
**FOSTER CARE REENTRY LAWS:
MENDING THE SAFETY NET FOR EMERGING
ADULTS IN THE TRANSITION TO INDEPENDENCE**

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I. INTRODUCTION

While state child welfare agencies are notoriously bad parents, for some youth they remain the best available option. This is particularly true for older youth who have no other viable choice for permanency, and who must therefore aim toward achieving independence as graduates from the foster care system. It is now well established among social scientists that young adults who emancipate from foster care, when compared to their peers, are far more likely to suffer from homelessness, unemployment, unplanned pregnancy, lack of health care, and incarceration, among other problems.¹ In recognition of the challenges facing graduates from foster care in the transition to independence, over the past several decades, more and more states have extended the availability of support for foster youth who fail to achieve other forms of permanence beyond the age of legal majority.² The federal government has also significantly enhanced the level of financial support for programs aiding foster youth in the transition to adulthood.³ The hope behind such programs is that with the benefit of additional time in care, youth will be better equipped to navigate this transition successfully.

Based on the prevalence of adverse outcomes for foster youth exiting care to independence, many advocates for older foster youth typically focus on trying to keep their clients in the shelter of state care for as long as possible. Frequently, however, the goal of extending time in care for older youth is impacted by the opposition of the youth themselves. Many of the youth raised in state care are so frustrated and scarred by their experiences that all they can think about is being “freed” from the child welfare system and living on their own. This desire often leads older wards who believe themselves ready for independence not only to resist cooperating with placements or recommended services, but also to overestimate their readiness for independence. Many wards lack a realistic understanding of the obstacles they will face upon achieving independence. Older wards may also be handicapped both by limits in their

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1. See *infra* Part II.B.

2. Most states now provide some level of support for foster youth at least through the age of twenty-one. See *infra* Part II.C for a discussion of state laws regarding the extension of support for foster youth beyond the age of eighteen.

3. See *infra* notes 59, 107–10, and accompanying text.

preparation for independence and by the shortsightedness characteristic of late adolescence. Further complicating the challenges of this transition, caseworkers responsible for overseeing services for state wards, and for making recommendations to juvenile judges about extended wardship, too often respond to uncooperative wards by urging judges to dismiss them prematurely from state care as soon as they reach legal majority. In many jurisdictions, youth are thus routinely discharged from care without regard for the extent of their preparedness for independence, and notwithstanding their continuing eligibility for state-supported wardship and services.

The case of Michelle P. illustrates many of these challenges.⁴ Michelle was first taken into state care in California as a twelve-year-old victim of sex abuse. Her time in foster care was marked by a history of abuse, suicide attempts, and a series of arrests for charges relating to prostitution. In 2013, at the age of seventeen, she was transported by traffickers to the state of Florida; soon after her arrival there, a police raid prompted child protection authorities to take her into protective care. Following a shelter care hearing at which she was committed temporarily to the Florida Department of Children and Families (DCF), authorities there discovered her outstanding California warrants and transferred her into detention to await extradition. Michelle told her advocates that she was the subject of a “green light”—meaning that traffickers had called for her to be killed—and that she thus feared for her life if she were forced to return to California. After her lawyer successfully secured California’s agreement to quash their warrants and rescind their request for extradition, Michelle was released into the care of Florida’s DCF, which moved her into a locked treatment program. While there, she received psychiatric support, schooling, and other services aimed at treating her history as a victim of child trafficking. Shortly before her eighteenth birthday, with her advocates having successfully petitioned for an extension of her foster care, she was released from the treatment program and placed in a foster home with several other teen wards.

Before being placed in the treatment facility, Michelle had moved from chaos to chaos, interrupted only by her six-month stay in this program. She had virtually no opportunity to develop the skills that would prepare her for a successful transition to independence. In her foster home, she welcomed her newfound freedom and chafed at the structure and rules imposed on her by her foster parent. She struggled to understand why she was given her own living space and responsibility for managing her own affairs, but at the same time did not have permission to bring friends into what she now saw as her own home. According to her lawyer, Michelle was seriously handicapped by the absence of a mentor, surrounded instead by officials who insisted that as an adult she needed to be responsible for her future but failed to give her any meaningful support or guidance about how to do this. The newness of Florida’s extended foster care

4. Michelle’s story is summarized here, with her permission, based on accounts given by her and by the lawyer who represented her in proceedings in a Florida child protection court.

program—adopted on January 1, 2014⁵—just made matters worse, as the responsible agency (according to Michelle’s counsel) lacked the organization, structure, and protocols needed to ensure that it could effectively deliver services targeted at foster youth aiming to overcome serious deficits in the development of independent living skills.

When Michelle turned eighteen, her caseworker informed her that as a condition of her continuing eligibility for foster care, she would need to be either in school or regularly employed in accordance with Florida’s new law. Left to enroll herself in school, she missed deadlines, prompting DCF to warn her that if she did not comply with its program mandates she would be discharged from care. Michelle responded by saying she would rather be “on her own,” with no real concept of what this meant. Soon after her eighteenth birthday Michelle’s caseworker closed her case due to a lack of compliance and forced her out of her foster home, after a period of approximately two months. With no education, no means to support herself, and nowhere to go, Michelle quickly took up with a young man, and within barely a month she became pregnant. One evening, following a beating by her paramour, she found herself homeless, alone, and terrified about her future, prompting her to call her attorney and ask if there was any way she could return to foster care.

Michelle was fortunate that as a component of the law establishing an extended foster care program, the Florida legislature included a provision permitting individuals in Michelle’s circumstances to seek reentry into foster care. With the aid of her advocate, she was able to have her case reopened and return to care. Florida is now among nineteen states that have enacted legislation permitting youth to reenter foster care after exiting to independence. Combined with several states that lack statutes but still permit reentry, either through administrative rules or informal programs, roughly half of the states now allow older youth to return to foster care after some form of trial independence. Most of these statutes and programs have been adopted only recently, and largely in response to federal law changes enabling states to secure additional funding for eighteen- to twenty-one-year-old youth working toward independence. The safety net embodied by these reentry or trial independence programs appropriately acknowledges many of the unique challenges faced by youth seeking to navigate the difficult transition from foster care to independence. It is the purpose of this Article to examine the statutes and programs addressing the subject of foster care reentry, consider their efficacy in light of the limited available data, and make recommendations for legislative changes aimed at assisting older foster youth seeking to achieve successful independence.

The Article begins with an examination of the concept of emerging adulthood and the challenges unique to youth transitioning from foster care to independence. It then considers the reasons why some youth—despite the weight of the burdens they will carry while trying to stand on their own—still choose to leave the relative security of foster care prematurely. Finally, the Article

5. See *Extended Foster Care—My Future My Choice*, FLA. DEP’T CHILD. & FAMS., <http://www.myflfamilies.com/service-programs/independent-living/extended-foster-care> (last visited June 1, 2016).

examines the growing number of states that have experimented with permitting older youth to reenter care after trial independence, ending with recommendations for states that have yet to consider whether to extend this critical safety net for some of the nation's most vulnerable youth as they seek to stand on their own.

II. THE TRANSITION TO INDEPENDENCE IN AND OUT OF FOSTER CARE

A. *The Concept of "Emerging Adulthood"*

For most young people, the transition from adolescence to adulthood occurs gradually and over an extended period of time. Psychologist Jeffrey Arnett describes this transitional phase as "emerging adulthood," marking a period typically extending into the mid or even late twenties, during which progress toward independence is made only in fits and starts.⁶ Both social scientists and neurologists now recognize that true "adult" functioning, measured in terms of cognitive, behavioral, and social maturity, is not achieved for the majority of emerging adults until well into the third decade of life.⁷ During this transitional phase, while most young people begin the process of separating from their families, few do so precipitously or without setbacks.⁸ Studies generally place the median age at which adolescents first leave home in the early twenties,⁹ and many of those adolescents who leave home for the first time between the ages of eighteen and twenty-four return to live in their parental households at some time thereafter, even if only for a short time.¹⁰ One recent study found that

6. JEFFREY JENSEN ARNETT, *EMERGING ADULTHOOD: THE WINDING ROAD FROM THE LATE TEENS THROUGH THE TWENTIES* 1–2 (2d ed. 2015); see also Patricia Cohen et al., *Variations in Patterns of Developmental Transitions in the Emerging Adulthood Period*, 39 *DEVELOPMENTAL PSYCHOL.* 657, 657 (2003).

7. Rosemary J. Avery, *An Examination of Theory and Promising Practice for Achieving Permanency for Teens Before They Age out of Foster Care*, 32 *CHILD. & YOUTH SERVS. REV.* 399, 400 (2010); Rosemary J. Avery & Madelyn Freundlich, *You're All Grown Up Now: Termination of Foster Care Support at Age 18*, 32 *J. ADOLESCENCE* 247, 250 (2009) (summarizing recent scientific research exploring brain development during early adulthood); DANIEL R. WEINBERGER ET AL., *NAT'L CAMPAIGN TO PREVENT TEEN PREGNANCY, THE ADOLESCENT BRAIN: A WORK IN PROGRESS* 2–3 (2005), <https://thenationalcampaign.org/resource/adolescent-brain>.

8. William Aquilino, *The Returning Adult Child and Parental Experience at Midlife*, in *THE PARENTAL EXPERIENCE IN MIDLIFE* 423, 434 (Carol D. Ryff & Marsha Mailick Seltzer eds., 1996) ("[M]any children leave home before they have the means to establish and maintain an independent lifestyle. . . . [and] those who left home at age twenty-one or sooner were about twice as likely to return home as those who left home at age twenty-two or older.").

9. Avery & Freundlich, *supra* note 7, at 248 ("About 25% of children do not leave for the first time until age 22 or later."); Loring Jones, *The First Three Years After Foster Care: A Longitudinal Look at the Adaptation of 16 Youth to Emerging Adulthood*, 33 *CHILD. & YOUTH SERVS. REV.* 1919, 1919 (2011) (reporting an approximate median age of twenty-three).

10. Avery, *supra* note 7, at 400 (stating that "40% of those who leave home for the first time between the ages of 18 and 24 return to live in their parental household at some time thereafter"); see also Jones, *supra* note 9, at 1919; Thomas E. Keller, Gretchen Ruth Cusick & Mark E. Courtney, *Approaching the Transition to Adulthood: Distinctive Profiles of Adolescents Aging out of the Child Welfare System*, 81 *SOC. SERV. REV.* 453, 454 (2007).

approximately 55% of young men and 46% of young women between eighteen and twenty-four years old were living at home with one or both of their parents.¹¹ Other studies have concluded that the average age at which children in the general population finally depart the home is twenty-eight.¹² The staging of the transition to independence is particularly indispensable for youth from less well-off families seeking to balance work, school, and the achievement of the credentials needed to sustain independence.¹³ There is also evidence that the tendency for emerging adults to continue living with their families well into their twenties is even more marked for minorities. Richard Settersten and Barbara Ray report that between 1970 and 2000, the percentage of black men who were still living with their parents at the age of twenty-five rose from 14.2% to 23.6%, where the comparable figures for white men rose from 12.7% to 18.8%.¹⁴

Moreover, in recent decades, the age at which emerging adults achieve independence has steadily increased. Census data show that since 1960, the number of young men and women living at home has risen markedly for both eighteen- to twenty-four-year-olds and twenty-five- to thirty-four-year-olds.¹⁵ The median ages for completing school and starting a family have also steadily risen, as “young adults well into their 20s continue to juggle work and school, live at home longer, and delay” forming their own families.¹⁶ Even among those youth who move out of their family homes, many continue to receive financial and emotional support from their parents or other family members well past age eighteen.¹⁷ One recent report to Congress noted that on average, parents give

11. JASON FIELDS, U.S. CENSUS BUREAU, AMERICA'S FAMILIES AND LIVING ARRANGEMENTS: 2003 POPULATION CHARACTERISTICS 13 (2004); *see also* MARK E. COURTNEY, AMY DWORSKY & HAROLD POLLACK, CHAPIN HALL CTR. FOR CHILDREN, ISSUE BRIEF: WHEN SHOULD THE STATE CEASE PARENTING? EVIDENCE FROM THE MIDWEST STUDY 1 (2007) [hereinafter COURTNEY ET AL., WHEN SHOULD THE STATE CEASE PARENTING?], http://www.chapinhall.org/sites/default/files/publications/ChapinHallDocument_1.pdf; Avery, *supra* note 7, at 400 (“About 25% of children do not leave home for the first time until age 22 or later.”).

