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. Nearly 450,000 of the nation’s children and youth are cared for in foster care, defined as “24-hour substitute care for children away from their parents or guardians.” A majority of these youth are placed in state care due to neglect and abuse, removing them from everything they have ever known. Often their family history, along with this type of removal, traumatizes them in a stage of life when they are most vulnerable.

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. The data indicates that the average age of youth entering the system is 7.9 years. Adversely, the average age of a child adopted out of the foster care...
system is 6.3 years. Studies have found that once children have reached the age of nine, their chances of being adopted are greatly diminished. About 50% of youth in foster care are between the ages of nine and twenty, but over 70% of the children adopted are under the age of nine. 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.

Though the preferred goal for these children is permanency with caring parental figures, 6% of foster care youth have the case goal of emancipation and 8% have the case goal of long term foster care. 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.

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. Studies have shown that the lack of caregiver representation adversely affects the choices made by emancipated youth. 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.
10 AFCARS Report, supra note 1, at 1.
11 Id. at 7.
12 MAKE OLDER CHILD ADOPTION A REALITY, supra note 9, at 3.
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. Each state and area has special concerns which dictate how the laws in the area develop over time. For instance, California’s large population lends itself to a very different program than other smaller states within the United States. California has undertaken many model programs leading the way to better procedures and policies in the area of child welfare. States such as Illinois, specifically Cook County (Chicago), have made strides for older youth in foster care as well. 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. 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. 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. 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

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31 Id. at 542.
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.
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. As the nation’s notions of child welfare

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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.\textsuperscript{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.\textsuperscript{40}

\textit{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.\textsuperscript{41} Protection for children was drastically limited from the founding of this nation until 1875.\textsuperscript{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.”\textsuperscript{43} Laws that were enacted to protect children often went unprosecuted, and parents were rarely criminally charged for the crimes committed against their children.\textsuperscript{44} \textit{Fletcher v. People}\textsuperscript{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.\textsuperscript{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.”\textsuperscript{47} Also during this period, California’s first rape conviction went to the state’s supreme court.\textsuperscript{48} The aftermath was an increase in the number of convictions and appeals of rape cases in California, especially those dealing with youth.\textsuperscript{49} These cases showed a slight shift in thinking on the treatment of children in the new world.\textsuperscript{50} However, outside these few remote cases,\textsuperscript{51} the public thought at

\begin{thebibliography}{99}
\bibitem{40} \textit{Id.} at 449.
\bibitem{41} \textit{Id.}
\bibitem{42} \textit{Id.}
\bibitem{43} \textit{Id.}
\bibitem{44} \textit{Id.} at 449–51.
\bibitem{45} 52 Ill. 395 (Ill. 1869). \textit{See also} Myers, supra note 39, at 450.
\bibitem{46} \textit{Fletcher}, 52 Ill. at 396–97. \textit{See also} Myers, supra note 39, at 450.
\bibitem{47} \textit{Fletcher}, 52 Ill. at 397.
\bibitem{48} \textit{People v. Benson}, 6 Cal. 221 (Cal. 1856). \textit{See also} Myers, supra note 39, at 450.
\bibitem{49} Myers, supra note 39, at 450.
\bibitem{50} \textit{See id.} at 450–51.
\end{thebibliography}
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.\textsuperscript{52}

Interventions by child protection agencies and nonprofit societies were infrequent at this point in history;\textsuperscript{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.\textsuperscript{54} Even beyond this expressly given judicial authority, many judges felt the law inherently gave them the authority to stop child abuse.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{58} By stopping poverty and taking children from the poor, many believed they could stop the root of most crime.\textsuperscript{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.\textsuperscript{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.\textsuperscript{61} Yet, the idea for

\textsuperscript{51} See id. at 450 (citing to Fletcher and Benson).
\textsuperscript{52} See id.
\textsuperscript{53} Id. at 449, 451.
\textsuperscript{54} Id. at 450.
\textsuperscript{55} Id. at 450–51.
\textsuperscript{56} Mary Renck Jalongo, \textit{The Story of Mary Ellen Wilson: Tracing the Origins of Protection in America}, 34 EARLY CHILDHOOD EDUC. J. 1, 1 (2006).
\textsuperscript{57} Id.
\textsuperscript{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].
\textsuperscript{59} Id.
\textsuperscript{60} Id. at 179.
\textsuperscript{61} Jalongo, \textit{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

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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. 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. 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.

