TOO YOUNG TO UNDERSTAND, BUT OLD ENOUGH TO KNOW BETTER: DEFINING THE RIGHTS OF TRANSITION-AGE YOUTH IN THE CHILD WELFARE SYSTEM

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ABSTRACT

Older youth in the foster care system are often caught in the transition from childhood to adulthood. They are pushed to be independent in a system that historically and jurisdictionally has existed because of their dependency. Unlike their peers who may test responsibility, make mistakes, and learn from those mistakes in supportive environments, oftentimes, the rules and court orders of foster care rigidly confine the day-to-day existence of transition-age youth.

Current research around adolescent development and decision-making capacity indicates that transition-age youth are neither children nor adults. With the passage of the Preventing Sex Trafficking and Strengthening Families Act (the SFA) in 2014, Congress opened the door for states to adopt laws, policies, and practices more in line with the developmental stage of this age group. The law specifically requires states to provide foster youth with a list of their rights with respect to education, health, visitation, and court participation.

This Article critiques the SFA's rights provision in the context of the juvenile court's historical underpinnings, the rights of parents and the state, current developmental research, and common practice around older youth transitions to adulthood. In doing so, this Article highlights the legal paradox facing transition-age youth and questions the validity of "rights" without enforcement. This Article emphasizes the need for culture change within the child welfare community to appropriately integrate current research into policy and practice in the pursuit of achieving better life outcomes for older youth transitioning from care.

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INTRODUCTION

For older youth in the foster care system, particularly those nearing their emancipation, there exists a developmental paradox. They are caught between the freedoms of childhood and the responsibilities of adulthood.[1] They are still the subjects of legal proceedings where judges and other professionals are making decisions in their "best interests" and

1. *See* JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, SUCCESS BEYOND 18: A BETTER PATH FOR YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE TO ADULTHOOD 2–3 (2013) [hereinafter JIM CASEY, SUCCESS BEYOND 18] (noting young people are legal adults at age eighteen, yet still need support).

yet simultaneously encouraged to ready themselves for the challenges of living on their own.[2]

The child welfare system as a whole has struggled to define the rights and responsibilities of older youth in its care, specifically as compared to the clearly delineated rights and interests of their parents and the state at large. Indeed, transition-age youth[3] in child welfare have a unique hybrid status.

From the moment they enter foster care, the system and its many players hold court hearings, visits, and meetings where decisions are made for and on behalf of the youth.[4] Court orders, rules of placement, licensing regulations, and laws govern these youth's day-to-day lives. In this system, the adults—judges, attorneys, caseworkers, Court Appointed Special Advocates (CASAs), and others—assess and decide what is "best" for them.[5] These decisions, made by those who are in many ways strangers, range in significance and include where youth can go to school, whether they can have cell phones, who they can spend time with, what extracurricular activities they can be involved in, whether they can get driver's licenses, and many other life decisions, both big and small.[6] While youth may be a part of these decisions, too often they are left on the outside, deemed "too young to understand" the concerns and considerations of the adult professionals in their lives.[7]

At the same time, as these youth approach the age of eighteen, they are expected to act more like adults.[8] They participate in independent living classes and create plans for housing, education, and employment.[9] The system expects them to take advantage of the services and

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2. *Id.* at 17–20; *id.* at 4 ("Young people in foster care must have opportunities to practice decision-making and planning and gain increasing levels of autonomy.").

3. The definition of "transition-age youth" tends to vary by context and use. In this Article, the Author specifically uses the term to reference youth, ages sixteen to twenty-one, who are in the process of transitioning out of the foster care system.

4. Suparna Malempati, *Beyond Paternalism: The Role of Counsel for Children in Abuse and Neglect Proceedings*, 11 U. N.H. L. REV. 97, 101 (2013) ("Under current juvenile law, the legal principles that govern the operation of the juvenile dependency court are the best interests of the child and family preservation.").

5. *Id.* at 102 ("The best interest standard is a child-centered principle that focuses on the safety and well-being of the child.").

6. *See id.* (recognizing best interest standard "directs and guides many court decisions about appropriate outcomes for children").

7. *See infra* notes 330–35 and accompanying text (discussing the system's treatment of youth as "outsiders").

8. *See* JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, THE ADOLESCENT BRAIN: NEW RESEARCH AND ITS IMPLICATIONS FOR YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE 1 (2011) [hereinafter JIM CASEY, THE ADOLESCENT BRAIN] ("Unlike younger children in foster care, for whom safety and protection are the greatest need, older youth are in the process of developing greater autonomy and practicing adult roles and responsibilities.").

9. *See* Miriam Aroni Krinsky, *A Not So Happy Birthday: The Foster Youth Transition from Adolescence into Adulthood*, 48 FAM. CT. REV. 250, 251 (2010) ("While the average age of financial independence in America is twenty-six years of age, our current policies and practices are premised on the presumption that foster youth can somehow attain financial and emotional independence by age eighteen.").

opportunities offered to them. Often, if a youth does not take advantage of those services as decided by the state, then the state asks the court to dismiss the case once the youth reaches age eighteen. When this happens, court proceedings that were once designed to further the youth's well-being and protection are often arbitrarily dismissed leaving the youth to fend for him or herself. Indeed, when older youth in dependency proceedings make mistakes, when they challenge rules, or otherwise act in disregard of the court processes, they often hear that they are "old enough to know better."[10]

These youth are stuck between childhood and adulthood, where the laws of neither truly fit their situations. Historically, our federal and state laws have not been crafted for flexibility, particularly with the nuances necessary to address the stages of development for this age group.[11]

In September 2014, Congress passed the Preventing Sex Trafficking and Strengthening Families Act (the SFA), a law aimed at enhancing engagement of older youth in their own dependency cases.[12] Among its many provisions, the SFA requires that each state provides foster children under age fourteen a copy of their rights with respect to education, health, visitation, and court participation.[13]

This Article considers the SFA's "list of rights" provision in light of the historical landscape and court culture surrounding children's rights in dependency cases. If rights equate to status or value in court proceedings, how does the SFA's provision fit with the current status of transition-age youth in the foster care system? First, Part I summarizes the history of the dependency court, its purpose, and the interests at stake in such cases. Part II addresses the unique status of transition-age youth, from the "magic" of adulthood at age eighteen to the state of research on adolescent brain development and decision making. Part III analyzes the rights of youth in dependency proceedings, the potential impact of the SFA's rights provision, and the emergence of state Foster Care Bills of Rights. Finally, this Article recognizes that the developmental needs of transition-age youth call for system reform with more flexible legal parameters, greater advocacy on behalf of the direct wishes of youth, and an overall change in child welfare culture.

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10. *See infra* notes 186–89 and accompanying text (discussing the legal responsibilities of young people upon reaching the age of majority).

11. *See infra* notes 192–96 and accompanying text (discussing the disconnect between rigid jurisdictional statute in Colorado and developmental needs of transition-age youth).

12. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 113, 128 Stat. 1919, 1928–30 (2014).

13. *Id.* § 113(d).

I. THE HISTORY OF THE DEPENDENCY COURT

A. The Underpinnings of a Child Welfare System

To fully understand the context of the rights-based culture in the dependency courts, we must start by examining the origins of juvenile law. The history of "[c]hildren's status can be viewed as a movement from children as property, to children as welfare recipients, to children as rights-based citizens."[14]

In fact, the early inklings of family law date back to the sixteenth and seventeenth centuries, where intervention into the family was justified both by the need to regulate poverty and the need to regulate wealth.[15] Published in 1697, the "first English-language book on children and the law, *Law Both Ancient and Modern Relating to Infants*, . . . described children as chattel."[16] Children were the property of their parents, and as property owners, parents could use and treat children as they wished.[17] At the time, for the wealthy classes, family law was meant to ensure the "proper passage of wealth" and guarantee that taxes were collected on such property.[18] For the poorer classes, laws allowed the government to assume an obligation to care for children as an "ultimate parent," and provided a mechanism for apprenticeship programs for such youth.[19]

The eighteenth century saw the American colonies adopt laws similar to the English Poor Laws,[20] expanding the state's reach to removal of poor children not solely due to their poverty, but also because "their parents were not providing 'good breeding, neglecting their formal education, not teaching a trade, or were idle, dissolute, unchristian or uncapable.'"[21]

With the industrialization era and the coming of the nineteenth century, America responded with the "first great event" in child welfare: the House of Refuge Movement.[22] Many of these houses emerged not with the intent of protecting children from their caretakers, but more so

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14. Marvin Ventrell, *The History of Child Welfare Law*, *in* CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES 189, 193 (Donald N. Duquette et al. eds., 3d ed. 2016) (discussing the historical development of children's rights).

15. *Id.* at 200 (noting driving social policies leading to early child welfare intervention).

16. Marvin Ventrell, *From Cause to Profession: The Development of Children's Law and Practice*, COLO. LAW., Jan. 2003, at 65, 66 (characterizing early views on children).

17. *Id.*

18. Ventrell, *supra* note 16, at 201 (discussing early interest of court or crown where patriarch denied prior to heir's majority).

19. *Id.* at 201 (noting concepts emerging out of Elizabethan Poor Laws).

20. *Id.* (referencing "statutory scheme dealing with the custody of poor children").

21. *Id.* at 205 (quoting Douglas R. Rendleman, Parens Patriae*: From Chancery to the Juvenile Court*, 23 S.C. L. REV. 205, 212 (1971) (recognizing "poor plus" system of North American Poor Laws)).

22. *Id.* at 208 (detailing the American response to urban poor children).

in an effort to address poverty as a major cause of vagrancy and criminal acts by children.[23]

B. Parens Patriae *and the Child Savers*

Ultimately, the judicial system validated the efforts of the House of Refuge Movement, and through a series of cases, established a practice of state intervention into the private family unit through the doctrine of *parens patriae*.[24] *Parens patriae*, meaning "ultimate parent or parent of the country," provided a basis for the "state's authority and obligation to save children from being criminal."[25] It has continued to serve as the foundation upon which the modern juvenile court is based.[26] As our United States Supreme Court has noted: "Children, by definition, are not assumed to have the capacity to take care of themselves. They are assumed to be subject to the control of their parents, and if parental control falters, the State must play its part as *parens patriae*."[27]

In an early documented opinion, the Pennsylvania Supreme Court considered the case of Mary Ann Crouse, a child incarcerated at the Philadelphia House of Refuge because she was beyond her parent's control.[28] In dicta, the court discussed the state's authority to intervene: "To this end may not the natural parents, when unequal to the task of education, or unworthy of it, be superseded by the *parens patriae*, or common guardian of the community? . . . The right of parental control is a natural, but not an unalienable one."[29] Other courts similarly adopted this view,[30] and the *parens patriae* doctrine thereafter became the cornerstone of juvenile law.[31]

Just as the courts were adopting the *parens patriae* paradigm, "child savers" were also making their mark on the development of juvenile law in the nineteenth century.[32] These were individuals dedicated to saving "those less fortunately placed in the social order."[33] Largely consisting of "bourgeois wom[e]n," the movement sought to instill "white, Protestant, middle-class values" into children so that they could "become proper citizens."[34]

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23. *Id.* at 208–09 ("The movement began with the Society for the Prevention of Pauperism, which believed that poverty was a cause, if not the primary cause, of crime committed by children.").
24. *Id.* at 210 (noting early court involvement in juvenile matters).
25. *Id.* (defining state intervention).
26. *See In re* K.G., 808 N.E.2d 631, 635–37 (Ind. 2004) (providing historical perspective of juvenile court).
27. Schall v. Martin, 467 U.S. 253, 265 (1984) (describing role of parents and State).
28. Ventrell, *supra* note 16, at 211 (citing *Ex parte* Crouse, 4 Whart. 9, 10 (Pa. 1839)).
29. *Ex parte* Crouse, 4 Whart. at 11 (detailing *parens patriae* authority of the State).
30. Ventrell, *supra* note 16, at 214–17 (discussing cases of Emily and Mary Ellen).
31. *Id.* at 218 (analyzing development of juvenile court philosophy).
32. *Id.* (noting Progressive Era movement of "Child Saving").
33. *Id.* (defining "movement").
34. *Id.* at 191–92 (providing underlying views of movement).

