Is “Least Restrictive” the Best We Can Do? Securing the “Most Connected” Placements

April 9, 2019
## Goals for Workshop

<table>
<thead>
<tr>
<th>Understand</th>
<th>Understand the harm and deprivation that comes from group care placements.</th>
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</thead>
<tbody>
<tr>
<td>Understand</td>
<td>Understand the law and social science that supports assuring the most connected placements for youth.</td>
</tr>
<tr>
<td>Learn</td>
<td>Learn strategies for using the law and social science to advocate for the most connected placements for youth.</td>
</tr>
</tbody>
</table>
Key Principles: Family and Supportive Connections are Critical to Healthy Child and Adolescent Development

• Children and youth need the nurture and care of a parent or parent-like figure with whom they have a stable and long lasting relationship.
• This essential component for healthy development is impossible to provide in group care.
Key Principles: This is a Fundamental Child Welfare Issue

- Placement and care in family-based settings is the most fundamental issue for our clients because it is vital to all areas of safety, permanency, and well-being.

- Healthy childhood development depends on children and adolescents growing up in family-based settings where they can develop healthy, nurturing relationships.
Key Principles: Civil Rights

Placement and care in a family setting is a civil rights issue and our approach and strategies must reflect this.
Key Principles: Confronting our Own Biases

• We hold many biases that are barriers to our prioritization of this issue.

• These biases involve racism, classism, and ideas about professionalism that result in reliance on—or a default to--group care placements.

• Exposing and attacking these biases is an important part of advocacy for the most connected placement.
Social Science Support: No Evidence of Effectiveness

• There is almost no evidence that residential treatment is an effective treatment intervention.

• Any positive effects occur during short treatment stays and do not persist after transition out of residential treatment.
  • American Academy of Child and Adolescent Psychiatry (2010)
  • Magellan Report (2008)
There is evidence that placement in residential treatment and group care causes harm. Stays in residential treatment and group care:

- can exacerbate maladaptive behaviors
- result in victimization and abuse
- make youth vulnerable to harm both in the setting itself and after the youth transitions to another setting or out of care

- American Journal of Orthopsychiatry (2014)
- Unsafe and Uneducated (2018)
Social Science/Research: Group Care is Often Not Used for Treatment

- Data from an ACF Study in 2015 showed that up to 41% of youth in group care had no clinical indicators.

- Of all the youth who entered foster care during the study year who were age 13 or older:
  - about half entered group care at some point.
  - 4 in 10 entered group care due to behavioral problems with no clinical issues.
  - 1 in 4 entered group care as their first placement.

A National Look at the Use of Congregate Care in Child Welfare
Social Science/Research: Group Settings Often are Not Able to Meet a Youth’s Multiple Needs

• Many settings are not able to provide or facilitate access to community based activities or education.

• Many settings are not able to meet a youth’s special or unique needs:
  • Cognitive or physical disabilities
  • LGBTQ
  • Language
“In the past, admission to residential treatment was justified on the basis of community protection, child protection and benefits of residential treatment. However, none of these justifications have stood up to research scrutiny. In particular, youth who display seriously violent and aggressive behavior do not appear to improve in such settings, according to limited evidence.”

How and Where Can You Use the Social Science and Research in Your Advocacy?
Legal Supports—Federal Law

• Reasonable efforts to prevent placement and finalize the permanency plan. 42 U.S.C. § 671(a)(15); 45 C.F.R. § 1356.21(b)(2).

• Requirement to provide a safe and appropriate placement. 42 U.S.C. § 675 (1); 42 U.S.C.A. § 675a (a)(2).

• Case planning requirement to place a child in the least restrictive, most family like placement. 42 U.S.C.A. § 675 (5).

• Limitations on use or APPLA. 42 U.S.C.A. § 675a (a)(2).

• Normalcy requirement to provide age and developmentally appropriate activities and opportunities. 42 U.S.C.A. § 671 (1); 42 U.S.C.A. § 675a (a)(3).
Legal Supports—Federal Law

• Sibling placement and visitation requirements. 42 U.S.C.A. § 671 (31).

• School stability requirements. 42 U.S.C.A. § 675 (1)(G).

• Youth engagement in case planning and court requirements. 42 U.S.C.A. § 675 (1)(B) & (5)(C).

• 14th Amendment guarantees related to conditions, protection from harm and right to treatment.

• ADA and Rehabilitation Act guarantees for the least restrictive, most integrative setting and prohibition on discrimination based on disability.
Legal Supports—Federal Law Funding Restrictions Under FFPSA

• FFPSA amends title IV-E of the Social Security Act.

• When the law is implemented, child welfare agencies cannot use IV-E funds for group care after two weeks unless it falls w/in an exception. § 50741 of FFPSA.

• Exceptions include:
  • A Qualified Residential Treatment Program (QRTP).
  • A setting for youth who are pregnant or parenting or CSEC.
  • SIL settings for youth who are 18-21.
• Beginning January 1, 2019, group care facilities must be licensed as Short-Term Residential Treatment Facilities (STRTPs).

• STRTPs may only accept children for placement who require short-term, specialized, intensive treatment and must have a plan of operations that details core services, treatment practices.

• Case plan for children in STRTPs must specify the need for treatment and include a plan for transition into a less-restrictive environment.

• STRTP placements longer than 6 months must be approved by the local agency’s director or deputy director.
How and where can you use the law in your advocacy?
Discussion

If the research tells us that placement in family settings is a fundamental issue that is core to healthy child development, and the law supports the most connected placement, what is getting in the way of our advocacy?
Resources

• Video—"Is A Least Restrictive Placement the Best We can Do for our Children?", https://www.youtube.com/watch?v=bTr0UA2Duho&t=43s

• Video—"What Does Justice for Children Mean?", https://www.youtube.com/watch?v=7UmB4-mBZFM&t=14s


• Reducing Reliance on Non-Family Placements—A Judicial Tool (NACC and ABA2018), https://www.ncsc.org/~/media/Microsites/Files/Every%20Kid/Advocacy_Guide_for_Attorneys.ashx
Resources

• Leveraging the FFPSA for Older Youth: Three Part Series
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CLOSING THE EXTRACURRICULARS GAP:
Prioritizing Extracurricular Activities as a Key Intervention for Children and Youth in Foster Care and Juvenile Justice

January 2019

youth law center
EXECUTIVE SUMMARY

Extracurriculars – voluntary activities that a youth participates in that broaden his or her experience and/or skills – provide meaningful educational, social, and developmental advantages for all youth, but particularly for youth in the foster care and juvenile justice systems who face significant barriers to success. Despite the increasing need for effective interventions for young people in these systems and the compelling research on the powerful impact of extracurriculars, our practices and policies have not changed to prioritize extracurriculars as a key intervention. As a result, these systems not only fail to remove barriers to extracurricular participation; they erect them, whether by inattention or design. However, bright spots exist: jurisdictions and programs are working to ensure system-involved youth have access to the extracurricular opportunities they need and deserve for healthy development. Building on these successes, agencies, case managers, lawmakers, and other stakeholders can implement changes to ensure that young people have access to meaningful extracurricular activities that contribute to their development and help them thrive.

Benefits of Extracurricular Participation for Youth, Families, and Systems

Part One describes the benefits of extracurricular participation for youth, families and systems. These include:

• **Ensuring Healthy Development:** Extracurricular participation supports healthy child and adolescent development by helping young people build resilience, improve self-efficacy, develop a positive self-identity, and counteract the harmful effects of trauma.

• **Supporting Positive Behavior and Reducing Risky Behavior:** Research shows that extracurricular participation improves academic perfor-
mance, builds soft skills such as leadership and self-discipline, and reduces risky behaviors such as drug and alcohol use.

• **Building Positive Relationships:** When young people participate in extracurriculars, they are able to build healthy relationships with peers who share their interests and connect with supportive adults.

• **Benefiting Caregivers and Systems:** Participation in extracurriculars contributes to improved relationships between youth and their caregivers. It helps youth develop or strengthen healthy relationships with trusted adults which may result in new placement opportunities. As positive behavior increases, it may also improve placement stability and reduce disruptions.

Legal Supports for Extracurricular Participation

Part Two describes the legal and policy supports for extracurricular participation for system-involved youth. Federal and California law both give youth in foster care, including probation-supervised youth in foster care placements, the right to normal childhood experiences, including participation in age- and developmentally appropriate extracurricular activities. Further, the law empowers caregivers to make reasonable, prudent parenting decisions regarding extracurricular participation for children and youth in the foster care system. By contrast, the legal protections for youth in the juvenile justice system are inadequate to ensure that these young people have the opportunity to participate in extracurriculars. Despite some requirements under California law that juvenile detention facilities provide enrichment programming, the law provides little guidance on programming content. Additionally, adequate protections are lacking for young people under community-based probation.

Barriers to Extracurricular Participation

Part Three describes barriers created when child welfare and juvenile justice systems do not prioritize extracurricular participation and identifies some programs working to address those barriers. These include:

• **Failure to Address Common Barriers to Extracurricular Participation:** Some barriers to extracurricular participation, such as cost and transportation, are common to all youth. Systems must take action to help youth overcome these barriers.

• **Failure to Incorporate Extracurriculars into Case Planning:** When systems develop case plans and interventions without considering extracurriculars, they can make it difficult or impossible for youth to begin or continue an activity that is important to them and that may be a key therapeutic or habilitative intervention. All systems actors, from caregivers to case managers to judges, must be aware of youth’s activities and interests and ensure that they are considered in case planning.

• **Erecting Explicit Barriers to Participation:** When extracurriculars are viewed as a reward or as dispensable rather than as a critical intervention, systems may seek to limit youth’s participation as a disciplinary or risk management measure. This particularly impacts young people in secure confinement or residential placement, where extracurriculars are often viewed as a privilege to be earned.

Recommendations for Improving Access to Extracurriculars

Part Four provides recommendations to increase access to extracurriculars for youth in both the foster care and juvenile justice systems. These include:
• **Training and Information:** Youth, caregivers, child welfare and probation staff, courts, legal advocates, and other stakeholders should be trained on the benefits of and barriers to extracurricular participation. In particular, youth and families should be provided with the information necessary to effectively advocate for improved access to extracurricular activities. Case managers should identify and share extracurricular opportunities and information on how to access them with youth and caregivers regularly and through various means.

• **Collaboration:** Agencies should collaborate with schools and community organizations to provide free or low-cost extracurricular opportunities. Youth voice should be central in developing new programming. CASAs should be a resource to support participation.

• **Case Planning and Management:** Case plans should include measures to ensure that youth can access extracurriculars that are tailored to their needs and interests. Recurring barriers should be proactively identified and addressed on a systems level.

• **Legal, Policy, and Financial Supports:** Dedicated funding for extracurriculars for systems-involved youth should be provided at the state level. Local policies should ensure that youth are not excluded from extracurricular participation for disciplinary reasons. Lawmakers should improve protections for youth in the juvenile justice system by instituting robust programming requirements in juvenile facilities and requiring case managers to provide juvenile justice involved youth with information about extracurricular opportunities.

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**INTRODUCTION**

Both the foster care and juvenile justice systems are struggling to find effective interventions that meet the developmental, emotional, and social needs of the young people they serve. As systems move away from practices that have been demonstrated to be not only ineffective, but also harmful – such as the use of group care and secure confinement - it is imperative that these practices are replaced with supports that improve the lives of young people, including high quality parenting and participation in age- and developmentally appropriate activities, including extracurriculars.

Extracurricular activities, which include both school-based activities and community activities such as music, dance, art, sports, and volunteer projects, are a vital part of childhood and adolescence. Broadly speaking, and as employed in this brief, extracurricular activities are any activities that broaden a child or youth’s experience or skills. They help young people discover new interests, make connections with peers and supportive adults, and develop independence, self-esteem, and resilience. Extracurriculars are crucial for access to higher education, not only because they are necessary for a competitive application and can help with securing funding for college, but also because they help youth develop skills, talents, and supportive connections that help young people access and succeed in college.

Unfortunately, despite these significant benefits and legal supports for extracurricular participation, many young people in the juvenile justice and foster care systems face barriers to participation in extracurricular activities that are caused or exacerbated by these systems. These barriers prevent system-involved youth – often the youth
who most desperately need the benefits that extracurriculars provide – from participating alongside their non-system-involved peers.

