
Technical Assistance Brief

THE FOSTER CARE INDEPENDENCE ACT OF 1999
and
THE JOHN H. CHAFEE FOSTER CARE
INDEPENDENCE PROGRAM

Permanency Planning For Children Department



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NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

THE FOSTER CARE INDEPENDENCE ACT OF 1999 and THE JOHN H. CHAFEE FOSTER CARE INDEPENDENCE PROGRAM

Every year in the United States, 20,000 young adults exit foster care for the sole reason that they turn 18 years old.¹ At a time of life when all young adults are attempting independence and self sufficiency with varying degrees of success, foster children make their transition into the world with almost no financial resources, few personal and family connections, and little if any continuing support from the system that has essentially raised them.

In response to this concern, Congress passed the Foster Care Independence Act (FCIA) in December 1999. This federal legislation was the result of a bipartisan consensus that more resources should be focused on helping foster children prepare for a successful life after foster care. The FCIA ensures that state social service agencies can access flexible funding to support comprehensive independent living programs for all teens in care and can continue providing certain supports to these young adults even after they have left the system.

Overview of FCIA

The FCIA aims to profoundly change the way child welfare systems support and guide their eldest wards through the foster care process. At the heart of the legislation is the John H. Chafee Foster Care Independence Program. This legislation (P.L. 106-169) was Senator Chafee's (R-Rhode Island) final child welfare initiative before his death in October 1999.

The FCIA replaces the former Title IV-E Independent Living Program. The purpose of the revision is to provide states with flexible funding to assist children likely to "age out" of the foster care system at age 18. Its goal is to help former foster children continue their education, obtain employment, and attain the life skills necessary to transition successfully out of the system. To accomplish this, the FCIA doubles the amount of federal dollars available to assist states in providing independent living services and increases the states' flexibility in spending these dollars.

Additionally, the FCIA:

- Affirms the permanency plans mandated by the Adoption and Safe Families Act of 1997 (ASFA) and firmly reiterates that independent living is not a permanency plan.
- Allows states to offer independent living services to any child "likely to remain in foster care until age 18" regardless of permanency goal and age.
- Allows the states to offer "room and board" to the older teens who have left foster care and have not yet reached the age of 21.
- Encourages states to provide Medicaid coverage to former foster children through age 21.
- Mandates that states involve community partners in developing programs to ensure the self sufficiency of older teens transitioning from foster care.
- Establishes a role for young adults in designing their own transition program and requires that they commit to work diligently towards achieving its goals.

What is the Role of the Juvenile Court in Implementing the FCIA?

The FCIA may be misinterpreted as merely an appropriations act that increases funding for state independent living programs. On the contrary, the FCIA sets the tone for courtroom proceedings for all children who are aging out, or on the brink of aging out, of the foster care system, especially at the time of permanency planning hearings. As part of youth case planning under ASFA, juvenile and family courts can ensure that teens preparing to exit the foster care system are accessing and receiving the independent living services necessary to become independent. *The FCIA ensures that the court can directly impact the readiness of a child to become self reliant by holding the child welfare system accountable to not only provide permanency services but also independent living services as part of its case plan for all teens in this age group.*

¹ United States General Accounting Office, *Foster Care: Effectiveness of Independent Living Services*, November 1999, p. 4.

“It could be a fantastic leadership role for judges to promote concurrency in permanency and independent living services. Independent living services are just that — a service. Such services should be provided as a complement and a supplement to core child welfare services focusing on permanency. Older youth need both connections to family (their own family, kin, adopted, supportive adults, previous foster families, etc.) and preparation for adulthood.”

Robin Nixon, Director, Transition Advocacy and the National Foster Care Coalition, Casey Family Programs

A Difficult Transition for Former Foster Children

States vary widely in the transitional resources and after-care supports available to prepare teenagers in foster care for life on their own and to help them attain their goals. In its November 1999 report to the House of Representatives, the Government Accounting Office² found that only 18% of the states offer job training services, 35% help with job placement, 67% train in money management skills, 41% provide tuition for education, and 65% provide skills training in locating and maintaining housing.³

As Senator William Roth (R-Delaware) stated in support of the passage of the FCIA, “[a]s parents, we certainly do not cut off our children at 18. Indeed, children in foster care have more need than most for a helping hand if they are to succeed in adulthood.”⁴ Senator Daniel Moynihan (D-New York) followed by saying, “For children who have ‘aged out’ of foster care by turning 18, the government is, in effect, their parent and we should do more to help them become independent and self sufficient, just as other parents do.”⁵

Research conducted across the nation’s child welfare systems affirms that children who age out of the foster care system are at increased risk of poverty, homelessness, addiction, and re-entry into the public welfare system and adult criminal courts.⁶ This influential study found that more than 12% of the teens interviewed had been homeless,

28% had been incarcerated, and 32% had received public assistance since leaving foster care.⁷ Forty percent of the teens in the Wisconsin study also had difficulty obtaining medical care despite significant physical, mental, and behavioral health needs assessed while in care.⁸ Another study showed that these young adults achieve a lesser level of education, are more likely to become unwed parents, and are more likely to be unemployed than their non-foster care peers.⁹ It is fair to say that the present child welfare system is doing a poor job of preparing these children to be self-sufficient adults and productive citizens.