The work of the child savers and the *parens patriae* movement culminated in the creation of the juvenile court.[35] In 1899, Cook County, Illinois, formally opened the first juvenile court, which served as the model for subsequent juvenile courts across the country.[36] Under the juvenile court, the *parens patriae* doctrine justified both delinquency and dependency intervention.[37]

C. The Fundamental Rights of Parents

In addition to the judicially-embraced *parens patriae* authority of the state, a historical look at U.S. Supreme Court opinions also details a clear recognition of a parent's fundamental right—under the Due Process Clause of the Fourteenth Amendment of the Constitution—to the care, custody, and control of his or her children.[38]

This recognition of parents' rights by the Court began in 1923 with the case of *Meyer v. Nebraska*,[39] where a teacher was criminally charged for teaching German to a student (at the parents' request) in violation of a statute prohibiting the teaching of a language other than English to children who had not yet completed eighth grade.[40] Here, the Court interpreted the concept of liberty to include a parent's right to "establish a home and bring up children."[41]

The Court continued to solidify this fundamental right of parents to their children through a series of cases, including, among others, *Pierce v. Society of Sisters*,[42] *Wisconsin v. Yoder*,[43] *Santosky v. Kramer*,[44] and *Troxel v. Granville*.[45] With each case, the Court distinctly defined the right as a fundamental liberty interest in the care, custody, and control of the children.[46] This right of parents rests on two essential presumptions: "(1) parents possess what children lack in areas of functioning, and (2) parents' love and affection for their children generally causes parents to

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35. *Id.* at 219 (detailing history of juvenile court formation).

36. *Id.*

37. *Id.* (recognizing that juvenile court had authority both to handle delinquent behavior and to protect dependent children).

38. *See* Troxel v. Granville, 530 U.S. 57, 65 (2000) (recognizing parents' rights to children as "perhaps the oldest of the fundamental liberty interests recognized by this Court").

39. 262 U.S. 390 (1923).

40. *Id.* at 396–97 (reciting facts of case); *see also* Ann M. Haralambie, *U.S. Supreme Court Cases Regarding Child Welfare*, *in* CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES, *supra* note 14, at 275, 277 (discussing Supreme Court recognition of parental rights).

41. *Meyer*, 262 U.S. at 399 (defining rights under the Fourteenth Amendment).

42. 268 U.S. 510, 534 (1925) (recognizing right to direct education of children).

43. 406 U.S. 205, 214 (1972) (upholding parents' right to free exercise of religion for children).

44. 455 U.S. 745, 753 (1982) ("The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State.").

45. 530 U.S. 57, 65–66 (2000) (detailing constitutional case law on the fundamental right of parents to children).

46. *See id.* (providing a historical account of Supreme Court parental right cases).

act in their children's best interests."[47] While of constitutional magnitude, these rights are not absolute, thereby allowing intrusion by the state under *parens patriae* authority.[48]

D. Children as Subjects

At each historical junction detailed above, the focus was on the state as the "protector of the helpless or less fortunate."[49] The role of children throughout was either as property or as the beneficiary of assistance.[50] The juvenile system has consistently "held a *paternalistic view* of children because of their status as minors and because of societal concerns for child welfare."[51] Because children have historically been viewed as dependents and not individuals, the role of the juvenile court has been to "dictate[] the appropriate outcomes for children *without regard for the child's rights* and without consideration of the child's point of view."[52]

E. Gault *and the Delinquent Child*

The broad scope of a court's authority under the *parens patriae* doctrine continued, largely unfettered, until the U.S. Supreme Court's case of *In re Gault*[53] in 1967.[54] The *Gault* Court authored the now famous line in the historical shift from youth as welfare recipients to youth as rights-based individuals: "[N]either the Fourteenth Amendment nor the Bill of Rights is for adults alone."[55] In the case, the Court considered the procedural due process rights of fifteen-year-old Gerald Gault, who was arrested based upon a neighbor's complaint that Gault and his friends made indecent remarks to her on the phone.[56] The *Gault* Court held that a trial court's "exercise of the power of the state as *parens patriae* was not unlimited[,]"[57] and recognized that juveniles, like adults, have due process rights to "notice of charges, confrontation and cross-examination, prohibition against self-incrimination, and the right to counsel."[58]

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47. Jennifer K. Smith, Comment, *Putting Children Last: How Washington Has Failed to Protect the Dependent Child's Best Interest in Visitation*, 32 SEATTLE U. L. REV. 769, 776 (2009) (addressing bases for parental rights doctrine).

48. *See* Haralambie, *supra* note 40, at 277 (noting limit to parental rights); *see also* Smith, *supra* note 47, at 776–77 (same).

49. *See* Malempati, *supra* note 4, at 100 (depicting State as parent).

50. *See* Ventrell, *supra* note 16, at 201 (characterizing history of children's rights).

51. Malempati, *supra* note 4, at 100 (emphasis added) (describing *parens patriae* view of juvenile court).

52. *Id.* (emphasis added) (noting limited role of child in court process).

53. 387 U.S. 1 (1967).

54. *See* Ventrell, *supra* note 16, at 221 (citing *In re* Gault, 387 U.S. 1, 30–31 (1967)).

55. *In re* Gault, 387 U.S. at 13.

56. *Id.* at 4 (providing facts of case).

57. *Id.* at 30 (citing Kent v. United States, 383 U.S. 541, 555 (1966)).

58. *See* Ventrell, *supra* note 16, at 221 (detailing juvenile due process rights recognized in *Gault*).

Seen by some as a "great advancement in children's rights",[59] with *Gault*, the "*parens patriae* authority essentially disappeared from the delinquency court context" thereafter distinguishing the court's involvement with juveniles in delinquency cases from the experiences of youth in dependency court.[60] Despite the marked change in delinquency matters, "*Gault* did not dismantle, or even limit, the *parens patriae* authority of the dependency court."[61] Children in dependency cases "remained the beneficiaries of the court's *parens patriae* authority," but the view shifted from youth as pre-delinquents to youth needing protection from maltreatment.[62]

F. Today's Dependency Court

Today, the *parens patriae* doctrine continues to provide courts with the authority to act in the best interests of children.[63] In many ways, the court's adherence to its paternalistic view of children "has impeded the progress of the juvenile court into an effective rights-based system, particularly in the area of dependency cases."[64] The dependency system continues to pose "a struggle between the rights of parents to maintain family autonomy and the rights of the state to intervene and protect the interests of a child in cases of abuse and neglect. Little attention, however, is paid to the affirmative rights that children have in the dependency context."[65]

II. THE STATUS OF OLDER YOUTH IN FOSTER CARE

In the world of parents' rights, state intervention, and children needing protection, older youth sit on a fence with one foot still dangling in the days of their childhood and the other stretching to touch the ground of adulthood. As of September 2015, approximately twenty-six percent of youth in foster care were age fourteen and older.[66] A prior report determined that youth over age fourteen "remain in foster care at least twice as long as the total foster care population, on average."[67] During fiscal year 2015, over 20,000 youth exited the system through

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59. *Id.*

60. Kelly Crecco, *Striking a Balance: Freedom of the Press Versus Children's Privacy Interests in Juvenile Dependency Hearings*, 11 FIRST AMEND. L. REV. 490, 495–96 (2013) (describing historical separation of juvenile court proceedings).

61. Ventrell, *supra* note 16, at 221.

62. Crecco, *supra* note 60, at 496 (emphasizing change in view of dependent children).

63. *In re* K.G., 808 N.E.2d 631, 636 (Ind. 2004) (recognizing *parens patriae* jurisdiction); Smith, *supra* note 47, at 778 (recognizing *parens patriae* jurisdiction).

64. Malempati, *supra* note 4, at 101.

65. Smith, *supra* note 47, at 778 (providing that children's rights are often overlooked).

66. CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT 1 (2016).

67. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 8.

emancipation, heading out to the world on their own.[68] For these youth, emancipation meant having "left care without a legally sanctioned permanent family relationship to offer guidance and support as they made the transition into adulthood."[69]

Before we can evaluate the rights belonging to transition-age youth, we must first consider their place in the current dependency landscape, including their stages of development, their potential outcomes as interdependent adults, and the laws pertaining to their age group.

A. Emerging Adulthood: A New Developmental Stage

Contrary to laws across the country, developmentally, there is no magic transformation from adolescent to adult on one's eighteenth birthday.[70] Adulthood is not a moment in time event, but rather the culmination of a gradual process of growth and preparation.[71]

Erik Erikson, a German-born American psychoanalyst who established an eight-stage theory to healthy psychosocial development from infancy to death,[72] described this transition-age period in two parts: the adolescent stage (from ages twelve to eighteen) and the young adulthood stage (from ages nineteen to forty).[73] In the adolescent stage, youth struggle between identity and role confusion.[74] This is the time when youth are sorting through "beliefs, values, and ideals" to determine who they are.[75] This period is also when youth develop a sense of self-sufficiency.[76] Then, in the young adulthood stage, the young person seeks to develop intimacy and avoid isolation.[77] For Erickson, these are two distinct developmental events.[78]

Research has come to show, however, that "young people do not move seamlessly from adolescence at age 18 to young adulthood at age

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68. CHILDREN'S BUREAU, *supra* note 66, at 3; MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: CONDITIONS OF YOUTH PREPARING TO LEAVE STATE CARE 3 (2004).

69. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 8–9.

70. *See* Roper v. Simmons, 543 U.S. 551, 574 (2005) (noting arbitrary nature of age eighteen as dividing line between childhood and adulthood).

71. *See* MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26, at 1 (2011) (describing transition to adulthood); *see also* JIM CASEY, SUCCESS BEYOND 18, *supra* note 1, at 8 (discussing adolescence as a developmental stage).

72. *See* Richard O. Brooks, *"The Refurbishing": Reflections upon Law and Justice Among the Stages of Life*, 54 BUFF. L. REV. 619, 650–51 (2006) (recounting Erikson's theory of development).

73. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 15 fig.1 (presenting Erikson's stages).

74. *Id.* (noting psychosocial crisis of each stage); *see* Brooks, *supra* note 72, at 652 tbl.1 (describing psychosocial modality as "to be oneself (or not to be)").

75. Andrea Corn & Howard Raab, *Age-Appropriate Time Sharing for Divorced Parents*, 81 FLA. B.J. 84, 86 (2007) (detailing the psychosocial stage of adolescence).

76. *Id.*

77. *See* JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 15 fig.1 (presenting Erikson's stages).

78. *Id.* (highlighting seven stages).

19, as the traditional model might suggest."[79] Many now support the concept that there is instead a transition process of "emerging adulthood," ranging roughly from age eighteen to age twenty-five.[80] Emerging adulthood does not occur at some pre-determined age, but rather represents the time period when youth are moving towards greater independence.[81]

B. Adolescent Brain Development and the Impact of Trauma

Over the last decade, neuroscience research has demonstrated that the adolescent brain is not the same as the adult brain.[82] In fact, it was previously believed that brain development was complete by age six.[83] Research now shows, however, that adolescence is a second wave of significant brain growth and development.[84] This development begins at puberty and stretches all the way to the mid-twenties.[85] For a young woman, the brain generally reaches full maturity between ages twenty-one and twenty-two.[86] For a young man, this point is not reached until almost age thirty.[87]

Neuroscience rests on several key principles of brain architecture, as articulated by Harvard University's Center on the Developing Child.[88] They include the following concepts:

- Brains are built over time, from the bottom up.
- Brain architecture is comprised of billions of connections between individual neurons across different areas of the brain.
- The interactions of genes and experience shape the developing brain.
- Cognitive, emotional, and social capacities are inextricably intertwined throughout the life course.[89]

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79. *Id.* at 15 (noting changing research on adolescent development).
80. *Id.* at 15–16, 16 fig.2 (recognizing new developmental stage).
81. *Id.* at 15–16 (defining stage).
82. *Id.* at 20 (highlighting distinctions in brain development).
83. *Id.* at 2 (noting historical assumption on brain development).
84. *See* Gene Griffin, *Child Development and the Impact of Abuse and Neglect*, *in* CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES, *supra* note 14, at 69, 80 (referencing research of Jay N. Giedd and others); *see also* DANIEL R. WEINBERGER ET AL., THE ADOLESCENT BRAIN: A WORK IN PROGRESS 1 (2005) (recognizing "profound brain growth and change" during adolescence).
85. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 20 (defining period of development).
86. *Id.* at 22 (detailing female development).
87. *Id.* (defining male development).
88. Griffin, *supra* note 84, at 79 (referencing Ctr. on the Developing Child, *Brain Architecture*, HARV. U., http://developingchild.harvard.edu/science/key-concepts/brain-architecture (last visited July 6, 2017)).
89. *Id.* (articulating key concepts of brain architecture).

