Can Children's Attorneys Transform the Child Welfare System?
By William Booth, Angela Orkin, James Walsh, and John Walsh
We believe that permanency-focused advocacy can dramatically improve the lives of our clients and the system as a whole.

The Collective Power of Youth
By Betsy Fordyce
Foster youth–led organizing should be the strategy for system change. They are ready to use their voices; the best lawyers can do is listen, support, and follow their lead.

Leveraging the FFPSA for Older Youth: Prevention Provisions
By Jenny Pokempner
The Family First Prevention Services Act provides many opportunities to transform the child welfare system into a system of support that is focused on prevention and strengthening families.

Leveraging the FFPSA for Older Youth: Reduction of Group Care Provisions
By Jenny Pokempner
Because older youth are overrepresented in group care settings, they should benefit from the Family First Prevention Services Act if we work to develop the placements and services that are needed.

Leveraging the FFPSA for Older Youth: Improving Transitions
By Jenny Pokempner
Ideally, several provisions of the Family First Prevention Services Act, such as expanding Chafee services, will result in more youth leaving the system to permanency and not aging out.
Articles cont. »

From the Editor: Is It Lawyers' Job to Change the System?
By Cathy Krebs
Small actions can make big changes, and zealous advocacy on behalf of each client is not only our job but it also can push an entire system to do better for all children we serve.

Practice Points »

Five Facts About Juvenile Sex Offender Registration
By Riya Saha Shah
What lawyers need to know about sex offense recidivism in youth.

Inform Your Advocacy for Transition-Aged Clients Using State-Specific Data
By Jessalyn Schwartz
Understanding the experiences of young people aging-out of foster care in America is critical if outcomes are to improve.
Can Children’s Attorneys Transform the Child Welfare System?

By William Booth, Angela Orkin, James Walsh, and John Walsh – January 15, 2019

As we enter a new year, we find ourselves in a familiar position—more kids are entering foster care than are leaving. This means increasing caseloads, which affect every aspect of the child welfare system. Children’s attorneys struggle to represent their clients, often finding themselves putting out fires and preparing for hearings the day before they go to court. From high caseloads to lack of resources to help families and to overcrowded court dockets, many elements of the child welfare system seem out of our control. But what if there was another way, right now, for children’s lawyers to dramatically improve the lives of individual clients and the system as a whole? We believe that there is.

We are four lawyers from three states who share a common belief—that advocacy is the answer to our struggling child welfare system. You may wonder, how can children’s attorneys transform the child welfare system? We believe attorney can do this, but only if there is a culture shift in our profession. We know what we are suggesting may sound unrealistic to some—but stay with us. By the end of this article, we hope you will be ready to join our effort to elevate our profession and take charge of getting our clients home.

The Challenge for Our Profession

While there have been many strides in the area of children’s law, we are still a relatively young profession compared with other professions that serve children—such as pediatric medicine, which is mentioned in ancient texts from the sixth century BC. We got our start in 1874, when an attorney rescued an orphan, Mary Ellen Wilson, from abusive adoptive parents in Hell’s Kitchen with a writ of habeas corpus. There were no laws protecting children from abuse, so that lawyer, Elbridge Gerry, founded the New York Society for the Prevention of Cruelty to Children. It was the first child protection agency in the United States.

Even though it was a child’s attorney who first took action to systemically protect children in our country, it was not until 100 years later, in 1974, that the federal government would pass the Child Abuse Prevention and Treatment Act (CAPTA). While CAPTA does require some form of representation, it does not do enough to promote quality. The real drivers of effective representation are mainly addressed at the state level: training, caseload size, compensation, and accountability. This has resulted in wide variation among states, with children receiving representation in many different forms and structures.
For 44 years, children’s attorneys have struggled to remove our common roadblocks because we are constantly putting out fires. When we do have time to think globally, we tend to pull in opposite directions. We argue about the nuances of representation that do not affect the majority of children. Some of us take up the banner of due process, believing that every child having some kind of counsel should be the ultimate goal. Others believe that holistic representation is the goal—having enough lawyers and trainings and conferences to address every possible need a child could have. And many, many lawyers are just trying to keep their heads above water, doing the best they can to represent too many children with too little time.

As we speak to children’s lawyers from across the country, we find that the practice looks drastically different from state to state and, in some cases, from county to county. There are, however, some unfortunate constants: high caseloads, low compensation, inadequate training, and lack of supervision. There are other problems, but these are the four constants. At least one and probably some combination of the four are present in your jurisdiction.

