote considerable time to discussing a young client's current concerns and ambitions for the future and to identifying the ways in which the child welfare agency, the court, and other entities might help with those concerns and ambitions. It also means that the lawyer should prepare the young person, in some detail, for upcoming hearings. While a young person will be well served by being given an opportunity to speak directly with the judge, a lawyer can help ensure that the young person is well-prepared for the hearing and thus in a good position to make the most of that direct conversation.

The role of the lawyer, more particularly, will vary with the form of the hearing. In more traditional court hearings, a lawyer's zealous advocacy should be employed to press for meaningful participation of the youth in the hearing process, whether that means arranging for the youth to be present, helping the youth to think through issues to be raised in court, or insisting on the youth's active involvement in the hearing itself. For a youth who is hesitant to participate, a lawyer can help by putting the issues of concern to the youth before the judge and articulating the grounds for the youth's concerns. Moreover, lawyers can use their expertise and knowledge of their clients' rights to press for assistance and opportunities consistent with their clients' ambitions. That being said, a goal for all lawyers for older youth should be to help their clients become comfortable speaking for themselves.⁴

In jurisdictions with Benchmark Hearings, the lawyer's initial job will be to ensure that the case is heard by a Benchmark judge. Once that role is accomplished, the lawyer's role in court will likely be diminished, as the judge will expect to engage the youth more directly. Lawyers should continue to help the youth prepare for the hearings and identify areas of concern or need for support. Outside the court context, lawyers can help ensure that plans, particularly plans for support, are carried out. Indeed, where lawyers remain involved with their clients into young adulthood, they can continue to play this facilitative role, even after the court's involvement ends.⁵

A goal for all lawyers of older youth should be to help their clients become comfortable speaking for themselves.

ENDNOTES

¹ For a comprehensive survey of positions taken regarding the role of counsel in child protection proceedings, see Jean Koh Peters, *How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005: Survey Findings, Initial Observations, and Areas for Further Study*, 6 Nev. L.J. 966 (2006).

² 42 U.S.C. § 5106a(b) (2) (A) (xiii) (2000) (requiring the appointment of a “guardian ad litem” for every child involved in an abuse or neglect case as a condition of receiving federal CAPTA funding, and directing that legal representative to “(I) obtain first-hand, a clear understanding of the situation and needs of the child; and (II) to make recommendations to the court concerning the best interests of the child”).

³ See, e.g., *Special Issue on Legal Representation of Children: Proceedings of the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Forham: Recommendations of the Conference*, 6 Nev. L.J. 592 (2006) (recommending interpreting or modifying CAPTA’s mandate for appointment of best interests representatives for children to include the appointment of a client-directed attorney).

⁴ For a consideration of the role lawyers can play in teaching their child clients how to participate effectively in their court proceedings, see Emily Buss, *Confronting Developmental Barriers to the Empowerment of Child Clients*, 85 CORNELL L. REV. 895, 955-60 (1999).

⁵ As noted in Section VI, Iowa provides, by statute, for continuing guardian ad litem involvement with former foster youth beyond age 18 if authorized by the court. IOWA CODE § 232.2 (22)(d).

EXTENDING COURT JURISDICTION

V. Extending Foster Care Status and Court Jurisdiction into Adulthood

Chapin Hall's Midwest Evaluation, in Phase II, suggests that allowing youth to stay in foster care beyond their 18th birthday improves their outcomes in adulthood.¹ Perhaps most important, they are far more likely to remain in school and reach higher levels of educational attainment. Those who stay in care have also been shown to be less likely to be arrested or go to jail, less likely to get pregnant, and less likely to abuse drugs and alcohol. They are also more likely to have stable housing and to obtain needed health and mental health care.

It is sometimes argued that youth can get the same services through "after-care" or Chafee programs once they have left care that they can get while still in the foster care system. The Chapin Hall study suggests that remaining "in" the foster care system makes an important difference. The study does not purport to explain, however, why remaining in the system makes such a difference. It is our view that one of the primary differences is the involvement of the courts with youth still in care and the lack of such involvement with youth after their cases are discharged.

In Section IV, we discussed the important contributions that can be made by courts to help prepare foster youth for independence. Here, we advocate extending foster care involvement to at least age 21, and focus particular attention on the value of continuing the court's jurisdiction over the cases of foster youth into young adulthood.

A. Background

There are generally two ways in which foster youth receive services from the state after they turn 18. Most commonly, youth are discharged from foster care and become eligible for after-care services, including various supports and financial assistance to help with housing, education, and job training. These services are funded in whole or in part by federal block grants under the Chafee program, and are distributed at the discretion of the state's child welfare agency. Because the state is no longer acting as substitute parent, the state has no affirmative duty of care. And if the youth is denied services for which they are eligible, they will generally have no recourse, for the court no longer has any authority over the agency.

In some states, however, foster care status can extend beyond 18. Where foster care status continues, court jurisdiction generally also continues, giving the court ongoing authority to monitor case progress, engage the youth in the decision-making process, and enforce the youth's ongoing entitlement to the state's support. As of August 2007, 16 states and the District of Columbia extended court jurisdiction for youth up to the age of 21, 4 states until the age of 20, 3 states until the age of 19, and 2 states extended jurisdiction only under narrow exceptions. See Appendix: Court Jurisdiction End Age; State by State. There appears to be a growing interest among policymakers in exploring the possibility of extending court jurisdiction beyond 18 and amending Title IV-E to provide federal funding for this extension.² We applaud this trend, and offer the arguments that follow in support of extended jurisdiction.

Allowing youth to stay in foster care beyond their 18th birthday improves their outcomes in adulthood.

The history of child welfare service delivery suggests that court involvement is essential to ensuring that children and families actually receive the supports to which they are entitled.

B. Why Court Jurisdiction Should be Extended

Recognizing that ongoing court involvement is one of the more controversial issues among those advocating on behalf of youth aging out of care, we offer three kinds of arguments in support. We first consider the evidence available that bears on the question. We then offer several reasons that court involvement has special benefits for young adults transitioning to independence. Finally, we consider some of the arguments offered to oppose extended jurisdiction, and offer our responses.

1. *The Evidence in Support of Extended Court Jurisdiction*

While studies that bear on the efficacy of extended court involvement are limited, there are at least two sources of information that suggest that ongoing court involvement can help youth with the transition to independence. First, as noted above, the Chapin Hall data show a correlation between ongoing court jurisdiction and better outcomes. Second, the history of child welfare service delivery suggests that court involvement is essential to ensuring that children and families actually receive the supports to which they are entitled.

a. Social Science Support

While the Chapin Hall study does not compare youth who remain in foster care with and without court jurisdiction, it does compare those who remain in the system (both child welfare and court systems) to those who are entitled to comparable child welfare services as part of their after-care. The fact that the second group was found to be doing markedly worse at 19 than the first group suggests that ongoing court in-

volve ment may be more important than the entitlement to services or the connection with agency personnel. The study does not, however, disentangle the effect of the court involvement from other effects associated with ongoing foster care involvement. To get a sense of the contribution made by the courts, we need to look to the history of court involvement in the child welfare system more broadly.

b. Learning from History

Already discussed in Section IV is the increasing authority Congress and state legislatures have given to courts over the last quarter century to improve the delivery of child welfare services. As noted there, child welfare agencies' failure, in the absence of court involvement, to provide sufficient services promptly, was not due to legal obstacles or agencies' affirmative opposition. Rather, it was the product of an overwhelmed system that inadvertently let non-emergency matters slide, with serious negative consequences to children. The history of Title IV-E and its parallel state legislation suggests that adding a system of court reviews, with clear expectations associated with those reviews, helped to organize agency behavior, involve a broader array of individuals in identifying and meeting families' needs, and ensure that appropriate services were provided in a timely manner.

We have every reason to expect that the same pressures of caseloads and crises will stand in the way of older youth receiving the services for which they are eligible. If anything, we can expect these risks to be greater for older youth. Caseload size for workers whose caseloads include only older youth may be considerably higher than for those with mixed caseloads, or case-

loads that include only younger children or children new to the system. Moreover, for caseworkers with mixed caseloads, the legal requirements designed to ensure that children return home or are adopted whenever possible tend to lead those workers to give priority to the needs of their younger clients.³ Second, and somewhat related to the fact that preparation for independence is less clearly provided for in legislation than other permanency goals, the funding for many of the services that older foster youth need may be in short supply. Third, many of the important needs of older foster youth, such as help pursuing educational goals, participating in activities, and developing healthy relationships with peers and adults, will not present as urgent matters, but these needs can only be met if assistance is provided consistently over a long period of time. Finally, many of the youth who need help the most will strike agency workers as least deserving. Unlike younger children, whose struggles inspire sympathy and involvement, the struggles of older youth often take forms that are off-putting to adults. It is easy to put the oppositional, “non-compliant” youth at the bottom of the list (even more so if he has become an adult), but it is this youth who is most in need of immediate and ongoing attention. In sum, without court oversight, we can expect the problems that plague child welfare agencies, generally, when courts are not actively involved, to be particularly grave for older youth.

As with all cases, effective court involvement can ensure that every case receives priority attention at least in preparation for and during its review hearings. Workers prepare case plans, and their lawyers present them to the court. The various players—caseworkers, lawyers, family members, and service providers—assemble for this pre-

sentation and are available to present information and answer the judge’s questions. At a minimum, we can expect the court review process to provide the same benefits to older youth that it has proven successful in providing for younger children and their families in the foster care system.

2. The Special Benefits of Court Involvement for Young Adults

We can expect, however, that young adults will get even more from the court process than their younger counterparts, and that courts can serve some special additional functions for this population.

- a. Courts can Support Youth in Exercising Their Autonomy in Young Adulthood

In Section IV.A.3., we discuss the value to youth of participating actively in the court process. Engaging in a planning process with a judge can impress upon a young person the importance of the task. Moreover, the hearings offer youth an opportunity to plan for their futures in a context in which relevant actors are brought together and access to assistance is apparent.

After a youth turns 18, any doubts about who is ultimately responsible for the youth’s future should disappear. Where court hearings continue, they can (and should) continue with the understanding that other participants such as caseworkers are present as possible sources of support but not as substitute decision makers for the youth. Giving young adults an opportunity to engage a judge in discussions about their future, once their responsibility for decision making is clear, allows them to realize the potential of this planning process. In treating young people as autonomous indi-

In treating young people as autonomous individuals who could still use some help thinking through choices and implementing plans chosen, courts mimic the support that parents provide to their adult children.

Ongoing court jurisdiction guarantees an ongoing opportunity for discussion and planning as a youth moves in and out of various programs based on interest, needs, and compliance with program conditions.

viduals who could still use some help, both in thinking through choices and in implementing plans chosen, courts mimic one aspect of the support that parents provide to their adult children. Court provides a structured context in which to facilitate youths' problem-solving and planning process. It does not, as detractors suggest, perpetuate a child-like state in which young people continue to cede control of their lives to others.

To ensure that the court system and those who attend recognize the foster youths' adult status, it is important that these young people are identified as parties. In some states, all foster children regardless of age are treated as parties. Even where this is not the case, party status should be conferred on foster youth once they achieve adulthood. In affording young adults "standing" (the legal term for those with a right to invoke the court's attention to their concerns), the legal system strengthens, rather than undercuts, a young person's assumption of responsibility for his own life.

b. Courts Can Provide an Ongoing Forum for Planning, Regardless of a Youth's Service Needs

Another related benefit of ongoing court jurisdiction is that it allows for a continued mechanism for connection and support for young adults regardless of whether they are receiving any "services" at the time. Ongoing court jurisdiction guarantees an ongoing opportunity for discussion and planning as a youth moves in and out of various programs based on interest, needs, and compliance with program conditions. If a youth fails out of school, for example, he may lose his qualification for educational support, but with ongoing court

jurisdiction, he will not lose the forum in which to consider what educational options he might pursue in the future. If a youth makes an arrangement to live with an adult not considered sufficiently responsible (or safe) by the agency, she might lose all state housing support, but with ongoing court jurisdiction, she will not lose her ability to reassess housing options, or to reflect on other consequences that may flow from her choice of relationships, in a supportive context. Again, maintaining a structure and context for assisted decision making and a place to go for needed supports better mimics the relationship between parent and children in young adulthood than does a system that defines the ongoing connection between state and young person in terms of the services provided.

c. Courts Can Impose Reasonable Conditions on Youths' Access to State-Funded Supports

This is not to say that courts cannot play a role in determining whether state support for any particular program or plan is appropriate. The court's ability to make things happen, which is in large part the value of the court as a forum for youths' problem solving, also gives the court the authority to impose conditions on youths' receipt of specific benefits. In this sense, continuing jurisdiction offers a mechanism for addressing the concern, reportedly expressed by some lawmakers, that providing child welfare support to young adults will, in some cases, subsidize their bad choices. While we cannot and should not police how these young people spend each dollar (just as parents of adult children cannot and should not do this), it is entirely appropriate for the state to impose certain conditions on the use of housing dollars, for

example, just as parents would. The key, however, is to ensure that a failure to meet the conditions only terminates the services in question, not the underlying relationship, as tends to be the case where service providers are involved and the courts are not.

d. Ongoing Court Jurisdiction Provides the Best Mechanism for Youth Re-Entry

In the next section we advocate for a system of “re-entry” that allows young people who have left the foster care system to return for services. Here, we suggest that ongoing court jurisdiction makes re-entry easier for youth and note the connection between the opportunity for re-entry and other values of ongoing court jurisdiction for youth.

Where courts retain jurisdiction and young adults have standing in juvenile court, they can petition the court to reopen their cases, based on newly discovered needs. While there is no reason, in theory, that an agency would not be just as open to a simple request for re-entry, the concepts of jurisdiction and standing, which are unique to the court system, best capture the idea that the relationship between young person and state authority continues, regardless of any particular decisions made along the way. Providing for re-entry through the court also separates the gatekeeper from the entity charged with controlling services and managing the budget. Thus courts are in a better position to reopen a discussion about a youth’s needs before, rather than contemporaneously with, assessing those needs. Where a court has ongoing jurisdiction, and a young adult establishes standing simply by age and former foster care status, a young person can secure a forum for assistance with decision

making and problem solving, without first establishing what, if any, specific state-provided supports might be appropriate.

3. Allaying Concerns

Those who oppose extending court jurisdiction to young adults in foster care focus on two concerns—cost and the risk of fostering ongoing dependence on the system. Here we offer a brief response to both of these concerns.

a. Costs

The largest costs associated with extending jurisdiction are not the court costs, but rather the costs of ongoing foster care involvement, costs currently not covered by Title IV-E’s federal reimbursement scheme and therefore entirely covered with state funds. Already noted is the fact that some of those same foster care costs are incurred, after youth are discharged, by the state or the federal government, as after-care costs. While it is unquestionably more costly to keep youth within the foster care system, those costs, combined with the considerably more modest cost of extending court involvement, should be weighed against the expected benefits, with their positive cost implications, of that ongoing involvement.

On the other side of the ledger, the social science data suggest that extending court-supervised foster care to 21 may produce considerable economic benefits both in the form of costs avoided and incomes enhanced. Chapin Hall’s longitudinal research⁴ reports that youth who were still in the system at 19 were less likely to be incarcerated, less likely to become pregnant, and less likely to have problems with drug and alcohol abuse. Youth who remained in care

Ongoing court jurisdiction makes it easier for young people who have left the foster care system to return for services.

Because courts can recognize foster youth as parties with their own capacity to bring issues before them, ongoing jurisdiction gives youth a context in which they can be encouraged to exercise their independence, not avoid it.

at 19 were considerably more likely to remain in school and to achieve higher levels of educational attainment, to have stable housing, and to receive needed health and mental health care.

The most straightforward cost-benefit calculation weighs the cost of foster care and court jurisdiction during the years in question against the costs avoided in criminal justice and incarceration, child-birth expenses, and public assistance payments. More comprehensively, these foster care costs need to be weighed against the long-term costs that flow from failing to support youth sufficiently in these critical years. Most starkly documented is the difference in future income, and therefore personal and societal prosperity, associated with one's educational attainment. Youth who stay in foster care and earn a college degree will predictably earn more than twice as much as those who stop school after high school, and almost three times as much as those who never earn a high school diploma. Moreover, arrest and incarceration rates for the general population peak in the late teen years and then begin to fall with decreases occurring every year in early adulthood.⁵ If similar patterns are reflected among former foster youth, reducing criminal justice activity between 18 and 21 might permanently lower the rate of incarceration among this population with significant reductions in cost.

Admittedly, the most dramatic cost reductions we project are speculative. The primary reason to extend jurisdiction is not to save money; it is to help foster youth in young adulthood. The fact that the costs of doing so would likely be offset by short-term benefits (reduction in criminal justice involvement and other public benefits expended during years of extended foster care)

suggests that providing this much needed assistance is affordable. The fact that the long-term benefits to society might be considerable suggests just how important it is for young people to receive this help in the critical transition years. Similarly, we do not support our own young adult children because we have run the numbers and concluded that financial support will save us money in the end, but we do hope, in providing that support, to set our children on a path to economic, as well as other forms of, independence.

b. Fostering Ongoing Dependency

There are some who fear that ongoing court jurisdiction, in particular, will perpetuate young people's dependency, and send a message that they are still viewed as minors in the system. Nothing in the design of the court review process requires young people to assume that role. Indeed, as discussed above, courts can and should provide a comfortable and supportive context in which young people can begin to take responsibility for themselves. The court can ensure that the youth plays a central role in his hearings and that final decision making about long- and short-term planning rests with the youth. This is not to say that all courts will necessarily make this adjustment for foster youth's adulthood. Nor, we understand, have all lawyers recognized that they have an ethical obligation to abandon their guardian ad litem role when their clients become adults. But these are issues of training and implementation, not system design. Because courts can recognize foster youth as parties with their own capacity to bring issues before them, ongoing jurisdiction gives youth a context in which they can be encouraged to exercise their independence, not avoid it.

If youths' autonomy is respected, they should not be forced to come to court. The question remains, however, whether their cases should be kept "open" with regularly scheduled court dates or closed, pending a youth's request to re-open the case. In the next section we consider the relative advantages of these two approaches, among others, as mechanisms for system re-entry for young people seeking to return for supports from the child welfare system. We conclude that keeping cases open is the better approach, absent a youth's express request that his case be closed. Moreover, we recommend that the courts retain jurisdiction over foster youth and former foster youth until at least age 21, so that those who leave the system entirely can return to the courts for assistance if they later discover a need.

ENDNOTES

¹ Mark E. Courtney, et al., *MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 19*, 44 Chapin Hall Working Paper 19 (2005), available at www.chapinhall.org.

² On May 24, 2007, Senator Barbara Boxer introduced Senate Bill 1512, which would extend Title IV-E's coverage to age 21. As this protocol goes to print, no action has yet been taken on the bill.

³ We have seen, in our court observations, that caseworkers tend to devote significantly more attention to younger children in a sibling group, in order to satisfy their obligations for permanency planning. While we advocate modifying the legal requirements for older youth to help ensure that their needs receive the same attention as those of their younger siblings, we recognize that preparing youth for independence does not lend itself to the same use of timelines that has proved a successful systems motivator for children whose permanency goals are return home or adoption.

⁴ Courtney, et al. (cited in note 1).

⁵ See Elizabeth Scott and Thomas Grisso, *Symposium on the Future of the Juvenile Court: The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform*, 88 J. CRIM. L. & CRIMINOLOGY 137, 154 (1997) ("Substantial evidence indicates that many adolescents become involved in criminal activity in their teens and desist by the time they reach young adulthood"); Terrie E. Moffitt, *Adolescence-Limited and Life-Course-Persistent Anti-social Behavior: A Developmental Taxonomy*, 100 PSYCH. REV. 674, 675, figure 1 (1993) (portraying a sharp drop in the rate of criminal offending after age 17).

RIGHT OF RE-ENTRY

VI. Right of Re-Entry

In one way or another, most 18-year-olds declare their independence from their parents and embrace the control over their own lives that comes with adulthood. They may leave their family home to go to college or live on their own. During breaks from school or times of hardship, however, they turn again to their parents for a place to stay and for emotional and financial support. In young adulthood, steps forward, followed by mis-steps and steps back are common, indeed, healthy. This cycle may repeat itself several times before the young person is finally ready to be truly financially independent from her family, which may take until the mid-20s, if not longer.¹

By contrast, youth discharged from the child welfare system generally have no such parental safety net to rely on as they take their first steps toward independence. In many states that provide after-care services, those services are often only available if the youth opts in at the time of discharge, and youth forfeit their eligibility forever if they decline the services at discharge. In most states with extended court jurisdiction, if a youth chooses to leave foster care before her 21st birthday, that decision is final, and there is no way to come back under the court's jurisdiction.

The initial urge to reject additional help and assert independence at 18 can be particularly strong for foster youth, who may resent the involvement the system has had with their families and the constraints it has imposed on them in their minority. Even in states where court jurisdiction can extend to age 21, many youth elect to opt out of the system as soon as they can. And in states without extended jurisdiction,

youth sometimes initially reject the offer of after-care services, convinced that they can make it on their own without help.

Before they realize what they are choosing, foster youth are forced to make a choice. If they experiment with independence and try to make it on their own, as their non-foster peers do, they lose the chance to receive the ongoing support and services that will be available to those non-foster peers, when they discover that they need help.

This destructive choice is a major flaw in the current administration of foster care. In addition to advocating for extended court jurisdiction in all states, we recommend that foster care discharge should not carry with it such harsh finality. Instead, the child welfare system, which has acted as parent through foster youths' 18th birthday, should try to better mimic what happens in typical families: It should provide for early efforts at independence, while maintaining a safety net ready to catch them when they fall. It is essential that we offer youth a means of returning to the system and obtaining supports when they run into trouble.

Recognizing that these moves in and out of relative independence are typical of adolescence and young adulthood, the question becomes how best to accommodate them within the child welfare system to ensure that youth are adequately supported but not stunted as they take these critical first steps to independent adulthood. Should a youth be able to re-enter the foster care system after his case is discharged? Can a youth re-enter the system without submitting to the "custody" of the state? Or should his re-entry right be limited to accessing those services designed to aid youth in transition?

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It is essential that we offer youth a means of returning to the system and obtaining supports when they discover that they need help.

Evaluating different models requires consideration of several complex issues. The design and structure of any re-entry system are of particular importance: How can a youth let “the system” know that she wants to re-enter it? Will she have to petition the court, or can she just call her former case worker? Who should decide whether the youth may re-enter? Should re-entry be an absolute right up until a certain age, or should a judge or some other decision maker evaluate the case and make a determination?

