

AVOIDING POT HOLES ON FLORIDA'S "ROAD TO INDEPENDENCE": ADVOCACY FOR INDEPENDENT LIVING SERVICES FOR FOSTER YOUTH¹

Terry, a former foster youth, testified to the United States Senate in 1999 to support federal legislation to assist older foster youth: "As she views it, she was abandoned twice. First by an abusive father who couldn't even care for her and then by the foster care system. 'At age 18,' she told the senators, 'I was homeless and hopeless.'"²

A. Summary of Federal Law

1. History of Federal Independent Living Initiative

Based on concern for older foster youth, Congress passed the federal Independent Living Initiative in 1985 to provide funding to the states to assist foster youth who have attained age 16 in making the transition from foster care to adulthood. 42 U.S.C. Sec. 677. The intent of the Independent Living Initiative was to ensure that states would provide all older foster youth with independent living services and skills training to prevent these children from ending up homeless, on welfare, or institutionalized.³

Despite the federal Independent Living Initiative, states have not adequately prepared foster children to survive on their own upon reaching adulthood. Nationwide studies have shown that 20% to 40% of our country's homeless population consists of former foster children.⁴ In fact, a National Association of Social Workers study found that more than a fifth of teens at

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²Susan Kellam, *Foster Youth Lobby Congress* (September 1999), available at www.connectforkids.org.

³See Senator Daniel Patrick Moynihan, *Legislation for Independent Living Programs*, 57 CHILD WELFARE 483 (1988); MaryLee Allen, et al., *Federal Legislative Support for Independent Living*, 57 CHILD WELFARE 515 (1988). See also Mari Brita Maloney, *Out of the Home Onto the Street: Foster Children Discharged Into Independent Living*, 14 FORDHAM URBAN L.J. 971 (1986).

⁴See J.C. Barden, *After Release From Foster Care, Many Turn to Lives on the Streets*, N.Y. TIMES, Jan. 6, 1991, at 1.

homeless shelters arrived directly from foster care.⁵ Thus, by failing our children, our foster care system has created a whole new category of homeless people. In addition, studies also have shown that former foster children are disproportionately represented on public assistance rolls, in state prisons, and in state psychiatric institutions.⁶

2. Foster Care Independence Act of 1999 (Chafee Act)

As a result of continued evidence of the dire circumstances faced by foster youth who have not been prepared for adulthood, Congress recently amended the federal Independent Living Initiative through the federal Foster Care Independence Act of 1999. *See* Pub. L. No. 160-169, 118 Stat. 1823 (1999), 42 U.S.C. Sec. 677. In the Act, known as the “John H. Chafee Foster Care Independence Program,” Congress found as follows:

Congress has received extensive information that adolescents leaving foster care have significant difficulty making a transition to adulthood; this information shows that children aging out of foster care show high rates of homelessness, non-marital childbearing, poverty, and delinquent or criminal behavior; they are also frequently the target of crime and physical assaults.

The Nation’s State and local governments, with financial support from the Federal Government, should offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program beginning several years before high school graduation and continuing, as needed, until the young adults emancipated from foster care establish independence or reach 21 years of age.

Id. The National Conference of State Legislatures summarized these findings by noting that former foster care youth are:

disproportionately represented in crime statistics and show higher rates of homelessness and teen parenthood than the general population. Former foster youth take longer to complete basic education, experience higher dropout rates and are at greater risk for never completing their secondary education. As they grow out of their teen years, they have lower rates of employment and lower

⁵*See* Sonia Nazario, *Angel and Her Friends Outgrew Foster Care and Ended Up on the Streets of Hollywood. 'I Look Forward to Death,' One Teen Says. 'There Has To Be Something Better Than This,'* L.A. TIMES, Dec. 12, 1993, at A1.

⁶*Id.* *See also* Barbara Vobejda, *At 18, It's Sink or Swim; For Ex-Foster Children, Transition is Difficult,* WASH. POST, July 21, 1998, at A1.

earnings than the general population and higher rates of reliance on publicly funded welfare and health care.

The National Conference of State Legislatures, INDEPENDENT LIVING FOR FOSTER YOUTH (2002). Because of the serious concerns for older foster youth and the dire need for them to receive Independent Living services, the Chafee Act received widespread bipartisan support.⁷

Title I of the Chafee Act, “Improved Independent Living Program,” was enacted to award states increased funding to provide all older foster youth with adequate independent living services and skills training. 42 U.S.C. Sec. 677 (a) (1). As a result of the Chafee Act, Congress doubled the annual federal foster care Independent Living funding from \$70 million to \$140 million. The Chafee Act had a significant impact on Florida. Florida’s share of federal foster care Independent Living funding was formerly \$900,000 and now is in excess of \$10 million per year.⁸

In order to receive federal Chafee funding, the Florida Department of Children & Families submitted an application and state plan to the federal government. In its application and plan, DCF committed itself to providing Florida’s foster youth, and former foster youth, with a wide range of Independent Living services, training, and financial assistance. *See Florida Department of Children and Families FY 2001-2004 Application for the Chafee Foster Care Independence Program.*

B. Summary of Current Florida Law—Florida Statute Section 409.1451 (Road to Independence Act)

Florida law also requires the Department of Children and Families or its community-based providers to prepare all adolescent foster children for Independent Living. Florida Statute

⁷See Susan Kellam, *Bipartisan Foster Care Independent Living Bill Introduced*, N.Y. TIMES, May 15, 1999, at 1. *See also* Randi Guinn, *Passage of the Foster Care Independence Act of 1999: A Pivotal Step on Behalf of Youth Aging Out of Foster Care and Into a Life of Poverty*, 7 GEO. J. POVERTY LAW & POL’Y 403 (2003).

⁸See Shana Gruskin, *State to Help Foster Kids Master Adult Life*, SUN-SENTINEL (FT. LAUD.), Jan 2, 2000, at 1B.

Section 409.1451, known as the Road to Independence Act, mandates that DCF “shall administer a system of independent living transition services to enable older children in foster care and young adults who exit foster care at age 18 to make the transition to self-sufficiency as adults.... The goals of independent living transition services are to assist older children in foster care and young adults who were formerly in foster care to obtain life skills and education for independent living and employment, to have a quality of life appropriate for their age, and to assume personal responsibility for becoming self-sufficient adults.” Fla. Stat. Sec. 409.1451 (1) (a) & (b).

The Act requires DCF to provide Independent Living services, skills training, and financial assistance to foster youth and former foster youth. The intent of the law, as articulated by the Florida Legislature in the amendments that it enacted in 2004, is:

to assist older children in foster care and young adults who exit foster care at age 18 in making the transition to independent living and self-sufficiency as adults. The department shall provide such children and young adults with opportunities to participate in life skills activities in their foster families and communities which are reasonable and appropriate for their respective ages, and shall provide them with services to build the skills and increase their ability to live independently and become self-sufficient.

Fla. Stat. Sec. 409.1451 (3) (a).⁹

1. Services for Children in Foster Care Under Age 13 to 18—Fla. Stat. Sec. 409.1451(4)

For youth who are under age 18, services include Pre-Independent Living services for children age 13 to 15 and Life Skills services for children age 15 to 18. In addition, children age 16 and 18 are eligible for the Subsidized Independent Living program.

