

Aging Out of Foster Care: Towards a Universal Safety Net for Former Foster Care Youth

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I. INTRODUCTION

No one expects adulthood to occur overnight, but that is exactly what happens to youths exiting the foster care system. To a youth in foster care, reaching the age of majority, typically set by states at age eighteen, means losing everything. The youth no longer has housing, healthcare, financial assistance, or a social worker to call in emergencies. Overnight, the youth is abandoned, on his or her own without a safety net and with little preparation for adulthood.

For former foster care youths, exiting the foster care system is often a distressing time when they find themselves unprepared for the hard realities of adulthood. Youths who “age out”¹ are more likely than their peers to suffer from homelessness, be involved in criminal activity, be uneducated, be unemployed, experience poverty, and lack proper healthcare. Youths receive little to no formal preparation from the state. Most troubling is the irreversibility of aging out. Unlike other young adults who have the option of returning home during difficult times, foster care youths in most states do not have the option of reentering the foster care system once they age out. All states have cut-offs, established between the ages of eighteen and twenty-one, after which a foster care youth is no longer eligible for any services or support.

By definition, foster care youths have experienced trauma;² they were removed from the homes of their biological parents due to abuse or neglect

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¹ The term “age out” refers to the termination of court jurisdiction over foster care youths.

² 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 27, 44 (D. Wayne Osgood et al. eds., 2005). In California a youth may be adjudged within the jurisdiction of the juvenile court when:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. . . . ; (b) The child has suffered, or there is a substantial risk that the child

and often placed with strangers or in group homes.³ Children who survive abuse are more likely to have “problems in forming positive interpersonal relationships, physical and mental health problems, impaired cognitive development, reduced educational attainment, increased delinquency, and a greater likelihood to engage in high-risk behaviors.”⁴

While individual experiences in foster care vary greatly, many problems persist as a result of frequent placement changes, inadequate supervision, careless foster families, and deficient group homes.⁵ The structure of the foster care system is outside the scope of this essay; however, many of the problems facing former foster care youths stem in part from the treatment they received while in state care.

Current policy terminates all services and support to a former foster care youth instantaneously, often before the youth is ready for the responsibilities of adulthood. The ideal of a middle class American youth growing up in a loving home with two biological parents who nurture her physically and emotionally does not resonate with foster care youths. For former foster care youths, often no adult is in attendance at their high school graduation, if they accomplish this milestone, or available to support them as they enter adulthood. If these youths are fortunate enough to have the opportunity to pursue higher education, they often have no “home” to return to during school breaks and summer recess. There is no parent available for emergency child-care or financial needs. In the case of an unforeseeable medical problem or

will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child’s parent or guardian to adequately supervise or protect the child. . . . ; (c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. . . . ; (d) The child has been sexually abused, or there is substantial risk that the child will be sexually abused. . . . ; (e) The child is under the age of five year old and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. . . . ; (f) The child’s parent or guardian caused the death of another child through abuse or neglect.; (g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered . . . ; the child’s parent has been incarcerated or institutionalized and cannot arrange for the care of the child. . . . ; (h) The child has been freed for adoption by one or both parents. . . . ; (i) The child has been subjected to an act or acts of cruelty by a parent or guardian or a member of his or her household. . . . ; (j) The child’s sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected

CAL. WELF. & INST. CODE § 300 (West 2006).

³ Courtney & Heuring, *supra* note 2, at 28-29.

⁴ *Id.* at 44.

⁵ See generally Adair Fox & Jill Duett Berrick, *A Response to No One Ever Asked Us: A Review of Children’s Experiences in Out-of-Home Care*, 24 CHILD & ADOLESCENT SOC. WORK J. 23 (2007) (providing an overview of studies based on interviews with current and former foster care youths regarding their experiences in care).

financial crisis, they are completely unprepared and alone. Any such crisis can lead to momentous harm. These youths are struggling to survive and meet their basic needs with little to no help from the government. Essentially, they have no safety net.

This Article identifies the specific needs and outcomes of youths who age out under current foster care policies. This Article next analyzes federal law relating to youths aging out and surveys various state law attempts to address gaps in federal law. Lastly, I make policy recommendations, arguing for a universal approach that provides basic services to all former foster care youths.

The title of this Article suggests the need for a universal safety net for foster care youths transitioning into independence, akin to the parental support system received by their peers. A universal safety net should provide services to all former foster care youths, regardless of whether they can meet current state requirements for post-emancipation support. These services should include mentorship, daily life skills training, housing support, job training, healthcare, counseling services, educational scholarships, and emergency contacts. More importantly, to be effective, a safety net must allow youths the flexibility to make mistakes while still offering them a place to return to for help. The perfect balance of flexibility and structure may be difficult to achieve, but the system should permit some margin of error. Foster care youths should receive the support best suited to their special needs in a manner of their choosing as they struggle to transition into stable and successful adulthoods.

II. LEGAL FRAMEWORK OF THE FOSTER CARE SYSTEM

While parents have primary control over the upbringing of their children, a state may remove children from parental custody based on both the state's police power and the state's *parens patriae* power.⁶ When a state intervenes on behalf of a child, the state may determine that the risks to the child are such that the child should be removed from his or her home of origin.⁷ The established preference of the child welfare system is to enable the biological parents to retain custody of their child, based on the child's need for continuity and stability in his or her initial relationships.⁸

The Adoption and Safe Families Act (ASFA),⁹ passed in 1997, is the primary federal law controlling entry into and placements under the foster care system. ASFA seeks to balance the competing needs for family preservation and reunification with the health and safety of the child. The central

⁶ Will L. Crossley, *Defining Reasonable Efforts: Demystifying the State's Burden Under Federal Child Protection Legislation*, 12 B.U. PUB. INT. L. J. 259, 264 (2003).

⁷ See *id.*

⁸ See *id.* at 266.

⁹ Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (codified as amended in scattered sections of 42 U.S.C.).

issues that ASFA addresses are “(1) the failure of state child welfare agencies to promote child safety over placement prevention and family reunification and (2) the problem of foster care drift.”¹⁰ To obtain federal funding under ASFA, a state must pass legislation consistent with these priorities.¹¹

ASFA addresses the first issue by adopting the “reasonable efforts” standard in state determinations regarding the appropriateness of reunification services.¹² The statute mandates that reasonable efforts must be made to preserve families by preventing a child’s initial removal from the home and to reunify families by enabling the child’s safe return home after a removal.¹³ The child’s health and safety must be the “paramount concern” in determining the nature of reasonable efforts made to reunify the child with his or her family.¹⁴

“Foster care drift” describes the practice of youths in the foster care system who often spend years “drifting” through temporary foster home placements.¹⁵ Close to half of youths in foster care spend at least two years in the foster care system and almost 20% spend five or more years in foster care.¹⁶ The average youth in foster care has three different foster care placements. 30% of infants placed with non-relatives have “multiple placements during the first six years of life.”¹⁷ This challenges the view that young children in foster care experience a relatively normal upbringing.¹⁸

Foster care is designed to provide temporary placements while parents are assisted in reunification efforts.¹⁹ Foster parents enter into a contract with a state agency which grants them no parental rights and only limited custody of the child.²⁰ State agencies often discourage foster families from “becoming too attached or allowing the child to become too attached, so as to avoid disrupting bonds with the biological family with whom the child will be reunited.”²¹ However, children may spend their entire childhood cycling through various temporary foster care placements before aging out, without ever being reunified with their families of origin or finding an adoptive home.²²

¹⁰ See Richard P. Barth, et al., *From Anticipation to Evidence: Research on the Adoption and Safe Families Act*, 12 VA. J. SOC. POL’Y & L. 371, 372-73 (2005).

¹¹ See Barbara Bennett Woodhouse, *Horton Looks at the ALI Principles*, 4 J.L. & FAM. STUD. 151, 159 (2002).

¹² 42 U.S.C. § 671(a)(15)(A)-(B) (2000).

¹³ *Id.* § 671(a)(15)(B); 42 U.S.C. § 671(a)(15)(B); see generally Kathleen S. Bean, *Reasonable Efforts: What State Courts Think*, 36 U. TOL. L. REV. 321 (2005) (explaining how state courts have interpreted the reasonable efforts requirement).

¹⁴ 42 U.S.C. § 671(a)(15)(A).

¹⁵ Woodhouse, *supra* note 11, at 158.

¹⁶ Miriam Aroni Krinsky, *A Case for Reform of the Child Welfare System*, 45 FAM. CT. REV. 541, 542 (2007).

¹⁷ Barth, et al., *supra* note 10, at 374.

¹⁸ See *id.* at 374-75.

¹⁹ Crossley, *supra* note 6, at 266.

²⁰ Woodhouse, *supra* note 11, at 158.

²¹ *Id.*

²² *Id.*

ASFA addressed the problem of foster care drift by establishing provisions which promote adoption. To prevent a foster child from languishing indefinitely, termination of parental rights must begin when a child has been in foster care for fifteen out of the last twenty-two months.²³ Exceptions exist when the child is being cared for by a relative, when there is a “compelling reason” for determining that termination of parental rights is not in the best interest of the child, or when the state has not provided reasonable efforts to reunify the family.²⁴ Other procedural safeguards include requiring permanency planning and that a permanency hearing begin within twelve months of the child’s removal from her parent’s home.²⁵

III. NEGATIVE OUTCOMES SUFFERED BY YOUTHS WHO AGE OUT

Each year approximately 20,000 youths age out of the foster care system in the United States, typically when they reach the age of eighteen.²⁶ Another roughly 5,200 youths run away before they age out of the system.²⁷ Former foster care youths face homelessness, incarceration, poor educational outcomes, unemployment, and poverty at startling rates.²⁸ In 2003, 523,000 children were in foster care, 24% of whom did not have a permanency goal of living with a family.²⁹ Of children in foster care, 55% are African American or Hispanic, 52% are male, and the median age is roughly ten and one-half years.³⁰ 30% of youths in foster care are teenagers.³¹ Of those youths between the ages of eleven and eighteen, approximately one-fourth spend at least five years in foster care.³² At any given time, more than 100,000 youths age sixteen or older are in foster care.³³ Approximately 42,000 do not age out of the system; instead, they “are reunited with parents or principal caretakers, adopted, placed in guardianship, transferred to another agency, die, or

²³ See 42 U.S.C. § 675(5)(E) (2000).