In this brief, the Youth Law Center examines the research on the benefits of extracurricular participation, the law that supports extracurricular participation for system-involved youth, the barriers facing these youth and their families, and some programs that are succeeding in providing extracurricular opportunities. Our findings and recommendations are based on a review of current social science research, as well as interviews with youth, social workers, resource parents, probation officers, nonprofit administrators, and community stakeholders, spanning over 20 counties in California. Although this brief focuses on California, its findings and recommendations are nationally applicable.

All young people deserve the opportunity to develop their skills, interests, and relationships through extracurricular participation. For young people in the child welfare and juvenile justice systems, these opportunities are especially critical. Our child welfare and juvenile justice systems should work to strengthen existing programs and develop research-informed practices that will ensure that all young people have access to extracurriculars that allow them to develop and thrive.
Extracurricular activities can provide youth with social, emotional, spiritual, and educational enrichment, as well as simply the opportunity to have fun. Extracurriculars are part of a normal childhood and promote healthy development for all youth. However, youth in the foster care and juvenile justice systems typically have faced adverse childhood experiences, including trauma, poverty, separation, abuse, neglect, loss, and disruption, that hinder healthy development. These youth have also frequently not had access to the type of childhood opportunities, including extracurricular activities, that can mitigate the impact of those adverse experiences and support healthy development. These youth are in special need of opportunities to support healthy development and connect with their communities - opportunities that can be provided by extracurriculars.

Extracurricular engagement supports healthy development, helping young people build resiliency and counteract the harmful effects of trauma. Extracurriculars help young people improve academic outcomes, develop skills, and reduce risky behavior. They also increase youth’s lifelong connections and opportunities for permanency. These benefits not only impact youth, but also help their caregivers and the child welfare and juvenile justice systems achieve the goal of improving child well-being.
How many youth are in the child welfare and juvenile justice systems?

- In 2016, there were about 437,000 youth in foster care nationally.¹

- In 2018, there were 60,000 youth in foster care in California; 38,000 between 6 and 17 years old.²

- In 2014, juvenile courts handled nearly 975,000 delinquency cases nationally.³

- In 2017, there were approximately 56,000 juvenile arrests in California, resulting in approximately:
  - 5,500 referrals to diversion programs;
  - 5,000 youth placed on informal or nonwardship probation;
  - 12,500 youth returned home on probation; and
  - 11,000 youth sent to secure or non-secure facilities.⁴

Extracurriculars Help Mitigate Trauma

Many young people in foster care and juvenile justice have experienced considerable challenges that place them at risk for negative outcomes in adulthood, including high rates of trauma. When a child experiences traumatic stress, the body’s stress response system is activated, producing physiological changes in the body and the brain.⁵ Prolonged traumatic stress can lead to negative effects on children’s emotional, behavioral, and social functioning.⁶

Fortunately, extracurricular participation can help young people recover from trauma. When a child's stress response systems are activated within an environment of supportive relationships with adults, the physiological effects of trauma are mitigated.⁷ In fact, when a child is exposed to developmentally healthy experiences, the brain can actually “rewire” itself to counteract the damage caused by traumatic experiences and to develop resilience – the ability to confront, adapt to, and overcome challenging circumstances.⁸ Participation in extracurricular activities, in which a young person is surrounded by supportive adults, can provide the necessary healthy environment for this rewiring to take place.

Extracurricular participation can also promote healthy adolescent brain development. During adolescence, the teenage brain begins to develop the ability to think long-term, delaying gratification and avoiding acting on emotional impulse.⁹ However, young people need safe and supportive environments in which to practice this developmental task. Extracurriculars provide young people with the safe and stimulating environments they need, giving them the opportunity to develop, explore, rise to high expectations, build external caring relationships, and seek opportunities to participate and contribute.¹⁰

Extracurriculars Reduce Risky Behavior and Improve School Performance

Young people in the foster care and juvenile justice systems – particularly youth who age out of those systems – face troubling long-term outcomes. Without intervention, these youth are less likely to graduate from college or be gainfully employed and are more likely to be involved in the adult criminal justice system and to experience violence and poverty than their peers.¹¹

These outcomes are particularly devastating for youth of color, who also face systemic racism and its consequences, including the criminalization of typical adolescent risk-taking, as they navigate the transition to adulthood. Research demonstrates that “the experience of racial discrimina-
tion interferes with an adolescent’s development” and that youth of color experience “disparately negative outcomes when compared with their white peers in foster care.” Ultimately, “the disparate treatment of African-American and Latino youth is...a matter of disparate opportunities to grow, develop, and successfully transition into adulthood.”

Extracurricular participation can ameliorate these negative outcomes for all youth by building protective factors that allow for improved academic outcomes and reduced risky behavior, providing young people with a smoother path to higher education and career success.

Participation in extracurricular activities help youth build self-efficacy, or belief in one’s ability to success or accomplish tasks. For young people, high self-efficacy is associated with optimism, achievement, goal orientation, self-regulated learning, and academic help-seeking. Participation in extracurricular activities also helps young people cultivate soft skills, such as the ability to work with others, leadership, grit, self-discipline, ambition, curiosity, and endurance.

Perhaps as a result, young people who participate in after-school activities show strong improvement on academic measures and develop new skills and talents. Even after controlling for socioeconomic factors and cognitive ability, extracurricular participation is linked with higher grades and graduation rates. After-school programs can have a positive effect on the achievement of academically at-risk students, with one 2006 meta-analysis showing students improving in reading, math, or both. Similarly, in a 2005 study of a Boys & Girls Club Education Enhancement Project, student participants had higher grade averages and scores in reading, spelling, history, science, and social studies than a control group.

Moreover, numerous studies and program evaluations demonstrate that extracurriculars reduce the likelihood that youth will engage in risky behavior such as drug use, delinquency, and sexual activity. For example, a national evaluation of 4-H found that youth participants were more likely to postpone having sex, contribute to their communities, and be civically active, and less likely to use drugs, alcohol, or cigarettes. Similarly, participants in the Teen Outreach Program, a service-learning program, had significantly less risk of pregnancy, school suspension, and course failure; the more volunteer hours participants worked, the lower the risk of course failure. Extracurricular activities can also reduce youth involvement in criminal activity by keeping them busy and safe during the after school hours, which is the peak time for behaviors that may result in juvenile offenses.

These positive effects of extracurricular participation can help ensure youth in the foster care and juvenile justice systems have positive experiences and outcomes. Where young people are more
engaged and successful in school, they are more likely to see themselves as “college material,” increasing the likelihood that they will aim for post-secondary education. Extracurricular participation can smooth the path to higher education for young people, who may be able to obtain scholarships based on their skills and talents. And interests developed through extracurriculars can guide youth to a course of study or to a fulfilling career. For example, a young person who has enjoyed cooking classes may decide to become a chef; a young person who participated in a robotics club might choose to study mechanical engineering.

Extracurriculars Help Young People Build Connections

For healthy development, young people need to be embedded in networks of families, friends, and communities that provide guidance, support, and help when they face crises inevitable to the transition to adulthood. Unfortunately, the foster care and juvenile justice systems often disconnect youth from essential supportive networks. Participating in extracurricular activities helps youth fill that gap by providing them the opportunity to develop social capital: the resources and relationships that allow youth to build support and success. Extracurriculars help build connections to supportive adults who can become mentors and role models, such as soccer coaches and bandleaders. Mentors and adult role models, in turn, provide support, connections, and resources to young people, both directly and through their networks. Connections built with staff and other parents through extracurriculars can lead to permanency, as adults who develop a relationship with a young person in a positive context may be willing to become a placement or permanency option. Youth also have the opportunity to connect and develop supportive, healthy relationships with peers who share their interests.

Benefits to Youth Also Benefit Caregivers and Systems

Clearly, extracurricular participation provides significant benefits to young people. But caregivers and families also benefit when young people participate in extracurricular activities. Young people who participate in extracurricular activities are likely to be healthier, happier, and have more connections to community, which can have a positive impact on relationships between youth and caregivers. Extracurriculars provide children and youth with something positive to do during the after-school hours and long holiday and summer breaks, providing some childcare for caregivers.
Caregivers gain additional adults they can turn to for parenting advice and support in dealing with challenging situations or behaviors. And extracurricular participation provides caregivers and families – including birth families – with additional opportunities to forge a strong bond. For example, when a caregiver and a birth parent both attend a youth’s soccer game, the youth is able to feel both parents’ support for them. In addition, the caregiver and birth parent learn about the youth’s strengths and interests and build a relationship in a relatively low-pressure, natural environment.

Similarly, participation in extracurriculars benefits child welfare and juvenile justice systems. When youth are healthy and happy, and caregivers feel a strong connection to youth, placement stability can improve. Extracurricular activities can offer important outlets to support youth in coping with loss, grief, anger, and difficult situations – outlets that may be far more effective than psychotherapy and other “traditional” mental health interventions. Moreover, a decrease in risky behavior and increase in positive behavior can lead to reduced involvement with the juvenile justice system, or improved chances of successful probation completion and reduction of recidivism.

Participation in extracurricular programming can also help juvenile justice systems better serve youth. In addition to the benefits described above, giving youth access to programming while in secure confinement provides youth something positive to look forward to, which can in turn improve behavior. When detention staff participate in activities with youth, relationships between staff and youth improve, enhancing the environment in and operation of the facility. And programming in detention facilities can be designed to connect youth to community-based pro-social programs that they will support them when they return to the community.

PART 2
THE LAW GOVERNING EXTRACURRICULAR INVOLVEMENT

Both federal and California law require that the child welfare system take steps to ensure that foster youth, including probation-supervised foster youth, have access to normal childhood experiences, including access to age- and developmentally appropriate activities. By contrast, legal requirements or supports for extracurricular participation for youth involved in the juvenile justice system are scarce. Ensuring that appropriate legal requirements are both enacted and followed consistently is crucial to supporting extracurricular participation for system-involved youth.

Legal Supports for Extracurriculars in the School System

In California, public education must be provided free of charge. Because educational activities, including extracurricular and curricular activities, play a central role in children’s education and development, they must also be free for students when they are provided by the school, regardless of ability or willingness to pay. Schools must provide necessary equipment for extracurricular activities such as musical groups, school plays,
and sports teams, and cannot require participation fees. Further, when schools bring students to events such as exhibits, fairs, theaters, or similar activities as part of their educational programs, they cannot charge the students for the admission fees, although they may charge for transportation. And schools must provide some additional financial protection for young people in the foster care system: foster youth must be able to access after school education and safety programs free of charge.  

Legal Supports for Extracurriculars for Foster Youth

Legal support for extracurricular participation for foster youth is a relatively recent phenomenon. In 2001, California became one of the first states to pass laws to promote “normalcy” for foster youth by establishing the Foster Youth Bill of Rights, which enumerated twenty-one rights – including the right to participate in extracurricular, enrichment, or social activities. California also empowered caregivers to make “reasonable and prudent parenting decisions” about the lives of children in their care, including extracurricular participation.  

In 2013, as part of the Youth Law Center’s Quality Parenting Initiative, Florida enacted the Quality Parenting for Children in Foster Care Act, which required that case plans for teenagers in foster care include a normalcy plan, gave the caregivers the authority to consent to a foster youth’s participation in activities without seeking agency and court approval, and directed caregivers to use the prudent parent standard in making these decisions. Utah and Washington swiftly followed suit, enacting similar legislation in 2014. Following the lead of these states, Congress enacted the Strengthening Families Act of 2014, mandating that state child welfare systems adopt prudent parenting standards and increasing federal independent living program funding to provide ongoing opportunities for foster youth to participate in age- and developmentally appropriate extracurricular, enrichment, cultural, and social activities. The range of activities covered is expansive, including participation in school-based activities such as sports and field trips; socializing with friends and dating, including using

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a cell phone; and leisure activities such as bike riding, going to the movies, and camping.  

In determining when an activity is age- or developmentally appropriate, caregivers must consider typical developmental patterns, and, under California law, the needs and capabilities of an individual child. In practice, considering both developmental patterns and individual needs means that, for example, it might be appropriate for a talented singer to join a church choir with adults or for an aspiring actor to perform in a community theater play with older youth.

The law balances the need for caregivers to make reasonable parenting decisions and youths’ rights to participate in extracurricular activities. For example, a caregiver is permitted to prevent a foster child from attending a specific activity as appropriate discipline for misbehavior, but the frequency and scope of that discipline cannot result in an effective denial of the youth’s right to participate in extracurricular and other enrichment or social activities.