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. Mary Ellen grew up there and later married and had children of her own. 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.” 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. The Society was the first in the world dedicated solely to the area of child protection. By the 1920s, word of the Society had spread around the nation and inspired the beginning of approximately 300 additional nongovernmental societies. 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. 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. In this era, as in previous eras, most of the help children in need received

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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.\footnote{Id.}

With the Great Depression of the 1930s came a push to involve the federal government in the area of child protection more heavily.\footnote{Id. at 453.} Many of the nongovernmental societies witnessed their demises during these rough economic times.\footnote{Id.} 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.\footnote{Id.} 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.\footnote{Herman, \textit{supra} note 38.} 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.\footnote{Myers, \textit{supra} note 39, at 453.} 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.”\footnote{Id.} 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.\footnote{Brenda Gordon, \textit{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.” \textit{Id.}}

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.\footnote{Myers, \textit{supra} note 39, at 452.} The first juvenile court was established in Chicago in 1899; the idea of having such a specialized court spread soon after.\footnote{Id.} In fact, by 1919 all but
three states had juvenile courts systems in place. The remaining three states soon followed suit, setting up their own courts specifically for children and issues dealing with children.

Juvenile courts have become an integral part of today’s child protection system. 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. 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. In Ex parte Crouse, a Pennsylvanian court “acknowledged and sanctioned the state’s authority to intervene into the family as ultimate parent.” This case and its use of the doctrine were soon adopted in other cases throughout the United States. In 1944, the Supreme Court of the United States confirmed the parens patriae authority of the state in Prince v. Massachusetts. 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.

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

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. The onset of mass media and advancements in scientific research fostered most of the nation’s attention. 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. 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. 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. Physicians soon caught on to the notions advanced by Caffey’s article. In 1962, pediatrician Henry Kempe and his colleagues published The Battered Child Syndrome in the Journal of the American Medical Association. The article laid the foundation for a later medical and psychiatric model which demonstrates the causes of such a disorder. Because of this article, child abuse became its own academic subject.

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. The media tended to report only the most horrific stories of abuse. 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. This symposium resulted in the production of a model child abuse reporting law. Within five years of the symposium, forty-four states had

109 Id. at 454.
110 Id. at 455.
111 Id. at 454.
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. These laws
generally required physicians to report any cases where they had
reasonable suspicion of abuse. 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.

The research by Caffey, Kempe, and others influenced more than just
the mandatory reporting laws being introduced within the states. The
research eventually found its way into the courtroom. In the 1971 case
of People v. Jackson, the California Court of Appeals ruled to recognize
Battered Child Syndrome as both “a medical diagnosis and a legal
syndrome.” 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.” Today, Battered Child
Syndrome is recognized by all courts as a legal syndrome. 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.

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

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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). 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. 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.

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. Two years later, Congress passed the Adoption Assistance and Child Welfare Act (AACWA). This Act provided federal funding for foster care. It was amended in 1983 to include “reasonable efforts” as the standard for reunifying children once they were removed from their homes. The motivation behind the AACWA came from concerns over children lingering in the foster care system or experiencing foster care drift. The AACWA required states to create permanency plans for all children who were brought into the foster care system. 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.

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135 Id. at 457.
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.
143 Id.
144 Id.
Congress was also concerned with a disproportionate number of minority children lingering in the foster care system. During this era children of color (specifically African-American children) were overrepresented in foster care and remained in care longer than their white counterparts. In response to this concern, Congress passed the Multiethnic Placement Plan (MEPA) in 1994. MEPA was designed to prohibit “child welfare agencies from delaying or denying adoptive placements because of race.” It did, however, still permit race to be a factor at that time. 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. The 1996 amendment, and MEPA as it stands today, eliminated race as a factor, making race irrelevant in placing children. Sadly, disparities in race and the lingering of minorities in the foster care system is a major concern even to this day.

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.

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

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.
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. 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. 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.” The increase in assistance is to be accomplished by a phasing-in program. As of October 1, 2017, all eligible youth with special needs will be covered.

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.

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. 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.

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167 Id. at 3975.
169 NATIONAL FOSTER CARE COALITION, supra note 155, at 14.
170 Id.
171 Id.
172 Id.
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.


\(^{179}\) 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).

people remained in care beyond their 18th birthday was associated with an increase in earnings of between $470 and $924." 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. This increase amounts to an approximately $92,000 increase in total earnings over an individual foster youth’s work life. An increase this great can drastically change the outcome foster alumni face well past their time in the foster care system.

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, 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. 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. 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. Further, these evaluations describe the benefits to be derived from an extension beyond those of simply finding permanency. 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.”).
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. 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; the reality of the foster care system and the youth it encompasses; and the role courts should play in the young adult’s life if care is extended past the age of eighteen.

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. 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. 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. 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).

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), states and tribes receive grants to aid in fulfilling plans designed to support current and former foster care youth. 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.” 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.” 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. 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. 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.