For children age 13 to 15, pre-independent living services include life skills training, educational field trips, and conferences. Fla. Stat. Sec. 409.1451(4) (a). The specific services to be provided to a child are to be determined using a pre-independent living assessment, which is a

⁹The Appendix to these materials includes the most recent (2005) amendments to Florida statutes pertinent to independent living needs of foster care children and youth formerly in foster care.

tool designed to establish the child's baseline strengths and weakness with respect to independent living readiness. *Id.* In 2004, the Florida legislature enacted additional requirements for DCF and its community-based care providers to ensure that children in this age group are receiving adequate pre-independent living preparation. Fla. Stat. Sec. 409.1451(4)(a). Pursuant to the 2004 amendments, DCF must conduct an annual staffing to ensure that preindependent living training and services to be provided to the child as determined by the assessment are being received and to evaluate the progress of the child in developing the needed independent living skills. *Id.* DCF must also provide to the child at the first staffing following the child's 14th birthday, and at each subsequent staffing, information on services provided by the Road to Independence scholarship program and information about scholarship and other educational benefits available to children seeking to enroll in the Road to Independence scholarship program. *Id.* Information relating to both the preindependent living assessment and all staffings must be reduced to writing and submitted to the court as part of the required written report at judicial review hearings held pursuant to Fla. Stat. Sec. 39.701. *Id.* Attorneys representing these children should participate in and advocate for their clients in the staffings and, of course, the court hearings.

For children age 15 to 18, life skills services include independent living skills training, educational support, employment training, and counseling. Fla. Stat. Sec. 409.1451(4)(b). The specific services to be provided to a child are to be determined using an independent living assessment. *Id.* In the calendar month following each foster child's 17th birthday, DCF must provide the child an independent-living assessment. *Id.* Based on the results of the assessment, DCF must provide services and training in order for the child to develop the necessary independent living skills and abilities prior to the child's 18th birthday. *Id.* Information related to both the independent living skills assessment and the deliberations of all staffings must be

reduced to writing and submitted to the court prior to each judicial review held pursuant to Fla. Stat. Sec. 39.701. *Id.*

Finally, qualified children age 16 to 18 are also eligible for Subsidized Independent Living, which allows them to live in their own apartment or other non-licensed setting. Fla. Stat. Sec. 409.1451(4)(c). Subsidy payments may be made directly to a child who is in Subsidized Independent Living. *Id.* Eligibility guidelines for the Subsidized Independent Living program are spelled out in DCF operating procedures, which are available online at <http://www.dcf.state.fl.us/publications/policies/175-81.pdf>.

2. Services for Youth Age 18 to 23—Fla. Stat. Sec. 409.1451(5)

For youth who are age 18 to 23, services include Aftercare support services, Transitional support services, and the Road to Independence Scholarship Program.

Aftercare services include mentoring, tutoring, mental health services, substance abuse counseling, life skills classes, parenting classes, job skills training, counselor consultations, and temporary financial assistance. Fla. Stat. Sec. 409.1451(5) (a). In addition, temporary financial assistance may be provided to prevent homelessness. *Id.* In some districts, DCF has adopted an internal policy limiting Aftercare financial assistance to \$1,000 per year. Youth who leave foster care at age 18 but request services prior to age 23 are eligible for Aftercare support services. *Id.*

Transitional support services include “financial, housing, counseling, employment, education, mental health, disability and other services, if the young adult demonstrates that the services are critical to the young adult’s own efforts to achieve self-sufficiency and to develop a personal support system.” Fla. Stat. Sec. 409.1451(5)(c). In some districts, DCF has adopted an internal policy limiting Transitional financial assistance to \$5,000 per year paid out in monthly allotments of \$416 rather than as a lump sum. Youth age 18 to 23 are eligible for Transitional

support services if they were dependent as a child, were living in foster care or independent living at age 18, and had spent at least six months living in foster care. *Id.*

Finally, youth age 18 and over are eligible for a Road to Independence Scholarship if they are in school full-time and meet certain criteria. Fla. Stat. Sec. 409.1451(5)(b). Essentially, the Road to Independence scholarship provides eligible youth with a monthly payment of financial assistance that currently totals \$892 per month. The amount of the award is based “on the living and educational needs of the young adult and may be up to, but shall not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.” *Id.*

The Road to Independence Act amendments enacted in 2004 change how the needs assessment is to be calculated, as follows:

The amount of the award, whether it is being used by a young adult working toward completion of a high school diploma or its equivalent or working toward completion of a postsecondary education program, shall be determined based on an assessment of the funding needs of the young adult. This assessment shall consider the young adult's living and educational costs and other grants, scholarships, waivers, earnings, and other income to be received by the young adult. An award shall be available only to the extent that other grants and scholarships are not sufficient to meet the living and educational needs of the young adult, but an award shall not be less than \$25 in order to maintain Medicaid eligibility for the young adult as provided in s. 409.903.

Id. As this new standard is being implemented around the State by local DCF independent living offices, there is some uncertainty as to whether the assessment formulas that they have developed are accurately calculating the actual needs of the scholarship recipients, and a number of program participants have been informed that their scholarship stipends are being reduced to the minimum award amount of \$25 per month based upon erroneous calculations.¹⁰

¹⁰See, e.g., Megan O'Matz, *The Well Runs Dry: State Assessment Formula to Slice into Aid Ex-Foster Children Receive*, SUN-SENTINEL (FT. LAUD.), Nov. 18, 2004, at 1B; Ashley Fantz, *Stipend for Kids May be Slashed*, MIAMI HERALD, July 30, 2004, at 1B.

The Road to Independence Act defines the criteria for the scholarship program as follows:

A young adult who has reached 18 years of age but is not yet 21 years of age is eligible for the initial award, and a young adult under 23 years of age is eligible for renewal awards, if he or she:

a. Was a dependent child, pursuant to chapter 39, and was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday;

b. Spent at least 6 months living in foster care before reaching his or her 18th birthday.

c. Is a resident of this state as defined in s. 1009.40; and

d. Meets one of the following qualifications:

(I) Has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, or has earned a special diploma or special certificate of completion as described in s. 1003.438, and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in s. 1009.533;

(II) Is enrolled full time in an accredited high school¹¹; or

(III) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent.¹²

Fla. Stat. Sec. 409.1451(5)(b).

Youth who receive the Road-to-Independence Scholarship are provided with educational fee waivers for workforce development postsecondary programs, community colleges, and universities. *See* Fla. Stat. Sec. 1009.25(2)(c). The 2004 amendments now require the Road to Independence scholarship applicant “to apply for any other grants and scholarship for which he or she may qualify” and to receive help from DCF in the application process. *See* Fla. Stat. Sec.

¹¹The 2004 amendments to the Road to Independence Act eliminated two previous eligibility requirements in this section that the youth be “within 2 years of graduation, and has maintained a grade point average of at least 2.0 on a scale of 4.0 for the two semesters preceding the date of his or her 18th birthday.” Advocates sought this amendment in order to ensure that applicants enrolled in special education programs would be not deemed ineligible for the Road to Independence scholarships by the two-year graduation or 2.0 grade point average requirement due to their educational disabilities.

¹²Similarly, the amendments eliminated the previous requirement that the scholarship applicant demonstrate that he or she “is making satisfactory progress in that program as certified by the program, and is within 2 years of graduation.”

409.1451(5)(b). Furthermore, youths who receive the Road to Independence Scholarship also are provided with Medicaid coverage. *See Fla. Stat. Sec. 409.903(4).* Youths who are discharged from foster care at age 18 and who elect to participate in the Aftercare or Transitional support services components of the Road to Independence Act are not provided with Medicaid coverage.¹³

C. The Reality of Florida’s Record of Serving Foster Youth Age 18 to 23

1. Florida’s Record of Serving Adolescent Foster Children Under Age 18

DCF’s legal obligation to provide foster youth with Independent Skills training did not begin with the passage of the “Road to Independence Act.” Since the 1980’s, pursuant to former Florida Statute Section 409.165, Florida law has mandated that DCF provide extensive Independent Living skills training to adolescent foster children.