Lack of Legal Supports for Extracurriculars in Juvenile Justice System

In California, the delinquency system is tasked with providing youth in need of protective services with care, treatment, and guidance consistent with their best interest and the best interest of the public. California law specifies that juvenile hall “shall be a safe and supportive homelike environment.” Beyond these basic requirements, legal guarantees that youth in the juvenile justice system have access to extracurricular activities are sparse compared to those protecting foster youth. This is unfortunate, given that there is growing recognition that youth in both these systems share very similar or identical backgrounds, experiences and challenges (including moving between systems), and can benefit from many of the same interventions.

Youth confined in juvenile camps, ranches, and detention facilities in California are entitled to education, recreation and exercise, social awareness programs, religious programs, and work programs. Recent additions to the regulations governing California’s juvenile detention facilities require juvenile facilities to provide at least one hour of programming daily, with an emphasis on trauma-informed, linguistically and culturally relevant programming that is based on the individual needs of youth. Additionally, courts have found that the Constitution requires “[m]inimally adequate program services” that teach youth the basic principles that are essential to correcting their conduct. In practice, juvenile facilities vary dramatically in the programming they provide to youth. While some facilities have on-site Boys & Girls Clubs or bring in outside providers to teach enrichment programs like yoga, creative writing, or music, others offer little beyond the minimal requirements.

For youth under probation supervision in the community, there is no legal requirement to provide access to extracurricular programming. However, California requires that local probation departments provide youth on probation protective services, with the goal of providing guidance that enables each young person to be a law-abiding and productive member of his or her family and the community.

Young people involved in the juvenile justice system identify greater support for extracurricular experiences as a crucial need. In a survey of youth who had been confined in juvenile facilities in California, one of the most common suggestions to improve facilities was more programs, including those that address addiction, restorative justice, and job readiness. Youth further requested programs focused on the arts and self-expression, sports, mentoring, and culturally-relevant programming.
Despite the myriad documented benefits of youth participation in extracurricular activities – to youth, families and systems – and the legal requirements governing normalcy for foster youth, including probation-supervised foster youth, extracurriculars are markedly missing from systems practices and policies. Whether due to a lack of knowledge about the importance of extracurricular participation for healthy development or to a failure to incorporate that knowledge into practice, child welfare and juvenile justice systems regularly (1) fail to address common barriers to extracurricular participation, (2) inadvertently create barriers by failing to incorporate extracurriculars into case planning, and even (3) explicitly erect barriers to participation. Fortunately, some innovative programs are beginning to address these barriers.

**Failure to Address Common Barriers to Extracurricular Participation**

Participation in extracurricular activities requires an investment of resources and time. It also requires knowledge of the existence of extracurricular opportunities and how to access them. Although the difficulties presented by these barriers may be exacerbated by system involvement, the barriers themselves are not obscure and the solutions are not complicated. Thousands of fam-
families navigate these challenges every day to enroll their children in dance, debate, basketball, mentoring, art, and summer camps. Nevertheless, the child welfare and juvenile justice systems have often failed to help youth and families surmount these barriers.

Extracurricular activities can entail a significant outlay of funds for families. Participation in a single extracurricular activity can cost parents as much as $600; for a family with two kids participating in two activities a year, costs can reach $2,400. Despite the importance of extracurricular participation, the foster care payment rate does not account for the cost of extracurriculars. Nor is there any statewide program providing financial support for extracurriculars for youth in the child welfare or juvenile justice systems. Although some California counties provide funding of approximately $250 to $400 per year for foster youth to enroll in extracurricular activities, this funding is often insufficient to fully fund youth participation and does not extend to youth in the juvenile justice system who are not in foster care. Even where additional funding is available, the process for receiving it can be cumbersome, in some cases requiring multiple levels of agency approval and often prohibiting reimbursement for expenses already incurred.

Transportation to and from extracurricular activities can be a barrier, especially in rural counties where distances can be long and public transit scarce. Families with multiple children may find it especially difficult to get their children to and from activities. Although this is a widespread problem, California counties have largely failed to implement systems-level solutions, such as coordinating a carpool or ride-swap list or providing additional funding to cover fuel costs.

Even where extracurricular activities are available and accessible, youth will not be able to participate if they or their families do not know about them and are not provided information about the positive impacts they can have. Child welfare agencies across California acknowledge that they struggle with effective communication among caregivers, case managers, and community organizations regarding extracurricular opportunities and resources. Some counties simply rely on caregivers to find the information on their own, while others rely on the knowledge and communication skills of individual caseworkers. There is little training about extracurriculars as an intervention or guidance on how to identify the types of activities that might be helpful and interesting to youth. In the absence of systems for sharing such information, some youth will fall through the cracks, their needs going unmet.

Even where caregivers are aware of extracurricular opportunities, failure to effectively share important information about the child or youth can impede participation. For example, a caregiver may need information about a child’s medical history or insurance or a copy of the child’s birth certificate in order to sign that child up for the soccer team. If an agency does not make such information available to caregivers or creates cumbersome processes for obtaining it, it can delay or even prevent a child from participating in extracurricular activities.

Child welfare and juvenile justice systems need to be proactive about addressing these common barriers to extracurricular activities. Funding streams for extracurricular participation should be developed for youth in both systems, and funding should be readily accessible with minimal bureaucratic requirements. Agencies should explore creative funding possibilities to support extracurricular participation. Where transportation is an issue, agencies should develop solutions that respond to local needs and conditions. Agencies should work to develop partnerships with local community organizations to provide free or low-cost access to activities for youth. Information about these opportunities should be shared with youth and caregivers frequently, using multiple media. Youth’s preferences and interests should be consulted in designing and promoting extracurricular programming. Ultimately, agencies must be alert to recurring barriers and proactive in tailoring both individual and systems-level responses.
Inspire Program, Santa Barbara, CA: Providing Caregivers with Resources and Information

Santa Barbara’s Inspire Program, launched in 2017 as part of the county’s Quality Parenting Initiative efforts, has developed a network of 60 local business partners that provide discounts to resource families and to youth participating in extended foster care. The Inspire Program also encourages businesses to provide job training opportunities or entry-level jobs at locations such as Avis Budget Car Rental to youth in extended foster care.

The participating businesses cover a wide geographic area within the county. Recruitment of Inspire partners has focused on identifying services that will meet the daily needs of resource families and transition-aged youth, including extracurriculars. Among the first Inspire partners were local YMCAs, which helped local foster youth enroll in summer programs, often without charge. Other early partners included restaurants that provide discounted family meals or date nights for resource parents, and an auto mechanic shop that provides discounts and deals on a variety of services.

The program thrives because of staff champions who drive communications with caregivers and partner businesses and agencies. Coordinator Gustavo Prado, a program leader, points out that in child welfare the work often involves a crisis. For example, when a child is placed with a relative caregiver, a family faces many stressors, which may be compounded by the unplanned
financial costs associated with welcoming a new child into the family. Business and community partners can help ease these financial strains and support the family and child through discounts and subsidies for services such as extracurriculars.

Inspire does not rely only on caseworkers to maintain the program and disseminate information. Santa Barbara also has a dedicated recruiter, Matt Pennon. Pennon is a resource parent whose role is to keep resource parents, workers, and program partners engaged by sending out a bimonthly email with updates to the lists of participating businesses and any new offers available. The agency’s website also maintains a list of participating businesses online. In addition, the agency supports families’ awareness of Inspire by having case managers distribute Inspire materials to families during regular contacts and sending out an Inspire packet along with a family’s certificate of licensing approval.

Prado observes that workers are increasingly providing Inspire packets and information to families, and families are using this benefit more often. Although the impact of Inspire has not been formally evaluated, Prado observes that Inspire has increased the number of youth participating in extracurricular activities, and families have been accessing discounted services. Next steps for Inspire include a formal evaluation of the different aspects of Inspire, with the goal of assessing the overall efficacy of the program.

Systems Fail to Incorporate Extracurriculars into Case Planning

Child welfare and juvenile justice systems also inadvertently create barriers to extracurricular participation by failing to incorporate these activities into case planning and management. Without an explicit recognition of the value of extracurriculars and without an intentional incorporation of extracurriculars into decision making and case plans, systems will continue to make it difficult – if not impossible – for youth to reap the benefits of extracurricular participation.

Young people in the child welfare and juvenile justice systems often have their schedules filled with court dates, visits with parents and siblings, appointments with probation officers, and other services. These appointments are often scheduled without any consideration of the youth’s own schedule – and when a class trip conflicts with a court date, the court date often takes precedence.

Failure to address extracurriculars in case planning can lead to multiple barriers and missed opportunities. For example, young people’s extracurricular interests or commitments are not routinely taken into account in making foster care placement decisions. If a case worker fails to consider that a child is taking art classes at a local community center, that worker is unlikely to make a special effort to find a placement near the center. This could make it increasingly burdensome for the child to continue attending (especially where the agency provides no coordinated transportation support) or even cause the child to lose eligibility for the classes if she no longer meets residency requirements. Placement work-
ers often forget to reach out to adults at the community center who may have connected with the child and could provide a placement, permanent connection, and stability. When a young person loses the ability to participate in an extracurricular activity they enjoy, they not only lose the activity, but also the network of supportive adults and peers connected with that activity. Losing these connections can seriously compound the trauma and difficulty of removal and placement changes. And of course, where a child experiences multiple placement changes, the burden of seeking out, joining, and becoming engaged in new activities is significant.

In addition, courts and agencies should think creatively about how to incorporate other necessary activities into extracurricular participation so youth and families are not overwhelmed with demands for time and travel. For example, sterile, awkward visitation at an agency visitation center can be replaced with “parenting time” with birth and resource families cheering a youth on during their basketball game together and going out for ice cream or dinner afterwards. Sibling visitation can be incorporated into attending and supporting sibling activities or having older siblings transport younger siblings to events or acting as a chaperone.

If the therapeutic impact of extracurricular participation is fully respected, these activities might replace other court or agency ordered mental health related activities. Skill-building activities with a therapeutic component, such as therapeutic horseback riding or art therapy, could be incorporated into a child’s mental health treatment plan and supported with federal Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) funds where such services are medically necessary to address a young person’s mental health needs. Therapists who are working with young people to build important skills such as emotional regulation can incorporate this therapeutic intervention into a youth’s extracurricular participation. For example, a therapist working with a young person to help him manage anger appropriately could accompany him to a football practice to provide support and targeted intervention as the youth practices these skills in a context that is engaging to him. These targeted therapeutic interventions can be developed and implemented in partnership between mental health professionals and adults who are important to the youth or share lived experience with the youth, strengthening the youth’s connections with supportive adults.

For young people on probation, the failure to comply with court-ordered terms of probation can result in increasingly severe penalties, including commitment to a detention facility. Unfortunately, participation in extracurricular activities is not often considered when probation terms are set. So, for example, a young person might find herself barred from leaving the county – and therefore unable to compete in a debate tournament at the high school just across the county line. Or a young person might have a curfew that requires him to be at home after 7 p.m., interfering with basketball practice that routinely runs until 8 o’clock.

Youth who are placed in group care through either the juvenile justice or foster care systems face additional barriers to extracurricular participation. The structure, staffing, and transportation resources of group care facilities are often not set up to accommodate youth participation in extracurriculars – particularly where those extracurriculars occur outside of the facility. Facilities prioritize youth participation in activities inside the program, limiting youth’s opportunity to access community resources and to interact with young people and adults outside of the system. In addition, group settings tend to offer a small number of activities for a large group of youth rather than tailoring activities to a youth’s individual desires and needs. This one size fits all approach is antithetical to the research on adolescent development. As California transitions away from traditional group homes to very short term therapeutic placements, the need for community based interventions that are not contingent on a
specific placement becomes even more critical. Consistent participation in a spoken word group or track team might offer critical stability and continuity as a youth transitions from a resource family to a short term residential therapeutic program and back home.

The solution to these issues is relatively straightforward: extracurricular participation must be included in case planning and case decision making. Case managers, judges, attorneys, and caregivers should be familiar with the extracurricular activities available in their communities, the interests of youth in their care, and the resources available for funding them. The research makes clear that focus on these activities is just as important for youth's well-being as focus on educational or mental health activities. Ensuring that youth can participate freely in extracurriculars should be a priority in decision making in all aspects of the case, from the imposition of probation requirements, to the scheduling of visits or therapy sessions, to placement changes. And in those instances where young people are placed in group care, agencies, courts, and advocates must ensure that the facility is able to provide support for individualized extracurricular participation.