How would the practice be different if we were specialized doctors, rather than specialized lawyers? To return to the pediatric medicine metaphor—we essentially operate as the legal equivalent of pediatric trauma surgeons. We just are not resolving physical problems; we are resolving much more complex emotional, familial, and behavioral problems for our clients. And we must agree as a profession that all of these problems are best resolved in the context of a permanent family. That is our shared role. It starts with recognizing our value as professionals and demanding respect by achieving results for our clients. And it ends with a drastically changed child welfare landscape where the child’s attorney is not an afterthought but is instead the person whose vision guides the child home.

Would pediatric trauma surgeons be asked to work on 150 to 200 children at one time? Would they be asked to do it without nurses or physician’s assistants? Would surgery be scheduled every half hour of the day? Parents would not stand for this. But the children we represent don’t have another option. They get us, in whatever form we take. Our role is critically important to our clients, and we must hold ourselves accountable.

The Solution Is Permanency-Focused Advocacy

So how do we elevate our profession?

There is a way. For over 17 years, the Foster Children’s Project (FCP) has operated in Palm Beach County with a singular purpose—to get kids out of foster care and into permanent homes quickly and safely. The office was founded with the goal of getting children into permanent homes within 12 months. When FCP began taking cases in 2001, the average time to permanency was 36 months. Throughout the life of the program, FCP has averaged 12.5 months to get a child into his or her permanent placement. Some may be concerned that this approach adversely affects parents. But this is not the case. The Chapin Hall study of FCP found
substantially higher rates of exits to permanency without any negative impact on rates of reunification.

When FCP was created, it began with the simple premise of measuring the length of time children were in foster care, and it evolved into an approach that has stood the test of time. The primary reason FCP’s work has not been replicated is the assumption that it is too expensive. It operates like a real law firm—with caseload targets of 50 children per lawyer, social workers, and funds for litigation expenses. This model and approach helped FCP to change the culture of the child welfare system in Palm Beach County. But it is not necessary to have all of the resources in place to take action today.

We are calling this model of representation permanency-focused advocacy and we are proposing a nationwide move in this direction. It means creating a culture in which every case has a sense of urgency—a culture in which we work harder in between hearings than in court. Permanency-focused advocacy is actually very simple. Many of the strategies learned can be applied to any caseload or system. And imagine if we were all able to move children home a bit faster. What could that mean for the child welfare system as a whole? Even one month per child?

There are three key features of permanency-focused advocacy. If every children’s attorney adopted these, we would see the kind of culture shift needed to transform the child welfare system.

**The child’s attorney acts as lead counsel.** As children’s attorneys, we lack clarity that is so common in many other areas of the law. Criminal defense attorneys know they are working for a “not guilty” verdict. A lawyer suing an insurance company on a client’s behalf is looking for a win so the client receives a judgment. The list goes on and on. But for children’s attorneys, there are no wins or losses. We must counsel our clients and seek the best possible outcome, but many times that is a moving target. And we are expected to address the well-being of the child while in the system. This unique role, along with the frequent high caseloads, sets lawyers up for failure. We take the small wins and handle only the most urgent issues between court hearings. This leaves little time for legal strategy and proactive steps to move cases forward.

The only way for children’s lawyers to transform the child welfare system is to step into the role of lead counsel and take responsibility for the direction and pace of the case. After all, the case is styled “in the interest of our client.” That alone should bring us a degree of clarity: We are lead counsel because we represent the most important person, indeed the subject, of the case. Once we realize this, we must then focus on the most important legal problem first.
The child’s attorney focuses on the child’s number one legal problem—being in the custody of the state, instead of a family. Most children in foster care have the same problem that Mary Ellen Wilson had—they need a safe and permanent home. If you are appointed to represent a person who is in state custody, it is safe to conclude that your role is to get your client out of state custody as quickly as possible. Taking that a step further, because your client is a child, it’s safe to assume your client needs to be with a family. By keeping it simple, we believe the mission of the child’s attorney is clear—get the child home. Preferably, with some exceptions, this will mean the birth parent’s home. Sometimes it will mean an adoptive home.

As the child’s attorney, you cannot control what the parents will or will not do on their case plan. You can remove obstacles. You can motivate them with visitation. You can plan concurrently by keeping siblings together and in foster homes that will adopt if need be. And you can do this one case at a time. By developing a strategy for permanency within one year for each of your clients, you can start to move the needle in your jurisdiction, even if it’s just a little.

The child’s attorney enforces permanency time frames as a right of the child. How many cases do not see real movement until right before the hearing? What if we spent more time working between hearings? We must hold the department accountable for referrals and services. We must bring cases back into court when action is not taken. How do we keep our focus on the time frames? We can start by measuring.