However, the Florida legislature has long acknowledged that the needs of older foster children have not been met and has found as follows:

The foster care system includes a larger pool of older children who have more complicated problems and have been in care for longer periods of time and are not faring well. . . . Alternate care placements for adolescents are often inadequate or inappropriate, and services are inadequate to prepare them for independent living. . . . Adolescents are often inappropriately and repeatedly placed in the foster care system, typically spend long periods in alternate care, lack a stable environment, and exhibit behavior problems such as truancy, delinquency, and physical or sexual abuse.

¹³The Florida Independent Living Advisory Council supports “the expansion of Medicaid to all young adults formerly in foster care exiting the system but recognizes the fiscal limitations.” REVIEW AND RECOMMENDATIONS ON INDEPENDENT LIVING TRANSITION SERVICES, Dec. 31, 2004, at 20. In its 2004 publication (and in the Council’s Draft 2005 REPORT OF INDEPENDENT LIVING SERVICES FOR FOSTER YOUTH IN THE STATE OF FLORIDA, issued in December 2005), the Council recommended to the Florida Legislature that it enact provisions to expand Medicaid coverage “for the priority population of high school students and young adults with mental health issues and developmental disabilities. The Advisory Council supports expansion of Medicaid to all young adults formerly in foster care exiting the system but urges priority be given to these vulnerable subgroups.” *Id.* at 24.

Fla. Stat. Sec. 409.1673.

Despite the longstanding statutory mandate for DCF to provide all adolescent foster youth with Independent Living skills training, this has not occurred. DCF's 2001 Independent Living Annual Report acknowledges that, out of 5,001 eligible foster youth, only 1,295 received Independent Living skills training. *See Florida Department of Children & Families 2001 Independent Living Annual Report (October 1, 2001—September 30, 2002)*. This means that approximately 75% of Florida's foster youth are not receiving the Independent Living skills training to which they are legally entitled. Thus, DCF's own statistics, which DCF is legally required to compile, demonstrate the bleak realities for Florida's older foster children. Unfortunately, even with the increase in funding and the amendments to the law, child advocates have not seen improvements in the services provided to adolescent foster children under age 18.¹⁴ This continues to be one of the most critical legal issues for Florida's older foster children.¹⁵

2. Florida's Record of Serving Foster Youth After Age 18

Unfortunately, the realities for foster youth over age 18 have been even bleaker, and some of the recent changes to Florida law have been harmful to many of these youth, rather than

¹⁴See Megan O'Matz, *Life-Skills Program for Teens is Dropped; DCF in Miami Will Use Money for Caseworkers*, SUN-SENTINEL (FT. LAUD.), Oct. 10, 2003, at 1B; Carol Marbin Miller, *State Gets 10 Days to Prepare Teen for Adulthood*, MIAMI HERALD, Oct. 10, 2003, at 3B; Editorial, *Going Nowhere on Road to Independence: Florida Mustn't Leave Foster Teens in Limbo*, MIAMI HERALD, Oct. 13, 2003.

¹⁵See also Office of Program Policy Analysis & Government Accountability (OPPAGA) Report No. 05-61, *Improvements in Independent Living Services Will Better Assist State's Struggling Youth* (Dec. 2005)(finding, *inter alia*, that foster youth in the OPPAGA sample were five times more likely than non-foster youth to change schools; in the 2003-04 school year, 38% of the foster youth changed schools at least once, compared to only 7% of the general population; and finding that foster youth were *17 times more likely to be homeless* than were non-foster youth their same age)(OPPAGA Report attached).

beneficial to them. In the 1980's, pursuant to former Florida Statute Section 409.145 (3), Florida began offering the services of the children's foster care program, including foster care placements, to youth from age 18 to 21, providing that the youth were in school full-time. In 2000, the Florida legislature amended Section 409.145 to expand eligibility for extended foster care to age 23, providing that the youth were still in school. Thus, until 2002, when the Road to Independence Act was enacted, DCF provided youth over age 18 with a foster care placement, while other youth who were able to live independently were placed in the Subsidized Independent Living Program and resided in their own apartments. In consultation with DCF, the older youth formerly had two options (continued foster care placement or subsidized independent living), depending on the individual needs of the youth.

However, the Road to Independence Act eliminated the option of extended foster care, and now DCF no longer provides the youth with a foster home placement.¹⁶ Instead, DCF offers the youth limited cash assistance, and those youth who seek the monthly support provided by the Road to Independence scholarship must now meet more stringent academic

¹⁶The 2004 amendments to the Road to Independence Act added the following language: "A young adult who is eligible for the Road-to-Independence Program and who so desires shall be allowed to remain in the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday." Fla. Stat. Sec. 409.1451(5) (b) 5.e. However, this option still does not serve the needs of those youths whose foster families or group care providers do not desire to continue providing them room and board, or those youths who were unsuccessful in securing living arrangements after their 18th birthday and who now desire to return to a licensed foster care or group living arrangement while they complete their education.

Advocates for these youths are seeking a further amendment to the statute that would require DCF or the community-based care provider to arrange for the youth to either stay in the current foster home or arrange for alternative foster care or group home living arrangement. This would effectively restore the extended foster care option that was part of Florida law for nearly two decades, with minimal administrative and fiscal impact, in that payment of room and board for these youths is already budgeted through the Road to Independence Program, and Florida has the ability to apply for additional federal Title IV-E funds, which are available to states to extend foster care for youth up to age 19 who are finishing high school.

requirements to receive this assistance. DCF strongly lobbied for this change in the law, as it relieves DCF of the responsibility to provide these youth with placements and enables DCF to terminate these youth from workers' caseloads.

Unfortunately, this change in the law has been calamitous for many youth, particularly those with special needs, who need the care and guidance of foster parents, not just a monthly check. Many of the academic requirements for the new "scholarships," particularly the two-year graduation and 2.0 grade point average requirements that have now been stricken from the statute, disqualified many youth from receiving needed financial assistance. Through no fault of their own, many foster children are moved by DCF multiple times and therefore experience multiple shifts in school placements, resulting in their being unable to keep up academically and being unable to qualify for the scholarship. Moreover, because 75% of these youth were never provided with Independent Living skills training prior to age 18 according to DCF's own statistics, many of these youth have faced dire outcomes as a result of the elimination of extended foster care.

The elimination of extended foster care has had a particularly negative impact on foster youth who have children.¹⁷ In some cases, DCF has either removed or threatened to remove children from teen mothers upon DCF terminating the young mothers from foster care at age 18. In some cases if young mothers do not qualify for the Road to Independence scholarship, then DCF alleges that they are financially unable to care for their children. Additionally, in some cases DCF alleges that young mothers lack the skills to care for their children on their own without the guidance of foster parents that extended foster care formerly provided. Thus, in

¹⁷See, e.g., Megan O'Matz and Shana Gruskin, *State to 18-Year-Olds: You're on Your Own; Advocates Worry About What Will Happen to Teens Who Are No Longer Eligible for DCF Foster Care*, SUN-SENTINEL (FT. LAUD.), June 4, 2003, at 1A.

some cases the elimination of extended foster care has led to families being broken apart and children of former foster care youth being taken into state custody by DCF.