Beginning at puberty, a number of important changes in the adolescent brain occur.[90] First, the prefrontal cortex gradually develops.[91] This is the part of the frontal lobe that is responsible for functions such as "reasoning, decision making, judgment, and impulse control . . . ."[92] It is the last part of the brain to reach full development.[93] As the prefrontal cortex develops, youth become less dependent on the limbic system—"the emotional center of the brain"—when making decisions.[94]

Second, during adolescence, the brain changes its production of dopamine—the "chemical that links action to pleasure[.]"[95] When this occurs, youth need to reach a higher threshold of stimulus prior to feeling pleasure.[96] As a result, they seek new excitement and risk.[97]

Third, adolescence is the period of "use it or lose it."[98] During this time, the gray matter of the brain starts to thin as the synapses—"links between neurons that transmit and receive information"—undergo a pruning process.[99] Those synapses that are frequently used become stronger and more established through a process called myelination.[100] Those that are unused are pruned away.[101] Through this process, youth may lose as many as 30,000 synapses per second over the entire cerebral cortex.[102]

Young people in the foster care system undergo this developmental process just as their peers, yet many are simultaneously impacted by prior trauma.[103] Specifically, youth who have experienced physical or

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90. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 20–23, 23 figs.3 & 4 (describing impact of brain development on adolescent functioning).

91. *Id.* at 20–21 (defining "prefrontal cortex" as "part of the brain that governs a person's executive functions").

92. *Id.* at 20; *see* WEINBERGER ET AL., *supra* note 84, at 1 (listing prefrontal cortex functions as "setting priorities, organizing plans and ideas, forming strategies, controlling impulses, and allocating attention").

93. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 20; WEINBERGER ET AL., *supra* note 84, at 1.

94. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 20 (explaining the transition from emotional to rational decision making).

95. *Id.* at 21; WEINBERGER ET AL., *supra* note 84, at 1 (discussing "one of the neuronal mechanisms that increase[s] the capacity for more mature judgment and impulse control").

96. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 21–22 (describing the functional impact of chemical change).

97. *Id.* (explaining changing behavior of adolescents based on dopamine increase during this period).

98. *Id.* at 22 (highlighting a critical mechanism for brain resiliency).

99. *Id.*; *see also* WEINBERGER ET AL., *supra* note 84, at 11–12, 12 fig. 3 (depicting the cutting back of "inefficient or ineffective connections to achieve maximal efficiency of function").

100. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 22; WEINBERGER ET AL., *supra* note 84, at 11 ("Like Michelangelo starting with a block of granite and eliminating rock to create the masterpiece David, certain connections are strengthened and others eliminated--in essence, brain functions are sculpted to reveal and allow increasing maturity in thought and action.").

101. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 22.

102. *Id.* (detailing extent of myelination process).

103. Griffin, *supra* note 84, at 80 (recognizing that adverse childhood experiences may cause short or long term developmental damage).

emotional abuse may suffer disrupted or delayed brain development.[104] These delays may negatively impact the behavioral, emotional, or social development of youth.[105]

The beautiful phenomenon of the brain rewiring during adolescence, through the "use it or lose it" processes, however, means that it is possible for the effects of trauma to be offset.[106] The brain has great neuroplasticity, or resiliency, during this period.[107] When a youth has corrective experiences and supportive relationships during this time, the youth's brain will literally rewire and create new neural connections.[108] On the other hand, the failure to provide opportunities to establish resiliency means that those neural pathways may be lost.[109] The manner by which the system supports and facilitates the transition to adulthood for older youth in the foster care system is indeed crucial to their future well-being and success.

C. The Midwest Study

The challenges faced by those exiting the foster care system are well-documented through the Midwest Evaluation of the Adult Functioning of Former Foster Youth (Midwest Study).[110] A longitudinal study conducted by researchers at Chapin Hall at the University of Chicago, the Midwest Study followed a sample of young people (initial baseline interviews of 732) from Illinois, Wisconsin, and Iowa as they transitioned from the foster care system into adulthood.[111] Researchers interviewed the youth participants at ages seventeen or eighteen years old, with repeat interviews conducted at ages nineteen, twenty-one, twenty-three or twenty-four, and twenty-six.[112] The study compared the outcomes of foster youth across a variety of domains to the outcomes of their nonfoster care peers, who were documented through the National

104. JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 25 (acknowledging that completion of brain development may occur later for youth impacted by trauma).

105. *Id.* (noting the impact of trauma).

106. *Id.* at 27 (emphasizing room for brain healing during time period).

107. *Id.* at 27–28 (explaining that the brain is not hard-wired by age three as previously believed).

108. *Id.* at 28 (recognizing that rewiring occurs with healthy, supportive relationships and experiential learning opportunities); *see also* JIM CASEY, SUCCESS BEYOND 18, *supra* note 1, at 8 ("Neuroscience makes clear that support during the cognitive, social, and emotional development processes of adolescence and emerging adulthood can lead to healthy and constructive adulthood.").

109. *See* JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 22 (describing the pruning process).

110. Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth*, CHAPIN HALL, http://www.chapinhall.org/research/report/midwest-evaluation-adult-functioning-former-foster-youth (last visited July 6, 2017) (providing full PDFs of Midwest Study reports).

111. COURTNEY ET AL., *supra* note 71, at 3 (setting forth parameters of study).

112. *Id.* at 4 (detailing survey waves).

Longitudinal Study of Adolescent Health (Add Health).[113] Former foster youth struggled across the board in the comparisons.[114]

Youth growing up outside of the foster care system generally benefit from the support of family, both financially and emotionally.[115] It is estimated that "parents provide their young adult children with material assistance totaling approximately $38,000 between the ages of 18 and 34."[116] Meanwhile, foster youth enter the adult world without the same built-in safety nets. The study found that "[o]n many dimensions that would be of concern to the typical parent, [the young people in the Midwest Study were] faring poorly as a group."[117]

In addition, young people interviewed through the Midwest Study were much less likely to be living with their biological parents than their peers.[118] In fact, in a separate 2003 survey, about fifty-five percent of young men and forty-six percent of women (outside of the foster care system) between the ages of eighteen and twenty-four were living with at least one of their parents.[119] Meanwhile, since exiting foster care, about eighteen percent of former foster youth had experienced homelessness at least once between the ages of seventeen and twenty-one.[120]

The Midwest Study demonstrated similarly poor outcomes for former foster youth in areas of education and employment.[121] Nearly a quarter of the Midwest Study youth did not graduate high school or obtain their General Educational Development (GED) by age twenty-one as compared to eleven percent of their Add Health peers.[122] Moreover, only thirty percent of Midwest Study youth completed any college compared to fifty-three percent of Add Health youth.[123] Fewer young people in the Midwest Study were employed, on average, as compared to their peers, and their peers generally earned about one dollar more per hour than the former foster youth.[124] The median earnings among those

113. *Id.* at 5 (explaining comparison groups).

114. *See id.* at 6 ("Across a wide range of outcome measures, including postsecondary educational attainment, employment, housing stability, public assistance receipt, and criminal justice system involvement, these former foster youth are faring poorly as a group.").

115. *See* MARK E. COURTNEY ET AL., MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 21, at 5 (2007) (citation omitted) (describing ongoing support of family during transition years).

116. *Id.* (quantifying parental support to young people).

117. *Id.* at 83 ("If the outcomes of these young adults were assessed through the same lens that most U.S. parents would use to view the progress of their own children, the findings presented here should be very troubling.").

118. *Id.* at 14 (noting that former foster youth were more likely to be living with relatives than biological parents compared to their peers).

119. *Id.* at 5 (highlighting parental support in housing).

120. *Id.* at 15 (recognizing homelessness as problem experienced by former foster youth often more than once).

121. *Id.* at 26–37 (detailing survey results in education and employment areas for former foster youth at age twenty-one).

122. *Id.* at 26 (providing results on educational achievement).

123. *Id.* (stating survey results regarding post-secondary education pursuits).

124. *See id.* at 31–32 (comparing employment outcomes for former foster youth and peers).

Midwest Study youth who were employed was only $5,450 at the age of twenty-one, as compared to the $9,120 made by their peers.[125] A significant amount of the young people in the Midwest Study benefited from public assistance of some kind.[126]

Former foster youth in the study were also more likely to receive mental health counseling and substance abuse treatment, to become pregnant, and to become involved with the criminal justice system.[127]

While the Midwest Study noted a number of devastating outcomes for the former foster youth population, it also acknowledged several strengths, including the youth's ability to "exhibit extraordinary optimism and high aspirations," as well as close relationships with members of their biological family.[128] In addition to comparisons to their Add Health peers, the Midwest Study provided researchers the opportunity to compare the outcomes of youth exiting foster care in Illinois to those exiting in Wisconsin and Iowa.[129] At the time, Illinois was the only state of the three to allow youth to remain in foster care until age twenty-one as opposed to age eighteen.[130] The study found that with more time in foster care—and perhaps more supportive opportunities to rewire their brain and heal past trauma—youth had better life outcomes across several domains.[131]

D. The Federal Legislative Landscape

The Midwest Study provided a look at the impact of existing federal law targeted towards transition-age youth, as well as an impetus for future legislative change.

In 1986, Congress amended Title IV-E of the Social Security Act, creating an Independent Living Program utilizing federal dollars to help states support older youth in the foster care system in their transition to adulthood.[132] Subsequently, in 1999, Congress passed the Foster Care Independence Act (Chafee Act),[133] which created the John Chafee Foster Care Independence Program. The Chafee Act doubled the federal funding available to states for independent living purposes and expanded

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125. *Id.* at 35 (distinguishing groups based on income).

126. *See id.* at 38–39 (explaining survey results regarding receipt of government benefits).

127. *Id.* at 44–46 (mental health and substance abuse treatment); *id.* at 50–53 (pregnancy); *id.* at 64–67 (criminal justice system involvement).

128. *Id.* at 84 (reviewing positive results gathered by study).

129. *See id.* at 87 (comparing Illinois, Iowa, and Wisconsin systems).

130. *Id.* (noting Illinois' extended care system).

131. *See id.* at 87–88 (recognizing benefit of longer transition period from foster care system while acknowledging need for further time to study impact of law); *see also* Courtney et al., *supra* note 110.

132. Frank E. Vandervort, *Federal Legislation Protecting Children and Providing for Their Well-Being*, *in* CHILD WELFARE LAW AND PRACTICE: REPRESENTING CHILDREN, PARENTS, AND STATE AGENCIES IN ABUSE, NEGLECT, AND DEPENDENCY CASES, *supra* note 14, at 231, 253 (detailing congressional response to transition of older youth from foster care).

133. John H. Chaffee Foster Care Independence Program, 42 U.S.C. § 677 (2012).

youth eligibility for services.[134] It also provided vouchers for post-secondary education and vocational training.[135] In part, researchers intended the Midwest Study to look at how foster youth were transitioning to adulthood since the Chafee Act became law.[136]

The initial stages of the Midwest Study informed further federal policy change related to this population.[137] In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act (the Fostering Connections Act), which formally recognized the benefit of providing older youth in care additional time for their transitions.[138] The Fostering Connections Act amended the definition of "child" in Title IV-E of the Social Security Act.[139] The new definition included young people up to age twenty-one (instead of terminating services at age eighteen), if the young person was engaged in one of four activities: (1) completing high school or a GED program, (2) enrolled in college or vocational school, (3) participating in a program to remove employment barriers, or (4) employed at least eighty hours per month.[140] Young people between the ages of eighteen and twenty-one were also eligible to remain in care if they were incapable of performing the four activities previously listed due to a medical condition.[141]

Following this policy change under the Fostering Connections Act, states were eligible to receive federal funding to reimburse the costs of foster care for youth in this transition-age group, as of 2011.[142] A number of states then modified their local laws to match this expanded definition of child.[143] In many ways, this change marked an awareness that young people exiting foster care, just like their non-foster care peers, need time to achieve their goals, make permanent connections or achieve legal permanency, learn from mistakes, and develop new skills or supports.[144] States continue to work towards effective implementation of the Fostering Connections Act, particularly addressing whether policies and

134. COURTNEY ET AL., *supra* note 115, at 5 (providing account of federal legislation).

135. *Id.* (discussing services provided by Chafee Act).