Beyond structural issues, the concept of re-entry implicates the same emotional and psychological issues that cause so many youth to exit care before 21 and decline services in the first place. When a college student comes home to live with her parents during summer vacation, she does not have to make any formal declaration that she is not ready to handle independence; her return is just treated as a natural part of the process of growing up. Reaccessing court jurisdiction or state-provided services, however, could (depending on how the process is structured) require just such a declaration, a move that many youth will be reluctant to make. Any effective system allowing for re-entry must take these structural and emotional issues into account.

This section attempts to summarize various ways that states have attempted to address the need for a more flexible ongoing relationship between youth and the child welfare system after discharge. Collectively, the idea of an ongoing postdischarge relationship is often referred to as “re-entry,” though a more accurate term might be “re-access,” as these programs are designed to give youth a way to re-access a system of supports, whether or not that entails going back “into” the system. Some re-entry de-

signs feature ongoing court involvement. A state can allow a youth to petition the court to reopen his case and reassert jurisdiction over him after discharge, as Arkansas does. Alternatively, a state can provide for the courts to maintain jurisdiction over youth through their 21st birthday, even after they are discharged from the foster care system, as New York does.

There are also re-entry models that do not contemplate ongoing court involvement. For example, a state could allow a youth who has been discharged to re-enter foster care status as a ward without reassertion of court jurisdiction. Only one state, Arizona, has adopted a policy that allows a youth who has been discharged to officially re-enter foster care status as a ward. Alternatively, a state could structure its after-care services in a way that allows the youth to choose to receive services at any time until their 21st birthday, even if they initially reject these services. Several states, including Iowa, have elected to pursue this option, and Florida offers this option for former foster youth up to 23. Finally, a state could provide access to lawyers for former foster youth after discharge, which is another aspect of Iowa’s approach.

In our view, ongoing court involvement will significantly enhance the effectiveness of a re-entry program. We advocate for a model that resembles New York’s trial discharge model, for it strikes the best balance between the youth’s interest in developing skills of independence while providing a mechanism for seeking assistance when the youth identifies a need for support.

A. Different Mechanisms for Re-Entry

Several states have taken notice of the unique issues and challenges facing foster

youth transitioning to independence and have adopted various models allowing for some sort of re-entry to provide continued support for youth as they grow into adulthood. Most of these programs are relatively new and can serve as laboratories to test different ways of striking the balance between the needs of the youth and the state's interests in ease of administration and effective use of limited resources.

1. Models That Feature Ongoing Court Involvement

a. Re-opening a Youth's Case

Arkansas allows youth who have been discharged from foster care and from the court's jurisdiction to return to court to seek assistance. Allowing a court to re-open a youth's case lends judicial authority, with its enforcement power, to a young person's right to receive services from the child welfare agency. For example, if a 20-year-old former foster youth wanted to receive educational voucher services, but the independent living services office in charge of administering those programs was unresponsive, the court could compel the child welfare agency to provide the services. The Arkansas model also provides for ongoing legal assistance to youth seeking re-entry and access to services. See Appendix A: Model Programs; Right of Re-Entry.

This model has its limitations. As a threshold matter, this model (as with all models featuring ongoing court involvement) would only work in states that provided for extended court jurisdiction. It might be particularly politically difficult to convince a legislature to provide for extended jurisdiction over cases in which young adults had already chosen to leave the system. Further, the burdens associated with ask-

ing the court to reassert jurisdiction, both logistical and emotional, might discourage youth from invoking the court's assistance, even if it were, at least in theory, available.

b. Trial Discharge

Another model for ongoing court involvement is not really a right of re-entry at all, so much as a mandated gradual exit. New York has recently passed a law that mandates at least a six-month "trial discharge" for all youth exiting foster care. During this trial discharge period, the youth is no longer considered a ward, is not "in foster care," and elects what (if any) services he wants to receive. The court, however, maintains jurisdiction over the youth. If certain triggering conditions occur (for example, homelessness) the court is mandated to return the youth to full foster care status, with its accompanying placement in a state-approved foster care placement (typically a group home). The youth can also elect to re-enter full foster care status during this period, even absent the triggering conditions. During the period of trial discharge, the state is required to provide certain after-care services to the youth, and the child's foster care caseworker is required to maintain "supervision" (which includes, for example, regular phone contact and availability for meetings at the youth's request) until age 21. Finally, at the end of the six-month mandatory period, if the youth does not want to re-enter full foster care status but likes the safety net of trial discharge, she may elect to continue the trial discharge period, up until age 21. See Appendix B: Model Programs; Right of Re-Entry.

This model has several advantages over other models. First, it avoids the legal and emotional hurdles associated with requir-

Ongoing court involvement will significantly enhance the effectiveness of a re-entry program.

During New York's trial discharge period, the youth is no longer "in foster care," but the court maintains jurisdiction over the youth.

ing the court to reopen a case it has closed. The court stands ready to hear the case, and a youth need announce no change of heart to seek out the court's assistance. Moreover, the New York statute makes explicit the ongoing obligations that the state has to the youth, including maintaining some contact with the youth, whether or not the youth remains in care. This structure more closely mimics the more typical family arrangement, in which parents stand by, attending to their children's progress and ready to help when their children struggle.

This analogy to parents suggests that the six-month limitation on mandatory trial discharge status is problematic. Parents do not "discharge" their kids at 18, or 18 plus six months; their support and availability to their children is ongoing. Further, under the New York law, once a youth has fulfilled the six-month trial discharge requirement, if she decides she wants full discharge, she foregoes any future claim to after-care services. Thus, a youth whose first six months out of care are relatively good is out of luck if she elects full discharge and then discovers a need for help a year later. A youth who is struggling with independence, but not yet ready to admit that she needs help, is similarly out of luck. Recognizing this problem, New York tries to encourage advocates and child welfare workers to counsel foster youth to continue in trial discharge.

2. Re-Entry Models That Do Not Involve The Court

a. Re-Entry into Foster Care Status Without Court Involvement

As an alternative to ongoing court jurisdiction, a state could allow a youth to re-enter foster care status within the child welfare

system without a formal assertion of jurisdiction by the court. Under this option, a youth who wanted to re-enter foster care could contact his former case worker or some other designated party and request re-entry, and the child welfare agency would resume a case management relationship with the youth. Like a reassertion of court jurisdiction, this model may facilitate or make more efficient the distribution of services to the youth.

Arizona currently has a policy that follows this model and allows a youth to re-enter the supervision of the Department of Children, Youth, and Families. To be eligible, the youth has to have stayed in foster care until she was at least 18 and has to go through a petition process, which includes a 90-day waiting period² and a review of the youth's plan for independence. See Appendix C: Model Programs; Right of Re-Entry.

This model lacks the power of the court to compel the child welfare agency to provide youth with needed supports. Moreover, this system design discourages youth from re-entering the system. The screening is provided to ensure that youth are serious about re-entering care to avoid the costs associated with repeated moves in and out of the system. Systems, such as courts, that can keep cases open at low cost appear better designed to meet youths' ever changing needs.

b. Right to Re-Access After-Care Services

Another model that does not contemplate ongoing court involvement focuses on access to Chafee-funded after-care services and guarantees that a youth is able to receive those services through a certain age,

regardless of whether she declined such services at some point in the past. In effect, rather than give the youth a right to re-enter the foster care system itself, the model gives the youth a right to re-enter the system of services provided to discharged youth. A few states are already implementing this approach. Under this model, a youth is entitled to request the full panoply of services available to youth aging out at any point up until a certain maximum age (typically 21, but up to 23 in some cases).³ States employing this model include Iowa and Florida. See Appendix D: Model Programs; Right of Re-Entry.

This model has some potential advantages over models that contemplate ongoing court jurisdiction. First, it is probably politically easier to achieve. This model doesn't require the state to offer any new services or the judge to take on any new cases; it simply opens the door to whatever after-care services are offered to former foster youth, regardless of their prior participation in the program. This corrects the problem of after-care systems that effectively punish youth for initially declining services and trying to make it on their own by deeming them ineligible for services if they need help later. Further, this model is fairly easy to administer. A youth can simply call up a service provider (or be referred to one through a help line or a case worker) and access the services for which she is eligible, rather than having to petition the court.

This political and practical expediency may also be its weakness, however. Because this model provides no official re-entry into the foster care or court system, the advantages of those systems' involvement are unavailable to youth. Further, the model is entirely dependent on the services available in

the given jurisdiction. The Chaffee block grant program does not mandate specific services that a state must provide as part of its transitional independent living program. Some jurisdictions have an extensive list of services available to youth who have been discharged from care, but others have more limited programs that often provide little help beyond educational vouchers and job training.⁴ For a youth in crisis, job training is no help when the rent is past due and the prospect of homelessness looms. Further, the obligation of the state under these models is decidedly less than under models featuring ongoing court jurisdiction. Services are generally limited to what the block grant funding covers. Unlike in foster care, youth seeking after-care assistance can assert no entitlement to any level of assistance.

B. Model Re-Entry Program

The various models for re-entry highlight the different challenges that arise when trying to provide ongoing support for youth who have expressed a desire to assert their independence. On the one hand, states have an interest in efficient and effective administration of programs and careful use of scarce child welfare dollars. On the other hand, research indicates that young adults need flexible ongoing support and the opportunity to "test their wings" as they prepare for independence.

We propose a re-entry mechanism that is modeled largely after New York's trial discharge system. See Appendix E: Model Programs; Right of Re-Entry. Youth over 18 could be discharged from care on a trial basis, as in New York, but, unlike in New York, the court would always retain jurisdiction over the case until age 21.

Systems, such as courts, that can keep cases open at low cost appear better designed to meet youths' ever changing needs.

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We recommend that the court continue to schedule review hearings for discharged youth, to increase the chance that a youth will take advantage of the opportunity to engage in problem solving in the court's supportive context. If a youth opposes participating in ongoing hearings, he can make a direct request that no further hearings be scheduled. Even then, however, the youth should have authority to request additional hearings if he later desires the court's assistance.

Under our proposal, the courts would be available to hear any former foster youth's request for assistance up to at least the age of 21, regardless of the choices made by that young person earlier in adulthood. This approach combines the advantages of ongoing court involvement with the flexibility and relative ease of administration of the models that allow for access to after-care services at any time through age 21. It eliminates procedural hurdles that can stand in the way of youth getting the help they need, when they need it. In very rough terms, it mimics the experience of youth raised in more typical circumstances, who have the chance to experiment with various levels of independence, secure in the knowledge that if things go awry, they will have somewhere to turn.

ENDNOTES

¹ See discussion of healthy young adulthood in Section II.A.2.

² The 90-day waiting period, according to the Independent Living Coordinator in Arizona, is meant to ensure that the child truly wants to enter foster care again, rather than just looking for a quick handout of money or services.

³ Florida has one of the most generous programs of services for youth who have aged out of care, continuing availability of all Chafee services until age 23. See FL. REV. STAT § 409.1451(5)(a)(3).

⁴ For a state-by-state summary of the services provided by various states with Chafee funding, see www.fostercaretoadulthood.wikispaces.com.

RIGHT OF RE-ENTRY

CASAs FOR OLDER YOUTH

VII. Volunteer Advocates: How to Help Older Youths

In many foster care cases, a Court Appointed Special Advocate, or CASA, plays an important role. Under some models, the CASA serves as the only legal representative for a foster child. Under others, the CASA supplements the work of the child's lawyer. In our view, it is never appropriate for a CASA to substitute for a lawyer, particularly in cases involving adolescents and young adults. As discussed in Section IV.B.3, client directed legal representation is developmentally appropriate for older youth and can facilitate youths' central participation in the court and agency planning process. That being said, CASAs can still make an important contribution in these cases and can play a special role in supporting foster youths' transition to adulthood.

In this section, we recommend that the CASA program and CASA volunteers alter their role when appointed to older youth or when the children they represent become adolescents. In particular, we recommend specialized recruitment and training of CASAs for older youth that prepares them to help youth to make and act on their own plans, to understand and exercise their rights, and to develop permanent connections with family or other important adults.

A. Background

The CASA program was developed to expand the juvenile court's ability to assess children's circumstances before making decisions with life-long consequences for families. In 1977, in Seattle, Washington, Judge David Soukup established the first program of its kind that employed volun-

teers from the community to serve as the "eyes and ears of the court." Similar programs followed, and in 1982, the National CASA Association was established to act as an overarching organization for the growing number of local programs. The mission established by National CASA is "together, with its state and local members, to support and promote court-appointed volunteer advocacy for abused and neglected children so that they can thrive in safe, permanent homes." With minor deviations, all state and local programs operate under the same general mission statement. Currently CASA has over 50,000 volunteers in over 900 programs. These volunteers have been appointed by judges to assist in the cases of over 225,000 abused and neglected children.¹

Once a volunteer has passed a background check, he or she is expected to undergo training and make a commitment to volunteer for a period of twelve to eighteen months. In training, volunteers learn the role they are expected to play, the structure and organization of the program, and the relevant child welfare law. Upon completion of training, volunteers are assigned to a case. Because there are not enough CASAs for every child, CASAs are generally appointed in cases where the judge has identified special problems or risks. The volunteer investigates the case and develops an on-going relationship with the child to help assess the child's wants and needs.

CASA volunteers take on one child, or one sibling group, at a time so that they can get to know the children and ensure their interests are properly represented in court. They spend considerably more time with these children (averaging 10 hours per month) than can caseworkers or lawyers, who typically carry heavy caseloads. Moreover, most

We recommend specialized recruitment and training of CASAs for older youth that prepares CASAs to help youth to make and act on their own plans, to understand their rights, and to develop permanent connections with family or other important adults.

The current CASA model is best designed to serve younger youth and must be adjusted to meet the needs of older youth.

CASAs stay involved for the length of the case, providing some continuity to offset the problems created by frequent turnover among caseworkers. Because of the CASA's singular focus on the needs and interests of one child or sibling group, and because of the attention and commitment asked of the CASAs, courts generally show considerable deference to their observations and recommendations.

B. Limitations of CASA When Serving Older Youth

While CASA serves children of all ages, the current model is best designed to serve younger youth and, in several ways, the current model is not ideally suited to address the needs of older youth. For example, the current twelve to eighteen month volunteer commitment only seems adequate if the CASA is serving a young child likely to find a permanent home within that time period. But if a CASA volunteer is appointed to serve a fifteen year old, it is likely that the case will stay open for at least three more years, and possibly six, if the youth lives in a jurisdiction that allows care to be extended to twenty-one. Additionally, the volunteer training focuses on how to help secure safety and permanence primarily through return home or adoption, not on the issues discussed in this protocol that will matter for the youth aging out. Finally, current CASA volunteers advocate "in the best interest of the child," but for older youths this standard is inappropriate, and the focus should be on actively engaging the youth in making her own choices.

C. A New Focus

As an organization that has the opportunity to engage individual foster youth directly,

CASA stands in a position to provide significant support to foster youth aging out of care. Because the role of CASAs for older youth should be considerably different from their role for younger children, and because the issues facing youth aging out would likely appeal to a different set of volunteers than those interested in helping young children, the CASA program should recruit a separate set of volunteers for cases involving older youth. This separate group of volunteers should, in turn, undertake different tasks, for which they could be prepared through specialized training.

1. Recruiting a New Set of Volunteers

While there are no age-based selection criteria for the appointment of CASA volunteers, the traditional focus of their work, as with the court, has been on younger children, where the court's concerns for safety and permanence focus on the choice between returning a child to his birth parents and adoption. But these are not, for the most part, the safety and permanency issues that are relevant to a sixteen-year-old who is living in a group home. For this reason, we recommend targeting, recruiting, and training specific volunteers to handle the cases of older youth to better serve their legal and developmental interests.

Some local CASA organizations have begun to take the lead in fashioning programs specifically designed for older youth. One notable example in California is the CASA program in San Diego, called Voices for Children. This program has established several categories of volunteers, including their Court Appointed Special Monitors (CASM), who are assigned to children who are expected to age out of the system. These CASMs make a somewhat longer commit-

ment than the more traditional CASAs and are trained to ensure that children in long-term foster care receive the services they need to prepare them for independence.²

Ideally, a volunteer assigned to a youth who is expected to age out of the system will remain involved as long as the youth remains in the child welfare system. Because this is a predictable length of time, volunteers could be asked, at the outset, to make a commitment for the number of years remaining in a young person's eligibility for foster care. Identifying a separate group of volunteers specifically interested in older youth and more focused on advocating for their legal entitlements prior to emancipation will allow for this sort of specialization as well as a better match of temperament and skills between the volunteer and youth.

2. The Role of CASAs for Older Foster Youth

Most conventionally, CASAs for older youth can be expected to play a monitoring role, ensuring that the child welfare agency is making sufficient efforts to meet the foster youths' needs and prepare them for adulthood. In fulfilling this monitoring role, CASAs can employ the same developmental and discharge checklists we advocate for courts in Section III.A. and B. See Appendices: Model Legislation and Model Court Checklists; Preparation for Independence. CASAs for older youth could significantly enhance their assistance if, in addition to this monitoring, they helped youth to (1) develop their own plans for the future, (2) understand and exercise their legal rights, and (3) develop their relationships with individuals who could serve as long-term sources of support. The discussion that follows considers some of the mechanisms CASAs could employ to fulfill these roles

and the form that training should take to equip them for the task.

a. Helping Foster Youth to Make and Act on Their Own Plans

The training of CASA volunteers for older youth should prepare the volunteers to help young people take the actions and achieve the outcomes that they have chosen for themselves. This is a radically different orientation than that of the conventional CASA volunteer. While young children may be well served by CASAs who make their own assessment of children's best interests, such an approach will only undermine a young person's preparation for independence. To be effective with older youth, CASAs must learn to offer support and advocacy in court that furthers the youths' own vision of their best interests.

To be effective with older youth, CASAs must learn to offer support and advocacy in court that furthers the youths' own vision of their best interests.

One of the ways to encourage youth to take command of their own lives is to connect them with a youth advocacy organization in their state or community. See Appendix: Youth Advocacy Organizations. As discussed in Section III.A., foster youth participation in these organizations gives them valuable experience taking responsibility, interacting with peers, and exercising real influence in an area where their expertise is recognized and valued. Because many foster youth are not even aware of the existence of these organizations or, perhaps, doubt the value of their participation, a CASA can provide significant assistance to a foster youth simply by helping him make an initial connection with a youth organization.

While a lasting relationship may develop between a CASA and a youth, the CASA can better serve youth, in the majority of cases, by helping them to develop relationships with adults who are already important to them.

b. Helping Youth to Understand and Exercise Their Rights

Helping foster youth to understand their rights and how to exercise them will empower youth and encourage them to exercise control over the plans they have made in anticipation of discharge from the system. To equip a CASA volunteer to help a young person understand her legal rights, the training program should provide materials that set out these rights in terms that both the volunteer and the youth can clearly understand. Voices for Children in San Diego has several pages in their training documents that recognize the importance of teaching youths their rights. These pages consist of poster-like handouts that can be distributed to youth. In a simple way, they explain to youth their educational rights including their right to due process when faced with disciplinary action in school. Another page informs youth of their special education rights, and how they can seek such assistance.

Where youth and CASA are well informed about the youth's rights, the CASA can support the youth's exercise of those rights. Thus, for example, a youth who is expelled can turn to her CASA for assistance in asserting her due process rights. The CASA can help the youth with the logistics (How is a meeting requested?) and can attend the meeting with the youth to provide support, as a parent would generally do for youth living at home. While assistance in exercising rights might be provided more effectively by a lawyer, a CASA, who is assigned to only one youth or case, will likely have more time to assist the youth in contexts that extend beyond juvenile court. Moreover, while we do not recommend this approach, some CASAs may serve as the sole legal representative for youth in some juris-

dictions. Where a youth has both a CASA and a lawyer, a CASA will sometimes be most effective, in advocating for a youth whose legal rights are implicated, by helping to connect that young person with her lawyer.

c. Helping Youth to Develop Long-Term Supportive Relationships

As discussed earlier in this protocol, a primary need of older foster youth is to develop connections with adults who can provide them with meaningful and lasting support as they transition to independence. While many CASA volunteers do form a close relationship with the youth to whom they are assigned, they should not be expected to serve as the primary, permanent source of support for these youth. It is unrealistic to expect youth to form a close, lasting relationship with an individual who has been assigned to them relatively randomly through a court process, no matter how caring that individual. And it is also unrealistic to demand of volunteers, before they have even formed a relationship with a youth, that they commit to life-long involvement with that youth. While a lasting relationship may develop between the CASA and youth, the CASA can better serve youth, in the majority of cases, by helping them to find and develop relationships with adults who are already important to them.

Finding people whom the youth identifies as possible long-term sources of support, and encouraging the development of a relationship between the youth and those individuals, should be a large focus for CASA volunteers. Because children who remain in the child welfare system into late adolescence typically experience many moves in foster care, they frequently

lose contact with caring individuals from earlier stages in their lives. Identifying and locating these individuals can be extremely time consuming, and, without the help of a volunteer, may not ever be accomplished. In California, where efforts to help youth develop permanent connections have been given priority in recent years, CASAs have begun to be trained to use computer search tools to help youth identify extended family members, sometimes in large numbers, who had not previously been identified by the child welfare system. The California experience suggests that one of the most important aspects of this training is teaching the CASA volunteers how to solicit the input of youth in a manner that encourages the youth to take the lead in identifying individuals to contact.

Sometimes, simply locating an individual identified as important to a child can set in motion the reestablishment of the relationship. As one striking example, a CASA volunteer in California recounts her experience helping a youth, who identified a bus driver from years' past as a possible source of friendship and support. After considerable effort, the CASA located the bus driver and asked her if she would be able and willing to step in and provide a relationship with the youth that might help support her into adulthood. While it took some time to get reacquainted, the youth has now been integrated into the bus driver's family. She has a place she can go for holidays and a person to whom she can turn when looking for support. Without the involvement of the CASA, that initial, time-consuming effort to locate the bus driver would probably never have occurred.