The impact of the elimination of extended foster care also has been especially tragic for youth with disabilities. One of the most tragic cases has been that of Marcel Teague Taylor who died two summers ago at the age of 18 shortly after being discharged from foster care.¹⁸ Since the age of four when he was placed in DCF custody, Marcel had lived in foster homes and psychiatric institutions for the next fourteen years. Although he had no job, had not been enrolled in school and had only an elementary school reading level, and suffered from a severe mental illness for which he took daily psychotropic medications, DCF discharged Marcel from foster care on his eighteenth birthday. Marcel went directly from living in a children's psychiatric institution to living in a motel. Without the care and supervision of foster parents, Marcel drowned in a waterway behind the motel.

Marcel's case illustrates the potential tragic outcomes for youth with disabilities who are forced out of foster care placements and deprived of the safety net that extended foster care had previously provided. A few years ago, in testifying to Congress regarding the Chafee Act, a national child welfare expert had urged all states to offer extended foster care to youth at age 18: "Extending the period of care to 21 is a no brainer to us . . . especially for youth with developmental disabilities. [T]hese kids are only functioning at a 12- to 15-year-old level by the time they reach 18."¹⁹ Florida, however, recently took the backwards step of eliminating its longstanding, and fiscally sensible, extended foster care program.

¹⁸See Megan O'Matz, *All Alone, Too Soon; Some Florida Legislators are Trying to Alter the Law That Ends Foster Care at Age 18; Marcel Taylor's Case Shows Why*, SUN-SENTINEL (FT. LAUD.), July 11, 2003, at 1A.

¹⁹*Congressional Hearings on Foster Care Independent Living at 12* (May 13, 1999) (statement of Mark Kroner).

Because of the dire outcomes that have befallen many youth who have been forced out of extended foster care, Florida's Road to Independence Act has been dubbed the "Road to Homelessness Act" by child advocates.²⁰ Legislation is currently being drafted that seeks to restore extended foster care as an option for Florida's former foster youth, as well as to remedy other concerns with the Road to Independence Act. However, there is much that attorneys can do to help older foster youth within the boundaries of existing law.

D. Advocacy Strategies for Attorneys Who Represent Older Foster Youth

By advocating for older foster youth, attorneys can make a significant difference in the lives of these youth. Advocacy strategies vary, depending on whether the youth is under age 18 or over age 18. Additionally, special advocacy is needed for youth who have children and for youth with disabilities.

1. Advocacy for Older Foster Children Under Age 18

The cases of foster children under age 18 are under the jurisdiction of the juvenile division of the circuit court and are subject to regular judicial review pursuant to Chapter 39 of the Florida statutes. Federal law mandates that a judicial review of a foster child's case shall determine "in the case of a child who has attained age 16, the services needed to assist the child to make the transition from foster care to independent living." 42 U.S.C. Sec. 675 (5) (C).

In addition, every child in foster care must have a case plan that is approved by the court. *See Fla. Stat. Secs. 39.601-39.603.* Federal law specifically mandates that, in addition to all other requirements for a foster child's case plan, "for a child age 16 or over, the case plan must also

²⁰*See, e.g. Megan O'Matz and Shana Gruskin, State to 18-Year-Olds: You're on Your Own; Advocates Worry About What Will Happen to Teens Who Are No Longer Eligible for DCF Foster Care, SUN-SENTINEL (FT. LAUD.), June 4, 2003, at 1A; Megan O'Matz, A Tough Road to Independence: Advocates Say the State Does Little For Foster Kids Who Reach Age 18, SUN-SENTINEL (FT. LAUD.), June 25, 2003, at 1B; Editorial, Protect Foster Teens: Reverse New Law's Cruel Effects, MIAMI HERALD, June 27, 2003; Editorial, No Home, No Money, No Help, ST. PETERSBURG TIMES, Oct. 27, 2003, at 8A.*

include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living.” 42 U.S.C. Sec. 675(1) (C).

Further, DCF adopted a specific operating procedure to govern DCF’s fulfillment of its legal obligation to provide Independent Living services to older foster youth. *See DCF Operating Procedure No. 175-80, “Independent Living Services,” available at <http://www.dcf.state.fl.us/publications/policies/175-80.pdf>.* The DCF Operating Procedure requires DCF to conduct an Independent Living Assessment prior to a foster youth’s 16th birthday and sets forth the procedures for creating an individualized Independent Living case plan: “[T]he youth with assistance from the counselor completes an assessment to identify specific skills the youth already has, skills the youth must learn to live on his or her own, and the appropriate level of entry into the basic living skills training. Based on this assessment, the training and services needed to teach the necessary skills are identified and target dates are for [sic] obtaining those skills are determined. . . The training tasks and services and the target dates are then incorporated into the youth’s case plan.” *Id.* In addition, DCF’s Operating Procedure specifies in detail the Independent Living services and skills training that the adolescent child’s case plan must contain, including “[d]ocumentation of proposed services by the department, such as educational and employment-related assistance, counseling, therapy, skills training, etc., including the type of service and nature and frequency of contact.” *Id.* The DCF Operating Procedure further provides that: “Staff must assist the youth in re-assessing his or her skill level and update the case plan accordingly prior to each judicial review.” *Id.*²¹

In addition to the case plan requirements set forth in Fla. Stat. Secs. 39.601-39.603, and the DCF Operating Procedure, the 2004 amendments to the Road to Independence Act are especially significant for children age 13 to 18 in that they require that the court exercise much

²¹To the extent that these guidelines differ from the 2004 changes to Fla. Stat. Sec. 409.1451 (3) & (4), which are described above, the statutory requirements take precedence.

greater oversight of DCF's provision of independent living services to the youth, pursuant to its judicial review authority in Fla. Stat. Sec. 39.701, than was previously mandated or permitted by Florida law. New section 39.701(6) (a) requires that the court conduct a judicial review hearing within 90 days after a child's 17th birthday. *Id.* It permits the court the discretion to review the status of the child more frequently during the year prior to the child's 18th birthday. *Id.* At each judicial review held after the child's 17th birthday, in addition to hearing from DCF or the community-based care provider, the child's foster parent, or guardian ad litem about the child's best interests and particularly the provision of independent living transition services, the statute also requires the court to give the child the opportunity to speak directly to the court about any concerns relating to independent living transition services or any other matters. *Id.*

Fla. Stat. Sec. 39.701(6) (a) mandates that DCF include in its judicial review social study report written verification that the child:

1. has been provided a current Medicaid card; a certified copy of his or her birth certificate;
2. has a valid driver's license or Florida identification card;
3. has been provided information relating to Social Security (SSA) insurance benefits, if any, that the child is entitled to receive, and a full accounting of the SSA funds that are being held in trust for the child by DCF and information about how to access those funds;
4. has been given information and training about budgeting skills, interviewing skills, and parenting skills;
5. has been provided all relevant information about the Road to Independence Act scholarship, eligibility requirements, forms necessary to apply, and assistance in completing the forms;
6. has an open bank account or has identification necessary to open such an account, and has been provided with essential banking skills;
7. has been provided with information on public assistance and how to apply;
8. has been provided with a clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in.

Id.