The Goal of Independent Living

The FCIA reaffirms the goal of permanency for all children in foster care as mandated by ASFA: “Independent Living Programs are not an alternative to adoption for these children.”¹⁰ Upon the bill’s passage, Senator John Rockefeller (D-West Virginia) stated, “...an important provision in this Foster Care Independence Act states that independent living programs are not an alternative to permanency planning – young people of all ages need and deserve every possible effort be made toward permanence, including adoption.”

Children under the age of 16 and over the age of 18 were not consistently offered, nor did they receive, the independent living services they were eligible for prior to the FCIA. However, as part of an ASFA appropriate case plan, independent living services can be offered to *any* child who is transitioning to adulthood. In amending this policy, the FCIA considers two key challenges faced by teens in foster care. First is locating an appropriate adoptive or permanent family for the teen. Second, most teens who have been raised in foster care are at a disadvantage compared to teens raised by a family in developing the life skills necessary to enter society.

The FCIA now allows states to provide independent living services to all children at risk of aging out of the system. This means that a 14-year-old child in a stalled adoptive placement is just as eligible to receive these services as a 17-year-old child on the brink of independence. Thus, the criterion is the child’s “need” to learn the skills necessary to transition to adulthood – not age or placement.

² Ibid.

³ Ibid.

⁴ 145 Congressional Record S15202 (1999).

⁵ Ibid. S15204.

⁶ Courtney, M., Piliavin, I., Grogan-Taylor, A., and Nesmith, A., *Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months after Leaving Out-of-Home Care*, Institute for Research on Poverty, University of Wisconsin-Madison, July 1998.

⁷ Ibid.

⁸ Testimony before the House Committee on Ways and Means, Subcommittee on Human Resources, Hearing on Foster Care Independent Living, Statement of Mark E. Courtney, May 13, 1999.

⁹ Cook, R., *A National Evaluation of Title IV-E Foster Care Independent Living Programs for Youth, Phase 2*, 1992.

¹⁰ Sec. 101(a)(2).

The FCIA must rely on the courts to promote concurrency in permanency and independent living services. Permanency plans for adolescents should include permanency services with the goal of securing a family, in concert with independent living services that address such issues as education, medical coverage, and post-placement living arrangements, in addition to traditional life skills training.

Education

Only 80% of states report that they offer educational services as part of their independent living programs.¹¹ Young adults entering the workforce without a high school education are at a serious disadvantage compared to those who have successfully completed high school. The FCIA provides states with flexible funding to create and sustain programs that will provide assistance to foster care youth in obtaining a high school diploma or GED. Assistance can include tuition, tutoring, and other educational expenses. Similar support may be provided to young adults who are interested in obtaining a post-secondary education.¹² Services can include educational planning, assistance in obtaining financial aid or college admission, and college-testing preparation.

Health Issues and Medical Care

Few states extend Medicaid coverage to young adults exiting the foster care system through the age of 21.¹³ In the Wisconsin study, 44% of young adults stated that they had a problem “most” or “all of the time” in obtaining medical care since their discharge from foster care.¹⁴ Ninety percent of these youth stated that their difficulties were due to “a lack of health insurance coverage or care costing too much.”¹⁵

The FCIA now allows states the option to continue Medicaid to young adults who are in care on their 18th birthday, after they exit foster care, through age 21. Additionally, independent living services are expected to incorporate training on preventative health issues

such as substance abuse, smoking avoidance, nutrition education, and pregnancy prevention.

Post-Placement Living Arrangements

A direct correlation has been drawn between the quality of transitional services provided to youth leaving foster care and the risk of their later homelessness.¹⁶ Three in ten of the nation’s homeless adults are former foster children.¹⁷ Under the FCIA, states can allot up to 30% of their federal independent living dollars to provide room and board for young adults who were in care on their 18th birthday but who are not yet 21. This includes adolescents who lost touch with the agency prior to or after their 18th year and then returned requesting assistance prior to their 21st year.

Traditional Life Skills Training

Forty-six percent of states report independent living training in daily living skills.¹⁸ This training can include money management, health and safety, nutrition education, grocery shopping, housekeeping, parenting education, family planning, community transportation, driver’s education, and interpersonal and social skills.¹⁹ The FCIA continues to support training in these areas and encourages the development of services that focus on adult self sufficiency.