In many cases, however, identifying and locating an individual is only the first step in a delicate process of developing a rela-

tionship. In training, volunteers should be prepared to make the initial communication and to approach the issue of reconnection in small steps, first proposing a simple meeting, to allow the two to get reacquainted. Additionally, training should be aimed at dispelling biases that may interfere with the CASA's support for the youth's choice of individuals with whom she hopes to reconnect. One of the primary obstacles identified in a California Permanency for Youth Project³ report in reconnecting foster youth with adults was a bias of children's representatives and case workers against the children's relatives. CASA volunteers may presume that a youth's history of removal for abuse and neglect, and the subsequent failure of the child welfare system to identify family members with whom the youth could live, indicates that the family, as a whole, is an inappropriate source of support for the youth. Recognizing that youth tend to return to their families, regardless of that history, and that the family members the CASA could help identify could be those in a better position to provide supports than those from whom a child was removed, it is essential that the CASA come to understand the value of supporting the youth's exploration of those family relationships. Respecting the youth's decisions and desires by respecting the people with whom the youth would like to reconnect is vital, both to the success of the efforts at reconnection and to preserve the youth's trust in her relationship with the CASA.

As noted, a CASA volunteer's involvement with an older foster youth has the potential for fostering a long-lasting relationship between the child and the CASA volunteer herself. In many cases, CASA volunteer advocates report continued contact with youth well into adulthood, because both the youth and volunteer wanted the connec-

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tion to continue. In speaking with CASA volunteers, we heard of ongoing relationships with former foster youth who called their CASAs to seek advice, to vent about ongoing problems with birth families, and even to invite them into the delivery room for the birth of a child. While this ongoing relationship should not be expected in every case, it can offer an invaluable ongoing source of support for a young person, even if it only supplements other relationships that will carry into adulthood.

ENDNOTES

¹ For more information about the CASA program, see the National CASA website, www.nationalcasa.org.

² For more information about California's local CASA programs, see www.californiacasa.org.

³ For more information about the work of the California Permanency for Youth Project, see www.cpyp.org.

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LAW GOVERNING POST-MINORITY PARENTAL SUPPORT STATE BY STATE

Instructions: Use examples of instances where states extend support obligations beyond the age of 18 or graduation from high school to argue for extended foster care jurisdiction or reform in the process of transition to independence. For example:

- IF: State extends age of majority for child support to 21,
 - THEN: Foster care jurisdiction should be extended to at least 21.
- IF: State requires insurers to continue coverage for dependent child up to age 25,
 - THEN: Foster youth should have access to medical insurance as dependents of the foster care system through age 25.
- IF: State revives the duty to support adult disabled children when disability occurs past majority,
 - THEN: Youth should have a right of return to foster care for a period after emancipation.
- IF: State imposes post-secondary support obligations when children can benefit so that children can transition to adulthood successfully,
 - THEN: Foster care jurisdiction and services should be extended to at least 21 to help youth transition successfully to independence.

Note: Particularly helpful language has been highlighted.

State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Alabama	19 or when child graduates from high school.		If disability arises prior to majority, Alabama Supreme Court has established that, in absence of express statutory prohibition, it is “parents’ [duty] to support their children who continue to be disabled beyond their minority.” <i>Ex parte Breuington</i> , 445 So. 2d 294, 297 (Ala. 1983).	Courts have discretion; will impose without prior agreement. <i>Ex parte Bayless</i> , 550 So. 2d 986 (1989); ALA. CODE § 30-3-1.
Alaska	18, or 19 if child in high school or equivalent and residing with parent.		If disability prior to majority. Parental duty of support continues beyond majority where adult child incapable of supporting himself by reason of mental or physical disability. <i>Stribb u. Stribb</i> , 774 P.2d 798, 800 (Alaska 1989).	Courts may not require either parent to pay college support, even with agreement. <i>H.P.A. u. S.C.A.</i> , 704 P.2d 205 (Alaska 1985).
Arizona	18 or until high school graduation, but not past 19.		If disability prior to majority, Courts may order support past majority if child is physically or mentally disabled. ARIZ. REV. STAT. ANN. §§ 25-320E (2004).	No statute or case law holding parents to a duty to college support in absence of agreement.

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State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Arkansas	Later of 18 or high school graduation.		If disability prior to majority. Courts may order continuation of support even after disabled child reaches majority.	No statute or case law holding parents to duty to college support without agreement.
California	18, or the earlier of high school graduation or turning 19.	Legislation requiring no age limit termination for dependent child incapable of self-support pending CA A.B. 910.	Parents have a duty to support a child of <i>any age</i> who is <i>incapacitated from earning a living and without sufficient means</i> . CAL. FAM. CODE § 3910 (2004); See also <i>Culp v. Culp</i> , D279304 at 2 (Cal. Super. Ct. Dec. 29, 2000).	Courts will impose support obligation. <i>If college is in best interests of the child, then support order can include requirement that a parent pay</i> so long as court thinks parent is financially secure. <i>Hale v. Hale</i> , 132 P.2d 67, 69 (Cal. App. 3d Dist. 1942).
Colorado	19 or judicial termination.	<i>Child considered dependent for insurance purposes until 25</i> (even if not enrolled in educational institution) if unmarried, financially dependent, or shares same permanent address as covered caregiver.	Prior to majority. “If a child is physically or mentally incapable of self-support when he attains the age of majority, emancipation does not occur, and the duty of parental support continues for the duration of the child’s disability.” <i>Koltay v. Koltay</i> , 667 P.2d 1374, 1376 (Colo. 1983); COLO. REV. STAT. § 14-10-115(13)(a)(II)(2007) and (15)(a)(II)(2007).	Courts may order both parents to contribute to education expenses of child, but if educational support is ordered, child support must be terminated. COLO. REV. STAT. §§ 14-10-115(15); <i>In re marriage of Robb</i> , 934 P.2d 927 (Colo. Ct. App. 1997).

State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Connecticut	18, or 23 if enrolled full time at post-secondary institution.	H.B. 6055 pending—extends coverage until 19 or 23 if full-time students or 25 if they do not have access to employer-sponsored coverage. Insurers can reflect cost of extended coverage in premium.	Court may order support of disabled child up to age 21. CONN. GEN. STAT. § 46b-84 (2007).	<i>Court may enter educational support order up to the age of 23, only if it finds as a matter of fact that it is more likely than not that parents would have provided this support if family were intact. Child must remain in good standing and make academic records available to both parents.</i> CONN. GEN. STAT. § 46b-56c.
Delaware	18, or earlier of high school graduation or 19.	Policyholder's dependent children must be covered until 24 if residents of DE or full time students. Premium can reflect extended coverage, but may not exceed 102% of policy cost before child turned 18. 18 DEL. CODE § 3354; § 3570.	Under poor statute, parent may be ordered to support adult child unable to provide for himself at any age , so as to avoid placing burden on public resources. DEL. CODE ANN. Title 13, § 503 (1999).	No statute or case law holding parents to duty to college support in the absence of agreement.
District of Columbia	21 or emancipation.		Common law duty to support disabled adult children of any age. <i>Nelson v. Nelson</i> , 548 A.2d 109, 111 (D.C. 1988).	<i>All minor children entitled to support.</i> D.C. CODE § 16-916, and minority extends to 21.
Florida	18, or 19 if child will graduate from high school by that age.	S.B. 238 pending—would require coverage to age 25 if unmarried, with no dependents of their own and no other health insurance. Premiums may not exceed 102% of previous annual premiums.	Both parents have duty to support if disability arises prior to majority. FLA. STAT. ANN. § 743.07(2) (2005).	<i>Courts will compel postsecondary support upon a finding of actual “dependency,” but college alone does not necessarily render a child dependent.</i> <i>Slaton v. Slaton</i> , 428 So.2d 347 (Fla. Dist. Ct. App. 1983).
Georgia	18, up to 20 if still in secondary school.		Parents have no duty to support an adult disabled child beyond the age of majority. GA. CODE ANN. § 19-6-15 (2004). Proposed amendment would extend coverage to adult disabled children whose disability arose prior to majority. H.B. 540.	<i>Court has discretion to order financial assistance for child’s education, only until the child reaches 20.</i> GA. CODE ANN. § 19-6-15(e).
Hawaii	18, up to 23 if child enrolled at accredited higher educational institution.	Attempts to require extended dependent coverage did not pass out of committee in 2006.	Parents have statutory obligation to support adult disabled children. No language limiting to situations where disability arose prior to majority. HAW. REV. STAT. § 580-47 (1993 & Supp. 2005).	Courts may order support for adult children for college. HAW. REV. STAT. § 580-47.
Idaho	18, up to 19 if enrolled in formal education.		Common law duty to support adult disabled child only if disability arose prior to majority.	No statute or case law holding parent to duty absent agreement.
Illinois	18, or earlier of high school graduation or 19.	H.B. 3429 Pending—would require that no insurer could exclude child under 25 if unmarried, financially dependent and having same legal residence.	Parents have a duty to support adult children suffering from mental or physical incapacity regardless of age. 750 ILL. COMP. STAT. ANN. 5/513 (2004 & Supp. 2006).	<i>Court may make provisions for education expenses whenever the child’s age.</i> Support terminates when child receives baccalaureate degree. 750 ILL. COMP. STAT. ANN. 5/513.

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Note: Particularly helpful language has been highlighted.

State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Indiana	<i>21 or emancipation.</i>		Child must be disabled at the time the child reaches majority for support duty to be imposed. IND. CODE ANN. § 31-14-11-18 (2003).	Child support order may include sums for child's education at institutions of higher learning, where appropriate. IND. CODE § 31-16-6-2.
Iowa	18, until earlier of high school graduation or 19.		Statutory duty to support adult disabled children, <i>even if disability arises past majority.</i> IOWA CODE ANN. § 598.1(9) (2001).	"Support" means obligation which may include support for child between ages of 18 and 22 who is regularly attending an accredited school or, in good faith, a full time student in college or has been accepted for the next term. IOWA CODE § 598.1(8); § 598.1(9)
Kansas	18, to end of school year in which child turns 18; may be extended to 19 on agreement of parents.			Parents have no statutory or common law duty to support their adult children. KAN. STAT. ANN. § 59-2006 (2003); <i>Arche v. U.S. Dep't of Army</i> , 798 P.2d 477, 486 (Kan. 1990).
Kentucky	18 or 19 if still in high school.	Covered as dependents until 19, or <i>25 if enrolled in educational institutions.</i>		Support duty extends only to those children who are mentally or physically incapacitated upon reaching majority. KY. REV. STAT. ANN. § 405.020 (2004).

State	Age of Majority for Child Support Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Louisiana	18 or emancipation; earlier of high school graduation or 19; or 22 if child is in secondary school and developmentally disabled.	Statutory duty to support adult disabled children no matter when disability arises. L.A. Crv. CODE ANN. Art. 229 (1993).	No statute or case law holding parents to duty in absence of an agreement.
Maine	18 or 19 if still in high school.	Parents are obligated to support adult disabled child no matter when disability arises , according to case law, though statutory authority is unclear. <i>Buril v. Buril</i> , 354 A.2d 392 (Me. 1976); See also M.E. REV. STAT. ANN. Title 19-A, § 1504 (1998).	No statute or case law holding parents to duty in absence of an agreement.
Maryland	19 if still in high school or emancipation.	Strong common law tradition of requiring support for disabled adult children, no matter when disability arises . Now also statutory duty. Md. CODE ANN., Fam. Law § 13-102(b) (2003).	Child support guidelines provide that <i>court may consider under equitable powers the terms of any existing separation or property settlement agreement or court order, including provisions for payment of college expenses.</i>
Massachusetts	18, or 21 if child domiciled with parent or 23 if enrolled in education program.	Common law continuing obligation to support disabled adult children. <i>Feinberg v. Diamant</i> , 389 N.E.2d 998, 999 (Mass. 1979).	Court <i>may order support for child between ages of 18 and 21 who is domiciled with parent and principally dependent upon said parent for support. Court may also order support for a child up to age 23 in school, up to a B.A.</i> MASS GEN. Laws ch. 208 § 28; <i>Doe v. Roe</i> , 585 N.E.2d 340 (Mass. App. Ct.1992).
Michigan	18, but may be ordered until 19 ½ for completion of high school, and beyond by agreement.	Dependents may stay on parent's coverage two years after losing I.R.C. dependent status, or until 26 (whichever comes first). MASS GEN. LAWS 175 § 108(3). Young adults aged 19-26 are eligible for lower-cost insurance coverage tailored to meet their needs. MASS GEN. LAWS 1761 § 10.	Court has authority to order support beyond the age of majority where adult child is disabled. See <i>Blakely v. Blakely</i> , 549 N.W.2d 575 (Mich. 1996), affirming trial court order, 534 N.W.2d. 147 (1995).
Minnesota	18 or 20 if attending secondary school.	HFO 475—pending. Extends age of dependency to 25 regardless of enrollment in educational institution.	Statutory duty to support adult disabled children no matter when disability arises .
Mississippi	21		MINN. STAT. § 518A.26 Subd. 5 (2006). Duty to support adult disabled children implied in cases. <i>See, e.g., Taylor v. Taylor</i> , 478 So.2d 310 (Miss.1985).

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Missouri	18, earlier of high school graduation or 21; or 22 if enrolled in vocational school or college.	H.B. 1071—pending. Requires coverage for <i>dependent children with chronic illnesses until 25 or child marries.</i>	Statutory duty to support <i>any</i> physically or mentally incapacitated child, if also insolvent and unmarried. Mo. ANN. STAT. § 452.340 (2003 & Supp. 2006); <i>Court has said it does not make sense to impose legal obligation to support a child of minority age but not an adult disabled child who is just as dependent on the parent for care.</i> <i>Kramer v. Carroll</i> , 309 S.W.2d 654, 660 (Mo. App. 1958)	<i>Parental obligation shall continue until earlier of child completing education or reaching age 21, if child enrolled in institution of higher education.</i> Mo. REV. STAT. § 452.340.5 (West 2007).
Montana	18 or emancipation; to 19 if enrolled in high school.		A parent is not obligated to support a child who has reached the age of majority absent written agreement or express provision in a decree. MONT. CODE ANN. § 40-4-208(5) (2005).	<i>Court can consider child's educational needs in setting support award;</i> MONT. CODE ANN. § 40-4-204(2)(d), but support beyond majority age is sharply limited, § 208(5).
Nebraska	19		Parents are not obligated to support their adult disabled children.	Court may not order support past the age of majority over objection of any parent, absent a previous agreement between parties. <i>Zettnerman v. Zettnerman</i> , 512 N.W.2d 622 (Neb. 1994).

State	Age of Majority for Child Support Ongoing Dependence for Insurance Coverage?	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Nevada	18 or 19 if still in high school.	Coverage may include dependents up to age 26, and must include dependents who are mentally or physically incapable of earning a living as long as incapacity remains. Also must continue for one year for dependents who are full time students if they had to take leave of absence due to illness or injury. N.H. REV. STAT. ANN. § 415.5 (2007).	The handicap of the child must have occurred before the age of majority for the duty of ongoing support to apply. NEV. REV. STAT. ANN. § 125B.110 (2004).	No statute or case law holding parents to duty in absence of agreement.
New Hampshire	The later of 18 or high school graduation.	<i>At option of insured parent, dependent may be covered until 30 if they have no dependents of their own.</i> Insurer may charge higher rate, but must not exceed 3% of premiums. N.J. STAT. ANN. § 17B:27-30.5.	State poor person statute imposes support duty on person with sufficient means for "his or her wife, husband, child, father or mother when in need." This would compel a revival of support duties for adult disabled child. N.H. REV. STAT. ANN. § 546-A:2 (2006).	Court may order support for college expenses for adult children in appropriate circumstances. <i>Gnirk v. Gnirk</i> , 589 A.2d 1008 (N.H. 1991).
New Jersey	<i>Age of majority or as determined by court.</i>		Broad discretion. <i>A parent is required to support children until they have emancipated.</i> When child is disabled, emancipation does not occur automatically upon reaching majority. <i>Monmouth County Dis. Soc. Servs. v. C.R.</i> , 720 A.2d 1004, 1013-14 (N.J. Super. Ct. Ch. Div. 1998).	Court has discretion to award payment of college support and expenses even though child has reached age of majority. <i>Newburgh v. Newburgh</i> , 443 A.2d 1031 (N.J. 1982).
New Mexico	18 or 19 if still in high school.	<i>May not be terminated based on age before 25th birthday of dependent child, regardless of whether enrolled in educational institution.</i> N.M. STAT. ANN. § 13-7-8.	Common law duty to support adult disabled child until need for support ceases, if disabled prior to majority. <i>Cohn v. Cohn</i> , 934 P.2d 279, 281 (N.M. 1996).	No statute or case law holding parents to duty in absence of agreement.
New York	<i>21 or emancipation as determined by court.</i>	Pending—S.B.03185 –unmarried and unemployed college graduate may be dependent for family coverage for period of one year after graduation. A.B.02142- coverage for dependent children enrolled full-time in accredited professional or graduate school.	The New York legislature specifically amended child support laws in 1966 to eliminate parental obligation to support children, including those who are disabled, after a child's twenty-first birthday.	Court may order postsecondary support, or support for private school or enriched education , but parent may not be directed to pay support for a child over 21 absent express agreement. N.Y. Do. Re. Law § 240(1-b)(c)(7); <i>Setford v. Cavanaugh</i> , 572 N.Y.S.2d 591 (1991).
North Carolina	18, or the earlier of through secondary school or age 20.		Parents are required to support children if the children are disabled upon reaching majority. N.C. GEN. STAT. § 50-13.8 (2005).	No statute or case law holding parents to duty in absence of agreement.

LAW GOVERNING POST-MINORITY PARENTAL SUPPORT STATE BY STATE

Instructions: Use examples of instances where states extend support obligations beyond the age of 18 or graduation from high school to argue for extended foster care jurisdiction or reform in the process of transition to independence. For example:

- IF: State extends age of majority for child support to 21,
 - THEN: Foster care jurisdiction should be extended to at least 21.
- IF: State requires insurers to continue coverage for dependent child up to age 25,
 - THEN: Foster youth should have access to medical insurance as dependents of the foster care system through age 25.
- IF: State revives the duty to support adult disabled children when disability occurs past majority,
 - THEN: Youth should have a right of return to foster care for a period after emancipation.
- IF: State imposes post-secondary support obligations when children can benefit so that children can transition to adulthood successfully,
 - THEN: Foster care jurisdiction and services should be extended to at least 21 to help youth transition successfully to independence.

Note: Particularly helpful language has been highlighted.

State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
North Dakota	18, or to graduation or 19 if in high school.		While child support obligations generally end when the child graduates from high school or reaches majority, whichever comes first, court has authority to order ongoing support where the court “determines support to be appropriate.” N.D. CENT. CODE § 14-09-08.2(6) (2004).	Court has no authority to order support for college expenses. <i>Larson v. Larson</i> , 694 N.W.2d 13 (N.D. 2005).
Ohio	Later of 18 or high school, but not past 19.			Domestic relations court has jurisdiction to order continuing support after majority if child is physically or mentally disabled to point of being incapable of maintaining herself. <i>Castle v. Castle</i> , 473 N.E. 2d 803, 807 (Ohio 1984).
Oklahoma	18 or until child completes high school.		Court may order support for adult disabled child if disability exists or cause of disability is known to exist on or before child’s 18th birthday. OKLA. STAT. ANN. Tit. 43, § 112.1A (2006).	No statute or case law holding parents to duty in absence of agreement.

State	Age of Majority for Child Support Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Oregon	18, or 21 if in school at least half-time.	<i>Dependent includes elderly parents and disabled adult children.</i> OR. REV. STAT. § 735.720	<i>"Parents are bound to maintain children who are poor and unable to work to maintain themselves."</i> OR. REV. STAT. § 109.010 (2003). <i>No language limiting to incapacity prior to majority.</i>
Pennsylvania	Later of 18 or completion of high school.		Statute states parents "may be liable for support of their children who are 18 years or older." 23 Pa. Cons. Stat. ANN. § 4321(3) (2001). Court has interpreted to require support if child's physical or mental disability existed when he reached majority and this prevents him from self-supporting. <i>Hanson v. Hanson</i> , 625 A.2d 1212, 1214 (Pa. Super. Ct. 1993).
Rhode Island	18, or sooner of 90 days past high school graduation or 19.	19 or financially dependent students until 25, or any age if child is mentally or physically impaired. RI. GEN. LAWS § 27-18-59 (2007).	Courts may order support for disabled child until the child's twenty-first birthday. R.I. GEN. LAWS § 15-5-16.2 (2003).
South Carolina	18 or graduation from high school.	Pending—S.B. 255—extends coverage to dependents under 30 with no dependents S.B. 327—extends coverage to dependents under 25 and unmarried S.B. 793—extends coverage to dependents under 30 with no dependents, allows additional premium to be charged.	Court may order parents to continue supporting adult disabled child, <i>because support is in the best interest of the child and the state</i> , and is conducive to the welfare of the family. S.C. CODE ANN. § 20-7-420(17) (1985 & Supp. 2005).
South Dakota	18 or 19 if attending secondary school.		Cases establish courts may order college support. <i>Risinger v. Risinger</i> , 253 S.E.2d 652 (1979). <i>Family court judge may require postsecondary support where there is evidence that 1) child will likely benefit from college 2) child can at least make satisfactory grades 3) child cannot otherwise go to school 4) parent has financial ability to pay.</i> West n. West, 419 S.E.2d 804 (S.C. Ct. App. 1992).
			No statute or case law holding parents to duty in absence of agreement.

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Note: Particularly helpful language has been highlighted.

State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Tennessee	18, or until high school graduation.		In case of adult disabled child, a conservator is to be appointed who can seek support from parents. <i>Day v. Gatewood</i> , 1999 Tenn. App. Lexis 285.	No statute or case law holding parents to duty in absence of agreement.
Texas	Later of 18 or graduation from high school.	Dependent status <i>until 25 or older in some cases</i> . TEX. INS. CODE ANN. § 1201.053 (2007).	Parents obligated to support adult disabled children who were disabled prior to attaining majority. TEX. FAM. CODE ANN. § 154.001 (2006).	<i>Extension of support beyond age 18 permitted if child enrolled in joint high school/junior college program.</i> TEX. FAM. CODE ANN. § 154.002.
Utah	18 or when child graduates from high school.	<i>Coverage must continue until dependent's 26th birthday regardless of whether enrolled in higher education.</i> UTAH CODE ANN. § 31A-22-610.5.	Parents may be ordered to support adult disabled children <i>when they are at risk of burdening the public</i> . UTAH CODE ANN. §§ 78-45-2, 78-45-3(1), 78-45-4(1) (2002).	<i>Courts have discretion to order support to age 21.</i> UTAH CODE ANN. § 15-2-1.
Vermont	18 or high school graduation.	If insurance covers dependents after 18, must continue for medically necessary leave of absence from school for up to 24 months. Also must continue to cover mentally or physically incapable dependents past limiting age. 8 VT. STAT. ANN. § 4089d.	Exception to rule that common law duty to support ends at majority is when children are disabled and unable to support themselves. For these children, parent's duty continues. <i>Rowell v. Town of Vershire</i> , 19 A. 990, 990 (Vt. 1890).	No statute or case law holding parents to duty in absence of agreement.

