

**REDEFINING “CHILD” AND REDEFINING LIVES: THE
POSSIBLE BENEFICIAL IMPACT *THE FOSTERING
CONNECTIONS TO SUCCESS ACT* AND COURT
INVOLVEMENT COULD HAVE ON OLDER FOSTER CARE
YOUTH**

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I. INTRODUCTION

The statistics surrounding youth in foster care in this nation are startling to those who have never experienced the system first hand.¹ Nearly 450,000 of the nation’s children and youth are cared for in foster care,² defined as “24-hour substitute care for children away from their parents or guardians.”³ A majority of these youth are placed in state care due to neglect and abuse, removing them from everything they have ever known.⁴ Often their family history, along with this type of removal, traumatizes them in a stage of life when they are most vulnerable.⁵

According to the United States Department of Health and Human Services Adoption and Foster Care Analysis Reporting System (AFCARS), the preliminary estimates for fiscal year 2009 (as of July 2010) indicate that the average age of children in foster care is 9.6 years.⁶ The data indicates that the average age of youth entering the system is 7.9 years.⁷ Adversely, the average age of a child adopted out of the foster care

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¹ See generally *The AFCARS Report: Preliminary FY 2009 Estimates as of July 2010 (17)*, U.S. DEP’T HEALTH & HUMAN SERVS. (July 2010), http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.pdf [hereinafter *AFCARS Report*].

² *Id.* at 1.

³ 45 C.F.R. § 1355.20(a) (2002).

⁴ *Children Entering Foster Care: 1995–1997*, OR. STATE OFFICE FOR SERVICES TO CHILD. & FAM., 3 (March 1999), http://www.cwp.pdx.edu/assets/Legislative_Summary.pdf.

⁵ *Id.* at 5.

⁶ *AFCARS Report*, *supra* note 1, at 1.

⁷ *Id.* at 3.

system is 6.3 years.⁸ Studies have found that once children have reached the age of nine, their chances of being adopted are greatly diminished.⁹ About 50% of youth in foster care are between the ages of nine and twenty,¹⁰ but over 70% of the children adopted are under the age of nine.¹¹ The North American Council on Adoptable Children (NACAC) reports that the chances of a child being adopted from foster care decrease each day the child remains in care.¹²

Though the preferred goal for these children is permanency with caring parental figures,¹³ 6% of foster care youth have the case goal of emancipation and 8% have the case goal of long term foster care.¹⁴ Approximately 11% of foster youth actually emancipate, or age out, from the system yearly, totaling over twenty thousand young adults who emancipate yearly from the foster care system.¹⁵

Emancipation can only be understood as a failure of the system, a system designed to provide these children with the permanency they desperately need. Facing these statistics, the reality for an older youth in foster care is dismal to say the least.¹⁶ Studies have shown that the lack of caregiver representation adversely affects the choices made by emancipated youth.¹⁷ Children involved in the foster care system, especially those who age out of the system as teenagers and young adults, are likely to have adjustment issues and eventually reemerge requiring the

⁸ *Id.* at 7.

⁹ ALICE GROH, N. AM. COUNCIL ON ADOPTABLE CHILDREN, IT'S TIME TO MAKE OLDER CHILD ADOPTION A REALITY: BECAUSE EVERY CHILD AND YOUTH DESERVES A FAMILY 3 (2009), available at <http://www.nacac.org/adoptalk/MakeOlderChildAdoptionReality.pdf> [hereinafter MAKE OLDER CHILD ADOPTION A REALITY].

¹⁰ *AFCARS Report*, *supra* note 1, at 1.

¹¹ *Id.* at 7.

¹² MAKE OLDER CHILD ADOPTION A REALITY, *supra* note 9, at 3.

¹³ CHILD WELFARE INFO. GATEWAY, U.S. DEP'T HEALTH & HUMAN SERVS., FOSTER CARE STATISTICS 2009 5 (2010), available at <http://www.childwelfare.gov/pubs/factsheets/foster.cfm> [hereinafter CHILD WELFARE INFORMATION GATEWAY].

¹⁴ *AFCARS Report*, *supra* note 1, at 2.

¹⁵ *Id.* at 4.

¹⁶ See generally *id.* at 1–4.

¹⁷ *Barriers Facing Foster Care Youth: National and Local Statistics About Emancipating Foster Youth*, HONORING EMANCIPATED YOUTH, 1–2, <http://www.heysf.org/pdfs/HEYFosterYouthStatistics.pdf> (last visited Nov. 30, 2011) [hereinafter *Barriers Facing Foster Care Youth*] (showing a disparate impact on the decision making abilities of emancipated youth).

aid of additional governmental systems in the areas of housing, education, financial stability, employment, incarceration, and health.¹⁸

Many foster care youth who emancipated or aged out of the system are thrown on the streets unsure of where to sleep at night or how to independently take care of themselves.¹⁹ There is a staggering correlation between being homeless in this country and having a history with the foster care system.²⁰ Approximately 27% of the homeless population spent time in foster care.²¹ Additionally, within two years of leaving foster care, approximately 24% of emancipated youth will be incarcerated.²²

Moreover, foster youth struggle in the areas of education and employment. Seventy-five percent of children from foster care are behind grade levels from their non-foster care peers, and only 46% of children from foster care graduate from high school, compared to 84% of the general high school age population.²³ Further, “[e]mancipated foster youth earn significantly less than youth in the general population . . . [and] progress more slowly into the labor market.”²⁴

Health concerns are also present with youth and young adults who emancipated from foster care. Post Traumatic Stress Disorder (PTSD) in youth who have been through the foster care system is two times the level of PTSD in war veterans.²⁵ Nearly 50% of foster youth also suffer from chronic health conditions, including a high prevalence of mental health and substance abuse issues.²⁶ Adding to these issues, 42% of foster youth become parents of their own children within two and one-half to four years after exiting care.²⁷ Children of emancipated foster care youth are almost twice as likely to have their own children placed into foster care than those parents who have never been a part of the foster care system.²⁸ Many of these individuals are unable to cope with these difficulties and remain dependent on governmental systems after foster care has ceased.²⁹

¹⁸ *Id.*

¹⁹ *Id.* at 1.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 2.

²³ *Id.* at 1.

²⁴ *Id.* at 2.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1.

How each state manages these difficult issues and their individual child welfare systems varies.³⁰ Each state and area has special concerns which dictate how the laws in the area develop over time.³¹ For instance, California's large population lends itself to a very different program than other smaller states within the United States.³² California has undertaken many model programs leading the way to better procedures and policies in the area of child welfare.³³ States such as Illinois, specifically Cook County (Chicago), have made strides for older youth in foster care as well.³⁴ Illinois has made a committed effort to continue care for young adults beyond the age of eighteen, even without financial support from the federal government.³⁵ These model programs offer a good basis on how states have begun to extend care to older youth and where states considering this implementation should focus their efforts for the best results.

The Fostering Connections to Success and Increasing Adoptions Act of 2008 (the Fostering Connections Act) offers states federal support to give these young adults a greater chance to find what they lack most: a permanency many have never experienced and a better idea of how to be independent and successful members of society.³⁶ A provision of the Fostering Connections Act specifically accomplishes the goal of finding permanency for these children through a state option to use federal funds to expand foster care to young adults up to the age of twenty-one.³⁷

States should extend foster care and court involvement for children over the age of eighteen under this legislation. This extension of care and time will help remedy the current actions (or lack thereof) by states and courts which fail to adequately prepare older foster youth for independent

³⁰ Douglas J. Besharov, "Doing Something" About Child Abuse: The Need to Narrow the Ground for State Intervention, 8 HARV. J. L. & PUB. POL'Y 539, 549 (1985).

³¹ *Id.* at 542.

³² CPYP: California Permanency for Youth Project: Project Description, CAL. DEP'T SOC. SERVS., 1-2 (Oct. 10, 2007), http://www.chhs.ca.gov/initiatives/CACChildWelfareCouncil/Documents/CPYP_Project_Description.pdf [hereinafter CPYP].

³³ *Id.*

³⁴ Emily Buss, *Juvenile Court for Young Adults? How Ongoing Court Involvement Can Enhance Foster Youths' Chances for Success*, 48 FAM. CT. REV. 262, 270 (2010); *infra*, Part IV.B.1.

³⁵ *Id.*

³⁶ See generally Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

³⁷ 42 U.S.C.A. § 675(8)(B) (West 2010).

living outside of government systems. This article sets forth not only support for why states should implement these provisions into their individual foster care systems but also it offers models from states on how this implementation can be structured to achieve the best results for older foster youth. Additionally, this paper examines basic considerations for more positive interactions with all youth in the foster and court systems.

Part II of the article offers a look at the historical path child protection has taken to get to its current place. Included in this section are details on the role courts have played and the current procedure taken by courts in dealing with emancipation and older youth in foster care. Further, Part II looks at the issues the child welfare system has faced and how legislation has put it in the position it is in today.

Part III of the article looks at the possibilities currently available to states under the Fostering Connections Act. Specifically, this section focuses on the provision in the Fostering Connections Act which gives states the option to extend care to young adults up to the age of twenty-one (the extension provision).

Part IV of the article focuses on how current legislation can and should be applied by states to offer the best outcomes for older foster care youth. This part describes gaps and issues arising out of the implementation of this provision which states will want to consider before putting an implementation plan of their own in place. Further, this part looks at model programs in place throughout the United States that have demonstrated better outcomes for foster youth.

Finally, Part V of this article contemplates continuing problems and complications within the child welfare system. It details how states and their actors might be able to respond to the reality of the foster care system through more preventative (rather than corrective) measures.