Court Collaboration in Northwest Georgia: Prioritizing Extracurricular Involvement

Beginning in 2014, Georgia law required a trauma assessment for every child who was adjudicated dependent. In many cases, courts would also require children to undergo a psychological evaluation. As a result of these assessments and evaluations, psychologists would frequently testify in the court about the importance of incorporating extracurricular and physical activities into the child's life. Unfortunately, the court often would not hear this testimony until much later into the
court process, impeding the court’s ability to help secure this important resource for children.

Judges in the Northwest Georgia System of Care engaged in conversations with psychologists and other providers to seek a solution to this problem, and to ask that evaluations and assessments include recommendations for extracurricular and physical activities. These written recommendations are provided to the courts earlier in the process, which helps courts incorporate the recommendation into their orders. As a result, judges began to see the positive impacts on the children and young people in their courtrooms. Young people gained confidence from succeeding at something they cared about, improved their academic performance, and built relationships with coaches and mentors – relationships that, in some cases, led to permanency.

The above example is one of many positive outcomes of the collaborative efforts of stakeholders and the effective use of a system of care. Northwest Georgia has had a system of care with strong judicial leadership since the 2000s. This system of care was created with the goal of encouraging collaboration between stakeholders, including judges, agency directors, school board representatives, CASAs, birth parents, foster parents, and local community supports, in an effort to improve access to services to support children and families. The executive committee has regularly held monthly meetings, and there are at least two regional meetings annually for all stakeholders. This collaborative approach allows stakeholders to bring their resources together to effectively and holistically serve children and families and to improve overall outcomes for children, families, and communities.

**Systems Erect Explicit Barriers to Extracurricular Participation**

Where systems view extracurricular participation as a reward, rather than as critical to healthy development, they may exclude youth from extracurriculars as a punishment. Given the significant developmental and behavioral benefits of extracurricular participation, this exclusion is detrimental to youth and counterproductive. This problem is particularly acute for young people in group care and in the juvenile justice system who are detained in secure confinement. In many facilities, extracurricular or enrichment activities are earned through good behavior or may be taken away as a disciplinary response. Facilities uphold a negative cycle in which a youth who is poorly behaved, and probably most in need of intervention, does not have the opportunity to participate in positive programming, which could help him regulate his behavior in the facility and in the community and begin the process of rehabilitation.  

Systems may also limit youth participation in extracurriculars through a default preference for avoiding risk. Despite state and federal law guaranteeing foster youth the right to participate in age- and developmentally appropriate activities – and safeguarding caregivers’ ability to make reasonable parenting decisions regarding participation – systems sometimes impose onerous requirements on families that act as barriers to extracurricular participation. For example, agencies may require high-level approval before allowing a foster youth to travel out of state or county for a class trip or sports tournament. Families may have challenges convincing a county agency to allow a youth to sleep in a hotel supervised by coaches or teachers for these activities. In other instances, case managers may fail to support certain activities by, for example,
providing discretionary funding to a youth who wants to participate in color guard but not to a youth who wants to participate in a car club. Where case managers fail to respond to youth’s actual needs and interests out of a concern about liability or misplaced gatekeeping instinct, youth miss opportunities. Healthy child and adolescent development inherently requires allowing risk and increasing independence so youth have the experiences they will need to navigate adult life.

Boys & Girls Club Partnerships: Sonoma and Sacramento County Probation Departments

Imagine an empty housing pod inside a juvenile hall – a sterile institution with white cement walls and steel doors. Now picture purple paint with a mural, carpet, some foosball tables, colorful signs about career paths, graduation photos. There’s a friendly staff member who greets you with a smile when you walk in and shakes your hand. This set-up describes the Boys & Girls Clubs inside Sonoma County’s Juvenile Hall, operated by the Probation Department.

Sonoma County Probation allows all youth in the facility to participate in Club programming twice a week. The first hour of Club is a life skills class, such as job readiness, in which all youth on the unit participate and that offers school credit. During the second hour at the Club, youth who have disciplinary restrictions go back to their unit while other youth have free time to play games, listen to music, or speak with staff.

Once a youth is released, this partnership continues. Sonoma County’s community-based REACH program provides young people who have been released from custody with intensive case management, training workshops, and group activities to help them make progress in work, education,
relationships, community, health, and creativity. In partnership with Juvenile Probation, REACH supports youth in successfully completing probation and leading crime-free lives. REACH further assists youth with enrolling in school and obtaining a job – and youth know that they can find community and supportive adults at the Boys & Girls Club.

In 2013, the Sacramento Probation leadership developed a collaboration with Boys & Girls Clubs. Youth confined in Sacramento’s juvenile hall who participate in Boys & Girls Club build relationships with adults who can support their efforts when they return to the community. One youth, Darius, originally joined the Boys & Girls Club in juvenile hall and recently began regularly attending the E.L. Hickey branch in the community. Darius observes that “when I get off track I like to come to the after-school program because they help remind me of what I am trying to accomplish.”

Implementing such a program requires a culture change for facilities, which must move from a control-based culture to a positive youth development culture. Sacramento County’s experience demonstrates that this approach is effective.

Realizing that disciplinary challenges were symptomatic of a failure to provide enough programming to keep the youth occupied, administrators increased programming and decreased reliance on room confinement. This resulted in a sharp decrease in the use of restraints (from about 90 per month in 2010 to about 6 per month in 2017) and a 90% decrease in workers’ compensation claims.

Aztecas Soccer Program, Santa Cruz, CA

A teenage boy wearing a purple jersey races down the soccer field, chasing the ball and passing it to his teammate, who kicks a blazing shot past the goalie. The purple-clad team erupts in cheers - their coach on the sideline urges them to stay focused. A typical scene for a weekend soccer game. But this team is anything but typical. Their purple jerseys? A symbol that the team’s players are coming together despite their previous affiliations with the Norteño and Sureño gangs, which identify themselves with the colors red and blue. Their cheering coach? Santa Cruz County Probation Officer Gina Castaneda, who has created the innovative Aztecas Soccer Program to help her clients not just stay out of trouble, but also become community leaders.

A Probation Officer working primarily with Latino youth from Watsonville, California, Castaneda heard from many of the young men she was supervising that they loved to play soccer but didn’t have a team to play with. Herself an avid soccer player, Castaneda approached Probation leadership with her plan: a soccer team for gang-involved youth under probation supervision that would provide not only soccer training, but also opportunities for mentorship, gang intervention, and academic support. Starting with no funding, over the first three years, Castaneda built the program as a volunteer. Gradually, the Aztecas began to obtain funding from a variety of sources, including community donations, grants, and savings to Probation from avoiding out-of-home placements or secure confinement for Aztecas players.

Ten years later, Aztecas is thriving. Accepting referrals from a broad array of sources, including Probation, local police departments, community organizations, and schools, Aztecas is open to young people on probation supervision and who...
are identified as being at high risk of juvenile justice involvement. At any time, ten to fifteen young people participate in the team. Participation is a serious commitment; in addition to practicing and playing in games four days a week, team members receive academic tutoring, case management, and soon, health and wellness classes and local college visits. In addition to Castaneda, who is able to dedicate about fifteen percent of her time to the program, Aztecas employs two assistant coaches, a grant writer, and a part-time activities coordinator who keeps attendance at practices, tutors team members, and advocates on their behalf at school.

Aztecas players not only receive services as part of the team, they also give back to the community - and in the process, develop as community leaders. Every week, Aztecas team members participate in several hours of community service - from working in soup kitchens to volunteering at local schools. Not only does this give young people on probation the opportunity to earn some community service hours, it helps them connect with their peers and with the community. “Because they’re doing it with people they’re connected to,” says Castaneda, “they’re more engaged.”

The centerpiece of the Azteca’s community outreach is the Aztecas Youth Soccer Academy, a week-long soccer clinic for kids aged 7-14. that Aztecas team members run in partnership with a team of college students. A week before the Academy, Castaneda provides an eight-day course for the team to teach communication, coaching, and soccer skills. Then, for the week of the Academy, the Aztecas take charge - setting up the camp, teaching the campers soccer moves, and debriefing in the afternoons. The week culminates in a soccer tournament, with a barbeque and community resource fair for the campers and their parents. The Academy is an opportunity for Aztecas team members to act as leaders and mentors for kids in the community - many of whom are foster youth or have parents impacted by incarceration.

The Aztecas Soccer Program offers many benefits to its team members. They are able to make connections with a team of supportive adults who view them through a strengths-based lens and who provide case management and crisis intervention. Participation in Aztecas reduces team members’ gang involvement and substance use. As Castaneda explains, participation in Aztecas takes up too much time to leave room for negative activities. Castaneda has observed that Aztecas team members are recognized in their community as having chosen a path other than gang involvement - allowing them an easier exit from gang affiliation. Perhaps most important, however, is the way that Aztecas participation impacts young people’s sense of themselves. Aztecas members are not just “at-risk youth.” Instead, through participation in Aztecas, young people learn to see themselves as athletes, as leaders, as mentors, as people who give back to their community.

Of course, it’s not all soccer and community service. Castaneda ensures her team kicks back and has fun as well. The Aztecas have taken field trips to a local ropes course and to the amusement park. At the end of the day, Castaneda says, “they are just kids, and they get the chance to behave like kids and put down their masks.”
PART 4
RECOMMENDATIONS

The benefits of extracurricular activities are too important to let barriers, especially systems-created barriers, stand in the way of youth participation. Fortunately, programs such as those highlighted above demonstrate that enabling access to extracurriculars is possible. Below are recommendations for steps that agencies, lawmakers, and other stakeholders can take to ensure that every youth has the opportunity to participate and thrive in extracurricular activities.

Training and Information

• **Training on Extracurriculars:** Child welfare staff, probation officers and counselors, caregivers, attorneys, judges, and other stakeholders should be trained on the benefits of extracurriculars, legal requirements for access, how to promote access through practices, policies and resources, and how best to support caregivers and youth to participate in extracurricular programming.

• **Communication with Youth and Caregivers:** Case managers, including both child welfare and probation staff, should be familiar with extracurricular opportunities for youth in their jurisdiction and resources available to support participation. These opportunities should be communicated to youth, caregivers, and family members repeatedly and in multiple formats. Case managers and other support networks, such as parents’ and youth networks, should disperse information online, in child and family team meetings, in phone and email communication, and during home visits. Agencies can share information on websites and social media. Agencies should ensure that caregivers have all the information about youth that might be necessary to enroll in extracurriculars.
Collaboration and Community Involvement

- **Youth Voice:** Programs to improve access to extracurriculars should be developed in partnership with systems-involved youth. Decisions regarding the types of programming and support to be offered should be based on interests voiced by youth and youth advocates.

- **Agency/Community Partnerships:** Child welfare agencies and probation departments should work collaboratively with the local schools and service providers (such as YMCAs, Boys & Girls Clubs, and Recreation or Parks Departments) to provide free or low-cost extracurriculars, with accommodations that ensure that system-involved youth are able to participate. Agencies should educate partner organizations, including schools, about the specific needs of system-involved youth and how to conduct outreach and troubleshoot challenges.

- **Engage CASAs:** Court-appointed special advocates should be encouraged to provide support for extracurricular participation, including outreach to community organizations to develop partnerships, educating the court and legal counsel about the importance of participation to healthy development, brainstorming creative ways to incorporate extracurriculars into other case activities, providing transportation, and working with young people and families to identify interests and relevant programming and ensure youth are signed up and participating.

Case Planning and Management

- **Extracurriculars in the Case Plan:** Both foster care and juvenile justice systems should prioritize extracurriculars in case planning and center other activities on extracurriculars. Youth should identify current or desired extracurricular activities to explore. Those activities should be included in the case plan to ensure that case managers, the court, and caregivers are held accountable for participation. The case plan should include action steps and responsible parties to ensure that youth are able to participate in their desired activities. For probation-supervised youth, extracurricular participation should not be a term of probation, but should be included in the case plan to ensure that probation terms do not interfere with participation.

- **Include Extracurricular Mentors in Case Planning and Child and Family Teams:** Youth should be asked to identify and invite supportive adults with whom they have formed a relationship through extracurriculars to participate in child and family team meetings.

- **Identify and Resolve Local Barriers:** Child welfare agencies and probation departments should work proactively with youth, families, and service providers to identify and resolve recurring barriers to participation. For example, where transportation is an issue, agencies should coordinate vans and carpools in order to alleviate the transportation burden, connecting foster parents who live near each other, with similar aged youth, or youth who attend the same school.

"Systems must think in an entirely new way about extracurriculars: as a key intervention for children and youth -- not just an extra."