²⁴ *Id.* § 675(5)(E)(i)-(iii).

²⁵ *Id.* § 675(5)(C).

²⁶ Foster Care Independence Act of 1999, Pub. L. No. 106-169, 113 Stat. 1822 (1999) (codified as amended at 31 U.S.C. & 42 U.S.C.).

²⁷ Katherine M. 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, 1207 (2007).

²⁸ *Id.*

²⁹ CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH AND HUMAN SERVS., A REPORT TO CONGRESS ON ADOPTION AND OTHER PERMANENCY OUTCOMES FOR CHILDREN IN FOSTER CARE: FOCUS ON OLDER CHILDREN (2005), available at http://www.acf.hhs.gov/programs/cb/pubs/congress_adopt/congress_adopt.pdf.

³⁰ See Courtney & Heuring, *supra* note 2, at 28.

³¹ Randi P. Guinn, *Passage of the Foster Care Independence Act of 1999: A Pivotal Step on Behalf of Youth Aging Out of Foster Care and Into a Life of Poverty*, 7 GEO J. ON POVERTY L. & POL’Y 403, 406 (2000).

³² Alfred Pérez, Kasia O’Neil & Sarah Gesiriech, Demographics of Children in Foster Care, <http://pewfostercare.org/research/docs/Demographics0903.pdf> (last visited Nov. 4, 2007).

³³ Abigail English, *Youth Leaving Foster Care and Homeless Youth: Ensuring Access to Health Care*, 79 TEMP. L. REV. 439, 440 (2006).

run away.”³⁴ Younger children have a significantly better chance of adoption.³⁵

A. Homelessness and Lack of Stable Housing

Maintaining stable housing presents a significant barrier to emancipated foster care youths’ successful transition to adulthood.³⁶ The Midwest Study, a large-scale longitudinal study by Chapin Hall, found that participating former foster care youths were twice as likely as their same age peers to be unable to pay their rent or mortgage.³⁷ Another large-scale longitudinal study by the Casey Family Programs found that more than one-fifth of former foster care youths experienced homelessness for one day or more within a year of aging out.³⁸ National statistics report that approximately 1% of the general population experience homelessness for at least one night in a year.³⁹ A 1999 report found that 40% of “persons in federally funded homeless shelters were former foster youth.”⁴⁰ In Massachusetts, a 2005 Census of homeless young adults ages eighteen through twenty-four, found that 25% were former foster care youth.⁴¹ A California study found that 65% of former foster care youths age out without secured housing.⁴² One study found that half of youths who exited foster care possessed less than \$250 at the time of their release.⁴³ Allowing a youth to exit the foster care system without a stable home places her on an often irreversible path to failure.

Foster care youths in congregate care or other institutions can be in danger of emancipating with inadequate preparation for independent living.⁴⁴ Group homes, where older youths are often placed, often hinder the develop-

³⁴ *Id.*

³⁵ Eve Stotland & Cynthia Godsoe, *The Legal Status of Pregnant and Parenting Youth in Foster Care*, 17 U. FLA. J.L. & PUB. POL’Y 1, 5 (2006).

³⁶ Mark E. Courtney & Amy Dworsky, *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19: Executive Summary* (2005), at 9, available at http://www.chapinhall.org/content_director.aspx?arid=1355&afid=240&dt=1.

³⁷ *Id.*

³⁸ Casey Family Programs, *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study* (2005), at 37, available at <http://www.casey.org/NR/rdonlyres/4E1E7C77-7624-4260-A253-892C5A6CB9E1/923/CaseyAlumniStudyupdated082006.pdf>.

³⁹ *Id.*

⁴⁰ Michele Benedetto, *An Ounce of Prevention: A Foster Youth’s Substantive Due Process Right to Proper Preparation for Emancipation*, 9 U.C. DAVIS J. JUV. L. & POL’Y 381, 387 (2005).

⁴¹ THE MASSACHUSETTS SOCIETY FOR PREVENTION OF CRUELTY TO CHILDREN, 18 AND OUT: LIFE AFTER FOSTER CARE IN MASSACHUSETTS 13 (2005), available at http://www.mspcc.org/assets/updoli_18andOut.pdf.

⁴² CALIFORNIA DEP’T OF SOCIAL SERVS., REPORT ON THE SURVEY OF THE HOUSING NEEDS OF EMANCIPATED FOSTER/PROBATION YOUTH 6 (2002), available at <http://www.childsworld.ca.gov/res/pdf/rptonthehousingneeds.pdf>.

⁴³ Thom Reilly, *Transition from Care: Status and Outcomes of Youth Who Age Out of Foster Care*, 82 CHILD WELFARE 727, 737 (2003).

⁴⁴ Alice Bussiere, Jennifer Pokempner & Jennifer Troia, *Adolescents, the Foster Care System, and the Transition to Adulthood: What Legal Aid Lawyers Need to Know*, 39 CLEARINGHOUSE REV. J. OF POVERTY L. & POL’Y 159, 165 (July-Aug. 2005).

ment of relationships with members of the community and give youths fewer opportunities to become adopted or develop adult mentors.⁴⁵ Congregate care facilities are generally staffed with young workers and sustain high employee turnover rates, preventing youths from developing “lasting relationships with responsible adults,” one of the key factors typically associated with aging out successfully.⁴⁶ According to one former foster care youth who now works at a mentoring program which he founded:

Mentors provide consistency through times of transition. They believe in the youth with whom they work and are sometimes the only people in the children’s lives who are saying positive things about them. They help youth regain trust in relationships and improve social skills. We could require all youth to have one identified consistent adult through all transitions, as a bare minimum. My real vision would be to preserve and foster all relationships that children want to preserve, throughout foster care and adoption.⁴⁷

One method of mentorship is encouraging youths in foster care to develop bonds with their family. Developing strong relationships with adults and extended family is one of the most important needs of youths in foster care.⁴⁸

“Kinship care,” the practice of placing youths in homes of extended family members, provides more stability but also raises concerns.⁴⁹ Kinship care placements have the potential to be less traumatic because of the child’s preexisting relationship with the caregiver.⁵⁰ “Research indicates that children placed with relatives are more stable” and “more open to discussing their problems” than youths who are not in kinship care.⁵¹ However, children in kinship care often live in poverty “with caregivers who are elderly, single, or poorly educated.”⁵² Despite providing the same commitment as non-relative caregivers, kinship caregivers are not entitled to the same financial support.⁵³ Additionally, kinship caregivers are often not licensed foster parents and, therefore, lack legal authority to procure medical, financial, and educational services for the children for whom they accept responsibility.⁵⁴

A 2001 study found that during the first twelve to eighteen months after leaving foster care almost as many former foster care youths lived with a

⁴⁵ Alice Bussiere, *Permanence for Older Foster Youth*, 44 FAM. CT. REV. 231, 236 (2006).

⁴⁶ See Courtney & Heuring, *supra* note 2, at 31.

⁴⁷ E-mail from Justin Pasquariello, Executive Director, Adoption & Foster Care Mentoring (on file with author).

⁴⁸ See *id.*

⁴⁹ See Jeffrey C. Goelitz, *Answering the Call to Support Elderly Kinship Caregivers*, 15 ELDER L.J. 233, 234 (2007).

⁵⁰ *Id.* at 240.

⁵¹ *Id.*

⁵² *Id.* at 234.

⁵³ *Id.*

⁵⁴ *Id.*

relative (31%) as those who lived independently (37%).⁵⁵ Similarly, a 1991 study found that at some point during the two and one-half to four years after leaving foster care, 54% of respondents reported living with a relative.⁵⁶ It should be noted, however, that a youth's relationship with her family of origin may be problematic given the situations meriting removal from her biological parents. Nonetheless, encouraging these relationships can benefit former foster care youths who may find themselves with no other adult to seek help from in times of despair.

B. High Rates of Criminal Activity

Youths who age out of foster care have "considerable involvement with the law."⁵⁷ One study found that 45% of former foster care youth had "trouble with the law" after exiting the foster care system: 41% spent time in jail, and 26% were formally charged with criminal activity.⁵⁸ 37% of the youths experienced one or more negative outcomes, including victimization, sexual assault, incarceration, or homelessness.⁵⁹ A study found that "13 percent of the [female participants] reported having been sexually assaulted and/or raped within twelve to eighteen months of discharge from care."⁶⁰

A study of California youth who aged out of foster care between 1992 and 1997 found that one-half of the males with state prison records had committed violent or serious offenses.⁶¹ This study found that the greater the number of placements youths had while in foster care, the greater the likelihood that they had state prison records at the time of the study.⁶² Another study found that youths who had more foster care placements were more likely to encounter violence in their romantic relationships.⁶³ The data indicate that the lack of stability under current foster care practices increases the likelihood of negative outcomes.⁶⁴

⁵⁵ See Courtney & Heuring, *supra* note 2, at 42.

