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Fostering Success: The Need for Continued Foster Care Beyond Age Twenty-One

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FOSTERING SUCCESS: THE NEED FOR CONTINUED FOSTER CARE BEYOND AGE TWENTY-ONE

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INTRODUCTION

Emergence into adulthood is a gradual process.¹ For most young adults, the journey from dependence to independence is a continuum, allowing the exploration of new roles and responsibilities with the safety net of parents to fall back on in times of crisis.² However, for former foster youth who have aged out of the system, the transition into adulthood is less a continuum and more a cliff. With an abrupt end of care and services, many emancipated foster youth are set “on a path to continued disadvantage in adulthood.”³ Prior to 2008, foster youth were expected to have all their “ducks in a row” by age eighteen and independently make the transition into adulthood.⁴ In 2008, Congress passed the Fostering Connections to Success and Increasing Adoptions Act (“Fostering Connections Act” or “FCA”), which allowed states to “claim federal reimbursement for the costs of caring for and supervising Title IV-E eligible foster youth until age 21.”⁵ While this law was a step in the right direction, assisting former foster youth in their transition into adulthood should not stop at twenty-one.⁶

1. “The path that individuals take from dependency in childhood to independence in adulthood is now a longer and more complicated one than at any other point in history.” David Wood et al., *Emerging Adulthood as a Critical Stage in the Life Course*, in HANDBOOK OF LIFE COURSE HEALTH DEVELOPMENT 123, 123 (Neal Halfon et al. eds., 2018) (citing Jeffrey J. Arnett, *Emerging Adulthood: The Winding Road from the Late Teens Through the Twenties*, N.Y.C.: OXFORD U. PRESS (2nd ed. 2014)).

2. Stephanie Cosner Berzin et al., *Emerging Versus Emancipating: The Transition to Adulthood for Youth in Foster Care*, 29 J. ADOLESCENT RSCH. 616, 617 (2014).

3. *Id.*

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

5. The Act amended parts B and E of Title IV of the Social Security Act. Clark M. Peters et al., *Extending Foster Care to Age 21: Weighing the Costs to Government Against the Benefits to Youth*, CHAPIN HALL 1 (June 2009), <https://assets.aecf.org/m/resourcedoc/UC-ExtendingFosterCaretoAge21-2009.pdf>. *See generally* Fostering Connections to Success and Increasing Adoptions Act.

6. In California, care has not stopped with the Fostering Connections Act. As of 2023, the California Senate is reviewing a bill that proposes a three-year pilot program that extends foster care to NMDs until age twenty-two if the youth is experiencing homelessness or is at reasonable risk of homelessness and not under the juvenile court’s jurisdiction. *See* S.B. 9, 2023-2024 Leg., Reg. Sess. (Cal. 2023).

When a child is removed from their home because of abuse or neglect and placed in the foster care system, the responsibility to find a permanent placement and act as the parent rests “upon the state public child welfare agency under the supervision of the juvenile court.”⁷ The state provides oversight and support until the youth either returns home, is placed with a family through adoption or guardianship, goes missing after running away, or transitions to another care setting, such as institutionalization (e.g., incarceration or psychiatric hospitalization).⁸ When a youth does not exit the system in any of these ways, they are considered “emancipated” and are no longer under the supervision or protection of the state.⁹ In other words, when a foster youth turns eighteen, the state sends that child into the world and closes its parental doors. Due in part to this abrupt end of care, nonminor dependents (“NMDs”) face significant challenges in housing, education, and employment.¹⁰

This Comment examines the 2008 Fostering Connections Act, weighing the advantages and disadvantages of extending foster care to age twenty-six while considering how sociocultural factors affect the gradual transition into adulthood. This Comment proposes continued governmental support beyond age twenty-one to certain NMDs to aid their transition into adulthood, thus better aligning legal and sociocultural constructions of adulthood. Part I introduces some challenges former foster youth face as they age out of the system. Part II walks through the current landscape of the Fostering Connections Act, specifically focusing on California’s implementation, Extended Foster Care (“EFC”), and California’s 2023 pilot program extending foster care until age twenty-two. Part III analyzes the legal status of “adult” and highlights exceptions to the age of majority, arguing that legal rules should be determined based on context and sociocultural factors rather than arbitrary age thresholds. Parts IV and V delve into the advantages and disadvantages of extending foster care beyond twenty-one. Part VI proposes solutions that states can adopt to make foster youths’ transitions into adulthood less

7. Mark E. Courtney et al., *When Should the State Cease Parenting? Evidence from the Midwest Study*, CHAPIN HALL 1 (Dec. 2007), https://www.chapinhall.org/wp-content/uploads/Midwest_When_Should_the_State_Cease_Parenting.pdf.