The signal of the importance of something is whether you’re actually measuring it and you’re holding people accountable to improving those numbers.

—Sandra E. Peterson, Group Worldwide Chairman, Johnson & Johnson

While some children’s law offices have databases to track cases, many attorneys operate with a stack of files and an impossible list of things that need to be done. If we are to take charge of our cases and work to improve the system, we must start by measuring. It is not the lack of laws on the books that prevents children from finding permanency quickly. It is flaws in the system and the court process. These are areas that may seem outside the purview of the role of a children’s attorney, but we submit that they are not. We are, in fact, in the very best position to be the driver of the case.

Once we are in the driver’s seat, it is our role to watch the clock for our client. This means watching more than the goal date of the case plan. It means making sure the parents get engaged in services early, taking the case back into court when it veers too far off the course we have set for it and developing interim goal dates for each task in the case plan. These are all ways you can begin to let your jurisdiction know that you are
watching the clock. As you introduce these practices, you’ll start to see a reduction in your client’s length of stay—if you measure your outcomes.

Measuring can also lead to new resources. If the success of FCP can be replicated, we can all make the case for lower caseloads based on the real, measurable impacts we have on individual clients and the system.

**Change the Child Welfare System One Case at a Time**

If all of us were pulling together in the direction of permanency-focused advocacy, what would be the cumulative effect on the child welfare system in this country? What if children removed from their homes because the parents smoked marijuana and had a dirty house were returned in 6 months instead of a year? What if children whose parents disappeared from their lives at birth got adopted in 6 months instead of 18 or 24?

What we as children’s attorneys bring to the table our critical thinking skills. We analyze the facts, apply the law to them, and bring about the best outcomes for our clients. Achieving an outcome for your client may involve thinking way outside the box or even changing the practice of the local child welfare agency. By doing this, FCP has impacted its local system of care in the following ways:

**Visitation.** Once you know that visitation is the single biggest predictor of reunification, you realize once a month is not enough. FCP pushed for three times a week for infants and was told it would break the system. The system did bend, but it did not break. Visitation three times a week is now the rule in Palm Beach County—for every child.

**Concurrent planning.** Once you know that, from the child’s perspective, it makes no sense to spend a year in a foster home only to be moved to an adoptive home if your parents fail, you realize the first placement should be the last placement. So FCP pushed hard for “foster to adopt” homes, so that if parents could not be reunified, the child would undergo only one change in caretakers. FCP was told it could not be done. It would cause too many issues with foster parents who would refuse to let go of children they wished to adopt. Those issues do present themselves from time to time. Separating from a foster child can be heartbreaking. Managing foster parents’ expectations can be time consuming. Litigating against them even more so. However, when balanced against the fact that the majority of Palm Beach County children under age five are in foster homes that will adopt them if the parents are unsuccessful, the struggle has been worth it.

**Material breach of the case plan.** Once you know that the case plan is really just a contract, you realize your client is a party to that contract or, at a minimum, a third-party beneficiary. So FCP borrowed from contract law and argued material breach as a
ground to terminate parental rights when parents stopped working their case plans. In these cases, it makes no sense to wait the whole 12 months of the plan. Material breach is now a statutory ground for termination of parental rights in Florida.

**Prescriptive case plans.** Once you know that your client’s parents have trouble getting things accomplished, you know they need to focus only on what needs to get done. They can’t afford distraction. So FCP argued against extraneous tasks in case plans. As it turns out, Chapin Hall found this was one of the critical differences in cases where children were represented by FCP. The case plans contained only relevant tasks—and that helps kids get home quicker.

These are just a few of the ideas that grew organically out of permanency-focused advocacy. You likely face different issues in your jurisdiction, but the process is the same. Once you change your focus, your practice begins to change. If this seems daunting, keep in mind that not all of the cases we handle as children’s attorneys are difficult. Sadly, parents often make the decision about whether or not our client is going home an easy one. Even ruling out the complex cases, just tackling the cases with an outcome that is not in doubt could have a tremendous effect on child welfare nationally. Some may say that’s not our concern, that it’s the province of state and federal governments to worry about the health of the child welfare systems. We disagree.

**We Have the Power to Transform the System**

We believe that it is time for us, as children’s attorneys, to take matters into our own hands—just as Elbridge Gerry did when he stepped outside his role as a lawyer and formed the first child protection agency. Let’s all start pulling in the same direction and transform this broken system. Fewer kids in care means a healthier system for our next client to enter. It means case workers with more time. It means less crowded foster homes. It means shorter waiting lists for services. It means all of that—and more.