II. HISTORICAL TREATMENT OF CHILD PROTECTION AND FOSTER CARE

The history of foster care is also the personal history of every single child who has been affected by the system. One cannot so hastily separate the history of the legislation and implementation from the lives on which it has had a great influence. The establishment of a foster care system in this country was the result of individuals who saw wrongdoing and had the courage to seek change.³⁸ As the nation's notions of child welfare

³⁸ Ellen Herman, *Fostering and Foster Care*, ADOPTION HIST. PROJECT (July 11, 2007), <http://darkwing.uoregon.edu/~adoption/topics/fostering.htm>.

progressed, foster care has evolved from care in institutional settings to in-home care with a more traditional notion of family.³⁹ The progression of this change in the child protection system can logically be broken into three eras: the first from colonial times until 1875, the second from 1875 to 1962, and the final modern era from 1962 to the present.⁴⁰

A. Colonial Times to 1875

This first era of child protection tells the history of many children who did not receive the protective aid they needed.⁴¹ Protection for children was drastically limited from the founding of this nation until 1875.⁴² In times “[p]rior to 1875, many children went without protection, although there has never been a time when children were completely bereft of assistance. Criminal prosecution has long been used to punish egregious abuse.”⁴³ Laws that were enacted to protect children often went unprosecuted, and parents were rarely criminally charged for the crimes committed against their children.⁴⁴ *Fletcher v. People*⁴⁵ is an example of one early conviction. In the 1869 case, a father was convicted of crimes against his blind son after he locked his son in a cold cellar during the dead of winter in Illinois.⁴⁶ The judge in the case found that although the prevailing societal thought at the time was that parents had the right to raise their children as they saw fit, parental “authority must be exercised within the bounds of reason and humanity.”⁴⁷ Also during this period, California’s first rape conviction went to the state’s supreme court.⁴⁸ The aftermath was an increase in the number of convictions and appeals of rape cases in California, especially those dealing with youth.⁴⁹ These cases showed a slight shift in thinking on the treatment of children in the new world.⁵⁰ However, outside these few remote cases,⁵¹ the public thought at

³⁹ John E.B. Myers, *A Short History of Child Protection in America*, 42 FAM. L.Q. 449, 456 (2008).

⁴⁰ *Id.* at 449.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 449–51.

⁴⁵ 52 Ill. 395 (Ill. 1869). *See also* Myers, *supra* note 39, at 450.

⁴⁶ *Fletcher*, 52 Ill. at 396–97. *See also* Myers, *supra* note 39, at 450.

⁴⁷ *Fletcher*, 52 Ill. at 397.

⁴⁸ *People v. Benson*, 6 Cal. 221 (Cal. 1856). *See also* Myers, *supra* note 39, at 450.

⁴⁹ Myers, *supra* note 39, at 450.

⁵⁰ *See id.* at 450–51.

this time that parents should have the right to raise their children as they saw fit, the laws and courts often followed this way of thinking, even when it was to the detriment of children who were being abused and neglected.⁵²

Interventions by child protection agencies and nonprofit societies were infrequent at this point in history;⁵³ however, the option of intervening into the family unit existed in certain cases. Judges in Massachusetts, for example, were given express authority to intervene and remove children when parents did not “train up” or properly discipline and teach their children.⁵⁴ Even beyond this expressly given judicial authority, many judges felt the law inherently gave them the authority to stop child abuse.⁵⁵ Many children who were removed from their homes before the advent of agencies and societies in America were sent to almshouses where they became trained servants in indentured servitude.⁵⁶ For example, many children from eastern areas of the United States were sent on orphan trains to the west to work on farms with families who needed the extra hands for labor.⁵⁷

Several of the removals of children during this era were predicated on the House of Refuge Movement, a movement which came from society’s hopes of preventing pauperism.⁵⁸ By stopping poverty and taking children from the poor, many believed they could stop the root of most crime.⁵⁹ The House of Refuge Movement predated the idea of delinquency; rather, it was concerned with saving those youth who were “salvageable” from the grasp of poverty.⁶⁰ Sadly, most of the children removed at this time fared no better after the removal than they had while in the care of their parents or guardians, or even while living poor on the streets.⁶¹ Yet, the idea for

⁵¹ See *id.* at 450 (citing to *Fletcher and Benson*).

⁵² See *id.*

⁵³ *Id.* at 449, 451.

⁵⁴ *Id.* at 450.

⁵⁵ *Id.* at 450–51.

⁵⁶ Mary Renck Jalongo, *The Story of Mary Ellen Wilson: Tracing the Origins of Protection in America*, 34 EARLY CHILDHOOD EDUC. J. 1, 1 (2006).

⁵⁷ *Id.*

⁵⁸ CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 178 (Donald N. Duquette & Ann M. Haralambie eds., 2010) [hereinafter CHILD WELFARE LAW AND PRACTICE].

⁵⁹ *Id.*

⁶⁰ *Id.* at 179.

⁶¹ Jalongo, *supra* note 56, at 1.

care outside of the biological parent or guardian's home was becoming a reality that would take shape in the eras to follow.⁶²

B. Period from 1875 to 1962

The second era of child protection in America included a drastic turn of events for children. Experts see the personal story of Mary Ellen Wilson as having forever changed the way child protection operates.⁶³ Mary Ellen's 1874 case was the first child abuse case successfully prosecuted in America.⁶⁴ As a child, Mary Ellen grew up in Hell's Kitchen, one of New York's roughest neighborhoods.⁶⁵ Mary Ellen is most commonly known from the photograph taken of her after her removal from her home.⁶⁶ This photograph evidenced the prolonged abuse and beatings she endured.⁶⁷ The young girl suffered traumatic events of abuse and neglect while in the care of her guardians.⁶⁸ She was imprisoned by her guardians in their flat, only let out to use the outhouse at night, and never given a bed or toys of her own.⁶⁹

Etta Wheeler, a religious missionary who learned of Mary Ellen's living situation, was determined to help her but found that the state of government and societal views on the value of children did not allow this help to come easily.⁷⁰ During this era in child protection, children were viewed as the equivalent of animals; merely chattels of their owners, or rather, their parents or guardians.⁷¹ Without child protective agencies and the existence of or assistance from laws benefitting children, Wheeler sought the assistance of Henry Bergh.⁷² Bergh was the founder of the American Society for the Prevention of Cruelty to Animals (ASPCA) and aided Wheeler in finding a legal remedy for the wrongs done to Mary

⁶² *See id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Myers, *supra* note 39, at 451.

⁶⁶ Jalongo, *supra* note 56, at 1.

⁶⁷ *Id.*

⁶⁸ *Id.* Mary Ellen was placed under the guardianship of Mary Connolly as a toddler after the child's natural mother surrendered her to New York City's Department of Charities. *Id.*

⁶⁹ *Id.* at 1–2.

⁷⁰ *Id.* at 2.

⁷¹ *Id.* at 1.

⁷² *Id.* at 1–2.

Ellen.⁷³ Though New York at the time did have a law which permitted the state to remove neglected children from their caregivers, authorities did not feel as though interference was necessary in this case.⁷⁴ Ultimately, attorneys for ASPCA did not end up using animal abuse laws; rather, they relied on a provision in the writ of habeas corpus to release Mary Ellen from the cruelty.⁷⁵

Despite being tragic, Mary Ellen’s story has a happy ending. Her guardian was convicted and Mary Ellen was placed out of that home, first in the home of Mrs. Wheeler’s mother and later with Mrs. Wheeler’s younger sister and her husband.⁷⁶ Mary Ellen grew up there and later married and had children of her own.⁷⁷ Her story is one of triumph through the worst of situations.

To many experts, “this horrifying case [is] the catalyst for legislation that prosecuted and convicted parents and guardians who subjected children to neglect, violence, and abuse in America.”⁷⁸ Following the adjudication of Mary Ellen’s case, some of those associated with bringing her guardians to justice created the New York Society for the Prevention of Cruelty to Children (the Society), a nongovernmental child protection society.⁷⁹ The Society was the first in the world dedicated solely to the area of child protection.⁸⁰ By the 1920s, word of the Society had spread around the nation and inspired the beginning of approximately 300 additional nongovernmental societies.⁸¹ The federal government also made strides in protecting children. The Sheppard-Towner Act of 1921 established children’s bureaus which focused on the health of mothers and infants from a state level.⁸² Although the start of these societies and bureaus showed progress in the area of child protection, many children, especially those in rural areas, still went without the help they needed.⁸³ In this era, as in previous eras, most of the help children in need received

⁷³ *Id.* at 1.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* at 3.

⁷⁷ *Id.*

⁷⁸ *Id.* at 1.

⁷⁹ Myers, *supra* note 39, at 451–52.

⁸⁰ *Id.* at 452.

⁸¹ *Id.*

⁸² CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 190.

⁸³ Myers, *supra* note 39, at 452.

came largely from family, neighbors, police, and sometimes from the court system.⁸⁴

With the Great Depression of the 1930s came a push to involve the federal government in the area of child protection more heavily.⁸⁵ Many of the nongovernmental societies witnessed their demises during these rough economic times.⁸⁶ The role of the federal government in the area of child protection grew vastly with President Roosevelt's New Deal, which included the Social Security Act of 1935.⁸⁷ This Act created important provisions including the Aid to Dependent Children provision, which was later extended to create federal funding for foster care in the United States.⁸⁸ Through the cooperation of the United States Children's Bureau and state public-welfare agencies, the Social Security Act also provided authorization to extend care to children in rural areas of the nation.⁸⁹ This legislation "was an important shot in the arm for the nascent social work specialty of child welfare, and a modest step toward what . . . [later] became a central role for the federal government in efforts to protect children from abuse and neglect."⁹⁰ By the end of this era in child protection, almost every state had laws which placed the responsibilities of child protection and child welfare firmly with the government.⁹¹

In addition to the decrease in private societies and an increase in governmental child welfare agencies, child protection developments in this era also highlighted the need for a special court to deal with child issues.⁹² The first juvenile court was established in Chicago in 1899; the idea of having such a specialized court spread soon after.⁹³ In fact, by 1919 all but

⁸⁴ *Id.*

⁸⁵ *Id.* at 453.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Herman, *supra* note 38.

⁸⁹ Myers, *supra* note 39, at 453.

⁹⁰ *Id.*

⁹¹ Brenda Gordon, *A Criminal's Justice or a Child's Injustice? Trends in the Waiver of Juvenile Court Jurisdiction and the Flaws in the Arizona Response*, 41 ARIZ. L. REV. 193, 196-97 (1999). While the social movement of the time worked to ensure humane treatment for children, reformers saw the need for an alternative to the traditional punishments against parents under criminal laws. This reform looked to treat the inhumane treatment of children citizens under "nonpunitive *parens patriae*," which allowed courts "wide discretion in resolving problems." *Id.*

⁹² Myers, *supra* note 39, at 452.