- Jennifer Rodriguez, Executive Director, Youth Law Center
Legal, Policy, and Financial Supports

- **Financial Supports:** States should provide dedicated funding for extracurricular activities for foster youth and probation-supervised youth. This funding should be widely available with a streamlined application process to avoid delays and entry barriers. Agencies should explore potential funding streams as applicable, including EPSDT or foster parent recruitment and retention funds, and ensure that families and agency staff are aware of funding possibilities and supported to access funding.

- **Ensure that Extracurriculars are Treated as Positive Interventions:** Systems should ensure that extracurriculars are considered a critical developmental and behavioral intervention, not a reward. For example, juvenile detention and residential facility policies and practices should not bar youth from extracurricular and enrichment activities as a disciplinary measure. Similarly, where a youth is struggling academically, systems should provide additional academic support rather than removing youth from extracurricular activities.

- **Stronger Protections for Youth in the Juvenile Justice System:** Young people under probation supervision need stronger legal protections for extracurricular access. State lawmakers and agencies should require programming in secure confinement that responds to young people’s interests and needs. State lawmakers should clarify that the supervision duties of probation officers include providing youth both in secure confinement and in the community with information and support to access extracurricular activities.

CONCLUSION

Extracurricular participation cannot be an afterthought or optional activity for system-involved youth. Instead, child welfare and juvenile justice agencies must recognize the crucial developmental, social, and educational benefits youth derive from extracurriculars, and ensure the legal protections that currently exist to protect youth participation in extracurriculars are upheld. When systems fail to acknowledge or understand the critical role of extracurriculars in youth development, they fail to alleviate—and instead may even erect—barriers to participation. Fortunately, promising practices demonstrate that when we make these activities a priority, systems, families, advocates and youth can overcome these barriers so our youth feel valued and successful and have the new opportunities they deserve to heal and grow.
Notes


6. Trauma resulting from maltreatment can continue to have effects into adolescence and beyond, including delayed developmental milestones, increased risky behavior, and difficulties navigating social situations. Id. at 9.


8. The Road to Adulthood, supra note 7; Promoting Resilience, supra note 7, at 2.


10. Id.


12. The Road to Adulthood, supra note 7 at 14.

13. Id.


15. Tsang, supra note 14.

16. A 2014 study found that novice teachers in low-income schools who had been captains or presidents of clubs in college were rated as better teachers and stayed in their jobs longer. Kaisa Snellman et al., The Engagement Gap: Social Mobility and Extracurricular Participation among American Youth, 65(7)1 The ANNALS OF THE AM. ACADEMY OF POL. AND SOC. SCI. 194 (Jan. 2015).


19. Durlak, supra note 17, at 295.


24. National Recreation and Parks Association, supra note 22. Juvenile violence is more prevalent on school days and the most likely time for a juvenile to commit an assault with bodily harm or an assault with a weapon is between 3 and 4 pm.

26 Id.

27 Snellman et al., supra note 16.


29 Id.

30 Id.

31 Id.

32 Cal. Const. art. IX, §5.


44 Cal. Welf. & Inst. §851.


50 Wong, supra note 18.

51 Welf. and Inst. Code §11460(a) and (b).

The Youth Law Center (YLC) advocates to transform foster care and juvenile justice systems across the nation so every child and youth can thrive. For the past forty years, YLC has been a thought leader in advocacy for children and youth in the nation’s child welfare and juvenile justice systems. We envision a world where systems interventions and approaches prioritize children’s humanity and needs.

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Children do better when they live in families. This common-sense experience is confirmed by research and embedded in our laws. Services for children, youth, and families are best provided in the home and in their home community. If a child is removed from the home, our laws require children be placed in the least restrictive, most family-like setting to meet their needs.

Yet, statistics reveal practice is not consistent with this policy. Forty percent of children removed from their homes are placed in a congregate care setting without a demonstrated clinical or behavioral need for placement outside of a family. Attorneys can and do play a critical role in changing this practice and improving outcomes for children and families.

Children and families need advocates to assert a child’s right to live in a family. This guide was created to support attorney’s advocacy efforts to keep children in families and family settings and provides a framework to identify issues for case investigation and legal arguments, as well as supporting resources for presenting these arguments in court. It is based on multi-disciplinary research, as well as other resources and guidelines, and draws on best practices for professionals within the child welfare field. As a user of this tool, we encourage you to familiarize yourself with the cited references to further strengthen your legal advocacy for children.

We start with the premise that every child should be placed in a family unless there is a well-documented, professionally recommended clinical and/or behavioral need that is beyond the ability of a family to meet, with or without community services. The cornerstone question is whether congregate care is necessary and appropriate to meet the child’s needs.

**Part I: Framework for Advocacy**

As attorneys, we should use the applicable laws, along with the social science research and equity issues, to frame our arguments. After a thorough, independent investigation of the facts in our case, combined with legal and other research, we have the tools we need to assert arguments to the court.

**Analysis:**

1. Have reasonable efforts been made to allow the child to remain safely in the home?
2. If removal is necessary despite making reasonable efforts, is the child placed with relatives? If not, why not?
3. If the child is not with relatives despite every effort being made to place with relatives, is the placement in a foster family setting? If not, why not?
4. If the child is not with a foster family, is the congregate care placement the least restrictive placement available to meet the child’s needs?

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3 For purposes of this toolkit “congregate care” includes group homes, institutions, emergency shelters or residential treatment facilities.
I. Federal/State Law Arguments
   a. Adoption Assistance and Child Welfare Act of 1980 (AACWA)\(^4\)
      i. AACWA requires the Department to make “reasonable efforts” to prevent removal of a child. If, despite making reasonable efforts to prevent removal, a removal is nevertheless necessary the Department must make reasonable efforts toward reunification of the child with the family.\(^5\)
      ii. Under AACWA each child should have a case plan that describes where and in what setting the child is to be placed and a discussion of the safety and appropriateness of the placement.
      iii. Additionally, AACWA states that each child should have a case plan, “designed to achieve placement in a safe setting that is the least restrictive (most family like) and most appropriate setting available…”\(^6\)

   b. Adoption and Safe Families Act (ASFA)
      i. In order to be eligible for federal funds, ASFA requires the State to consider giving preference to an adult relative over a non-related caregiver when determining a placement for a child, provided that the relative caregiver meets all relevant State child protection standards.\(^7\)

Questions to ask in Court

1. Reasonable Efforts to Prevent Removal
   ◦ Did the Department make reasonable efforts to prevent the removal of the child from the home?
   ◦ Were there supports that could/should have been explored to allow the child to remain safely in the home and eliminate the need for placement?

2. Relative Placement
   ◦ If removal was deemed necessary despite making reasonable efforts, is the child placed with an adult relative?
   ◦ If no relatives identified, has the Department conducted a diligent search, and if so, how recently?’
   ◦ Have the child and parents been asked about close relatives?
   ◦ Is there an absent father and have those relatives been identified and contacted?
   ◦ If there are identified relatives, but none are willing to serve as a placement, what are the barriers?
   ◦ Can those barriers be addressed and ameliorated by the Court and/or Department?
   ◦ Are there supports we can put in place to allow the child to be placed with a relative?

3. Non-Relative Foster Family Placement
   ◦ Is there a foster family available and willing to serve as a placement?
   ◦ Are there supports we can put in the foster family home to allow the child to live in a family setting?
   ◦ Does the child need a therapeutic foster home who can address special needs?

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\(^5\) Id.
\(^6\) Id. at §675
\(^7\) 42 U.S.C. §671 (a)(19)
4. Congregate Care Placement

A. Basis of the Determination
   ◊ Is the congregate care decision being made based on a professional’s recommendation?
      a. Did the professional use a validated assessment tool?
      b. Did the professional utilize the level of care process in making the determination?
      c. What behaviors or needs did the professional identify that cannot be met within a family setting?
   ◊ What type of congregate care placement is proposed and why?
      a. If proposed placement is a group home or emergency shelter, how does this placement meet the federal standard for the least restrictive most family like setting and how is it appropriate to meet the child’s needs?
      b. If an institution or other residential treatment facility is proposed, have community-based treatments been tried and excluded?

B. Documentation Supporting Determination
   ◊ Is the professional’s recommendation based on a well-documented history that demonstrates a clinical need for congregate care?
   ◊ Was an evaluation with written recommendations and/or a validated assessment tool utilized?
   ◊ Were all parties provided with a copy of that evaluation and recommendations?
   ◊ Is there an opportunity to cross-exam the professional who conducted the evaluation on the record?
   ◊ Were all parties provided with documentation of that history?
   ◊ Do you need to file a motion for discovery to obtain the history that is being relied on to support placement in a congregate care setting?

C. Is there a plan to transition the child from congregate care to his/her home or to another family setting?
   ◊ What are the steps in that plan?
   ◊ How are the youth and parents involved in the transition plan?
   ◊ How are the parent’s involved in the child’s treatment (i.e. family therapy)?

c. State Statute or Case Law Arguments
   i. Many states have statutes that guide judicial decision-making about placement decisions. In other words, placement is not solely a Child Protective Agency decision, and should involve attorney input and judicial review.
   ii. Furthermore, many states have case law\(^8\) that addresses relative placements and the ability of relatives to serve as placements without first being “licensed” by the child protection agency.
   iii. To be eligible for federal funds under ASFA, states must include in their State Plans a preference for placement with adult relatives over non-related persons.

    **Questions to ask in Court: (will depend on the state law at issue)**

    ◊ Is there a statute or is there any case law that addresses children’s placement and if so, can you use the law to further your argument that a particular child should not be placed in congregate care?
    ◊ Does your State Plan include a statement that relative placements will be prioritized over non-relative placements and how is the Agency implementing that priority?

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\(^8\) See NJ Dept. of Child Protection & Permanency v. K.N., 223 NJ 530 (2015) (placement is not solely within the purview of the Division. There is judicial oversight of placement decisions.)
II. Social Science

a. Social science research indicates that children who are placed in non-family settings are at higher risk for several negative (poor) outcomes including, DSM diagnosis, behavioral problems, educational issues, etc.⁹

b. There are clinically effective alternatives to congregate care that must be explored, such as Therapeutic Foster Care.¹⁰

Tips for Court

◊ Cite to the research that indicates children who are placed in non-family settings are put at risk for several negative outcomes. This may be compounded by the facts of the case if a particular child already has special needs that require specialized and more supportive attention.

◊ Cite to the research regarding effective alternatives to congregate care.

III. Equity

a. Children who are disproportionately represented in the foster care system may also be disproportionately represented in congregate care.

b. Although not exhaustive, children who may be at greater risk for congregate care include: LGBTQ, transgender, Native American, racial or ethnic minorities, children with special medical, mental health, or behavioral needs, and dual system youth.

Questions to Ask in Court

◊ Is this child being treated differently based on a demographic category or minority status?

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¹⁰ Chadwick Center and Chapin Hall. (2016). Using evidence to accelerate the safe and effective reduction of non-family placement for youth involved with child welfare. San Diego, CA & Chicago, IL.

¹¹ Mallon, Aledort and Ferrera, (2002 study LGBTQ youth averages 6.35 placements)

Part 2: Advocacy After a Child Is Ordered To Residential Care

Suppose that after your thorough and independent investigation you determine that congregate care is necessary, OR despite your arguments to the contrary, congregate care is ordered by the court. What now? It is crucial to determine and advocate for the best possible placement, given the child’s needs, for the shortest period of time to meet those needs. To assess whether the congregate care placement is safe, effective and appropriate to meet the child’s needs, and if not, argue for a different placement, you need to focus on **11 Critical Areas**.