⁵⁶ *Id.*

⁵⁷ Reilly, *supra* note 43, at 729.

⁵⁸ *Id.* at 736.

⁵⁹ *Id.* at 729.

⁶⁰ See Courtney & Heuring, *supra* note 2, at 35.

⁶¹ BARBARA NEEDELL ET AL., UNIV. OF CAL. AT BERKELEY, YOUTH EMANCIPATING FROM FOSTER CARE IN CALIFORNIA: FINDINGS USING LINKED ADMINISTRATIVE DATA, at 71 (2002), available at http://cssr.berkeley.edu/pdfs/ffy_entire.pdf (last visited Oct. 31, 2007).

⁶² *Id.* at 72. This study draws a distinction between youths supervised by the child welfare system during foster care, which is often the case in California when they enter the system due to parental abuse or neglect, and youths supervised by probation departments during foster care, which is usually the case when youths are removed from their homes because of their own behavior. See *id.* at 5. This statistic accounts only for those youths who had been supervised by the child welfare system.

⁶³ Reilly, *supra* note 43, at 740.

⁶⁴ See Courtney & Heuring, *supra* note 2, at 45-46 ("[E]vidence suggests that fewer placements and a stable environment are associated with a higher degree of life satisfaction, better physical functioning, higher educational attainment, and improved adult functioning. Fewer placements have also been found to be associated with increased contact and an increased feeling of closeness with foster families after discharge from care, less criminal activ-

C. Lack of Educational Achievement

Youths who age out of foster care are significantly less likely than their peers to graduate from high school and rarely obtain higher education. Former foster care youths are almost twice as likely as their classmates to drop out of high school.⁶⁵ The Midwest Study found that, at age nineteen, more than one-third of former foster care youths lacked a high school diploma or general equivalency degree (GED).⁶⁶ Another study found that half of youths leave foster care without a high school diploma.⁶⁷ More than 28% of foster care youths who do obtain a high school diploma do so by passing GED tests rather than graduating from a traditional high school, compared with approximately 5% of the general public.⁶⁸ As researchers note, “a GED only is insufficient and may be a deterrent to stable employment, and by itself a high school diploma no longer assures employment beyond a poverty level wage.”⁶⁹ Of foster care youths who remain in high school, 20% live independently during their senior year, compared to only 3% of a matched group of youths living with at least one parent.⁷⁰ One study found that youths who voluntarily remained in foster care until at least age nineteen were twice as likely as those who age out to be enrolled in school or vocational training.⁷¹

In Massachusetts, youths in foster care are two times more likely to fail the Massachusetts Comprehensive Assessment System (MCAS) and three times more likely to receive special education services than their peers.⁷² Nationally, studies indicate that students in foster care receive special education services at a disproportionate rate similar to that in Massachusetts.⁷³ Foster care youths who receive special education services are more likely to

ity, increased life satisfaction, and the ability to access health care and to avoid early parenthood. [One study] found the total number of a child’s placements was a significant predictor of their readiness for independent living when they became older adolescents.” (citations omitted).

⁶⁵ Judith M. Gerber & Sheryl Dicker, *Children Adrift: Addressing the Educational Needs of New York’s Foster Children*, 69 ALB. L. REV. 1, 4 (2005-2006).

⁶⁶ Mark E. Courtney & Amy Dworsky, *Early Outcomes for Young Adults Transitioning From Out-of-Home Care in the USA*, 11 CHILD & FAM. SOC. WORK, 209, 212 (2006).

⁶⁷ Reilly, *supra* note 43, at 735.

⁶⁸ Lauren Eyster & Sarah Looney Oldmixon, *State Policies to Help Youth Transition Out of Foster Care*, ISSUE BRIEF (NGA Center for Best Practices, Washington, D.C.), Jan. 2007, at 10, available at <http://www.nga.org/Files/pdf/0701YOUTH.PDF>.

⁶⁹ See e.g., Jennifer Pokempner & Lourdes M. Rosado, *Dependent Youth Aging Out of Foster Care in Pennsylvania: A Judicial Guide*, at 22, available at <http://www.jlc.org/File/publications/agingoutpa.pdf> (2003).

⁷⁰ Wendy Whiting Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non-Foster Care Youth*, 14 CHILD & ADOLESCENT SOC. WORK J., 41, 48 (1997).

⁷¹ Courtney & Dworsky, *supra* note 66, at 212-13.

⁷² THE MASSACHUSETTS SOCIETY FOR PREVENTION OF CRUELTY TO CHILDREN, *supra* note 41, at 23. The MCAS is a standardized test given to all public school students in the state. It is used to comply with the testing provisions of the No Child Left Behind Act. See Massachusetts Department of Education, *About MCAS*, available at <http://www.doe.mass.edu/mcas/about1.html> (last visited Oct. 31, 2007).

⁷³ Gerber & Dicker, *supra* note 65, at 29.

be in a restrictive setting such as a group home, rather than in an individual family home.⁷⁴ Additionally, “[c]hildren who live in less restrictive foster care settings have greater prospects for achieving permanency and long-term educational outcomes.”⁷⁵

National research indicates that, even after controlling for grades and test scores, foster care youths are more likely than similarly situated youths living with at least one parent to be placed in a general high school track rather than in a college preparatory program.⁷⁶ A number of factors contribute to this statistic. Given the limited availability of foster homes, foster care placements are often made without consideration of the youth’s school history and needs.⁷⁷ Foster care students face frequent placement changes, resulting in gaps in their education and school attendance.⁷⁸ “As children move, their educational records fail to follow them or arrive far too late; in the process they lose critical services and both general and special education entitlements.”⁷⁹ Foster care youths suffer because they do not have caring adults to advocate for them in the school system.⁸⁰ For example, in one study, 65% of foster care youths reported that a parent or guardian had never attended a teacher conference.⁸¹

Former foster care youths continue to suffer from disproportionately low academic achievement. Only 5% of foster care youths complete a post-secondary educational degree, compared with 20% of their peers.⁸² Many programs, even those designed to assist foster care youths, do not adequately account for their “unique circumstances.”⁸³ For example, former foster care youths who are temporarily displaced from their student housing during academic breaks often become homeless during this time.⁸⁴

Most foster care youths express a desire to achieve postsecondary education or training but are often hindered in obtaining the prerequisite high school diploma by frequent moves and lack of agency coordination.⁸⁵ Research indicates that children “lose an average of four to six months of educational attainment each time they change schools.”⁸⁶ One study found that “65 percent [of foster care youths] experienced seven or more school

⁷⁴ Gerber & Dicker, *supra* note 65, at 3; see generally Mark C. Weber, *The Least Restrictive Environment Obligation as an Entitlement to Education Services: A Commentary*, 5 U.C. DAVIS J. OF JUV. L. & POLY 147 (2001).

⁷⁵ Gerber & Dicker, *supra* note 65, at 28.

⁷⁶ Blome, *supra* note 70, at 47.

⁷⁷ Gerber & Dicker, *supra* note 65, at 2.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 3.

⁸¹ Blome, *supra* note 73, at 48.

⁸² THOMAS R. WOLANIN, HIGHER EDUCATION OPPORTUNITIES FOR FOSTER YOUTH: A PRIMER FOR POLICYMAKERS, at vii (2005), available at http://www.ihep.org/Pubs/PDF/foster_youth.pdf.

⁸³ *Id.*

⁸⁴ *Id.* at 44.

⁸⁵ Bussiere, Pokempner, & Troia, *supra* note 44, at 166.

⁸⁶ WOLANIN, *supra* note 82, at vi.

changes from elementary school through high school.”⁸⁷ Thus, the portion of this group that graduate on track has lost between twenty-eight and forty-two months of educational achievement. In addition to the academic consequences, each transfer requires the youth adjust to a new caretaker, surrounding, and school.⁸⁸ Changing schools frequently “reinforces a cycle of emotional trauma of abandonment and repeated separations from adults and friends.”⁸⁹ Notably, adolescent peer relations are especially important to youths.⁹⁰

D. *Failure to Achieve and Maintain Employment*

Former foster care youths face unstable employment prospects and often work for low wages.⁹¹ The Midwest Study found that only 40% of its participating nineteen-year-olds were employed.⁹² Of the participants who were employed in the prior year, over three quarters earned less than five thousand dollars and 90% earned less than ten thousand dollars during the year.⁹³ 55% of the youths had been fired from a job at least once since leaving foster care.⁹⁴ One troubling study found that many former foster care youths obtained money through illegal means: 24% supported themselves by dealing drugs and 11% engaged in prostitution.⁹⁵

E. *High Rates of Poverty*

Based on their rates of education and employment, it is not surprising that former foster care youths often suffer from economic instability. Foster care youths who emancipate receive significantly less financial support than their peers. Approximately half of the general population between the ages of eighteen and twenty-four live at home.⁹⁶ Close to “two-thirds of young adults in their twenties receive economic support from their parents.”⁹⁷ Therefore, it is unrealistic to expect those in foster care to be fully prepared for independence at age eighteen with no support, financial or otherwise.

The Midwest Study found that only 46% of the former foster care youths studied possessed a savings or checking account, compared with 82% of their peers.⁹⁸ Former foster care youths are twice as likely not to have

⁸⁷ Eyster & Oldmixon, *supra* note 68, at 2.

⁸⁸ Blome, *supra* note 70, at 51.

⁸⁹ WOLANIN, *supra* note 82, at vi.

⁹⁰ Blome, *supra* note 70, at 51.

⁹¹ Courtney & Dworsky, *supra* note 66, at 213.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ Reilly, *supra* note 43, at 735.

⁹⁵ *Id.*

⁹⁶ Eyster & Oldmixon, *supra* note 68, at 2.