⁹³ *Id.*

three states had juvenile courts systems in place.⁹⁴ The remaining three states soon followed suit, setting up their own courts specifically for children and issues dealing with children.⁹⁵

Juvenile courts have become an integral part of today’s child protection system.⁹⁶ Juvenile courts were primarily created to deal with juvenile delinquents, but they also had built in the jurisdictional power to intervene in cases involving children who are abused or neglected.⁹⁷ This authority helped to further establish and institutionalize the idea of “*parens patriae*” or the court’s ability to intervene in the family for the best interest of the child.⁹⁸ In *Ex parte Crouse*,⁹⁹ a Pennsylvanian court “acknowledged and sanctioned the state’s authority to intervene into the family as ultimate parent.”¹⁰⁰ This case and its use of the doctrine were soon adopted in other cases throughout the United States.¹⁰¹ In 1944, the Supreme Court of the United States confirmed the *parens patriae* authority of the state in *Prince v. Massachusetts*.¹⁰² Though the course of implementation and thought behind the doctrine has changed over time, *parens patriae* remains a key concept in the area of child welfare and the driving force of children entering into foster care.¹⁰³

The period from 1875 to 1962 monumentally changed the area of child protection in the United States.¹⁰⁴ Beginning with the first nationally recognized judgment against child abuse and neglect¹⁰⁵ and the start and subsequent downfall of nongovernmental societies¹⁰⁶ and ending with the interjection by the states, the federal government, and the court system,¹⁰⁷ this era’s influence on the child protection system is still present today.¹⁰⁸

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 186.

⁹⁹ 4 Whart 9, 11 (Pa. 1839).

¹⁰⁰ CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 181.

¹⁰¹ *Id.* (citing case examples).

¹⁰² *Id.* at 190.

¹⁰³ *Id.* at 193–94.

¹⁰⁴ See Myers, *supra* note 39, at 451–53.

¹⁰⁵ See Jalongo, *supra* note 56, at 1.

¹⁰⁶ Myers, *supra* note 39, at 452–53.

¹⁰⁷ *Id.* at 452.

¹⁰⁸ *Id.* at 451–54.

C. The Beginning of the Modern Era

Child abuse once again caught the nation's attention during the beginning of the modern era.¹⁰⁹ The onset of mass media and advancements in scientific research fostered most of the nation's attention.¹¹⁰ Medical research, including the case studies of six young individuals in 1946, first tipped physicians off to the issue of injuries linked to the ill-treatment by caregivers.¹¹¹ Physician John Caffey's description of the injuries studied hinted at the abusive cause even though he never blatantly advanced such a viewpoint in his work.¹¹² The case studies described young infants and toddlers suffering from fractured bones, hemorrhages, weaknesses in various extremities, and soft spots on various parts of the head and face, most without a known cause.¹¹³ Physicians soon caught on to the notions advanced by Caffey's article.¹¹⁴ In 1962, pediatrician Henry Kempe and his colleagues published *The Battered Child Syndrome* in the *Journal of the American Medical Association*.¹¹⁵ The article laid the foundation for a later medical and psychiatric model which demonstrates the causes of such a disorder.¹¹⁶ Because of this article, child abuse became its own academic subject.¹¹⁷

Through the media, the article had a significant effect not only on the medical profession but also on the general public and their perceptions of child abuse.¹¹⁸ The media tended to report only the most horrific stories of abuse.¹¹⁹ However, response to the article and media coverage of these stories caused such a stir that it resulted in a call for a symposium in 1962.¹²⁰ This symposium resulted in the production of a model child abuse reporting law.¹²¹ Within five years of the symposium, forty-four states had

¹⁰⁹ *Id.* at 454.

¹¹⁰ *Id.* at 455.

¹¹¹ *Id.* at 454.

¹¹² See generally John Caffey, *Multiple Fractures in the Long Bones of Infants Suffering from Chronic Subdural Hematoma*, 56 AM. J. ROENTGENOLOGY 163 (1946), available at <http://www.ajronline.org/cgi/data/187/6/1403/DC1/1>.

¹¹³ *Id.* at 164–69.

¹¹⁴ CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 191.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ Myers, *supra* note 39, at 454–55.

¹¹⁹ *Id.* at 455.

¹²⁰ CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 191.

¹²¹ *Id.*

adopted these mandatory reporting laws based on the model, and many of the remaining states adopted voluntary reporting laws.¹²² These laws generally required physicians to report any cases where they had reasonable suspicion of abuse.¹²³ The creation of these acts was one of the most significant steps taken by the state to ensure the protection of abused and neglected children.¹²⁴

The research by Caffey, Kempe, and others influenced more than just the mandatory reporting laws being introduced within the states.¹²⁵ The research eventually found its way into the courtroom.¹²⁶ In the 1971 case of *People v. Jackson*,¹²⁷ the California Court of Appeals ruled to recognize Battered Child Syndrome as both “a medical diagnosis and a legal syndrome.”¹²⁸ The syndrome is defined as “a clinical condition in young children who have received serious physical abuse,” and “is a significant cause of childhood disability or death.”¹²⁹ Today, Battered Child Syndrome is recognized by all courts as a legal syndrome.¹³⁰ The creation and use of such a syndrome has led to the protection of more children throughout the child welfare system as well as a greater number of children being placed in the foster care system.¹³¹

The modern era also saw a flood of legislation further increasing the government involvement in the area of child welfare.¹³² The Social Security Act of 1935 was amended in 1962 to supply more funding to expand the services offered for child welfare.¹³³ There nevertheless existed a demand for more initiatives in the area of child abuse and neglect.¹³⁴ The

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* (stating that the research also created “a medical diagnosis and a legal syndrome” according to the California Court of Appeals in 1971).

¹²⁶ *Id.*

¹²⁷ 95 Cal. Rptr. 919, 922 (Cal. App. 3d 1971)

¹²⁸ *Id.* See also CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 191.

¹²⁹ C. Henry Kempe et al., *The Battered-Child Syndrome*, 9 CHILD ABUSE & NEGLECT 143, 143 (1985).

¹³⁰ Kristi Baldwin, *Battered Child Syndrome as a Sword and Shield*, 29 AM. J. CRIM. L. 59, 64 (2001).

¹³¹ Vincent J. Fontana et al., *The Maltreatment Syndrome in Children*, 269 NEW ENG. J. MED. 1389, 1389 (1963).

¹³² Myers, *supra* note 39, at 454.

¹³³ *Id.* at 456.

¹³⁴ *Id.* at 456–57.

answer came in 1974 when Congress passed the federal Child Abuse Prevention and Treatment Act (CAPTA).¹³⁵ Conditioned on each individual state's adoption of mandatory reporting laws, CAPTA provided additional funding for improving the investigation and reporting of abuse and neglect cases.¹³⁶ CAPTA also fostered the creation of the National Center on Child Abuse and Neglect (NCCAN) which served as a national information clearinghouse on the topic.¹³⁷

Congress also passed large amounts of legislation dealing specifically with the removal, placement in foster care, and subsequent adoptions of abused children. In 1978, Congress passed the Indian Child Welfare Act (ICWA) which was intended to protect the tribal children of the United States from being unnecessarily removed from their homes and tribes.¹³⁸ Two years later, Congress passed the Adoption Assistance and Child Welfare Act (AACWA).¹³⁹ This Act provided federal funding for foster care.¹⁴⁰ It was amended in 1983 to include "reasonable efforts" as the standard for reunifying children once they were removed from their homes.¹⁴¹ The motivation behind the AACWA came from concerns over children lingering in the foster care system or experiencing foster care drift.¹⁴² The AACWA required states to create permanency plans for all children who were brought into the foster care system.¹⁴³ Each child's permanency plan required the agency to determine if the child should be returned to the home as soon as it was safe to do so or if the agency should move toward the termination of parental rights and permanency for the child in another home.¹⁴⁴

¹³⁵ *Id.* at 457.

¹³⁶ CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 191.

¹³⁷ *Id.* at 191–92.

¹³⁸ Myers, *supra* note 39, at 457.

¹³⁹ CHILD WELFARE LAW AND PRACTICE, *supra* note 58, at 192.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Myers, *supra* note 39, at 459. Foster care drift is a term used to describe children who are shifted from foster care placement to foster care placement. LEAVING OUR MARK ON A NEW GENERATION: A NEW CHAPTER, CONGRESSIONAL COALITION ON ADOPTION INSTITUTE'S 2010 FOSTER YOUTH INTERN REPORT 4, 36 (2010), *available at* <http://www.ccaainstitute.org/images/stories/pdf/2010%20foster%20youth%20internship%20report%20small.pdf>.

¹⁴³ *Id.*

¹⁴⁴ *Id.*

Congress was also concerned with a disproportionate number of minority children lingering in the foster care system.¹⁴⁵ During this era children of color (specifically African-American children) were overrepresented in foster care and remained in care longer than their white counterparts.¹⁴⁶ In response to this concern, Congress passed the Multiethnic Placement Plan (MEPA) in 1994.¹⁴⁷ MEPA was designed to prohibit “child welfare agencies from delaying or denying adoptive placements because of race.”¹⁴⁸ It did, however, still permit race to be a factor at that time.¹⁴⁹ MEPA was later amended in 1996 because of concerns that the continued use of race as a large factor prohibited MEPA from accomplishing its intended goals.¹⁵⁰ The 1996 amendment, and MEPA as it stands today, eliminated race as a factor, making race irrelevant in placing children.¹⁵¹ Sadly, disparities in race and the lingering of minorities in the foster care system is a major concern even to this day.¹⁵²

Throughout the modern era, the government has taken great steps to advance and improve its role as a “parent.” Through the legislation described above, the government has etched out a plan to help those children who are most desperate for its attention. Additionally, the current Fostering Connections Act and the implementation of other creative models and initiatives have the opportunity to improve the state’s parental role and push through the road blocks of children lingering and drifting in foster care. These initiatives may succeed in the areas where prior legislation has failed to do so.¹⁵³

¹⁴⁵ *Id.* at 458.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 458–59.

¹⁵¹ *Id.* at 459.

¹⁵² *Id.* at 458.

¹⁵³ *See infra* Parts III, IV.

III. CURRENT ADVANCEMENTS UNDER THE FOSTERING CONNECTIONS ACT

A. *Overview of the Provisions Not Specifically Dealing with Older Foster Care Youth*

In the past, concerted efforts were unsuccessful in sufficiently resolving the problems of a foster care system seen as denying the youth its “parents.”¹⁵⁴ Because of this, the 110th Congress of the United States proposed an act which represented the most significant change for the child welfare system in more than a decade.¹⁵⁵ The Fostering Connections Act was unanimously passed by the House of Representatives and the Senate and signed into law by President George W. Bush on October 7, 2008.¹⁵⁶

The Center for Law and Social Policy notes that “[t]he Fostering Connections to Success and Increasing Adoptions Act . . . will help hundreds of thousands of children and youth in foster care by promoting permanent families for them through relative guardianship and adoption and improving education and health care.”¹⁵⁷ The Fostering Connections Act’s five main objectives include supporting and connecting relative caregivers, improving outcomes for children in the foster care system, improving tribal foster care and adoption access, increasing and improving incentives for adoption, and providing better clarification of definitions and other provisions.¹⁵⁸ The hope is that the Fostering Connections Act’s implementation will ensure that youth who will enter, or have already

¹⁵⁴ Nora Casey, *New Support for Older Youth: State Options for Implementing the Fostering Connections Act of 2008*, POLICYMATTERS J., Spring 2010, at 17, 17, available at <http://policymatters.net/wordpress/wp-content/uploads/2010/05/Foster.pdf>.