State	Age of Majority for Child Support	Legislation Regarding Ongoing Dependence for Insurance Coverage?	Will impose obligation to support adult disabled child?	Will impose post-secondary support obligation?
Virginia	18, or earlier of high school graduation or 19.	Court may order support for adult disabled child <i>who is unable to support herself, unable to live independently, and resides with parents.</i> Va. CODE ANN. § 20-61 (2004); § 20-124.2(C) (Supp. 2006).	Court may order support for adult disabled child <i>who is unable to support herself, unable to live independently, and resides with parents.</i> Va. CODE ANN. § 20-61 (2004); § 20-124.2(C) (Supp. 2006).	No statute or case law holding parents to duty in absence of agreement.
Washington	18 or to graduation if before 19.	Court may order <i>support of adult disabled child.</i> WASH. REV. CODE § 26.19.035(1)(f).	Court may order <i>support of adult disabled child.</i> WASH. REV. CODE § 26.19.035(1)(f).	<i>Discretion to court to award college support according to enumerated factors.</i> WASH REV. CODE § 26.19.090.
West Virginia	18 <i>or up to 20 if enrolled in secondary school.</i>	Court may order support for adult disabled child, provided child is unmarried, isolated, residing with parent, and <i>was not emancipated</i> when disability occurred, <i>regardless of whether disability occurred before or after age of majority.</i> W. Va. CODE ANN. §§ 48-11-103(a)-(b); 2-3-1 (2006).	Court may award college support. W. Va. CODE § 48-13-702(b)(2).	
Wisconsin	18, or earlier of high school graduation or 19.	Recognizing court's authority to order support "for child" beyond the age of majority. Wisc. STAT. ANN. § 769.101 (2001).	No statute or case law holding parents to duty in absence of agreement.	
Wyoming	18, <i>up to 21 for secondary education.</i>	Parents have a duty to support adult disabled children when disability prevents them from becoming emancipated, <i>regardless of age.</i> Wyo. STAT. ANN. § 14-2-204(a) (2005).	No statute or case law holding parents to duty in absence of agreement.	

LAW GOVERNING POST-MINORITY PARENTAL SUPPORT
STATE BY STATE

MODEL LEGISLATIVE TESTIMONY

(This testimony, using Utah as a model, is offered as an example of how a legislative witness can rely on a state's law governing parents' obligations to their adult children to argue for continuing support for foster youth to at least age 21.)

Introduction

I am pleased to appear before the [Subcommittee] today to testify in support of amending [Utah Code Ann. § 78-3a-104(e) (2006)], on behalf of [Foster Youth Advocacy Organization]. We propose changing the definition of “child” for the purposes of child welfare involvement and court jurisdiction over foster youth from the current age of 18 to age 21.

Young people who grow up in foster care face daunting odds when they “age out” of that system as adults. Many of them find themselves without a job and without a home. Before long, many are incarcerated, and others become parents before they are ready. Staying in school is fraught with obstacles, from unaffordable tuition, to episodic housing, to a lack of academic and emotional support. Whatever their obstacles and opportunities, foster youth are far more likely than other young people to face those obstacles and opportunities alone. Clearly, we are failing these young people.

We know from our own life experience, now well supported by sociological research, that the adulthood acquired at age 18 is, for most of us, an option to be exercised rather than a mandatory transformation. We may declare our independence most forcefully as we blow out our 18 candles, but we will, more likely than not, crawl into bed at our parents’ house when the celebrating is over. For most of us, the first decade of adulthood is a patchwork of dependence and independence. We try out jobs, apartments, and relationships, and when they do not work out, we can retreat to the emotional and financial support of our parents. Our ongoing dependence serves as both safety net and stepladder. When we rely on parents to help us gain an advanced education, our independence will be more successful, by many measures, for being delayed.

In contrast, foster children in most states are forced to take full responsibility for themselves the moment the law allows them to do so, and the state sheds most or all of its involvement the moment foster youth are out of their custodial control.

While a system of laws, courts, state employees and their contractors can never match what families provide in unconditional love, single-minded loyalty, powerful attachments, and depth of insight, we owe it to those for whom we have taken over as parent our best attempt to give them what we expect other parents to provide. This requires that the system be flexible and responsive, and that it gives young adults the ability to move in and out of relative independence. It also requires that supports be tied to needs and abilities, rather than offered as rewards for those perceived to be doing best. Like any family, budgetary considerations will inevitably have some effect on the supports afforded, but, like any family, the commitment to support should not end because the dollars are short. Finally, to be ef-

fective, the system of supports must engage former foster youth in decision making as adults who are now in charge of their own fates.

Ongoing court involvement in young adulthood greatly enhances the ability of the system to offer effective and age-appropriate support to former foster youth. Where the court remains involved, youth are more likely to receive the support to which they are legally entitled, and they are more likely to be involved in thoughtful planning about their futures. This conclusion is based on research by the University of Chicago Law School's Foster Care Project, and on the comprehensive longitudinal research of the Chapin Hall Center for Children.¹ Chapin Hall's ongoing study of approximately 700 youth who are aging out of the foster care system has found that youth who remain in the child welfare system with court oversight beyond the age of 18 do significantly better than those who are discharged at 18 from that court-involved system. These youth appear to do better than discharged youth, even when those discharged youth are said to be entitled to the same set of supports (such as housing and educational supports) as the court-involved youth.

Furthermore, though parental obligations are generally thought to end as a matter of law at 18, the laws of many states, including ours, impose obligations of support on parents of adult children in a growing set of circumstances. Most of the justifications advanced by state courts and legislatures apply with equal, if not greater, force in the foster care context. These laws, we suggest, support imposing a parallel obligation on the state, as parent, to support the foster children who grew up in care into young adulthood.

[Utah's] current system, which terminates court jurisdiction at the age of 18, is out of step with both current thinking about development and the transition to adulthood nationwide, and with the way we have defined support obligations and dependence in our own legislature and case law. We support amending [Utah Code Ann. § 78-3a-104(e)] to bring it in line with [Utah's] already existing conceptions of ongoing dependence in the transition to adulthood.

Ongoing Dependence for Insurance Purposes in [Utah]

[Utah Code Ann. §31A-22-610.5] states that health insurance carriers must allow children to remain dependents under their parent's insurance coverage until the age of [26]. This legislation reflects [Utah]'s recognition of the need for longer-term caregiver support as youth transition into adulthood. Such law also responds to the staggering growth rate of the uninsured population in this country, many of whom fall between the ages of 19 and 34.

Youth who have transitioned out of foster care by age 18, however, appear to be among the most likely to be without health insurance. While Chapin Hall's study of the adult functioning of former foster youth reveals that only 47.1 percent of youth who are no longer in care at age 19 have health insurance, it also reveals that almost all (if not all) youth who remain in care are insured at that age. The lack of insurance translates into a lack of neces-

¹ Mark E. Courtney, et al., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 19, 44 Chapin Hall Working Paper (2005), available at www.chapinhall.org.

sary medical care for youth who transition out of foster care at the age of 18, as [Utah] forces them to do. According to Chapin Hall data, youth who do not remain in care at age 19 are more than five times as likely to forgo or be denied medical care that they need. Allowing courts to retain jurisdiction over foster youth to the age of 21 can serve our important state goal of ensuring that the number of uninsured youth does not continue to grow at a staggering pace.

Family Court Discretion to Order Support to age 21

[Utah Code Ann. §15-2-1] gives family courts discretion to order child support until the age of 21. [Utah] is not alone. In fact, half the states, as well as the District of Columbia, allow courts to order support past the age of majority, generally for the purposes of post-secondary education. This is because these states, like [Utah], recognize that family courts are in a unique position to mitigate some of the harms that children of divorced parents might incur as a result of the economic and emotional repercussions of divorce.

The harms with which these states are concerned are well-documented by researchers. However, the harms which foster youth face when emancipated from foster care have been documented to be much greater. These youth, at age 19, are less likely to have obtained a high school degree or GED, for example. They are far less likely to go to college. They are far more likely to experience such economic hardships as homelessness, joblessness or lack of adequate nutrition. However, allowing youth to remain in foster care until the age of 21 appears to mitigate some of these harms. Youth who remain in care are more likely to graduate from high school and to enroll in post-secondary educational programs. Youth who remain in care are less likely to experience economic hardship or to be forced to rely on government support like food stamps, public housing or low-income family assistance. Youth in care are more likely to receive family planning services and less likely to be arrested or convicted of a crime.

[Utah] has seen fit to mitigate the harm to children of divorced parents by allowing courts to extend support obligations up until the age of 21. Yet [Utah] terminates jurisdiction over foster youth at the age of 18, despite the fact that the harm these youth may face as a result could be much greater than what children of divorce may experience. The foster care system should respond accordingly, by uniformly extending child welfare support and court jurisdiction over youth to age 21.

State-Imposed Obligations to Support Adult Children who are Disabled

[Utah], like 41 other states, also grants courts the discretion to order parents to support adult disabled children who are at risk of burdening the public. Provisions regarding ongoing support for adult disabled children are found in [Utah Code Ann. §§78-45-2, 78-45-3(1), and 78-45-4(1)]. This indicates that our legislature as well as our courts have recognized that the designation of “independence” requires a baseline level of self-sufficiency. Furthermore, these statutes show that the State of [Utah] has determined that protecting the public from the burden of supporting a child incapable of self-support is a legitimate state

goal. This goal justifies imposing a continuing obligation of support on parents who are able to care for such children. Youth discharged from foster care at age 18 are at greater risk for homelessness, joblessness, incarceration, indigence and “illegitimate” pregnancy than those who remain in care until the age of 21. Youth discharged at 18 are also less likely to have access to a college education. In short, youth discharged from care at age 18 are at greater risk of becoming or creating public burdens than those who remain in care until at least 21. Having already recognized a strong state interest in preventing this type of public burden, [Utah] courts should extend foster care jurisdiction to at least 21 to protect against it.

Conclusion

The State of [Utah] has already recognized that youth are entitled to and may need parental support into at least their early twenties. Furthermore, through statutes regulating health insurance providers, child support, and support for adult disabled children, we have recognized that the transition to adulthood is defined by level of independence, rather than solely by age. Our state’s foster care system must respond accordingly. The concerns underlying the state statutes that I have discussed apply with equal, if not greater, force in the foster care context. When we cut off the parental relationship and assume responsibility as caregivers for youth in foster care, we have an obligation to see that obligation through at least to the point at which we have mandated parents to do so. It is time to bring our foster care system in line with the rest of our state law, by extending jurisdiction over foster youth to at least the age of 21.

A: PROPOSED DEVELOPMENTAL CHECKLIST LEGISLATION PREPARATION FOR INDEPENDENCE

The University of Chicago Law School Foster Care Project's Proposed "Developmental Checklist" Legislation for Adolescents in Foster Care

(1) Purpose.

The purpose of this Act is to ensure that the child welfare system addresses the developmental needs of adolescents in foster care.

(2) Definitions.

"Youth" shall mean all individuals in foster care age 12 or older.

(3) Goals.

In preparation for foster youths' lives of independence, the child welfare system must provide foster youth with opportunities to:

- (a) Develop and maintain important relationships with peers and adults;
- (b) Participate regularly and continuously in activities and associations of interest; and
- (c) Gain experience taking responsibility and exercising decision-making control.

(4) Rights of youth.

(a) Every youth in foster care shall have the right to:

- (i) Attend court hearings and speak directly to the judge;
- (ii) Participate actively in the development of his or her case plan and permanency plan and to discuss his or her views and concerns about these plans with the judge;
- (iii) Visit and contact brothers and sisters, and visit parents, if not a safety risk;
- (iv) Develop and maintain relationships with peers and adults who are important to the youth;
- (v) Participate in extracurricular, cultural, and personal enrichment activities, consistent with his or her age and development level;
- (vi) Attend religious services and activities of his or her choice;
- (vii) Make and receive confidential phone calls and send and receive confidential mail and electronic mail, if electronic mail is available at his or her residence. Youth may use communications tools, including telephone and electronic mail, if available, for a reasonable period of time each day, consistent with his or her age and developmental level;
- (viii) Have private space, of reasonable size, for storage of personal belongings.

(b) The fact that a right is not listed in this Section should not be construed to mean that the youth does not have that right.

(5) Responsibilities and authority of caregivers.

(a) With respect to the rights of foster care youth outlined in Section 4, caregivers may set reasonable limitations on when, where, and how often youth in their care may engage in the listed activities, except that:

- (i) Limitations on attendance of religious activities should be as narrow as possible; and
- (ii) Limitations on contact with siblings should be as narrow as possible.

(b) When setting limitations, caregivers must act as a reasonable parent, taking into account the individual youth's age, developmental level, and personal characteristics.

(c) When requested by the attorney or case worker of a youth in their care, caregivers must report their observations of the youth's participation in activities, special interests or hobbies, social skills, and peer relationships.

(6) Responsibilities of the child welfare agency.

(a) In order to facilitate youths' exercise of their rights as described in Section 4, the child welfare agency must:

- (i) Provide youth with timely notice of court dates, provide assistance with transportation, and otherwise to encourage the youth's court attendance;
- (ii) Include youth in case planning meetings and ensure that youth play a central role in the planning process;
- (iii) Facilitate visits with parents and siblings, which may include provision of transportation, and/or therapeutic supports;
- (iv) Facilitate visits and contact with peers and adults whom youth identify as important to them;
- (v) Facilitate youths' participation in extracurricular activities which may include assisting youth to identify and register for appropriate activities; purchasing equipment, uniforms, and supplies; and providing transportation; and
- (vi) Facilitate youth attendance of religious activities and services at the youth's request, which may include providing transportation.

(b) In order to facilitate youths' development and preparation for independence, the child welfare agency must:

- (i) Periodically discuss with each youth his or her interests, current participation in social activities, and other youth activities;
- (ii) Periodically discuss with each youth his or her relationships of importance and the assistance required to develop and maintain those relationships.

(7) Responsibilities of courts.

In order to facilitate foster youths' development and preparation for independence, courts must:

(a) When a foster youth appears at a hearing, discuss with the youth:

- (i) His or her participation in social activities and youth activities;
- (ii) His or her opportunities to visit family and friends;
- (iii) His or her goals and ambitions;
- (iv) His or her emotional needs; and
- (v) Any other points relevant to the youth's emotional and developmental health.

(b) When a foster youth does not appear at a hearing:

- (i) Ascertain what efforts were made to secure the youth's attendance and direct additional efforts to attempt to secure the youth's presence at the next hearing; and
- (ii) Gather information on all of the factors set out in Section 7(a) from the caseworker, the caregiver if present, and the youth's attorney and others with knowledge.

(8) School responsibilities.

Schools may not deny participation in school activities to a foster care youth who is a student at their school on grounds that the student entered the school in the middle of the school year.

PROPOSED DEVELOPMENTAL CHECKLIST LEGISLATION

B: NEW YORK MODEL LEGISLATION PREPARATION FOR INDEPENDENCE

New York's Discharge Checklist Legislation 18 NYCRR Section 430.12 (f)(3)

(a) A social services district shall be considered to be exercising diligent efforts to achieve the permanent discharge of a child in foster care only if it complies with the requirements for casework activity and documentation contained in this section.

.....

(f) *Another planned living arrangement with a permanency resource.* Another planned living arrangement with a permanency resource is a permanency planning goal to assist foster care youth in their transition to self-sufficiency by connecting the youth to an adult permanency resource, equipping the youth with life skills and, upon discharge, connecting the youth with any needed community and/or specialized services.

.....

(3) Discharge.

(i) Standards.

(a) For each child discharged to another planned living arrangement with a permanency resource, the district must identify any persons, services or agencies which would help the child maintain and support himself or herself and must assist the child to establish contact with such agencies, service providers or persons by making referrals and by counseling the child about these referrals prior to discharge. This must include efforts to assist the child to reestablish contacts with parents, former foster parents or other persons significant to the child.

(b) No child can be discharged to another planned living arrangement with a permanency resource, unless such child has received written notice of such discharge at least 90 days prior to the date of discharge and has had the goal of another planned living arrangement with a permanency resource continuously for a six-month period immediately prior to discharge. This notice requirement does not apply where the child has voluntarily departed from the foster care placement without the consent of the district and has been absent from said placement for 60 days.

(c) No child may be discharged to another planned living arrangement with a permanency resource, unless the child has a residence other than a shelter for adults, shelter for families, single-room occupancy hotel or any other congregate living arrangement which houses more than 10 unrelated per-

sons and there is a reasonable expectation that the residence will remain available to the child for at least the first 12 months after discharge. This requirement does not apply to a child who is a member of the military or job corps or who is a full-time student in a post-secondary educational institution or where the child has voluntarily departed from the foster care placement without the consent of the district and has been absent from said placement for 60 days.

(ii) Documentation.

(a) Documentation includes goals or outcomes and services in the service plan and a summary by the district of the efforts made and their results in the assessment and service plan required by the uniform case record.

(b) A copy of the written notice of discharge must be maintained in the case record until the child attains the age of 21, showing the date the child received the notice. In addition, the child's service plans prepared pursuant to Part 428 of this Title must show that the child has had the goal of independent living continuously for a six-month period immediately prior to discharge. If the notice is not received by the child because the child is voluntarily absent from the foster care placement without the consent of the district, the case record must document when the child left the foster care placement, the voluntary nature of the absence of the child, the absence of consent by the district and the efforts made by the district to make contact with the child to encourage the return of the child to the placement.

(c) The plan amendment or service plan required by the uniform case record must include a description of the living arrangements secured for the child, together with an assessment of the permanency of those arrangements. If the child is discharged without the district securing living arrangements for the child, the case record must document that the reason for the failure to secure such arrangement has been that the child is a member of the military or job corps or a full-time student in a post-secondary educational institution or has voluntarily departed from the foster care placement without the district's consent and has been absent from the placement for 60 days.

C: CALIFORNIA MODEL LEGISLATION PREPARATION FOR INDEPENDENCE

California's Discharge Checklist Legislation California Welfare and Institutions Code Section 391 Termination of Jurisdiction; Continued Jurisdiction

At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority the county welfare department shall do both of the following:

- (a) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.
- (b) Submit a report verifying that the following information, documents, and services have been provided to the child:
 - (1) Written information concerning the child's dependency case, including his or her family history and placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated.
 - (2) The following documents, where applicable: social security card, certified birth certificate, health and education summary as described in subdivision (a) of Section 16010, identification card, as described in Section 13000 of the Vehicle Code, death certificate of parent or parents, and proof of citizenship or residence.
 - (3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support.
 - (4) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate.
 - (5) Assistance in maintaining relationships with individuals who are important to a child who has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, based on the child's best interests.
- (c) The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) and that termination of jurisdiction

would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of subdivision (b). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.

(d) The Judicial Council shall develop and implement standards, and develop and adopt appropriate forms, necessary to implement this section.

D: PROPOSED DISCHARGE CHECKLIST LEGISLATION PREPARATION FOR INDEPENDENCE

The University of Chicago Law School Foster Care Project's Proposed Discharge Checklist Legislation For Adolescents Leaving Foster Care

(1) No youth receiving services from the child welfare system shall be discharged from that system without a court hearing.

(2) At least 60 days prior to the discharge hearing, the child welfare agency shall:

(a) Inform the youth of:

- (i) the date, time and location of the hearing;
- (ii) her right to attend the hearing, and the importance, to the youth, of attending;
- (iii) her right to assistance in traveling to and from the hearing;

(b) Provide the youth with the full written report the child welfare agency is required to prepare, pursuant to (2)(c), in anticipation of the youth's discharge;

(c) Prepare a written report that includes the following:

- (i) Information concerning the youth's case, including family and placement history, location and status of siblings, and contact information the youth can use, should she seek additional information about her case or family history in future years;
- (ii) Health and Education Records, including:
 - A. health and immunization records,
 - B. educational summary and transcripts,
 - C. copies of the following, and documentation that the following have been provided to the youth in official form:
 - the youth's birth certificate,
 - official proof of the youth's citizenship or residence, in a form acceptable to employers who are required to verify a youth's immigration status,
 - the youth's social security card,
 - a driver's license, or, where the youth cannot drive for safety reasons, another form of state identification,
 - where applicable, a death certificate(s) for the youth's parent(s);
- (iii) Documentation of the youth's current housing arrangement with a verification that the youth's housing is stable, and is expected to remain available and affordable for the youth for at least 12 months after discharge. For youth who are expected to reside on the campus of an educational institution, documentation setting out a plan for the youth's housing during periods of school closure;

PROPOSED DISCHARGE CHECKLIST LEGISLATION

- (iv) Documentation of the youth's enrollment in a program of health insurance that is expected to remain affordable and appropriate for the youth until at least age 21;
 - (v) A plan for a youth's ongoing education, including documentation of assistance provided the youth in
 - A. enrolling in a program of secondary education, where the youth has not yet completed high school; or
 - B. applying for admission to colleges and/or vocational training programs, and applying for financial aid, where the youth has already earned a high school diploma or its equivalent;
 - (vi) Documentation of efforts made to assist youth in preparing for employment and applying for positions;
 - (vii) Documentation of efforts made to assist the youth in developing and maintaining meaningful relationships with individuals important to the youth, and contact information for each of these individuals.
- (3) The court may maintain jurisdiction over the youth, beyond the discharge hearing date, if it finds that the department has not met the requirements of Section (2), and that termination of jurisdiction would be detrimental to the interests of the youth. This section shall not be construed to limit the court's discretion to continue jurisdiction for other reasons authorized by the court.

A: PHILADELPHIA MODEL COURT CHECKLIST PREPARATION FOR INDEPENDENCE

Philadelphia Family Court Protocol for Youth 16 and Older*

Preamble: The below protocol is intended as a guide for better serving older youth in care and for ensuring a successful transition from DHS custody to independence. All parties involved in the child's care and legal proceedings – e.g. the child, DHS, the City Solicitor, the Child Advocate, the Advocate social worker, the biological parents, the parents' advocates, the provider agency, the foster parent, etc. – should work as a team prior to Court to investigate the issues contained in the protocol. Problem areas (i.e. areas where the Court's intervention would be most helpful) should be identified prior to Court. The focus in Court should be on these areas.