Together, we can change the system one step at a time. Start small. Pick one. Measure. Use results to show the value of your work and increase resources for high-quality representation.

We hope this conversation continues on many fronts and that you will be a part of it. For our part, we have started the Children’s Law Podcast—the first project of our new organization, [True North Child Advocates](https://childrenslaw.org). You can find us at childrenslaw.org or on iTunes by searching “True North Children’s Law.” Please join the conversation. Your voice is vital.

William Booth, Angela Orkin, Jim Walsh, and John Walsh practice in New York, New York; Atlanta, Georgia; and West Palm Beach, Florida, respectively. Together they formed True North Child Advocates and host the Children’s Law Podcast.
The Collective Power of Youth

By Betsy Fordyce – January 15, 2019

On March 22, 2018, a handful of youth leaders stood on the steps of the Colorado State Capitol building and looked out over a crowd of child welfare professionals, families, friends, and legislators. They held handmade signs: *Hear Me Roar for Those Who Whisper; If You Can Read This, Your Voice Matters; Listening is Love*. They read letters written by fellow current and former foster youth. They shared Governor John Hickenlooper’s proclamation declaring Foster Youth Voice Day in the state of Colorado.

This rally marked the first true public action of project Foster Power’s “Youth Voice, Youth Choice” campaign. Young people joined together with a clear message: that adults include youth in decision-making processes, particularly those affecting their own lives, and #passthemic so that youth have an opportunity to share their own experiences and ideas.

This call to action is just one of many examples of foster youth across the country asking those of us working in these systems to “pass the mic” and listen to what they have to say. Through the efforts of the national Foster Youth in Action network, as well as many dedicated youth and adults on the ground, youth organizing is emerging as a powerful strategy for large-scale change in the child welfare field.

Launched in the summer of 2017 as an initiative of the Rocky Mountain Children’s Law Center (RMCLC), project Foster Power is a group of current and former foster youth, ages 15 to 25, seeking to improve the foster care system through youth organizing and advocacy. These young people are using their past experiences to connect with one another, promote healing, and collectively raise their voices to challenge the system that they experienced firsthand.

The Beginnings of project Foster Power

In 2014, RMCLC began to explore new ways to engage youth in its system-change efforts. For over 30 years, as a nonprofit child law center, RMCLC worked on behalf of abused, neglected, and at-risk youth and their families with programs spanning the judicial and legislative arenas. Like so many others in the child welfare space, RMCLC attorneys zealously advocated *for* youth every day, pursuing all possible avenues to meet their “best interests.” Yet, there is a difference between working *for* youth and working *with* youth. Despite extraordinary diligence and the best of intentions, adult professionals in this area do not always get it “right” on their own, nor does the change they seek always manifest.
With this in mind, RMCLC realized that there was a piece of the puzzle missing when it came to its strategies for generating change: specifically, taking the lead from those with direct system experience. The organization launched its Youth Empowerment Program based on the belief that by empowering foster youth to be strong leaders, amplifying their voices, and creating opportunities for influence, the culture and practice of the Colorado child welfare system could change for the better.

RMCLC looked to Foster Youth in Action to intentionally build this work. For three years, that partnership included learning, planning, and re-envisioning, and ultimately resulted in project Foster Power launching as a foster youth–led model for change in Colorado.

The initial goal of this work was to shift youth engagement in Colorado from solo youth advocates making speeches at meetings and events to the collective voice of a chorus of youth demonstrating their power in numbers and taking action. In its first year, project Foster Power reached 119 youth throughout the Denver metro and Colorado Front Range areas. It was important that this work be youth-led from the inside, so RMCLC hired a former foster youth on staff and dedicated one full-time adult ally to the program. The original youth founders named project Foster Power, illustrating both their experience as foster youth and their goal of fostering power in one another. The first year of action has ultimately focused on this power building.

The Power of Youth Organizing
As a national network, Foster Youth in Action is building a movement led by young people to radically transform the foster care system in this country. Foster Youth in Action recently released a report detailing the history of youth engagement in this country and raising up foster youth–led organizing as a strategy for healing and system change.

Existing strategies for youth engagement often focus on programming, such as youth advisory boards, youth advocacy groups, and youth-adult partnerships. These approaches seek to provide adults with youth feedback or advice on recommendations for change, lend youth voices to advocacy efforts, and create equal opportunities for shared learning and leadership. They typically are not youth-led and youth-driven, however, and may represent the voices of a few high-functioning youth as representatives rather than the voices of youth across the foster care experience.