⁹⁷ *Id.*

⁹⁸ Courtney & Dworsky, *supra* note 66, at 214.

enough money to pay their rent, and one-quarter are categorized as food insecure on a composite measure of food security.⁹⁹ Almost half of the females and almost a quarter of the males studied had received some form of government assistance in the last year.¹⁰⁰ Over half of the participants in the Midwest Study reported suffering from at least one of the following: homelessness; lack of food; eviction; disconnected phone, gas, or electricity service; or not having enough money to pay a utility bill, pay rent, or buy clothing.¹⁰¹

F. Family Challenges in Adulthood

Former foster care youths are more likely than their peers to raise children out-of-wedlock.¹⁰² A 2001 study found that less than one-third of the mothers who were formerly in foster care were married.¹⁰³ Furthermore, former foster care youths tend to struggle as parents. A study found that 46% of parents who were formerly in foster care reported having children with health, educational, or parenting problems.¹⁰⁴ One troubling statistic is that 19% of former foster care parents reported having a child removed from their custody, restarting a painful cycle with the foster care system.¹⁰⁵ These numbers can be partially attributed to the lack of good parental role models for many foster care youths during their childhood and adolescence.¹⁰⁶

G. Lack of Access to Healthcare and Mental Health Services

Medical problems and lack of healthcare further contribute to the impoverishment of former foster care youths. Many foster care youths suffer from health problems related to poverty, such as low birth weight, lead poisoning, or malnutrition.¹⁰⁷ Other foster care youths suffer from health problems resulting from parental neglect, maternal substance abuse, and physical or sexual abuse.¹⁰⁸ Former foster care youths suffer disproportionately from mental health problems and depression.¹⁰⁹

⁹⁹ *Id.*

¹⁰⁰ *Id.* "These forms of [government] assistance included: Food Stamps; public housing/rental assistance; Temporary Assistance to Needy Families; Special Supplemental Nutrition Program For Women, Infants and Children; Supplemental Security Income; general assistance payments; emergency assistance payments; and Cuban, Haitian or Indian assistance payments." *Id.*

¹⁰¹ *Id.*

¹⁰² See Courtney & Heuring, *supra* note 2, at 38.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Gerber, *supra* note 65, at 29.

¹⁰⁸ *Id.*

¹⁰⁹ See Courtney & Heuring, *supra* note 2, at 34-35.

Data suggests that when youths exit foster care their health problems may “persist or worsen due to both increased risk-taking behaviors and more limited healthcare access.”¹¹⁰ A study found that 30% of foster care youths experienced serious health problems after leaving foster care.¹¹¹ Fifty-five of the participants had no health insurance.¹¹² Of those with health coverage: 25% were on Medicaid, 11% on another form of public assistance, and only 9% had obtained private health insurance.¹¹³ One of the youths located for the study was discharged without health insurance and died because of lack of access to needed diabetes medication.¹¹⁴ Several barriers prevent former foster care youths from obtaining health insurance, including poverty, lack of familiarity with the healthcare system, and lack of appropriate healthcare providers.¹¹⁵

H. Lack of Basic Independent Living Skills

Due to a life marked by traumatic experiences, foster care youths frequently lack the basic skills necessary for successful independence such as keeping appointments, managing a bank account, finding housing, shopping for groceries, cooking meals, driving a car, and taking public transportation.¹¹⁶ Without being able to obtain parental consent, foster care youths face difficulties in signing leases, obtaining loans, receiving medical care, and in acquiring important government documents.¹¹⁷ For example, foster care youths report difficulties in securing housing because they lack a credit history or a willing cosigner.¹¹⁸ The State of Florida has proposed legislation that would allow caseworkers and foster parents to sign paperwork without accepting legal responsibility.¹¹⁹ This proposal allows youths to obtain driver’s licenses, open bank accounts, and access healthcare and other services.¹²⁰ However, due partially to budgetary concerns, some lawmakers are resisting the proposal.¹²¹

¹¹⁰ English, *supra* note 33, at 441.

¹¹¹ Reilly, *supra* note 43, at 736.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 730. Out of the 239 former foster care youth contacted for the study, five were deceased: “three from gang violence, one of a drug overdose, and one as a result of being discharged without health insurance and subsequently being unable to obtain needed medicine for his diabetes.” *Id.*

¹¹⁵ English, *supra* note 33, at 444.

¹¹⁶ WOLANIN, *supra* note 82, at vi.

¹¹⁷ Breanne Gilpatrick, *Foster Kids Call for the Right to Drive: Legal Hurdles Could Derail a Proposal Intended to Make it Easier for Foster Children to Obtain their Driver’s Licenses*, MIAMI HERALD, Apr. 9, 2007, at B1.

¹¹⁸ *Id.*

¹¹⁹ H.B. 1215, 109th Reg. Sess. (Fla. 2007); *see also* Gilpatrick, *supra* note 117.

¹²⁰ H.B. 1215; *see also* Gilpatrick, *supra* note 117.

¹²¹ Gilpatrick, *supra* note 117.

III. FEDERAL LAW

The states are responsible for establishing specific foster care practices and managing individual cases. However, the federal government strongly influences state child welfare policies through funding statutes, such as ASFA. Federal money accounts for about half of the funding spent on child welfare in the United States, although the portion received by each state differs significantly.¹²²

A. *The Foster Care Independence Act of 1999 — The Chafee Act*

The federal government responded to the needs of foster care youths who age out with the Foster Care Independence Act of 1999 (known as the FCIA or the Chafee Act).¹²³ The enactment of the Chafee Act has been called “a pivotal step on behalf of youth living in poverty.”¹²⁴ The goal of the Chafee Act is to “provide states with flexible funding that will enable programs to be designed and conducted” to: (1) identify and assist youths who are “likely to remain in foster care until 18 years of age”; (2) provide “education, training, and services necessary to obtain employment” to those youths; (3) prepare those youths to “enter postsecondary training and education institutions”; (4) “provide personal and emotional support to children aging out of foster care, through mentors and the promotion of interactions with dedicated adults”; (5) “provide financial, housing, counseling, employment, and other appropriate support and services” to former foster care youths between the ages of eighteen and twenty-one; and (6) “make available vouchers for education and training, including postsecondary training and education, to youths who have aged out of foster care.”¹²⁵

1. *The Chafee Act Supports Youths Aging Out of Foster Care*

The Chafee Act amended Title IV-E of the Social Security Act to provide states with more flexible funding to offer services to youths transitioning from foster care to independent living. This flexibility eliminates age restrictions, allowing states to offer independent living services to youths before they reach age sixteen.¹²⁶ The Chafee Act grants wide discretion to the states, allowing them to set their own criteria regarding which foster care

¹²² Keely A. Magyar, *Betwixt and Between but Being Booted Nonetheless: A Developmental Perspective on Aging Out of Foster Care*, 79 TEMP. L. REV. 557, 560 (2006). For example, “[i]n 2002, federal money accounted for 78.39% of child welfare funding in North Dakota but just 28.33% of child welfare funding in Indiana.” *Id.* at 561.

¹²³ Pub. L. No. 106-169, 113 Stat. 1822 (1999) (codified as amended at 31 U.S.C. & 42 U.S.C.).

¹²⁴ Guinn, *supra* note 31, at 404.

¹²⁵ 42 U.S.C. § 677 (2002).

¹²⁶ 42 U.S.C. § 677(b)(2)(C) (2002).

youths receive services.¹²⁷ However, states must “[u]se objective criteria for determining eligibility for benefits and services under the programs, and for ensuring fair and equitable treatment of benefit recipients.”¹²⁸

The Chafee Act doubled the amount of funding for transitional services from \$70 million to its current rate of \$140 million per year.¹²⁹ Funding is distributed to states based on their share of the national foster care population.¹³⁰ States must provide a 20% match to qualify for Chafee funds.¹³¹ Title IV was expanded in 2002, adding the Education and Training Vouchers Program, which authorizes an additional \$60 million for states to provide up to five thousand dollars per year per youth for postsecondary education.¹³²

The Act places an emphasis on promoting permanence, stating that independent living services are not to replace the current foster care goal of finding adoptive placements.¹³³ However, the reality is that foster children over the age of twelve are significantly less likely to be adopted than their younger peers.¹³⁴ The increased legislative interest in aging out acknowledges that, while foster care is intended to be temporary, for many youths a viable permanent home never materializes.¹³⁵

2. State Implementation of the Chafee Act

As a result of differing eligibility requirements under the Chafee Act, states receive between five and twenty-three hundred dollars per year for independent living services for each youth in foster care.¹³⁶ Thirty-one states currently offer Medicaid benefits to at least some emancipated youth transitioning to independence.¹³⁷ Forty-six states offer housing assistance to emancipating youth.¹³⁸

The wide discretion given to states in implementing transitional services has led to inequalities among services provided to foster care youths.¹³⁹ “About one-third of reporting states [serve] less than half of their eligible

¹²⁷ 42 U.S.C. § 677(b)(2).

¹²⁸ 42 U.S.C. § 677(b)(2)(E).

¹²⁹ Benedetto, *supra* note 40, at 410.

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Promoting Safe and Stable Families Amendments of 2001, Pub. L. No. 107-133, §§ 201-202, 115 Stat. 2413, 2422-25 (2001) (codified as amended at 42 U.S.C. § 629 (2002)).

¹³³ Pub. L. No. 106-169, 113 Stat. 1822 (1999) (codified as amended at 31 U.S.C. & 42 U.S.C.).

¹³⁴ Bussiere, *supra* note 45, at 236.

¹³⁵ *Id.* at 233.