12. Jones, *supra* note 9, at 1919; *see also* TED MOUW, NETWORK ON TRANSITIONS TO ADULTHOOD, POLICY BRIEF: THE EFFECT OF TIMING AND SEQUENCE OF CHOICES ON YOUNG ADULTS' FUTURES (2004), <http://transitions.s410.sureserver.com/wp-content/uploads/2011/08/chap-8-formatted.pdf>.

13. Richard A. Settersten Jr. & Barbara Ray, *What's Going on with Young People Today? The Long and Twisting Path to Adulthood*, 20 FUTURE CHILD. 19, 32 (2010).

14. *Id.* at 25 fig.3. The same study reports a similar, though less marked, disparity in the rise of black and white women still living at home. *Id.*

15. *See Living Arrangements of Adults*, U.S. CENSUS BUREAU fig.AD-1, <https://www.census.gov/hhes/families/data/adults.html> (last visited June 1, 2016). This shifting trend has been attributed to various broad societal changes including increases in the number of youth attending postsecondary education, changes in marital patterns, and the rising number of emerging adults facing the economic challenges of unemployment and low-wage jobs. *See ON THE FRONTIER OF ADULTHOOD: THEORY, RESEARCH, AND PUBLIC POLICY* (Richard Settersten Jr. et al. eds., 2005); D. Wayne Osgood et al., *Vulnerable Populations and the Transition to Adulthood*, 20 FUTURE CHILD. 209, 210–11 (2010); Settersten & Ray, *supra* note 13, at 22–23.

16. Avery, *supra* note 7, at 400.

17. Robert F. Schoeni & Karen E. Ross, *Material Assistance from Families During the Transition to Adulthood*, in *ON THE FRONTIER OF ADULTHOOD*, *supra* note 15, at 402; Mary Elizabeth Collins, *Transition to Adulthood for Vulnerable Youths: A Review of Research and Implications for*

their children an estimated \$38,000—or about \$2,200 a year—between the ages of eighteen and thirty-four to supplement wages, pay for college tuition, and help with housing costs, among other types of financial assistance.¹⁸ Whatever may be the roots of the change, it is clear that outside of the foster care system, emerging adults have become increasingly dependent on their families, remaining in their homes well into adulthood, returning to their homes after trial independence, and relying heavily on their families for continuing support.

B. Challenges Facing Foster Youth Transitioning to Independence

Regardless of the age at which they leave foster care, a very different set of circumstances faces emerging adults who have been raised by the state when they seek to attain independence. Each year, for the past decade, an average of roughly 27,000 youth nationally have graduated from state care into some approximation of independence.¹⁹ Typically leaving care somewhere between the ages of eighteen and twenty-one, these youth are deemed too old for foster care and are thus expected to make it on their own long before the vast majority of their peers.²⁰ Where other youth make this transition from the security of their families' homes, foster youth must navigate the tasks of finding housing and healthcare, securing employment, and accessing higher education without meaningful assistance.²¹ In the words of one group of social scientists who have studied the challenges facing older youth exiting foster care, "If the transition to adulthood is likely to be smooth for college-bound middle-class youth, but is often rough sledding for working-class non-college-bound youth, then it can be a minefield for such vulnerable populations."²²

This sentiment is consistently reflected in the observations of foster care veterans. In a series of in-depth interviews of former foster youth from three Midwestern states, Gina Samuels and Julie Pryce explore youths' perspectives

Policy, 75 SOC. SERV. REV. 271, 271–72 (2001); COURTNEY ET AL., WHEN SHOULD THE STATE CEASE PARENTING?, *supra* note 11, at 1; Settersten & Ray, *supra* note 13, at 32.

18. COURTNEY ET AL., WHEN SHOULD THE STATE CEASE PARENTING?, *supra* note 11, at 1.

19. See U.S. DEPT. OF HEALTH & HUMAN SERVS., THE AFCARS REPORT (2015) [hereinafter 2015 AFCARS REPORT], <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport22.pdf>. Data maintained by the HHS's Administration for Children and Families reports that, in 2014, just under 22,400 youth emancipated from foster care nationally. *Id.* at 3. This figure is down from a high of 29,730 in 2007. U.S. DEPT. OF HEALTH & HUMAN SERVS., THE AFCARS REPORT 4 (2009), <http://www.acf.hhs.gov/sites/default/files/cb/afcarsreport15.pdf>. See also *infra* tbl.1 for the total numbers of youth leaving care nationally and exiting care to emancipation at ages eighteen, nineteen, and twenty-one for each year since 2008.

20. MARK COURTNEY ET AL., CHAPIN HALL CTR. FOR CHILDREN, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 21, at 1 (2007) [hereinafter COURTNEY ET AL., MIDWEST EVALUATION AT AGE 21], http://www.chapinhall.org/sites/default/files/ChapinHallDocument_2.pdf.

21. Adrienne L. Fernandes-Alcantara, *Youth Transitioning from Foster Care: Background and Federal Programs*, in YOUTH TRANSITIONING FROM FOSTER CARE: BACKGROUND, ISSUES, CHARACTERISTICS, AND DEMOGRAPHICS 1, 5 (Lindsey R. Asher ed., 2014); Osgood et al., *supra* note 15, at 211–12.

22. Osgood et al., *supra* note 15, at 210.

about their transition to independence. One youth in particular captures the challenges unique to state wards who are seeking to stand on their own, explaining the consequences of living without the safety net of a supportive family:

I go into those phases . . . where I wanna be a kid again. But reality quickly snaps me back. My friends, they have a lot of family support, so they're making those mistakes . . . they have their family to back them. I don't have the luxury of making those types of mistakes.²³

From these and other interviews, Samuels and Pryce conclude that the subjects of their study left foster care “having missed out on some relational experiences, skills, and ‘emotional investments’ that most child developmentalists would suggest are also fundamental to adult independence and well being.”²⁴ These conclusions mirror the views of many other foster youth who have spoken to both the abruptness of the transition out of care and their lack of readiness for independence:

When they released me into my own custody at 16, you know, I had a . . . I mean I . . . fell. I hit the ground hard. I went to a homeless shelter and slept in cars with my baby. . . .

After I was released from foster care, I had my own apartment and everything . . . and I am not sure exactly what went wrong, but everything went wrong. I ended up moving back in with my mom and dad, and the reason I was in foster care in the first place is because the way they treated me.

It's really unrealistic and all of a sudden you're 18 and say, “O.K., bye.” And we have no resources to go back to. We have nothing to fall back on at all because they said that you're a grown-up now and we can't take care of you or we don't want to

I was doing very well, wanted to go to school. I wanted to do this, I wanted to do that, but they wanted to say, “You're out of here.” But I still needed support.²⁵

As illustrated by these comments, many of the youth emancipating from care carry burdens that make their successful transition to independence especially challenging. Beyond the poverty characteristic of most youth entering foster care, these burdens include, among other things, a history of family

23. Gina Miranda Samuels & Julia M. Pryce, “What Doesn't Kill You Makes You Stronger”: *Survivalist Self-Reliance as Resilience and Risk Among Young Adults Aging out of Foster Care*, 30 CHILD. & YOUTH SERVS. REV. 1198, 1204 (2008) (ellipses in original).

24. *Id.* at 1208 (citing James Campbell Quick, Janice R. Joplin, Debra L. Nelson & Jonathan D. Quick, *Behavioral Responses to Anxiety: Self-Reliance, Counterdependence, and Overdependence*, 5 ANXIETY, STRESS & COPING: INT'L J. 41–51 (1992)).

25. J. Curtis McMillen et al., *Independent-Living Services: The Views of Former Foster Youth*, 78 FAMS. SOC'Y 471, 477 (1997). In the introduction of their engaging chronicle of the lives of ten former foster youth, Martha Shirk and Gary Stangler observe that for young adults who lack the supportive network of family or others who can provide meaningful advice, “garden variety emergencies—a flat tire, a stolen wallet, a missing birth certificate—escalate into full-blown crises.” MARTHA SHIRK & GARY STANGLER, ON THEIR OWN: WHAT HAPPENS TO KIDS WHEN THEY AGE OUT OF THE FOSTER CARE SYSTEM 2 (2004).

instability and the absence of meaningful family supports; the exposure to trauma suffered by every child entering into state care; and the trajectory of multiple placements and other related disruptions of living circumstances, schooling, and social networks that are still hallmarks of substitute care. As detailed below, social scientists have independently associated each of these concerns with the increased likelihood of negative outcomes following the transition to adulthood.

With regard to the impact of disrupted family systems, Rosemary Avery observes that “[s]uccessful youth development is inextricably linked to relationships with the family of origin that influence developmental trajectories and life changes in adulthood.”²⁶ Speaking of the “social capital” that describes the complex support system parents use to advance their children’s chances of success, she notes that many older foster youth simply have no meaningful support to aid in this transition.²⁷ For older youth who remain in care without the prospect of achieving permanence through reunification with family, many caseworkers have long since ceased their efforts to keep youth connected with the family from whose care they were removed. The absence of such “social scaffolding,” she concludes, is the “critical predictor of the deleterious post-foster care outcomes that research has recently uncovered.”²⁸

Additionally, the comprehensive longitudinal Adverse Childhood Experience (ACE) study has long since dispelled any question about the close association between childhood trauma and a broad range of adverse adult outcomes.²⁹ Avery and her colleague Madelyn Freundlich review in detail the

26. Avery, *supra* note 7, at 401.

27. As Avery states,

Social capital describes an interpersonal resource upon which individuals can draw to enhance their opportunities in life. It includes obligations, expectations, and trustworthiness embodied in social structures, the potential for information in social relations, and norms and effective sanctions. It is formed as a result of relationships between parents and children, and is enhanced when the family is embedded in social relationships with other families and community institutions. Social capital conveys benefits to individuals within this social network through the provision of information, influence and control, and social solidarity. Social capital theory emphasizes the importance of social patterns of acceptable behavior that support desirable social outcomes in that they provide for the exchange of information that facilitates outcomes desirable to group. Without social networks there is no possibility for the exchange of information or the enforcement of norms that facilitate collective goals.

Id. (citations omitted).

28. *Id.*; see also PETER J. PECORA ET AL., *THE CHILD WELFARE CHALLENGE: POLICY, PRACTICE, AND RESEARCH* 245 (3rd ed. 1992); Avery & Freundlich, *supra* note 7, at 253; Keller et al., *supra* note 10, at 454; Samuels & Pryce, *supra* note 23, at 1201; Henrika McCoy, J. Curtis McMillen & Edward Spitznagel, *Older Youth Leaving the Foster Care System: Who, What, When, Where, and Why?*, 30 *CHILD. & YOUTH SERVS. REV.* 735, 744 (2008); Erin Singer et al., *Voices of Former Foster Youth: Supportive Relationships in the Transition to Adulthood*, 35 *CHILD. & YOUTH SERVS. REV.* 2110, 2110 (2013).