136. *Id.* at 6 (identifying one goal of the Midwest Study).

137. COURTNEY ET AL., *supra* note 71, at 2 (noting impact of Midwest Study on federal legislation).

138. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.

139. *Id.* § 201(a) (extending the definition of "child" under federal law).

140. 42 U.S.C. § 675(8)(B)(iv)(I)–(IV) (2012) (highlighting eligibility requirements).

141. *Id.* § 675(8)(B)(iv)(V) (recognizing a medical condition exception).

142. *See* JIM CASEY, SUCCESS BEYOND 18, *supra* note 1, at 10 (providing recommendations to leverage federal funding from Fostering Connections to Success and Increasing Adoption Act).

143. *See, e.g.*, CAL. WELF. & INST. CODE §§ 388.1, 11400(aa) (West 2017) (defining non-minor dependent status for older youth); NEB. REV. STAT. §§ 43-4501 to -4514 (2017) (establishing Young Adult Bridge to Independence Act); 42 PA. CONS. STAT. § 6302 (2017) (defining "child").

144. *See* JIM CASEY, SUCCESS BEYOND 18, *supra* note 1, at 7–9 (describing needs of transition-age youth and appropriate design for foster care system support).

practices are developmentally-appropriate for this transition-age population.[145]

E. The Research on Adolescent Decision Making

Just as the delinquency courts were first to adopt the view of children as "rights-based" individuals, so too have other courts been willing to consider the research on adolescent development.[146] In 2005, the United States Supreme Court in *Roper v. Simmons*,[147] held that the death penalty for those under age eighteen at the time of their convictions was prohibited by the Eighth and Fourteenth Amendments to the Constitution.[148] In so finding, the Court took ample time to analyze research on the developmental differences between youth and adults.[149] The Court noted three key differences.[150] First, youth tend to exhibit a "lack of maturity and an underdeveloped sense of responsibility" more often than adults, "qualities [which] often result in impetuous and ill-considered actions and decisions."[151] In fact, "adolescents are overrepresented statistically in virtually every category of reckless behavior."[152]

Second, juveniles are more susceptible to peer pressure or other outside negative influences.[153] They have less control over their own environments.[154] Third, their character is less well-formed or fixed than that of adults.[155] With these principles in mind, the Court determined that "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability."[156]

Following the Court's *Roper* opinion in 2005, the American Psychological Association (APA) faced criticism for what some viewed as inconsistent positions on adolescent decision making.[157] The *Roper* Court, in its ultimate opinion and accompanying analysis of adolescent

145. *See id.* at 3 (emphasizing the need to extend foster care jurisdiction based on "unique developmental tasks of [adolescent] life stage and their legal status as adults").

146. *See* Laurence Steinberg et al., *Are Adolescents Less Mature Than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip-Flop,"* 64 AM. PSYCHOLOGIST 583, 583–86 (2009) (discussing the U.S. Supreme Court's reliance on adolescent development research).

147. 543 U.S. 551 (2005).

148. *See id.* at 578–79 (stating holding).

149. *See id.* at 569–73 (differentiating the judgmental capacity of adults from adolescents).

150. *Id.* at 569–70 (noting "general differences between juveniles under 18 and adults").

151. *Id.* at 569 (internal quotations omitted) (quoting Johnson v. Texas, 509 U.S. 350, 367 (1993)) (highlighting the first distinction between adults and adolescents).

152. *Id.* (quoting Jeffrey Arnett, *Reckless Behavior in Adolescence: A Developmental Perspective*, 12 DEVELOPMENTAL REV. 339, 339 (1992)) (noting recklessness of adolescence).

153. *Id.* (describing the second distinction between adolescents and adults).

154. *Id.* (explaining juvenile susceptibility to outside influence).

155. *Id.* at 570 (recognizing the third distinction between adults and adolescents).

156. *Id.* at 572–73 (analyzing developmental research in context of death penalty sentence).

157. *See* Steinberg et al., *supra* note 146, at 583–84 (describing alleged inconsistency of APA's positions on adolescents).

development, heavily relied upon the APA's position that adolescents are less mature than adults in terms of criminal responsibility.[158] In 1990, however, the APA asserted in *Hodgson v. Minnesota*[159] that "because adolescents had decision-making skills comparable to those of adults, there was no reason to require teenagers to notify their parents before terminating a pregnancy."[160] To many, these two briefs represented contradictory positions on the developmental capacity of young people.[161] In fact, however, these two positions can be reconciled through careful analysis of existing research.[162]

Following these cases, a number of researchers from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice considered age differences in many cognitive and psychosocial capacities.[163] Researchers determined:

> [W]hereas adolescents and adults perform comparably on cognitive tests measuring the sorts of cognitive abilities that were referred to in the [APA's] *Hodgson* brief—abilities that permit logical reasoning about moral, social, and interpersonal matters—adolescents and adults are not of equal maturity with respect to the psychosocial capacities listed by Justice Kennedy in the majority opinion in *Roper*—capacities such as impulse control and resistance to peer influence.[164]

Indeed, studies show that there are no "appreciable differences" in logical reasoning or competency-related abilities between youth age sixteen and older and adults.[165] On the other hand, "psychosocial characteristics such as impulsivity, sensation seeking, future orientation, and susceptibility to peer pressure" continue to develop "well beyond middle adolescence and even into young adulthood . . . ."[166]

The MacArthur Juvenile Capacity Study demonstrated: "By age 16, adolescents' general cognitive abilities are essentially indistinguishable from those of adults, but adolescents' psychosocial functioning, even at the age of 18, is significantly less mature than that of individuals in their

158. *See Roper*, 543 U.S. at 568–73 (analyzing case in light of adolescent development research); *see also* Steinberg et al., *supra* note 146, at 583 (detailing the *Roper* analysis of the APA's position).

159. 497 U.S. 417 (1990).

160. Steinberg et al., *supra* note 146, at 584 (citation omitted) (referencing Hodgson v. Minnesota, 497 U.S. 417 (1990)).

161. *See id.* ("Justice Kennedy explicitly asked at oral argument in *Roper* if the APA had 'flip-flopped' between 1989 (when its final amicus brief was filed in the abortion case) and 2004 (when its brief was filed in the juvenile death penalty case).").

162. *See id.* at 584–87 (reconciling APA positions).

163. *Id.* at 585 (establishing the reason for MacArthur Juvenile Capacity Study).

164. *Id.* at 586 (summarizing findings that distinguish cognitive capacity from psychosocial capacity in decision making).

165. *Id.* (recognizing the similarity between adults and older youth in logical decision making abilities).

166. *Id.* at 587 (describing age differences in psychosocial characteristics).

mid-20s."[167] This analysis affirmed the allegedly contradictory views of the APA in its briefs in *Hodgson* and *Roper*.[168] The distinction in decision making is clear:

> When it comes to decisions that permit more deliberative, reasoned decision making, where emotional and social influences on judgment are minimized or can be mitigated, and where there are consultants who can provide objective information about the costs and benefits of alternative courses of action, adolescents are likely to be just as capable of mature decision making as adults, at least by the time they are 16. . . .
>
> In contrast, in situations that elicit impulsivity, that are typically characterized by high levels of emotional arousal or social coercion, or that do not encourage or permit consultation with an expert who is more knowledgeable or experienced, adolescents' decision making, at least until they have turned 18, is likely to be less mature than adults'.[169]

Certainly, the United States Supreme Court appreciated these distinctions in adopting the APA research, both in *Hodgson*—where the Court upheld the right of adolescents to seek abortions without parental consent—and in *Roper*—where the Court rejected the juvenile death penalty.[170]

These studies, however, create space for similar discussions on adolescent decision making in the dependency arena. In terms of cognitive abilities, foster youth over age sixteen are capable of logical reasoning equivalent to that of adults.[171] They can engage in case-planning and legal decision making when they have adult support to advise them through this process.[172]

In contrast, the studies call into question the psychosocial abilities of youth to make decisions when emotions are high, peer pressure exists, and adult consultation is absent.[173] These include decisions such as driving without a license, purchasing drugs or alcohol, or engaging in sexual activity.[174] The lack of maturity with these types of decisions does

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167. *Id.* at 592 (presenting study findings).

168. *See id.* at 586 ("[W]e believe that APA's seemingly contradictory positions in *Hodgson* and *Roper* are in fact quite compatible with research on age differences in cognitive and psychosocial capacities.").

169. *Id.* at 592 (highlighting contextual differences in decision making abilities of adolescents).

170. *See id.* at 583–84 (describing distinctions in adolescent ability in the context of Supreme Court holdings).

171. *Cf. id.* at 592 (discussing mature decision making of adolescents in medical, legal, and research study contexts).

172. *Cf. id.* (noting adolescent capability in "legal decision making (where legal practitioners, such as defense attorneys, can play a comparable role)").

173. *See id.* at 592–93 (emphasizing lack of mature decision making from adolescents in particular contexts).

174. *See id.* at 593 (providing examples of immature decision making contexts).

not negate responsibility or justify actions, but rather, demonstrates the need for greater restraint or added protection to help transition-age youth navigate these events.[175] Indeed, in some ways, transition-age youth are both old enough to understand and yet not always old enough to know better.

To adequately meet the needs of young people as they transition into adulthood, we must design a system that recognizes these distinctions.

III. DEFINING THE RIGHTS (AND RESPONSIBILITIES) OF OLDER YOUTH IN DEPENDENCY CASES

A. The Legal Significance of Age Eighteen

While the age of eighteen does not indicate any magical, transformative experience in the journey from child to adult, particularly as research on adolescent development now notes an emerging adulthood spanning all the way to age twenty-five, the legal system, for all intents and purposes, views the age of eighteen as a significant marker.[176] Even as the *Roper* Court carefully weighed the research on distinctions between capacities of adolescents and adults, it fell back to eighteen as its default.[177]

The majority described the difficulty: "The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach."[178] Ultimately, the Court found that "a line must be drawn[,]" and that "[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood."[179]

At the age of eighteen, young people assume a number of "rights" in our country. In almost every state, by the age of eighteen young people are eligible to vote in elections or serve on juries.[180] At eighteen, young people can enlist to fight in our military, or even marry, without their parents' consent.[181]

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175. *Cf. id.* at 592 (describing immature decision making due to lack of consultation with knowledgeable or experience expert).

176. Roper v. Simmons, 543 U.S. 551, 574 (2005) (determining age of eighteen to be a dividing line between juveniles and adults).

177. *Id.* (noting need to draw line of distinction).

178. *Id.* (recognizing subjectivity of choosing eighteen as age of distinction).

179. *Id.* (explaining Court's analysis in deciding upon eighteen as "age at which the line for death eligibility ought to rest").

180. *See id.* apps. B & C (listing state laws on voting and jury service).

181. *See id.* app. D (referencing state laws on marriage without parental consent); *see also* 10 U.S.C. § 505(a) (2012) ("[N]o person under eighteen years of age may be originally enlisted without the written consent of his parent or guardian . . . .").

Turning eighteen also means that young people may be legally responsible for their actions in ways they never have been before.[182] If they commit a criminal offense, they subject themselves to the adult criminal system and face corresponding consequences.[183] In most states, the age of eighteen is considered the age of majority.[184] Upon reaching majority, young people can legally enter into contracts or sign apartment leases.[185] If they lapse in payments or responsibilities under these agreements, they face the repercussions.