¹³⁶ GOVERNMENT ACCOUNTABILITY OFFICE, HHS ACTIONS COULD IMPROVE COORDINATION OF SERVICES AND MONITORING OF STATES’ INDEPENDENT LIVING PROGRAMS, 4 (2004), available at <http://www.gao.gov/new.items/d0525.pdf>. [hereinafter GAO REPORT].

¹³⁷ *Id.* at 19; see also English, *supra* note 33, at 448 (“The FCIA gave states the option of making Medicaid coverage available to youth who leave foster care on or after their eighteenth birthday.”).

¹³⁸ GAO REPORT, *supra* note 136, at 20.

¹³⁹ *Id.* at 22.

foster care youth population, while an equal percentage of states [serve] three-fourths or more.”¹⁴⁰ Some states limit certain services to “specific sub-populations of emancipated youth.”¹⁴¹ For example, Florida limits Medicaid coverage to emancipated youths meeting the minimum academic requirements that allow them to be eligible for the state’s independent living scholarship program.¹⁴²

The U.S. Department of Health and Human Services (HHS) is required to develop outcome measures that track state performance with emancipated foster care youths.¹⁴³ HHS is required to propose a penalty for states that do not comply with its data reporting procedures.¹⁴⁴ It is unclear whether states are complying.¹⁴⁵ Further, advocates are concerned that states will not accurately report to the federal government.¹⁴⁶

B. *McKinney-Vento Homeless Education Assistance Improvements Act of 2001*

The McKinney-Vento Homeless Education Assistance Improvements Act of 2001 (McKinney-Vento) provides special educational rights to homeless youths.¹⁴⁷ McKinney-Vento was reauthorized in January 2002 as part of a general strengthening of the No Child Left Behind Act.¹⁴⁸ For example, “[t]he McKinney-Vento Homeless Act requires that all school districts in states that receive McKinney-Vento grants appoint a homeless liaison, regardless of whether or not a school district receives a McKinney-Vento sub-grant.”¹⁴⁹ This extra measure of accountability provides an incentive for school districts to assist homeless youths in their communities.¹⁵⁰ McKinney-Vento requires that school districts, in the best interest of the child, “keep a homeless child or youth in their school of origin, except when doing so is contrary to the wishes of the child’s or youth’s parent or guardian.”¹⁵¹ Home-

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 19.

¹⁴² *Id.*

¹⁴³ See 42 U.S.C. § 677(f)(1)(A) (2000). Data must include measures of educational attainment, employment, avoidance of dependency, homelessness, nonmarital childbirth, incarceration, and high-risk behaviors. *Id.*

¹⁴⁴ 42 U.S.C. § 677(f)(2).

¹⁴⁵ See Pokempner & Rosado, *supra* note 69, at 10. For example, Pennsylvania has not updated its statutory provisions to incorporate the changes mandated by the Chafee Act. *Id.*

¹⁴⁶ See Benedetto, *supra* note 40, at 411-12.

¹⁴⁷ 42 U.S.C.A. § 11432(g)(3)(A) (2002). See Sarah Hudson-Plush, *Improving Educational Outcomes for Children in Foster Care: Reading the McKinney-Vento Act’s “Awaiting Foster Care Placement” Provision to Include Children in Interim Foster Care Placements*, 13 CARDOZO J. OF L. & GENDER 83, 85-88 (2006).

¹⁴⁸ John Wong et al., *The McKinney-Vento Homeless Assistance Act—Education for Homeless Children and Youths Program: Turning Good Law into Effective Education*, 11 GEO. J. ON POVERTY L. & POL’Y 283, 294 (2004).

¹⁴⁹ *Id.* at 294-95.

¹⁵⁰ *Id.* at 295.

¹⁵¹ 42 U.S.C.A. § 11432(g)(3)(B)(i).

less youths have the right to expedited enrollment in new schools, even if they lack academic records or other documentation usually necessary to enroll.¹⁵² Importantly, McKinney-Vento requires that schools coordinate with local educational agencies to provide homeless youths with transportation to school.¹⁵³

The rationale behind McKinney-Vento is to allow youths to have continuous education in spite of instability in their living situations.¹⁵⁴ Maintaining educational stability is identified as one of the “key factors for academic success.”¹⁵⁵ However, McKinney-Vento has yet to be properly funded.¹⁵⁶ Some school districts view the bill as an “unfunded mandate from the federal government” because it provides only twenty to thirty dollars per homeless youth.¹⁵⁷

McKinney-Vento defines “homeless children and youth” as those “individuals who lack a fixed, regular, and adequate nighttime residence.”¹⁵⁸ This category includes youths who are “sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are *awaiting foster care placement*.”¹⁵⁹ Yet neither the statute nor the corresponding regulations define the term “awaiting foster care placement.”¹⁶⁰ The American Bar Association advocates for the United States Department of Education to interpret this term broadly to include “children and youth placed by public agencies in interim, emergency, or short-term placements” so these youth obtain “uninterrupted educational access.”¹⁶¹

Strong similarities exist between youths who are homeless and those in foster care. Both groups suffer from instability and can benefit greatly from a continuous educational environment. Maintaining a stable school could help reduce the negative educational outcomes associated with growing up in the foster care system. Notably, youths who remain in the same school are capable of maintaining friendships with peers and relationships with adults during a period of their lives marked by trauma. Further, this educational continuity allows consistent adults to monitor foster children’s behavior and maintains receipt of services for which they qualify.

¹⁵² Wong et al., *supra* note 148, at 295.

¹⁵³ 42 U.S.C.A. § 11432(g)(1)(J)(iii).

¹⁵⁴ Wong et al., *supra* note 148, at 292.

¹⁵⁵ *Id.* at 295.

¹⁵⁶ *Id.* at 296.

¹⁵⁷ *Id.* at 296-97.

¹⁵⁸ 42 U.S.C.A. § 11434a(2) (2002).

¹⁵⁹ 42 U.S.C.A. § 11434a(2)(B)(i) (emphasis added).

¹⁶⁰ Hudson-Plush, *supra* note 147, at 88.

¹⁶¹ American Bar Association, Center on Children and the Law, *Education Access for Homeless and Foster Youth* (2004), <http://www.abanet.org/child/educ-access.doc>.

C. *Foster Care Continuing Opportunities Act*

In May 2007, Senator Barbara Boxer proposed the “Foster Care Continuing Opportunities Act.”¹⁶² Under this bill, states would have the option of allowing youths to elect to remain in foster care until age twenty-one.¹⁶³ This bill has the potential to fill the current funding gap faced by states when youths opt to remain in foster care past age eighteen by providing federal funding for transitional youths.¹⁶⁴ According to Senator Boxer:

This legislation would help improve the services for foster care youth so that they can better transition from childhood to adulthood. The future for foster youth, once emancipated, is often bleak. In my state of California, about 65 percent of emancipated youth are homeless, less than three percent go to college, and 51 percent are unemployed. We must do more for these young adults who deserve much better¹⁶⁵

The federal funding provided by this bill would “match state and county funds to provide foster care payments and related administrative costs for foster youth 18 to 21.”¹⁶⁶

This bill is a welcome step in the right direction. If passed, it would allow states to make their foster care dollars go further. Importantly, youths in states that do not permit post-age eighteen jurisdiction would now have the option to remain in foster care. However, the political viability of this bill remains uncertain. In prior legislation, such as the FCIA and McKinney-Vento, the federal government displayed reluctance to adequately finance foster care improvement measures.

IV. STATE LAW

Under federal law, states must only maintain jurisdiction over dependent youths until they reach age eighteen; thus, state laws regulating when a foster care youth ages out vary greatly. Thirty-four states allow foster care youths to continue receiving services past age eighteen.¹⁶⁷ Twenty-six states

¹⁶² S. 1512, 110th Cong. (2007).

¹⁶³ *Id.*

¹⁶⁴ Press Release, Senator Barbara Boxer, Boxer Introduces Legislation to Provide Care for Foster Youth Over the Age of 18, (May 24, 2007), available at <http://boxer.senate.gov/news/releases/record.cfm?id=275098>. See also *In re Holly H.*, 104 Cal. App. 4th 1324, 1330 (Cal. App. 1 Dist. 2002) (“Although the juvenile court has the authority to retain jurisdiction over a dependent child until age 21, the reality is that federal funding for foster youth ends at the age of 18 and common practice is for the juvenile court to terminate jurisdiction at that time.”) (citation omitted).

¹⁶⁵ Boxer Introduces Legislation, *supra* note 164.

¹⁶⁶ *Id.*

¹⁶⁷ Magyar, *supra* note 122, at 564. Some of the states that terminate juvenile dependence completely at age eighteen are Arizona, Delaware, Idaho, Iowa, Kentucky, Nevada, North Carolina, Oklahoma, Utah, and West Virginia. See ARIZ. REV. STAT. ANN. § 8-201 (2007);

allow foster care youths to receive services until age twenty-one, with the other eight states split evenly in ending foster care services at age nineteen or twenty.¹⁶⁸ In some states, terminating court jurisdiction at age eighteen or nineteen remains the default, only departed from under certain conditions.¹⁶⁹ A significant majority of states do not allow former foster care youths to voluntarily reenter the foster care system after they age out.¹⁷⁰ Further complicating matters, courts in different states interpret similar statutory language in different ways.¹⁷¹

This section of the essay will detail state statutes and policies from states with more developed bodies of emancipation law. This is intended to provide a snapshot into the diversity of state child welfare systems. The states included are California, New York, Pennsylvania, Texas, Illinois, Florida, and Massachusetts.