29. For an overview of the ACE study and its conclusions, see Valerie J. Edwards et al., *The Wide-Ranging Health Consequences of Adverse Childhood Experiences*, in *CHILD VICTIMIZATION: MALTREATMENT, BULLYING AND DATING VIOLENCE, PREVENTION AND INTERVENTION* ch. 8 (Kathleen Kendall-Tackett & Sarah Giacomoni eds., 2005); Vincent Felitti et al., *Relationship of*

numerous studies that have documented the particularly strong connections between childhood trauma—a necessary precondition of every youth’s entry into state care—and struggles in the transition to adulthood.³⁰ They note that both the abuse and neglect on which child protection interventions are predicated, and the chronic stress youth endure while in foster care (especially over extended periods of time), lead to physical alterations in brain maturation. These alterations result in maladaptive behaviors that are especially problematic during late adolescence and emerging adulthood, impacting learning, memory, executive functioning, and youths’ ability to engage in age-appropriate behaviors. These problems, in turn, increase the likelihood of drug abuse, teen pregnancy, depression, mood disorders, affective instability, and self-injury in later life.³¹

Finally, the checkered placement history that marks many youths’ trajectories through foster care is a significant obstacle to the successful transition from foster care to adulthood. One recent study evaluated a cohort of 114 youth aging out of care, measuring the correlation between disrupted placement histories and risky behaviors, including substance abuse and risky sexual behaviors. Not surprisingly, the author’s conclusion was that placement instability can create long-term negative consequences for youth aging out of foster care.³² This conclusion mirrors other evaluations correlating placement instability with “[l]ow educational achievement, school drop-out rates, identity confusion, low self-esteem, drug use, juvenile arrest and incarceration rates, increased mental health care needs, and social network disruption.”³³ Foster care youth and alumni have also identified chronic instability as a major impediment to their willingness to form trusting relationships with others, reflecting the links between youths’ trajectory through care and their ability to generate the “social capital” needed to effect positive transitions to independence.³⁴

Childhood Abuse and Household Dysfunction to Many of the Leading Causes of Death in Adults: The Adverse Childhood Experiences (ACE) Study, 14 AM. J. PREVENTIVE MED. 245, 245–56 (1998).

30. Avery & Freundlich, *supra* note 7, at 250–52.

31. *Id.* at 251. For other articles exploring the relationship between exposure to trauma and childhood development, see generally Robert F. Anda et al., *The Enduring Effects of Abuse and Related Adverse Experiences in Childhood: A Convergence of Evidence from Neurobiology and Epidemiology*, 256 EUR. ARCHIVES PSYCHIATRY CLINICAL NEUROSCIENCE 174 (2006); Frank W. Putnam, *The Impact of Trauma on Child Development*, JUV. & FAM. CT. J. 1 (2006).

32. Tonia Stott, *Placement Instability and Risky Behaviors of Youth Aging out of Foster Care*, 29 CHILD ADOLESCENT SOC. WORK J. 61, 79 (2012).

33. *Id.* at 63; see also James G. Barber & Paul H. Delfabbro, *Placement Stability and the Psychosocial Well-Being of Children in Foster Care*, 13 RES. ON SOC. WORK PRAC. 415, 419–22 (2003); Melissa Jonson-Reid & Richard P. Barth, *From Placement to Prison: The Path to Adolescent Incarceration from Child Welfare Supervised Foster or Group Care*, 22 CHILD. & YOUTH SERVS. REV. 493, 503–04, 506, 513 (2000); Wendy Whiting Blome, *What Happens to Foster Kids: Educational Experiences of a Random Sample of Foster Care Youth and a Matched Group of Non-foster Care Youth*, 14 CHILD & ADOLESCENT SOC. WORK J. 41, 50–51 (1997) (discussing the relationship between placement and educational issues).

34. Stott, *supra* note 32, at 63, 67; GINA MIRANDA SAMUELS, CHAPIN HALL CTR. FOR CHILDREN, *A REASON, A SEASON, OR A LIFETIME: RELATIONAL PERMANENCE AMONG YOUNG ADULTS WITH FOSTER CARE BACKGROUNDS* 55–60 (2008), <http://www.chapinhall.org/sites/default/>

The few studies that have sought to analyze the circumstances under which older youth exit foster care have consistently concluded that high percentages of these exits are unplanned or occurred under negative circumstances. For example, a 1999 evaluation of 252 youth discharged from foster care in Missouri after the age of seventeen found that only 20% of the sample attained their independent living goals, compared to 26% discharged because of a refusal to cooperate with services, with a total of 63% leaving foster care due to “unplanned exits.”³⁵ Other studies of older populations have marked the prevalence of foster youth who leave care in unplanned ways that were not consistent with agency expectations, concluding that if adolescents are not reunified with their parents or guardians their most likely exits from foster care are either running away or aging out.³⁶

All of these circumstances combine to stack the odds against foster youth trying to gain independence from state care. Social scientists who have examined this transition have documented, with overwhelming consistency, a constellation of increased risk factors for outcomes including “homelessness, early pregnancy, incarceration, victimization, and poverty.”³⁷ Much of this work stems from two large-scale longitudinal studies examining the transition of youth in foster care to independence. One of these projects, the Midwest Evaluation of the Adult Functioning of Former Foster Youth (known generally as the “Midwest Study”), examined outcomes for youth graduating from foster care in Illinois, Wisconsin, and Iowa, over a several-year period beginning in 2002. In comparison to same-age peers in the general population, the Midwest Study found that young adults graduating from foster care were more likely to have educational deficits,³⁸ be unemployed,³⁹ have economic hardships such as low food security,⁴⁰ have physical or mental health problems or restricted access to health services,⁴¹ be pregnant or parenting,⁴² or be involved with the criminal justice system.⁴³ A similar study of youth graduating from foster care in Oregon and Washington (the Northwest Foster Care Alumni Study) documented comparable deficits with respect to mental health, education, and employment,⁴⁴ and other studies have documented higher instances of homelessness, depressive symptoms,

files/old_reports/415.pdf.

35. J. Curtis McMillen & Jayne Tucker, *The Status of Older Adolescents at Exit from Out-of-Home Care*, 78 CHILD WELFARE 340, 344–45, 351 (1999).

36. Penelope L. Maza, *A Comparative Examination of Foster Youth Who Did and Did Not Achieve Permanency*, in *ACHIEVING PERMANENCE FOR OLDER CHILDREN AND YOUTH IN FOSTER CARE* 32, 32–39 (Benjamin Kerman, Madelyn Freundlich & Anthony N. Maluccio eds., 2009); McCoy et al., *supra* note 28, at 743; Stott, *supra* note 32, at 63.

37. Samuels & Pryce, *supra* note 23, at 1198.

38. COURTNEY ET AL., *MIDWEST EVALUATION AT AGE 21*, *supra* note 20, at 4.

39. *Id.* at 5–6.

40. *Id.* at 6.

41. *Id.* at 8–9.

42. *Id.* at 10.

43. *Id.* at 11–12.

44. PETER J. PECORA ET AL., *THE FOSTER CARE ALUMNI STUDIES, IMPROVING FAMILY FOSTER CARE 1–2* (2005), http://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf.

substance abuse, and other risky behaviors among former foster youth.⁴⁵ Summarizing the literature associated with the Midwest and Northwest studies, the Jim Casey Youth Opportunities Initiative recently concluded that among youth transitioning from foster care to independence:

- More than one in five will become homeless after age eighteen;
- Only 58% will graduate high school by age nineteen (compared to 87% of all nineteen year olds);
- 71% of young women are pregnant by twenty-one, facing higher rates of unemployment, criminal conviction, public assistance, and involvement in the child welfare system;
- At the age of twenty-four, only half are employed;
- Fewer than 3% will earn a college degree by age twenty-five (compared to 28% of all twenty-five-year-olds); and
- One in four will be involved in the justice system within two years of leaving the foster care system.⁴⁶

From this compelling body of research, it is difficult to dispute the conclusion that most youth who age out of foster care “simply cannot make it on their own.”⁴⁷

While the challenges of graduating from foster care are substantial for any youth, they are particularly so for children who have barely attained the legal age of majority. In addition to its comparison of outcomes for foster care veterans and their peers in the general population, the Midwest Study also explored whether youth who remain in care beyond the age of eighteen fare

45. Mary Elizabeth Collins, *Transition to Adulthood for Vulnerable Youths: A Review of Research and Implications for Policy*, 75 SOC. SERV. REV. 271, 271 (2001); Stott, *supra* note 32, at 62; Kimberly A. Tyler & Lisa A. Melander, *Foster Care Placement, Poor Parenting, and Negative Outcomes Among Homeless Young Adults*, 19 J. CHILD & FAM. STUD. 787, 787 (2010); *see also* CAROL BRANDFORD, OFFICE OF CHILDREN’S ADMIN. RESEARCH, FOSTER YOUTH TRANSITION TO INDEPENDENCE STUDY: SECOND ANNUAL REPORT 4-5 (2003); CAROL BRANDFORD & DIANA J. ENGLISH, OFFICE OF CHILDREN’S ADMIN. RESEARCH, FOSTER YOUTH TRANSITION TO INDEPENDENCE STUDY: FINAL REPORT 3-4 (2004); RONNA COOK ET AL., A NATIONAL EVALUATION OF TITLE IV-E FOSTER CARE 4-1-4-3 (1991); COURTNEY ET AL., MIDWEST EVALUATION AT AGE 21, *supra* note 20, at 8-11; PECORA ET AL., *supra* note 44, at 31-37; DELLA M. HUGHES ET AL., BOSTON FOUND., PREPARING OUR KIDS FOR EDUCATION, WORK AND LIFE: A REPORT OF THE TASK FORCE ON YOUTH AGING OUT OF DSS CARE 13-14 (2008); JASON R. WILLIAMS ET AL., UNIV. OF ALASKA ANCHORAGE, ALASKAN FOSTER CARE ALUMNI STUDY 33-41 (2005); Richard P. Barth, *On Their Own: The Experiences of Youth After Foster Care*, 7 CHILD & ADOLESCENT SOC. WORK J. 419, 420 (1990); Mark E. Courtney et al., *Foster Youth Transitions to Adulthood: A Longitudinal View of Youth Leaving Care*, 80 CHILD WELFARE 685, 706-08 (2001); Thom Reilly, *Transition from Care: Status and Outcomes of Youth Who Age out of Foster Care*, 82 CHILD WELFARE 727, 735-37 (2003); Singer et al., *supra* note 28, at 2110; Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 19*, at 27-33 (Chapin Hall Working Paper, 2005) [hereinafter Courtney et al., *Midwest Evaluation at 19*].

46. JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF: COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE 5 (2013) [hereinafter, JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF], http://www.jimcaseyyouth.org/sites/default/files/Cost%20Avoidance%20Issue%20Brief_EMBARGOED%20until%20May%202016.pdf.

47. Avery & Freundlich, *supra* note 7, at 253.

better than their peers who leave foster care upon reaching the age of legal majority. While the research on this issue is not extensive, there is nonetheless good evidence that remaining in care helps youth attain more stable and durable forms of independence, and that this can result in considerable cost savings. The Midwest Study followed the progress of foster youth who had entered care prior to their sixteenth birthdays, who had been in out-of-home care for at least a year when they were first interviewed, and whose primary reason for placement in substitute care was abuse or neglect.⁴⁸ Because of differences in the three states' policies on extension of foster care beyond eighteen during the period covered by the study, the authors were able to compare outcomes for youth who were forced out of care at the age of eighteen (in Wisconsin and Iowa) with outcomes for youth who remained in care until twenty-one (in Illinois).

The most striking differences observed by the study authors were in educational attainment, where youth in Illinois (who typically remained in care beyond eighteen) were 1.9 times more likely to have ever attended college and 2.2 times more likely to have completed at least one year of college than their peers graduating from foster care in Iowa and Wisconsin.⁴⁹ The Midwest Study also determined that after controlling for observed differences in baseline characteristics, Illinois study participants were 4 times more likely to have ever attended college than their counterparts from Iowa and Wisconsin, and 3.5 times more likely to have completed at least one year of college.⁵⁰ The study also found more qualified evidence that extending care may increase earnings and delay pregnancy. With regard to earning potential, the study found that each additional year of care after the baseline interview was associated with a \$470 increase in annual earnings.⁵¹ Similarly, remaining in care was associated with a thirty-eight percent reduction in the risk of becoming pregnant between the baseline interview and the interview at age nineteen.⁵²

Not surprisingly, the Midwest Study also concluded that youth who remained in care were much more likely to receive independent living services aimed at assisting them in achieving stable independence.⁵³ To be sure, there are considerable variations in the quality and structure of state programs aimed at supporting youth transitioning from foster care to independence, and there exists only limited empirical evidence associating specific program models with sustainable positive outcomes.⁵⁴ Nonetheless, other studies have concluded both

48. COURTNEY ET AL., WHEN SHOULD THE STATE CEASE PARENTING?, *supra* note 11, at 2.

49. *Id.* at 4.