¹⁵⁵ NATIONAL FOSTER CARE COALITION, FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT: FREQUENTLY ASKED QUESTIONS ON THE PROVISIONS DESIGNED TO IMPACT YOUTH AND YOUNG ADULTS 9 (2010), available at <http://www.nationalfostercare.org/pdfs/NFCC-FAQ-olderyouth-2009.pdf> [hereinafter NATIONAL FOSTER CARE COALITION].

¹⁵⁶ Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008). See also NATIONAL FOSTER CARE COALITION, *supra* note 155, at 9.

¹⁵⁷ *Fostering Connections to Success and Increasing Adoptions Act Will Improve Outcomes for Children and Youth in Foster Care*, CENTER FOR L. AND SOC. POL’Y (Oct. 14, 2008), http://cdf.childrendefense.org/site/DocServer/9_16_08_FCSAIAAct_1-_pager_FIN_AL_with_new_logo.pdf?docID=8882 [hereinafter CLASP].

¹⁵⁸ See generally Fostering Connections to Success and Increasing Adoptions Act, 122 Stat. 3949, 3949.

entered, the foster care system will end up with better results than foster children have under the old process.¹⁵⁹

The Fostering Connections Act’s implementations greatly improve the area of kinship care by offering better notification to relatives for children entering the system and increased financial assistance to those relatives who offer care.¹⁶⁰ Specifically, the Fostering Connections Act provides for the following: Family Connection Grants, which can be used by states to create programs such as Kinship Navigator, a program designed to help kinship care providers find resources and services they need most; Family Group Decision-Making, which allows for meetings with families to develop a plan to keep children safe and secure; Intensive Family Finding, which uses technology to search for all possible family placements; and Residential Family-Based Substance Abuse Treatment programs, which offer families safe places to live and receive the services they need to remain together, safe, healthy, and happy.¹⁶¹ Further, the Fostering Connections Act provides financial and educational support through kinship guardianship assistance payments for children who are placed in kinship care settings.¹⁶²

Additionally, the Fostering Connections Act improves the care provided to tribal children.¹⁶³ The implementation of the Fostering Connections Act extends federal assistance which is already granted to many other children under federal foster care and adoption assistance programs to children of American Indian or Alaskan Native descent.¹⁶⁴ Further, this section of the Fostering Connections Act also calls on the United States Department of Health and Human Services (HHS) to provide technical assistance in bringing about more positive and permanent outcomes for tribal children.¹⁶⁵

Title IV of the Fostering Connections Act improves adoption incentives.¹⁶⁶ This section works to promote the adoption of children with

¹⁵⁹ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 9.

¹⁶⁰ Fostering Connections to Success and Increasing Adoptions Act § 101–105, 122 Stat. at 3950–57.

¹⁶¹ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 20–21.

¹⁶² Fostering Connections to Success and Increasing Adoptions Act § 101, 122 Stat. at 3950–53.

¹⁶³ *Id.* at 3962–73.

¹⁶⁴ CLASP, *supra* note 157, at 2.

¹⁶⁵ *Id.*

¹⁶⁶ Fostering Connections to Success and Increasing Adoptions Act § 401–403, 122 Stat. at 3973–79.

special needs.¹⁶⁷ In dealing with adoptions, special needs children include any children who are harder to place in permanent living arrangements, due to certain characteristics such as age, siblings, minority status, or physical, mental, or emotional disabilities.¹⁶⁸ Under the Fostering Connections Act, “[a]s of October 1, 2009, states with federal adoption assistance programs [could] claim federal funds for more older youth and children with special needs.”¹⁶⁹ The increase in assistance is to be accomplished by a phasing-in program.¹⁷⁰ As of October 1, 2017, all eligible youth with special needs will be covered.¹⁷¹

Although each of these objectives rendered made the Fostering Connections Act either an improvement from existing legislation or a gap-filler where legislation had not previously been, the most drastic increase in aid comes from the provisions designed to help older youth in foster care. Specifically, it comes from the extension of federal assistance for foster care beyond the age of eighteen under Title II of the Fostering Connections Act.¹⁷²

B. Implementations Designed Specifically for Older Youth in Foster Care

Title II of the Fostering Connections Act provides a state option for funding children in foster care or other placements even after they reach the age of eighteen; a transition plan for children who are still expected to age out of the system; educational stability plans; health oversight and coordination plans; and plans for sibling placements for children currently in the foster care system.¹⁷³ The passage of the Fostering Connections Act therefore offers states federal support to give young adults in foster care a greater chance of finding permanency and the opportunity to become independent and successful members of society. Thoughtful implementation of the Fostering Connections Act and the provisions in Title II provides the opportunity for states to bring about a positive change for their foster care system.¹⁷⁴

¹⁶⁷ *Id.* at 3975.

¹⁶⁸ Judith K. McKenzie, *Adoption of Children with Special Needs*, FUTURE CHILD., Spring 1993, at 62, 62.

¹⁶⁹ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 14.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ 42 U.S.C.A. § 675(8)(B) (West 2010).

¹⁷⁴ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 9.

What is so vastly different with this legislation than past legislation dealing with the foster care system is the amendment of the definition of “child” as allowed under this section of the Fostering Connections Act.¹⁷⁵ The Fostering Connections Act provides that a state may make an election to extend care through federal funding to children who are nineteen, twenty, or twenty-one depending on the state’s criteria at the point in time when it was enacted.¹⁷⁶ A number of evaluations on the benefits of extending foster care beyond the age of eighteen show that in doing so, not only are young adults more prepared to enter adulthood but also they are given a better chance of finding a permanent family living arrangement to last them beyond the state’s reign as parent.¹⁷⁷

Chapin Hall’s *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19*¹⁷⁸ found that extension of care can help foster youth obtain better outcomes in the areas of education, health, and employment.¹⁷⁹ The report found “a 38 percent reduction in the risk of teenage pregnancy between the ages of 17 and 19” for young adults who stayed in care past age eighteen.¹⁸⁰ By comparing young adults involved in an extended care program in Illinois to those in the nearby states of Wisconsin and Iowa where care ends at the age of eighteen, the report found that the youth who stayed in care in Illinois were nearly “[two] times more likely to have ever attended college and approximately 2.2 times more likely to have completed at least one year of college.”¹⁸¹

Furthermore, Partners for Our Children and Chapin Hall’s *California Fostering Connections to Success Act and the Costs and Benefits of Extending Foster Care to 21*¹⁸² found that “each additional year young

¹⁷⁵ Buss, *supra* note 34, at 263.

¹⁷⁶ 42 U.S.C.A. § 675(8)(B); NATIONAL FOSTER CARE COALITION, *supra* note 155, at 21.

¹⁷⁷ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 27.

¹⁷⁸ MARK E. COURTNEY & AMY DWORSKY, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: *OUTCOMES AT AGE 19*, CHAPIN HALL (2005), available at http://www.chapinhall.org/sites/default/files/ChapinHallDocument_4.pdf [hereinafter MIDWEST STUDY].

¹⁷⁹ *Id.* at 72.

¹⁸⁰ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 27 (compiled from raw data found in MIDWEST STUDY, *supra* note 178).

¹⁸¹ *Id.* (compiled from raw data found in MIDWEST STUDY, *supra* note 178).

¹⁸² MARK E. COURTNEY ET AL., SEATTLE, W.A.: PARTNERS FOR OUR CHILDREN, CALIFORNIA’S FOSTERING CONNECTIONS TO SUCCESS ACT AND THE COSTS AND BENEFITS OF EXTENDING FOSTER CARE TO 21 (2009), available at <http://www.california-adoption.org/Documents/VoiceForAdoptionFederal.pdf>.

people remained in care beyond their 18th birthday was associated with an increase in earnings of between \$470 and \$924.”¹⁸³ In large part, this notable increase in employment options once again comes down to foster youth furthering their education through a college degree or postsecondary training opportunities.¹⁸⁴ This increase amounts to an approximately \$92,000 increase in total earnings over an individual foster youth’s work life.¹⁸⁵ An increase this great can drastically change the outcome foster alumni face well past their time in the foster care system.¹⁸⁶

The Act’s improvements are supported by the Urban Institute’s report *Coming of Age: Employment Outcomes for Youth Who Age out of Foster Care Through Their Middle Twenties*,¹⁸⁷ which found that when foster youth first age out of system at the age of eighteen, they are most likely in a position to experience a period of unemployment.¹⁸⁸ The report also found that the youth who aged out of the system were likely to “continue to experience poor employment outcomes” into their mid-twenties.¹⁸⁹ Each of these studies shows the beneficial outcomes that have already been demonstrated in model programs which extend care past twenty-one and which are already in place around the country.¹⁹⁰ Further, these evaluations describe the benefits to be derived from an extension beyond those of simply finding permanency.¹⁹¹ With such conclusive evidence available, states should seriously consider extending care in their jurisdictions and encouraging the type of permanency this extension promotes.

¹⁸³ *Id.* at 8.

¹⁸⁴ *Id.* at 13–14.

¹⁸⁵ *Id.* at 12.

¹⁸⁶ *See id.* at 11 (“[I]ndividuals with a bachelor’s degree can expect to earn approximately \$2.1 million . . . over the course of their work-life whereas those with only a high school diploma can expect to earn approximately \$1.2 million.”).

¹⁸⁷ OFFICE OF THE ASSISTANT SEC’Y FOR PLANNING AND EVALUATION, U.S. DEP’T. OF HEALTH & HUMAN SERVS., *COMING OF AGE: EMPLOYMENT OUTCOMES FOR YOUTH WHO AGE OUT OF FOSTER CARE THROUGH THEIR MIDDLE TWENTIES* (2008), available at http://www.urban.org/UploadedPDF/1001174_employment_outcomes.pdf.

¹⁸⁸ *Id.* at 1.

¹⁸⁹ *Id.* at 28.

¹⁹⁰ *Infra* Part IV.B.