A. California

California is home to the largest foster care population, with more than one in five of the country's foster care children residing in the state.¹⁷² In California, the court "may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependant child attains the age of twenty-one."¹⁷³ Jurisdiction, however, does not automatically extend to all children under the age of twenty-one. The court may retain control only when it is shown to be in the best interest of the child.¹⁷⁴ Assisting in the expenses related to obtaining a postsecondary education is an insufficient reason for the court to retain jurisdiction.¹⁷⁵ Despite the avail-

DEL. CODE ANN. TIT. 10 §§ 901, 911 (2007); IDAHO CODE ANN. § 16-1604 (2007); IOWA CODE §§ 232.61, 232.68, 602.7101 (2006); KY. REV. STAT. ANN. § 610.010 (West 2006); N.C. GEN. STAT. §§ 7B-101(13), 7B-200 (2006); W. VA. CODE § 49-1-2 (2007).

¹⁶⁸ Magyar, *supra* note 122, at 564.

¹⁶⁹ *Id.* at 567.

¹⁷⁰ *Id.* at 571.

¹⁷¹ *Id.*

¹⁷² Becca Dunlap, *Dependents Who Become Delinquents: Implementing Dual Jurisdiction in California Under Assembly Bill 129*, 5 WHITTIER J. CHILD & FAM. ADVOC. 507, 507 (2006).

¹⁷³ CAL. WELF. & INST. CODE § 303 (West 2006).

¹⁷⁴ See CAL. WELF. & INST. CODE § 391(c) (West 2006). See also *In re Tamika C.*, 131 Cal. App. 4th 1153, 1160 (Cal. Ct. App. 2005). In *Tamika C.*, the court held it was an abuse of discretion to require a "slow student" against her wishes to graduate from high school in an abbreviated time frame. *Id.* at 1168. In that case, the Department of Children and Family Services gave the youth the option of graduating in an abbreviated time frame and thus completing high school before she turned eighteen, or completing her senior year in the normal course in which case jurisdiction would be terminated at eighteen. *Id.* at 1163. Tamika wished to remain in high school in order to raise her grades, making her eligible to attend beauty school. *Id.* at 1158. The appellate court noted that the county focused entirely on what was in their best fiscal interest rather than Tamika's best interest. *Id.* at 1164.

¹⁷⁵ See *In re Robert L.*, 68 Cal. App. 4th 789, 797 (Cal. Ct. App. 1988). In *Robert L.* the foster care youth, Robert, was placed in long-term foster care with his grandparents. *Id.* at 791. His grandparents chose to remain his foster parents as opposed to legal guardians so they would continue to receive foster parent payments while he lived with them. *Id.* at 791-92. On appeal, the court terminated jurisdiction while Robert was a twenty-year-old college student,

ability of foster care services until age twenty-one, a startling nine out of ten California foster children age out by the time they turn eighteen.¹⁷⁶ Moreover, since the courts have discretion to determine whether to extend care beyond age eighteen, actual practices are almost certain to vary widely from county to county and judge to judge.

Unique to California is Assembly Bill 408,¹⁷⁷ which establishes a program to ensure foster care youths will age out with a lifelong connection to a committed adult.¹⁷⁸ The law requires that youths over age sixteen identify an adult important to them in their case plan, which must include steps taken by the agency to maintain their relationship with a caring adult.¹⁷⁹ The statute also includes a normalizing component allowing foster care youths to participate in “age-appropriate extracurricular, enrichment, and social activities” and prohibiting laws, regulations, or policies from standing in the way of youths’ involvement in these activities.¹⁸⁰

Assembly Bill 490 permits foster care children to remain in their school of origin for the rest of the current school year, mandates prompt transfer of educational records when the youths change schools, and requires the appointment of an educational liaison for foster children.¹⁸¹ While Assembly Bill 490 is too recent for any meaningful empirical evaluation of its effects the law should be viewed as a welcome recognition of the perils faced by foster care youths as they move through the public school system.

California also has a statutorily defined checklist to guide court management of aging out procedures.¹⁸² First, the statute requires the state to ensure that the youth appear in court for termination of juvenile dependency unless the youth is unwilling or unable to be located.¹⁸³ Second, the county must provide proof that the youth received specified documents and information.¹⁸⁴ The youth must receive information about her dependency case and family history, a social security card, birth certificate, a health and edu-

stating that there was no legislative mandate that foster care be used to “subsidize higher education.” *Id.* at 797. Unlike Robert, most former foster care youth who age out do not have foster parents willing to keep them in their home. *See In Re Holly H.*, 104 Cal. App. 4th 1324 (Cal. Ct. App. 2002). In that case, Holly repeatedly “refused to take advantage of services that have been offered to her.” *Id.* at 1337. The youth failed to appear for an evaluation for Social Security benefits, to report to a job the Department of Children and Family Services arranged for her, and left a group home when she received a short-term income resulting from her father’s death. *Id.* While the court noted that it “may fear for Holly’s future,” it found that the “state can no longer paternalistically insist that she live her life as the juvenile court thinks best.” *Id.* at 1338.

¹⁷⁶ Magyar, *supra* note 122, at 572.

¹⁷⁷ CAL. WELF. & INST. CODE § 16501 (West 2006).

¹⁷⁸ Bussiere, *supra* note 45, at 234.

¹⁷⁹ CAL. WELF. & INST. CODE § 16501.1(f)(15).

¹⁸⁰ CAL. WELF. & INST. CODE § 362.05 (West 2006).

¹⁸¹ Children’s Advocacy Institute, AB 490 (Steinberg) Fact Sheet: Helping Foster Children Make the Grade, *available at* [http://www.caichildlaw.org/Misc/AB_490_\(Steinberg\)_Fact_Sheet.pdf](http://www.caichildlaw.org/Misc/AB_490_(Steinberg)_Fact_Sheet.pdf).

¹⁸² CAL. WELF. & INST. CODE § 391 (West 2006).

¹⁸³ *Id.* § 391(a).

¹⁸⁴ *Id.* § 391(b).

ation summary, assistance in applying for Medi-Cal or other health insurance, referral to transitional housing, and other housing, employment, or available financial assistance, assistance in applying to college or vocational training programs, and assistance in maintaining relationships with persons who are important to the youth.¹⁸⁵ While the law places no requirement on counties to ensure achievement of educational goals, counties cannot “throw roadblocks” in the youths’ paths.¹⁸⁶ The statute allows, but does not require, the juvenile court to retain jurisdiction if it is in the best interest of the child, or alternatively, to terminate jurisdiction if the youth has refused services or cannot be located after reasonable efforts.¹⁸⁷

B. New York

In New York, a youth may consent to having jurisdiction extended to age twenty-one.¹⁸⁸ In 1986, a group of homeless former foster care youths between the ages of seventeen and twenty-one successfully litigated a claim that New York City and New York State had failed to prepare them for independent living.¹⁸⁹ Seven of the youths were discharged prior to reaching age twenty-one without adequate preparation for adulthood.¹⁹⁰ The remaining plaintiffs were still in foster care but claimed to lack adequate preparation for independent living.¹⁹¹ The court granted an injunction holding that New York City and State must perform their pre-discharge preparatory obligations and their post-discharge supervisory responsibilities.¹⁹²

By regulation, New York must provide preparation for aging out by formalized instruction including “supervised performance in job search, career counseling, apartment finding, budgeting, shopping, cooking, and house cleaning.”¹⁹³ New York has implemented “family-based concurrent planning for youth with goals of independent living.”¹⁹⁴ The policy “limit[s] the use of independent living as a permanency goal” by “help[ing] identify and nurture permanent family connections for those youth.”¹⁹⁵ This system requires that caseworkers take steps to assist the youths in developing an adult mentor.¹⁹⁶ Further, New York has advanced a policy to limit the use of congregate care placements specifically targeted at closing poor-performing

¹⁸⁵ *Id.*

¹⁸⁶ *In re Tamika C.*, 131 Cal. App. 4th at 1163.

¹⁸⁷ CAL. WELF. & INST. CODE § 391.

¹⁸⁸ N.Y. FAM. CT. ACT LAW § 1055(e) (Consol. 2007) (“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.”).

¹⁸⁹ *Palmer v. Cuomo*, 503 N.Y.S.2d 20, 21 (N.Y. App. Div. 1986).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.* at 22.

¹⁹³ N.Y. CODES R. & REGS. tit. 18, § 430.12 (2007).

¹⁹⁴ Bussiere, *supra* note 45, at 235.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

group homes.¹⁹⁷ Since 2003, this policy has led to over one hundred foster care youths being removed from group homes and placed in familial homes, traditional foster homes, therapeutic foster homes, and other family-based settings.¹⁹⁸

New York provides additional protections to homeless youths, including those awaiting foster care placements. A youth or her parent maintains the right to choose which school district the youth attends.¹⁹⁹ The designated school district must “treat the homeless youth as a resident for all purposes.”²⁰⁰ A school district that receives a request for records must, within five days of receipt of such request, forward a complete copy of the youth’s academic records to the designated school district.²⁰¹ Finally, the youth’s social services district must provide her with transportation to attend the school.²⁰²

The Governor’s Permanency Bill of 2005²⁰³ further addresses the educational needs of New York’s foster children.²⁰⁴ This law requires that social services ensure prompt enrollment in programs and referrals to support services for foster children.²⁰⁵ The law also has an inter-agency component that requires schools to cooperate in carrying out the permanency plans instituted by social services.²⁰⁶

C. *Pennsylvania*

In Pennsylvania, a youth may remain a dependant until age twenty-one if she was adjudged dependant prior to age eighteen and “while engaged in a course of instruction or treatment, [she] requests the court to retain jurisdiction until the course has been completed.”²⁰⁷ The Juvenile Act²⁰⁸ requires the court to grant a requested extension of care “when the youth is in a course of instruction or treatment.”²⁰⁹ Although the law requires a hearing prior to discharge, in practice, some counties routinely violate this requirement and automatically age out youths when they reach eighteen.²¹⁰ Except the hearing requirement, there are no regulations or standards for terminating jurisdiction over foster care youths.²¹¹

¹⁹⁷ *Id.* at 236.