Yet despite these "coming of age" rights and responsibilities in many areas of our legal system, the dependency systems across our country are not consistent in taking note of any change to the young person's legal status. Even following the Fostering Connections Act, some states continue to use age eighteen as the end of a court's intervention or legal jurisdiction over youth.[186] For young people in these states, services may be provided by means of administrative programs, yet there no longer remains any legal enforceability for such services as youth begin to tackle the world of adulthood.[187]

In other states, the dependency system has extended jurisdiction over young people until the age of twenty-one, yet there is no marked difference in how the dependency court system treats those young people as they cross the threshold of eighteen. In Colorado, for example, the continuing jurisdiction statute reads, "the jurisdiction of the court over any child adjudicated as neglected or dependent shall continue until he becomes twenty-one years of age unless earlier terminated by court order."[188] Prior to a youth's eighteenth birthday, the Colorado court should consider the activities outlined in the Fostering Connections Act to assess whether the youth needs more time after age eighteen to stay within the dependency court's jurisdiction.[189] Nothing about the youth's

182. *See* Krinsky, *supra* note 9, at 250 (recognizing eighteen as "time of change" where "youth can exercise the right to vote, enlist in the military, and sign legal documents").

183. *See* United States v. Marshall, 736 F.3d 492, 498 (6th Cir. 2013) ("The Supreme Court's decisions limiting the types of sentences that can be imposed upon juveniles all presuppose that a juvenile is an individual with a chronological age under 18.").

184. *See* Cheryl B. Preston & Brandon T. Crowther, *Minor Restrictions: Adolescence Across Legal Disciplines, the Infancy Doctrine, and the Restatement (Third) of Restitution and Unjust Enrichment*, 61 U. KAN. L. REV. 343, 374–75 (2012) (providing historical account of reduction of age of majority from twenty-one to eighteen by state legislatures in 1970s).

185. *See* Jonathan Todres, *Maturity*, 48 HOUS. L. REV. 1107, 1125 (2012) ("In the United States, most jurisdictions have a functional minimum age for the right to contract of eighteen years old.").

186. *See* Bruce A. Boyer, *Foster Care Reentry Laws: Mending the Safety Net for Emerging Adults in the Transition to Independence*, 88 TEMP. L. REV. 837, 850 n.66 (2016) (cataloging states that do not extend jurisdiction beyond eighteen by statute, but provide some support for former foster youth post-eighteen).

187. *See id.* at 850 (recognizing administrative approach to extended service provision).

188. COLO. REV. STAT. § 19-3-205(1) (2016) (providing for continuing jurisdiction of court).

189. *See id.* § 19-3-205(2)(a) (listing considerations for extending jurisdiction past age eighteen).

status, however, actually changes at eighteen.[190] Furthermore, prior to eighteen, youth in foster care in Colorado receive an attorney, not to represent their direct wishes, but to represent their best interests.[191] Upon turning eighteen, youth continue in a "best interests" court system with the same model of guardian ad litem representation, now stretching all the way until age twenty-one if the court determines continued jurisdiction would be best for them.[192] Without changing system culture to match developmentally-appropriate milestones for this transition-age population, we run the risk of making age twenty-one the old cliff of age eighteen.

Indeed, the age of eighteen is both significant and totally insignificant, depending on our perspective.[193] The law does not always exhibit flexibility, and so for need of clarity, our system creates importance around the chosen age.[194] The dependency system does not consistently match the line drawn in other legal contexts; yet, it also does not authentically follow the developmental lessons that we know to be true for transition-age young people. Perhaps most critically, as some have recognized, "The notion that a single line can be drawn between adolescence and adulthood for different purposes under the law is at odds with developmental science."[195]

B. The Current Status of Youth Rights

While the rights of parents and states' interests have been consistently articulated in dependency cases,[196] the same cannot be said for the rights of children. Children are thought to have "interests," while parents are thought to have "rights."[197] Many fear that affording rights to children will only come at the expense of the rights of their parents, as if parents have already cornered the market on rights with little to go around.[198]

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190. *See id.* § 19-3-205(1) (providing for jurisdiction continuing until age twenty-one with no specified change at age eighteen).

191. *Id.* § 19-3-203(3) (providing for appointment of guardian ad litem charged with representation of child's best interests).

192. *Cf. id.* §§ 19-3-203, -205 (providing for jurisdiction and legal representation with no marked change at age eighteen).

193. *Compare* JIM CASEY, THE ADOLESCENT BRAIN, *supra* note 8, at 15 (explaining that change from adolescent to adult is not complete on eighteenth birthday), *with* Preston & Crowther, *supra* note 184, at 374 (recognizing age of legal majority at age eighteen).

194. *See* Roper v. Simmons, 543 U.S. 551, 574 (2005) (adopting eighteen as default distinction).

195. Steinberg et al., *supra* note 146, at 583 (highlighting disconnect between law and research).

196. For a discussion of the rights of parents and the State's *parens patriae* interest, see *supra* notes 24–48 and accompanying text.

197. *Compare supra* notes 38–48 and accompanying text, *with infra* notes 202–89 and accompanying text.

198. *See* Howard Davidson, *Children's Rights and American Law: A Response to What's Wrong with Children's Rights*, 20 EMORY INT'L L. REV. 69, 70 (2006) (explaining lack of American laws with "children's rights" in title).

Still others believe that the rights of children are subsumed by the rights of their parents, or in their parents' absence, by the state under the *parens patriae* doctrine.[199] Under this viewpoint, children do not need separate, independent rights.[200] They are taken care of when the system protects the rights of others.[201] Such a view can be easily understood in a system completely designed around child protection and best-interest decision making.

When discussing the rights of parents, federal and state courts are consistently clear in their definition: Parents have a right to the care, custody, and control of their children.[202] This is the starting point for the discussion of protections that children are thereby owed.[203] Even in cases where children have been recognized to have some independent status, the "right" is not so easily defined; it is fluid based on the child's context or the issues at stake in the particular court proceeding.[204]

In Alabama, a court recognized, "Parents and their children share a liberty interest in continued association with one another, i.e., a fundamental right to family integrity."[205] In Colorado, children have protected interests "in continuing family relationship[s] . . . [and] in a permanent, secure, stable, and loving environment."[206] Children in Florida have a "fundamental liberty interest to be free of physical and emotional violence at the hands of [their] . . . most trusted caretaker."[207] In Georgia, children have a liberty interest in "maintaining the integrity of the family unit and in having a relationship with [their] biological parents."[208] Kansas has noted a child's fundamental liberty interest in his or her parentage, reciprocal to a parent's interest in maintaining the familial relationship with the child.[209] Children in Massachusetts have an

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199. *Cf.* Troxel v. Granville, 530 U.S. 57, 68 (2000) (establishing legal presumption that fit parents act in children's best interests); *see also* Schall v. Martin, 467 U.S. 253, 265 (1984) (noting State's obligation to control children when parent is unable).

200. *Cf. Troxel*, 530 U.S. at 72–73 (recognizing rights of parents to make decisions for children and limits on State intervention with no discussion of rights of children).

201. *Id.*

202. *See, e.g.*, *id.* at 65 (noting constitutional right of parents to "care, custody, and control of their children"); *see also* Santosky v. Kramer, 455 U.S. 745, 753 (1982) (same); *In re* K.M., 653 N.W.2d 602, 607 (Iowa 2002) (same); Rideout v. Riendeau, 761 A.2d 291, 297 (Me. 2000) (same).

203. *See, e.g.*, *Santosky*, 455 U.S. at 758–69 (applying Mathews v. Eldridge, 424 U.S. 319 (1976), standard test to assess procedural due process owed to parents at termination of parental rights hearings).

204. For a discussion of how the rights and interests of children are defined across the country, see *supra* notes 198–203 and accompanying text.

205. J.B. v. DeKalb Cty. Dep't. of Human Res., 12 So. 3d 100, 115 (Ala. Civ. App. 2008).

206. *See* People *ex rel.* C.A.K., 652 P.2d 603, 607 (Colo. 1982) (identifying interests at stake in termination of parental rights hearing).

207. *See* Kingsley v. Kingsley, 623 So. 2d 780, 785 (Fla. Dist. Ct. App. 1993) (second alteration in original) (internal quotation omitted) (describing child's fundamental liberty interest).

208. *See* Kenny A. *ex rel.* v. Perdue, 356 F. Supp. 2d 1353, 1360 (N.D. Ga. 2005) (discussing constitutional interests of children).

209. *See* Ferguson v. Winston, 996 P.2d 841, 846 (Kan. Ct. App. 2000) (addressing fundamental liberty interests of parents and children in paternity action).

absolute interest in "freedom from abusive or neglectful behavior."[210] Texas acknowledges that children have an "interest in a final decision and thus placement in a safe and stable home."[211]

There are countless other statements of recognition that youth too have interests at stake in these proceedings.[212] There is overlap amongst many, and yet no clear trumpeted statement of the right.[213] It is unclear whether interests in these cases are equated to the rights of parents or are mere factors in the "best interest" decision making itself. What is the value of these expressions?

At times, the federal courts have attempted to wade into these murky waters.[214] In 1989, the United States Supreme Court heard the case of *DeShaney v. Winnebago County Department of Social Services*.[215] In this case a boy and his mother sued county social workers after the boy was severely beaten and permanently injured by his father following reports made expressing concerns for the boy's safety.[216] Despite the reports, the county failed to act in removing the boy from his father's care.[217] The boy brought an action under 42 U.S.C. § 1983, alleging that the Department's failure to act deprived him "of his liberty interests in 'free[dom] from . . . unjustified intrusions on personal security'" under the Due Process Clause of the Fourteenth Amendment.[218] The Court, however, rejected this argument and held that "nothing in the language of the Due Process Clause itself requires the State to protect the life, liberty, and property of its citizens against invasion by private actors."[219]

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210. *See* Care & Protection of Robert, 556 N.E.2d 993, 998 (Mass. 1990) (emphasizing absolute interest in freedom from harm compared to child's interest in family integrity, which is not absolute).

211. *See In re* J.F.C., 96 S.W.3d 256, 304 (Tex. 2002) (considering promotion of child's interests by Texas rules).

212. *See e.g.*, *In re* Dependency of M.S.R., 271 P.3d 234, 244 (Wash. 2012) (recognizing fundamental liberty interests of children in termination proceedings, including "interest in being free from unreasonable risk of harm and a right to reasonable safety; in maintaining the integrity of the family relationships, . . . and in not being returned to (or placed into) an abusive environment over which they have little voice or control").

213. *Compare supra* notes 205–12 and accompanying text, *with* Troxel v. Granville, 530 U.S. 57, 65 (2000) (defining parents' fundamental right to care, custody and control of child).

214. *See* Dale Margolin Cecka, *The Civil Rights of Sexuality Exploited Youth in Foster Care*, 117 W. VA. L. REV. 1225, 1253–57 (2015) ("Foster children's rights while in custody of the state are not well settled.").

215. 489 U.S. 189 (1989).

216. *Id.* at 191–93 (recounting facts of case).

217. *Id.* at 192–93 (describing action taken by county department).

218. *Id.* at 194–95 (alteration in original) (quoting Ingraham v. Wright, 430 U.S. 651, 673 (1977)).

219. *Id.* at 195 (stating holding of Court).

In doing so, the Supreme Court made a careful distinction relevant to youth in state custody foster care.[220] The Court found:

> [W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—it transgresses the substantive limits on state action set by . . . the Due Process Clause [of the Fourteenth Amendment].[221]

Since *DeShaney*, several courts have addressed violations of the substantive due process rights of foster children.[222] In 2003, the Washington Supreme Court heard the case of *Braam ex rel. Braam v. State*,[223] a class action filed against the State "in an effort to improve the lives of foster children in the State's care."[224] The plaintiffs in *Braam* specifically challenged the State's practice of indiscriminately moving children from placement to placement, in addition to the lack of appropriate mental health treatment to meet the children's needs.[225]

The *Braam* case provided a solid opportunity to explore the landscape of the substantive due process rights of foster children across the country.[226] The Washington court concluded that "foster children have a substantive due process right to be free from unreasonable risk of harm, including a risk flowing from the lack of basic services, and a right to reasonable safety."[227] Any violations of these rights would be measured under the professional judgment standard—"whether the State's conduct falls substantially short of the exercise of professional judgment, standards, or practices."[228] Since *Braam*, other foster youth have sought relief, with varying degrees of success, from violations of their substantive due process right to be free from harm while in state custody.[229]

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220. *See* Taylor I. Dudley, *Bearing Injustice: Foster Care, Pregnancy Prevention, and the Law*, 28 BERKELEY J. GENDER L. & JUST. 77, 96–97 (discussing applicability of *DeShaney* in other contexts).