50. *Id.*

51. *Id.* at 5 tbl.2.

52. *Id.* at 6.

53. *Id.* at 7.

54. See MARLA MCDANIEL ET AL., CTR. ON LABOR, HUMAN SERVS. & POPULATION, PREPARING FOR A "NEXT GENERATION" EVALUATION OF INDEPENDENT LIVING PROGRAMS FOR YOUTH IN FOSTER CARE 6-7 (2014), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000126-Preparing-for-a-Next-Generation-Evaluation-of-Independent-Living-Programs-for-Youth-in-Foster-Care.pdf> (finding that limited available research on programs specifically targeting youth transitioning out of foster care precludes drawing useful conclusions about best practices and

that youth with significant externalizing behavior problems—including histories of disruptive conduct disorders, juvenile detention, alcohol consumption, and substance abuse—tend to leave foster care earlier than other youth,⁵⁵ and that those who exit care at an older age typically demonstrate higher degrees of resilience.⁵⁶ Thus, while research still needs to be done on understanding the most effective models of independent living services, there is compelling evidence that the population of youth who choose to leave care early are even less well equipped for independence than the cohort of youth who remain in care until twenty-one.

C. *Extension of Wardship Beyond Eighteen*

It is now beyond reasonable dispute that the costs associated with the premature transition of foster youth to independence are substantial. While it may be difficult to quantify these costs with any precision, communities now carry a tremendous burden as a result of the bad outcomes associated with emerging adults transitioning from foster care too soon. This burden is measured, among other things, in added “welfare and Medicaid costs, the cost of incarceration, lost wages and other significant costs to individuals and to society.”⁵⁷ Though the challenge of estimating these costs is inherently speculative, the Jim Casey Youth Opportunities Initiative attempted to quantify the poorer outcomes for young people transitioning from foster care relative to the general population, accounting for lost wages and tax revenue, early pregnancy and parenting, and criminal justice intervention. Their estimate of nearly \$8 billion annually in avoidable costs associated with these bad outcomes⁵⁸ contrasts with Congress’s allotment of \$140 million per year for independent living programs through the John H. Chafee Foster Care Independence Program, established by Congress’s passage of the Foster Care Independence Act (FCIA) in 1999.⁵⁹

The reality underlying the social and financial costs of failing to provide adequate support for youth aging out of care has clearly informed the development of policies and practices at both the state and federal levels. With

recommending additional research).

55. McCoy et al., *supra* note 28, at 738.

56. Clara Daining & Diane DePanfilis, *Resilience of Youth in Transition from Out-of-Home Care to Adulthood*, 29 CHILD. & YOUTH SERVS. REV. 1158, 1168–69 (2007).

57. JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF, *supra* note 46, at 5.

58. *Id.* at 5, 9, 10; *see also* CLARK M. PETERS ET AL., CHAPIN HALL ISSUE BRIEF: EXTENDING FOSTER CARE TO AGE 21: WEIGHING THE COSTS TO GOVERNMENT AGAINST THE BENEFITS TO YOUTH 8–9 (2009), https://www.chapinhall.org/sites/default/files/publications/Issue_Brief%2006_23_09.pdf (concluding that the costs of extending foster care to twenty-one are outweighed by the economic benefits associated with better outcomes post-independence).

59. Foster Care Independence Act of 1999, Pub. L. No. 106-169, § 477(h), 113 Stat. 1822, 1828 (codified as amended at scattered sections of 42 U.S.C.). This bill doubled the amount of money previously provided by Congress to support independent living efforts. The resulting program is known as the John H. Chafee Foster Care Independence Program, named after Rhode Island Senator John Chafee, a longtime champion of increased support for older foster youth transitioning to adulthood.

the passage of the FCIA in 1999, Congress doubled the federal funding previously provided to states to support young adults transitioning from foster care to independence after the age of eighteen. Though the money allocated under the Chafee program was clearly inadequate given the scope of the need,⁶⁰ it was nonetheless a step in the right direction.

When Congress passed the FCIA, only a handful of state statutes permitted wards to remain in care until the age of twenty-one.⁶¹ Some of these states allowed youth older than eighteen to remain in care only under limited circumstances, such as if they were still “in a course of instruction or treatment”⁶² or “mentally . . . retarded . . . , developmentally disabled, or physically impaired.”⁶³ In the years immediately following passage of the FCIA, however, this number grew significantly; by 2004, an ABA survey identified twenty-three state statutes extending jurisdiction beyond eighteen, including seventeen states extending jurisdiction to twenty-one.⁶⁴ In the intervening years, almost every state has extended supports for foster youth through the age of twenty-one, either by amendments to state law,⁶⁵ or through administrative programs supported by federal funds, state funds, or some combination thereof.⁶⁶ Indeed, it is now a rarity for a young adult who has grown up in foster care to have no access whatsoever to continued state support for at least some period of time past the age of legal majority.⁶⁷

60. See JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF, *supra* note 46, at 2–3.

61. These included Alabama, California, Colorado, Illinois, Indiana, Missouri, New Hampshire, Ohio, Oregon, Pennsylvania, South Dakota, and Virginia. See *Extending Foster Care Beyond 18*, NAT'L CONF. ST. LEGISLATURES (Mar. 11, 2016), <http://www.ncsl.org/research/human-services/extending-foster-care-to-18.aspx>.

62. See, e.g., 1995 Pa. Legis. Serv. 1995-6 (West) (amending 42 PA. STAT. AND CONS. STAT. ANN. § 6302 (1994)).

63. See, e.g., Act of Apr. 24, 1996, 1996 Ohio Laws 143 (codified as amended at OHIO REV. CODE ANN. § 2151.353(F)(1) (West 2016)) (explaining when retention of juvenile court jurisdiction past twenty-one is authorized).

64. JANE KIM ET AL., A.B.A. CTR. ON CHILDREN & THE LAW, CONTINUING COURT JURISDICTION IN SUPPORT OF 18 TO 21 YEAR-OLD FOSTER YOUTH 15–16 tbl.1 (2008). This survey coincided with the issuance of an ABA recommendation urging all states to extend wardship to the age of twenty-one. *Id.* at 26.

65. Recent legislative changes have been adopted in Alaska (2012), Florida (2014), Hawaii (2014), Maryland (2013), Minnesota (2010), and North Dakota (2011). Just under two-thirds of states now extend wardship to twenty-one by statute.

66. States that do not extend jurisdiction beyond eighteen by statute, but still provide some support for foster youth past the age of eighteen, include, among others, Arizona, Kentucky, Louisiana, Oklahoma, and West Virginia. See CHILD WELFARE LEAGUE OF AM., STATE FOSTER YOUTH 18–22 POLICIES (2009), <http://66.227.70.18/advocacy/adoptionhr6893fostercarechart.pdf>. See *infra* note 110 for a list of states currently receiving federal support for extended foster care.

67. While those who work with youth in foster care now speak with remarkable consistency about the importance of extended wardship, significant voices in the public arena still from time to time threaten the implementation of rational policy around foster care. In early 2015, Illinois's recently elected Republican Governor Bruce Rauner, a multimillionaire first-time politician, stated his intention to eliminate all support for foster youth at eighteen, as a so-called cost-cutting measure. See Christy Gutowski, *Rauner Budget Cuts Target Older Illinois Foster Youth*, CHI. TRIB. (Mar. 6, 2015, 4:58 AM), <http://www.chicagotribune.com/ct-rauner-budget-dcfs-met-20150305-story.html>. To date,

III. WHY DO YOUTH CHOOSE TO LEAVE CARE EARLY?

If the human and capital costs of premature independence are no longer reasonably disputable, and if states now routinely permit foster youth to remain in care to twenty-one, why would any youth leave care early, with as much as three years remaining before the expiration of this safety net? As states' foster care systems have reached beyond the age of legal majority, many have done so with provisions explicitly conditioning the extension of wardship on the youth's consent,⁶⁸ consistent with commentators' cautions that legal adults should not be forced to remain in state care against their will.⁶⁹ Given the frequency with which youth leave care before twenty-one even in jurisdictions that extend wardship, if states are to fashion useful policies aimed at reentry into care, it is important to understand not only how often this occurs, but also the reasons why.

Over the past few decades, as federal and state policies and practices have extended the reach of supportive foster care systems past the age of eighteen, many youth who have the option to extend foster care have chosen to do so, often with the support and encouragement of their advocates and caseworkers. In the year 2014 (the last year for which national data is available), the Administration for Children and Families reported that there were 15,192 youth in foster care between the ages of eighteen and twenty, and just under 19,000 youth in care with a goal of emancipation.⁷⁰ These data suggest that a significant percentage of the youth whose most likely exit from foster care is to emancipation or independence are remaining in care past the age of eighteen. This reality is mirrored by the data on Illinois children gathered by the Midwest Study,⁷¹ which examined trends for older foster youth in three Midwestern states between the years 2002 and 2006. During the period of the study, Illinois law permitted the extension of wardship to twenty-one, but did not yet explicitly guard against youth being discharged from care for lack of cooperation with recommended services.⁷² The Illinois youth evaluated through the Midwest Study thus all faced the prospect of being dismissed from care for the failure to cooperate with services, which at the time was a prevalent practice throughout the state, especially outside of Cook County. Despite this, the study authors noted that "the Illinois youth were, on average, more than 2 years older when

opposition of advocates bolstered by the enforcement of a federal consent decree has forestalled implementation of many of these proposed budget and service cuts.

68. *E.g.*, ALASKA STAT. ANN. § 47.10.100(a) (West 2016); HAW. REV. STAT. § 346-395 (2016); N.H. REV. STAT. ANN. § 169-C:4(II) (2016); N.Y. FAM. CT. ACT § 1055(e) (McKinney 2016); 42 PA. CONS. STAT. § 6302 (2015) (definition of "child").

69. KIM ET AL., *supra* note 64, at 1.

70. 2015 AFCARS REPORT, *supra* note 19, at 1.

71. See *supra* notes 38–43 and accompanying text for a discussion of the Midwest Study.

72. In 2009, the Illinois legislature amended the Juvenile Court Act and—for the first time—provided in law that "the minor's lack of cooperation with services . . . shall not by itself be considered sufficient evidence that the minor is prepared to live independently and that it is in the best interest of the minor to terminate wardship." 2009 Ill. Legis. Serv. 96-581 (West) (codified as amended at 705 ILL. COMP. STAT. ANN. 45/2-31 (West 2016)).

they exited the child welfare system than their peers in Wisconsin and Iowa.”⁷³ It is thus clear that when given the choice to remain in foster care, many youth do just that, for as long as they are permitted to continue relying on state support.

Nonetheless, as more and more states have followed the lead of Illinois and other early pioneers in extending foster care, significant numbers of youth have cut their ties with the foster care system, despite continuing eligibility to remain in state care. Table 1 reflects the total numbers of youth leaving care nationally at ages eighteen, nineteen, and twenty, as well as the total number of youth exiting care to emancipation, for each of the years between 2008, when Congress passed the Fostering Connections to Success and Increasing Adoptions Act (FCA), and 2014, the last year for which national data are available. While the aggregate nature of this information imposes some limits on the conclusions that may be drawn about youths’ decisions regarding whether or not to remain in extended care, the data still suggest several things of note about the transition of foster youth to independence.