¹⁹⁸ *Id.*

¹⁹⁹ N.Y. EDUC. LAW § 3209(2)(a) (McKinney 2007).

²⁰⁰ N.Y. EDUC. LAW § 3209(2)(e)(2).

²⁰¹ N.Y. EDUC. LAW § 3209(2)(f).

²⁰² N.Y. EDUC. LAW § 3209(4).

²⁰³ N.Y. FAM. CT. ACT LAW §§ 1086-90 (Consol. 2007).

²⁰⁴ Gerber & Dicker, *supra* note 65, at 5-6.

²⁰⁵ *Id.* at 6.

²⁰⁶ *Id.*

²⁰⁷ 42 PA. CONS. STAT. § 6302 (2007).

²⁰⁸ 42 PA. CONS. STAT. §§ 6301-65 (2007).

²⁰⁹ See Pokempner & Rosado, *supra* note 69, at 11.

²¹⁰ *Id.* at 11.

²¹¹ *Id.* at 12.

D. Texas

The state of Texas extends foster care, transitional services, and Medicaid eligibility until age twenty-one.²¹² Texas is one of the few states that permits former foster care youths who aged out to reenter the foster care system at their election.²¹³ Texas has experienced difficulty in implementing independent living services for all its foster care youths, particularly those in rural areas, resulting in over \$500,000 of unspent federal Chafee program funds in fiscal year 2001.²¹⁴ To address the housing issues of former foster care youths in all areas of the state, Texas provides “a monthly stipend for rent as well as a one time stipend for household supplies.”²¹⁵ Unlike the majority of states in the GAO report, Texas does not provide a formal mentoring program.²¹⁶ Texas, however, should be commended for offering Medicaid coverage to all former foster care youths up until age twenty-one as long as they remain at or below 400% of the federal poverty line.²¹⁷

E. Illinois

In Illinois, a court may continue its jurisdiction over a foster care youth until age twenty-one 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.”²¹⁸ Illinois is the only state that retains a significant number of youths in foster care until age twenty-one.²¹⁹ In Illinois, the youth must petition the court to remain in foster care.²²⁰ A youth who exits the foster care system has no right of reentry.²²¹ Those who do age out are at a severe risk of homelessness. One study found that almost half of homeless youth interviewed in Chicago reported being former juvenile dependents of the State of Illinois.²²²

“Illinois was the only state with an expanded transitional services program that had comprehensive outcomes available.”²²³ The Midwest Study found that youths who voluntarily remained in care were more likely to re-

²¹² TEX. FAM. CODE ANN. § 264.121(2)(A)-(B) (2007).

²¹³ *Id.*

²¹⁴ See GAO REPORT, *supra* note 136, at 14.

²¹⁵ *Id.* at 20.

²¹⁶ *Id.* at 23.

²¹⁷ Eyster & Oldmixon, *supra* note 68, at 8.

²¹⁸ 705 ILL. COMP. STAT. ANN. 405/2-31 (2007).

²¹⁹ See Courtney, *supra* note 2, at 30.

²²⁰ MELANIE DELGADO, ET AL., THE CAL. WELLNESS FOUND., EXPANDING TRANSITIONAL SERVICES FOR EMANCIPATING FOSTER YOUTH: AN INVESTMENT IN CALIFORNIA'S TOMORROW 20 (2007), available at http://www.cachildlaw.org/TransServices/Transitional_Services_for_Emanicipated_Foster_Youth.FinalReport.pdf.

²²¹ *Id.*

²²² Stotland & Godsoe, *supra* note 35, at 55.

²²³ DELGADO, ET AL., *supra* note 220, at 20.

ceive specific independent living services and subsidies.²²⁴ Respondents in care “were twice as likely to be enrolled in an educational or vocational training program.”²²⁵ Additionally, those who remained in care were three times more likely than those who aged out at eighteen to be enrolled in a two- or four-year college.²²⁶

F. Florida

Florida provides transitional services to youths ages thirteen to twenty-three with the goals of providing older and former foster care youths with “life skills and education for independent living and employment, to have a quality of life appropriate for their age, and to assume personal responsibility for becoming self-sufficient adults.”²²⁷ Florida is one of the states that limits Medicaid coverage to emancipated youths meeting minimum academic standards.²²⁸ Youths in Florida “must be full-time students to receive full housing benefits.”²²⁹ Florida has used Chafee funds to improve its independent living programs.²³⁰ One interesting use of the funds was the development of a scavenger hunt requiring youths to practice necessary skills such as taking public transportation and opening a checking account at a bank.²³¹

Florida terminates jurisdiction over the youths at age eighteen, and any services provided by the Department of Health and Rehabilitative Services after youths age out are completed without juvenile court supervision.²³²

G. Massachusetts

In Massachusetts, the state may continue to retain responsibility for a foster care youth until age twenty-one “for the purposes of specific educational or rehabilitative programs.”²³³ A foster care youth who wishes to remain in custody and receive foster care services after age eighteen must sign a “voluntary placement agreement.”²³⁴ A youth can remain in foster care if she is in an educational or vocational program, continues to need agency services, and complies with her case plan.²³⁵ Many youths face difficulty

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ FLA. STAT. § 409.1451 (2007).

²²⁸ See GAO REPORT, *supra* note 136, at 19.

²²⁹ *Id.* at 24.

²³⁰ *Id.* at 21.

²³¹ *Id.*

²³² See *L.Y. v. Dep’t of Health and Rehab. Servs.*, 696 So.2d 430, 431 (Fla. Dist. Ct. App. 1997).

²³³ MASS. GEN. LAWS. ch. 119, § 23(H) (2006).

²³⁴ THE MASSACHUSETTS SOCIETY FOR PREVENTION OF CRUELTY TO CHILDREN, *supra* note 41, at 21.

²³⁵ *Id.*

complying with these requirements, and those who exit foster care possess no affirmative right of reentry.²³⁶

The Massachusetts Department of Education and Department of Social Services have interpreted the term “awaiting foster care placement” used in McKinney-Vento.²³⁷ The two state departments agree that youths in state custody living in specified temporary foster care placements are living in “emergency, temporary, or transition” housing for purposes of the bill.²³⁸ The listed placements have lengths of stay up to forty-five days.²³⁹ Additionally, the state recognizes that some situations may be considered “emergency, temporary, or transitional” even if they are “not very temporary.”²⁴⁰ For example, because of limited resources, a youth might be temporarily placed in one foster home while waiting to go to another one; a youth in this situation would be considered to be in “emergency, temporary, or transitional” housing.²⁴¹

Justin Pasquariello, a former foster care youth, established a mentoring program for foster care youths in Massachusetts. According to Justin, Massachusetts practice of allowing former foster care youths to reenter the system is “particularly effective.”²⁴² He has heard about multiple youths who managed to sign back into foster care.²⁴³ His experience demonstrates that youths who sign back into foster care fare significantly better than those of the same age who aged out.²⁴⁴

V. A UNIVERSAL SAFETY NET FOR FORMER FOSTER CARE YOUTH

This Article argues for comprehensive reform in the treatment of foster care youths who age out. Recent attempts at reform are too narrow to accomplish the dramatic changes needed. Most of these attempts focus on simply extending the age that youths may remain in foster care. While extending jurisdiction is an important component of any aging out policy reform, it does not remedy any of the failures of the foster care system in its treatment of emancipated youths. This Article argues that youths between the ages of eighteen and twenty-four should be categorized as transitional youths and should receive age-appropriate services consistent with their needs and wants. Conditions such as remaining in school or pursuing a vocation should not be necessary prerequisites for the receipt of services and support after age eighteen; indeed, it is often the youths who are not in school or not making progress towards employment who most need help. Youths should

²³⁶ *Id.* at 21-22.

²³⁷ *See* Hudson-Plush, *supra* note 147, at 94-95.

²³⁸ *Id.* at 94.

²³⁹ *Id.* at 95.

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² E-mail from Justin Pasquariello, *supra* note 47.

²⁴³ *Id.*

²⁴⁴ *Id.*

be engaged in and empowered by the process and maintain the ability to revisit any decision regarding their services.

A. *Providing Support Beyond Age Eighteen*

All youths should remain eligible for a full range of comprehensive services while transitioning out of foster care. The Midwest Study demonstrates that youths who voluntarily remain in foster care past age eighteen have significantly better outcomes than their peers.²⁴⁵ The majority of assistance is needed immediately when the youth reaches the age of majority. Over the years, services can be removed and scaled back gradually. Ending federal funding for foster care youths after they turn eighteen “has resulted in inconsistent, and largely inadequate, state statutes regarding availability of foster care for individuals eighteen and older.”²⁴⁶ Therefore, while many states allow youths to remain in foster care after age eighteen, they commonly only offer limited services.