221. *DeShaney*, 489 U.S. at 200 (distinguishing case at hand from case with child in state custody); *Cf.* Youngberg v. Romeo, 457 U.S. 307, 314–25 (1982) (requiring State to provide necessary services to involuntarily committed mental patients to ensure their "reasonable safety").

222. *See, e.g.*, Cecka, *supra* note 214, at 1253–57 (recounting case law on foster child's right to be free from harm while in state custody).

223. 81 P.3d 851 (Wash. 2003).

224. *Id.* at 854 (providing case background).

225. *Id*. at 855 (describing nature of claim).

226. *See id.* at 856–57 (providing string citation to persuasive authority on substantive due process rights of foster children).

227. *Id*. at 857 (defining the substantive due process right).

228. *Id.* at 858 (identifying appropriate culpability standard for violations of children's substantive due process rights).

229. *See* Cecka, *supra* note 214, at 1253–57 (providing case law summary).

It is worth noting that the *Braam* court dismissed the plaintiffs' claims based on state statutes.[230] None of the dependency laws created a private cause of action for youth.[231] The court stated "that parties believing themselves aggrieved by [the State's] failure to abide by these [state] statutes, including a foster child through an attorney or guardian ad litem, will have an opportunity to raise the issue in the context of dependency actions."[232] The court similarly rejected claims under other federal child welfare laws, noting that the federal funding mandates of such laws did not create an explicit cause of action.[233]

In addition, courts have also evaluated the procedural due process rights of youth under the Fourteenth Amendment. *Kenny A. ex rel. Winn v. Perdue*,[234] a case heard by the U.S. District Court for the Northern District of Georgia, was a class action brought by foster youth in Fulton and DeKalb counties, asserting various violations of their due process rights under the Georgia constitution.[235] Among their arguments, the plaintiffs claimed that they had a constitutional right to counsel in all deprivation cases, not just at the time of termination of parental rights hearings.[236] The court recognized that foster youth in state custody were "entitled to constitutionally adequate procedural due process when their liberty or property rights [were] at stake."[237] In *Kenny A.*, the court defined the youth's fundamental liberty interests at stake in such cases as "a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining the integrity of the family unit and in having a relationship with his or her biological parents."[238] The process of taking a child into state custody creates a "special relationship" that "gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological, and emotional harm."[239]

The court then conducted the three-part *Mathews v. Eldridge* test to assess what process was owed in such cases.[240] Ultimately, the *Kenny A.* court concluded that children had a procedural due process right to counsel under the Georgia constitution.[241]

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230. *See Braam*, 81 P.3d at 863 (affirming trial court's dismissal of state claims).
231. *Id.*
232. *Id.* (identifying context of dependency case to be proper avenue for violations of state statutes as opposed to separate cause of action).
233. *Id.* at 863–65 (affirming trial court's dismissal of federal statutory claims).
234. 356 F. Supp. 2d 1353 (2005).
235. *Id.* at 1355–56 (stating facts of case).
236. *Id.* at 1357.
237. *Id.* at 1359 (recognizing procedural due process rights of children).
238. *Id.* at 1360 (articulating rights of foster children).
239. *Id.* (providing that fundamental liberty interests of child are at stake throughout the proceedings).
240. *Id.* at 1360–61 (discussing the Mathews v. Eldridge, 424 U.S. 319, 334–35 (1976), analysis).
241. *Id.* at 1360 (stating holding of court under Due Process Clause of Georgia Constitution).

Thus, while courts have recognized substantive and procedural rights of children in foster care, the historical landscape is varied in consistency and enforceability. Future litigation will no doubt continue to refine the rights, yet it is uncertain whether there will ever be one clear right comparable to that of parents in such dependency cases.

More recently, in 2011, a class action suit, *D.B. v. Richter*,[242] was filed in the Supreme Court of the State of New York on behalf of transition-age youth in the foster care system.[243] Specifically, the class involved all youth between the ages of seventeen and twenty-one who were currently in foster care with a permanency goal of emancipation (Another Permanent Planned Living Arrangement or APPLA) or who left foster care to live on their own.[244] The action was filed against the New York City Administration for Children's Services (ACS) in an effort to help transition-age youth enforce their "right to receive help in finding appropriate and adequate housing and to receive other help from ACS until [their] 21st birthday."[245] As a result of the case being filed, the parties reached a settlement that required ACS to establish policies regarding services and support for youth transitioning out of foster care, specifically around the area of housing.[246]

This case targeted the protections owed to transition-age youth in the dependency system.[247] It raised additional questions about the rights of this in-between age group of young people, as well as the enforceability of rights bestowed on them.

C. The Strengthening Families Act and Foster Care Bills of Rights

Congress furthered the conversation around transition-age youth in foster care, specifically their engagement in case planning and their rights in the system, with the passage of the SFA in September 2014.[248] The SFA is "designed to promote well-being and normalcy for youth in foster care[,]" included provisions encouraging states to identify and protect youth at risk of sex trafficking, to improve opportunities for

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242. Index No. 402759/11 (N.Y. Sup. Ct.) filed Oct. 17, 2011.

243. Notice of Proposed Class Action Settlement at 1, *D.B. v. Richter*, Index No. 402759/11 (N.Y. Sup. Ct. 2011), http://www.legal-aid.org/media/152814/d.b.%20v.%20richter%20notice.english.pdf (providing notice of a proposed settlement to all eligible youth).

244. *See id.* at 1; *see also Proposed Class Action Settlement Averts the Danger of Homelessness for Young People Aging Out of Foster Care*, LEGAL AID SOC'Y (Oct. 20, 2011), http://www.legal-aid.org/en/mediaandpublicinformation/inthenews/proposedclassactionsettlementavertsthedangerofhomelessness.aspx (detailing news coverage of proposed class action).

245. Notice of Proposed Class Action Settlement, *supra* note 243 (asserting right of current and former foster youth in case).

246. *See id.* at 2–4 (summarizing terms of proposed settlement).

247. *Id.* (identifying services to be provided to current and former foster youth).

248. Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014) (codified as amended in scattered sections of 42 U.S.C.).

youth in foster care, to support permanency efforts through adoption incentives, and to enhance international child support recovery efforts.[249]

In one key provision, the SFA called for states to implement a "reasonable and prudent parent standard," which would allow foster parents to make more of the day-to-day decisions for youth in their homes.[250] The goal is to provide a sense of normalcy to foster youth by allowing them to participate in extracurricular, cultural, and social activities with their peers.[251] It is a recognition that youth in foster care still need to just be kids.[252]

Other provisions seek to empower youth ages fourteen and older to engage in their own dependency cases.[253] The SFA specifies that the case plan "shall be developed in consultation with the child [age fourteen or older] and, at the option of the child, with up to 2 members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child."[254] This provision seems to reflect an understanding of the adolescent's cognitive capacities for decision making at these ages.[255] With guidance and opportunity, they are able to participate in these decisions.

The SFA also amended the federal language to describe this process as "transition planning for a successful adulthood," as opposed to transition planning for "independent living."[256] This also reflects changing views around successful outcomes for these youth, recognizing that adults do not, in fact, live independently, but rather live "interdependently" with support from many permanent connections with friends and family.[257]

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249. *See* JENNIFER POKEMPNER ET AL., PROMOTING NORMALCY FOR CHILDREN AND YOUTH IN FOSTER CARE 2 (2015) (summarizing general provisions of SFA); *see also* Preventing Sex Trafficking and Strengthening Families Act § 2 (providing Table of Contents for Act's provisions).

250. Preventing Sex Trafficking and Strengthening Families Act § 111 (establishing standard for supporting normalcy for children in foster care).

251. *Id.*; POKEMPNER ET AL., *supra* note 249, at 8–21 (analyzing implementation strategies for normalcy provisions).

252. *Cf.* POKEMPNER ET AL., *supra* note 249, at 5 ("Indeed, normalcy for youth means being able to do what is considered 'routine' for many teenagers . . . .").

253. Preventing Sex Trafficking and Strengthening Families Act § 113 (providing for involvement of older foster youth in their own case planning).

254. *Id.* (designing case planning with emphasis on youth engagement).

255. *See supra* notes 164–65 and accompanying text (discussing adolescent capacity for logical decision making).

256. Preventing Sex Trafficking and Strengthening Families Act § 113 (amending terminology to reflect changing views).

257. Jill K. Jensen, *Fostering Interdependence: A Family-Centered Approach to Help Youth Aging Out of Foster Care*, 3 WHITTIER J. CHILD & FAM. ADVOC. 329, 329–30 (2004) ("Programs that focus on the concept of 'independent living' should be redefined as preparation for 'interdependent living.'"); *id.* at 330 ("Interdependent living . . . is defined as 'being able to carry out management tasks of daily life and having a productive quality of life through positive or appropriate interaction with individuals, groups, organizations, and social systems.'" (quoting ANTHONY N. MALUCCIO ET AL., PREPARING ADOLESCENTS FOR LIFE AFTER FOSTER CARE: THE CENTRAL ROLE OF FOSTER PARENTS 10 (1990))).

In the discussion of furthering youth rights, the essential provision, the "List of Rights" addition, reads:

> (b) List of Rights.—The case plan for any child in foster care under the responsibility of the State who has attained 14 years of age shall include—
>
> (1) a document that describes the rights of the child with respect to education, health, visitation, and court participation, the right to be provided with the documents specified in section 475(5)(I) in accordance with that section, and the right to stay safe and avoid exploitation; and
>
> (2) a signed acknowledgment by the child that the child has been provided with a copy of the document and that the rights contained in the document have been explained to the child in an age-appropriate way.[258]

The effective date for this provision was September 29, 2015, with a delayed date permitted if state legislation was required.[259]

A collaborative brief on effective implementation of the SFA articulated the rationale behind these provisions.[260] With regard to case planning, the SFA represents a "recognition that young people should be included in these important processes and that youth as young as age 14 can have a very informed perspective that can lead to better permanency outcomes and compliance with the case plan."[261] Providing youth with their rights is intended to "strengthen[] their self-sufficiency and prepare[] them for a successful transition out of foster care and into adulthood."[262] While the report recommends that the Department of Health and Human Services should provide a model List of Rights, it acknowledges the absence of a clear list in the SFA itself.[263]

With this general mandate, the list of rights in each state may look somewhat different from one another, so long as they cover the essential topics—education, health, visitation, and court participation.[264] Even before the enactment of the SFA, a number of states enacted Foster

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258. Preventing Sex Trafficking and Strengthening Families Act § 113 (establishing "List of Rights" provision).

259. *See* CHILDREN'S DEF. FUND ET AL., IMPLEMENTING THE PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT (P.L. 113-183) TO BENEFIT CHILDREN AND YOUTH 26 (2015).

260. *Id.* at 8–9 (stating it was a "collaborative effort of Children's Defense Fund, Child Welfare League of America, First Focus, Generations United, Foster Family-based Treatment Association, and Voice for Adoption").

261. *Id.* at 26.

262. *Id.*

263. *See id.* at 27 ("It would be helpful for HHS to provide a model for the List of Rights.").

264. POKEMPNER ET AL., *supra* note 249, at 14 ("Youth should know what the law requires and allows. They should be supported in advocating for themselves on all important issues, including normalcy, family visitation, educational choices, and health care.").