A. Questions for all Older Youth:

1. **Safety**
2. What arrangements were made for the youth to **attend the court hearing?** If they are not attending, why?
3. **Permanency goals** for each child and a review of whether the youth is appropriate for reunification, adoption or subsidized legal guardianship. Has the **youth been consulted** about permanency planning? Has the youth been **asked to identify permanency resources?**
4. **FSP Update**
 - a. Date of last **FSP /CPP meeting.**
 - b. Is the **youth 14 or over in attendance?** If not, why?
 - c. What are the **main objectives** in the FSP? What services are being provided to meet these objectives?
5. **Independent Living Plan Update**
 - a. Date and status of referral to AIC. If youth does not have access to AIC, how are his/her independent living needs being provided?
 - b. What services are being provided to meet the youth's independent living/transition needs?
 - c. Who are the providers of IL instruction?
6. **Visitation and family contact/involvement. (Describe visitation schedule to the court.)**
Is the youth being given the opportunity to visit with siblings, parents, and other family resources? Are there other adult mentors or resources with whom the youth can visit?
7. **Educational progress. Provide the court information about the youth's educational progress**
 - a. What school or program is the youth enrolled in?
 - b. What grades are the youth receiving?
 - c. If the youth receives special education services, when was the last IEP meeting?

* Reprinted with the Permission of the Older Youth Subcommittee of the Court Improvement Project of Philadelphia Family Court

- d. What services have the youth received to prepare him or her for post-secondary education or training?
8. **Health and medical coverage.**
 - a. Is the youth up-to-date on all medical care and EPSDT screenings?
 - b. List any special health care needs and how they are being addressed? Provide any BHS referrals or assessments?
 - c. Has the youth been provided with information regarding family planning services?
 - d. If the youth has behavioral health needs, what services are being provided to address these needs?
 - e. If the youth has drug and alcohol needs, what services are being provided to address these needs?
 - f. If the youth is mentally retarded, what services are being provided by the Office of Mental Retardation?
9. **Status of home environment/placement:**
 - a. How many placements has the youth been in since the last review hearing?
 - b. Is this the least restrictive, most family like environment? What steps have been taken to move the youth from a congregate care setting to a more family-like settings?
 - c. How does the placement help the youth achieve the identified permanency plan?
 - d. Are there any plans for placement transitions in the next 6 months (i.e., transfer to another foster care home or agency, RTF step-down, efforts to find runaways).
 - e. Is the youth being referred to a **Supervised Independent Living (SIL)** placement? If yes, provide names of referral agencies and status of referral.
 - f. If the youth is a teen parent, **are mother and baby placed together?** If not, why?
10. **Caring Adults/Mentors.** What services are being provided to the youth to connect him/her with caring and reliable adults who can provide support and guidance to the youth? Has the youth been asked to identify mentoring resources?
11. Does the youth have the **names and phone numbers** of his social workers and child advocates?

B. For youth 16 – 21

1. Discuss the youth's goals in the FSP and IL Plan within the FSP. ***Be prepared to help the judge make findings regarding what services are needed to help the youth make the transition to independence.**
2. Provide information on the youth's **educational progress and how it relates to his or her plans to be independent and self-supporting upon discharge from care.** What additional educational supports would assist the youth?
3. Provide information on the youth's **current employment and future career** goals? What additional vocational/career services should be provided?
4. Has training in **family planning and parenting** been provided?
5. Has training in **food preparation, shopping, and nutrition** been provided?

6. Has there been an orientation to **community resources** (housing, government services, hospitals, library, church, community center)?
7. Has the youth been provided information about the responsibilities and process **under the Juvenile Act to stay in care past 18** if he or she is in instruction or treatment? Has a written request been made?
8. **What program of instruction or treatment is the youth planning to enroll in?** Have the terms and conditions for maintaining the Board Extension been discussed with the youth who is over 18 years of age?

C. Planning for Discharge/Transition from the System

1. If discharge planning has not occurred in a previous meeting (such as an FSP), has a discharge planning meeting **with the youth** and all parties occurred, in preparation for the recommendation of discharge?
2. Describe in detail what housing plans are in place for the youth (independent, family/friend or adult group home)?
3. What is the source of future medical coverage? Does the youth understand that she or he will not continue to have the current medical insurance?
4. What behavioral health, mental retardation, drug/alcohol or medical services are in place for the youth?
5. What is the source of current and future income (job, training, educational program), including the plan for a source of income and/or stable employment after discharge?
6. If the youth is under age 21, does he or she understand that they can stay in care if they are in a program of treatment or instruction? Does the youth understand that if they are discharged from the system at age 18 or any point thereafter after they cannot re-enter the system? Does the youth understand that they are entitled to receive services at the AIC until age 21?
7. Does the youth have a general understanding of tenant and homeowner rights?
8. What stable adults is the youth able to identify as resources he or she can rely on for advice and in emergencies?
9. Does the youth have an understanding of the basic governmental, community and housing services available to them after discharge?
10. What plans are in place so that the youth will have his physical health and/or behavioral health needs met after discharge?
11. What is the youth's plan for post-secondary education or training?
12. What services has the youth received to prepare for and apply to post-secondary education or training, including financial aid applications?

D. Serious Disabilities and Special Needs

1. **Diagnosis:** What is the disability, how severe is it and what is the current level of functioning?
2. What **treatment** is being provided to the youth to address the disability? Are **additional services** or treatment required?

3. Is the youth eligible for **special services as a result of the diagnosis?** Is the youth receiving the services?
4. Is the youth involved with **day program activities or treatment** (vocational, educational or supportive employment)?
5. Has an **application for SSI** been made?
6. What **services** are required from the offices of mental health/mental retardation, office of vocational rehabilitation, or other appropriate agencies? What actions have been taken to ensure these services will be provided?
 - a. For youth with serious behavioral health issues, has **DHS and CBH** begun discharge planning? If the youth is in an **out-of-state RTF**, what steps have been taken to **coordinate** with the facility for discharge planning?
 - b. If the youth is **mentally retarded**, has he or she been registered with the office of MR **prior to turning age 18**? What services are being received through the office of MR?
7. What **supportive housing or specialized programs** have been arranged for the youth to transition to?
 - a. **The referral process for mental health supportive housing should begin at least one year before anticipated discharge.** Provide the court with information regarding the status of the referral? Provide information regarding persons assisting with planning at the **Office of Mental Health and Community Behavioral Health**?
 - b. If the youth is mentally retarded, **what actions have been taken with the Office of Mental Retardation** to arrange residential supports for the youth upon discharge?
8. What arrangements have been made to ensure the **continuity of medical insurance and care?**

B: COOK COUNTY MODEL COURT CHECKLIST PREPARATION FOR INDEPENDENCE

Benchmark Hearing Case Summary Sheet

Name _____ Petition No. _____

Permanency Goal _____ Change recommended? _____

Housing _____ time at this location _____

Education _____

Health _____

Work _____

Contact with biological family _____

Strengths and interests:

Needs:

Services provided:

Services planned:

Attach a copy of any critical incident reports not formerly reviewed at a permanency hearing.

Caseworker _____

Supervisor _____

Agency _____

Agency _____

Date _____

Date _____

Cook County Model Court Checklist

YOUTH ADVOCACY ORGANIZATIONS

State	Organization	Website	Contact Name	Email/Phone	Organization Information
Alaska	Facing Foster Care In Alaska (FFCA)	http://www.nrcys.ou.edu/yd/state_pages/state.php?state_id=ak			Founded in 2003, "Facing Foster Care In Alaska" (FFCA) provides advocacy, training, peer support, and input into the development of the state's foster care system and Independent Living Services. FFCA meets quarterly and includes current and alumni foster youth from across the state.
Arizona	Youth Advisory Board	https://www.azdes.gov/dcf/lip/default.asp			Arizona's Youth Advisory Boards provide opportunities for youth to interact with peers who share a common experience; to participate in planning and hosting fun, learning activities; to take an active role in making positive changes in the independent living program and foster care services in general; to meet with local and state administrators, legislators, and others in decision making positions; and to speak out on foster care related issues.
Arkansas	Arkansas Youth Advisory Board	http://www.fyi3.com/fyi3/Involved/YB/arkansayab.cfm	Charlotte Ulickey	charlie8491@hotmail.com	Arkansas' Youth Advisory Board has been in place since October 2000. The Board is involved in discussions of policy, procedures, legal issues and special projects and some of its members serve on other boards and advisory groups.
California	California Youth Connection	http://www.calayoutconn.org/site/cyc/	Jennifer Rodriguez	jennar22@hotmail.com (415) 442-5060	California Youth Connection (CYC) is guided, focused, and driven by current and former foster youth with the assistance of other committed community members. CYC promotes the participation of foster youth in policy development and legislative change to improve the foster care system, and strives to improve social work practice and child welfare policy.
Colorado	Better Tomorrow Team	http://www.ncfy.com/publications/guide/btt.htm	Nancy Greenstreet-Gettler	Nancy.Gettler@state.co.us BTT_INC@yahoo.com	The Better Tomorrow Team, Inc., is a group of current and former foster youth whose mission is to encourage community awareness about the lives and futures of foster care youth.
Connecticut	Youth Advisory Board	http://www.fyi3.com/fyi3/Involved/YB/coloradobt.cfm	Lisa Votto Moira O'Neill	(860) 550-6376 moira.oneill@po.state.ct.us	Connecticut's Youth Advisory Board is a diverse group of students from across Connecticut whose mission is to advise the Child Advocate in identifying issues troubling youth in any situation; and helping enhance services for Connecticut youth.
Delaware	Youth Advisory Council				
Florida	Florida State Youth Advisory Board	http://www.fyi3.com/fyi3/Involved/YB/fisyab.cfm	Brandi Kennamore	bkennamore@earthlink.net	
Florida	Palm Beach County (District 9)		Jennifer Bailes-Fretz	Jennifer.Bailes@aol.com	

YOUTH ADVOCACY ORGANIZATIONS

State	Organization	Website	Contact Name	Email/Phone	Organization Information
Georgia	Metropolitan Atlanta Youth Opportunities Initiative	http://www.fyi3.com/fyi3/Involved/YB/mayoic.cfm	Akilah Watkins	awatkins@atlcfc.org (404) 688-5525	The Metro Atlanta Youth Opportunities Initiative (MAYOI) is a local pilot of the Jim Casey Youth Opportunities Initiative (JCYOI), a national effort to help young people make successful transitions from foster care to adulthood. JCYOI has made a three-year commitment to the Metro Atlanta effort.
Hawaii	Hawaii Foster Youth Coalition (HFYC)	http://hawaiiyouth.net		hawaiiyouth@yahoo.com	Hawaii Foster Youth Coalition (FYC) is a youth led and run organization providing a voice for youth currently and formerly in foster care. FYC helps youth with networking and support, develops youth leadership, engages in youth advocacy, gives legislative testimony and serves as a youth's advisor to "the system."
Hawaii	Youth Circles	http://www.hawaii.gov/dhs/protection/social_services/child_welfare/ILP			Facilitated Ohana conferencing (family mediation services), which began in April 2004, is available for youth to give them a voice in planning for their future, to bring together important people and services to support the youth in developing a transitional plan.
					See also http://epicohana.info/content/blogcategory/2030/
Idaho	Foster Youth and Alum of Idaho FYI.	http://www.fyi3.com/fyi3/Involved/yabs/yabPubID=47			Foster Youth/Alumni of Idaho advocates to improve foster care and impact public policy. FYI is involved in peer mentoring and training for professionals and foster parents.
Illinois	Illinois Youth Advisory Board	http://www.fyi3.com/fyi3/Involved/YB/illinoisyb1.cfm	Tom Brindisi	(312) 663-3524	The goal of the Statewide Youth Advisory Board is to advise the Department of Children and Family Services (DCFS) on programs and services for youth in the care of the state of Illinois, as well as to provide information on issues that affect this care.
					See also http://www.chicagoareaproject.org/prog_statewide.htm
Indiana	Youth Advisory Board	http://www.in.gov/dcs/programs/youth0506.html			The YAB is designed to give youth ages 16-21 the opportunity to practice leadership skills and learn to be advocates for themselves and others. Independent Living service providers serve as adult role models through the YAB development process. The goals of YAB are to provide an avenue whereby youth in care can inform DCS staff, placement facilities, foster parents, and policy makers on the issues that impact teens and young adults in the foster care system. YAB development and youth participation will also foster permanent connections among youth and between youth and adults, and will help prepare youth for the transition to adulthood by giving them experience accepting personal responsibility.

Organization Information					
State	Organization	Website	Contact Name	Email/Phone	
Iowa	Iowa Youth Connections Council	http://www.fyi3.com/fyi3/InvolvedYB/iyc.cfm	Sue Tew	suetew@ypii.org (515) 727-4220	The Iowa Youth Connections Council (IYCC), created in 2001 by the Department of Human Services (DHS), offers foster youth an opportunity to be involved in the system that serves them. The purpose of creating this Council was to have youth give input on foster care issues and to involve youth in meetings, trainings and other activities to improve the foster care system in Iowa.
Iowa	Elevate	www.elevate2inspire.com	Stephanie DuRocher	stephanied.elevate@gmail.com (515) 288-1981, ext. 722	Elevate is a group of young people who seek to inspire others to new levels of understanding and compassion for the life connection needs of foster care and adoptive teens by sharing their personal stories of hope.
Kansas	Voices of the Century	http://www.fyi3.com/fyi3/Involved/yabs/yabPublic.cfmi?yabID=15	Kathleen Prell	kprell@kclinc.org (816) 889-5050	
Kansas	Kansas Youth Advisory Council	http://www.srskansas.org/CFS/cfp_manuals/ppmepmanuals/ppm_manual/appendices/Appendix%207B%20Youth%20Council%20Handbook.doc	Brenda Chamberlain		The Kansas Youth Advisory Council's (KYAC) mission is to unite foster youth in an empowering way and enable them to speak for themselves concerning issues that affect them directly, while helping every foster child to obtain the life and leadership skills that will be advantageous to them later in life.
Kansas	Foster Youth Agenda	See http://www.kslegislature.org/committee/minutes/03-04/interim_joint/jtChildIssues06232004.pdf	Kathi Ledbetter-Williams, Exec. Director	(913) 621-4690	The Foster Youth Agenda's mission is accomplished by: Increasing public awareness of the challenges faced by foster youth and the policies that affect the delivery of services to this neglected population; Providing opportunities for open communication between all parties in the foster care community; Informing foster youth about services that are available in their communities and how to get connected to the services; Providing youth friendly information on how local, state, and national systems work, and how decisions are made at each level that impact the success of youth exiting foster care; and Encouraging youth who are aging out of the foster care system to understand and fulfill leadership responsibilities to other youth who are in foster care.
Kansas	Region IV Youth Advisory Council				
Kentucky	Kentucky Organization For Foster Youth	http://www.kychildnow.org	Jennifer Shaffer	(513) 346-7100 x110	The Kentucky Organization For Foster Youth (KOFFY) gives foster youth the chance to express themselves and give input on the foster system in Kentucky. The KOFFY travels throughout Kentucky to listen to concerns, reactions, and opinions of foster youth about their experiences in the system. Youth offer suggestions on ways to improve foster care for themselves and others. KOFFY representatives present these suggestions, opinions, and concerns to lawmakers in Kentucky, serving as an intermediary between foster youth and legislators.

YOUTH ADVOCACY ORGANIZATIONS

State	Organization	Website	Contact Name	Email/Phone	Organization Information
Louisiana	ILP Youth in Transition	http://fsgbr.org/ Independent_Living.html			
Maine	Youth Leadership Advisory Team	http://www.ylat.org/index.htm See also http://www.ylat.org/publications/answers.pdf	Penthea Burns	pburns@usm.maine.edu (877)792-YLAT	The Youth Leadership Advisory Team (YLAT) is a team of Maine youth in care (in state custody), ages 14-21, engaged in the education of the government, general public, caregivers, and peers regarding the needs of children and young adults in the child welfare system. Advocating for positive changes in the child welfare system, YLAT members help develop, guide, and revise the Bureau of Child and Family Services policies in order to create safety, comfort, and opportunities for all kids in care.
Maryland	Youth Advisory Board	http://www.dhr.state.md.us/ssa/living.htm#youth			The purpose of the Youth Advisory Board is to provide a vehicle in which information about the Independent Living Preparation Program can be gained and recommendations for improvements made. The role of the Youth Advisory Board is to empower youth to have a positive effect in their communities, encourage youth to develop skills necessary for independent living and leadership development, assist in the planning of annual teen conferences, and review State and federal legislation that may effect the Maryland Independent Living Preparation Program.
Massachusetts	Youth Speak Out Team	http://www.speakoutteam.org/	Ismay Griffith	igriffith@crox.org (617) 445-6655	Youth Speak Out Team is an online community where youth can share their views on topics important to them and find out what is going on with the rest of the "team."
Michigan	L.O.V.E - Let Our Voices Echo Through the Paths We Choose		Norville Bennett Alan Vander Pas	(231) 922-5222 (231) 922-5276	
Michigan	Future Foster Adults				
Michigan	SPIRIT- Spectacular People in Real Inspiring Transformations		Katherine Marceau	(586) 307-8220	
Michigan	Bay Arenac Support Effort Together Effectively Achieving More (BASETEAM)				
Michigan	Youth For Tomorrow's Children		Sean Blume	BlumeS@Michigan.gov (313) 456-3365	The mission for Youth For Tomorrow's Children is to advocate on behalf of past, present and future foster youth in the state of Michigan. We are setting a positive example to youth in foster care and those transitioning forward into independent adulthood.

Organization Information					
State	Organization	Website	Contact Name	Email/Phone	
Minnesota	Youth Advocacy Project; Our Voices Matter	http://www.fy13/states/minnesota.cfm#8anch	Michelle Chalmers	(612) 861-7115 ext.11	Our Voices Matter (OVN) works with youth in the foster care system providing a venue through which they can build leadership skills, articulate their vision for their own personal future, educate the public, and directly impact policy and legislation.
		See also http://www.mnadopt.org/ovm.htm			
Missouri	State Youth Advisory Board	http://www.dss.mo.gov/cd/chafee/srab/index.htm			
Missouri	Voices of the Century		Lee Bohannon	leeb@lkclinc.org (816) 889-5050	
Missouri	National Foster Youth Advisory Council		Daniella Rin Hover	drinhover@cyla.org (202) 942-0304	
Nebraska	UNIFY		Corin Kaye	ckaye@nebraskachildren.org (877) 476-8003	
Nebraska	Nebraska Foster Youth Advisory Councils	http://www.nebraskachildren.org	Corin Kaye	ckaye@nebraskachildren.org (877) 476-8003 3	YAB for the Central Region of Nebraska, meeting in Grand Island.
Nebraska	Brighter Tomorrow's Youth Council		Corin Kaye	ckaye@nebraskachildren.org (877) 476-8003	YAB for the Eastern region of Nebraska, meeting in Lincoln and Omaha.
Nebraska	Foster Youth for the Future		Corin Kaye	ckaye@nebraskachildren.org (877) 476-8003	YAB for the western region of Nebraska. Currently combined with the central council meeting in Grand Island until western membership grows.
New Jersey	Youth Advisory Board	http://www.transitionsforyouth.org/ServiceDetails.aspx?ServiceID=13	Nancy Caplan	ncaplan@dhs.state.nj.us (609) 292-0887	The Department of Children and Families has created 10 Youth Advisory Boards (YABs) hosted by provider agencies throughout the state. Seven other agencies have been contracted to provide transportation to these meetings. The main purpose of the YABs is to provide feedback on adolescent programs and policies to the Department of Children and Families. The YABs provide a non-clinical, youth-directed forum that empowers homeless youth and youth transitioning out of foster care to become effective advocates for themselves and others. YAB members enhance their advocacy skills through public speaking, legislative advocacy, and planning community service and recreational events.
New Mexico	Youth Advisory Board	http://www.nrcys.ou.edu/yd/state_pages/state.php?state_nm			There is a strong youth advisory board that participates in developing the independent living service plan and provides feedback and suggestions to CYFD managers and community providers.

YOUTH ADVOCACY ORGANIZATIONS

State	Organization	Website	Contact Name	Email/Phone	Organization Information
New Mexico	Youth Advocates for New Mexico (YANM)	http://www.cyfd.org/indeliving.htm			Youth Advocates for New Mexico (YANM) is a statewide youth advisory board founded in 1992. YANM provides a forum for foster care youth and former foster care youth to develop leadership skills and to inform child welfare practice in New Mexico.
New York	Youth In Progress	www.youthinprogress.org	Joanne Trinkle	jtrinkle@pdp.albany.edu	The mission of Youth In Progress is to enhance and advance the lives of today's and tomorrow's foster care youth by giving them a sense of self responsibility. To do this, YIP pledges to educate everyone involved in the foster care system to the realities of this experience. We will accomplish this mission by listening to youth in care and by offering them guidance that will allow them to achieve success in their lives and to realize their full potential.
North Carolina	SaySo- Strong Able Youth Speaking Out	www.saysoinc.org		sayso@ilirinc.com (800) 820-0001	The mission of SaySo, Inc. is to work to improve the substitute care system by educating the community, speaking out about needed changes and providing support to youth that are or have been in substitute care.
Ohio	OHIO (Overcoming Hurdles in Ohio) Youth Advisory Board	www.pcsao.org/ohiotoyouth.htm	Jessica Schneider Chance	Jessica@pcsaos.org	
Ohio	Networking Opportunity		Chris Esmurdoc	chris@adoptionnetwork.org (216) 325-1000	Networking Opportunities offers experiences for teens in foster care who want to meet others in care and recently out of care through emancipation or adoption. The organization offers a chance for foster youth to "GET REAL" about experiences of being in care and considering adoption and the future.
Oregon	Youth Board		Rosemary Lavenditti	Rosemary.Lavenditti@state.or.us (503) 945-5688	
Pennsylvania	Youth Advisory Board	www.independentlivingpa.org	Bill Motsavage Lori Habermehl	(610) 317-0721	The Pennsylvania Youth Advisory Board (YAB) is made up of youth who are currently in substitute care or have been in care. The purpose of the YAB is to educate, advocate, and bring about positive change in the substitute care system. The Board's goal is to represent the voice of older youth in the system and work with others for positive change.
Rhode Island	Youth Advisory Board	http://www.dcyf.ri.gov/youth.php	Kathy Crowe John O'Riley	(401) 528-3790 kathi.crowe@dcyf.ri.gov (401) 528-3764 john.o'riley@dcyf.ri.gov	The Rhode Island Youth Advisory Board is a diverse representation of concerned youth whose purpose is to listen, advocate and offer advice to DCYF in order to assist DCYF in shaping and developing programs with the intention of helping youth to have a healthy and successful transition into adulthood.
South Carolina	Go Out And Live Life (GOALL)	http://www.sc.edu/ccfs/training/goall.html	Jill Jumannies	jhinnant@sc.ri.com	GOALL was founded to conform with the Foster Care Independence Act of 1999's requirement that youth be involved in developing independent living programs. It is comprised of up to 10 youths ages 16 and over who either are currently in foster care or have recently been emancipated from care.