At the first judicial review hearing held after the child's 17th birthday, DCF is required to provide the court with an updated case plan that includes specific information related to

independent living services that have been provided since the child's 13th birthday, or since the child came into care, whichever came first. *Id.*

Most notably for purposes of the court's authority to assure DCF compliance with its obligations under the requirements of the Road to Independence Act, Fla. Stat. Sec. 39.701(6) (c) specifies that the court may exercise contempt powers against DCF if the agency fails to comply with its obligations as set out in the youth's permanency case plan or in Fla. Stat. Sec. 409.1451(4) (a) 4. The court can issue a show cause order and "[i]f cause is shown for failure to comply with this or any subsequent order, the department may be held in contempt." However, once the child turns 18, the court is divested of authority to enforce any previous order of civil contempt,²² although case law establishes that a finding of criminal contempt against the department can be enforced after the juvenile court jurisdiction over the child has terminated.²³

Attorneys who represent an older foster child should advocate before the juvenile court to ensure that the child's case plan includes specific Independent Living services and skills training tailored to the child's individual needs.²⁴ Attorneys should also ensure that the youth is involved in the development of the plan. The Chafee Act emphasizes the importance of youth involvement and requires states to ensure that "adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living." 42 U.S.C. Sec. 677 (b) (3) (H) (2003). The youth's attorney should ensure that the youth participate in the development of the case plan at all of the statutorily required pre-

²²See note 24, *infra*.

²³See, e.g., *Sprouse v. Sprouse*, 408 So.2d 632, 633 (Fla. 5th DCA 1982) ("Criminal contempt is separate and distinct from the case in chief. A criminal contempt, direct or indirect, is an offense against the court itself for which punishment is the penalty. An indirect criminal contempt proceeding is not instituted by motion of a party but by motion of the court or affidavit of any person having knowledge of the facts. The court then issues and signs an order to show cause.").

²⁴See Kathi Grasso, *Litigating the Independent Living Case*, 18 ABA CHILD LAW PRACTICE 8 (October 1999).

independent living and life skills staffings (meetings) and the attorney should actively advocate for the child's legal interests in the case planning staffings.

Additionally, once the court adopts the child's case plan, it becomes an order of the court. By invoking the authority of the court, attorneys can ensure that the child's case plan is not merely a "paper plan" and that the child is actually provided the mandated services. If DCF fails to provide the services, then the child's attorney can file motions to compel and motions for a rule to show cause as to why DCF should not be held in contempt, as set forth in Fla. Stat. Sec. 39.701(6). If every adolescent foster child had an attorney to advocate for him or her in this way, then statistics would no longer show that 75% of Florida's foster youth do not receive the Independent Living skills training to which they are legally entitled.

2. Advocacy for Youth Age 18 and Over

Although foster children under age 18 have access to judicial relief through the jurisdiction of the circuit court's juvenile division, jurisdiction ends when the child turns age 18. Fla. Stat. Sec. 39.40(2). In 2005, the Florida legislature amended Chapter 39 to permit a youth to petition for the juvenile courts to retain jurisdiction until the youth's 19th birthday.²⁵ Thus, foster youth who depend on juvenile court oversight to provide them with some redress for actions taken or not taken by DCF have the option to seek redress to enforce their rights to

²⁵See §39.013(2), Fla. Stat. (2005)("If a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Scholarship, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday.").

independent living, mental health, and developmental disability services for up to one year past age 18.²⁶

The Road to Independence Act mandates that DCF provide an administrative appeals process to youth age 18 and over as follows:

Appeals process.

1. The Department of Children and Family Services shall adopt by rule a procedure by which a young adult may appeal an eligibility determination or the department's failure to provide aftercare, scholarship, or transitional support services, or the termination of such services, if such funds are available.

2. The procedure developed by the department must be readily available to young adults, must provide timely decisions, and must provide for an appeal to the Secretary of Children and Family Services. The decision of the secretary constitutes final agency action and is reviewable by the court as provided in s. 120.68.

Fla. Stat. Sec. 409.1451 (5) (e).

The Road to Independence Act took effect on October 1, 2002. However, to date, over two years later, DCF has not adopted any administrative rules describing the procedures by which youth may appeal DCF's determinations to deny or terminate services.²⁷ While the

²⁶This limited extension of jurisdiction effectively overturns several prior district court opinions holding that the youth could not seek extended jurisdiction past age 18. *See, e.g., DCF v. C.K.*, 851 So. 2d 206 (Fla. 3d DCA 2003); *N.L. and L.R. v. DCF*, 770 So. 2d 220 (Fla. 3d DCA 2000); *L.Y. and Melody v. HRS*, 696 So. 2d 430, 432 (Fla. 4th DCA 1997). Youth over 18 could also assert federal statutory and constitutional causes of action in federal court, although the one-year extension option may foreclose federal court remedies for youth who petition the court for retention of jurisdiction through age 19. *See, e.g., Bonnie L. v. Bush*, 180 F. Supp. 2d 1321, 1338 (S.D. Fla. 2001) (“As juvenile court jurisdiction is not extended to individuals in extended foster care pursuant to Fla. Stat. § 409.145 [2000], such [federal statutory claims] are not barred by *Younger* [*v. Harris*, 401 U.S. 37 (1971)] as the first *Middlesex* [*County Ethics Comm. V. Garden State Bar Assn.*, 457 U.S. 423 (1982)] prong is not met as there is no ongoing state proceeding.”)(citations omitted), *aff'd by 31 Foster Children v. Bush*, 329 F.3d 1244 (11th Cir. 2003); *Mathis v. Regier*, Case No. 04-20169 (S.D. Fla. 2004)(Americans With Disabilities Act claim by 18 year old former foster youth in federal district court); *Ocean v. Kearney*, 123 F. Supp. 2d 618 (S.D. Fla. 2000)(14th Amendment procedural due process claim by 18 year old in federal court).

²⁷DCF has only recently published *proposed* rules for fair hearing appeals of Road to Independence denials, reductions, or terminations. *See* Fla. Admin. Code Proposed Rule 65C-31.008 (Independent Living Benefits—Policy Clarification on Due Process Notification) (Fla. Admin. Weekly, Oct. 28, 2005).

current practice in DCF districts varies, most youth statewide are not provided *any* notice of how they can appeal, or if they are provided notice of some administrative appellate procedure and the judicial review following exhaustion of the administrative appeals process, it is so complex that it is impossible for them to navigate it themselves. Children's attorneys are currently attempting to remedy the serious system-wide problem of DCF's failure to adopt administrative rules as required by the statute and DCF's violation of the fundamental rights of these youth to receive the procedural due process safeguards that are afforded to all clients of government benefit programs.

Attorneys are urgently needed to represent youth age 18 and over in appealing DCF's decisions to deny, reduce, terminate, or take no action on applications for benefits under the Road to Independence Act. Pending the adoption of a formal rule, attorneys can advocate for youth to the DCF Independent Living program and write an informal appeal to the DCF District Administrator and/or the DCF Secretary. In many cases, attorneys will achieve a resolution for their young clients without further review or litigation. Attorneys can also exercise their clients' rights under the Florida Administrative Procedure Act, Chapter 120 of the Florida statutes, including the right to judicial review of final agency action.

Without being represented by attorneys, youth do not have the ability to navigate the administrative process and to achieve resolution in their cases *pro se*. An attorney's zealous advocacy can make the difference between a foster youth becoming homeless or obtaining the benefits to which he or she is legally entitled to make successful transition to a productive adulthood.