The FCIA recognizes that young adults must play a part in determining the services needed to help them achieve self sufficiency. In his statement to the House Committee on Ways and Means, Mark Kroner, Director of Self-Sufficiency Services for Lighthouse Youth Services in Ohio, stressed that, “[t]he teens coming through our program taught us what they needed to do and learn in order to become more self sufficient. Sometimes it meant letting them make dozens of crazy mistakes and foolish choices...” The crucial point, captured by Senator Olympia Snowe (R-Maine), is to provide a “safe, stable, and nurturing environment” while they are “still learning these valuable life skills.”²⁰

¹¹ GAO, p. 7, *supra* note 1.

¹² For more information regarding programs and services offered to youth in foster care to address their educational needs, see *Technical Assistance Bulletin* Vol. VI, No. 2, “Improving Educational Outcomes for Youth in Foster Care: Perspectives from Judges and Program Specialists,” published by the National Council of Juvenile and Family Court Judges, Permanency Planning for Children Department, June 2002.

¹³ States that have extended the option to continue Medicaid include Arizona, California, Hawaii, New Jersey, Oklahoma, Texas and Wyoming.

¹⁴ Courtney p. 3, *supra* note 6.

¹⁵ Courtney, p. 1, *supra* note 6.

¹⁶ Roman, N.P. & Wolfe N., *Web of Failure: The Relationship Between Foster Care and Homelessness*, Online, 1995.

¹⁷ *Resources On: Foster Care and Homeless Youth*, Casey Family Programs, Online, July 2001.

¹⁸ GAO, p. 8, *supra* note 1.

¹⁹ GAO, p. 8-9, *supra* note 1.

²⁰ 145 Congressional Record S15227-01 (1999).

Consequently, the FCIA mandates that states involve foster care youth in a manner equal to any other community stakeholder in designing program activities. Each state must also certify that these young adults have “participated directly in designing their own program activities that prepare them for independent living and that the adolescents accept responsibility for living up to their part of the program.”²¹

The courts should encourage the same personal involvement of each child in his or her independent living plan. The use of alternative dispute resolution services, such as mediation or family group conferencing, can provide a forum for the ideas, needs, and desires of the young adult that need to be considered.

Case Closing

Judges have a very important role to play in deciding if discharge at age 18 is appropriate. In many jurisdictions, it is up to the judge to determine if a youth remains in need of child welfare services. Judges should be knowledgeable of the transition plan and can apply criteria such as “evidence of a safe and stable living arrangement” to discharge or case closing decisions.

Judges can greatly assist those youth who have run away or are missing from their placements between the ages of 16 to 18. The state must retain legal responsibility for missing youth for them to remain eligible for Chafee-funded room and board and Medicaid extension. Judges can maintain oversight of the missing youth by not discharging from foster care and keeping case files open.

What is the Role of the Juvenile Court in Affecting State Independent Living Policy?

In order to apply for funding under the FCIA, a state must submit an application to the Department of Health and Human Services (HHS).²² For fiscal year 2000, HHS allowed an abbreviated application process that required a description of the state’s plans and progress toward developing independent living programs consistent with the FCIA.²³ HHS further required that states submit a comprehensive FCIA State Plan for fiscal years

2001-2004 in June 2001. An update of this State Plan is to be submitted annually in conjunction with the Title IV-B Annual Progress and Services Report.

The FCIA requires states to engage a wide range of stakeholders in developing their Five Year Plans.²⁴ The expertise of juvenile and family court judges is essential in the development of state plans that support services consistent with achieving permanency for teens while, at the same time, providing those teens with the life skills necessary to attain self sufficiency. The continuing role of the judiciary is required to provide input where modification of the plans is warranted and advocate for the funding of excellent programs within their jurisdictions.²⁵

Judges may assist in the development of independent living services in their states by contacting the designated Independent Living State Coordinator. The names of each state’s Coordinator may be found online at www.nrcys.ou.edu/ilcoord.htm.

“Judges play a critical role, not only in oversight of or participation in the development of state plans but in the oversight of jurisdictional approaches to independent living services, permanency efforts for older youth, and discharge policies for young adults. Specifically, a judge can review the following areas during regular case reviews:

- How does the youth’s case plan address transition planning? Does it include structured independent living services as well as permanency services?
- If parental rights have been terminated and the youth will probably be emancipated from foster care, are there specific efforts outlined in the case plan to ensure that the youth has or is building a social support network? What plans are made for holidays?
- What is the educational status of the youth? Will the youth graduate from high school? Is the caseworker addressing post-secondary education or training for the youth?
- Is the young person involved in transition planning? How is that evidenced in the case plan?