State	Organization	Website	Contact Name	Email/Phone	Organization Information
Tennessee	Tennessee Youth Advisory Council	www.infostoryouth.org	Kim Crane Laura Galovits	kim.crane@vanderbilt.edu (615) 322-1461 lgalovits@oasiscenter.org (615) 327-4455	Tennessee Youth Advisory Council is composed of young people between the ages of 15-23 who are either currently in foster care or have been in foster care at some time in the past.
Texas	C.A.A.N. (Capital Area Alumni/youth Network)	http://www.dfps.state.tx.us/About/State_Plan/2006_Progress_Report/2006_Section_VIA.asp	Arron Fain	(512) 825-7369	CAAN is a group of current and former foster care youth who come together to support one another, promote leadership skills, and strengthen their sense of belonging. Drawing on their unique perspective and expertise, CAAN aims to educate policy makers as well as the community about their experiences and vision for change.
Virginia	Virginia Youth Advisory Council		Patrick S. Plourde	pap900@email1.dss.state.va.us (804) 726-7521	The Virginia Youth Advisory Council (VA-YAC) provides a structure in which foster care youth can gain information about the foster care system and exchange ideas that will improve foster care services to youth in Virginia.
Washington	Legislative Youth Advisory Council	Youthand Communities/LYAC/whatwedo.html">http://www.lrc.wa.gov>Youthand Communities/LYAC/whatwedo.html		(360) 786-7451 LYAC@leg.wa.gov	The twenty-two member council, comprised of students ages fourteen to eighteen, deliberates and advises legislators on issues important to youth in Washington State. This general purpose council also discusses issues involving foster care.
West Virginia	Transitional Living Youth Council				Transitional Living Council offers youth in foster care the chance to become involved in issues affecting their lives.
Wisconsin	Youth Advisory Council				Wisconsin's Youth Advisory Council (YAC), a group of former foster youth ages 15-20, began meeting in 2004. The group shares their personal experiences as children in foster care and gives DCFS staff their opinions and ideas to help create a more effective and supportive child welfare system.

YOUTH ADVOCACY ORGANIZATIONS

Benchmark Permanency Hearing for Teens Protocol



Child Protection Division
Circuit Court of Cook County

BENCHMARK REFERRAL FORM

To be completed by the Court Coordinator:

Date of Referral: _____

Geographic Calendar: _____

Judge: _____

Name of Minor: _____

Docket Number: _____

Proposed Court Date scheduled after Benchmark: _____

Benchmark Date: _____

Time: _____

***Place completed referral form in Benchmark Coordinator's mailbox (located outside office G0011AW).
You will be apprised of the Benchmark Date within 3 working days.**

To be completed by the Caseworker/ GAL:

Caseworker Name _____

Caseworker's Agency _____

Caseworker's Phone Number _____

Caseworker's Fax Number _____

Minor's Mailing Address _____

Minor's Date of Birth _____

Minor's ACR CYCLE _____

Minor's School Placement _____

G.A.L. Name and Phone Number _____

Additional Notes:

(Please complete other side)

ADDITIONAL INFORMATION

To be completed by the G.A.L. or Hearing Officer

1. What are the issues and problems that you believe make this a good case for a Benchmark Hearing?
 2. What do you hope to accomplish at the Benchmark Hearing? What are your expectations?
 3. What services are already in place? What is missing?
 4. Is the ward a chronic runner? When was the last time they ran and where do they usually run to?
 5. Is there something unusual or outstanding about this case that the Benchmark Judge should know that is not indicated above?

BENCHMARK AGREEMENT

On _____, 2006, I appeared at a Benchmark Hearing to discuss my goals and future plans. At my Benchmark Hearing, the responsibilities of the Illinois Department of Children and Family Services and the other agencies involved in my case were discussed. I understand that those agencies and I must do certain things if I am to reach my goals. Therefore, I agree to do the following:

Agreed this _____ day of _____, 2006

Judge Sybil Thomas

Responsible Person

The next Benchmark Hearing is scheduled for _____

This Agreement does not constitute a Court Order

BENCHMARK HEARING MEMORANDUM

TO: Judge _____

FROM: Judge Sybil Thomas

RE: **Notice of Upcoming Hearing and Benchmark Hearing Summary**

DATE: _____, 20_____

IN THE INTEREST OF _____ **NO.** _____

A Minor

Calendar # _____

NOTICE OF HEARING

THIS CAUSE came to be heard for a benchmark hearing on
_____, 20_____, the minor, DOB ____/____/____:

- having attained the age of _____
- approaching case closure

THIS MATTER IS CONTINUED ON:

- Benchmark Calendar
- Geographic Calendar

DATE: ____/____/____ at ____ a.m./p.m.

FOR: Permanency Hearing
 Progress Report
 Other: _____

BEFORE THE: **JUDGE** **HEARING OFFICER**

BENCHMARK HEARING SUMMARY

The following educational and career objectives were identified:

The following steps/actions are necessary to achieve the identified objectives:

The following services are recommended:

See attached Agreement signed by the teen and Judge Thomas.

At the next hearing, please confirm:

- What action the teen has taken to achieve the objectives identified above
- The status on implementing the recommended services

Benchmark Permanency Hearings for Teens
Child Protection Division
Circuit Court of Cook County

In Illinois, permanency hearings are held 12 months after a child comes into custody and every six months thereafter. Judge Sybil Thomas conducts Benchmark Hearings for qualified teen wards with an entered permanency goal of Independence. These hearings take place at a minimum age of 16 and at least 9 months prior to case closure. These are intensive hearings covering all aspects of the case and are designed to be supportive of the young person, assuring that youth receive appropriate assessments, planning and supportive services. The benchmark hearings are on a special calendar dedicated to this call; all other hearings regarding the young person will remain on the geographic calendar to which the case is currently assigned.

A representative of the Chicago Public Schools is available for each Benchmark Hearing to provide information about the teen's educational history and current information on enrollment and attendance. She also provides information about appropriate programs and services offered by the Chicago Public Schools and how to access those programs.

The caseworker's responsibilities in preparing for the hearing are clearly set out in the protocol. One of those responsibilities is to assure that the young person attends the hearing, and that s/he has given thought to the matters to be discussed. A special notice of the hearing directed to the young person is provided to be delivered by the caseworker.

In addition, the young person is asked to bring an adult with him or her to the hearing. The teen is asked to identify a responsible adult that s/he can rely on and would like to have continued contact with in the coming years. The caseworker is to invite that person to be present at the hearing.

One of the goals of the hearing is to ensure that there is a responsible adult involved in the life of every child who leaves the court. It is important to ascertain that the teen has a mentor who offers guidance and is a good role model for the teen. Beginning the search for the supporting adult at the ward's benchmark hearing should allow time for identification of that person and facilitation of the development of the relationship between the adult and the teen.

Benchmark Hearings for Teens **Protocol for Caseworkers**

The Honorable Sybil Thomas is conducting benchmark hearings for teen wards with a previously entered goal of Independence who are at least age 16 and have more than 9 months to case closure. The purpose of these hearings is to assure that youth receive appropriate assessment, planning and supportive services. All other hearings will remain on the geographic calendar currently assigned.

Caseworker responsibilities in preparation for a Benchmark Hearing:

1. Give the attached notice and description of the hearing to the young person and talk with him or her about the importance of the young person's participation.
2. Provide the attached notice and description of the hearing to a responsible adult identified by the teen as a person that the teen can rely on and would like to have continued contact with.
3. Assess the youth's life skills using information obtained from the youth, the caregiver and the Daniel Memorial Life Skill Assessment, or other assessment that meets the teen's needs.
4. Prepare a case plan* that details:
 - 1) youth's needs and current self-sufficiency
 - 2) the plan for transition of the youth to Independence
 - 3) how, where and when services are being provided for that transition and the level of participation of the youth in those services
 - 4) the young person's need for future services and how those services will be secured
 - 5) status of the youth's relationships with members of his/her immediate and extended birth family and recommendation on how those relationships can be facilitated in the best interest of the youth (i.e. visiting, counseling, therapy)
5. File the above case plan with the Service Plan Distribution Center using the attached cover sheet indicating a Benchmark Hearing.
6. Complete the Benchmark Summary Sheet and bring 6 copies with you to the hearing for distribution.
7. Remind the youth of the date and provide transportation for the youth to and from the hearing.

Caseworker responsibilities at a Benchmark Hearing: The same responsibility for appearance and testimony regarding the specifics of the service plan and its implementation as applies at all permanency hearings.

*Use as your guide for 1-4 above the requirements outlined in IDCFPS Procedure 302.Appendix M-Transition Planning for Adolescent Wards, which requires provision for the following:

- a) life skill assessment (Daniel Memorial Life Skill Assessment short form)
- b) life skills training
- c) vocational and career planning
- d) health care
- e) counseling
- f) housing
- e) financial assistance benefits for youth with special needs
- f) federal benefits and other public funds

For Benchmark Hearings prior to case closure assure that the young person has the documents necessary to function as an independent adult including: social security card, driver's license/state i.d., medical records and documentation, birth certificate, list of known relatives with addresses and telephone numbers, educational records, and documents or information on religious background (302 Appendix M-(g)).

Benchmark Hearing Case Summary Sheet

Name _____ Petition No. _____

Permanency Goal _____ Change recommended? _____

Housing _____ time at this location _____

Education _____

Health _____

Work _____

Contact with biological family _____

Strengths and interests: _____

Needs: _____

Services provided: _____

Services planned: _____

Attach a copy of any critical incident reports not formerly reviewed at a permanency hearing.

Caseworker _____

Supervisor _____

Agency _____

Agency _____

Date _____

Date _____

**Benchmark Permanency Hearing
Teen Planning Sheet
for**

Date: _____

Goals (Goals may relate to school, work, or anything that is important to this young person):

2006 _____

2007 _____

2008 _____

Challenges:

Proposed Plan:

Benchmark Referral Guidelines

The following guidelines should help you determine whether a minor is appropriate for a Benchmark Hearing. If you have any questions, please don't hesitate to contact me at ext. 4732.

1. Is the goal Independence? If no, not appropriate for a benchmark hearing.
2. Is the minor at least age 16 and more than 9 months from case closure? If he/she does not fall within those parameters, not appropriate for a benchmark.
3. Is the minor a chronic runner? If so, not appropriate for a benchmark hearing until he/she has been stable in placement for at least 3 months.
4. Is the minor incarcerated, have a pending criminal/delinquency case or an outstanding warrant? If so, not appropriate for a benchmark hearing until the criminal/delinquency matter has been resolved.
5. Does the minor have a drug problem that is not currently being treated? If so, probably not appropriate for a benchmark hearing.
6. Is the minor in a long-term residential placement? If yes, but is ready to be stepped down, may be appropriate for a benchmark – call first. If not ready to step-down, he/she is not appropriate for a benchmark.
7. Is the minor also a parent whose child is in DCFS custody or has a pending DCFS investigation? If so, not appropriate for a benchmark.
8. Does the minor have the minimal mental capacity/IQ to comprehend and benefit from the Benchmark Program?

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Alabama*	21	<p>Code of Ala. § 38-7-2 (2007) Public Welfare – Child Care – Definition (1) Child. Any person under 19 years of age, a person under the continuing jurisdiction of the juvenile court pursuant to Section 12-15-32, or a person under 21 years of age in foster care as defined by the Department of Human Resources.</p> <p>Code of Ala. § 12-15-32 (2007) Courts – Juvenile Proceedings – Jurisdiction and Venue – Retention of Jurisdiction (a) . . . jurisdiction obtained by the juvenile court in any case of a child shall be retained by it until the child becomes 21 years of age unless terminated prior thereto by order of the judge of the juvenile court . . .</p> <p>Code of Ala. § 12-15-30 (2007) Courts – Juvenile Proceedings – Jurisdiction and Venue – Generally (a) The juvenile court shall exercise exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, dependent or in need of supervision.</p>
Alaska*	19, but it can be extended to 20	<p>Alaska Stat. § 47.10.100 (2007) Welfare, Social Services and Institutions – Children in Need of Aid – Children’s Proceedings – Retention of Jurisdiction over Minor (a) The court retains jurisdiction . . . in the exercise of its power of protection over the minor and for the minor’s best interest, for a period of time not to exceed two years or in any event extend past the day the minor becomes 19, unless sooner discharged by the court, except that the department may apply for and the court may grant an additional one-year period of supervision past age 19 if continued supervision is in the best interests of the person and the person consents to it.</p>
Arizona	18	<p>A.R.S. § 8-201 (2007) Children – Juvenile Court – General Provisions - Definitions 6. “Child”, “youth” or “juvenile” means an individual who is under the age of eighteen years. 17. “Juvenile court” means the juvenile division of the superior court when exercising its jurisdiction over children in any proceeding relating to delinquency, dependency or incorrigibility.</p> <p>A.R.S. § 8-202 (2007) Children – Juvenile Court – General Provisions – Jurisdiction of Juvenile Court G. Except as otherwise provided by law, jurisdiction of a child that is obtained by the juvenile court . . . shall be retained by it, for the purposes of implementing the orders made and filed in that proceeding, until the child becomes eighteen years of age, unless terminated by order of the court before the child’s eighteenth birthday.</p>

¹ An * indicates that the statutory information was originally found in a report from the American Bar Association Center on Children and the Law, CONTINUING COURT JURISDICTION IN SUPPORT OF 18 TO 21 YEAR-OLD FOSTER YOUTH (July 2004). These statutes were rechecked in 2007 to confirm their continued accuracy, and any necessary corrections were made.

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Arkansas*	18, or 21 if engaged in course of instruction or treatment	<p>Ark. Stat. Ann. § 9-27-303 (2007)</p> <p>Juvenile Courts and Proceedings – Juvenile code - Definitions</p> <p>(32) “Juvenile” means an individual who is:</p> <p>(A) From birth to eighteen (18) years of age, whether married or single; or (B) Adjudicated delinquent, a juvenile member of a family in need of services, or dependent or dependent-neglected by the juvenile division of the circuit court prior to eighteen (18) years of age and for whom the juvenile division of the circuit court retains jurisdiction; Ark. Stat. Ann. § 9-27-306 (2007)</p> <p>Family Law – Minors – Juvenile Courts and Proceedings – Juvenile Code – Jurisdiction</p> <p>(a)(1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including but not limited to:</p> <p>(B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years, of age, except for the following:</p> <p>(i) (a) A juvenile who has been adjudicated dependent or dependent-neglected prior to the age of eighteen (18) years of age may request the court to continue jurisdiction until twenty-one (21) years of age so long as the juvenile is engaged in a course of instruction or treatment. (b) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment. (c) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from instruction or treatment; or</p> <p>(ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction to receive independent living services if the juvenile: (a) Was adjudicated dependent or dependent-neglected; (b) Was in foster care at eighteen (18) years of age; and (c) Left foster care but decides to return prior to twenty-one (21) years of age to benefit from independent living services;</p>
California*	21	<p>Cal. Wel. & Inst Code § 303 (2007)</p> <p>Children – Delinquents and Wards of the Juvenile Court – Juvenile Court Law – Dependent Children – Jurisdiction – Retention of Jurisdiction</p> <p>The court may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependent child attains the age of 21 years.</p>
Colorado*	21	<p>C.R.S. 19-3-205 (2006)</p> <p>Children's Code – Dependency and Neglect – General Provisions – Continuing Jurisdiction</p> <p>... the jurisdiction of the court over any child adjudicated as neglected or dependent shall continue until he becomes twenty-one years of age unless earlier terminated by court order.</p>

¹ An * indicates that the statutory information was originally found in a report from the American Bar Association Center on Children and the Law, CONTINUING COURT JURISDICTION IN SUPPORT OF 18 TO 21 YEAR-OLD FOSTER YOUTH (July 2004). These statutes were rechecked in 2007 to confirm their continued accuracy, and any necessary corrections were made.

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Connecticut	18, or 21 if in school full-time	<p>Conn. Gen. Stat. § 46b-120 (2007) Family Law – Juvenile Matters – General Provisions - Definitions The terms used in this chapter shall, in its interpretation and in the interpretation of other statutes, be defined as follows: (1) “Child” means any person under sixteen years of age . . . (2) “youth” means any person sixteen or seventeen years of age... Conn. Gen. Stat. § 46b-121 (2007) “Juvenile matters” defined. Authority of court. (a) Juvenile matters in the civil session include all proceedings concerning uncared-for, neglected or dependent children and youths within this state . . . Conn. Gen. Stat. § 17a-93 (2007) Social and Human Services and Resources - Child Welfare - Dependent and Neglected Children (a) “Child” means any person under eighteen years of age, except as otherwise specified, or any person under twenty-one years of age who is in full-time attendance in a secondary school, a technical school, a college or a state-accredited job training program; Conn. Gen. Stat. § 17a-126 (2007) Social and Human Services and Resources - Child Welfare - Dependent and Neglected Children (e) The guardianship subsidy provided under this section shall continue until the child reaches the age of eighteen or the age of twenty-one if such child is in full time attendance at a secondary school, technical school or college or is in a state accredited job training program. Annually, the subsidized guardian shall submit to the commissioner a sworn statement that the child is still living with and receiving support from the guardian. The parent of any child receiving assistance through the subsidized guardianship program shall remain liable for the support of the child as required by the general statutes.</p>
Delaware	18	<p>10 Del. Code § 901 (2007) Courts and Judicial Procedure - Organization, Powers, Jurisdiction and Operation of Courts - The Family Court of The State of Delaware - Organization, Administration and Operation - Definitions For the purpose of this chapter, unless the context indicates differently: (3) “Child” means a person who has not reached his or her 18th birthday. (5) “Court” means the Family Court of the State of Delaware, and “court” refers to other courts of the State. 10 Del. Code § 921 (2007) Courts and Judicial Procedure - Organization, Powers, Jurisdiction and Operation of Courts - The Family Court of The State of Delaware - Jurisdiction and Powers - Exclusive original civil jurisdiction The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning: (1) Any child found in the State who is alleged to be dependent, neglected, or delinquent except as otherwise provided in this chapter;</p>
District of Columbia*	21	<p>D.C. Code § 16-2303 (2007) Particular Actions, Proceedings and Matters – Family Division Proceedings – Proceedings Regarding Delinquency, Neglect, or Need of Supervision – Retention of Jurisdiction For purposes of this subchapter, jurisdiction obtained by the Division in the case of a child shall be retained by it until the child becomes twenty-one years of age, unless jurisdiction is terminated before that time. This section does not affect the jurisdiction of other divisions of the Superior Court or of other courts over offenses committed by a person after he ceases to be a child. If a minor already under the jurisdiction of the Division is convicted in the Criminal Division or another court of a crime committed after he ceases to be a child, the Family Division may, in appropriate cases, terminate its jurisdiction.</p>

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Florida*	18, but it can be extended to 19	<p>Fla. Stat. § 39.013 (2007) Judicial Branch – Proceedings Relating to Children – General Provisions – Procedures and Jurisdiction; Right to Counsel</p> <p>(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter . . . Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department . . . When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities . . . The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.</p>
Georgia*	18	<p>Ga. Code Ann. § 15-11-2 (2007) Courts – Juvenile Proceedings – Juvenile Proceedings – General Provisions – Definitions</p> <p>(2) "Child" means any individual who is:</p> <p>(C) Under the age of 18 years, if alleged to be a "deprived child" . . .</p> <p>(4) "Court" or "juvenile court" means the court exercising jurisdiction over juvenile matters.</p> <p>(8) "Deprived child" means a child who: (A) Is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for the child's physical, mental, or emotional health or morals; (B) Has been placed for care or adoption in violation of law; (C) Has been abandoned by his or her parents or other legal custodian; or (D) Is without a parent, guardian, or custodian.</p>
Hawaii*	19	<p>Haw. Rev. Stat. § 587-12 (2006) Property; Family – Family – Child Protective Act – Jurisdiction – Retention of Jurisdiction</p> <p>Except as otherwise provided in this chapter, jurisdiction invoked by the court under this chapter may be retained by it, for the purposes of this chapter, after the child becomes eighteen years of age until the full term for which any order entered expires or until the child becomes nineteen years of age.</p>
Idaho*	18	<p>Idaho Code § 16-1604 (2007) Probate Code – Juvenile Proceedings – Child Protective Act – Retention of Jurisdiction</p> <p>(1) Jurisdiction obtained by the court under this chapter shall be retained until the child's eighteenth birthday, unless terminated prior thereto. Jurisdiction of the court shall not be terminated by an order of termination of parental rights if guardianship and/or custody of the child is placed with the department of health and welfare.</p>
Illinois*	21	<p>705 Ill. Comp. Stat. 405/2-31 (2007) Courts – Judiciary – Juvenile Court Act of 1987 – Abused, Neglected or Dependent Minors – Duration of wardship and discharge of proceedings</p> <p>(1) All proceedings under this Act in respect of any minor for whom a petition was filed after the effective date of this amending Act of 1991 automatically terminate upon his attaining the age of 19 years, except that a court may continue the wardship of a minor until age 21 for good cause when there is satisfactory evidence presented to the court and the court makes written factual findings that the health, safety, and best interest of the minor and the public require the continuation of the wardship.</p>

¹ An * indicates that the statutory information was originally found in a report from the American Bar Association Center on Children and the Law, CONTINUING COURT JURISDICTION IN SUPPORT OF 18 TO 21 YEAR-OLD FOSTER YOUTH (July 2004). These statutes were rechecked in 2007 to confirm their continued accuracy, and any necessary corrections were made.