8. *Id.*

9. *Id.*

10. See discussion *infra* Part I: Background.

challenging. Finally, this Comment concludes by emphasizing the need to align the legal status of “adult” with sociocultural norms and the physiological development of youth.

I. BACKGROUND: THE GRIM REALITY OF AGING OUT OF THE FOSTER CARE SYSTEM

Aging out of the foster care system presents many challenges for former foster youth. One of the biggest challenges is accessing and maintaining housing.¹¹ Annually, in the United States, around 20,000 youth between ages eighteen and twenty-one exit the foster care system without a permanent placement.¹² As a result, high percentages of former foster youth experience homelessness by age twenty-six.¹³ The global COVID-19 pandemic only made the housing crisis worse, significantly changing the pace and manner in which young adults emerge into adulthood.¹⁴ The first year of the pandemic had the highest percentage of young adults living with their parents since the Great Depression.¹⁵ In the United States, the percentage of young adults living with their parents remains on a significant upward slope.¹⁶ While

11. *HHS Releases Guidance to Help Prevent Homelessness for Youth Who Have Transitioned Out of Foster Care*, U.S. DEP'T HEALTH & HUM. RES. (Jan. 17, 2024), <https://www.hhs.gov/about/news/2024/01/17/hhs-releases-guidance-help-prevent-homelessness-youth-who-have-transitioned-out-of-foster-care.html>.

12. *Id.*

13. “Research suggests that 31 percent to 46 percent of youth exiting foster care experience homelessness by age 26.” *Child Welfare System*, YOUTH.GOV, <https://web.archive.org/web/20241127192614/https://youth.gov/youth-topics/homelessness-and-housing-instability/child-welfare-system> (last visited Apr. 19, 2025).

14. Richard Fry et al., *A Majority of Young Adults in the U.S. Live with Their Parents for the First Time Since the Great Depression*, PEW RSCH. CTR. (Sept. 4, 2020), <https://www.pewresearch.org/short-reads/2020/09/04/a-majority-of-young-adults-in-the-u-s-live-with-their-parents-for-the-first-time-since-the-great-depression/>.

15. *See id.*

16. Rachel Minkin et al., *Parents, Young Adult Children and the Transition to Adulthood*, PEW RSCH. CTR. (Jan. 25, 2024), <https://www.pewresearch.org/social-trends/2024/01/25/parents-young-adult-children-and-the-transition-to-adulthood/> (stating that young adults ages eighteen to twenty-four rose from 53% in 1993 to 57% in 2024); Frank F. Furstenberg Jr., *On a New Schedule: Transitions to Adulthood and Family Change*, 20 FUTURE CHILD. 67, 70, 72–75 (2010) (describing that young adults ages eighteen to twenty-four living with their parents has risen from slightly above 40% in 1960 to above 50% in 1990).

many young adults rely on their parents and families, emancipated foster youth are left to face high rent and limited housing options alone.

Homelessness is not the only challenge former foster youth face in transitioning to adulthood. Decades of studies show that American foster youth are less likely than their non-foster peers to graduate from high school or earn a GED.¹⁷ Educational attainment is impacted by both individual and systemic factors.¹⁸ For example, a history of abuse or neglect (individual factors) and attending a low-performing school (a systemic factor) both contribute to lower rates of educational attainment.¹⁹ In a longitudinal study of 4,000 California foster care students enrolled in high school between 2002 to 2007, only 45% completed high school by 2010, compared to 79% of the general student population.²⁰ An even smaller percentage of foster youth go on to complete post-secondary education.²¹ The issue, however, is not for lack of aspiration.²² A survey of 613 foster youth in California showed that 86% reported aspirations to complete a college degree.²³ Despite

17. “GED” is the abbreviated form of the General Educational Development test and is “equal to a high school diploma.” See *What is GED? A Guide to the Test.*, USAHELLO, <https://perma.cc/GL2V-RMU5> (last updated Sept. 19, 2024); Mark E. Courtney & Jennifer L. Hook, *The Potential Educational Benefits of Extending Foster Care to Young Adults: Findings from a Natural Experiment*, 72 CHILD. & YOUTH SERVS. REV. 124, 124, 126–27 (2017) (utilizing a 2011 study which gathered data from three different states, revealing that at age twenty-six, foster youth were three times more likely to not have a high school diploma compared to other young adults) (citing Angelique Day et al., *An Examination of Post-Secondary Retention and Graduation Among Foster Care Youth Enrolled in a Four-Year University*, 33 CHILD. & YOUTH SERVS. REV. 2335, 2335 (2011)).