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. 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.” 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. Each plan must address a goal for the future of the child and can include information on other subjects pertinent

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202 Id.
203 Id.
204 Casey, supra note 154, at 18.
205 Id.
206 Id.
208 Id.
209 Buss, supra note 34, at 263.
to the child’s wellbeing. 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. 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. 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. 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.

The Fostering Connections Act extends programs which were designed in the original Chafee Program. 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. The Fostering Connections Act further extends the Independent Living Services and Programs to these same young adults. 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.” 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.

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. The Fostering Connections Act is intertwined with Title IV-
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.\footnote{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.\footnote{222}

Eligibility for Title IV-E is determined from factors evaluated when
the child first enters into the system.\footnote{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.\footnote{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.\footnote{225} This leaves a gap in coverage and a concern for
states to worry about when implementing the provision.\footnote{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[.]
- 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.\footnote{227}
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. 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. 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.

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. Additionally, states have the hard decision of determining what to do about young adults who are not eligible for Title IV-E funding. States may decide not to implement legislation which provides financial support for only certain youth. 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. 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.

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
children currently in foster care. 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. The youth could benefit greatly from provisions extending the age of foster care provided by the states beyond the age of eighteen; however, without taking their nature and needs into consideration, the implementation will likely fall short of its intended purpose.

There are skeptics of the benefits purported from the extension provision in the Fostering Connections Act. First, some feel as though the provision extending care to young adults past the age of eighteen becomes a disincentive for permanency. 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. 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. 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.

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

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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.\textsuperscript{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.\textsuperscript{248} These skills could otherwise benefit the youth, even once they are past the age of twenty-one.\textsuperscript{249} If the Fostering Connections Act did encourage dependency rather than fostering better self-sufficiency, the purported intent would be completely moot.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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

\textsuperscript{247} Id.
\textsuperscript{248} Id.
\textsuperscript{249} Id.
\textsuperscript{250} Id.
\textsuperscript{251} Id. at 19.
\textsuperscript{252} Id.
\textsuperscript{253} Id.
\textsuperscript{254} Id. at 18–19.
has failed some of them.” Many of these youth feel animosity toward the system they feel has not met their basic needs. 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. 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.

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. Also, many young adults make choices based on the current day without much thought toward the future. 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. 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. 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. Every day that a child (or young adult) remains in foster care, the child’s chances of finding a permanent home setting decrease. These youth deserve the state’s best effort in getting them at least a family to call on at the end of the day.

256 Id. at 42.
257 Id. at 36.
258 Id.
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. Some commentators even assert that the age of adulthood in society is now closer to twenty-six years of age. States must examine society’s current view of adulthood when implementing extension provisions into action. 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. 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.

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. Typically, the juvenile, family, or dependency courts, as well as tribal courts, have jurisdiction over the foster youth in their designated areas. The court’s role throughout the dependency process includes monitoring the case’s progress and being a part of permanency planning. 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. This transition plan is a continued part of the case review process required for

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.
272 NATIONAL FOSTER CARE COALITION, supra note 155, at 39.
each youth in foster care. 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). 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.

Many questions flow from an extension of foster care past the legal age of majority. States must decide what entity will be responsible for permanency planning. 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. Title IV-E notes that approving permanency plans (including APPLA designations) must be taken up by state courts alone. These discrepancies lead to a major disconnect and confusion over what the role of the courts ought to be. 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. 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. She argues that because judges in juvenile courts are well-positioned to communicate and deal with young adults in a meaningful manner, they

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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.
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. 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.

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. 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. Courts have at least three legal tools which enable them to best meet the needs of foster youth. These tools include: (1) authority over government agencies; (2) authority over child welfare agencies; and (3) subpoena power to call on necessary parties in the hopes of finding permanency for the individuals in their jurisdiction. In particular, courts possess formal authority to make things happen and hold persons accountable. 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.

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

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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.
296 Buss, supra note 34, at 269.
court system holds a special place in these youths’ lives by representing authority. 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. 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.” 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. 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.

The participation with the court and related agencies enables foster youth to gain developmental skills as well. As stated earlier, there is a concern that youth in foster care depend on governmental systems even after exiting governmental care. 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. Also, these youth learn to interact and have meaningful conversations with persons of power in their communities. 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.” This type of relationship can foster a greater respect for the system and a more positive perception of a foster youth’s future.