Foster Youth in Action makes the case that youth organizing is an ideal strategy for system change in this space because it empowers youth as both the leaders and the actors in the work. Drawing from models of community organizing, youth organizing amplifies the voices of all
foster youth, both those who are often selected for leadership roles and those who may not yet have been prepared for such opportunities.

In addition, the impact of youth organizing is significant both in its transformation of systems and its transformation of individuals. As noted in the Foster Youth in Action report, research indicates that youth organizing promotes a young person’s psychological wellness, academic engagement, and healing from trauma. Youth are connecting to one another, gaining confidence, developing a positive sense of self, and learning important skills of critical analysis and problem solving. Simultaneously, their actions are creating change in laws and practice across the country. Groups like California Youth Connection (CYC), the original founders of Foster Youth in Action, have been powerfully paving the way in this area for over 30 years. Indeed, in its first year, project Foster Power was fortunate to learn from the wisdom and experience of its many partners, such as CYC, Oregon Foster Youth Connection, and Florida Youth SHINE.

Youth Voice, Youth Choice: A Campaign of Action
Youth leaders of project Foster Power, known as “core organizers,” have intentionally created an open membership inclusive of youth of all abilities. For project Foster Power, members are the “heart” of the work. A member is anyone who falls within the ages of 15 and 25, is currently in or previously experienced the child welfare system, and attends at least one project Foster Power meeting or event. There is no application process. If you want to be involved, you get to be involved—even if life becomes chaotic and you cannot attend for a while. The door is always open for you to return. Activities and events are designed so that members of all abilities can engage, learn, and have their voices heard.

With the training and support of Foster Youth in Action, project Foster Power follows a youth action cycle designed to build its collective voice and empower youth to take action to create change. Steps of the cycle range from crafting a vision of what foster care should look like to listening to ourselves and others to taking action and reflecting on the work. In its first year, project Foster Power tailored this model to the specific interests and needs of youth in Colorado.

In what has become a signature step of project Foster Power’s listening process, youth leaders spent the fall of 2017 conducting a Listening Tour, going to youth directly at independent living classes, shelters, advisory council meetings, group homes, and other stops. At each stop, core organizers led an activity called the “Burning Wall of Problems” where youth wrote one problem of the foster care system on a sticky note, using as many sticky notes as they needed, and pasted these notes on one big wall of problems. Once the notes were posted, youth each took a marker and dotted the problems that they too experienced or that resonated with them.
This activity allowed youth to anonymously share their voices, recognize that they were not alone in their experiences, and inform the project Foster Power issue selection.

After nine stops in the 2017 tour, core organizers and members analyzed themes presented on the wall and ultimately selected an issue for action: Youth Voice, Youth Choice. This campaign arose from the frequently expressed complaint that youth did not feel heard in their cases or that they had a say in their lives. The goal of the campaign was then to educate foster youth on their rights and teach them the skills to advocate for themselves. By empowering youth to use their voices in this way, project Foster Power aimed to build its power for future campaigns and thus create an even bigger impact.

In 2018, project Foster Power took action on the Youth Voice, Youth Choice campaign. As part of this campaign, youth

- hosted a youth voice rally at the Colorado State Capitol to raise awareness for the importance of youth voice;
- wrote letters either about the power of having their voices heard or about the impact of not being listened to by adults;
- held a Youth Voice Bootcamp, teaching youth about their rights and providing skill building around advocacy;
- drafted a Youth Rights document, taking statutory rights and interpreting them into youth-friendly language; and
- recommended ways that professionals can inform youth about their rights.

Part of this campaign centered on the Preventing Sex Trafficking and Strengthening Families Act, which requires agencies to provide lists of rights to youth in foster care ages 14 and older. Through the Listening Tour, it became evident that many youth either did not remember receiving or did not understand these lists. project Foster Power started at the beginning by dissecting the legal language of the statutes and thinking through how youth would best understand each concept. Youth leaders are now meeting with human services agencies, children’s attorneys, placements, and judicial officers about the role they each can play in educating youth in this area.

As work on the Youth Voice, Youth Choice campaign continues, project Foster Power has already been conducting its second Listening Tour and will soon be identifying its issue for action in 2019. Each year, the cycle repeats, each time informed by the voices of youth and driven by the action of youth.