The Foster Care Continuing Opportunities Act,²⁴⁷ recently proposed by Senator Boxer, has the potential to close some of the gaps in federal funding. With it, states would be capable of making meaningful strides in protecting the interests of former foster care youths. Nonetheless, the legislation does not do enough. Legislation is needed mandating that all states allow foster care youths to receive services until at least age twenty-one. While necessary, extending jurisdiction alone is not sufficient. First, the push to extend jurisdiction should be accompanied by multiple changes holistically addressing aging out. Second, twenty-one is in an inappropriate age to cut off services. This gives youths only three years to attain self-sufficiency — not even long enough to complete a traditional four-year degree. Research indicates that the typical youth does not reach self-sufficiency until age twenty-six.²⁴⁸

Limitations on foster care benefits to youths not enrolled as full-time students or maintaining employment should be eliminated because these limitations prevent the most disadvantaged foster care youths from obtaining critical help. They also display a disregard for a youth’s own choices and visions for her future. Ending foster care services only has the potential to hinder a youth’s chance at successful independence.

B. *Housing Supports and Financial Assistance*

Post-jurisdiction foster care should be structured to be accessible and attractive to the full range of former foster care youths. The program should

²⁴⁵ Courtney & Dworsky, *supra* note 36 at 9.

²⁴⁶ Magyar, *supra* note 122, at 598.

²⁴⁷ S. 1512, 110th Cong. (2007).

²⁴⁸ DELGADO, ET AL., *supra* note 220, at 1.

assist with financial planning, locating housing, and finding and maintaining employment.

For those who choose to sever all ties with the system at age eighteen, they should do so after being advised in detail of the benefits available to them past age eighteen. Housing stability can be encouraged by offering a wide range of options which allow youths to maintain housing that best suits their needs. Some youths may prefer and benefit from a structured living arrangement designed for foster care youths aging out. For example, California established the Transitional Housing Program for Emancipated Foster/Probation (THP-Plus).²⁴⁹ THP-Plus provides a structured housing environment for former foster care youths, age eighteen through twenty-four.²⁵⁰ The support services offered include visits to foster care youths' homes, counseling, independent living training, educational guidance, and employment advice.²⁵¹ The program is capped at only 167 participants statewide, while 4,000 foster care youths age out in California each year.²⁵² Unfortunately, a California state bill to appropriate \$10.6 million to expand THP-Plus to accommodate up to 1,000 emancipated youths²⁵³ failed this term.²⁵⁴

Providing more financial planning assistance to youths will prepare them to manage money effectively. For example, young adults often need guidance in using credit responsibly. Independent living training can prepare youths to make realistic budgets and balance a checkbook. To prepare a youth to age out and avoid financial crisis, the state should address financial concerns such as debt, obtaining necessary documents, or credit scores. Lastly, small cash stipends for daily needs such as bus passes, food, or phone calls can provide needed temporary assistance, such as helping a youth while she is job seeking, and a larger stipend for one-time events such as buying apartment furniture or job interview attire is also appropriate.

C. Education Stability and Opportunities for Higher Education

State accountability is needed to ensure that youths who age out accomplish minimum threshold levels of preparation. One main hindrance to successful independence is the poor educational outcomes of former foster care youths. The federal government can offer states incentives that encourage improving these outcomes. If the federal government prioritizes funding programs that facilitate improved educational outcomes, state policies will be

²⁴⁹ See California Department of Social Services, THP-Plus Information Flyer, available at <http://www.dss.cahwnet.gov/cfsweb/res/pdf/THP-PlusBrochure.pdf>.

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Sara Steffens, *Bill Proposes Alternative to Life on Streets*, CONTRA COSTA TIMES, Apr. 22, 2007, at A1.

²⁵³ A.B. 845, 2007-08 Leg. (Cal. 2007).

²⁵⁴ Unofficial Ballot for A.B. 845, available at <http://www.leginfo.ca.gov/bilinfo.htm> (search for A.B. 845 in the 2007-2008 session; then click on AB 845; then follow link for Senate Floor vote on 6/28/2007).

forced to follow the money trail. Additionally, there must be support and encouragement given to youths to help them achieve academic success. One possible reform is to allocate federal funding specifically to encourage completion of high school. A high school graduation payment could be granted to the state for each foster care youth who completes high school, and a small grant should go to the youths individually. Graduating high school is a major rite of passage which goes unrecognized for foster care youth.

Structuring the foster care system to incorporate greater placement stability and educational continuity can assist those who are on their way to high school graduation. The No Child Left Behind Act, which includes McKinney-Vento, is up for reauthorization this year. The Act should be expanded to cover foster care youths in addition to homeless youths. Foster care youths face the same instability associated with homeless youths, and they too could see great improvements in their academic performance. Giving foster care youths the same educational protections granted to homeless youths is a natural extension of McKinney-Vento.

Encouraging youths to seek higher education is a means of contributing to their successful independence. Tuition waiver programs remove some of the obstacles facing former foster care youths seeking higher education, particularly when combined with comprehensive support services, including priority housing and housing support during school breaks. One example of a successful comprehensive model is the Guardian Scholars program, which began in California and has since expanded to other states.²⁵⁵ The program provides year-round housing, scholarships, mentoring, and assistance with academics, finances, and employment.²⁵⁶ The program has a retention rate of nearly 70%, which is greater than that for the general student body.²⁵⁷ The additional Chafee Act funds allocated to post-secondary education can assist states in developing similar programs.

D. *Health and Mental Health*

Another area where federal reform is appropriate is healthcare. Ensuring healthcare to the 20,000 youths who age out each year would greatly alter the lives of those youths with whom the government has assumed a special relationship. While politicians have spent years debating national healthcare, foster care youths should not suffer on the sidelines of this political battle. Healthcare, which includes funding for mental health services, should be offered universally to former foster care youths until they reach age twenty-four.

²⁵⁵ See Erika Fitzpatrick, *Foster Kids Waive at College*, YOUTH TODAY, Apr. 2007, at 30-31.

²⁵⁶ *Id.*

²⁵⁷ Editorial, *A Transition Into Adulthood*, SAN FRANCISCO CHRON., Jan. 28, 2007, at E4.

E. Employment Opportunities

To prevent foster care youths from becoming dependent on state services, they should be encouraged to seek and maintain employment. One method is to assist foster care youths in gaining part-time jobs after they reach age sixteen. Thus, when a youth ages out, she will already possess work experience and the confidence and maturity that accompany employment. Independent living training is an appropriate forum to teach interview skills and job skills. More comprehensive job training programs — particularly for highly skilled jobs — should be offered as an alternative to pursuing higher education. Lastly, employers should be granted tax credits to incentivize the hiring of former foster care youths. This benefit would not have an age cutoff, helping former foster care youths support themselves throughout their lives.

A cost-benefit analysis found that costs associated with allocating funding for transitional services have long-term benefits.²⁵⁸ Employment training has the long-term benefit of increasing tax revenue from former foster care youths who maintain gainful employment.²⁵⁹ Importantly, providing services is expected to prevent future government expenditures associated with mental health services, homelessness, substance abuse, and welfare payments under programs such as Temporary Aid to Needy Families (TANF).²⁶⁰

F. Rethinking Juvenile Dependence for Adults

Court involvement should not terminate completely at age eighteen. However, the treatment of youths who are over age eighteen should be dramatically different from that of minors in the foster care system. Instead, court involvement should be structured in a way that promotes autonomy. Special courts should be established for transitioning youths, possibly with the use of ombudsmen. Additionally, court hearings should be held less frequently, and a youth performing well should not be penalized for missing hearings. Service delivery should include social workers who specialize in adolescents. A mentoring system and community for former foster care youths could assist them in obtaining social support similar to that of their peers.

Critics may understandably be reluctant to provide extensive support without supervision. However, this Article does not argue for large cash stipends. Services like housing assistance, job training, and educational scholarships are more appropriately provided by vouchers or direct payments to institutions.

²⁵⁸ DELGADO, ET AL., *supra* note 220, at 31.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

One benefit of a universal system is that it provides benefits to all former foster care youths, not only those who petition to remain juvenile dependents. Federal and state laws establish adulthood arbitrarily at the age of eighteen, even though research indicates that some foster care youths would benefit from the continued support beyond the age of eighteen. Foster care is even more problematic because it ends abruptly. A youth may petition to remain in foster care, attend children's court, be accountable to the same designated social worker, and get basically the same treatment they received as a minor. On the other hand, a youth who ages out is often left with nothing, treated as if she never possessed a special relationship with the government. This duality leads to unfair results, particularly in states that do not allow reentry into the foster care system.

G. Youth Empowerment and Voice

At the center of any decision affecting a former foster care youth should be the recognition of the youth's expressed interests. There must be an appreciation that a one-size-fits-all approach is not appropriate for foster care youths. Rather, services must be available on an as-needed basis. Foster care youths should be encouraged to participate in actively planning their own futures and understand that their voices matter.

Individual differences and abilities of foster care youths should be respected and developed. Some youths may desire or need more supervision and wish to remain in close contact with a social worker. Others may only want assistance with specific tasks such as filling out job applications and securing housing, but are not willing to attend court regularly to obtain these services. And still others may want no connection to the court or child welfare systems at age eighteen but want and need that door reopened thereafter when facing life's adult challenges. Thus, a universal system needs flexible and guaranteed services, such as healthcare, tuition, housing, and employment assistance upon which every former foster care youth may rely. This system will provide foster care youths their desired level of autonomy, and more importantly, the ability to make mistakes as young adults.

VI. CONCLUSION

The current system of government abandonment of former foster care youths highlights the need for comprehensive reform in this area. To be practical, many of these changes may need to occur incrementally. However, with proper funding and direction, foster care youths can lead productive adult lives. They can receive the proper balance of autonomy and support for a successful transition into adulthood, similar to that of their peers. These youths, for whom the state assumes responsibility and then abandons at an arbitrary age, are our most vulnerable youths and deserve the state's support as they make the important and difficult transition into adulthood.