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

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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.\textsuperscript{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.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{321} The court system has in turn created a process involving “benchmark hearings” for adults who remain in the foster care system.\textsuperscript{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.\textsuperscript{323}

The county produces these results through the assignment of individual judges, who alone are in charge of benchmark hearings.\textsuperscript{324} This lends the process a sense of consistency and requires follow-through from everyone involved.\textsuperscript{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.\textsuperscript{326} Each hearing

\textsuperscript{318} See supra notes 178–86 and accompanying text (discussing the positive results achieved by extending care beyond age of eighteen).
\textsuperscript{319} Buss, supra note 34, at 267.
\textsuperscript{320} Id. at 270.
\textsuperscript{321} Id.
\textsuperscript{322} Id.
\textsuperscript{323} Id.
\textsuperscript{324} Id.
\textsuperscript{325} Id.
\textsuperscript{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.\footnote{327 Id.}

Though the main actors in these meetings are the judge and the young adult, others are involved as resources for information and support.\footnote{328 Id.} These additional actors include representatives from schools, the Department of Child and Family Services, and the state’s attorney’s office\footnote{329 Id.} They often provide information that the judge requests or provides assistance with planning.\footnote{330 Id.} 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.\footnote{331 Id.} 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.\footnote{332 Id.} This checklist also sufficiently meets the requirements for a permanency plan under the Fostering Connections Act.\footnote{333 Id.} This connection can promote a safety net for the youth long after the states’ care expires.\footnote{334 Id.}

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,\footnote{335 Id. at 270.} Illinois has had a positive change in the outcomes for their foster care alumni.\footnote{336 MIDWEST STUDY, supra note 178, at 70.} Therefore, results became more apparent and legislatures took notice.\footnote{337 Id. at 3–4.} Much of the force behind today’s Fostering Connections Act comes from the positive results the benchmark hearings and continued care produced in Illinois.\footnote{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.
347 Id.
348 Id.
work with foster care children in the system. The volunteers “spend time with the children, attend their court appointments and maintain contact with attorneys representing the children’s interests, among other things.” 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. 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. 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. 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. The program was designed to create awareness of the urgency for permanency in older children and youth in the California foster care system. 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.

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.” The California program is mirrored after model programs.

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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. The program specifically altered the models currently used in other jurisdictions to fit the development levels of the young adult population in foster care.

The EYCP project was successful in connecting foster youth who had aged out of the system with family and non-related social networks. 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.” 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. 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. The recommendations come from research California did before, during, and after implementing its own model programs under the CPYP and specific grants.

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

358 Id.
359 Id.
361 Id. at 21.
362 Id.
364 Id. at 4.
Connections Act. These recommendations are also important for states to look at when wishing to improve their child welfare system in general. 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. Presumably every member of the child welfare system has the best interests of the child, children, or family in mind. However, each member of the system is working with different tools on different issues within a child or family’s life. The variety and large number of people involved in the process can lead to great discrepancies in understanding. This variance will inevitably affect the outcomes for those whose needs are involved.

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. With each part of the system more aware of the entire process, a more cohesive approach to dealing with common issues can be achieved.

As discussed, court involvement in the process is beneficial to both the system as well as the individual foster youth. 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. An understanding of the difficulties and limitations of each person’s position will foster a more respectful child welfare work environment. 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
still possible to find permanent support systems even once youth are emancipated from the system.\textsuperscript{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.\textsuperscript{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.\textsuperscript{391}

To make this goal possible, states would likely need to revisit permanency plans which include Long Term Foster Care (LTFC) and APPLA.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,

\begin{itemize}
    \item \textsuperscript{389} JACOBSON, supra note 360, at 5.
    \item \textsuperscript{390} Id. at 21.
    \item \textsuperscript{391} Id.
    \item \textsuperscript{392} LOUISELL, supra note 363, at 6.
    \item \textsuperscript{393} Id.
    \item \textsuperscript{394} 42 U.S.C.A. § 675(8)(B) (West 2010).
    \item \textsuperscript{395} LOUISELL, supra note 363, at 6.
    \item \textsuperscript{396} Id.
    \item \textsuperscript{397} Id.
\end{itemize}
states will also likely be able to save the costs associated with foster youth who remain dependent on state services.\textsuperscript{398} It is well known that the state is not a proper parent and cannot be with the resources at its disposal.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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,\textsuperscript{403} the reality of the foster care system and the people involved in it,\textsuperscript{404} and the options and implications of continued court involvement.\textsuperscript{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.\textsuperscript{406} This article also urges states to contemplate continuing problems in the area of child welfare as a whole, including collaboration

\textsuperscript{399} LOUISELL, \textit{supra} note 363, at 6–7.
\textsuperscript{400} Id.
\textsuperscript{402} Id.
\textsuperscript{403} \textit{Supra} Part IV.A.1.
\textsuperscript{404} \textit{Supra} Part IV.A.2.
\textsuperscript{405} \textit{Supra} Part IV.A.3.
\textsuperscript{406} \textit{Supra} Part IV.B.
within the system’s actors\textsuperscript{407} and a shared focus on permanency.\textsuperscript{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.

\textsuperscript{407} Supra Part V.A.
\textsuperscript{408} Supra Part V.B.