¹⁹¹ *Id.*

IV. WHAT STATES SHOULD CONSIDER WHEN IMPLEMENTING THE EXTENSION PROVISION TO THE FOSTERING CONNECTIONS ACT

The Fostering Connections Act provides states with options that had previously not existed to them, options which improve the lives of older children in the foster care system.¹⁹² As states contemplate whether to implement these sections of the Fostering Connections Act and how to go about doing so, they should consider some of the gaps and issues arising out of this piece of legislation, including: the Fostering Connections Act’s interplay with existing legislation;¹⁹³ the reality of the foster care system and the youth it encompasses;¹⁹⁴ and the role courts should play in the young adult’s life if care is extended past the age of eighteen.¹⁹⁵

Because the federal government has given states flexibility in the implementation of the Fostering Connections Act, the reform will look different for each state that adopts it.¹⁹⁶ Luckily, many states and communities have already taken the initiative to change the results for youth in their foster care system and have provided program models with data to support the changes they have made.¹⁹⁷ By analyzing these model programs, states and communities still considering their options can better understand the systems which are in place elsewhere and which have been successful in promoting a better life for older youth in foster care.

A. Implementation Issues with the Fostering Connections Act

1. Relationship with Existing Legislation

What makes the implementation of the Fostering Connections Act especially challenging is its interplay with existing legislation that currently supports older youth in the foster care system.¹⁹⁸ This principally includes its connection with each state’s John H. Chafee Foster Care Independence Program (the Chafee Program) and federal funding through Title IV-E of the Social Security Act (Title IV-E).¹⁹⁹

¹⁹² 42 U.S.C.A. § 675(8)(B) (West 2010).

¹⁹³ *Infra* Part IV.A.1.

¹⁹⁴ *Infra* Part IV.A.2.

¹⁹⁵ *Infra* Part IV.A.3.

¹⁹⁶ See Casey, *supra* note 154, at 17.

¹⁹⁷ *Infra* Part IV.B.

¹⁹⁸ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 10, 12.

¹⁹⁹ *Id.* at 12.

Under the Chafee Program (1999),²⁰⁰ states and tribes receive grants to aid in fulfilling plans designed to support current and former foster care youth.²⁰¹ These funds can be used for such things as aid in dealing “with education, employment, financial management, housing, emotional support and assured connections to caring adults for older youth in foster care.”²⁰² The targeted population of the Chafee Program is “youth who are likely to remain in foster care until age [eighteen], youth who, after attaining [sixteen] years of age, have left foster care for kinship guardianship or adoption, and young adults ages [eighteen to twenty-one] who have ‘aged out’ of the foster care system.”²⁰³ The Chafee Program also provides the state with \$5,000 worth of education and training vouchers for each youth who is Title IV-E eligible.²⁰⁴ A portion of this financial support can be used for housing for foster youth who have aged out of the system and are eighteen to twenty-one years of age.²⁰⁵ The Chafee Program’s implementation ultimately doubled the funding available to older foster youth for independent living services from seventy million to one hundred forty million dollars with its creation.²⁰⁶

Title IV of the Social Security Act provides funding to states for services involving needy families with children or for children in the child welfare system.²⁰⁷ Section E of the Social Security Act specifically was passed as legislation designed to “[enable] each State to provide, in appropriate cases, foster care and transitional independent living programs for children who otherwise would have been eligible for assistance under the State’s plan approved under Part A.”²⁰⁸ Federal funding is conditioned on the state child welfare agency having a written case plan for each of the children it has in foster care.²⁰⁹ Each plan must address a goal for the future of the child and can include information on other subjects pertinent

²⁰⁰ 42 U.S.C.A. § 677 (West 2010).

²⁰¹ *The John H. Chafee Foster Care Independence Program*, U.S. DEP’T HEALTH & HUMAN SERVS (2009), http://www.acf.hhs.gov/programs/cb/programs_fund/state_tribal/jh_chafee.htm.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ Casey, *supra* note 154, at 18.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ Block Grants to States for Temporary Assistance for Needy Families, 42 U.S.C. §§ 601, 670 (2006).

²⁰⁸ *Id.*

²⁰⁹ Buss, *supra* note 34, at 263.

to the child’s wellbeing.²¹⁰ As an additional effort to link every child to a permanent family, the Social Security Act also specifies that the state child welfare agency must carry out permanency planning.²¹¹ Oftentimes the reality for older youth in foster care is that a family is difficult to find; instead, they are listed with the status of “another planned permanent living arrangement” (APPLA), which indicates that it is likely the child will eventually age out of the system or be emancipated.²¹² Title IV-E requires that the status of each child be reviewed by a court or administrative entity at least every six months, with permanency hearings held at least every twelve months.²¹³ The purpose of these requirements is to improve the outcomes of children in the foster care system and to keep track of progress toward unifying these children with a permanent living arrangement.²¹⁴

The Fostering Connections Act extends programs which were designed in the original Chafee Program.²¹⁵ The Fostering Connections Act provides Education and Training Vouchers (ETV) to children who were in foster care but who exited out into kinship guardian care or adoptive placements after the age of sixteen.²¹⁶ The Fostering Connections Act further extends the Independent Living Services and Programs to these same young adults.²¹⁷ Due to the varied populations of youth and young adults around the country, “independent living programs vary by state, but often include life skills preparation, youth conferences, and services designed to prepare youth for a successful transition to independent adulthood.”²¹⁸ Implementing of the Fostering Connections Act increases the chances that youth who have found placements at a later stage in life will have all the necessary tools to make the transition into adulthood.²¹⁹

However, the children who need the most help, as offered by the Fostering Connections Act, are those who have yet to find permanency in their lives.²²⁰ The Fostering Connections Act is intertwined with Title IV-

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 263–64.

²¹⁴ *See* 42 U.S.C.A. § 672 (West 2010).

²¹⁵ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 12.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 16.

E of the Social Security Act when dealing with the extension of federal funding for children left in foster care past the age of eighteen.²²¹ If states make the election to extend federally funded care to the age of nineteen, twenty, or up to the age of twenty-one, the law limits reimbursement only to those youth who are Title IV-E eligible.²²²

Eligibility for Title IV-E is determined from factors evaluated when the child first enters into the system.²²³ Eligibility is based on whether the child would have been eligible at that time for financial support from the Temporary Assistance for Needy Families (TANF) provision under Part A of the Social Security Act.²²⁴ With the limitations on who can be funded based on original entry into the foster care system, some youth might not have the ability to continue to receive federal funding for their foster care past the age of eighteen.²²⁵ This leaves a gap in coverage and a concern for states to worry about when implementing the provision.²²⁶

Even for those children who are eligible under Title IV-E, the children must be involved in the following for them to receive the additional funding:

- Completing secondary education or in a program leading to an equivalent credential[.]
- Enrolled in an institution that provides post-secondary or vocational education[.]
- Participating in a program or activity designed to promote, or remove barriers to, employment[.]
- Employed at least [eighty] hours per month[.] or
- If [the children's] medical condition[s] make[] [them] incapable of engaging in these activities, updated information on [their] condition must be maintained in [their] case plan.²²⁷

²²¹ *Id.* at 12.

²²² *Id.* at 12, 22–23.

²²³ Allison Lowery Palmer, *ACYF-CB-PI 10-11: An Overview of the Comprehensive Fostering Connections PI*, U.S. DEP'T HEALTH & HUMAN SERVS., 30 (Dec. 16, 2010), http://aaicama.org/cms/maindocs/Fostering_Connections_PI%20_12-16-10_3perpage.pdf.

²²⁴ *Id.* at 31.

²²⁵ Casey, *supra* note 154, at 18.

²²⁶ *Id.* at 18–19.

²²⁷ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 23.

In the absence of clarity from the legislation itself on what programs meet these conditions, the National Foster Care Coalition has recommended that states consider such programs as substance abuse and mental health treatment, job training, and English as a Second Language (ESL) instruction to aid children in their foster care systems.²²⁸ Each of these options is designed to help meet the individualized needs of the young adults who opt to stay in foster care beyond the age of eighteen.²²⁹ They are designed in hopes that each one will be able to live more productive lives and find permanency for when the state’s role as parent comes to an end.²³⁰

The issues related to Title IV-E eligibility and ineligibility raise the question of which children a state should extend care to and what areas of support should be offered to those children. Although forty-four states and the District of Columbia (as of June 2009) have policies of extending care past the age of eighteen, few states extend all of the possible protections offered under Title IV-E to young adults over the age of eighteen.²³¹ Additionally, states have the hard decision of determining what to do about young adults who are not eligible for Title IV-E funding.²³² States may decide not to implement legislation which provides financial support for only certain youth.²³³ As discussed later, some states and communities have model programs in place to aid all young adults in foster care beyond the age of eighteen, regardless of federal reimbursement.²³⁴ Based on evidence gathered from these model programs throughout the United States, it is safe to say that extension of care, even without funding, could save states money and make their foster care systems more beneficial to the youth who enter them.²³⁵

2. *Reality of Foster Care Youth*

When considering the implementation of the Fostering Connections Act, it is important to remember that the impact will always be felt by

²²⁸ *Id.* at 25.

²²⁹ *Id.* at 27.

²³⁰ *Id.*

²³¹ *Id.* at 26–27.

²³² *Id.* at 29.

²³³ Casey, *supra* note 154, at 18.

²³⁴ *Infra* Part IV.B.

²³⁵ MIDWEST STUDY, *supra* note 178, at 72.

children currently in foster care.²³⁶ Therefore, in dealing with implementation, each state should be cognizant of the reality of the foster care system and those who are part of that system. Further, each state should also contemplate the impact society's notion of adulthood could have on such an extension.²³⁷ The youth could benefit greatly from provisions extending the age of foster care provided by the states beyond the age of eighteen;²³⁸ however, without taking their nature and needs into consideration, the implementation will likely fall short of its intended purpose.²³⁹

There are skeptics of the benefits purported from the extension provision in the Fostering Connections Act.²⁴⁰ First, some feel as though the provision extending care to young adults past the age of eighteen becomes a disincentive for permanency.²⁴¹ By giving foster youth more time to try and make it on their own, these skeptics fear that the youth will no longer work with agencies to find permanent home situations and instead will live in the moment.²⁴² In looking at the reality of the foster care system, many of these youth have had no permanency in their lives to know what the benefit of such a situation would be.²⁴³ Also, many of these foster youth have learned to rise above and take care of their own needs and any benefits from this provision might be lost on them.²⁴⁴

Second, opponents of the extension argue that this type of provision encourages continued dependency on governmental systems.²⁴⁵ Under foster care, these children rely on the state to be a makeshift parent to them and meet much of their basic needs.²⁴⁶ The opponents' fear is that by extending the foster care beyond the age of eighteen, young adults in foster

²³⁶ See, e.g., Casey, *supra* note 154, at 1 (noting that the “twenty-six thousand young adults who ‘age out’ of foster care every year” are faced with a myriad of challenges “including low educational attainment, incarceration, homelessness, substance abuse, early pregnancy, unemployment, and poverty”).