Children Bill of Rights.[265] With the SFA's passage, additional states have sought to adopt such lists in an attempt to define the rights of foster children and foster parents and satisfy the SFA's requirements.[266] Some of these Bills of Rights are enacted through state statute, others find their way in departmental policy or regulation.[267]

On the whole, such lists of rights are fairly benign. They generally set forth expectations for the foster care system at large in terms of how children in its care should be treated.[268] Such bills often include "provisions regarding frequent contact with parents, siblings, and family members, foster youth's access to their advocates and the courts, and participation in age-appropriate school activities."[269]

The ABA Center on Children and the Law has "also assessed which states' child welfare bill of rights include: protection against abuse or corporal punishment, access to healthcare, protections against excessive medication, and preparation for independence."[270] As of 2012, only five states—California, Colorado, Maryland, Nevada, and Pennsylvania—included all four of these topics in their statutes, while six additional states—Hawaii, Maine, New Mexico, New York, Texas, and Wisconsin—incorporated these provisions into their departmental policies.[271]

The focus of such lists is primarily on what youth in foster care deserve: safe and healthy placements where their day-to-day needs are met,[272] an explanation of why they are in care,[273] the ability to participate in case planning,[274] educational stability,[275] freedom from abuse or

265. *See* Jill Reyes, *Child Welfare Bills of Rights for Foster Children*, 31 CHILD L. PRAC. 156, 156 (2012) (discussing state trend to pass child welfare bills of rights prior to passage of any federal legislation).

266. *Foster Care Bill of Rights*, NAT'L CONF. STATE LEGISLATURES (Aug. 25, 2016), http://www.ncsl.org/research/human-services/foster-care-bill-of-rights.aspx (noting pending state legislation to define rights of foster children and parents).

267. *See* Reyes, *supra* note 265 (noting use of statute of local child welfare agency policy to create bills of rights).

268. *See, e.g.*, N.C. GEN. STAT. § 131D-10.1(b) (2016) ("The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families.").

269. *See* Reyes, *supra* note 265 (noting that most states have policy adopting "Bill of Rights for Foster Children" from Philadelphia in 1973).

270. *Id.*

271. *Id.* (listing states with comprehensive bill of rights in either statute or policy).

272. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-529(A)(2) (2016) (stating the right to "live in a safe, healthy and comfortable placement"); CAL. WELF. & INST. CODE § 16001.9(a)(1) (2016) (stating the right to "live in a safe, healthy, and comfortable home").

273. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-529(A)(3) (stating the right to "know why the child is in foster care and what will happen to the child and the child's family, including siblings, and case plans").

274. *See, e.g.*, 11 PA. CONS. STAT. § 2633(16) (2011) (discussing the right to involvement in case planning and court participation); TEX. FAM. CODE ANN. § 263.008(b)(14) (West 2017) (discussing the right to participation in or development of treatment plans).

neglect,[276] sibling contact,[277] privacy,[278] prompt access to any needed treatment or services,[279] visitation with birth parents,[280] representation of their voices in court,[281] access to personal possessions,[282] freedom from discrimination,[283] independent living services,[284] lifelong connections with kin,[285] and opportunities to experience normalcy.[286]

The SFA requires states to provide these lists (or those similar) to youth using youth-friendly language.[287] This is documented by having the youth's signature acknowledging receipt of the rights.[288] While this documentation addresses notification to youth of their rights, concerns remain regarding enforcement.[289]

D. The Meaning of Rights

The term "Bill of Rights" is an interesting one. Historically, it referenced the first ten amendments to the United States Constitution,

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275. *See, e.g.*, ARK. CODE ANN. § 9-28-113 (2016) (discussing the right to continuity of educational services); 11 PA. CONS. STAT. § 2633 (noting the right to educational stability); S.C. CODE ANN. § 59-38-10 (2016) (discussing the right to educational services).

276. *See, e.g.*, HAW. REV. STAT. § 587A-3(a)(1) (2016) (stating the right to live in home "free from physical, psychological, sexual, and other abuse"); N.C. GEN. STAT. § 131D-10.1(a)(1) (2016) (stating the right to "safe foster home free of violence, abuse, neglect, and danger").

277. *See, e.g.*, CONN. GEN. STAT. § 17a-10a(a) (2016) (ensuring the right to sibling visitation); FLA. STAT. § 39.4085(15) (2016) (ensuring the right to regular sibling contact).

278. *See, e.g.*, DEL. CODE ANN. tit. 13, § 2522(a)(11) (2016) (granting right to "have their confidentiality protected as required by state and federal law"); 11 PA. CONS. STAT. § 2633(17) (granting right to confidentiality).

279. *See, e.g.*, DEL. CODE ANN. tit. 13, § 2522(4) (granting right to access treatment necessary to meet needs); FLA. STAT. ANN. § 39.4085(7) (2016) (establishing goal of dependent children receiving necessary treatment).

280. *See, e.g.*, HAW. REV. STAT. § 587A-3(a)(3) (ensuring a child's right to contact with parents); N.J. STAT. ANN. § 9:6B-4(e) (West 2016) (establishing a right for children placed outside their home to visit their parents).

281. *See, e.g.*, CAL. WELF. & INST. CODE § 16001.9(a)(17) (2016) (establishing policy of foster children's right to "attend court hearings and speak to the judge"); TEX. FAM. CODE ANN. § 263.008(b)(13) (2016) (noting right to participation in court).

282. *See, e.g.*, MASS. DEP'T OF CHILDREN & FAMILIES, FOSTER CHILD BILL OF RIGHTS (highlighting right to access in policy bill of rights).

283. *See, e.g.*, CAL. WELF. & INST. CODE § 16001.9(a)(23) (establishing policy or foster children's right not to be subjected to discrimination or harassment); 11 PA. CONS. STAT. § 2633(2) (granting right to "[f]reedom from discrimination because of race, color, religion, disability, national origin, age or gender").

284. *See, e.g.*, DEL. CODE ANN. tit. 13, § 2522(a)(12) (granting right to independent living services beginning at age sixteen); HAW. REV. STAT. § 587A-3(a)(10) (ensuring a child's right to age-appropriate life skills training and transition planning starting at age twelve).

285. *See, e.g.*, MASS. DEP'T OF CHILDREN & FAMILIES, *supra* note 282 (highlighting right to receive support in maintaining positive connections with relatives).

286. *See, e.g.*, ARIZ. REV. STAT. ANN. § 8-529(a)(6) (2016) (establishing right to attend "community, school and religious" activities); ARK. CODE ANN. § 9-28-113(b) (2016) (establishing rights related to education).

287. *See* POKEMPNER ET AL., *supra* note 249, at 9 (discussing details of Act's "list of rights" provision).

288. *See* 42 U.S.C. § 675a(b)(2) (2012) (requiring "signed acknowledgement by the child").

289. *See* POKEMPNER ET AL., *supra* note 249, at 10, 10 n.46 (recognizing that child's acknowledgement of receipt does not address enforcement of child's right).

encompassing a "list of treasured liberties."[290] The original Bill of Rights was thought to be "the product of the bitter struggles of men and women who loved freedom and hated tyranny."[291] It was the recognition of almost inherent rights.[292]

The various state Bills of Rights for foster youth are similarly lofty in nature, though often lacking in protections. Unfortunately, these state Bills of Rights "typically do not create enforceable rights or specify any means for their enforcement."[293]

In Colorado, for example, the statute specifically reads that the legislature only intended the list as "guidelines to promote the physical, mental, social, and emotional development of youth in foster care and to prepare them for a successful transition back into their families or the community."[294] These guidelines may be limited in application "to reasonable periods during the day or restricted according to the routine of foster care homes to ensure the protection of children and foster families." As such, the rights are neither absolute nor enforceable.[295]

In Florida, the statutory list delineates that it establishes "goals and not rights."[296] It shall not "be interpreted as requiring the delivery of any particular service or level of service in excess of existing appropriations[,]" nor shall it create any "cause of action against the state . . . ."[297] Similarly, Hawaii's list establishes "guiding principles."[298] Arizona and North Carolina make clear that any violations do not create causes of action.[299] These are expectations of care, meant more so to inform foster parents and state agencies of their enduring obligations to youth, not to allow youth to have an equal and enforceable stake in the proceedings.

A few states have described grievance procedures for violations of any listed rights, falling short, however, of creating separate causes of action. In Delaware, aggrieved youth "may motion the court . . . for appropriate equitable relief."[300] Nevada provides rights of redress.[301]

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290. *See* Garrett Epps, Speech, *The Bill of Rights*, 82 OR. L. REV. 517, 521 (2003) (delivering history of the Bill of Rights to the U.S. Constitution).

291. *See* Frank H. Elmore, *Liberty Under the Bill of Rights*, 50 FED. RULES DECISIONS 65, 65 (1970) (presenting historical account of Bill of Rights).

292. *See id.* at 66 (describing Bill of Rights amendments as "most essential portions of the Constitution").

293. *See* POKEMPNER ET AL., *supra* note 249, at 10 (noting lack of creation of enforceable rights).

294. COLO. REV. STAT. § 19-7-101(2) (2016) (setting limits on enforceability).

295. *See id.*

296. FLA. STAT. § 39.4085 (2016).

297. *Id.* (limiting enforceability of Bill of Rights).

298. HAW. REV. STAT. § 587A-3(a) (2016).

299. ARIZ. REV. STAT. ANN. § 8-529(C) (2016); N.C. GEN. STAT. § 131D-10.1(a) (2016).

300. DEL. CODE ANN. tit. 13, § 2522(b) (2016) (establishing remedy).

301. NEV. REV. STAT. § 432.550 (2015) (allowing child to redress alleged violation with foster care provider or employee, agency, juvenile court, guardian ad litem or attorney for child).

Pennsylvania allows for filing of a grievance in accordance with county policy.[302] Youth in Rhode Island can seek appropriate equitable relief from the family court.[303] In Montana, youth should contact the Foster Care Program Officer, who will follow-up on their concerns.[304]

Thus far, there have been few cases across the country actually litigating the rights listed in the various state Bills of Rights. In the Arizona case of *K.D. v. Hoffman*,[305] a thirteen-year-old argued that the court violated her rights when it denied her request to attend and testify at a termination of parental rights hearing.[306] She asserted that the Arizona Bill of Rights for Children and Youth in Foster Care Act (AZ Bill of Rights Act) gave her the right to "attend the . . . court hearing and speak to the judge."[307] Despite this argument, the Arizona Court of Appeals determined that the legislature did not intend to grant youth in foster care absolute rights in passing the AZ Bill of Rights Act, and thus the act established no legally enforceable right or cause of action.[308]

New Jersey, on the other hand, clearly recognizes a private cause of action for violations of the Children's Bill of Rights.[309] In *K.J. v. Division of Youth and Family Services*,[310] a federal district court of the District of New Jersey discussed the Bill of Rights in detail.[311] It noted that the "Act outlines the State's responsibilities when undertaking to protect children by placing them outside of the home."[312] It recognized this as an affirmative obligation of the State.[313] It was designed to "protect the most fundamental rights of children placed outside the home[,]" recognizing the rights of youth independent of their parents.[314]

Moreover, the court noted that the Child Placement Bill of Rights Act was created separately from the rest of the child welfare laws, "suggesting that it was meant to provide a separate remedy."[315] Despite a lack of any articulation of a remedy within the Act itself, the court held

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302. 11 PA. CONS. STAT. § 2633(24)–(25) (2016) (establishing grievance process).

303. R.I. GEN. LAWS § 42-72-15(m) (2016) (providing remedy for child aggrieved by violation of bill of rights).

304. MONT. DEP'T OF PUB. HEALTH & HUMAN SERVS., CHILD & FAM. SERVS. DIV., THE POLICY OF THE STATE OF MONTANA REGARDING RIGHTS OF YOUTH IN FOSTER CARE (2015), http://dphhs.mt.gov/CFSD.aspx (follow "Montana Foster Youth Rights" hyperlink) (establishing process for youth to express concerns about care or treatment).

305. 359 P.3d 1022 (Ariz. Ct. App. 2015).

306. *See id.* at 1023 (describing procedural history and basis of claim).

307. *See id.* at 1023–24 (relying on alleged violation of subsection (A)(16) of Bill of Rights to assert cause of action).

308. *Id.* at 1024 (limiting enforceability of Arizona Bill of Rights for Children and Youth in Foster Care Act).

309. K.J. v. Div. of Youth & Family Servs., 363 F. Supp. 2d, 728, 743–48 (D.N.J. 2005) (considering federal due process claims and state law claims of foster youth).

310. *Id.*

311. *Id.* at 741–45.