3. Advocacy for Youth with Special Needs

Attorneys are particularly needed to advocate for two groups of foster youth with special circumstances and needs: youth who are parents of children, and youth with disabilities.

a) Advocacy for Youth with Children

The Florida Department of Children & Families' application for the federal Chafee Independent Living funds, signed by the DCF Secretary, certified as follows: "Youth with children or who are pregnant are not excluded from participating in the independent living or the subsidized independent living program. The family services counselor and/or the independent living coordinator assists the youth in locating appropriate services, such as prenatal care, housing and daycare, etc." *See Florida Department of Children and Families FY 2001-2004 Application for the Chafee Foster Care Independence Program.* The Department's Operating Procedure further provides for independent living services to include "[s]pecial initiatives to assist teen parents in foster care and their children in making the transition from being in the department's care." *See DCF Operating Procedure 175-80, Independent Living Services.* Attorneys for youth with children should ensure that their clients are provided with the services to which they are legally entitled to enable the youth to care for their children while achieving independence.

Additionally, attorneys are needed to represent youth with children in order to ensure family preservation. Under the law, a parent's financial inability is not grounds for a child to be declared dependent on the state. *See Fla. Stat. Sec. 39.01(45).* Additionally, a child may not be removed from a parent if the provision of services by DCF would allow the child to remain safely at home. *See Fla. Stat. Sec. 39.402 (7).* DCF needs to make efforts to "preserve and strengthen the child's family whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal." *See Fla. Stat. Sec. 39.001.* Unfortunately, in some cases DCF seeks to illegally remove children from foster youth because of the youth's financial inability or other circumstances beyond the youth's control, and DCF often does not provide appropriate services to these youth. Therefore,

attorneys are particularly needed to advocate for family preservation for foster youth who have children.

b. Advocacy for Youth With Disabilities

Special advocacy is also needed for youth with disabilities. Under the law, youth with disabilities are equally entitled to receive independent living services. The Chafee Act makes clear that independent living services must be provided to youth “at various stages of independence,” including youth with disabilities. 42 U.S.C. Sec. 677 (b) (2) (C). Youth with disabilities may need additional and specialized programming to help them achieve independence, and state child welfare agencies must provide developmentally appropriate independent living services.²⁸

Additionally, in order to receive federal Chafee funding for its foster care Independent Living program, DCF is specifically required to be in compliance with the federal Americans with Disabilities Act (ADA). The ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, program, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. Sec. 12132. In accordance with the ADA, DCF is required to provide reasonable accommodations to youth with disabilities to enable them to participate in all independent living services and programs.

The Florida Department of Children & Families’ application for the Chafee Independent Living funds, signed by the DCF Secretary, certifies as follows:

All youth in foster care are eligible for independent living services and they are provided an equal opportunity to participate. Youth with disabilities, who are in foster care, are eligible for this program and the subsidized independent living

²⁸See Juvenile Law Center, *Dependent Youth Aging Out of Foster Care; A Guide for Judges* (2003), available at <http://www.jlc.org/Resources/pdfs/agingoutjudgesguide.pdf>.

program and may not be deemed ineligible from this program on the basis of their disability, according to the Americans with Disabilities Act of 1992, Title II.

Though a youth with a disability (physical, emotional, or learning) may need additional supports from other organizations or agencies, the youth is still eligible for any and all services from the program. Reasonable accommodations must be provided to insure that each youth has access to services provided by the program.

See Florida Department of Children and Families FY 2001-2004 Application for the Chafee Foster Care Independence Program.

Moreover, DCF's Operating Procedure regarding Independent Living Services provides:

All youth in foster care age 16 to their 21st birthday are to be assessed for and receive independent living services. Eligibility is not restricted to youth who are targeted for subsidized independent living. Eligibility for participation in the independent living program is only determined by age.

- (1) Youths with disabilities who are adjudicated dependent are eligible for this program and may not be deemed ineligible from this program on the basis of their disability, according to the Americans with Disabilities Act of 1992, Title II.
- (2) Though a youth with a disability may need additional supports from other organizations or agencies such as Developmental Services, Mental Health or Vocational Rehabilitation, the youth is still eligible for any and all services from the independent living program, including subsidized independent living.
- (3) Reasonable accommodations must be provided to ensure that each youth has access to the services provided by the program.

See DCF Operating Procedure 175-80, Independent Living Services.

Unfortunately, contrary to the law, many foster youth with disabilities are not provided with independent living services or skills training to meet their special needs. Attorneys for foster youth with disabilities should zealously advocate for DCF to provide the youth with the full range of independent living services to which they are legally entitled.

Additionally, many foster youth with disabilities are in special education programs, and attorneys who represent these youths should ensure that appropriate educational services are coordinated with the youth's school.²⁹ Pursuant to the Individuals with Disabilities Education

²⁹See generally Florida Statute Sec. 39.0016 ("Education of Abused, Neglected and Abandoned Children") (2004 amendment to Florida law establishing goals for the Department of

Act (IDEA), every youth in a special education program must have an Individualized Education Plan (IEP). 20 U.S.C. Secs. 1414-1415. For adolescent youth, the IEP must contain educational transition services to help the youth make the transition to adulthood. *Id.* Attorneys for these youth should advocate to ensure that DCF coordinates DCF's independent living plan for the youth with the school's IEP for the youth.

Advocacy is also needed for youth with disabilities who are being denied access to the Road to Independence scholarship program. Although DCF must provide reasonable accommodations to enable youth with disabilities to participate in all Independent Living programs, DCF has not provided reasonable accommodations to enable youth with disabilities to participate in the Road to Independence scholarship program. The Road to Independence Act formerly provided for youth in high school to receive the scholarship if they had a 2.0 grade point average for the two semesters prior to their 18th birthday and were within two years of graduation. *See Fla. Stat. Sec. 409.1451(4) (b) (2) (2003).* However, because youth with disabilities who are in special education programs are not required to have a 2.0 grade point average in order to graduate high school with a special diploma, *see Fla. Stat. Sec. 1003.438*, and because youth with disabilities may remain in high school through age 22, *see 20 U.S.C. Sec. 1412*, these eligibility requirements were dropped from the statute in 2004. Notwithstanding this, DCF is not providing disabled youth with reasonable accommodations to enable them to receive the Road to Independence scholarship. Instead, DCF is informing youth with disabilities that they must drop out of high school and enroll in a GED program if they wish to apply for a Road to Independence scholarship. Attorneys are needed to represent youth with disabilities and to litigate the issue for these youth to whom DCF is denying reasonable accommodations.

Another subgroup of foster youth with disabilities particularly in need of legal advocacy are those youth with mental health needs who DCF seeks to commit to psychiatric facilities. The section of this CLE manual and seminar devoted to Rule 8.350 and Mental Health Services and Laws discusses advocacy for these foster youth.

APPENDIX

Senate Bill sb1314er

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2 An act relating to independent living; amending
3 s. [39.013](#), F.S.; authorizing a child in foster
4 care to petition the court to retain
5 jurisdiction of his or her case; limiting the
6 court's continued jurisdiction to 1 year after
7 the child's 18th birthday; identifying the
8 issues to be considered by the court during its
9 continued jurisdiction; providing that the
10 jurisdiction of the court terminates under
11 specified conditions; providing that the court
12 encourage the Statewide Guardian Ad Litem
13 Office to provide greater representation to
14 certain children; amending s. [39.701](#), F.S.;
15 requiring the Department of Children and Family
16 Services to include in its judicial review
17 study report verification that the child has
18 been provided with certain information about
19 the Road-to-Independence Scholarship Program
20 and with notice of the child's right to
21 petition the court for continuing jurisdiction;
22 amending s. [409.1451](#), F.S.; authorizing a child
23 who is eligible for the Road-to-Independence
24 Scholarship Program to continue to reside with

25 a licensed foster family or a group care
26 provider; requiring that the department enroll
27 certain young adults who were formerly in
28 foster care in the Florida KidCare program if
29 they do not otherwise have health insurance or
30 are not eligible for Medicaid; requiring that
31 the Independent Living Services Advisory