18. Courtney & Hook, *supra* note 17, at 125.

19. Mark E. Courtney et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 21*, CHAPIN HALL 32 (2018), https://www.chapinhall.org/wp-content/uploads/CY_YT_RE0518_1.pdf [hereinafter Courtney et al., *Findings from CalYOUTH*].

20. *Id.*

21. “Of youth who had earned a high school credential, a little over 4 percent had earned a college degree. Among all youth in the study, 3.6 percent had earned a college degree.” *Id.* at 36.

22. Of foster youth who did not attend college, but expressed interest in going, almost half reported they did not receive enough help from others in the actual steps needed to enroll in college (e.g., “picking a school, completing applications, and applying for financial aid”). *Id.* at 46.

23. *Id.* at 52.

having high aspirations, foster youth cannot attain higher education without a high school diploma or a GED.

As a result of low educational attainment, former foster youth typically have fewer employment opportunities and lower earning capacity compared to their non-foster peers.²⁴ This is largely due to risk factors associated with aging out of the system, such as: drug and alcohol abuse, mental illness, early parenthood, involvement in the juvenile justice system, and residing in a group home or residential treatment facility.²⁵ Former foster youth are additionally confronted with food insecurity, a lack of social stability, poor physical and mental health, intimate partner violence, and difficulties adjusting to young parenthood.²⁶ These challenges negatively affect the well-being of both the young individual and society. So, as the foster youth's 'corporate parent,' if the state failed to find a permanent placement for the young individual while in foster care, it is arguably the state's responsibility to support the young individual in their emergence into adulthood.²⁷

When considering the state's responsibility to care for youth who have aged out of the system, some may question why former foster

24. On average, young adults formerly in foster care earn about half as much as the general population and are less likely to be employed compared to their peers. Nathanael J. Okpych & Mark E. Courtney, *Does Education Pay for Youth Formerly in Foster Care?*, 43 CHILD. & YOUTH SERVS. REV. 18, 18 (2024). However, when comparing former foster youth who completed college to young adults in the general public with similar education, these gaps became smaller. *Id.* at 24; see Mark E. Courtney et al., *Improved Outcomes at Age 21 for Youth in Extended Foster Care*, CHAPIN HALL (2018), <https://www.chapinhall.org/research/improved-outcomes-at-age-21-for-youth-in-extended-foster-care/> [hereinafter Courtney et al., *Improved Outcomes*] (noting foster care persisting after age eighteen increases likelihood of completing high school and higher education, increasing employment opportunities and earning capacity). In other words, getting a college degree helps close the earnings gap.

25. Courtney et al., *Improved Outcomes*, *supra* note 24.

26. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 36.

27. Courtney et al., *supra* note 7; Mark E. Courtney, *The Difficult Transition to Adulthood for Foster Youth in the US: Implications for the State as Corporate Parent*, SOC. POL'Y REP., Spring 2019, at 1, 15 [Courtney, *The Difficult Transition to Adulthood for Foster Youth*] (discussing that in many cases, the state will be acting as the foster youth's *co-parent* because most foster youth who make the transition into adulthood are in close contact with at least one member of their family of origin—noting that more research is needed to address how policy may best help youth in these situations).

youth should receive extended support in the transition to adulthood while other vulnerable or indigent young adults receive little to no financial support. Studies reveal that foster youth fare worse than low socioeconomic status (“SES”) youth in key areas.²⁸ First, only 64% of foster youth living with relatives will graduate from high school, while 79% of low SES students attain a high school diploma.²⁹ This highlights the important role that emotional and familial support play in fostering success. Second, many foster youths experience early maltreatment and placement instability, leading to mental health problems that often go untreated.³⁰ Thus, while both groups suffer more than the general public and are deserving of support, foster youth face comparably larger disadvantages, even when compared to other vulnerable youth, indicating a greater need for resources.

II. THE FOSTERING CONNECTIONS ACT: AN OVERVIEW

In 2008, the United States Senate unanimously passed the Fostering Connections Act, which was subsequently signed into law by President George W. Bush.³¹ The FCA responded to decade-long concerns over the challenges that foster youth face in their transition to adulthood.³² The law’s purpose was to “support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, improve incentives for adoption, and for other purposes.”³³ To meet these goals, the FCA amended Title IV-E of the Social Security Act, resulting in “significant changes to federal funding

28. A further example is school mobility, where only about two-thirds of students in foster care attended the same school for the entire school year, compared to over 90% of low-SES students. VANESSA X. BARRAT & BETHANN BERLINER, *THE INVISIBLE ACHIEVEMENT GAP: EDUCATION OUTCOMES OF STUDENTS IN FOSTER CARE IN CALIFORNIA’S PUBLIC SCHOOLS: PART ONE* 17 (2013).