<table>
<thead>
<tr>
<th>Critical Areas of Focus</th>
<th>Questions To Ask In Court</th>
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</table>
| **1. Does the program have a focus on permanency?**  
  a. Initial assessment to determine the necessity of care  
  b. Commitment to every child having a permanent family and will work to find one if the child does not already have identified family  
  c. Utilizes intervention as a short-term solution and actively works to help the youth return to family of origin or a family setting  
  d. Begins discharge planning upon intake or soon thereafter | ◊ Is there a discharge plan that identifies anticipated duration of intervention and the treatment targets?  
◊ If reunification with parents has already been excluded, has the family to whom the youth will return been identified and if not, what steps have been taken to find and engage family members?  
◊ Are the child’s parents engaged in the treatment plan? |
| **2. Does the program Involve families (including biological parents, non-custodial parents, adult relatives and other identified kin)?**  
  a. Prioritizes connection to family from admission throughout the residential intervention  
  b. Engages the family as partners in the intervention/treatment  
  c. Creates a Child and Family Team (CFT)  
  d. Empowers parental decision-making | ◊ Is an identified family currently engaged in the child’s intervention?  
◊ If not, what steps are being taken to identify and engage family or other positive adult connections?  
◊ Has a child and family team (CFT) been created?  
◊ Has the CFT created a comprehensive treatment plan? If not, when will that take place? |
| **3. Does the program involve youth?**  
  a. Supports and ensures that youth have a voice in their treatment plan/goals  
  b. Provides youth with the opportunity to connect with peers  
  c. Utilizes youth advocates  
  d. Promotes youth involvement | ◊ Does the youth have an active role in establishing treatment plans and goals?  
◊ Is the youth allowed to attend public school – or their home school?  
◊ Does the youth have a youth advocate to engage, guide and support him/her/their?  
◊ Is the youth encouraged to attend his/her/their court hearings?  
◊ Does the program involve and inform the child’s attorney in the child’s treatment? |
| **4. Does the program provide culturally and linguistically competent services?**  
  a. Utilizes staff with similar cultural and linguistic capabilities  
  b. Ensures diverse workforce  
  c. Provides opportunities for youth to engage in cultural, religious, ethnic practices  
  d. Creates living environments that reflect diversity | ◊ Does the youth have an opportunity to engage in religious and/or cultural traditions?  
◊ Is the program able to meet the cultural and linguistic needs of the youth? |
| **5. Does the program provide trauma-informed care?**  
  a. Conducts trauma assessments for both youth, parents and families  
  b. Assures medical care, preferably in the youth’s community  
  c. Creates trauma-informed environments  
  d. Utilizes evidence-informed strategies  
  e. Regularly trains staff on understanding trauma | ◊ Are trauma assessments completed for the youth?  
◊ Are trauma assessment completed by the parents and other family members involved in the youth’s transition home?  
◊ Does the facility provide medical care for the youth in their home community?  
◊ Does the staff receive regular training on trauma and evidence informed strategies?  
◊ Is there a protocol for using evidence informed strategies related to trauma? |
<table>
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<tr>
<td><strong>6. Does the program link itself with the youth and families’ home community?</strong>&lt;br&gt;a. Utilizes many practices that support reunification&lt;br&gt;b. Ensures youth spend quality time at home&lt;br&gt;c. If program is more than 2 hours from the youth’s home, ensures a means for frequent contact&lt;br&gt;d. Works with the family’s local community and support network</td>
<td>◇ If the location of the program is more than 2 hours from the youth’s home, why was it chosen and is there a closer alternative?&lt;br&gt;◇ If location is more than 2 hours from youth’s home, is the youth provided with meaningful opportunities to engage with family and others in their support network daily?&lt;br&gt;◇ Is there an aftercare program provided by or coordinated through the program?</td>
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<td><strong>7. Does the program use seclusion and restraint?</strong>&lt;br&gt;a. Has a policy regarding the use of seclusion and restraints which all parties have reviewed&lt;br&gt;b. Requires staff to undergo regular training on S/R&lt;br&gt;c. Collects/monitors/track data on S/R usage&lt;br&gt;d. Uses debriefing techniques after S/R&lt;br&gt;e. Creates an environment grounded in knowledge of trauma and applies it to S/R</td>
<td>◇ Has the youth been subjected to seclusion or restraint and if so, why?&lt;br&gt;◇ What was tried to de-escalate the situation prior to the use of S/R?&lt;br&gt;◇ How long did the S/R last and was that the least amount of time necessary to safely reduce the threat?&lt;br&gt;◇ Was a de-briefing conducted with the youth (and staff?) after the S/R?</td>
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<td><strong>8. Does the program work with youth in transition to adulthood?</strong>&lt;br&gt;a. Supports youth and who they consider family&lt;br&gt;b. Teaches youth skills to be successful in adulthood&lt;br&gt;c. Utilizes peer mentors to teach and model skills&lt;br&gt;d. Connects youth to resources&lt;br&gt;e. Assures that youth have access to support networks and housing prior to leaving the program</td>
<td>◇ Does the youth have a transition plan?&lt;br&gt;◇ Has an adult connection or connection to a support network been established for the youth&lt;br&gt;◇ Does the youth have a place to live and a means of financial support in place upon discharge?</td>
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<td><strong>9. Does the program have an informed practice on the use of psychotropic medication?</strong>&lt;br&gt;a. Has a medical doctor/psychiatrist on staff or as a regular part of the treatment team&lt;br&gt;b. Ensures prescribing physicians weigh the risks and benefits of medications&lt;br&gt;c. Conducts on-going re-assessments&lt;br&gt;d. Obtains informed consent&lt;br&gt;e. Ensures a smooth transition upon discharge to ensure the prescriptions are maintained appropriately</td>
<td>◇ Is the child currently on any psychotropic medication?&lt;br&gt;◇ Is the child’s prescribed medication consistent with the child’s diagnosis?&lt;br&gt;◇ How often does the child get medication assessments to ensure the continued appropriateness of the prescription?</td>
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<td><strong>10. Does the program use best practices?</strong>&lt;br&gt;a. Implements standards and procedures to hold itself accountable&lt;br&gt;b. Is licensed by its state authority and nationally accredited&lt;br&gt;c. Provides regular and consistent training and supervision to staff&lt;br&gt;d. Incorporates a core set of values and operating principles&lt;br&gt;e. Employs trauma-informed care and utilizes evidence based or evidence informed practices</td>
<td>◇ Is this facility licensed by the state?&lt;br&gt;◇ How does the state or other licensing body monitor the facility?&lt;br&gt;◇ Does the facility have operating principles that are publicly available?&lt;br&gt;◇ How does the facility incorporate trauma-informed practices?</td>
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<td><strong>11. Does the program focus on outcomes?</strong>&lt;br&gt;a. Ensures what outcome data is critical to collect and develops methods to collect the data&lt;br&gt;b. Develops and implements a method for data collection and benchmarking its performance&lt;br&gt;c. Ensures that practice and process indicators are measured&lt;br&gt;d. Ensures that the functional domains of home, purpose, community and health are measured&lt;br&gt;e. Collects functional outcome data and uses it to inform on-going performance&lt;br&gt;f. Shares its data with external constituents</td>
<td>◇ Does this program have a process by which it tracks data in order to measure and improve outcomes?&lt;br&gt;◇ In addition to tracking systemic outcomes, how does this program measure and ensure outcomes for this individual child?</td>
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Leveraging the FFPSA for Older Youth: Prevention Provisions

By Jenny Pokempner

Signed on February 9, 2018, as part of the Bipartisan Budget Act of 2018 (H.R. 1892), the Family First Prevention Services Act (FFPSA) has the potential to radically change child welfare systems across the country. Primarily by dictating how federal child welfare funds (Title IV-E) can be used, the FFPSA seeks to create a child welfare system that increases its investments in prevention services, so youth and families do not enter the system in the first place, and in family- and community-based services and placements, so youth who enter the system are more likely to find family and permanency. It is hoped that changing the way Title IV-E funds can be spent will lead to state systems that better reflect a vision of child welfare service delivery that prioritizes prevention, seeks to keep children with families in the community, and provides a more comprehensive service array for youth as they transition to adulthood.

For years, our federal financial structure has moved states in the direction of removal and placement and has done little to attack the use and overuse of group care. While financial incentives and disincentives are not the only movers of system change, they can be powerful ones. Title IV-E funds previously could be used for the cost of foster care maintenance for eligible children, administrative expenses to manage the program, training for staff and caregivers, adoption assistance, and kinship guardianship assistance. These funds could generally not be used for prevention services. This meant that the bulk of federal funds for child
welfare systems could be used only once a child entered the system, and once they
did, the same level of reimbursement was allowed for family-based settings and
group care. In addition, in the past, federal funds to support youth in the transition
to adulthood have been capped at age 21.

The FFPSA changes significantly how federal funds can be used by states. It allows
states to use IV-E funds for certain prevention services with the goal of keeping
youth and families out of state custody and placement. It also limits the use of IV-E
funds to pay for group care with the goal of enhancing a placement and service
array that keeps youth in the most family- and community-based settings with the
goal of moving them toward permanency. In addition, the FFPSA allows states to
use federal funds to respond to the reality and research that shows that the
transition to adulthood lasts into a young person’s mid-20s and that youth deserve
support as they build their skills and pursue post-secondary education and training.
To that end, the FFPSA allows states two options: to extend Chafee Program
aftercare services to youth until age 23 if the state provides extended foster care
(foster care past age 18) and to extend eligibility for education and training
vouchers until age 26 for all states.

The FFPSA has the potential to drastically change the child welfare system in
general, but the potential impact on older youth is significant. Not only are there
large numbers of older youth in the child welfare system—171,162 youth in foster
care, or 25 percent—but they make up a significant number of the youth who are in
group care. 51 percent of these youth are aging out without being successfully
reunified with their family or connected to another family through adoption or legal
guardianship. It is clear that these youth are at great risk for poor adult outcomes
because we have not collectively provided them the foundation of family and skills
that every young person needs to succeed as he or she transitions to adulthood.
Increasingly, older youth in foster care are receiving the attention they deserve, but
identifying and implementing the policy and practice changes necessary to make a
meaningful impact on their lives remains a challenge.

This three-part series—comprised of this article on prevention provisions and ones
on reduction of group care provisions and improving transitions—takes a close
look at how the FFPSA can be leveraged to bring benefit to older youth and
suggests strategies to ensure that plans for implementation of the law keep older
youth as a priority and that the youth are not lost in the immense efforts to implement all provisions of the law. Several senators have written to the Children’s Bureau to request that additional guidance be provided to the states so that they have the information and capacity to ensure that the law benefits older youth. These three articles follow the lead and challenge of the Grassley letter to make sure older youth are front and center in FFPSA implementation work. While the FFPSA provides some new leverage points through financing reform, it is acknowledged that broader policy, practice, and philosophy shifts are needed to transform how we serve older youth and to achieve the positive outcomes they deserve. We hope that these strategies help transform the work we are doing to a positive rather than a negative approach: a commitment to get young people to the most the connected placements in the community that can lead to permanency. Please note that this series of articles does not provide a detailed summary of the FFPSA. Instead it highlights the ways advocacy can be done around select provisions to improve outcomes and opportunities for older youth. A very helpful and detailed summary of the FFPSA has been published by the Children’s Defense Fund: The Family First Prevention Services Act: Historic Reforms to the Child Welfare System Will Improve Outcomes for Vulnerable Children (Feb. 2018).

Prevention Provisions

The FFPSA provides states, territories, and tribes the option to use Title IV-E funds for prevention services that would allow “candidates for foster care” to stay with their parents or relatives. Prior to this law, IV-E funds could be used only once a child was removed from the home. States will be able to define candidates for foster care, but generally this will include youth at risk of entering or reentering the foster care system from the home of a parent, relative, or legal guardian. This includes disrupted permanency arrangements (for example, a disrupted adoption). As the Grassley letter urges, “candidates for foster care” should include youth between ages 18 and 21 who are eligible to reenter care under state law. (While guidance on this issue was requested, advocates in states with reentry should include this in implementation discussions.)

Under the FFPSA, states will be reimbursed for prevention services for up to 12 months and can provide two types of prevention services: (1) mental health and substance abuse prevention and treatment services provided by a qualified clinician...
and (2) in-home parent skill-based programs, which include parenting skills training, parent education, and individual and family counseling. Services must be evidence-based (well-supported, supported, or promising) and trauma-informed to be eligible for reimbursement. This new use for IV-E funds can be a game changer and allows states to invest funds in and build capacity to prevent placement in meaningful ways.

In addition to being able to use IV-E for specific prevention services for “candidates for foster care,” states can also use IV-E funds to provide prevention services to youth in foster care who are pregnant or parenting. States are still restricted to the two categories of prevention services listed above but can provide them to pregnant and parenting young people in foster care regardless of whether their child is system-involved or at risk for involvement. These services can be provided for up to 12 months from the time a youth is identified as being in need of services.