²³⁷ *Id.* at 18–19 (describing eighteen to twenty-five year olds as entering ““emerging adulthood”).

²³⁸ MIDWEST STUDY, *supra* note 178, at 72.

²³⁹ Casey, *supra* note 154, at 19.

²⁴⁰ *Id.* at 18.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* at 19.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 18.

²⁴⁶ *Id.*

care will not learn how to be independent, adult members of society.²⁴⁷ Without being thrust into the real world at the age of eighteen, there might be a tendency for these young adults to hold on to the state instead of learning skills to be self-sufficient.²⁴⁸ These skills could otherwise benefit the youth, even once they are past the age of twenty-one.²⁴⁹ If the Fostering Connections Act did encourage dependency rather than fostering better self-sufficiency, the purported intent would be completely moot.²⁵⁰

Finally, there is a fear that foster youth who are struggling to make ends meet and support their most basic needs may opt out of permanency possibilities available to them to better meet their current needs.²⁵¹ Once again, the effort to find foster youth lasting permanent homes would be ineffective if the continuation would be taken on instead of working to find possible permanency.²⁵² Keeping in mind the reality of these youth (who have likely spent their whole lives fighting for what they have), this extension might feel like a better option than planning for the future, and it could possibly leave them without their basic needs met in the meantime.²⁵³

The above are all legitimate concerns. However, these concerns merely reiterate the areas in this nation’s foster care system which are currently failing and which will continue to fail unless change occurs. Instead of focusing on how legislation might possibly continue to leave children without permanency, it is important to closely examine the reality of the foster care system and the youth in it to ensure that implementation of a law provides a result which is as close as possible to its intended purpose.

To do this, states should first look toward the possibility of allowing re-entry of the young adults back into the states’ foster care system.²⁵⁴ According to youth who took part in the Congressional Coalition on Adoption Institute’s 2010 Foster Youth Intern Program, an institute for current and past foster youth to have their voices heard, “by the time that many foster youth reach [eighteen], they are dissatisfied with a system that

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.* at 19.

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.* at 18–19.

has failed some of them.”²⁵⁵ Many of these youth feel animosity toward the system they feel has not met their basic needs.²⁵⁶ Many also believe that their stay in the foster care system has left them no better off than the placements from which they were removed.²⁵⁷ Additionally, many of these youth have experienced foster care drift and find the milestone of reaching the age of eighteen to be a chance for them to finally have some stability (albeit limited) in their personal choice of where to call home.²⁵⁸

Beyond being in the special category of foster care youth, it should be noted that these are also young adults. Many youth around the age of eighteen years old find the freedom offered from being an adult appealing.²⁵⁹ Also, many young adults make choices based on the current day without much thought toward the future.²⁶⁰ A re-entry process would permit youth who reach the age of eighteen and who feel the need to escape to freedom only to find that they cannot do so well on their own with the possibility to once again call on the foster care system.²⁶¹ States must be aware that youth will oftentimes want to get out of foster care as soon as they can, based on both their experiences throughout the process as well as the maturity of individuals in this country at the age of eighteen.²⁶² States must then be prepared to help these youth out at a later time and get them back on track to finding permanency before the benefits of foster care expire at last.²⁶³ Every day that a child (or young adult) remains in foster care, the child’s chances of finding a permanent home setting decrease.²⁶⁴ These youth deserve the state’s best effort in getting them at least a family to call on at the end of the day.

²⁵⁵ LEAVING OUR MARK ON A NEW GENERATION: A NEW CHAPTER, CONGRESSIONAL COALITION ON ADOPTION INSTITUTE’S 2010 FOSTER YOUTH INTERN REPORT 4 (2010), available at <http://www.ccaoinstitute.org/images/stories/pdf/2010%20foster%20youth%20internship%20report%20small.pdf>.

²⁵⁶ *Id.* at 42.

²⁵⁷ *Id.* at 36.

²⁵⁸ *Id.*

²⁵⁹ See *Child Development Guide: 16–19 Years*, WASHINGTON STATE DEP’T SOC. & HEALTH SERVS. (1993), <http://www.dshs.wa.gov/ca/fosterparents/training/cdevguid/cdg15.html>.

²⁶⁰ See *id.*

²⁶¹ Casey, *supra* note 154, at 18.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ MAKE OLDER CHILD ADOPTION A REALITY, *supra* note 9, at 1.

An extension provision would allow the state’s parenting to mirror more closely the parenting offered by parents or guardians of those not in the system. It has been argued that in reality adulthood no longer starts at the age of eighteen.²⁶⁵ Some commentators even assert that the age of adulthood in society is now closer to twenty-six years of age.²⁶⁶ States must examine society’s current view of adulthood when implementing extension provisions into action.²⁶⁷ In doing so, states can ensure that society will not view the extension as aiding those who cannot help themselves, but rather as a logical extension due to current trends.²⁶⁸ States must be careful about prompting the debate on exactly when adulthood begins and what perceptions result from the choices the states make in this area.²⁶⁹

3. Court Involvement

Beyond the conception of adulthood and the reality of youth staying in foster care beyond the age of eighteen, states must also consider which courts will have jurisdiction over the young adults who remain in the system and what role the courts will play if they implement the provision.²⁷⁰ Typically, the juvenile, family, or dependency courts, as well as tribal courts, have jurisdiction over the foster youth in their designated areas.²⁷¹ The court’s role throughout the dependency process includes monitoring the case’s progress and being a part of permanency planning.²⁷² Under the Fostering Connections Act, the continuing role of the court specifically includes the maintenance of each individual’s permanency plan which Title IV requires to guarantee federal funding.²⁷³ This transition plan is a continued part of the case review process required for

²⁶⁵ Martha Irvine, *Rethinking the Age of Adulthood*, CBS NEWS (Feb. 11, 2009, 8:25 PM), <http://www.cbsnews.com/stories/2003/10/27/national/main580303.shtml>. See also Daniel J. Levison, *A Conception of Adult Development*, 41 AM. PSYCHOLOGIST 3, 5 (1986).

²⁶⁶ Irvine, *supra* note 265.

²⁶⁷ Casey, *supra* note 154, at 18–19.

²⁶⁸ *Id.* at 18.

²⁶⁹ *Id.*

²⁷⁰ Buss, *supra* note 34, at 264.

²⁷¹ Sue Badeau, *Child Welfare and the Courts*, PEW COMMISSION ON CHILD. IN FOSTER CARE, 1, [http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/BadeauPaper\[1\].pdf](http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Foster_care_reform/BadeauPaper[1].pdf) (last visited Dec. 6, 2011).

²⁷² NATIONAL FOSTER CARE COALITION, *supra* note 155, at 39.

²⁷³ 42 U.S.C.A. § 675(1)(A)–(C) (West 2009).

each youth in foster care.²⁷⁴ The transition plan is “designed to achieve placement in a safe setting that is the most family-like” and must be completed in the ninety-day period immediately preceding the point in time when the foster youth reach the age where they must leave the system (any age between eighteen and twenty-one).²⁷⁵ Part of this case review process requires the court or administrative body in charge of the case review system to consult with the youth in an age-appropriate manner about their wants, needs, and understanding of the process.²⁷⁶

Many questions flow from an extension of foster care past the legal age of majority.²⁷⁷ States must decide what entity will be responsible for permanency planning.²⁷⁸ There are many inconsistencies in Title IV-E, including whether the plans must be reviewed by a court or by a broadly defined administrative body.²⁷⁹ Title IV-E notes that approving permanency plans (including APPLA designations) must be taken up by state courts alone.²⁸⁰ These discrepancies lead to a major disconnect and confusion over what the role of the courts ought to be.²⁸¹ In her article *Juvenile Court for Young Adults? How Ongoing Court Involvement Can Enhance Foster Youths’ Chances for Success*, Emily Buss argues that there is an apparent preference for the reviews to take place in the court setting and that such a setting can offer “simplicity, consistency, and coherence” that the use of numerous tribunals would not.²⁸² She also finds that these factors apply to the argument to keep young adults’ cases in the same courts they were in prior to the youth reaching the legal age of majority.²⁸³ She argues that because judges in juvenile courts are well-positioned to communicate and deal with young adults in a meaningful manner, they

²⁷⁴ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 38–39.

²⁷⁵ *Id.* at 39–40.

²⁷⁶ *Id.* at 39.

²⁷⁷ Buss, *supra* note 34, at 264.

²⁷⁸ *Id.*

²⁷⁹ 42 U.S.C. § 675(6) (2006). “[A]dministrative review” is

a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

Id.

²⁸⁰ 42 U.S.C. § 671 (2006).

²⁸¹ Buss, *supra* note 34, at 264.

²⁸² *Id.*

²⁸³ *Id.*

should be in charge of the review process and permanency planning for young adults continuing in care.²⁸⁴ This extension will offer the young adults a chance to direct their own future along with the opportunity to gain a respectful relationship with a noble member of the legal community.²⁸⁵

Court involvement is critical in making the provision to extend care past the age of eighteen plausible and successful. Courts have the ideal connection to both the youth and other systems which enables them to connect with and actually aid the youth through the process of finding permanency.²⁸⁶ Though the actual permanency planning is not done in the court, but rather through the child welfare agency, the court could define how the planning should occur and what outcomes should result from the planning.²⁸⁷ Courts have at least three legal tools which enable them to best meet the needs of foster youth.²⁸⁸ These tools include: (1) authority over government agencies;²⁸⁹ (2) authority over child welfare agencies;²⁹⁰ and (3) subpoena power to call on necessary parties in the hopes of finding permanency for the individuals in their jurisdiction.²⁹¹ In particular, courts possess formal authority to make things happen and hold persons accountable.²⁹² Through these tools, the court system can make sure all other systems are held responsible for the child’s needs and ensure that each agency is in conformance with the laws of the jurisdiction.²⁹³

In addition, courts, and judges in particular, are best able to facilitate the youths’ participation in the decision making and permanency planning process.²⁹⁴ Title IV-E requires that courts consult with individuals in foster care in an age-appropriate manner throughout permanency planning.²⁹⁵ The Fostering Connections Act also requires this participation.²⁹⁶ The

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 49.

²⁸⁷ *Id.*

²⁸⁸ Buss, *supra* note 34, at 266.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.* at 267.

²⁹³ *Id.*

²⁹⁴ *Id.* at 268.