Colorado Youth Step Up and Speak Out
Through the Youth Voice, Youth Choice campaign, youth wrote anonymous letters to adults. They were given a series of prompts, ultimately being asked to write either about a time their voices were heard, and the power of that, or a time when they wished adults had listened differently. *project Foster Power* received over 100 letters, each powerful in its message. Some were positive with praise to caseworkers, attorneys, or foster parents who made a difference by listening; others demonstrated the significant impact of being disregarded and provided advice for how adults could listen better in the future. These letters continue to be displayed in libraries, coffee shops, child welfare offices, and social work schools in an effort to raise public awareness for foster youth voice. The power of the letters was not just the light they shed on these issues, but perhaps even more so, the power they gave to their authors who were able to put their experiences into words and find similarities with their peers.

Here are two of those letters collected in the spring of 2018:

*Dear Adult,*

_During my time in care, I was listened to because I forced people to listen to me. The force in being heard was both empowering and painful. It hurt me that you didn’t just listen because it was my life. My world. My family that was being torn apart. You empowered me by forcing me to force you, because I discovered my own power, and I uncovered the true meaning of perseverance. So thank you for making me stronger and thank you for making me loud, because today I am doing better than you ever thought I would be doing. BUT, for future reference, I have a few things for you to remember. It’s my life. My voice not only matters, but it’s powerful. Foster kids are people too; we need patience, empathy, and at least one person believing in us NO MATTER WHAT, just like you do. Just because I was full of anger, just because I was stubborn, doesn’t mean I wasn’t broken and scared. If you could have listened a little more and told a little less, maybe I could have trusted and been honest a lot sooner. I matter, we all matter, and now that I’ve grown up a little bit, I see that you matter too._

_Dear Adult,_

_I was in a bad home and I was brave enough to not only speak up for myself, but for the other three girls that weren’t receiving food, clothing, and other necessities. I came to you when it seemed no one else was listening. I put my trust into you, but you did not do the same for me. The day you disregarded my truth, my needs, and my importance was the same day I did._
From, A Young Person Who Matters

Movement Lawyering: The Role of Lawyers in Youth Organizing Work

In recent years, the concept of movement lawyering has been used to describe the somewhat nontraditional path of lawyers working to address large social justice issues through grassroots policy and community-based approaches. This lawyering involves attorneys working to shift power to vulnerable populations and, in doing so, help to disrupt the status quo. Lawyers who act as adult allies for youth organizing groups are serving as movement lawyers, empowering youth with the skills, opportunities, and resources to change the foster care system for the better. Lots of people have power in child welfare cases: Judges have power to make decisions about families, attorneys have power to make arguments in court, foster parents and family members have power to maintain or terminate placements, caseworkers have power to conduct assessments and investigate homes. In many of our cases, youth themselves have the least power—they are the subjects of our work. Youth organizing has the potential to shift these structures and build the collective power of youth.

According to Dominique, one of project Foster Power’s core organizers, “people often say they want to hear straight from the horse’s mouth, to get information directly from the source. Well, in this case, foster youth are the horse.” We as professionals do not have to have all the answers. Instead, we have the legal knowledge, critical analysis skills, and persistence to empower young people. Foster youth-led organizing is about large-scale change, but it is also about connecting youth to each other and their communities, encouraging civic engagement, developing leadership abilities, and creating a culture in which those with experience in the system guide the rest of us. Youth in foster care know what needs to change and are ready to use their voices; as lawyers, maybe the best we can do is listen, support, and follow their lead.

Betsy Fordyce is the director of the Youth Empowerment and Legal Advocacy Program at the Rocky Mountain Children’s Law Center in Denver, Colorado.
Leveraging the FFPSA for Older Youth: Prevention Provisions

By Jenny Pokempner – January 15, 2019

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 challenged at the trial court level and on appeal.

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.
Leveraging the FFPSA for Older Youth: Reduction of Group Care Provisions

By Jenny Pokempner – January 15, 2019

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 disincentive 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 disincentives 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 disincentivizes 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 Exempted 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.

**Individual Advocacy Strategies**

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 alongside 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 overrepresented 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.

Jenny Pokempner is the director of child welfare policy at the Juvenile Law Center in Philadelphia, Pennsylvania.
Leveraging the FFPSA for Older Youth: Improving Transitions

By Jenny Pokempner – January 15, 2019

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.
- States with state-funded or Title IV-E–funded extended foster care (foster care past age 18) have the option to provide Chafee aftercare services to young adults until age 23 (from age 21).
- States have the option to provide young adults Chafee education and training vouchers (ETVs) until age 26 (from age 23).

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

1. **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.

2. **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.)
3. **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.

*Jenny Pokempner* is the director of child welfare policy at the Juvenile Law Center in Philadelphia, Pennsylvania.
From the Editor: Is It Lawyers’ Job to Change the System?