²¹ FCIA § 477(b)(3)(H).

²² Casey, *Frequently Asked Questions*, February, 2000, p. 15.

²³ Department of Health and Human Services, Administration for Children Youth and Families, Program Instruction, ACYF-CB-PI-01-02, February 2001.

²⁴ FCIA § 477 (b)(3)(E).

²⁵ *Supra* note 12.

- If the youth has a permanency goal of adoption or permanent guardianship, are efforts being made to achieve that outcome, as well as providing preparation for adulthood through provision of independent living services?
- If the youth is transitioning from foster care to an independent apartment or other arrangement, is discharge at age 18 appropriate? Is the living arrangement safe and stable? Are child welfare services still needed?"

Robin Nixon, Director, Transition Advocacy and the National Foster Care Coalition, Casey Family Programs

Closing Statement

Judge Patricia Martin Bishop has served as the Presiding Judge of the Child Protection Division of the Circuit Court of Cook County, Chicago, Illinois from January 2000 to the present, and also serves as the Chicago Model Court Lead Judge for the OJJDP-funded Victims Act Model Court Project of the Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges. Judge Bishop has made numerous presentations and keynote addresses at local and national conferences on child abuse topics. In February 2001, she served as faculty for the "Improving Educational Outcomes for Youth in Care: A National Collaboration Symposium" in Washington D.C. Judge Bishop presented on the Benchmark Permanency Hearing Initiative which she has implemented in Cook County — a special court call or docket focusing on teenage wards who have been abused and neglected. These intensive hearings are designed to be supportive of the young person and to ensure that youth receive appropriate assessment, planning, and training services. These hearings also serve as a national model to address the educational and professional needs of dependent children.

"Judges need to remember that the children whom we place in state care are our responsibility. When these children enter care, the state becomes their parent. In doing so, the state, like any other parent, undertakes the responsibility to raise these children and to provide for their education, their health, and their well being. When a child enters foster care, no one can say for certain how long that child will remain in foster care. We do not immediately know who will eventually 'age out.' We do know, however, that education, health, and well being are cornerstones to successful independent living. If children are to succeed, they must be provided with these cornerstones.

For example, I first met Stevie when I was a newly assigned judge to the Child Protection Division of the Circuit Court of Cook County. At that time, Stevie was eight years old.

Subsequent assignments took me away from the Child Protection Division. Years later, I returned to the Child Protection Division as the Presiding Judge. In 2001, as part of a pilot program to address the unique needs of teenagers, I began hearing a special teen call, the Benchmark Permanency Hearing Program. The idea behind this program was that teenagers would benefit from intensive permanency hearings that focused on their strengths, needs, and future aspirations. One of the first teens to have a benchmark hearing was Stevie.

Since I had last seen Stevie, he had been in a number of placements. After running away from these placements, Stevie had been placed in a residential facility. The good news was that Stevie was attending and thriving in a highly structured academic setting.

Stevie was stepped down from the residential placement and placed in a relative foster home. While this was an appropriate placement for Stevie, Stevie's education began to take a back seat. No one was stressing the importance of education. There was a delay in enrolling Stevie in school. Stevie missed three months of that semester. Once enrolled, there were problems with supplies and other items, such as Stevie's gym uniform. It began to seem that I was the only person concerned about Stevie's education, including Stevie.

Since I seemed to be alone in my concern for Stevie's education, I became involved in it. I attended two school staffings for Stevie. My attendance resulted in updates to Stevie's individualized education plan. Stevie now has a special counselor who contacts me about Stevie's education. Stevie is still attending school. His motivation needs improvement. His grades need improvement. He is, however, enrolled and attending appropriate classes.

Stevie and children like him are not unique to my jurisdiction. What Stevie has taught me is that a child's needs cannot be put on hold. Someone must meet those needs. It does not matter who takes the lead as long as the needs are met.

Stevie is not yet a success story. Nor is he a failure. His future, like the futures of all children, is not set in stone. I hope that his future will be better because of my involvement. In many cases, education, health, and well being, are forgotten. The child's needs in these areas, however, continue to exist. Someone must focus on these needs if the child is to be able to succeed after he leaves foster care. Accordingly, as the state raises these children, it is the judge who must ensure that someone is addressing their education, health, and well being."

Judge Patricia Martin Bishop

Presiding Judge, Child Protection Division
Circuit Court of Cook County, Chicago, Illinois

Online sources of additional information

- Text of the legislation – Thomas.loc.gov
- Final Fiscal Year 2001 State Allotments – www.nrcys.ou.edu/Documents/Chafee/fy01chafee_compare.htm
- Independent Living State Coordinators – www.nrcys.ou.edu/ilcoord.htm
- Frequently Asked Questions – www.casey.org

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