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1 Council study the most effective way of
2 providing health insurance for young adults in
3 the program for independent living who are not
4 eligible for the Florida KidCare program;
5 requiring the council to report its
6 recommendations to the Legislature; providing
7 an appropriation; requiring the department to
8 adopt rules; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Subsection (2) of section 39.013, Florida
13 Statutes, is amended, and a new subsection (12) is added to
14 that section, to read:

15 39.013 Procedures and jurisdiction; right to

16 counsel.--

17 (2) The circuit court shall have exclusive original
18 jurisdiction of all proceedings under this chapter, of a child
19 voluntarily placed with a licensed child-caring agency, a
20 licensed child-placing agency, or the department, and of the
21 adoption of children whose parental rights have been
22 terminated under ~~pursuant to~~ this chapter. Jurisdiction
23 attaches when the initial shelter petition, dependency
24 petition, or termination of parental rights petition is filed
25 or when a child is taken into the custody of the department.
26 The circuit court may assume jurisdiction over any such
27 proceeding regardless of whether the child was in the physical
28 custody of both parents, was in the sole legal or physical
29 custody of only one parent, caregiver, or some other person,
30 or was in the physical or legal custody of no person when the
31 event or condition occurred that brought the child to the

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1 attention of the court. When the court obtains jurisdiction of
2 any child who has been found to be dependent, the court shall
3 retain jurisdiction, unless relinquished by its order, until
4 the child reaches 18 years of age. However, if a youth
5 petitions the court at any time before his or her 19th
6 birthday requesting the court's continued jurisdiction, the
7 juvenile court may retain jurisdiction under this chapter for

8 a period not to exceed 1 year following the youth's 18th
9 birthday for the purpose of determining whether appropriate
10 aftercare support, Road-to-Independence Scholarship,
11 transitional support, mental health, and developmental
12 disability services, to the extent otherwise authorized by
13 law, have been provided to the formerly dependent child who
14 was in the legal custody of the department immediately before
15 his or her 18th birthday. If a petition for special immigrant
16 juvenile status and an application for adjustment of status
17 have been filed on behalf of a foster child and the petition
18 and application have not been granted by the time the child
19 reaches 18 years of age, the court may retain jurisdiction
20 over the dependency case solely for the purpose of allowing
21 the continued consideration of the petition and application by
22 federal authorities. Review hearings for the child shall be
23 set solely for the purpose of determining the status of the
24 petition and application. The court's jurisdiction terminates
25 upon the final decision of the federal authorities. Retention
26 of jurisdiction in this instance does not affect the services
27 available to a young adult under s. [409.1451](#). The court may
28 not retain jurisdiction of the case after the immigrant
29 child's 22nd birthday.

30 (12) The court shall encourage the Statewide Guardian
31 Ad Litem Office to provide greater representation to those

1 children who are within 1 year of transferring out of foster
2 care.

3 Section 2. Paragraph (a) of subsection (6) of section
4 [39.701](#), Florida Statutes, is amended to read:

5 [39.701](#) Judicial review.--

6 (6)(a) In addition to ~~the provisions of~~ paragraphs
7 (1)(a) and (2)(a), the court shall hold a judicial review
8 hearing within 90 days after a youth's 17th birthday and shall
9 continue to hold timely judicial review hearings. In addition,
10 the court may review the status of the child more frequently
11 during the year prior to the youth's 18th birthday if
12 necessary. At each review held under ~~pursuant to~~ this
13 subsection, in addition to any information or report provided
14 to the court, the foster parent, legal custodian, guardian ad
15 litem, and the child shall be given the opportunity to address
16 the court with any information relevant to the child's best
17 interests, particularly as it relates to ~~the provision of~~
18 independent living transition services. In addition to any
19 information or report provided to the court, the department
20 shall include in its judicial review social study report
21 written verification that the child:

22 1. Has been provided with a current Medicaid card and
23 has been provided all necessary information concerning the
24 Medicaid program sufficient to prepare the youth to apply for
25 coverage upon reaching age 18, if such application would be
26 appropriate.

27 2. Has been provided with a certified copy of his or
28 her birth certificate and, if the child does not have a valid

29 driver's license, a Florida identification card issued under
30 ~~pursuant to~~ s. 322.051.

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1 3. Has been provided information relating to Social
2 Security Insurance benefits if the child is eligible for these
3 ~~such~~ benefits. If the child has received these benefits and
4 they are being held in trust for the child, a full accounting
5 of those funds must ~~shall~~ be provided and the child must be
6 informed about how to access those funds.

7 4. Has been provided with information and training
8 related to budgeting skills, interviewing skills, and
9 parenting skills.

10 5. Has been provided with all relevant information
11 related to the Road-to-Independence Scholarship, including,
12 but not limited to, eligibility requirements, forms necessary
13 to apply, and assistance in completing the forms. The child
14 shall also be informed that, if he or she is eligible for the
15 Road-to-Independence Scholarship Program, he or she may reside
16 with the licensed foster family or group care provider with
17 whom the child was residing at the time of attaining his or
18 her 18th birthday or may reside in another licensed foster
19 home or with a group care provider arranged by the department.

20 6. Has an open bank account, or has identification
21 necessary to open ~~such~~ an account, and has been provided with
22 essential banking skills.

23 7. Has been provided with information on public
24 assistance and how to apply.

25 8. Has been provided a clear understanding of where he
26 or she will be living on his or her 18th birthday, how living
27 expenses will be paid, and what educational program or school
28 he or she will be enrolled in.

29 9. Has been provided with notice of the youth's right
30 to petition for the court's continuing jurisdiction for 1 year
31

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1 after the youth's 18th birthday as specified in s. 39.013(2)
2 and with information on how to obtain access to the court.

3 10. Has been encouraged to attend all judicial review
4 hearings occurring after his or her 17th birthday.

5 Section 3. Paragraphs (b) and (d) of subsection (5) of
6 section [409.1451](#), Florida Statutes, are amended, present
7 subsection (9) of that section is redesignated as subsection
8 (10), and a new subsection (9) is added to that section, to
9 read:

10 [409.1451](#) Independent living transition services.--

11 (5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER

12 CARE.--Based on the availability of funds, the department
13 shall provide or arrange for the following services to young
14 adults formerly in foster care who meet the prescribed
15 conditions and are determined eligible by the department. The
16 categories of services available to assist a young adult
17 formerly in foster care to achieve independence are:

18 (b) Road-to-Independence Scholarship Program.--

19 1. The Road-to-Independence Scholarship Program is
20 intended to help eligible students who are former foster
21 children in this state to receive the educational and
22 vocational training needed to achieve independence. The amount
23 of the award shall be based on the living and educational
24 needs of the young adult and may be up to, but may ~~shall~~ not
25 exceed, the amount of earnings that the student would have
26 been eligible to earn working a 40-hour-a-week federal minimum
27 wage job.

28 2. A young adult who has reached 18 years of age but
29 is not yet 21 years of age is eligible for the initial award,
30 and a young adult under 23 years of age is eligible for
31 renewal awards, if he or she:

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1 a. Was a dependent child, under ~~pursuant to~~ chapter
2 39, and was living in licensed foster care or in subsidized

3 independent living at the time of his or her 18th birthday;

4 b. Spent at least 6 months living in foster care
5 before reaching his or her 18th birthday;

6 c. Is a resident of this state as defined in s.
7 1009.40; and

8 d. Meets one of the following qualifications:

9 (I) Has earned a standard high school diploma or its
10 equivalent as described in s. 1003.43 or s. 1003.435, or has
11 earned a special diploma or special certificate of completion
12 as described in s. 1003.438, and has been admitted for
13 full-time enrollment in an eligible postsecondary education
14 institution as defined in s. 1009.533;

15 (II) Is enrolled full time in an accredited high
16 school; or

17 (III) Is enrolled full time in an accredited adult
18 education program designed to provide the student with a high
19 school diploma or its equivalent.