²⁹⁵ *Id.* at 269 (citing 42 U.S.C. § 675(5)(C)(iii) (2006)). For case interpretation see generally *In re Pedro M.*, 864 N.Y.S.2d 869, 870 (N.Y. Fam. Ct. 2008).

²⁹⁶ Buss, *supra* note 34, at 269.

court system holds a special place in these youths' lives by representing authority.²⁹⁷ Judges are best able to require the youths' presence in court and more importantly can amplify their personal voice in the matters which ultimately affect their lives.²⁹⁸ As the National Foster Care Coalition points out, "For youth in the foster care system who may not always feel that respect and concern, [personal involvement with the court] can be a great motivator for their engagement."²⁹⁹ Courts are also in the best position to enable those youth who have exited care to experiment with freedom a chance to re-enter the foster care system.³⁰⁰ Many states make use of the court system to oversee the youths' re-entry process, enabling the system to more perfectly fit the reality of foster youth.³⁰¹

The participation with the court and related agencies enables foster youth to gain developmental skills as well.³⁰² As stated earlier, there is a concern that youth in foster care depend on governmental systems even after exiting governmental care.³⁰³ Youth who have a voice and actively participate in planning for their future in the supportive environment of the courtroom learn to become responsible for themselves and their personal choices.³⁰⁴ Also, these youth learn to interact and have meaningful conversations with persons of power in their communities.³⁰⁵ As Buss states, "Courts can play an important role in these youths' lives, within the considerable limitations of their relationships of only brief and occasional contract, when they transform a boilerplate review hearing into a meaningful conversation whose central participants are the judge and the youth."³⁰⁶ This type of relationship can foster a greater respect for the system and a more positive perception of a foster youth's future.³⁰⁷

There are, however, opponents to continued juvenile court involvement to this extent.³⁰⁸ Many skeptics worry about the costs

²⁹⁷ *Id.* at 265.

²⁹⁸ *Id.* at 268.

²⁹⁹ NATIONAL FOSTER CARE COALITION, *supra* note 155, at 50.

³⁰⁰ Buss, *supra* note 34, at 269. *See also supra* Part IV.A.2.

³⁰¹ Buss, *supra* note 34, at 269.

³⁰² *Id.* at 268.

³⁰³ Casey, *supra* note 154, at 18.

³⁰⁴ Buss, *supra* note 34, at 268.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.* at 269.

included with ongoing court involvement and once again, a learned dependency that these interactions can create.³⁰⁹

However, these concerns are ill-placed. In dealing with funding for extended care, the most expensive costs come not from the court’s involvement but rather from the actual cost of extending the care to foster these individuals.³¹⁰ The Fostering Connections Act was designed specifically to combat the issues associated with these costs.³¹¹ Moreover, the design of the Fostering Connections Act itself does not create a dependency for the youth on the system.³¹² Issues of dependency come from “training and implementation” of the Fostering Connections Act and not the actual design of the Fostering Connections Act.³¹³ To combat continued dependency issues, states must be concerned both with recognizing the individual rights and needs of the young adults, and with treating them as young adults, to ensure that dependency is not nurtured.³¹⁴ As the next section describes, some communities have already extended care for foster youth past the age of eighteen and implemented programs that are useful to those youth expected to age out of the system.³¹⁵

B. Model Implementation Programs and Analysis

As stated above, a state’s manner of implementation is the key to ensuring that the Fostering Connections Act creates the best possible results.³¹⁶ Keeping in mind the concerns states should address, including the Fostering Connections Act’s interplay with existing and possible future legislation, the reality of the foster care system, the reality of the persons that are a part of that foster care system, and continued court involvement, states must develop a firm plan on what they want to accomplish. To help, states should look to model programs already in place.

Currently, there are individual judges and communities throughout the United States that have taken it upon them to improve their interactions with young adults in the foster care system.³¹⁷ In many of these communities, favorable results have resulted from implementing extended

³⁰⁹ *Id.*

³¹⁰ *Id.*

³¹¹ *Id.*

³¹² *Id.*

³¹³ Buss, *supra* note 34, at 270.

³¹⁴ *Id.*

³¹⁵ See generally, *infra* Part IV.B.

³¹⁶ Buss, *supra* note 34, at 269–70.

³¹⁷ *Id.* at 270–72.

care and court involvement even without federal funding to support them.³¹⁸ Much of the drastic changes come to play in the judicial setting because it is both the judges and the judicial system which have a great deal of authority in these matters.³¹⁹ As Emily Buss points out, the judicial process must work with the implementation of the Fostering Connections' provision to extend care beyond eighteen and to ensure that "the nature of the court hearing . . . [varies] to reflect the special legal and developmental status of foster youth who have become adults."³²⁰

1. Cook County, Illinois Benchmark Hearings

In Cook County (Chicago), Illinois, the legislature has already continued care to persons beyond the age of eighteen without federal support.³²¹ The court system has in turn created a process involving "benchmark hearings" for adults who remain in the foster care system.³²² These hearings

facilitate direct communication between judge and young person and the development of a relationship that allows the judge to serve as a valued advisor and effective source of assistance for the young person while at the same time making clear that the young person bears considerable responsibility for decision making and action.³²³

The county produces these results through the assignment of individual judges, who alone are in charge of benchmark hearings.³²⁴ This lends the process a sense of consistency and requires follow-through from everyone involved.³²⁵ Further, the procedure in these meetings is also different. Instead of a court room, these benchmark hearings are held around a table where the judge and young adult can sit side by side, discussing and putting into action a plan for the young adult's future.³²⁶ Each hearing

³¹⁸ See *supra* notes 178–86 and accompanying text (discussing the positive results achieved by extending care beyond age of eighteen).

³¹⁹ Buss, *supra* note 34, at 267.

³²⁰ *Id.* at 270.

³²¹ *Id.*

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ *Id.*

³²⁶ *Id.* at 271.

ends in an agreement, signed by both the young adult and the judge, which details with concrete words the plans and commitments made.³²⁷

Though the main actors in these meetings are the judge and the young adult, others are involved as resources for information and support.³²⁸ These additional actors include representatives from schools, the Department of Child and Family Services, and the state’s attorney’s office³²⁹ They often provide information that the judge requests or provides assistance with planning.³³⁰ Further, these meetings can help the young adult foster a connection with another adult whom the young adult can later turn to in times of need.³³¹ Additionally, the court uses a checklist to ensure that the needs of the young adult are being met as well as to gauge the self-sufficiency of the young adult throughout the process.³³² This checklist also sufficiently meets the requirements for a permanency plan under the Fostering Connections Act.³³³ This connection can promote a safety net for the youth long after the states’ care expires.³³⁴

The involvement of the foster youth, along with aid from judges, service representatives, and additional adults to turn to can all ensure that the foster youth are more likely to be productive members of society once foster care ends, with all the tools necessary to live their life independent of state services. Since the program’s beginning in 2001,³³⁵ Illinois has had a positive change in the outcomes for their foster care alumni.³³⁶ Therefore, results became more apparent and legislatures took notice.³³⁷ Much of the force behind today’s Fostering Connections Act comes from the positive results the benchmark hearings and continued care produced in Illinois.³³⁸

³²⁷ *Id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.*

³³¹ *Id.*

³³² *Id.* at 271–72.

³³³ *Id.* at 272.

³³⁴ *Id.* at 271.

³³⁵ *Id.* at 270.

³³⁶ MIDWEST STUDY, *supra* note 178, at 70.

³³⁷ *Id.* at 3–4.

³³⁸ See NATIONAL FOSTER CARE COALITION, *supra* note 155, at 26–27.

2. *Other Model Courts*

The National Council of Juvenile and Family Court Judges has identified and supported numerous model courts throughout the United States.³³⁹ These courts seek out better processes by which to assist the youth they encounter throughout the foster care system.³⁴⁰ Like the benchmark hearings in Cook County, Illinois, courts in New York, Indianapolis, Newark, New Orleans, and Washington, D.C. have all set up special hearings designed to assist foster youth in a successful passage from care to the “real world.”³⁴¹ As Buss points out, “These specialized courts sometimes develop through a concerted, system-wide effort, and sometimes reflect the particular commitment of an individual judge.”³⁴² An example of one individual’s effort to help youth through the court system is found in Judge Juliet McKenna’s courtroom in Washington, D.C.³⁴³ Before an assignment shift, Judge McKenna established her own form of dealing with youth, including hearings designed toward conversing with the youth about their goals and possible ways of accomplishing them.³⁴⁴ Judge McKenna set aside certain days of each week to hold these hearings which helped increase attendance rates for foster youth who previously had poor attendance.³⁴⁵

Similarly, Judge Glenda Hatchett changed the process of dealing with the hearings of foster care youth in the Atlanta jurisdiction where she presides.³⁴⁶ As the appointed chief presiding judge of the Fulton County, Georgia Juvenile Court, Judge Hatchett “wanted to get a hold of the children who came through her court during their early teens, turn their lives around and hopefully [she] wouldn’t see them in their adult years in the criminal system.”³⁴⁷ For that reason, Judge Hatchett implemented the Court Appointed Special Advocates organization in her court.³⁴⁸ The organization works to train lay persons over the age of twenty-one to help

³³⁹ Buss, *supra* note 34, at 272.

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Id.*

³⁴⁴ *Id.*

³⁴⁵ *Id.*

³⁴⁶ Kathy Chaney, *Judge Hatchett: More Hands on Deck Needed for Foster Children*, CHI. DEFENDER (June 9, 2011), <http://www.chicagodefender.com/article-7954-judge-hatchett-more-hands-on-deck-needed-for-foster-children.html>.

³⁴⁷ *Id.*

³⁴⁸ *Id.*

work with foster care children in the system.³⁴⁹ The volunteers “spend time with the children, attend their court appointments and maintain contact with attorneys representing the children’s interests, among other things.”³⁵⁰ Jim Clune, the marketing and media specialist for CASA, said that CASA’s involvement in the courtroom and beyond ensures that children spend less time in long-term foster care.³⁵¹ Further, CASA provides these services to ensure that each child, regardless of age, is getting what the child needs and deserves from the foster care system.³⁵² Beyond being in the position of an attorney or judge, organizations like CASA demonstrate that all members of society must take an active role in ensuring a better life for those who are a part of the foster care system. Under the Fostering Connections Act’s extension, youth would be offered a bit more time during which these individuals and judges could aid them by using creative methods to work toward finding permanency.