TABLE 1

<i>In care as of 9/30:</i>	2008	2009	2010	2011	2012	2013	2014
<i>Eighteen at exit</i>	22274	26416	18030	13370	20208	18569	18320
<i>Nineteen at exit</i>	3728	4213	3791	2540	3885	5133	5114
<i>Twenty at exit</i>	1783	1837	2162	2345	928	910	923
<i>Total exit to emancipation</i>	29516	29471	27854	26286	23396	23090	22392

First, most of the youth exiting care at eighteen or older are presumably leaving care to emancipation, rather than to return home, adoption, or some circumstance other than independence. While the ACF Children’s Bureau’s Adoption and Foster Care Analysis Reporting System’s (AFCARS) aggregate national reports do not track the numbers of children leaving care from each age group to goals *other* than emancipation, the parallel between the total number of youth leaving care at eighteen or older and the number of youth exiting care to emancipation strongly suggests that most of the older youth exiting care are not doing so through more traditional forms of permanency. Second, in each of the years reflected in the table, many more youth exited care at eighteen than at nineteen or twenty. While AFCARS’s data do not permit a correlation between youth exiting care at or before eighteen and states that do not permit extension of foster care beyond eighteen, it is reasonable to assume that many of the youth leaving care before twenty-one could have extended their wardship, given the growing prevalence of states permitting extended foster care. Finally, though large numbers of youth have continued to leave care at eighteen, these numbers have fallen significantly since the passage and implementation of the FCA in

73. COURTNEY ET AL., WHEN SHOULD THE STATE CEASE PARENTING?, *supra* note 11, at 3.

2008.⁷⁴ From a high of 26,416 in 2009, youth leaving care at eighteen fell to a low of just over half that number in 2011—the first year following U.S. Department of Health and Human Services’ (HHS) issuance of regulations implementing the FCA. This drop strongly suggests that by significantly increasing the level of federal financial support for foster youth between eighteen and twenty-one, Congress has effected positive changes in the forces encouraging youth to remain in supportive care past eighteen.

If indeed federal and state policies have the capacity to persuade youth to stay in care long enough to minimize the risks associated with the transition to independence, it becomes especially important to understand why some youth still choose to leave care prematurely. From both systematic and anecdotal evaluations of youth leaving care to independence, several consistent themes emerge.

To begin, many youth are strongly motivated by an appropriate desire to stand on their own—a phenomenon described by one study’s authors as “survivalist self-reliance.”⁷⁵ In an in-depth assessment of a sample of participants in the Midwest Study, Samuels and Pryce found that the tension between dependence and independence was a dominant theme for many youth aiming at emancipation:

On the one hand, youth have minimal individual control or power throughout their foster care experiences. In the words of one participant, “I haven’t been able to live a real life . . . my life has been lived for me by the state!” Youth were equally concerned that becoming too dependent on the foster care system seriously risked one’s adult independence. On the other hand, there were times when these same youth noted aspects of their lives where they grew up too early or too fast; most sensed they were on their own even before entering foster care and certainly before their official “independence” from the child welfare system.⁷⁶

The theme of self-reliance, and the importance youth place on being able to manage their own affairs, recurs frequently in Samuels and Pryce’s study; many interviewees explicitly described reliance on others as posing a risk to their success,⁷⁷ leading the study authors to conclude that “despite (or because of) conferrals of early independence and their advice that foster youth should make use of existing resources, youth indicate persistent fears of dependence.”⁷⁸ Sarah Geenen and Laurie E. Powers documented the same essential theme in a similar

74. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, §§ 201–202, 122 Stat. 3949, 3957–59 (codified as amended at 42 U.S.C. §§ 672–673, 675 (2012)). See *infra* notes 107–10 and accompanying text for an explanation of how the Fostering Connections Act extends services for youth past eighteen.

75. Samuels & Pryce, *supra* note 23, at 1202.

76. *Id.* at 1201–02 (omissions in original).

77. *Id.* at 1205. Many youth view their ability to be self-reliant, despite the absence of family support, as an “important source of pride and self-esteem.” *Id.* As one youth put it, “[Y]ou don’t want to get . . . to the point where you are used to people taking care of you because . . . if you do that, then you will be dependent on people for the rest of your life.” *Id.*

78. *Id.* at 1207.

evaluation of older foster youth conducted in 2007; they noted that for many such youth, the ability to have a say in the important decisions affecting their lives was central to their choices surrounding emancipation.⁷⁹ One interviewee explained that “[w]e need to see what’s out there, what’s out there for me, so I make my own mistakes and I can learn from them.”⁸⁰

While the thirst for independence is clearly a desirable trait among emerging adults seeking to learn to care for themselves, it is important to note that for some foster youth, this thirst can be problematic if it interferes with reasoned judgments about whether and when to seek needed support. Samuels and Pryce documented several cases where youth interviewed in their study declined critical services following emancipation from care, even to the point of leading to homelessness.⁸¹ They cautioned that the inclination to disavow dependence common among youth who see themselves as proud survivors of foster care can discourage them from seeking or accepting help when clear needs exist, even to the point where the refusal of help becomes pathological.⁸²

Second, for many older youth in care, the sense that they have no control over the course of their lives serves to fuel the push for emancipation from care. For older youth in care, the importance of having some say in the critical decisions that impact their lives cannot be overestimated.⁸³ Despite this, youth routinely report that they have little to no say in the decisions that impact their lives while in foster care. Samuels and Pryce’s in-depth interviews described their study subjects as uniquely disenfranchised and rarely involved in the decisions about their short- or long-term plans.⁸⁴ This same conclusion has been mirrored repeatedly in evaluations of older foster youth.⁸⁵ Wards’ concerns about their inability to influence the course of their own lives encompass not only choices about where they must live or go to school and what services they must engage in, but also about control of their core relationships.⁸⁶ As one youth living in state-supported transitional care explained:

The only thing you’re on your own is you’re living by yourself and you pay your own bills, but as far as your life is concerned they’re completely around your life 100 percent, they need to know everybody you’re living with, everybody you know, everything you do, and that’s when I got out because, I mean, I was 19 years old. I didn’t want it.⁸⁷

79. Sarah Geenen & Laurie E. Powers, “*Tomorrow Is Another Problem*”: *The Experiences of Youth in Foster Care During Their Transition into Adulthood*, 29 CHILD. & YOUTH SERVS. REV. 1085, 1090 (2007).

80. *Id.*

81. Samuels & Pryce, *supra* note 23, at 1206.

82. *Id.*

83. See Geenen & Powers, *supra* note 79, at 1090–91.

84. Samuels & Pryce, *supra* note 23, at 1199, 1201.

85. Geenen & Powers, *supra* note 79, at 1090–91, 1098 (noting that many youth expressed annoyance that professionals and foster parents often disregard their input and opinions); see also McMillen & Tucker, *supra* note 35, at 356–57; McMillen et al., *supra* note 25, at 475.

86. Geenen & Powers, *supra* note 79, at 1091–95.

87. McMillen et al., *supra* note 25, at 477.

Although exceptions were noted, the former clients participating in Curtis McMillen's study did not find much support from child welfare agencies in their transitions out of care; when asked if their caseworkers were helpful, the answer was often simply "no."⁸⁸

The disconnect that many youth feel is also reflected by caseworkers who openly acknowledge the limits of their ability to engage their clients. Child welfare professionals routinely recognize that the foster care system does an inadequate job preparing youth for their own independence. In the words of one frustrated caseworker,

We [caseworkers] are making plans for them. And nobody is saying "what do you want?" Sometimes kids want things that are not in what we think is their best interest. But we don't empower them to try it and get the experience of failing. We, I think, try to protect them, and shield them from any negative experience.⁸⁹

Third, many youth who have spent formative teenage years in foster care have unrealistic expectations of what their lives will be like beyond the shelter of state support. One recent survey of former foster youth emphasized the detrimental impact that many emerging adults feel from the absence of supportive networks of adults. For peers outside of foster care, these networks offer not only critical education and support, but also a check on unrealistic expectations of the challenges of independence. In contrast, for foster youth,

a reliance on impermanent or former support systems indicates a possible missing connection between perception and actual utility of support systems. Many youth relied on child welfare professionals for an immense amount of support, including instrumental, appraisal, *and* emotional support. Furthermore, when asked about who currently provided them with support, some youth mentioned people who were no longer in their lives because of death or some other form of separation. Finally, we found that many youth held idealized views of permanent relationships. For example, we heard several youth state that "all of their relationships were permanent."⁹⁰

Last, adolescents and emerging adults are notoriously impulsive, often reacting to immediate circumstances without adequate regard for the long-term consequences of their decisions. In the words of one of the subjects of Geenen and Powers's qualitative study of youth aging out of foster care, "I don't live life for tomorrow. Tomorrow is another problem, so I just live for today."⁹¹ The sentiments reflected in this Article are illuminated by a growing body of research showing that even though adolescents may demonstrate the same level of cognitive ability as adults in making decisions, they are more heavily influenced than adults by emotions that distort thinking and interfere with self-serving and self-protective decision making.⁹²

88. *Id.* at 475.

89. Geenen & Powers, *supra* note 79, at 1090 (alteration in original).

90. Singer et al., *supra* note 28, at 2115.

91. Geenen & Powers, *supra* note 79, at 1099.

92. *E.g.*, Avery & Freundlich, *supra* note 7, at 249 ("Evidence suggests that emerging adults

The development of the inhibitory controls that enable emerging adults to regulate emotional stimuli and prevent them from interfering with rational, long-term decision making is a protracted neurological process that extends well beyond childhood.⁹³ Consequently, early adolescents are much more likely to be disrupted by emotional stimuli than are older adolescents and adults, and they are much more likely to allow that disruption to interfere with self-regulatory efforts.⁹⁴ Furthermore, research suggests that for emerging adults who are still acquiring these skills, impulse control is especially difficult when they perceive threats to their welfare or other negative stimuli of the kind routinely faced by older foster youth frustrated with the limits of their circumstances.⁹⁵ Youth contemplating the prospect of legal independence prior to twenty-one may thus be seen as developmentally prone to making decisions that give insufficient weight to the long-term challenges of living outside the flawed but still important safety net of state care.

Clearly, much of the impetus for youth seeking to leave foster care and strike out on their own results from feelings of frustration, disconnect, and powerlessness within the system. Through a series of in-depth interviews of 404 current and former foster youth, Henrika McCoy et al. sought to understand what distinguishes older youth who choose to exit care for independence after reaching eighteen from those who opt to remain in care until twenty-one. Categorizing the responses of those who left care early, they found that the largest numbers of early discharges were youth initiated.⁹⁶ Many of the youth who initiated their own discharge asked for or forced their release from care, with explanations such as “I left my foster home and never came back”; “I was sent to my aunt and uncle, but I ran away”; and “I ran away from placement so

experience difficulty maintaining balanced cognitive-emotional representations, especially if emotions are strongly activated, as when issues of security and survival are threatened.”); *see also* EMERGING ADULTS IN AMERICA: COMING OF AGE IN THE 21ST CENTURY (Jeffrey Jensen Arnett & Jennifer Lynn Tanner eds., 2006).

93. Julia E. Cohen-Gilbert & Kathleen M. Thomas, *Inhibitory Control During Emotional Distraction Across Adolescence and Early Adulthood*, 84 CHILD DEV. 1954, 1961 (2013) (finding their study results “consistent with a protracted development of inhibitory control that continues well into the adolescent years and contradicts suggestions that response inhibition is fully developed by the end of childhood”).

94. *Id.*

95. Michael Dreyfuss et al., *Teens Impulsively React Rather than Retreat from Threat*, 36 DEVELOPMENTAL NEUROSCIENCE 220, 225 (2014) (“The current study examined the effect of threat cues on impulse control and the underlying neural circuitry in adolescents. . . . The difficulty of adolescents in suppressing attention and actions specifically toward negatively valenced information in the current study is a pattern that is emerging in the developmental literature. . . . [T]hese findings suggest that changes in behavior and limbic circuitry during adolescence coincide with a heightened sensitivity to emotional cues that may cause them to impulsively react rather than retreat from cues of potential threat.” (footnotes omitted)).