Leveraging the Prevention Provisions for Older Youth

It is essential that states have the capacity to meet the needs of families with older youth if services are expected to truly prevent placement for teens and young adults. About 30 percent of youth who entered the child welfare system in 2016 were age 11 or older, while 10 percent were age 16 or older. As advocates are inquiring into their state’s capacity to provide trauma-informed and evidence-based prevention programs, they should also be asking whether programs have the skill set and expertise to support families with teens and adolescents. For example, are the available in-home parenting skills-based programs able to help parents understand adolescent development and trauma and how to productively respond to youth? Are the individual and family counseling programs able to respond to the dynamics of parents, teens, and young adults? Developing effective prevention services for families with teens and young adults also includes understanding the reasons these youth are coming into care. While older youth, like younger children, usually come into care for multiple reasons, the most common reasons for older youth are the Adoption and Foster Care Analysis and Reporting System (AFCARS) categories of neglect, child behavior problem, and caretaker inability to cope. Effective prevention services for older youth will need to respond to these removal
reasons and likely need to enlist the behavioral health system to formulate effective interventions. In addition, this is an area where getting feedback from youth and families about what they need—or needed—to remain together is essential. Advocates can play a key role in ensuring these voices are heard.

As mentioned above, for prevention services to be funded they must fall in the two service categories and they must be evidence-based (“promising,” “supported,” and “well-supported”). There is valid concern, including concern expressed in the Grassley letter, that there is a lack of programs targeting older youth that will meet the evidence-based criteria and that youth and families will not receive the benefit of the law because the research base is not yet where we need it to be. While we do advocacy at the federal level to see if federal guidance can provide some flexibility in this area, we recommend that advocates proceed to identify effective programs. If prevention programs that can meet the needs of families with older youth do not exist in sufficient numbers to meet the anticipated need, advocacy for issuing request for proposals (RFPs) is a recommended strategy. In addition, because the FFPSA funds only two categories of prevention services, advocacy for investment of state funds in prevention should be considered by advocates, especially to address the fact that entrance into the system is related to lack of income and housing to meet a child’s needs.

Leveraging the Prevention Provisions for Expectant and Parenting Youth in Care

The FFPSA allows states to use IV-E funds for prevention services for pregnant and parenting youth in foster care. As the Grassley letter suggests, this should include mothers and fathers at any time while they are in care. Youth in foster care have much higher rates of adolescent pregnancy and childbearing than their peers. Having one or more children at a young age has been shown to be correlated with barriers to educational attainment and adds to the challenges that youth face when they are making the transition to adulthood from foster care. The opportunity to enhance the services that these youth receive could aid in improving outcomes and opportunities for young parents who are very much in need of specialized support.

FFPSA prevention funds can be used for expectant and parenting youth in care without their children being candidates for foster care. This is a powerful provision
of the FFPSA that is at risk of getting lost in the important discussions around prevention in general. Advocates for older youth should make sure that stakeholders and policy makers are aware of this provision and that implementation planning includes how this provision will be leveraged to enhance the services and supports provided to expectant and parenting youth. There is often a lack of specialized services and placements for expectant and parenting youth in care, so these provisions could allow for specialized services that make a placement possible or make an existing placement more appropriate and supportive.

The Center for the Study of Social Policy (CSSP) has been leading efforts to improve our knowledge of and responses to expectant and parenting youth in foster care for many years and is continuing to provide expertise in implementing this provision of the FFPSA. In October 2018, CSSP released helpful FAQs on this issue and should be looked to for rich information on services and approaches to working with expectant and parenting youth in care. This way advocates can ensure that this provision is used to enhance the capacity of the system to support youth in care as parents and guard against their deeper involvement in the system as parents.

Individual Advocacy Strategies

The FFPSA provides us new leverage through financing incentives and disincentives to move the child welfare system to a goal that is not new: a system that front-loads services to prevent system involvement and meets family’s needs in the community. Our pre-FFPSA federal and state laws contain many provisions that aim to get us to this result. We can use the excitement and attention around the FFPSA and the new tools it provides to reinvigorate legal advocacy through enforcement of existing laws. We think these strategies not only complement FFPSA implementation work but may expand efforts in the states to invest more in prevention and community- and family-based care. Below are a few examples for attorneys who represent children and parents to consider in their trial court and appellate advocacy.

1 Enforce the reasonable efforts provisions. Federal law requires the child welfare agency make reasonable efforts to prevent placement of children in foster care and to finalize the permanency plan if the child is placed. A recent article by Jerry Milner and David Kelly of the Children’s Bureau
reinforced the experience of many: The reasonable efforts provisions are not often invoked to leverage service delivery at the trial court or fair hearing level or at the appellate level, so that obligation can be clarified and enforced.

2 Enforce the requirements for fair hearings. Attorneys should advocate zealously for reasonable efforts to prevent removal or, if the facts warrant, for a finding that reasonable efforts have not been made. Federal law and regulation require that states provide a mechanism for fair hearings for denials of service and benefits under Title IV-E. Failure to provide appropriate pre-placement prevention services are among the issues that can be challenged in a fair hearing. Fair hearings provide an additional forum to consider challenges that could result in the improvement of prevention and reunification services for families with older youth who are not being served in a manner that responds to their needs. Because the FFPSA funds only two categories of prevention services and requires that they be evidence-based, the reasonable efforts requirement continues to be a vital legal requirement that can help ensure specific prevention services to families. When lawyers bring challenges in a coordinated way (such as organized efforts to identify cases for appeals and fair hearings), they can move jurisdictions to prioritize investments in prevention.

3 Enforce laws around disposition for youth in care who are pregnant and parenting to ensure appropriate placements and services and to ensure respect for the parental rights of young parents. All states have case law and statutory provisions to ensure that dispositions of dependent children meet their needs and serve their best interests. These should be used to force the provision of services that support older youth as emerging adults and as parents. When a youth in care has a child, the disposition must serve the needs of the changed status of the dependent child in terms of services and placement. If the placement and services are not appropriate and are not supporting the youth as a youth and as a parent, they should be challenged as not consistent with the law. In addition, any efforts to remove a dependent child’s child or infringe on the dependent child’s legal rights as a parent, either because she is in foster care or because of a lack of placement that can serve both, should be vigorously
It is clear that the FFPSA provides many opportunities to transform the child welfare system into a system of support that is focused on prevention and on supporting and strengthening families in the community. If we can achieve this goal, it will benefit all families, including families who are or can support and nurture older youth. The attention to older youth and the development of law and policies that support the transition to adulthood of youth in foster care have increased over time. Far too often, though, it seems that our laws and policies put attention on the challenges older youth face, but that reforms are not implemented in ways or at the scale needed to achieve the desired results: large numbers of youth achieving permanency and successfully transitioning to adulthood. The combined force of Fostering Connections to Success and Increasing Adoptions Act of 2008, the Strengthening Families Act, and the FFPSA should result in better outcomes for older youth. We hope this series of articles continues the discussion among advocates so that we can collaborate and plan for systematic and individual advocacy on behalf of older youth.

*Jenny Pokempner is the director of child welfare policy at the Juvenile Law Center in Philadelphia, Pennsylvania.*
This is the second of three articles on how the Family First Prevention Services Act (FFPSA) might be leveraged to the benefit of older youth. In addition to increasing investments in prevention services so youth and families do not enter the system in the first place, the FFPSA seeks to limit the use of group care by restricting the use of Title IV-E funds for group settings. The FFPSA continues to allow Title IV-E funds to be used to fund placements in a “family foster home,” defined as a home with 24-hour care for 6 or fewer children (with some exceptions), or a “child care institution,” defined as an institution for up to 25 children that is not a detention center. However, under the FFPSA, a child’s Title IV-E eligibility ends after two weeks of placement in a child care institution. Thus, placement in group settings lasting longer than two weeks generally will be ineligible for federal funding. States can continue to place youth in these settings but will have to fund them with state and local dollars.

There are, however, several group settings that are exempted from these restrictions. States can continue to draw down IV-E funds for settings described later in this article after two weeks even if they are provided in the form of child care institutions.

Leveraging the Reduction of Group Care Provisions for Older Youth
Older youth are at high risk for being placed in group care; one out of every four—171,162—youth in foster is at least age 14, and 34 percent of those youth are in group care placements. These placements compromise the ability of youth to find permanency and form healthy, lasting relationships with family and caring adults. They also compromise opportunities for youth to develop the skills they need to be successful in adulthood. Older youth are the ones most likely to positively benefit from the FFPSA’s efforts to reduce group care, but they are also the group that the system will say it is the most challenged to serve in family-based settings.

Advocates must ensure that the needs of these youth are front and center in FFPSA discussions. We recommend that advocates take a three-pronged approach that works to ensure that

- the provisions that restrict group care are applied rigorously to older youth;
- the excepted settings are available in appropriate numbers, are of high quality, and prioritize permanency; and
- achieving permanency and supportive connections through enforcement of existing law, including the Strengthening Families Act permanency and normalcy provisions and the reasonable efforts requirements, continues and creates the framework for the right sizing of placements and services under the FFPSA.

Advocacy to Limit Group Care Placement

Much has been written about policies that can effectively reduce decisions to place youth in group care. These reforms tend to require more process and oversight before a placement in group care can occur. This can include special teamings that ask important questions about family and community connections as well as the efforts that have been made to serve the youth in the community. Requiring high-level approval and frequent reauthorization to continue placement can also force the system to think more creatively and carefully about options outside of group care. Policies that make certain reasons for group care placement unacceptable—such as the lack of a family-based setting—can also be powerful shifters of practice as can policies that prohibit group care placements for certain ages (for
example, under 12 or 18 and older) and that enforce time limits (e.g., no more than 3 months). While many states have instituted such reforms, advocates should examine what policies exist in their jurisdiction and consider whether policy or legal requirements of this sort should be part of FFPSA implementation efforts. It is possible that these reforms may be more effective in combination with the changed federal financing incentives as well as any additional reforms at the state the level.

The FFPSA uses the federal IV-E financing structure to shift practice, but it is largely using a dis incentive to force change and doing it through a significant, but limited, funding stream. Title IV-E is the largest federal funding stream for child welfare activities, but states use a good deal of state and local funds to run their child welfare systems, and these funds are not governed by the FFPSA. Long-lasting change will likely require states to create a law and policy structure that is consistent across funding sources and that does not just push child welfare systems away from service delivery we do not want to see, but that pulls and supports them in building the array that is best for children and youth. Ideally, state funding schemes should mirror the federal dis incentives for group care but should also provide incentives and support so that the state can build sufficient alternatives. Advocates are encouraged to consider the following possible reforms:

- Enact a state funding formula that dis incentivizes group care and provides incentives for community-based supportive services and placements.
- Enact state law to allocate funds to provide financial and service support for kinship care arrangements (for example, subsidies, navigators, post-permanency support).
- Enact state law that allocates funds to train foster care and adoption caseworkers to support older youth permanency.
- Review and potentially revise the state’s Medicaid Plan to ensure the funding of services that can support an enhanced placement array for older youth.
- Enact state law to provide funding and training to recruit and retain skilled caregivers.
Advocacy to Support Caregivers for Older Youth

To be successful in reducing group care placements, states need to build up and enhance their placement and service array. Working to recruit kin and non-kin caregivers is essential to this goal as is investing in retention and support of caregivers, which will also assist with recruitment. One of the best ways to determine what caregivers need to support youth of varying ages and needs is to simply ask them. Advocates can play a role in getting this feedback and presenting it to policy makers. Initiatives like the Quality Parenting Initiative (QPI) provide a model for this type of inquiry as well as a structure for supporting caregivers through policy and practice. This model seeks to both enhance and specify the standards for caregivers and provide them the support they need to achieve those standards.

The FFPSA requires that states show that their licensing standards for family foster care are in accord with model standards that have been promulgated by the Children’s Bureau. States will have to explain if there are areas where requirements are waived or amended for relative caregivers seeking to be licensed. It is recommended that advocates use this opportunity to create and enhance licensing standards that support caregivers in acquiring the skill and community support they need to provide excellent care for children, including older youth. High expectations should be mirrored by high support. In addition, these standards should address ways to resolve barriers that relative caregivers may face in being licensed or being approved for services and support that are not related to safety.

Advocacy to prohibit discrimination against lesbian, gay, bisexual, transgender, and questioning youth or foster and adoptive resources is a civil rights issue, but it is also a permanency and FFPSA issue. Advocates should leverage the FFPSA’s push to expand family-based placements as an opportunity to urge the elimination of any laws, policies, or practices that support discrimination of foster and adoptive resources and to institute prohibitions on discrimination.

Advocacy to Build a High-Quality Placement Array by Developing the Excepted Settings
The restrictions on using Title IV-E funds for group care have several exceptions. The following are settings that are exempted from the group care restrictions for the purpose of IV-E funds:

- A qualified residential treatment program (QRTP).
- A setting specializing in providing prenatal, post-partum, or parenting supports for youth.
- A setting providing high-quality residential care and supportive services to children and youth who have been found to be, or are at risk of becoming, sex trafficking victims.
- A supervised setting for youth ages 18 and older who are living independently.