20 3. A young adult applying for a Road-to-Independence
21 Scholarship must apply for any other grants and scholarships
22 for which he or she may qualify. The department shall assist
23 the young adult in the application process and may use the
24 federal financial aid grant process to determine the funding
25 needs of the young adult.

26 4. The amount of the award, whether it is being used
27 by a young adult working toward completion of a high school
28 diploma or its equivalent or working toward completion of a
29 postsecondary education program, shall be determined based on
30 an assessment of the funding needs of the young adult. This
31 assessment must ~~shall~~ consider the young adult's living and

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1 educational costs and other grants, scholarships, waivers,
2 earnings, and other income to be received by the young adult.
3 An award shall be available only to the extent that other
4 grants and scholarships are not sufficient to meet the living
5 and educational needs of the young adult, but an award may
6 ~~shall~~ not be less than \$25 in order to maintain Medicaid
7 eligibility for the young adult as provided in s. [409.903](#).

8 5.a. The department must advertise the availability of
9 the program and must ensure that the children and young adults
10 leaving foster care, foster parents, or family services
11 counselors are informed of the availability of the program and
12 the application procedures.

13 b. A young adult must apply for the initial award
14 during the 6 months immediately preceding his or her 18th
15 birthday, and the department shall provide assistance with the
16 application process. A young adult who fails to make an
17 initial application, but who otherwise meets the criteria for
18 an initial award, may make one application for the initial
19 award if the ~~such~~ application is made before the young adult's
20 21st birthday. If the young adult does not apply for an
21 initial award before his or her 18th birthday, the department
22 shall inform that young adult of the opportunity to apply
23 before turning 21 years of age.

24 c. If funding for the program is available, the
25 department shall issue awards from the scholarship program for
26 each young adult who meets all the requirements of the
27 program.

28 d. An award shall be issued at the time the eligible
29 student reaches 18 years of age.

30 e. A young adult who is eligible for the
31 Road-to-Independence Program and who so desires shall be

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1 allowed to reside with ~~remain in~~ the licensed foster family or
2 group care provider with whom he or she was residing at the
3 time of attaining his or her 18th birthday or to reside in
4 another licensed foster home or with a group care provider
5 arranged by the department.

6 f. If the award recipient transfers from one eligible
7 institution to another and continues to meet eligibility
8 requirements, the award must be transferred with the
9 recipient.

10 g. Scholarship funds awarded to any eligible young
11 adult under this program are in addition to any other services
12 provided to the young adult by the department through its
13 independent living transition services.

14 h. The department shall provide information concerning
15 young adults receiving the Road-to-Independence Scholarship to

16 the Department of Education for inclusion in the student
17 financial assistance database, as provided in s. 1009.94.
18 i. Scholarship funds are intended to help eligible
19 students who are former foster children in this state to
20 receive the educational and vocational training needed to
21 become independent and self-supporting. The ~~Such~~ funds shall
22 be terminated when the young adult has attained one of four
23 postsecondary goals under ~~pursuant to~~ subsection (3) or
24 reaches 23 years of age, whichever occurs earlier. In order to
25 initiate postsecondary education, to allow for a change in
26 career goal, or to obtain additional skills in the same
27 educational or vocational area, a young adult may earn no more
28 than two diplomas, certificates, or credentials. A young adult
29 attaining an associate of arts or associate of science degree
30 shall be permitted to work toward completion of a bachelor of
31 arts or a bachelor of science degree or an equivalent

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1 undergraduate degree. Road-to-Independence Scholarship funds
2 may ~~shall~~ not be used for education or training after a young
3 adult has attained a bachelor of arts or a bachelor of science
4 degree or an equivalent undergraduate degree.

5 j. The department shall evaluate and renew each award
6 annually during the 90-day period before the young adult's

7 birthday. In order to be eligible for a renewal award for the
8 subsequent year, the young adult must:

9 (I) Complete the number of hours, or the equivalent
10 considered full time by the educational institution, in the
11 last academic year in which the young adult earned a
12 scholarship, except for a young adult who meets the
13 requirements of s. 1009.41.

14 (II) Maintain appropriate progress as required by the
15 educational institution, except that, if the young adult's
16 progress is insufficient to renew the scholarship at any time
17 during the eligibility period, the young adult may restore
18 eligibility by improving his or her progress to the required
19 level.

20 k. Scholarship funds may be terminated during the
21 interim between an award and the evaluation for a renewal
22 award if the department determines that the award recipient is
23 no longer enrolled in an educational institution as defined in
24 sub-subparagraph 2.d., or is no longer a state resident. The
25 department shall notify a student who is terminated and inform
26 the student of his or her right to appeal.

27 l. An award recipient who does not qualify for a
28 renewal award or who chooses not to renew the award may
29 subsequently apply for reinstatement. An application for
30 reinstatement must be made before the young adult reaches 23
31 years of age, and a student may not apply for reinstatement

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1 more than once. In order to be eligible for reinstatement, the
2 young adult must meet the eligibility criteria and the
3 criteria for award renewal for the scholarship program.

4 (d) Payment of aftercare, scholarship, or transitional
5 support funds.--Payment of aftercare, scholarship, or
6 transitional support funds shall be made directly to the
7 recipient unless the recipient requests in writing to the
8 community-based care lead agency, or the department, that the
9 payments or a portion of the payments be made directly on the
10 recipient's behalf in order to secure services such as
11 housing, counseling, education, or employment training as part
12 of the young adult's own efforts to achieve self-sufficiency.
13 The young adult who resides ~~continues~~ with a foster family may
14 ~~shall~~ not be included as a child in calculating any licensing
15 restriction on the number of children in the foster home.

16 (9) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN
17 FOSTER CARE.--The department shall enroll in the Florida
18 KidCare program, outside the open enrollment period, each
19 young adult who is eligible as described in s. 409.1451(2)(b)
20 and who has not yet reached his or her 19th birthday.

21 (a) A young adult who was formerly in foster care at
22 the time of his or her 18th birthday and who is 18 years of
23 age but not yet 19, shall pay the premium for the Florida
24 KidCare program as required in s. 409.814.

25 (b) A young adult who has health insurance coverage
26 from a third party through his or her employer or who is
27 eligible for Medicaid is not eligible for enrollment under

28 this subsection.

29 Section 4. The Independent Living Services Advisory
30 Council shall conduct a study to determine the most effective
31 way to address the health insurance needs of young adults who

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1 are in the Independent Living Program of the Department of
2 Children and Family Services once the young adults are no
3 longer eligible for the Florida KidCare program. The
4 department and the Agency for Health Care Administration shall
5 assist the advisory council in conducting the study. The
6 advisory council shall provide a report containing
7 recommendations to the Legislature by January 2, 2006.

8 Section 5. The nonrecurring sum of \$1,100,000 from the
9 General Revenue Fund shall be appropriated to the Department
10 of Children and Family Services for Fiscal Year 2005-2006 to
11 implement the provisions of this act.

12 Section 6. The Department of Children and Family
13 Services shall adopt rules to administer this act.

14 Section 7. This act shall take effect July 1, 2005.

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