3. *California Permanency for Youth Project*

With such a large population of foster care youth residing in California, the problem of youth aging out of the system without the necessary tools to succeed is great.³⁵³ In 2003, the Public Health Institute in California started the California Permanency for Youth Project (CPYP) due in large part to a generous grant by the Stuart Foundation.³⁵⁴ The program was designed to create awareness of the urgency for permanency in older children and youth in the California foster care system.³⁵⁵ Further, the program was put in place in the hopes that California’s local county child welfare agencies might be able to implement more effective practices to ensure permanency when dealing with foster youth.³⁵⁶

Under this umbrella program, California developed the Emancipated Youth Connections Project (EYCP) in 2005 to design a program “to seek and sustain permanent lifelong connections for older youth who have already emancipated from foster care without a permanent connection to a caring adult.”³⁵⁷ The California program is mirrored after model programs

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Barriers Facing Foster Care Youth*, *supra* note 17, at 1.

³⁵⁴ *CPYP*, *supra* note 32, at 1.

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *Id.* at 3.

throughout the nation which were designed to ensure permanence for foster youth.³⁵⁸ The program specifically altered the models currently used in other jurisdictions to fit the development levels of the young adult population in foster care.³⁵⁹

The EYCP project was successful in connecting foster youth who had aged out of the system with family and non-related social networks.³⁶⁰ The study further found that “[h]ad these . . . connections been formed” earlier, “[s]ome participants would likely have left the system to a permanent outcome (reunification, adoption, guardianship) rather than exiting care at age eighteen [and] left to fend for themselves.”³⁶¹ Though EYCP and the larger programs established through CPYP have been successful, they fall short of filling the gap of children leaving service without their needs being met.³⁶² The Fostering Connections Act finally provides states and young adults alike more time to enhance their chances of finding permanency and to rule out the need for additional state sponsored services once a young adult has left foster care.

V. RECOMMENDATIONS FROM LESSONS REGARDING EXISTING MODELS

The Juvenile Courts and Child Welfare Work Group under the California Permanency for Youth Project (CYAP) produced *Recommendations for Effective Partnerships on Youth Permanence Between the Juvenile Courts and Child Welfare* which sets out aspects of care jurisdictions should consider when implementing model programs.³⁶³ The recommendations come from research California did before, during, and after implementing its own model programs under the CPYP and specific grants.³⁶⁴

States should consider these recommendations when planning a model program for implementing the extension provision in the Fostering

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ CHERYL J. JACOBSON, EMANCIPATED YOUTH CONNECTIONS PROJECT FINAL REPORT/TOOLKIT 5 (2008), available at http://www.phi.org/pdf-library/CPYP_toolkit.pdf.

³⁶¹ *Id.* at 21.

³⁶² *Id.*

³⁶³ See generally MARDITH J. LOUISELL, CALIFORNIA PERMANENCY FOR YOUTH PROJECT, RECOMMENDATIONS FOR EFFECTIVE PARTNERSHIPS ON YOUTH PERMANENCE BETWEEN THE JUVENILE COURTS AND CHILD WELFARE (2006).

³⁶⁴ *Id.* at 4.

Connections Act.³⁶⁵ These recommendations are also important for states to look at when wishing to improve their child welfare system in general.³⁶⁶ The following sections detail these recommendations.

A. Implementing a Structure for Collaboration

States must create a structure for collaboration between the courts, agencies, children, and other actors.³⁶⁷ Presumably every member of the child welfare system has the best interests of the child, children, or family in mind.³⁶⁸ However, each member of the system is working with different tools on different issues within a child or family’s life.³⁶⁹ The variety and large number of people involved in the process can lead to great discrepancies in understanding.³⁷⁰ This variance will inevitably affect the outcomes for those whose needs are involved.³⁷¹

In making sure that all involved act as a more cohesive unit, states should put into service a process by which the actors are introduced to each other and are given a chance to learn more about the process according to the viewpoint of other actors.³⁷² With each part of the system more aware of the entire process, a more cohesive approach to dealing with common issues can be achieved.³⁷³

As discussed, court involvement in the process is beneficial to both the system as well as the individual foster youth.³⁷⁴ However, courts in particular must make an effort to understand the roles of the agencies and youth in these situations and respect all the tools used by those agencies and their social workers in particular.³⁷⁵ An understanding of the difficulties and limitations of each person’s position will foster a more respectful child welfare work environment.³⁷⁶ This respect and

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.* at 5.

³⁶⁸ *Id.*

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ *Id.*

³⁷² *Id.*

³⁷³ *Id.*

³⁷⁴ *Supra* Part IV.A.3.

³⁷⁵ LOUISELL, *supra* note 363, at 4.

³⁷⁶ *Id.* at 5.

understanding will create a beneficial environment where the youth's needs may be met.³⁷⁷

Also as discussed, beneficial court involvement and a better foster care experience comes with direct youth involvement.³⁷⁸ It is important to get each young adult involved to best meet the young adult's needs.³⁷⁹ The child is the expert when it comes to the child's life, and these types of choices allow the expert to be a part of the process, ensuring that the system is beneficial and not merely existent.³⁸⁰ Further, from an empowerment standpoint, involvement of the foster youth in their own lives gives them responsibility and a stake in how their lives will turn out.³⁸¹ This is especially important once the foster youth are over the age of eighteen.³⁸² When judges sat down with the young adults, worked through the goals and needs with the young adults individually, and had mutual respect, the outcomes became more realistic and permanency became more possible.³⁸³ In the end, the youth learn to take responsibility for their lives and inevitably rely less on governmental systems beyond the foster care system.³⁸⁴ By ensuring that both the key actors whose professions are in child welfare, as well as the youth whose lives depend on the system are involved, the system can reach better, faster results.³⁸⁵ A more cohesive unit can offer the ultimate result for each youth; permanency after foster care ends.³⁸⁶

B. Focusing on Permanency

States must also have a permanency focus to all their contacts with youth in the foster care system.³⁸⁷ Though this is often the stated goal behind the actions of the child welfare system, permanency is frequently trumped by the greater perceived need of independence, especially when dealing with older youth.³⁸⁸ As shown through the California EYCP, it is

³⁷⁷ *Id.*

³⁷⁸ Buss, *supra* note 34, at 268.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.* at 268.

³⁸² *Id.*

³⁸³ *Id.* at 270–71.

³⁸⁴ *Id.* at 269.

³⁸⁵ LOUISELL, *supra* note 363, at 5.

³⁸⁶ *Id.*

³⁸⁷ *Id.* at 6.

³⁸⁸ *See id.*

still possible to find permanent support systems even once youth are emancipated from the system.³⁸⁹ There would likely be an increase in the opportunities for the youth if these support systems were a goal throughout the process while the youth were in the system.³⁹⁰ Further, youth would likely have more positive results once they were out of the system because they would have someone besides the government or something besides illegal activities in which to turn.³⁹¹

To make this goal possible, states would likely need to revisit permanency plans which include Long Term Foster Care (LTFC) and APPLA.³⁹² These plans do not promote permanency, but rather seem to promote the state playing the parental role only as long as is necessary or until the child reaches an age where it is assumed that the child can find a way to obtain independence on their own.³⁹³ Further, the extension provision in the Fostering Connections Act would allow a state more time to promote permanency as well as independence in older youth’s lives.³⁹⁴ This increase in time reduces the rush to give the youth only what the state can, and instead allows the state to give each child the best possible result.³⁹⁵

The recommendation founded through research by the Juvenile Courts and Child Welfare Work Group in California suggests that there should be an agreement between courts, child welfare workers, and other stakeholders who have a role in the child or young adult’s life.³⁹⁶ This agreement should be made using set criteria for selection of a case goal that best fits the need of the young adult, benchmarks for achievement while the young adult is in the system, and established roles of those involved in the case, including the youth.³⁹⁷ These steps take an active approach toward creating permanency for the youth. After all, once children are removed from their past situations, the options should be to create a better outlook for them. This author argues that the only way to do so is by promoting a permanency that will last long after any age in which they remain in the state’s care. By promoting permanency from the onset,

³⁸⁹ JACOBSON, *supra* note 360, at 5.

³⁹⁰ *Id.* at 21.

³⁹¹ *Id.*

³⁹² LOUISELL, *supra* note 363, at 6.

³⁹³ *Id.*

³⁹⁴ 42 U.S.C.A. § 675(8)(B) (West 2010).

³⁹⁵ LOUISELL, *supra* note 363, at 6.

³⁹⁶ *Id.*

³⁹⁷ *Id.*

states will also likely be able to save the costs associated with foster youth who remain dependent on state services.³⁹⁸ It is well known that the state is not a proper parent and cannot be with the resources at its disposal.³⁹⁹ Allocating funds to permanency and setting the goal that aging out and emancipation are not options placing the resources of the state where they can truly make a difference in each youth's life.⁴⁰⁰

VI. CONCLUSION

It is important to remember that the issues of child welfare reach beyond a system, agencies, and the courts; these issues reach to the youth of the nation. States should consider offering the best parenting they can to all the youth whose histories include foster care. Such superior care includes a chance at permanency and a prolonged opportunity to gain wisdom on how to become independent members of society.⁴⁰¹ No state has the ability to parent children as individual caretakers can, but with the Fostering Connections Act, specifically the extension provision providing federal foster care funding past the age of eighteen, states can give the children in their care the asset of time.⁴⁰²

This article urges states to consider implementing this monumental legislation. In doing so, states must be aware of implementation issues such as the Fostering Connections Act's relationship with existing legislation,⁴⁰³ the reality of the foster care system and the people involved in it,⁴⁰⁴ and the options and implications of continued court involvement.⁴⁰⁵ Thanks to assertive jurisdictions throughout the United States, states are not without some indication of how model programs extending care have fared or the processes which have improved the outlook for many older foster youth.⁴⁰⁶ This article also urges states to contemplate continuing problems in the area of child welfare as a whole, including collaboration

³⁹⁸ See generally George B. Curtis, *Checked Career of Parens Patriae: The State as Parent or Tyrant?*, 25 DEPAUL L. REV. 895 (1975).

³⁹⁹ LOUISELL, *supra* note 363, at 6–7.

⁴⁰⁰ *Id.*

⁴⁰¹ See generally Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008).

⁴⁰² *Id.*

⁴⁰³ *Supra* Part IV.A.1.

⁴⁰⁴ *Supra* Part IV.A.2.

⁴⁰⁵ *Supra* Part IV.A.3.

⁴⁰⁶ *Supra* Part IV.B.

within the system’s actors⁴⁰⁷ and a shared focus on permanency.⁴⁰⁸ With the opportunities provided under the Fostering Connections Act, one foster youth who ends up alone on the streets, not knowing where to turn to for help, is one child too many.

⁴⁰⁷ *Supra* Part V.A.

⁴⁰⁸ *Supra* Part V.B.