96. McCoy et al., *supra* note 28, at 741. The study’s authors grouped reasons for early discharge into nine categories and presented them from most to least common: “youth-initiated discharge (78, 39.2%), system-initiated discharge (56, 28%), discharge without notice (33, 16.6%), achievement of goals (32, 16.6%), age-related release (29, 14.5%), being thrown out of the system (15, 7.5%), discharge to live with family (12, 6%), other circumstances (12, 6%), and adoption (3, 1.5%).” *Id.*

they released me when I turned 18.”⁹⁷ Others noted that they were discharged by their caseworkers without notice or explanation, often without their agreement.⁹⁸ For those youth who indicated that they wanted to leave care, the most common reasons given were dislike or frustration with the system (76, 39%), followed by a desire for independence (55, 28.2%) and by the failure of the child welfare agency to provide services (42, 21.5%).⁹⁹ The sense of frustration felt by many of these youth is palpably evident from their comments to the study authors: “They wasn’t doing nothing”; “I can’t stand those people”; “So I can just get those people off my back. I just said release me”; “I was getting checks, but they did not even know my name. I was ready to be done with them.”¹⁰⁰

IV. REVOLVING DOOR TO FOSTER CARE

A. *The History of Reentry Statutes*

Though more and more youth have taken advantage of the growing opportunities across the country to remain in protective foster up to twenty-one, a significant minority, as discussed above, have taken a different course. Motivated by the frustrations reflected consistently by youth who have been parented by state child welfare agencies, many foster youth have chosen to leave care at or soon after reaching their age of legal majority, despite having continuing eligibility for financial aid, subsidized housing, and other supportive services. Focusing on this group of premature graduates from care, one caseworker underscored the importance to such youth of foster care having a “revolving door”: “There’s always going to be those kids that say, ‘I don’t care. I just want to go.’ But if they can go out and fall on their face and still come back, that would make all the difference.”¹⁰¹ This sentiment mirrors the views of many graduates themselves, who have reflected on the fact that though they may not have listened to counsel while in care, the demands of independent living create “teachable moments.”¹⁰² When youth who were eager to leave care begin to experience the enormity of the challenges of independence first hand, they may develop a new appreciation for resources for which they were eligible while in care, but which are no longer open to them.¹⁰³ For this reason, many youth stand to benefit substantially from policies that allow them to second-guess the decision to leave foster care before the age of twenty-one.

Prior to the passage of the FCA in 2008, only two state statutes explicitly contemplated the possibility of reentry into foster care for a youth who exited care to independence. The first of these, passed in Kentucky in 1990, provided

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.* at 741–42.

101. Geenen & Powers, *supra* note 79, at 1096.

102. Jones, *supra* note 9, at 1926.

103. Geenen & Powers, *supra* note 79, at 1096.

that in order to enable a youth to participate in state or federal educational programs or independent living services, a court could reinstate a ward's commitment to foster care through the age of twenty-one, as long as the reinstatement occurred prior to the youth attaining eighteen years and six months of age.¹⁰⁴ The Kentucky statute was amended in 2012 to extend the window of opportunity to the age of nineteen, and it continues to authorize reentry in order to enable youth to receive transitional living support.¹⁰⁵ Arkansas similarly passed a statute in 2005, providing that a youth through his or her guardian ad litem could petition to return to the court's jurisdiction in order to receive independent living or transitional services, as long as the youth was still under twenty-one, had been in care at the age of eighteen, and sought to return to care in order to benefit from such services.¹⁰⁶

In 2008, Congress enacted the FCA, significantly extending federal financial support for older youth transitioning out of foster care.¹⁰⁷ Before passage of this law, the federal government offered states financial support for older youth after leaving foster care up to the age of twenty-one through the Chafee Foster Care Independence Program.¹⁰⁸ The FCA enabled states for the first time to apply for federal funds to support youth between the ages of eighteen and twenty-one while still in care. In order to be eligible for such support, the FCA requires that a youth must be (1) completing high school or in an equivalency program, (2) enrolled in a postsecondary or vocational school, (3) working at least eighty hours per month, (4) enrolled in a program designed to promote work, or (5) determined to be ineligible for work or education due to a medical condition.¹⁰⁹ As of September 2015, twenty-two states had opted to receive funds under the FCA.¹¹⁰

104. Act of Apr. 2, 1990, No. 289, 1990 Ky. Laws 253 (Ky. 1990) (codified as amended at KY. REV. STAT. ANN. § 620.140 (West 2016)). Though no published decisions have applied this statute, one appellate court reviewing the law affirmed that the trial court had authority to reinstate a dependent's commitment to foster care, over the objection of the agency, after the youth changed her mind about leaving college. *Cabinet for Health & Family Servs. v. C. M.*, No. 2007-CA-001468-ME, 2008 WL 682606 (Ky. Ct. App. Aug. 13, 2008).

105. KY. REV. STAT. ANN. § 620.140(1)(e).

106. Act of Mar. 24, 2005, § 2, 2005 Ark. Acts 1191. Notably, the Arkansas statute was amended in 2015 to ensure that the lack of funding would not be considered as a basis for denying reentry into foster care. Act of July 22, 2015, § 1, 2015 Ark. Acts 875 (codified as amended at ARK. CODE ANN. § 9-27-306(e) (West 2016)). The statute thus now provides that "[r]egardless of funding," a youth should be able to reenter care if the department failed in its responsibility to develop a transition plan or was coerced by the department to leave foster care. *Id.*

107. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. 110-351, §§ 201, 202, 122 Stat. 3949, 3957-59 (2008) (codified as amended at 42 U.S.C. §§ 672, 673, 675 (2012)).

108. See *supra* note 59 and accompanying text for an estimate of federal contributions of the Chafee Foster Care Independence Program.

109. Fostering Connections Act § 201(a)(B).

110. See E-mail from Catherine Heath, Child & Family Program Specialist, Children's Bureau, ACYF, to Amy Dworsky, Research Fellow, Univ. of Chi. (Sept. 4, 2015) (on file with author). Jurisdictions receiving FCA funds include Alabama, Arkansas, California, Connecticut, Hawaii, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New York, North Dakota, Oregon, Pennsylvania, Tennessee, Texas, Washington, Washington, D.C., and West Virginia.

While the FCA does not explicitly address the subject of reentry into foster care, in July of 2010, HHS's Administration on Children, Youth and Families issued a program instruction making clear that funds allotted under the FCA could be used to support youth who left care to independence and then sought to return to care.¹¹¹ Since 2010, with the FCA as a catalyst, at least seventeen additional states have passed laws permitting reentry in some fashion,¹¹² and several other states have made clear in other ways—through administrative rules or program guidance—that reentry is an option for interested youth.¹¹³ In response to a survey conducted in 2009 by the University of Chicago's Chapin Hall, a number of additional states that do not guarantee reentry by statute or rule reported that reentry is possible for older youth in at least some circumstances.¹¹⁴ It thus appears that just over half of the states permit reentry in some fashion. While many of the states permitting reentry do so with the support of FCA funds, a number of others do not, presumably relying exclusively on state funds to support youth still in care after the age of eighteen.¹¹⁵ Notably, some of the jurisdictions that have opted to receive FCA funds, and thus could receive federal financial support for youth reentering care, do not appear to have formally exercised the prerogative to extend support for youth who have left

111. U.S. DEP'T OF HEALTH & HUMAN SERVS., PROGRAM INSTRUCTION: GUIDANCE ON FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008, at 5 (2010), <http://www.acf.hhs.gov/sites/default/files/cb/pi1011.pdf> ("A title IV-E agency can extend foster care assistance for a youth age 18 or older pursuant to section 475(8)(B) of the Act in a way that permits a youth to stay in foster care continuously or leave foster care for a period and return to foster care at some point after attaining age 18.").

112. These states include Alaska, California, Florida, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New York, North Dakota, Pennsylvania, Tennessee, Texas, Virginia, and Washington. See ALASKA STAT. ANN. § 47.10.080(v) (West 2015); CAL. WELF. & INST. CODE § 388(e)(1) (West 2016); FLA. STAT. ANN. § 39.6251(6) (West 2016); 705 ILL. COMP. STAT. ANN. 405/2-33 (West 2016); MD. CODE ANN., CTS. & JUD. PROC. § 3-804(a)(2) (West 2015); MASS. GEN. LAWS ANN. ch. 119, § 23(f) (West 2016); MICH. COMP. LAWS ANN. § 400.647 (West 2016); MINN. STAT. ANN. § 260C.451(subd. 6) (West 2016); MO. ANN. STAT. § 211.036 (West 2016); NEB. REV. STAT. ANN. § 43-4507(1) (West 2016); N.Y. FAM. CT. ACT § 1091 (McKinney 2016); N.D. CENT. CODE ANN. § 27-20-30.1 (West 2016); 42 PA. STAT. AND CONS. STAT. ANN. § 6351(j) (West 2016); TENN. CODE ANN. § 37-2-417(c) (West 2016); TEX. FAM. CODE ANN. § 263.6015 (West 2015); VA. CODE ANN. § 63.2-905.1 (West 2016); WASH. REV. CODE ANN. § 74.13.031 (West 2016).

113. These states include Alabama, Arizona, Iowa, Maine, and Vermont. See ALA. ADMIN. CODE r. 660-5-51-.01 (2016); ARIZ. DEP'T OF CHILD SAFETY, POLICY AND PROCEDURE MANUAL § 38 (2012), <https://extranet.azdes.gov/dcyfpolicy>; IOWA ADMIN. CODE. r. 441-202.3(234) (2016); *Child Welfare*, ME. DEP'T HEALTH & HUM. SERVS., <http://www.maine.gov/dhhs/ocfs/cw/chafee.htm> (last visited June 1, 2016); VT. CODE R. § 12-3-505:7002.10 (2015).

114. See AMY DWORSKY & JUDY HAVLICEK, CHAPIN HALL, UNIV. OF CHI., REVIEW OF STATE POLICIES AND PROGRAMS TO SUPPORT YOUNG PEOPLE TRANSITIONING OUT OF FOSTER CARE app. J, at 61 (2009), https://www.chapinhall.org/sites/default/files/Review_State_Policies_02_09.pdf. Chapin Hall's survey lists five additional states that reported permitting reentry in some circumstances: Connecticut, New Hampshire, New Jersey, North Carolina, and South Carolina. *Id.* See also *supra* notes 112 and 113 for a list of other states that permit reentry in certain circumstances.

115. See *supra* note 110 for a list of states that receive FCA funds. States that permit reentry into foster care but do not currently receive FCA funds include Arizona, Iowa, Missouri, New Hampshire, New Jersey, North Carolina, South Carolina, Vermont, and Virginia.

care and are still under twenty-one.¹¹⁶

Among the jurisdictions that have endorsed reentry in some fashion, statutes and procedures reflect significant variations in the limitations imposed on youth seeking to reenter foster care. One of the most common limitations is that, as a condition of reentry, youth must commit to satisfying one of the FCA's requirements for eligibility for receipt of federal funds.¹¹⁷ At least one state permits the responsible child welfare agency to limit services to FCA-eligible youth without actually requiring that it do so.¹¹⁸ Because of the obvious difficulties a youth would face in satisfying these requirements in the absence of state support, statutes that hold to the eligibility criteria of the FCA may require at the point of reentry only that the youth commit to restoring eligibility for federal funding.¹¹⁹ Where youth are subject to being discharged from care for the failure to comply with FCA eligibility requirements, it may also be important to ensure meaningful review of any eligibility determination. Several states do this through provisions explicitly guaranteeing administrative rights of appeal for youth discharged from extended care because of a determination that they have failed to meet continuing eligibility requirements.¹²⁰

Other states require that the youth must have been in foster care immediately prior to turning eighteen, presumably as a way of limiting the option of reentry to youth who exited foster care to some form of independence, rather than through returning home to a parent, adoption, or guardianship.¹²¹ At least one statute effects similar limits through explicit reference to the manner in which the youth achieved permanency.¹²² In contrast to these limits, a number of states do not impose any limitation on reentry based on the youth's age at exit, as long as the youth is still under the age of twenty-one.¹²³

116. Jurisdictions in this category include Washington, D.C., Hawaii, Indiana, North Dakota, Oregon, and West Virginia.

117. *See, e.g.*, ARK. CODE ANN. § 9-27-306(a)(1)(B)(1)(a); MASS. GEN. LAWS ANN. 119 § 23(f); MICH. COMP. LAWS ANN. § 400.649; NEB. REV. STAT. ANN. § 43-4504(3); N.D. CENT. CODE § 27-20-30.1(4)(g) (West 2016); 42 PA. STAT. AND CONS. STAT. ANN. § 6351(j); TEX. DEP'T OF FAMILY & PROTECTIVE SERVS., CHILD PROTECTION SERVICES HANDBOOK § 10520 (2012), http://www.dfps.state.tx.us/handbooks/cps/files/CPS_pg_x10500.asp. The official agency description of Texas's "trial independence" program, for example, states that "DFPS's ability to preserve federal funding is integral to the Extended Foster Care program." *See* TEX. DEP'T OF FAMILY & PROTECTIVE SERVS., *supra*, § 10510.