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Indiana*	21	<p>Ind. Code Ann. § 31-30-2-1 (2007)</p> <p>Family Law and Juvenile Law – Juvenile Law: Juvenile Court Jurisdiction – Continuing Jurisdiction – Jurisdiction to Continue – Reinstatement of Jurisdiction</p> <p>(a) Except as provided in subsections (b) and (c), the juvenile court's jurisdiction over a delinquent child or a child in need of services and over the child's parent, guardian, or custodian continues until: (1) the child becomes twenty-one (21) years of age, unless the court discharges the child and the child's parent, guardian, or custodian at an earlier time;</p> <p>Ind. Code Ann. § 31-34-1-1 (2007)</p> <p>Impairment or Serious Endangerment of Physical or Mental Condition</p> <p>A child is a child in need of services if before the child becomes eighteen (18) years of age: (1) the child's physical or mental condition is seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of the child's parent, guardian, or custodian to supply the child with necessary food, clothing, shelter, medical care, education, or supervision; and (2) the child needs care, treatment, or rehabilitation that:</p>
Iowa	18	<p>Iowa Code § 602.7101 (2006)</p> <p>Courts - Judicial Branch - Juvenile Court - The Court - Juvenile court.</p> <p>A juvenile court is established in each county. The juvenile court is within the district court and has the jurisdiction provided in chapter 232.</p> <p>Iowa Code § 232.2 (2006)</p> <p>Human Services - Juveniles - Juvenile Justice - Construction and Definitions - Definitions.</p> <p>5. "Child" means a person under eighteen years of age.</p> <p>6. "Child in need of assistance" means an unmarried child: a. Whose parent, guardian or other custodian has abandoned or deserted the child.</p> <p>b. Whose parent, guardian, other custodian, or other member of the household in which the child resides has physically abused or neglected the child, or is imminently likely to abuse or neglect the child</p> <p>8. "Court" means the juvenile court established under section 602.7101.</p> <p>Iowa Code § 232.61 (2006)</p> <p>Human Services – Juveniles - Juvenile Justice - Child In Need of Assistance Proceedings - General Provisions - Jurisdiction.</p> <p>1. The juvenile court shall have exclusive jurisdiction over proceedings under this chapter alleging that a child is a child in need of assistance.</p> <p>2. In determining such jurisdiction the age and marital status of the child at the time the proceedings are initiated is controlling.</p>
Kansas*	21	<p>Kan. Stat. Ann. § 38-1502 (2006)</p> <p>Minors - Kansas Code For Care of Children - General Provisions - Definitions.</p> <p>As used in this code, unless the context otherwise indicates: (a) "Child in need of care" means a person less than 18 years of age who</p> <p>Kan. Stat. Ann. § 38-1503 (2006)</p> <p>Minors - Kansas Code for Care of Children - General Provisions - Jurisdiction.</p> <p>(c) When jurisdiction has been acquired by the court over the person of a child in need of care it may continue until the child: (1) Has attained the age of 21 years; (2) has been adopted; or (3) has been discharged by the court. Any child 18 years of age or over may request, by motion to the court, that the jurisdiction of the court cease. Subsequently, the court shall enter an order discharging the person from any further jurisdiction of the court.</p> <p>(d) When it is no longer appropriate for the court to exercise jurisdiction over a child the court, upon its own motion or the motion of an interested party, shall enter an order discharging the child. Except upon request of the child, the court shall not enter an order discharging a child which reaches 18 years of age before completing the child's high school education until June 1 of the school year during which the child became 18 years of age as long as the child is still attending high school.</p>

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Kentucky*	18	<p>Ky. Rev. Stat. Ann. § 610.010 (2006)</p> <p>Unified Juvenile Code – Procedural Matters – District Court Jurisdiction of Juvenile Matters</p> <p>(1) Unless otherwise exempted by KRS Chapters 600 to 645, the juvenile session of the District Court of each county shall have exclusive jurisdiction in proceedings concerning any child living or found within the county who has not reached his or her eighteenth birthday or of any person who at the time of committing a public offense was under the age of eighteen (18) years, who allegedly . . .</p> <p>(13) The court shall have continuing jurisdiction over a child pursuant to subsection (1) of this section, to review dispositional orders, and to conduct permanency hearings under 42 U.S.C. sec. 675(5)(c) until the child is placed for adoption, returned home to his or her parents with all the court imposed conditions terminated, or reaches the age of eighteen (18) years.</p>
Louisiana	18	<p>La. Ch. Code Art. 303 (2007)</p> <p>Louisiana Children's Code - Jurisdiction, General Authority, and Appeals - Jurisdiction Over Children and Minors Art. 303. Exclusive jurisdiction over children and minors; exceptions</p> <p>A court exercising juvenile jurisdiction shall have exclusive original jurisdiction over: (2) Child in need of care proceedings pursuant to Title VI.</p> <p>La. Ch. Code Art. 603 (2007)</p> <p>Louisiana Children's Code - Child in Need of Care - Chapter 1. Preliminary Provisions; Definitions - Definitions As used in this Title: (5) "Child" means a person under eighteen years of age who, prior to juvenile proceedings, has not been judicially emancipated under Civil Code Article 385 or emancipated by marriage under Civil Code Articles 379 through 384.</p> <p>La. Ch. Code Art. 604 (2007)</p> <p>Persons subject to proceedings</p> <p>A court exercising juvenile jurisdiction shall have exclusive original jurisdiction, in conformity with any special rules prescribed by law, over any child alleged to be in need of care and the parents of any such child.</p> <p>La. Ch. Code Art. 606 (2007)</p> <p>Grounds; child in need of care</p> <p>A. Allegations that a child is in need of care must assert one or more of the following grounds: (1) The child is the victim of abuse perpetrated, aided, or tolerated by the parent or caretaker . . . (2) The child is a victim of neglect . . .</p>
Maine	18	<p>4 Me. Rev. Stat. Ann. § 183 (2006)</p> <p>Judiciary - District Court - Family Division of District Court</p> <p>There is established within the District Court a Family Division that has jurisdiction over family matters filed in District Court. The Family Division shall provide a system of justice that is responsive to the needs of families and the support of their children.</p> <p>22 Me. Rev. Stat. Ann. § 4002 (2006)</p> <p>Health and Welfare - Income Supplementation – Children - Child and Family Services and Child Protection Act - General Provisions - Definitions</p> <p>As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings.</p> <p>1. Abuse or Neglect. "Abuse or neglect" means a threat to a child's health or welfare by physical, mental or emotional injury or impairment, sexual abuse or exploitation, deprivation of essential needs or lack of protection from these, by a person responsible for the child.</p> <p>2. Child. "Child" means any person who is less than 18 years of age.</p> <p>3. Child Protection Proceeding. "Child protection proceeding" means a proceeding on a child protection petition under subchapter IV, a subsequent proceeding to review or modify a case disposition under section 4038, an appeal under section 4006, a proceeding on a termination petition under subchapter VI, or a proceeding on a medical treatment petition under subchapter VIII.</p>

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END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Maryland*	21	<p>Md. Cts. and Jud. Proc. Code Ann. § 3-804 (2007)</p> <p>Courts and Judicial Proceedings – Courts of General Jurisdiction – Jurisdiction/Special Causes of Action – Juvenile Causes – Children in Need of Assistance – Continuing Jurisdiction; Termination of Jurisdiction</p> <p>(a) Jurisdiction where CINA or child in a voluntary placement is under 18. -- The court has jurisdiction under this subtitle only if the alleged CINA or child in a voluntary placement is under the age of 18 years when the petition is filed.</p> <p>(b) Duration. -- If the court obtains jurisdiction over a child, that jurisdiction continues in that case until the child reaches the age of 21 years, unless the court terminates the case.</p>
Massachusetts	18	<p>Mass. Gen. Laws Ann. ch. 119, § 24 (2007)</p> <p>Administration of the Government - Public Welfare - Protection and Care of Children, and Proceedings Against Them - Protection of Children - Powers and Duties of Divisions of Juvenile Court Department as to Custody of Children.</p> <p>The divisions of the juvenile court department, upon the petition under oath of a person alleging on behalf of a child under the age of 18 within the jurisdiction of the court that the child: (c) lacks proper attention of the parent, guardian with care and custody or custodian; or (d) has a parent, guardian or custodian who is unwilling, incompetent or unavailable to provide any such care, discipline or attention . . . shall issue a notice to the department and summonses to both parents of the child to show cause why the child should not be committed to the custody of the department or that any other appropriate order should not be made.</p> <p>Mass. Gen. Laws Ann. ch. 119, § 26 (2007)</p> <p>Administration of the Government - Public Welfare - Protection and Care of Children, and Proceedings Against Them - Protection of Children - Hearing Procedure; Order of Commitment; Petition for Review.</p> <p>If the court finds the allegations in the petition proved within the meaning of this chapter, it may adjudge that the child is in need of care and protection. In making such adjudication, the health and safety of the child shall be of paramount concern. If the child is adjudged to be in need of care and protection, the court may commit the child to the custody of the department until he becomes 18 years of age or until, in the opinion of the department, the object of his commitment has been accomplished, whichever occurs first</p>
Michigan*	20	<p>Mich. Comp. Laws § 712A.2a (2007) – Probate Code – Jurisdiction, Procedure, and Dispositions Involving Minors – Continuing Jurisdiction Beyond Maximum Age; definitions</p> <p>Sec. 2a. (1) Except as otherwise provided in subsection (2), if the court has exercised jurisdiction over a juvenile under section 2(a) or (b) of this chapter, jurisdiction shall continue for a period of 2 years beyond the maximum age of jurisdiction conferred under section 2 of this chapter, unless the juvenile is released sooner by court order.</p>
Minnesota*	19	<p>Minn. Stat. § 260C.193 (2006)</p> <p>Public Welfare and Related Activities – Child Protection – Disposition – Dispositions; General Provisions Subd. 6. Termination of jurisdiction.</p> <p>The court may dismiss the petition or otherwise terminate its jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court, and except as otherwise provided in this subdivision, the jurisdiction of the court shall continue until the individual becomes 19 years of age if the court determines it is in the best interest of the individual to do so. Court jurisdiction under section 260C.007, subdivision 6, clause (14), may not continue past the child's 18th birthday.</p>
Mississippi*	20	<p>Miss. Code Ann. § 43-21-151 (2007)</p> <p>Public Welfare – Youth Court – Jurisdiction</p> <p>(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:</p> <p>(2) Jurisdiction of the child in the cause...shall continue...until the child's twentieth birthday unless sooner terminated by order of the youth court.</p>

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Missouri*	21	<p>§ 211.041 Mo. Rev. Stat. (2007) Public Health and Welfare – Juvenile Courts – Continuing Jurisdiction over Child, Exception, Seventeen-year-old violating State or Municipal Laws When jurisdiction over the person of a child has been acquired by the juvenile court under the provisions of this chapter in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of this chapter until he has attained the age of twenty-one years . . . § 211.031 Mo. Rev. Stat. (2007) Public Health and Welfare – Juvenile Courts – Juvenile Court to have Exclusive Jurisdiction, when – Exceptions – Home Schooling, Attendance Violations, How Treated</p> <p>1. Except as otherwise provided in this chapter, the juvenile court or the family court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall have exclusive original jurisdiction in proceedings:</p> <p>(1) Involving any child or person seventeen years of age who may be a resident of or found within the county and who is alleged to be in need of care and treatment because:</p> <p>(a) The parents . . . neglect or refuse to provide proper support, education . . . other care necessary for his or her well-being (b) The child or person seventeen years of age is otherwise without proper care, custody or support; or</p>
Montana	18	<p>Mont. Code Ann., § 41-3-102 (2005) Minors - Child Abuse and Neglect – General - Definitions. As used in this chapter, the following definitions apply:</p> <p>(6) "Child" or "youth" means any person under 18 years of age. (7) (a) "Child abuse or neglect" means: (i) actual physical or psychological harm to a child; (ii) substantial risk of physical or psychological harm to a child; or (iii) abandonment. (34) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned. Mont. Code Ann., § 41-3-103 (2005) Jurisdiction.</p> <p>(1) In all matters arising under this chapter, the district court has jurisdiction over: (a) a youth who is within the state of Montana for any purpose; (b) a youth or other person subject to this chapter who under a temporary or permanent order of the court has voluntarily or involuntarily left the state or the jurisdiction of the court; or (c) a person who is alleged to have abused or neglected a youth who is in the state of Montana for any purpose.</p>
Nebraska*	18	<p>Neb. Rev. Stat. § 43-247 (2007) Infants and Juveniles – Juvenile Code – General Provisions – Juvenile Court; Jurisdiction</p> <p>The juvenile court shall have exclusive original jurisdiction as to any juvenile defined in subdivision (1) of this section who is under the age of sixteen, as to any juvenile defined in subdivision (3) of this section . . . The juvenile court in each county as herein provided shall have jurisdiction of:</p> <p>(3) Any juvenile (a) who is homeless or destitute, or without proper support through no fault of his or her parent, guardian, or custodian; who is abandoned by his or her parent, guardian, or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent, guardian, or custodian; whose parent, guardian, or custodian neglects or refuses to provide proper or necessary subsistence, education, or other care necessary for the health, morals, or well-being of such juvenile; whose parent, guardian, or custodian is unable to provide or neglects or refuses to provide special care made necessary by the mental condition of the juvenile; or who is in a situation or engages in an occupation dangerous to life or limb or injurious to the health or morals of such juvenile, (b) who, by reason of being wayward or habitually disobedient, is uncontrolled by his or her parent, guardian, or custodian; who deports himself or herself so as to injure or endanger seriously the morals or health of himself, herself, or others; or who is habitually truant from home or school, or (c) who is mentally ill and dangerous as defined in section 71-908;</p> <p>Neb. Rev. Stat. § 43-245 (2007) Terms Defined</p> <p>For purposes of the Nebraska Juvenile Code, unless the context otherwise requires:</p> <p>(1) Age of majority means nineteen years of age; (4) Juvenile means any person under the age of eighteen;</p>

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END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Nevada	18	<p>Nev. Rev. Stat. Ann. § 3.004 (2007)</p> <p>State Judicial Department - District Courts - General Provisions - Department of the family court" defined.</p> <p>"Department of the family court" means any department of the district court that is designated as a department of the family court.</p> <p>Nev. Rev. Stat. Ann. § 3.006 (2007)</p> <p>"Family court" defined.</p> <p>"Family court" means the division of the district court that is established as a family court pursuant to NRS 3.0105.</p> <p>Nev. Rev. Stat. Ann. § 3.008 (2007)</p> <p>"Jurisdiction of the family court" defined.</p> <p>"Jurisdiction of the family court" means the jurisdiction of the family court that is established in NRS 3.223.</p> <p>Nev. Rev. Stat. Ann. § 432B.040 (2007)</p> <p>Public Welfare - Protection of Children From Abuse and Neglect - General Provisions - "Child" defined</p> <p>"Child" means a person under the age of 18 years.</p> <p>Nev. Rev. Stat. Ann. § 432B.410 (2007)</p> <p>Public Welfare - Protection of Children From Abuse and Neglect - Civil Proceedings - General Provisions - Exclusive original jurisdiction; action does not preclude prosecution.</p> <p>1. Except if the child involved is subject to the jurisdiction of an Indian tribe pursuant to the Indian Child Welfare Act, the court has exclusive original jurisdiction in proceedings concerning any child living or found within the county who is a child in need of protection or may be a child in need of protection.</p>
New Hampshire*	21	<p>N.H. Rev. Stat. Ann. 169-C:4 (2007)</p> <p>Public Safety and Welfare – Child Protection Act – Jurisdiction, Continued Jurisdiction, Modification</p> <p>I. The court shall have exclusive original jurisdiction over all proceedings alleging the abuse or neglect of a child.</p> <p>II. The court may, with the consent of the child, retain jurisdiction over any child, who, prior to his eighteenth birthday, was found to be neglected or abused and who is attending school until such child completes high school or until his twenty-first birthday, whichever occurs first; and the court is authorized to and shall make such orders relative to the support and maintenance of said child during the period after the child's eighteenth birthday as justice may require.</p>
New Jersey	18	<p>N.J. Stat. § 9:6-8.22 (2007)</p> <p>Children -- Juvenile and Domestic Relations Courts - Protective Welfare Laws - Abuse, Abandonment, Cruelty and Neglect of a Child - In General - Jurisdiction of Superior Court, Chancery Division, Family Part</p> <p>The Superior Court, Chancery Division, Family Part in each county shall have jurisdiction over all noncriminal proceedings involving alleged cases of child abuse or neglect, and shall be charged with the immediate protection of said children, whereby the safety of the children shall be of paramount concern.</p> <p>N.J. Stat. § 9:6-8.24 (2007)</p> <p>Jurisdiction</p> <p>a. Notwithstanding any other law to the contrary, the Superior Court, Chancery Division, Family Part has exclusive original jurisdiction over noncriminal proceedings under this act alleging the abuse or neglect of a child.</p> <p>b. In determining the jurisdiction of the court under this act, the age of the child at the time the proceedings are initiated is controlling.</p> <p>N.J. Stat. § 9:6-8.9 (2007)</p> <p>Children -- Juvenile and Domestic Relations Courts - Protective Welfare Laws - Abuse, Abandonment, Cruelty and Neglect of a Child - In General - "Abused child" defined</p> <p>For purposes of this act:</p> <p>"Abused child" means a child under the age of 18 years whose parent, guardian, or other person having his custody and control: a. Inflicts or allows to be inflicted upon such child physical injury by other than accidental means . . . b. Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means . . .</p> <p>c. Commits or allows to be committed an act of sexual abuse against the child . . .</p>

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
New Mexico*	18	<p>N.M. Stat. Ann. § 32A-1-8 (2007) Children's Code – General Provisions – Jurisdiction of the Court; Tribal Court Jurisdiction A. The court has exclusive original jurisdiction of all proceedings under the Children's Code [32A-1-1 NMSA 1978] in which a person is eighteen years of age or older and was a child at the time the alleged act in question was committed or is a child alleged to be: (3) a neglected child; (4) an abused child;</p> <p>N.M. Stat. Ann. § 32A-4-24 (2007) Children's Code – Child Abuse and Neglect – Limitations on Dispositional Judgments; Modification, Termination or Extension of Court Orders F. When a child reaches eighteen years of age, all neglect and abuse orders affecting the child then in force automatically terminate. The termination of the orders shall not disqualify a child from eligibility for transitional services.</p>
New York*	21	<p>N.Y. Family Ct. Law § 1055 (2007) Family Court Act – Child Protective Proceedings – Orders – Placement (e) No placement may be made or continued under this section beyond the child's eighteenth birthday without his or her consent and in no event past his or her twenty-first birthday.</p>
North Carolina*	18	<p>N.C. Gen. Stat. § 7B-200 (2006) Juvenile Code – Abuse, Neglect, Dependency – Jurisdiction – Jurisdiction (a) The court has exclusive, original jurisdiction over any case involving a juvenile who is alleged to be abused, neglected, or dependent. N.C. Gen. Stat. § 7B-201 (2006) Retention and termination of jurisdiction (a) When the court obtains jurisdiction over a juvenile, jurisdiction shall continue until terminated by order of the court or until the juvenile reaches the age of 18 years or is otherwise emancipated, whichever occurs first</p>
North Dakota*	20	<p>N.D. Cent. Code § 27-20-36 (2007) Judicial Branch of Government – Uniform Juvenile Court Act – Limitations of Time on Orders of Disposition 6. Except as provided in subsection 1, when the child attains the age of twenty years, all orders affecting the child then in force terminate and the child is discharged from further obligation or control.</p>
Ohio*	18, 21 if the child is disabled	<p>Ohio Rev. Code Ann. 2151.353 (2006) Court – Probate – Juvenile – Juvenile Court – District Detention Homes – Disposition of Abused, Neglected or Dependent Child E) (1) The court shall retain jurisdiction over any child for whom the court issues an order of disposition pursuant to division (A) of this section or pursuant to section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code until the child attains the age of eighteen years if the child is not mentally retarded, developmentally disabled, or physically impaired, the child attains the age of twenty-one years if the child is mentally retarded, developmentally disabled, or physically impaired, or the child is adopted and a final decree of adoption is issued, except that the court may retain jurisdiction over the child and continue any order of disposition under division (A) of this section or under section 2151.414 [2151.41.4] or 2151.415 [2151.41.5] of the Revised Code for a specified period of time to enable the child to graduate from high school or vocational school. The court shall make an entry continuing its jurisdiction under this division in the journal.</p>