312. *Id.* at 741 (referencing N.J. STAT. ANN. § 9:6B-1 to 9:6B-6 (West 2016)).

313. *Id.* at 742 (citing N.J. STAT. ANN. § 9:6B-2(b) (West 2016)).

314. *Id.*

315. *Id.* at 741.

that it nonetheless provided a private right of action, as doing so was "proper and necessary."[316] Thus, in New Jersey, youth have equitable access to enforcement of their rights.[317]

In sum, the SFA provides that youth in every state receive a copy of their rights; yet for the vast majority of youth across the country, having "rights" means something less than a guarantee—whether through a bill of rights or through case law.[318] Indeed, "mere encouragement and policy promulgation without any accompanying enforcement mechanism is not likely to bring about dramatic improvements for foster youth."[319]

IV. THE CHANGING CULTURE OF A LONG-STANDING SYSTEM

In a myriad of ways, the SFA causes advocates to engage in conversations about the value of transition-age youth. It recognizes the essential piece they bring to case planning for their own life outcomes.[320] It acknowledges that this age group should be focused on transitioning with supportive connections, not ultimate day-to-day independence.[321] It requires from states a declaration of expectations as to what youth deserve from a system legally obligated to support their well-being.[322]

Each of these elements of the Act is crucial to creating a dependency system built around the emerging adulthood of this age group in the pursuit of achieving better outcomes for their futures. The SFA, however, is just the beginning. While it provides for the rights of youth by name, it does little to encourage the enforceability of such rights, or even to create accountability for the promises that such lists of rights make to youth.

Our child welfare history shows our progression in viewpoint regarding youth.[323] Since the time of *Gault*, the delinquency system has been two steps ahead in considering the status of young people, specifically the status of their development and decision-making capacity.[324] It is time for the dependency system to follow suit, moving

316. *Id.* at 745 ("[T]he Child Placement Bill of Rights Act seeks to remedy the harm which arises when the State agencies and the placement system fail to carry out the State's affirmative obligation to protect the fundamental rights of the children entrusted to its care.").

317. *Id.*

318. For a discussion of the rights of transition-age youth both in bills of rights and in case law, see *supra* notes 200–90 and accompanying text.

319. Paul Jacobson, Note, *Promoting "Normalcy" for Foster Children: The Preventing Sex Trafficking and Strengthening Families Act*, 81 MO. L. REV. 251, 263 (2016).

320. *See* Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, § 113(a), 128 Stat. 1919, 1928 (2014) (providing for greater engagement of older youth in case planning).

321. *See id.* § 113(c) (amending terminology to focus on transition planning).

322. *See id.* § 113(d) (requiring states to provide a "list of rights").

323. *See* Ventrell, *supra* note 16, at 192–93 (discussing change in view as to children's status).

324. *See In re* Gault, 387 U.S. 1, 13 (1967) (describing delinquency court's shift to acknowledging youth as rights-based individuals).

past the paternalistic paradigms and instead considering this age group's need for an environment of both independence and support.

A. A Look Towards Developmental Appropriateness

Much of this discussion is less about specific laws or policies, and ultimately, more about culture change in our dependency systems. Judges are crucial in this process—asking questions of youth (and other parties) rooted in a knowledge of developmental research, giving young people an equal place at the table, and holding them, their families, and their case professionals accountable for their actions.[325] Creating a developmentally-appropriate system does not mean making excuses for the "bad" choices of our youth; it means establishing an environment where young people can try new things, make mistakes, and have support in learning from them.

One author, Emily Buss, recently called for the adoption of a new lens for the law around minors: "developmental jurisprudence."[326] This is "an examination of the role of law as a developmental agent—an agent that shapes how children grow up . . . ."[327] Essentially, this view advocates that "in all the domains in which law is already operating, it should be more universally attuned to its childrearing impact."[328] Professor Buss explains the role of the law in the development of older youth, specifically the message that we send to youth about their place in society.[329] "[Y]oung people are conditioned to assume the status of outsider: They are not a part of the social and professional community to which all the court personnel, their own lawyers included, belong, and they are not included in the hearings in any meaningful way."[330] This experience "perpetuates the youth's dependent status in the system" and "deprives them of an important opportunity to begin, in a highly structured and supported environment, to exercise decision-making authority over their own lives."[331] This is exactly the result that we, as a system, should seek to avoid.

B. Recommendations for Change

Changes to our system start with changes to our courts, our laws and policies, and our practices. We must be intentional in evaluating how

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325. *See, e.g.*, Jennifer Pokempner, *Implementing the Older Youth Permanency Provisions of the Strengthening Families Act: The Court's Role*, 35 CHILD L. PRAC. 65, 73–74 (providing lists of questions court can ask regarding older youth permanency provisions of the SFA).

326. Emily Buss, *Developmental Jurisprudence*, 88 TEMP. L. REV. 741, 741 (2016) (establishing new perspective on laws regarding minors).

327. *Id.* at 751.

328. *Id.* at 755 (explaining that developmental jurisprudence looks to "parenting model," just as therapeutic jurisprudence looks to "treatment model").

329. *See id.* at 766 (considering developmentally valuable procedures for youth).

330. *Id.*

331. *Id.* at 767.

our status quo supports or hinders the successful transition of older youth as they exit the child welfare system.

1. The Meaningful Participation of Youth

The dependency system has spent much time and attention in recent years on youth attending court. Now, courts must move beyond attendance and look for meaningful participation. Professionals must spend the time with youth—both fully preparing them prior to court and fully debriefing the experience with them after the hearing.[332]

Keeping in mind the research discussed above, there must be opportunities for young people to practice deliberative decision making, free from social influences and supported by "consultants who can provide objective information about the costs and benefits . . . ."[333] This is the time when transition-age youth have the ability to create new, healthy brain pathways and prune those pathways that have not proven successful.[334] Courts can support these opportunities by asking attorneys and other professionals how decisions have been made and what the role of the youth has been in such processes.[335]

2. A Meaningful Time Period for Transition

The results of the Midwest Study demonstrated that with additional time and support in their transition, young people can have greater success in their life outcomes.[336] This concept informed the Fostering Connections Act's extension of federal funding for young people between the ages of eighteen and twenty-one who are pursuing important goals.[337] As states have implemented the Fostering Connections Act and extended the court's jurisdiction, they have done so in a number of developmentally-appropriate ways.[338] One option is to design the extended foster care system around an opt-in or opt-out provision.[339] This

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332. *See* ELIZABETH WHITNEY BARNES ET AL., SEEN, HEARD, AND ENGAGED: CHILDREN IN DEPENDENCY COURT HEARINGS 8–11 (2012) (detailing benefits of children's attendance in court and addressing common concerns).

333. *See* Steinberg et al., *supra* note 146, at 592; *see also* JIM CASEY, SUCCESS BEYOND 18, *supra* note 1, at 12–14 (offering ten key elements to effective case planning with transition-age youth).

334. *See* Steinberg et al., *supra* note 146, at 592 (explaining supports needed in logical decision making).

335. *See, e.g.*, Pokempner, *supra* note 325 (emphasizing the court's role in the process).

336. *See* WEINBERGER ET AL., *supra* note 84, at 5–6 (describing "[a] process of competitive elimination").

337. *See* COURTNEY ET AL., *supra* note 115, at 87–88 (comparing Illinois results with Iowa and Wisconsin results).

338. *See* COURTNEY ET AL., *supra* note 71, at 1–2 (noting impact of the Midwest Study on federal legislation).

339. *Compare* ALL. FOR CHILDREN'S RIGHTS ET AL., ASSEMBLY BILL 12 PRIMER 9 (2014), http://www.cafosteringconnections.org/wp2/wp-content/uploads/2014/10/AB-12-Primer_Updated-1-1-14.pdf (characterizing California's extended care as "opt-out" program, meaning that youth's foster care "will be extended past age 18 unless s/he elects to exit care"), *with Fostering Connections to Success Act's Older Youth Extensions in Pennsylvania*, JUVENILE L. CTR.,

provision recognizes that in most states, young people are legal adults at the age of eighteen.[340] The opt-in or opt-out provision takes notice of that age, requiring foster youth in the system at age eighteen to either choose to remain in the system (opt-in) or choose to exit the system (opt-out). This is about consent. Either way, such a statutory provision requires the courts and the child welfare agencies to take note that, specifically at eighteen when the legal stakes become higher in many other domains, the dependency system also values the informed decision making of young people.

Hand in hand with this type of provision, many states have also adopted a "reentry" option.[341] This allows young people who choose to leave the dependency system after the age of eighteen the ability to re-enter the system to receive services and supports until the age of twenty-one.[342] It gives them the extra time to work on their goals, such as school, job training, or employment.[343] Re-entry is the developmentally-appropriate mechanism whereby youth can make a (hopefully informed) decision to try the world on their own, while simultaneously benefiting from an existing safety net if they need additional support.[344]

Certainly, extension of foster care jurisdiction with its accompanying provisions comes with its own challenges. This is a means, however, to evaluate state laws and policies and bring developmental science into the dependency world.

3. Meaningful Legal Representation

The SFA calls for recognition of the rights of young people in dependency cases. With rights comes status, along with procedural protections. If the system intends to provide young people an equitable voice in the proceedings, it must do that through effective counsel. The right to counsel for children in dependency cases was well-analyzed by the *Kenny A.* court, discussed above, as a procedural due process right.[345] For transition-age youth, the developmentally-appropriate choice is for that counsel to be client-directed, as opposed to representing the youth's

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http://www.jlc.org/fosteringconnections#conditions (last updated July 28, 2015) (providing opt-in choice for young people to remain in the system).

340. *Cf.* JIM CASEY, SUCCESS BEYOND 18, *supra* note 1, at 4 (illustrating developmentally-appropriate legal framework for young people between ages eighteen and twenty-one).

341. Boyer, *supra* note 186, at 839, 857–59 (exploring foster care reentry laws).

342. *See id.* at 839 (providing that roughly half of states allow young people to return to foster care "after some form of trial independence").

343. *See id.* at 858–60 (explaining that many state statutes or procedures governing reentry require youth to commit to satisfying activity under Fostering Connections Act as a condition).

344. *Id.* at 839 ("The safety net embodied by these reentry or trial independence programs appropriately acknowledges many of the unique challenges faced by youth seeking to navigate the difficult transition from foster care to independence.").

345. Kenny A. *ex rel.* Winn v. Perdue, 356 F. Supp. 2d 1353, 1360 (N.D. Ga. 2005) (upholding right to counsel "under the Due Process Clause of the Georgia Constitution").

best interests.[346] The youth's attorney can be that sound consultant advising the youth of the costs and benefits of various decisions. With this support, young people can be empowered to strengthen their decision-making capacity in a safe environment.

CONCLUSION

Transition-age youth in foster care have immeasurable challenges ahead of them as they exit a system that has often made decisions for them. Historically, the dependency courts have sent these youth countless messages of working "about" them and "for" them, rarely messages of working "with" them. The legal landscape generally provides these youth with a lesser voice than their parents, or even than the state, in determining what is "best" for them.

With the Preventing Sex Trafficking and Strengthening Families Act (the SFA), Congress opened the door for states, courts, and professionals to have deeper conversations about how youth are encouraged—or sometimes hindered—in their transition process.

Maya Angelou is often quoted as saying, "I did then what I knew how to do. Now that I know better, I do better."[347] Today, we have more research than ever on the adolescent brain, decision-making capacity, and life outcomes upon emancipation.[348] We now know better about what our systems are doing well and what we are failing to do. The SFA gives us an opportunity to turn this knowledge into practice and do better for transition-age youth in our foster care system.

346. *See* JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, FOSTER CARE TO 21: DOING IT RIGHT 5 (2011) ("Legal representation must be youth-driven, responsive, and respectful of the unique needs of each young person.").

347. J.N. Salters, *35 Maya Angelou Quotes That Changed My Life*, HUFFINGTON POST: BLOG (May 29, 2014, 2:50 PM), http://www.huffingtonpost.com/jn-salters/35-maya-angelou-quotes-th_b_5412166.html.

348. For a discussion of the research surrounding adolescent development and the longitudinal life outcomes of young people exiting the foster care system, see *supra* notes 84–132, 147–76 and accompanying text.