While the first three excepted settings do not specify age, it is likely that older youth will be considered for these excepted settings more often than younger children. Advocates should ensure that these excepted settings are of high quality and serve an important and needed role in the placement and service continuum. Advocates should also ensure that these settings do not become barriers to developing family-based settings for older youth or as a reason to not pursue permanency.

The QRTP is getting significant attention in FFPSA implementation discussions because it is likely the setting that will replace existing group homes, albeit in a transformed way. However, for a placement to be a QRTP, it must meet multiple requirements. These requirements are intended to ensure that placement is limited by specific treatment needs, that the placement can meet the treatment needs that cannot be met in a less restrictive setting, that the placement is capable of meeting an array of treatment needs, and that the goal from day one is to transition to family and the community. The FFPSA meets these requirements by developing a rigorous process to justify initial and continued placement and by requiring that placements have specific services, training, and capacity in place. Ideally, this process and requirements will ensure that older youth are placed in QRTPs only in rare circumstances for the shortest time possible. However, it is recommended that advocates raise questions about whether QRTPs can meet the needs of older youth.
and whether additional service provisions (such as the provision of transition services) or placements based on age should be developed.

Unlike QRTPs, the other excepted settings do not carry any particular requirements about initial or continued placement or about the service array and training of staff. States have the flexibility to develop and receive federal funding for group settings that serve pregnant and parenting youth and children and youth who have been found to be, or are at risk of becoming, sex trafficking victims. Advocates are encouraged to make sure there are discussions about the place of these settings in the state’s placement array and to explore developing standards for program and practice for these settings so they do provide high-quality services that meet the special needs of the targeted populations. It is recommended that advocates lead these discussions and recruit youth and service providers who have expertise in working with older youth and these two special populations. We encourage the development of standards that support good practice but are not so prescriptive that development of these settings is impossible. Finally, a crucial piece of these discussions includes how these two populations—pregnant and parenting youth and youth who are, or are at risk for being, victims of sex trafficking—can be served in family-based placement settings. The fact that states can provide care in a group setting for these two groups of youth does not in any way mean that it is the only, or even the most preferable, way to serve these youth. Advocates should ensure that implementation discussions address how serving these two groups of young people can be done in family settings.

Among the excepted placement options for federal funding is the placement category of “a supervised setting in which an individual lives independently.” This has been a IV-E reimbursable setting for youth who are in extended foster between ages 18 and 21 since the Fostering Connections to Success and Increasing Adoptions Act of 2008. The Children’s Bureau decided not to issue regulations on these settings but did provide some parameters indicating that states have a good deal of flexibility to develop settings that meet the age-appropriate needs of young adults:

For example, a title IV-E agency may determine that when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or
another housing arrangement meet the supervised setting requirement. We encourage the title IV-E agency to be innovative in determining the best living arrangements that could meet an older child’s needs for supervision and support as he/she moves toward independence. Further, we note that a title IV-E agency should continue to work with youth who are in supervised independent living settings to form permanent connections with caring adults.

While the majority of states provide extended foster care in some form, states continue to struggle with providing an age-appropriate placement array for young adults. Recent research shows some improvements, but much work remains to be done. We encourage advocates to ensure that discussions about the placement array for youth in extended foster care are a part of FFPSA discussions and presented as a strategy for alternatives to group care. Advocates can remind policy makers that states have great flexibility in what they can develop that will still allow them to draw down federal funds. Advocates should make sure the issue of quality is a core component of the discussion and that the placement array in extended foster care includes more independent settings as well as family-based settings.

Ensuring That Permanency Advocacy Is the Framework for the Expansion of the Placement Array

The focus of the group care provisions of the FFPSA are placement—reducing one type and increasing the provision of other types. These provisions use placement to get to permanency. We want youth in family- and community-based settings because we believe that in those settings they are more likely to be able to return home, reconnect and connect with kin or other community members, and achieve permanency.

In 2014, the Preventing Sex Trafficking and Strengthening Families Act (SFA), among other things, required that states crack down on the use of the permanency plan of “another planned permanent living arrangement” (APPLA) for older youth and put in place stringent requirements on when to use this permanency plan. It was believed that far too many older youth were being assigned the goal of APPLA and that this plan rarely resulted in permanency and often resulted in a youth aging
out of care without ever finding permanency. The SFA requirements sought to make the use of APPLA rare and to prompt discussion and case work that would result in APPLA not being needed at all.

While states changed law and policy to comply with the SFA, they are still in the process of changing practice and messaging around older youth permanency. We strongly recommend that advocates use FFPSA implementation efforts to continue with or reinvigorate work on this issue. Key to the older youth permanency provisions of the SFA was changing a philosophy that either all older youth were not cut out for family or that as youth got older, the focus needed to shift from permanency to preparation for adulthood. The SFA made clear that permanency is always the expectation and legal obligation until youth leave the system and that preparation for adulthood must occur alongside seeking permanency. We recommend that advocates use these legal requirements to underline the need to move older youth out of group care and to develop the types of alternatives for placement and services that are more conducive to achieving permanency.

The SFA also includes “normalcy provisions” focused on ensuring that youth are able to engage in normal, age-appropriate activities. The normalcy provisions of the SFA apply to all placement settings, including group care, and require that youth in care have access to age-appropriate enrichment, extracurricular, social, and cultural activities and experiences to the same degree as their non-placement peers. While these provisions have been in place since 2014, group care settings still struggle with their implementation, and oversight of implementation in group settings has been lax. Advocates are encouraged to inquire into the capacity of placements to comply with the normalcy provisions as the current placement array is being inventoried and a new array is being designed. It is likely that the facilities that are not able to provide normalcy to youth are exactly the ones that should either be eliminated or revamped.

The FFSPA provides new leverage through financing incentives and disincentives to move the child welfare system to a vision and goal that are not new: a system that provides age-appropriate and developmentally appropriate placement settings that are with family and in the community. Our pre-FFPSA federal and state laws contain many provisions that aim to get us to this result. We can use the new tools the FFPSA provides to reinvigorate legal advocacy through enforcement of existing
laws. Below are a few examples for attorneys who represent children and parents to consider in their trial court and appellate advocacy:

1. **Leverage reasonable efforts to finalize the permanency plan requirement to get youth the placement and services they need and deserve.** This could include requesting orders for a family-based placement to be developed or to provide services that would make a placement appropriate. This can be done at the trial court level or in a fair hearing. To have an impact on policy change, appellate advocacy could also be pursued. These challenges could be done along side assertions of the right to the least restrictive placement settings.

2. **Use state case law on disposition and any state law requirements related to placement to increase and enhance the placement options for older youth.** Statutory and case law in most states provides dispositional standards that require individualized determinations that are guided by the best interests standard. While these standards can be broad, advocates can use them, along with a good record supporting how the proposed placement will meet the youth’s needs, to argue for a court order for the best placement. (A few examples can be found in the Juvenile Law Center’s Transition to Adulthood Litigation Resources.) When the needed placement is not available or the service is not being provided, the court order can spur its development or expansion.

3. **Enforce the APPLA reduction provisions as a way to increase and enhance the permanency services provided to youth and ensure that youth are meaningfully engaged in permanency planning.** This could include the provision of trauma-informed services to address grief and loss, family finding and search technologies, child-specific recruitment, and reunification services.

4. **Enforce the normalcy provisions.** The federal law requires that the court make findings about whether older youth have regular, ongoing opportunities to engage in age-appropriate or developmentally appropriate activities and whether their caregiver or placement is using the reasonable and prudent parent standard to further this access. Attorneys should be diligent in making sure these findings are made and that corrective action
is taken if the court finds that the youth does not have access to activities.

The FFPSA provides a real opportunity to transform the child welfare system into one that can provide family-based settings for older youth and support them as they transition to adulthood. Because older youth are over represented in group care settings, they should benefit from the FFPSA if we work to develop the placements and services that are needed to provide high-quality alternatives. This will require further developing family-based settings and ensuring that any non-family-based settings are limited in ways that ensure quality and age appropriateness and that prioritize family, connections, and permanency.

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This is the third of three articles—here are the first and second—on how the Family First Prevention Services Act (FFPSA) might be leveraged to the benefit of older youth. The FFPSA seeks to respond to the transition needs of young people, recognizing that, in general, the transition to adulthood requires significant support and does not occur until a young person is in their mid-20s. The FFPSA also recognizes that successful transitions should begin early. To achieve these ends, the FFPSA expands the ages and time periods for which youth can be served. The following are some of the key changes:

- The John H. Chafee Foster Care Independence Program is now renamed the John H. Chafee Foster Care Program for Successful Transition to Adulthood to reflect the focus on supporting the transition to adulthood rather than a focus on the goal of “independence.”

- Transition to adulthood services begin at age 14 rather than 16.

- In addition to the existing requirement to provide young adults their vital documents and records, states must provide youth who exit the child welfare system at age 18 or older official documentation necessary to prove that the child was previously in foster care, to facilitate establishing eligibility and access to programs and services.
These provisions took effect in February of 2018. States must affirmatively take the options related to Chafee aftercare eligibility and ETV eligibility expansion, but states can do this at any time, according to a Children’s Bureau program instruction, by updating their Annual Progress and Services Report (APSR). No additional federal funds were allocated, but provisions were put in place to create a process for states to request unspent Chafee funds.

Implementation and Planning Strategies

Advocates should ensure that case planning and court procedures are changed so that there is accountability in the provision of transition services beginning at age 14. Advocates should also ensure that there is a process in place so that documentation is being provided to youth to let them know their foster care status.

Because states have to affirmatively take the option to extend Chafee services until age 23 if the state has extended foster care, advocates should raise this issue with the state and seek stakeholder and youth input on this decision. While there are no additional funds provided to extend the age of eligibility, providing aftercare until age 23 reflects developmentally appropriate practice and can be done through state funds. The same is true of the extension of ETV eligibility.

It is likely that some states will be resistant to expanding eligibility without new funds; for that reason, advocates may have to take the lead in organizing the discussion and collecting information and data that speak to the need to provide services for longer periods of time as well as the feasibility of doing so. Pursuing these inquiries simultaneously will also set advocates up to push for an increased investment of state and local funds for aftercare services.

Individual Advocacy Strategies
Enforce the transition planning requirements in court and at case planning meetings. The requirement for judicial review of transition planning is an excellent opportunity to ensure that older youth are being supported in skill development and permanency as they age. While court oversight of these provisions is required, it is not often marshaled to ensure that meaningful transition plans are developed and that orders are issued to correct plans that are not adequate. These challenges can be made from the time planning is required at age 14 to the time of discharge, which should not occur without a good plan or without the documents required under the law.

Ensure that your clients know about ETV and Chafee aftercare. Attorneys should use their counseling role to provide clients information about programs and benefits that youth are eligible to receive while they are in care and upon discharge as part of the transition planning process. Recent data show that a small number of eligible youth receive education support as part of the Chafee services. Providing information, including information about ETV, can help promote access to higher education and training opportunities. Youth can use their ETV funds for an array of expenses related to the cost of attending a program of higher education and training. Also, youth are eligible for Chafee aftercare in any state in the country. (Eligibility for Chafee aftercare is based on where the youth resides.)

Make sure youth have proof of former foster care status and have their vital documents before they discharge from care at age 18 or older. The FFPSA requirement to provide youth proof of foster care status when they discharge at age 18 or older has been in effect since February 2018. As part of the transition planning process, attorneys should inquire whether their client has been provided this documentation, and if not, they should ask for a court order that it be provided. It is also recommended that attorneys assist their clients in identifying a safe place to store these documents and other original vital documents that are provided as part of the discharge process and that they also store them digitally if possible.

Conclusion
The FFPSA offers opportunities to transform the child welfare system into a system that better supports youth as they transition to adulthood. Ideally, several provisions of the FFPSA will result in more youth leaving the system to permanency and not aging out. The Chafee aftercare and ETV provisions, however, provide states the opportunity to build a safety net of services and supports that more closely mirrors what youth in families receive as they transition to adulthood. While the FFPSA did not go far enough by mandating the extension of services or increasing the funding available, it does provide advocates an opportunity to develop the outlines and foundation of the service system we want to build for young people. Additional advocacy at the federal and state level will be needed to make this system as effective as possible.

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