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END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Oklahoma	18	<p>Okl. Stat. 20 § 91.1 (2006)</p> <p>Courts - District Courts - District courts as successors to jurisdiction of various other courts</p> <p>The district courts of the State of Oklahoma are the successors to the jurisdiction of . . . Juvenile Courts, Children's Courts . . .</p> <p>Okl. Stat. 10 § 7001-1.3 (2006)</p> <p>Children - Oklahoma Children's Code - General Provisions - Definitions</p> <p>A. When used in the Oklahoma Children's Code, unless the context otherwise requires:</p> <p>3. "Child" means any unmarried person under eighteen (18) years of age except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an adult pursuant to Section 7303-4.3 of this title and convicted of a felony;</p> <p>8. "Chronic abuse or chronic neglect of a child" means a pattern of physical or sexual abuse or neglect which is repeated or continuing;</p> <p>14. "Deprived child" means a child: a. who is for any reason destitute, homeless, or abandoned, b. who does not have the proper parental care or guardianship or whose home is an unfit place for the child by reason of neglect, abuse, cruelty, or depravity . . . c. who is a child in need of special care and treatment . . .</p> <p>Okl. Stat. 10 § 7002-1.1 (2006)</p> <p>Article II. Jurisdiction</p> <p>Jurisdiction of the Court - Personal jurisdiction--Transfer of proceedings--Emergency order or relief--Consolidation of proceedings</p> <p>A. 1. . . . the district court with juvenile or domestic docket . . . shall have jurisdiction of any child who is or is alleged to be deprived</p> <p>2. When jurisdiction has been obtained over a child who is or is alleged to be a deprived child, such jurisdiction may be retained until the child becomes eighteen (18) years of age.</p>
Oregon*	21	<p>Or. Rev. Stat. § 419B.328 (2006)</p> <p>Human Services; Juvenile Code; Corrections – Juvenile Code: Dependency – Juvenile Court – Disposition – Ward of the court, duration of wardship.</p> <p>(2) The court's wardship continues, and the ward is subject to the court's jurisdiction, until one of the following occurs: (e) The ward becomes 21 years of age.</p>
Pennsylvania*	18, or 21, at the request of a child engaged in a course of instruction or treatment	<p>42 Pa. Cons. Stat. § 6302 (2006)</p> <p>Judiciary and Judicial Procedure – Actions, Proceedings and Other Matters Generally – Juvenile Matters – General Provisions – Definitions</p> <p>"Child." An individual who:</p> <p>(1) is under the age of 18 years;</p> <p>(2) is under the age of 21 years who committed an act of delinquency before reaching the age of 18 years; or</p> <p>(3) was adjudicated dependent before reaching the age of 18 years and who, while engaged in a course of instruction or treatment, requests the court to retain jurisdiction until the course has been completed, but in no event shall a child remain in a course of instruction or treatment past the age of 21 years.</p>
Rhode Island	18	<p>R.I. Gen. Laws § 14-1-3 (2007)</p> <p>Delinquent and Dependent Children - Proceedings in Family Court - Definitions</p> <p>The following words and phrases when used in this chapter shall, unless the context otherwise requires, be construed as follows:</p> <p>(3) "Child" means a person under eighteen (18) years of age.</p> <p>(4) "The court" means the family court of the state of Rhode Island.</p> <p>R.I. Gen. Laws § 14-1-6 (2007)</p> <p>Delinquent and Dependent Children - Proceedings in Family Court - Retention of jurisdiction</p> <p>(a) When the court shall have obtained jurisdiction over any child prior to the child's eighteenth birthday by the filing of a petition alleging that the child is dependent, neglected, and abused pursuant to §§ 14-1-5 and 40-11-7, the child shall, except as specifically provided in this chapter, continue under the jurisdiction of the court until he or she becomes eighteen (18) years of age, provided, that prior to an order of discharge or emancipation being entered, the court shall require the department of children, youth, and families to provide a description of the transition services afforded the child in placement or a detailed explanation as to the reason those services were not offered.</p>

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
South Carolina	21	<p>S.C. Code Ann. § 20-7-736 (2006) Domestic Relations - Children's Code - Procedures For Family Courts - Abused, Neglected and Delinquent Children - Jurisdiction of family court under article; removal proceedings; procedures. (A) The family court has exclusive jurisdiction over all proceedings held pursuant to this article.</p> <p>S.C. Code Ann. § 20-7-490 (2006) Domestic Relations - Children's Code – Intake - General Provisions - Definitions (1) "Child" means a person under the age of eighteen. (2) "Child abuse or neglect," or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare:</p> <p>S.C. Code Ann. § 20-7-400 (2006) Domestic Relations - Children's Code – Jurisdiction - Exclusive original jurisdiction of family court. (B) Whenever the court has acquired the jurisdiction of any child under seventeen years of age, jurisdiction continues so long as, in the judgment of the court, it may be necessary to retain jurisdiction for the correction or education of the child, but jurisdiction shall terminate when the child attains the age of twenty-one years. Any child who has been adjudicated delinquent and placed on probation by the court remains under the authority of the court only until the expiration of the specified term of his probation. This specified term of probation may expire before but not after the eighteenth birthday of the child.</p>
South Dakota*	18, 21 for purposes of termination of parental rights and adoption	<p>S.D. Codified Laws § 26-7A-1 (2007) Minors - Juvenile Court - Definitions Terms used in this chapter and in chapters 26-8A, 26-8B, and 26-8C mean: (1) "Abused or neglected child," a child as defined in § 26-8A-2; (6) "Child," a person less than eighteen years of age and any person under twenty-one years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's eighteenth birthday; § 26-7A-2. Jurisdiction The circuit court has original jurisdiction in all proceedings under this chapter and chapters 26-8A, 26-8B and 26-8C. § 26-8A-29. Continuing jurisdiction of court prior to adoption In any action involving the termination of parental rights of both parents or any surviving parent, the court has continuing jurisdiction of the action and of the abused or neglected child for purposes of review of status of the child until the adoption of the child is fully completed. The department of social services or any other party having custody and guardianship of the child pending adoption may petition the court to review the status of the child at any time before the adoption of the child is completed. The court may issue any orders or decrees necessary to protect the child, to preserve the child's welfare and to facilitate adoption of the child by the court or another court of competent jurisdiction without delay. The continuing jurisdiction of the court according to this section does not prevent the acquisition of jurisdiction of the child by another court for adoption proceedings according to law.</p>
Tennessee	18	<p>Tenn. Code Ann. § 37-1-103 (2007) Juveniles - Juvenile Courts and Proceedings - General Provisions - Exclusive Original Jurisdiction. (c) jurisdiction shall continue until a person reaches the age of eighteen (18).</p>

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END AGE FOR COURT JURISDICTION

STATE BY STATE

State ¹	Statutory Age Limit	Legal Citations
Texas	18; 22	<p>Tex. Gov't Code § 24.601 (2006)</p> <p>District Courts - Family District Courts - Jurisdiction</p> <p>(b) A family district court has primary responsibility for cases involving family law matters. These matters include:</p> <p>(4) child welfare, custody, support and reciprocal support, dependency, neglect, and delinquency;</p> <p>Tex. Fam. Code § 264.101 (2006)</p> <p>Family Code - The Parent-Child Relationship and The Suit Affecting The Parent-Child Relationship - Protection of The Child - Child Welfare Services - Foster Care - Foster Care Payments</p> <p>(a-1) The department shall continue to pay the cost of foster care for a child for whom the department provides care, including medical care, until the later of:</p> <p>(1) the date the child attains the age of 18; or</p> <p>(2) the date the child graduates from high school or ceases to be enrolled in a secondary school in a program leading toward a high school diploma.</p> <p>(f) In this section, "child" means a person who:</p> <p>(1) is under 22 years of age and for whom the department has been appointed managing conservator of the child before the date the child became 18 years of age; or</p> <p>(2) is the responsibility of an agency with which the department has entered into an agreement to provide care and supervision of the child.</p>
Utah*	18	<p>Utah Code Ann. § 78-3a-104 (2006)</p> <p>Judicial Code – Courts – Juvenile Court Act of 1996 – General Provisions – Definitions</p> <p>(1) As used in this chapter:</p> <p>(e) "Child" means a person under 18 years of age.</p> <p>Utah Code Ann. § 78-3a-104 (2006)</p> <p>Judicial Code – Courts – Juvenile Court Act of 1996 – General Provisions – Jurisdiction of Juvenile Court – Original – Exclusive</p> <p>(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:</p> <p>(c) a child who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;</p>
Vermont	18	<p>Vt. Stat. Ann. 4 § 451 (2007)</p> <p>Judiciary - Family Court - Family Court</p> <p>(a) One family court having statewide jurisdiction is created.</p> <p>Vt. Stat. Ann. 4 § 454 (2007)</p> <p>Jurisdiction</p> <p>Notwithstanding any other provision of law to the contrary, the family court shall have exclusive jurisdiction to hear and dispose of the following proceedings filed or pending on or after October 1, 1990. The family court shall also have exclusive jurisdiction to hear and dispose of any requests to modify or enforce any orders issued by the district or superior court relating to the following proceedings:</p> <p>(14) All abuse prevention proceedings filed pursuant to chapter 21 of Title 15. Any district or superior judge may issue orders for emergency relief pursuant to section 1104 of Title 15.</p> <p>(15) All abuse and exploitation proceedings filed pursuant to subchapter 2 of chapter 69 of Title 33.</p> <p>Vt. Stat. Ann. 33 § 4902 (2007)</p> <p>Human Services - Programs and Services For Children and Youth - Child Welfare Services - General Provisions - Definitions</p> <p>Unless otherwise specifically provided, the following words and phrases in this chapter mean:</p> <p>(1) Child: a person under the age of 18 years committed by the juvenile court to the department for children and families prior to April 14, 1974 and to the department for children and families thereafter, except that for the purpose of subchapter 1 of chapter 35 of this title, a child is a person under the age of 16 years.</p> <p>Vt. Stat. Ann. 1 § 173 (2007)</p> <p>General Provisions - Construction of Statutes - Rules of Construction - Minors</p> <p>Persons of the age of eighteen years shall be considered of age and until they attain that age, shall be minors. Whenever referred to in the laws of this state, a person who is an adult or who has attained majority shall be a resident or nonresident person of eighteen years of age or more.</p>

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Virginia*	21	<p>Va. Code Ann. § 16.1-242 (2007)</p> <p>Courts Not of Record – Juvenile and Domestic Relations District Courts – Jurisdiction and Venue – Retention of Jurisdiction</p> <p>When jurisdiction has been obtained by the court in the case of any child, such jurisdiction may be retained by the court until such person becomes twenty-one years of age, except when the person is in the custody of the Department or when jurisdiction is divested under the provisions of § 16.1-244.</p>
Washington	18	<p>Wash. Rev. Code (ARCW) § 13.04.030 (2007)</p> <p>Juvenile Courts and Juvenile Offenders - Basic Juvenile Court Act - Juvenile Court - Exclusive Original Jurisdiction - Exceptions</p> <p>For purposes of this chapter:</p> <p>(1) the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings;</p> <p>(b) relating to children alleged or found to be dependent as provided...in ARCW § 13.34.030.</p> <p>Rev. Code Wash. (ARCW) § 13.34.030 (2007)</p> <p>Juvenile Courts and Juvenile Offenders - Juvenile Court Act - Dependency and Termination of Parent-Child Relationship - Definitions</p> <p>For purposes of this chapter:</p> <p>(2) "Child" and "juvenile" means any individual under the age of eighteen years.</p>
West Virginia	18	<p>W. Va. Code § 49-1-2 (2007)</p> <p>Child Welfare - Purposes; Definitions - "Juvenile" or "Child" defined.</p> <p>As used in this chapter, "juvenile" or "child" means any person under eighteen years of age.</p> <p><i>State ex rel. W. Va. Dep't of Health & Human Resources v. Hill</i>, 207 W. Va. 358, 532 S.E.2d 358, 2000 W. Va. LEXIS 8 (2000): In accordance with the definition of a "child" as a person under eighteen years of age, a circuit court's jurisdiction over a child abuse and neglect proceeding terminates when the child turns eighteen.</p>
Wisconsin	18	<p>Wis. Stat. § 767.01 (2006)</p> <p>The Family - Actions Affecting The Family - Definitions, Scope, Jurisdiction, and Recognition of Judgments - Jurisdiction.</p> <p>The circuit courts have jurisdiction of all actions affecting the family and have authority to do all acts and things necessary and proper in those actions and to carry their orders and judgments into execution as prescribed in this chapter.</p> <p>Wis. Stat. § 48.13 (2006)</p> <p>Charitable, Curative, Reformatory and Penal Institutions and Agencies - Children's Code – Jurisdiction - Jurisdiction over children alleged to be in need of protection or services.</p> <p>The court has exclusive original jurisdiction over a child alleged to be in need of protection or services which can be ordered by the court, and:</p> <p>(1) Who is without a parent or guardian;</p> <p>(2) Who has been abandoned . . .</p> <p>Wis. Stat. § 48.02 (2006)</p> <p>Charitable, Curative, Reformatory and Penal Institutions and Agencies - Children's Code - General Provisions - 48.02. Definitions.</p> <p>In this chapter, unless otherwise defined:</p> <p>(2) "Child" means a person who is less than 18 years of age, except that for purposes of investigating or prosecuting a person who is alleged to have violated a state or federal criminal law or any civil law or municipal ordinance, "child" does not include a person who has attained 17 years of age.</p>

¹ An * indicates that the statutory information was originally found in a report from the American Bar Association Center on Children and the Law, CONTINUING COURT JURISDICTION IN SUPPORT OF 18 TO 21 YEAR-OLD FOSTER YOUTH (July 2004). These statutes were rechecked in 2007 to confirm their continued accuracy, and any necessary corrections were made.

END AGE FOR COURT JURISDICTION

STATE BY STATE

State¹	Statutory Age Limit	Legal Citations
Wyoming	18	<p>Wyo. Stat. § 5-8-101 (2006) Courts - Juvenile Courts - Establishment; judges; courts of record. Courts are established in each county of the state known as the "Juvenile Court of County, Wyoming." Wyo. Stat. § 5-8-102 (2006) Jurisdiction.</p> <p>(a) The juvenile court has general jurisdiction in all matters and proceedings commenced therein or transferred to it by order of the district court concerning;</p> <p>(iii) Any minor alleged to be neglected as defined in W.S. 14-3-402;</p> <p>(iv) Any minor alleged to be in need of supervision as defined in W.S. 14-6-402;</p> <p>Wyo. Stat. § 14-3-402 (2006) Children - Protection - Child Protection Act - Definitions</p> <p>(a) As used in this act:</p> <p>(iii) "Child" means an individual who is under the age of majority;</p> <p>(xi) "Minor" means an individual who is under the age of majority; Wyo. Stat. § 14-1-101 (2006) Children - General Provisions - In General - Age of majority; rights on emancipation.</p> <p>(a) Upon becoming eighteen (18) years of age, an individual reaches the age of majority.</p>

**END AGE FOR COURT JURISDICTION
STATE-BY-STATE**

A: ARKANSAS MODEL LEGISLATION RIGHT OF RE-ENTRY

Arkansas's Re-Entry Legislation A.C.A. § 9-27-306

Jurisdiction.

- (a) (1) The circuit court shall have exclusive original jurisdiction of and shall be the sole court for the following proceedings governed by this subchapter, including but not limited to:

....

- (B) Proceedings in which a juvenile is alleged to be dependent or dependent-neglected from birth to eighteen (18) years, of age, except for the following:

- (i) (a) A juvenile who has been adjudicated dependent or dependent-neglected prior to the age of eighteen (18) years of age may request the court to continue jurisdiction until twenty-one (21) years of age so long as the juvenile is engaged in a course of instruction or treatment.
 - (b) The court shall retain jurisdiction only if the juvenile remains or has a viable plan to remain in instruction or treatment.
 - (c) The court shall dismiss jurisdiction upon request of the juvenile or when the juvenile completes or is dismissed from instruction or treatment; or
- (ii) A juvenile may contact his or her attorney ad litem to petition the court to return to the court's jurisdiction to receive independent living services if the juvenile
 - (a) Was adjudicated dependent or dependent-neglected;
 - (b) Was in foster care at eighteen (18) years of age; and
 - (c) Left foster care but decides to return prior to twenty-one (21) years of age to benefit from independent living services;

B: NEW YORK MODEL LEGISLATION RIGHT OF RE-ENTRY

New York's Trial Discharge Legislation 18 NYCRR Section 430.12(f)(4)

(4) Post-discharge.

(i) Standards.

- (a) Every child discharged to another planned living arrangement ... must remain in a status of trial discharge for at least six months after discharge and must remain in the custody of the local commissioner during the entire period of trial discharge. Trial discharge may continue at the discretion of the district up to the age of 21 if the reassessment and service plan review indicates either the need for continued custody or a likelihood that the child may need to return to foster care. During the period of trial discharge, the district must provide after-care services to the child, including casework contacts with the child, with the number of face-to-face contacts and in-home contacts equal to those required for that child pursuant to section 431.16(c) of this Title during the six months immediately preceding the child's discharge. ... In the event that the child becomes homeless during the period of trial discharge, the district must assist the child to obtain housing equivalent to that authorized by clause (c) of this subparagraph. Under no circumstances may a district refer or place a child during the 30-day period following the child's becoming homeless in a shelter for adults, shelter for families, single-room occupancy hotel, or any other congregate living arrangement which houses more than 10 unrelated persons. If appropriate housing is not available within 30 days of the date the child becomes homeless, the district must place the child in a suitable foster boarding home, agency boarding home, group home or institution consistent with section 430.11 of this Part. The provisions of this clause relating to trial discharge does not apply where a court order terminates the district's custody of the child or where the child reaches the age of 21.
- (b) After the district's custody of the child has been terminated whether by court order or by the district's own action, the district must maintain supervision of the child until the child is 21 years of age... Supervision includes at least monthly contact with the child, unless the child has maintained adequate housing and income continuously for the past six months, in which case at least quarterly contacts shall occur, either face-to-face or by telephone....
- (c) Nothing in this subdivision mandates the participation of a child in the status of trial discharge or supervision. Such participation is contingent upon the consent of the child.

NEW YORK MODEL LEGISLATION

C: ARIZONA MODEL PROGRAM RIGHT OF RE-ENTRY

Arizona's Re-Entry Policy
Division of Children, Youth and Families Policy Manual
Chapter 16, Section 6
<https://www.azdes.gov/dcyf/cmdps/cps/Policy/ServiceManual.htm>

The department will provide young adults who exited foster care at age 18 or older the opportunity to re-enter services under the supervision of the Division of Children, Youth, and Families (DCYF), at any time until the young adult reaches age 21.... .

Young Adults who desire to re-enter services under the supervision of the DCYF may do so by contacting the local Transitional Independent Living Program (TILP) contract provider. The TILP contract provider will:

- Provide services and support (including available financial assistance through the TILP) that will assist the Young Adult to resolve current housing, mental health, employment or other crises.
- Confirm the Young Adult's desire to receive long term case management and other services; (Youth who do not desire to return to DCYF for services may continue to receive aftercare services through the TILP).
- Assist the Young Adult to develop an individualized plan which includes goals, objectives and tasks which will lay the foundation for the Young Adult's eventual self-sufficiency in the areas of housing, employment, education, physical and mental health, etc.
- Notify the local DCYF Independent Living (IL) Coordinator of the potential case transfer.
- Monitor the Young Adult's compliance with the individualized plan for a period of up to 90 days.

If the Young Adult maintains satisfactory progress toward meeting their case plan goals for a period of up to 90 days, the TILP contract provider will schedule a staffing with the local DCYF Independent Living (IL) Coordinator for the purpose of facilitating transfer of services to DCYF. DCYF may accept the case earlier than 90 days.

The local DCYF IL Coordinator will meet with the Young Adult and the TILP contract provider to coordinate the transfer of services. The local DCYF IL Coordinator will:

- Affirm the Young Adult's desire to resume supervision and services through the DCYF.
- Identify the assigned DCYF CPS Specialist.
- Review the requirements and responsibilities of Young Adults in continued services.
- Review the current individualized plan, services provided and the Young Adult's progress in services.
- Facilitate any service or other revisions needed to the plan.

- Arrange for cost of care to support the current or anticipated living arrangement through the use of the Independent Living Subsidy stipend or other resources.

Young Adults participating in services and supervision through the DCYF must cooperate with the assigned CPS Specialist in developing an agreement which identifies how they will increase their skills to become self-sufficient. The agreement must document the young adult's acceptance of personal responsibility to:

- Maintain enrollment in, or enroll in an education, training or employment program of their choice.
- Participate in the education or training program of their choice by attending classes and earning related credits/certificate/license/degree.
- Prepare for financial self-sufficiency by participating in employment or employment readiness activities of their choice, which may include paid employment, volunteer work or other activities defined in the case plan that will assist the youth to strengthen their employability.
- Identify personal physical and mental health needs and participate in health services, including mental health services of their choice.
- Identify and maintain a safe living arrangement.

The assigned CPS Specialist will be responsible for evaluating the need for continued case management and other services, including financial assistance for room and board related costs, every six months, or more often if needed. Services may only be discontinued as described in Conclusion of Participation in the Voluntary Program (Chapter 16, Section 5).

D: FLORIDA MODEL LEGISLATION RIGHT OF RE-ENTRY

Florida's Re-Entry Legislation Florida Statute Section 409.1451(5)(a)

(5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.--Based on the availability of funds, the department shall provide or arrange for the following services to young adults formerly in foster care who meet the prescribed conditions and are determined eligible by the department... The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(a) Aftercare support services.--

1. Aftercare support services are available to assist young adults who were formerly in foster care in their efforts to continue to develop the skills and abilities necessary for independent living. The aftercare support services available include, but are not limited to, the following:
 - a. Mentoring and tutoring.
 - b. Mental health services and substance abuse counseling.
 - c. Life skills classes, including credit management and preventive health activities.
 - d. Parenting classes.
 - e. Job and career skills training.
 - f. Counselor consultations.
 - g. Temporary financial assistance.
 - h. Financial literacy skills training

The specific services to be provided under this subparagraph shall be determined by an aftercare services assessment and may be provided by the department or through referrals in the community.

2. Temporary assistance provided to prevent homelessness shall be provided as expeditiously as possible and within the limitations defined by the department.
3. A young adult who has reached 18 years of age but is not yet 23 years of age who leaves foster care at 18 years of age but who requests services prior to reaching 23 years of age is eligible for such services.

FLORIDA MODEL LEGISLATION

E: PROPOSED LEGISLATION RIGHT OF RE-ENTRY

The University of Chicago Law School Foster Care Project's Proposed Re-Entry Legislation

- (1) For all youth in foster care whose permanency plan is discharge to independence, the court shall maintain jurisdiction over the youth's case, even after the youth is discharged from the foster care system, until the youth's 21st birthday. After a youth is discharged from foster care, the youth will remain in the status of "trial discharge," until reaching the age of 21.
- (2) During the trial discharge period, the court shall hold hearings to review the youth's circumstances and give the youth an opportunity to raise concerns and seek assistance at least once every six months. The youth shall be given notice of these hearings, and informed of the opportunity to seek assistance from the court during those hearings, or, at the youth's initiative, at any time. Upon the express request of a youth, the court shall cease scheduling hearings unless and until the youth subsequently requests additional hearings.
- (3) During the trial discharge period, the child welfare agency shall provide after-care services to the youth, which shall include:
 - (a) Regular contact with the youth to inquire about the youth's welfare and offer assistance.
 - (b) In the event that the youth becomes homeless during the period of trial discharge, assistance obtaining housing and, if appropriate housing is not available within 30 days of the date the youth becomes homeless and with the consent of the youth, placement in a suitable foster home, group home or other appropriate housing arrangement.
 - (c) In the event that the youth requests placement in an agency approved living arrangement, placement in such a living arrangement if available.
- (4) Where the youth, during the trial discharge period, seeks to re-enter the child welfare system, or to seek the court's assistance in obtaining services, the youth can:
 - (a) contact his former caseworker; or
 - (b) contact a provider of after-care services for foster youth; or
 - (c) contact juvenile court personnel; or
 - (d) contact a state-run help line to obtain the contact information for any of the above.

PROPOSED LEGISLATION