By Cathy Krebs – January 15, 2019

Rethinking the child welfare system has become such a prevalent idea that there are blogs, podcast series, and entire non-profits devoted entirely to changing the system. In fact, all of the articles submitted for this winter edition of the Children’s Rights Litigation Committee’s newsletter were (coincidentally) all framed around this concept. Each article took a different approach, but the central focus of all of them was work that individual, front-line lawyers could do to “change the system.” We seem to have reached a broad consensus that and why we need to change our current child welfare system—it does not work for children and families. We are still graduating far too many kids from the system into poor outcomes; it’s estimated that 25 percent of former foster youth experience homelessness within a year and that 25 percent become involved in the criminal justice system within two years of exiting care. Disproportionality is also a significant issue within our system with, for just one example, African-American children comprising only 14 percent of the nation’s children and yet representing 23 percent of the national foster care population. Recently a new class action law suit was filed that alleged that foster children in Kansas are moved so often—in one case more than 130 placements in six years—they are effectively rendered “homeless while in state custody.” Indeed U.S. District Judge Janis Graham Jack recently ruled that children in foster care in the state of Texas “almost uniformly leave state custody more damaged when they entered.”

But can individual, front-line lawyers change the system? Though there are large entities representing children like the Children’s Law Center of California and Legal Aid in New York, the majority of lawyers representing children in dependency cases are either solo practitioners or members of small firms. Is it the job of individual lawyers to change the system? Even if it is, do lawyers have that ability?

Thinking about this question reminded me of a conversation I once had with my then high school-aged daughter. She was quiet on the ride home from school, and I asked her if anything was bothering her. It was close to the Martin Luther King, Jr. Day holiday, and her school had talked to the students about how it was their responsibility to change the world. Combined with living in Washington, D.C. where it seems so many people are literally working to do big things and change the world, my daughter felt a little hopeless. “I’m just a kid—just one person. What can I do that is big enough to change the world?” The answer I gave her is, I think, the same answer here. No, one person doesn’t have to do it all, but we must do what we can. And the actions of one individual can make a big difference.
Can one front-line lawyer change the entire system? Perhaps not the entire system, but certainly the actions of one lawyer can change the world for his or her client, literally transforming a child’s future whether because of connections to education or family or perhaps by reversing a decision to remove a child from his or her own home when there was no safety risk. As William Booth, Angela Orkin, James Walsh, and John Walsh note in their article, those individual case actions can lead to systems change, particularly when lawyers begin to pull in the same direction. Lawyers can also call attention to trends in a particular jurisdiction: Does the data in your jurisdiction show there are disparities and disparate outcomes based on race within your child welfare system? Do trends of removal identify sources of problems that the jurisdiction could address to prevent future removals, like the problem of children being removed because they’ve been left alone being addressed with more affordable child care?

Additionally, as the article by Betsy Fordyce points out, lawyers can listen to system-involved youth, support their advocacy, and help to amplify their voices. And as the three articles from Jenny Pokemnner outline, lawyers can use the provisions in the Family First Prevention Services Act to advocate for permanency and connections for older youth in foster care. That advocacy can push an entire system to change by developing needed placements and services to address the needs of older youth.

Small actions can make big changes, and zealous advocacy on behalf of each client is not only our job but also makes a difference and can push an entire system to do better for all children we serve. The Children’s Rights Litigation Committee is here to help you and is focused on producing content to assist you in working toward change and being the best advocate you can be.

Here are some additional resources from our archives that you might find helpful:

- Five Ways to Address Implicit Bias Within Our Systems
- How Listening to Our Child Clients Can Lead to Big System Changes
- Is a “Least Restrictive” Placement Really the Best We Can Do for Our Clients? (video)

Please let us know if there is other content you would find useful. Together, let’s all do our part to change the child welfare system so it works better for our kids, families, and communities.

Cathy Krebs is the committee director of the Children’s Rights Litigation Committee.
PRACTICE POINTS

Five Facts About Juvenile Sex Offender Registration
By Riya Saha Shah – December 5, 2018

Sex offender registries were established to keep children and communities safer. But, research shows that registration incorrectly presumes that children who commit sexual offenses are a risk to their communities. Here are five facts, based in research, that lawyers need to know.

1. **Youth who commit sexual offenses in childhood are unlikely to commit a subsequent sex offense.** Studies universally confirm that sex offense recidivism among youth is exceptionally low—between 3–5 percent.

2. **Youths’ already low recidivism rates drop off dramatically after a very short period of time.** When rare sexual recidivism does occur among young offenders, it is nearly always within the first few years following the original offense.

3. **The severity of a youth’s offense is not predictive of re-offense.** Laws that create lengthier terms of registration or no ability to remove youth from registries based on type of offense are inconsistent with research.