118. *See* VT. CODE R. §12-3-505:7001.8 ("Re-entry is subject to the eligibility criteria of 7001.1; however, some or all of these criteria may be waived at the discretion of the Commissioner or designee.").

119. *See, e.g.*, ARK. CODE ANN. § 9-27-306(a)(1)(B)(1)(b); MASS. GEN. LAWS ANN. ch. 119, § 23(f); VA. CODE ANN. § 63.2-905.1; VT. CODE R. §12-3-505:7001.8; TEX. DEP'T OF FAMILY & PROTECTIVE SERVS., *supra* note 117, § 10520.

120. *E.g.*, FLA. STAT. ANN. § 39.6251(9) (West 2016); NEB. REV. STAT. ANN. § 43-4507(2) (West 2016); VT. CODE R. 12-3-505:7005 (2015).

121. *See, e.g.*, ARK. CODE ANN. § 9-27-306(a)(1)(B)(ii)(b); CAL. WELF. & INST. CODE § 388(e)(1) (West 2016); TENN. CODE ANN. § 37-2-417(b) (West 2016); WASH. REV. CODE ANN. § 74.13.031(11)(b) (West 2016).

122. 705 ILL. COMP. STAT. ANN. 405/2-33(2) (West 2016).

123. FLA. STAT. ANN. § 39.6251(6); 705 ILL. COMP. STAT. ANN. 405/2-33; MASS. GEN. LAWS.

Another recurring restriction of reentry statutes is the imposition of an outside limit on when a youth may seek reentry, based either on the youth's age¹²⁴ or the length of time that has elapsed since the youth left foster care.¹²⁵ One state permits only one application for reentry, limiting the right to seek reentry to youth who either chose to leave care upon turning eighteen, or remained in care past eighteen but were subsequently discharged because of the failure to maintain eligibility for FCA funding.¹²⁶

A significant difference in reentry schemes arises from limitations on court involvement and oversight. In many jurisdictions, statutes and/or rules authorize agencies to provide services to youth seeking reentry, but do not mandate the provision of services to any individual youth.¹²⁷ Thus, with many states, reentry is not a right that arises when a youth satisfies clearly defined eligibility criteria, but rather an opportunity that is left solely to the discretion of the state. In other states, youth reentering care past the age of eighteen may also seek to reopen a closed court case.¹²⁸ In Washington, when a youth who is permitted to reenter the agency's extended foster care services program complies with the program for six months, the case will revert to a dependency status, with judicial oversight.¹²⁹ The engagement of the juvenile court may be especially important for a youth reentering foster care because of the responsible child welfare agency's accountability to the court and the court's authority to order compliance with an agreement for extended services.¹³⁰ Where the law permits

ANN. 119 § 23(f); MO. ANN. STAT. § 211.036 (West 2016); 42 PA. STAT. AND CONS. STAT. ANN. § 6351(j).

124. See, e.g., IOWA ADMIN. CODE r. 441-202.3(234)(3)(e) (2016) (providing that access to voluntary placement for former foster youth seeking reentry ends if the youth was out of care after turning twenty); KY. REV. STAT. ANN. § 620.140(1)(e) (West 2016) (requiring that an application be made prior to youth attaining age nineteen); MD. CODE ANN., CTS. & JUD. PROC. § 3-804(a)(2)(i) (West 2015) (stating that a court's authority to reestablish jurisdiction over a former foster youth ends when he turns twenty years and six months old); WASH. REV. CODE ANN. § 74.13.031(11)(b) (stating that a nonminor dependent whose dependency case has been dismissed by a court must request extended foster care services before reaching age nineteen).

125. See, e.g., N.Y. FAM. CT. ACT. § 1091 (McKinney 2016) (stating that the right to seek reentry expires twenty-four months after first discharge from foster care following a youth's eighteenth birthday); TEX. FAM. CODE ANN. § 263.6015 (West 2015) (stating that a juvenile court's authority to extend trial independence ends one year after a youth eighteen years of age or older leaves care); VA. CODE ANN. § 63.2-905.1 (West 2015) (stating that a youth must seek restoration of independent living services within sixty days of cessation).

126. WASH. REV. CODE ANN. § 74.13.336(1), (3) (stating that a youth may enter into a voluntary placement agreement for extended foster care services only once).

127. See, e.g., ALA. ADMIN. CODE r. 660-5-51-.01 (2016); MASS. GEN. LAWS ANN. ch. 119, § 23(f); MICH. COMP. LAWS ANN. § 400.649 (West 2016); TENN. CODE ANN. § 37-2-417(f) (West 2016); ARIZ. DEP'T OF CHILD SAFETY, *supra* note 113, § 38.

128. See, e.g., ALASKA STAT. ANN. § 47.10.080(v) (West 2016); ARK. CODE ANN. § 9-27-306(a)(1)(B)(ii) (West 2015); CAL. WELF. & INST. CODE § 388.1(a) (West 2016); FLA. STAT. ANN. § 39.6251(6)(b) (West 2016); 705 ILL. COMP. STAT. ANN. 405/2-33(2) (West 2016); KY. REV. STAT. ANN. § 620.140(1)(e) (West 2016); MO. ANN. STAT. § 211.036; N.Y. FAM. CT. ACT § 1091.

129. See WASH. REV. CODE ANN. § 74.13.336(2)(b).

130. See, e.g., ME. REV. STAT. ANN. tit. 22, § 4037-A(3) (2016) (“[T]he court may order either the department or the person or both to comply with the agreement of extended care and

the restoration of such oversight, a youth may also recover access to the aid of an attorney or guardian ad litem, who can advocate in court for the youth and—if necessary—against the agency.¹³¹ Court involvement also restores the youth's access to all of the accompanying remedies for the agency's failure to either engage in rational planning for independence, or implement provisions of a youth's service plan.¹³² To be sure, many judges are reluctant to interfere with agency discretion in both the planning and implementation of services, for reasons that are both political and legal.¹³³ Where this is the case, the availability of funding from either state or federal sources is of critical importance to youth seeking to reengage available support from the foster care system, and resource limits may significantly impact the ability of juvenile courts to ensure the availability of critical supports for youth transitioning to independence.¹³⁴ Nonetheless, from the perspective of youth seeking to ensure the availability of critical resources and supports necessary to the achievement of independent living skills, restoration of court oversight is a significant benefit.

Finally, it is worth noting that several states have adopted legislative strategies aimed at discouraging the premature closure of court cases for youth who are not yet prepared to live independently. One strategy involves mandating counseling youth about the dangers of leaving care too soon; in Nebraska, for example, the Young Adult Bridge to Independence Act directs that “[i]f a young adult chooses to terminate the voluntary services and support agreement, the department shall provide the young adult with a clear and developmentally appropriate written notice informing the young adult of the potential negative effects of terminating the voluntary services and support agreement early.”¹³⁵ Another strategy, directed more at child welfare professionals than at emerging adults contemplating leaving care, aims at the all-too-common confusion

support. . . .”); N.H. REV. STAT. ANN. § 169-C:4(II) (2016) (“[T]he court is authorized to and shall make such orders relative to the support and maintenance of said child during the period after the child's eighteenth birthday as justice may require.”).

131. See, e.g., WASH. REV. CODE ANN. § 13.34.267(6); cf. ME. REV. STAT. ANN. tit. 22, § 4037-A(5) (stating that a youth in care is not entitled to services of a guardian ad litem after the age of eighteen).

132. See, e.g., Bruce A. Boyer & Amy E. Halbrook, *Advocating for Children in Care in a Climate of Economic Recession: The Relationship Between Poverty and Child Maltreatment*, 6 NW. J.L. & SOC. POL'Y 300, 313 (2011) (discussing the importance of judicial oversight of agencies in the delivery of child welfare services).

133. Illinois law, for example, limits the authority of the juvenile court to “order specific placements, specific services, or specific service providers to be included in the [service] plan.” 705 ILL. COMP. STAT. ANN. 405/2-23(3). Advocates in Illinois have sought to address these limits through legislative reform, but budgetary concerns present a significant obstacle to legislation proposing the removal of barriers to the entry of orders compelling the expenditure of state funds. Recent legislation in Illinois seeking to amend this limitation (H.B. 3507) was vetoed by the governor, and an effort to override the veto failed by five votes.

134. One notable exception to this trend is the State of Arkansas, which in 2015 amended its reentry statute to eliminate language providing that the court's obligation to restore a youth to foster care was conditioned on the availability of funding. Act of July 22, 2015, § 1, 2015 Ark. Acts 875 (codified as amended at ARK. CODE ANN. § 9-27-306(e) (West 2016)).

135. NEB. REV. STAT. ANN. § 43-4507(1) (West 2016).

between a youth's willingness to cooperate with services and his or her readiness for independence. In many jurisdictions where continued care past eighteen is an option, youth are still routinely discharged from care at eighteen, not so much because they are actually prepared for independence, but rather because their caseworkers recommend case closure due to the youth's failure to cooperate with recommended services or placements.¹³⁶ In response to this problem, and in the same legislation that created its reentry program, Illinois added language to its statute on discharge of child protection proceedings providing that "[t]he minor's lack of cooperation with services provided by the Department of Children and Family Services shall not by itself be considered sufficient evidence that the minor is prepared to live independently and that it is in the best interest of the minor to terminate wardship."¹³⁷ This amendment has significantly reduced the number of children discharged prematurely to independence as a result of the reluctance of frustrated caseworkers and judges to continue extending resources to youth seen as uncooperative.

B. Data on Reentry

There is little available data on the number of youth who have sought to reenter foster care following an early exit to independence. In part, this circumstance is due to the fact that the federal government does not require states to gather information about foster care reentry. Much of the available data on foster care is tracked through the AFCARS, which serves as the principle vehicle for gathering and analyzing data pertaining to the implementation of Title IV-E of the Social Security Act. Federal regulations specify data elements that states must gather pursuant to Title IV-E,¹³⁸ but data on foster care reentry are not among them. Only one state appears to have codified a data collection requirement relevant to the subject of reentry,¹³⁹ but as of 2015 that state's child welfare agency had not yet developed the capacity to satisfy this statutory mandate.¹⁴⁰

Despite the absence of a federal mandate, several states have gathered

136. See *supra* notes 35 and 96–100 and accompanying text for examples of the circumstances under which many youth are discharged.

137. 2009 Ill. Leg. Serv. 96-581 (West) (codified as amended at 705 ILL. COMP. STAT. ANN. 405/2-31 (West 2016)).

138. See 45 C.F.R. § 1356.83 (2016); see also U.S. HEALTH & HUMAN SERVS., ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM, AFCARS TECHNICAL BULLETIN #1: DATA ELEMENTS 3–15 (2012), http://www.acf.hhs.gov/sites/default/files/cb/afcars_tb1.pdf.

139. The Massachusetts statute authorizing foster care reentry provides that [t]he department shall report annually to the child advocate, the senate and house chairs of the joint committee on children, families and persons with disabilities and the chairs of the senate and house committees on ways and means on the number of persons it serves and declines to serve under this subsection. MASS. GEN. LAWS ANN. ch. 119, § 23(f) (West 2016).

140. See E-mail correspondence with Lisa Rosenfeld, Counsel to Mass. Joint Committee on Children, Families & Persons with Disabilities, and Leah Robins, Legislative Dir. for the Mass. Dep't of Children and Families (Apr.–May 2015) (on file with author).

limited information about reentry. In Connecticut, a committee of the General Assembly commissioned a 2014 study examining the capacity of the Department of Children and Families to prepare youth aging out of care for independence, which looked specifically at the implementation of the state's reentry program.¹⁴¹ Under this program, which commenced in 2002, youth who were in care at eighteen but opted to leave foster care for independence are eligible for reentry if they are still under twenty-one, willing to pursue a secondary education, and have not been convicted of a crime.¹⁴² In each of the years examined by the study, while the majority of foster youth opted to remain in the care of DCF upon reaching the age of eighteen, a significant minority—more than 250 youth—exercised their right to exit care.¹⁴³ The population of candidates for reentry during these years thus included, at a minimum, several hundred youth. From this population, in the two years preceding the study (2012 and 2013),¹⁴⁴ the Connecticut DFS received a total of 172 applications from youth seeking reentry.¹⁴⁵ While available data do not permit an exact calculation of the number of youth potentially eligible to seek reentry into care under applicable program standards, it is apparent that a large percentage of the Connecticut youth eligible to seek reentry during this period in fact sought to do so.

Notably, less than a third of the youth seeking reentry in Connecticut succeeded in achieving this goal. Of the 172 applications, only 50 were accepted, with the remainder either still pending at the time of the report (12), or denied because the applicants failed to follow through with the applications (57), were referred for other programs (11), or were otherwise found ineligible for reentry (42).¹⁴⁶ For those who succeeded in effecting reentry, the reported results were generally very positive. Of thirty youth reentering care in 2012, at the time of the report only eight had failed to achieve their educational goals.¹⁴⁷

A similar evaluation examined reentry among more than 3,000 Illinois youth who reached eighteen while in foster care between January 2010 and September 2013.¹⁴⁸ During this time frame, more than half of the youth in the study (1,763 out of 3,254) exited foster care before reaching the age of twenty-

141. LEGISLATIVE PROGRAM REVIEW & INVESTIGATIONS COMM., CONN. GEN. ASSEMBLY, DEPARTMENT OF CHILDREN AND FAMILIES SERVICES TO PREPARE YOUTH AGING OUT OF STATE CARE (2014), <https://www.cga.ct.gov/prj/docs/2013/DCF%20Age%20Out%20Staff%20F&R%20Report.pdf>.

142. *Id.* at 94.

143. *Id.* at 13. Over the three years covered by the report, 98 of 600 youth (FY 2011), 84 of 540 youth (FY 2012), and 79 out of 440 youth (FY 2013) opted to exit care upon reaching eighteen years old. *Id.*

144. Though the state's reentry program began in 2002, Connecticut did not collect data on reentry prior to 2012. *Id.* at 94–95.

145. *Id.* at 95–96.

146. *Id.*

147. *Id.* at 97.

148. Judy Havlicek & Clark M. Peters, *Re-entry Among Former Foster Youth in Early Adulthood: Findings from Illinois*, 46 CHILD. & YOUTH SERVS. REV. 230, 232 (2014).

one, with only thirty-five applications for reentry.¹⁴⁹ While the modest number of applications for reentry clearly limits the utility of any inferences drawn from the demographics of this group, the study authors noted several characteristics distinguishing the group of applicants for reentry. Among the circumstances deemed significant were the facts that reinstated wards were more likely than the comparison groups to have been older upon the first exposure to maltreatment, more likely to have experienced higher instances of maltreatment, more likely to have suffered higher numbers of placement changes, and less likely to have ever lived with someone considered to be a potential adoptive or guardianship resource.¹⁵⁰ All of these circumstances are consistent with social science suggesting that for any individual seeking to transition successfully from foster care to adulthood, both the level of disruption associated with foster care and the absence of adult role models limit the likelihood of achieving stable positive outcomes.¹⁵¹

More significant than the limited conclusions to be drawn from the demographics of this group is the fact that the group itself is so small—roughly two percent of the population of youth leaving foster care after eighteen but before reaching the age of twenty-one. In California, where several thousand youth between eighteen and twenty leave care each year,¹⁵² the frequency of applications for reentry is similarly low; only a small (though growing) number of youth have sought reentry since that state’s program commenced in 2012.¹⁵³ The only other state for which the author was able to obtain data was Minnesota, which reported similarly small numbers of youth reentering care after the age of eighteen, with the largest percentage of these youth reentering at age eighteen and a smaller but comparable number at the age of nineteen.¹⁵⁴

In conjunction with their review of Illinois’s reentry program, Judy Havlicek

149. *Id.* at 233. Statistics updated through 2014 provided by the Illinois Children of Family Services document a total of seventy individual applications for reentry, including six individuals who sought reentry on more than one occasion. Letter from Janet Ahern, DCFS Deputy Gen. Counsel, to author (Mar. 24, 2015) (on file with author).

150. Havlicek & Peters, *supra* note 148, at 234.

151. See *supra* Part II.B for a discussion of the challenges individuals face when seeking to transition from foster care to adulthood.

152. In the years 2011–2013, California reported between 3,000 and 5,000 youth between the ages of eighteen and twenty exiting foster care. See STEPHANIE CUCCARO-ALAMIN ET AL., THE CONRAD N. HILTON FOUND., TRANSITION AGE YOUTH AND THE CHILD PROTECTION SYSTEM: DEMOGRAPHIC AND CASE CHARACTERISTICS 66 fig.19 (2015), https://s3.amazonaws.com/dvis-data/cdn/CDN_Hilton_TAY_Report_CA.pdf.

153. Data provided by the Judicial Council of California Center for Families, Children and the Courts report 66 separate requests for reentry in FY 2011–2012, 307 requests in FY 2012–2013, and 490 requests in FY 2013–2014. See E-mail from Marymichael Miatovich, Ctr. for Families, Children & the Courts, Operations & Programs Div., Judicial Council of Cal., to Judge Len Edwards (Apr. 22, 2015) (on file with author).

154. By age and year, Minnesota reported 145 youth reentering care in FY 2011 (69 at age eighteen, 63 at age nineteen, and 12 at age twenty), 94 youth reentering care in FY 2012 (53 at age eighteen; 33 at age nineteen, and 8 at age twenty), and 57 youth reentering care in FY 2013 (39 at age eighteen, 13 at age nineteen, and 5 at age twenty). E-mail from Stephen Vonderharr, Planning Project Dir., Minn. Dep’t of Human Servs., to Tiffany Koss (July 28, 2015) (on file with author).

and Clark M. Peters considered the various possible explanations for the paucity of candidates for reentry. They reasonably dismissed outright the possibility that the needs of young people who exited care to independence before twenty-one were being met outside of the foster care system, finding this suggestion to be plainly inconsistent with available research about outcomes for graduates of the foster care system.¹⁵⁵ More likely explanations include concerns about the burdensome process for seeking reentry, the mismatch between the developmental and other needs of foster care alumni and available resources, youths' reluctance to surrender freedom from the restrictions of foster care (such as curfews or limitations on contact with family members), or simply the fact that youth are unaware of the possibility of reentry.¹⁵⁶ It is also possible that for youth who left care in part because of conflictual relationships with their caseworkers, the fact that those same workers stand at the gateway to reentry may be a significant disincentive to reengaging in foster care.¹⁵⁷ Regardless of what accounts for the small number of youth seeking or achieving reentry, data suggest two important conclusions about reentry statutes. First, in all of the states where data has been made available, even though the number of youth seeking reentry is small, it is still significant. Second, the experience in Connecticut suggests that aggressive counseling and communication may significantly impact the ability of a reentry program to extend its reach and increase the number of vulnerable youth seeking to take advantage of the option of reentry.

C. *Recommendations for Extending Reentry Following Trial Independence*

Based on compelling evidence of the costs associated with foster youth's premature transition to independence, sound public and fiscal policy would seem clearly to favor legislative schemes permitting foster youth to remain in care up to the age of twenty-one. More research would help illuminate what strategies are most effective not only in persuading youth to remain in care after eighteen, but also in encouraging youth who have left care to seek reentry if they need assistance that cannot be found outside of foster care. Nonetheless, there would seem to be little reason to limit the availability of state support for abused and neglected youth who cannot achieve forms of permanence other than independence, at least up to the age of twenty-one. Legislative strategies aimed at supporting this population are not only eligible for federal aid through the Chafee and Fostering Connections programs,¹⁵⁸ but also likely to realize

155. Havlicek & Peters, *supra* note 148, at 235.

156. *Id.* at 235–36.

157. According to Penn Law School's Professor Kara Finck, whose child advocacy clinic began representing clients seeking reentry after Pennsylvania's statutory adoption of a reentry program in 2012, such continuing conflicts with caseworkers pose a significant obstacle to successful reentry into foster care for many clients. Kara Finck, Practice Assoc. Professor of Law, Univ. of Pa. Law Sch., Remarks at the Temple Law Review Symposium: Court-Involved Youth in the 21st Century: Empowerment vs. Protection (Oct. 2, 2015).

158. See *supra* notes 107–10 and accompanying text for a discussion of the Fostering Connections and Chafee programs.

significant long-term benefits and savings through the achievement of more stable and durable transitions to adulthood.

One important aspect of any legislative strategy should be to encourage children to remain in care if they are not yet prepared for independence. Jurisdictions that have aggressively counseled youth against prematurely terminating wardship seem to have had some success,¹⁵⁹ and state legislatures can encourage such counseling by making clear that it is a legislative priority.¹⁶⁰ Statutes might also explicitly recognize that if a juvenile court is considering whether or not a youth is ready for emancipation before signing off on closure of a case, the youth's reluctance to cooperate with recommended services should not be confused with readiness to live independently.¹⁶¹

For those youth who do choose to leave care, beyond conditioning reentry on satisfaction of the FCA eligibility requirements, there would seem to be little justification for the imposition of additional legislative restrictions on reentry into foster care prior to age twenty-one. Certainly, the central purposes of casework support for older youth seeking independence include encouraging them to learn and practice independent living skills, and fostering a sense of accountability is a necessary aspect of this learning process. However, the achievement of this goal can more readily be accomplished through the individualized decisions made during the daily course of the relationship between a worker and an older ward. The meaningful communication of independent living skills need not and should not depend on the imposition of categorical legislative limits on reentry that effectively prevent youth from learning from their experiences. There would thus seem to be little public policy rationale for restrictions on reentry laws adopted in a number of jurisdictions, such as limitations on the age of the youth or the period of time after an initial exit to independence during which a former ward who is still under twenty-one may seek to reenter care. These limitations, by and large, are inconsistent with what is now known about emerging adults and the developmental processes associated with transitioning from foster care to adulthood.

V. CONCLUSION

Even under the best of circumstances, the transition from adolescence to independence as an adult is a difficult one. Making this transition successfully is invariably a gradual process marked by trial and error, aided greatly by the assistance of supportive family. For youth exiting foster care, who far too often lack this support, achieving stable independence is especially challenging.

159. Officials in Connecticut report that counseling older youth to remain in care past eighteen is a focused priority of child welfare caseworkers and that the state has significantly reduced the number of children leaving care prior to twenty-one. Telephone Conference with Anne McIntyre-Lahner, Dir. of Performance Mgmt., Conn. Dep't of Children & Families (Aug. 31, 2015).

160. See NEB. REV. STAT. ANN. § 43-4507(1) (West 2016). See also *supra* note 135 and accompanying text for a discussion of the Nebraska statute.

161. See 705 ILL. COMP. STAT. ANN. 405/2-31(2) (West 2016). See *supra* note 133 for a discussion of the Illinois statute.

Despite the many shortcomings of state care, it is often a significantly better alternative than the park benches that await too many emerging adults who strike out on their own without housing, employment, or other resources. The discretion exercised by youth who choose to leave this safety net prematurely must be seen as developmentally appropriate, regardless of whether or not the choice to leave care seems objectively rational. Youth must be allowed—even expected—to make mistakes as they make this transition. And when youth who choose to leave care despite continuing eligibility for state support discover that they may have underestimated the challenges they will face, or overestimated their readiness to meet those challenges without any assistance, sound public policy clearly supports the extension of reentry programs that permit them to return to the relative safety of foster care.