4. **Youth who commit sex offenses are similar to youth who engage in non-sexual delinquent behavior.** Multiple studies confirm that children who commit sexual offenses are motivated by impulsivity and sexual curiosity, not predatory, paraphilic, or psychopathic characteristics. With maturation, a better understanding of sexuality, and decreased impulsivity, these behaviors stop.

5. **Registering youth who have committed sex offenses does not reduce their already low recidivism rates.** A 2008 study found no measurable difference in recidivism rates for registered and unregistered children who committed sexual offenses. In fact, recidivism rates among youth who have committed a sexual offense are lower in states that do not register youth.

If you would like to read more about this topic, our research and sources are available upon request.

*Riya Saha Shah* is the managing director at Juvenile Law Center in Philadelphia, Pennsylvania.
Inform Your Advocacy for Transition-Aged Clients Using State-Specific Data

By Jessalyn Schwartz – November 19, 2018

Recently, the Annie E. Casey Foundation released a comprehensive report regarding transition-aged youth (ages 14–21), including detailed data profiles of all 50 states and Washington, D.C. As practitioners serving these clients know, youth transitioning out of care have an incredibly difficult experience that is more complicated than that of similarly-aged youth who have not been in foster care. This report uses national and state data to give stakeholders, including attorneys, a better idea of how these youth are impacted by the process of aging out in their specific state.

Each state profile includes comparisons between national- and state-specific data spanning multiple categories—such as race and ethnicity, age, gender, episodes in foster care, the number of placements, the youth’s time in care, and youth outcomes. Overall, the data shows that 25 percent of youth in care nationally are transition-aged, with at least half of those aging out without reuniting or finding a connection to a family. One-third of youth were removed from their homes and placed in foster care on multiple occasions, with high rates of residential/group home placements and with half of youth experiencing three or more foster placements during their time in care. Less than a quarter of young people who receive federal funds for transition assistance receive services for employment, education, and housing, and transition-aged youth experience homelessness and other difficulties far more than the general population of similar age. Young people of color are far more likely to face barriers in their success and well-being after transitioning out of care and there are clear disparities related to race and ethnicity throughout the report’s findings.

As an example of the vital information found in each state profile, D.C. has a higher percentage of youth in care of transition age (31 percent) than the national average (25 percent). 89 percent of D.C.’s foster care population is African American, while only 28 percent of the national foster care population and 54 percent the district’s general population identifies as such. 67 percent of D.C.’s foster care youth have been in three or more foster care placements, compared with only 30 percent of foster youth nationwide. D.C. reports that it takes nearly three times as long for foster youth to achieve permanency compared to the nationwide average, and 75 percent of youth exit their foster care system because they have aged out, rather than because they were connected to a permanent familial or alternative arrangement. D.C. does have a high number of familial placements in comparison to group/residential or other types of care, but generally does not provide employment programs or substantial financial assistance for education. D.C.’s foster system generates more young parents, lower
rates of high school or GED completion, and fewer individuals with full-time employment by age 21 than what is seen with foster youth nationwide.

Attorneys should review their state-specific data in order to pinpoint racial and ethnic disparities in their practice region and use the information to promote awareness of and access to resources for youth. Advocates may be able to use this data to push for more provision of education, employment, and housing assistance for their clients; encourage and seek connections to mentors and other supportive adults; and ensure their clients are engaged in the services that are currently available in their state. It is crucial to be aware of how often youth are utilizing assistance that is funded and accessible to them and to know whether underusage of such services is due to a lack of awareness and/or adequate programming.

In using this data, it is important to note that states often miss opportunities to derive data from youth experiencing transition and the reporting may be incomplete. The report encourages stakeholders and advocates to see youth themselves as the best reporter of their experience. Lawyers should explicitly ask clients whether the state agency is providing and promoting familial connections, education and employment opportunities, life skills training, and parenting support or other case-specific needs. Lawyers should always be advocating for these services for clients, though they should particularly do so when clients are not receiving these needed services.

As the brief accompanying the data report states, “It’s critical that all stakeholders understand the experiences of young people transitioning from foster care in America if outcomes are to improve.”

*Jessalyn Schwartz* is an attorney in Washington, D.C. with a background in child welfare, mental health, and education.
The views expressed herein are those of the author(s) and do not necessarily reflect the positions or policies of the American Bar Association, the Section of Litigation, this committee, or the employer(s) of the author(s).

ABA Section of Litigation Children’s Rights Litigation Committee
http://www.americanbar.org/publications/litigation-committees/childrens-rights