29. *Invisible Achievement Gap, Part 2 Released*, ALL. FOR CHILD.’S RTS. (May 5, 2014), <https://allianceforchildrensrights.org/iag/>.

30. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 86–87.

31. EMILIE STOLTZFUS, CONG. RSCH. SERV., RL34704, *CHILD WELFARE: THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008* (P.L. 110-351) 1 (2008).

32. Courtney, *The Difficult Transition to Adulthood for Foster Youth*, *supra* note 27, at 3.

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

for child welfare.”³⁴ These changes included expanding federal support for kinship guardianship assistance; increasing eligibility for federal adoption aid; *extending foster care assistance for youth beyond age eighteen, up to twenty-one*; and allowing tribal child welfare agencies to access federal Title IV-E funds under similar requirements as states.³⁵

Ideally, these reforms would improve outcomes for former foster youth “by promoting permanent families for them through relative guardianship and adoption, improving health care, and supporting education stability.”³⁶ Although the FCA increases available funding for former foster youth, these individuals can only utilize these resources through state-run programs, the creation of which is entirely optional.³⁷

A. California’s Early Implementation of the Fostering Connections Act

In the sixteen years following the passage of the FCA, “28 states, nine tribes, and Washington, D.C., have all established a federally approved extension of foster care.”³⁸ While the FCA allows states to receive federal funding for foster youth until their twenty-first birthday, state participation is optional.³⁹ As one of the first states to utilize federal FCA funding, California enacted the California Fostering Connections Act in 2010 through Assembly Bill 12, establishing its Extended Foster Care (“EFC”) program.⁴⁰ This program was significant

34. STOLTZFUS, *supra* note 31; see Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949.

35. STOLTZFUS, *supra* note 31.

36. *Fostering Connections to Success and Increasing Adoptions Act of 2008*, NAT’L CTR. FOR HOMELESS EDUC., nche.ed.gov/legislation/fostering-connections (last visited Oct. 8, 2024).

37. *California’s Fostering Connections to Success Act: Court Procedures*, ADMIN. OFF. COURTS, CTR. FOR CHILD. FAM. & COURTS (2012), https://www.courts.ca.gov/documents/OverviewCourtProcdrsFosteringCnnctns_v5_121211.pdf.

38. John Kelly, *Bipartisan Bill Would Expand Federal Extended Foster Care Program*, IMPRINT (Feb. 7, 2024, 7:12 AM), <https://imprintnews.org/youth-services-insider/bill-would-expand-federal-extended-foster-care-program/247435>.

39. *California’s Fostering Connections to Success Act: Court Procedures*, *supra* note 37.

40. Mark E. Courtney et al., *Providing Foster Care for Young Adults: Early Implementation of California’s Fostering Connections Act*, CHAPIN HALL 1 (2013), https://www.chapinhall.org/wp-content/uploads/CY_EI_RE2013.pdf.

considering California hosts the largest population of foster care individuals in the nation.⁴¹ The EFC program allows former foster youth who have surpassed age eighteen “to remain under the [juvenile] court’s jurisdiction and receive financial assistance as ‘nonminor dependents’ [“NMDs”] until they turn 21 years old, so long as they meet eligibility requirements.”⁴² Like its federal parent program, participation in EFC is voluntary for former foster youth.⁴³

Eligibility for EFC requires that the former foster youth: (1) pursue high school or the equivalent; (2) enroll in a postsecondary education or vocational institution; (3) participate in an employment-promoting program; (4) work at least eighty hours per month; or (5) are unable to do any of these activities due to a medical condition described in their case plan.⁴⁴ Additionally, before participating in EFC, former foster youth must sign a mutual agreement with the agency responsible for providing their care.⁴⁵ These agreements require the proposed NMD to (1) “remain in supervised out-of-home placement under the placement and care of the responsible county . . . or tribal organization”; (2) “remain under the jurisdiction of the juvenile court as a[n] [NMD]”; and (3) meet specific conditions, like attending school, to continue receiving extended foster care payments.⁴⁶ In these ways, the EFC program promotes self-sufficiency in NMDs by mandating responsibilities that better prepare them for adulthood.

B. California’s 2023 Pilot Program: A Proposed Expansion of the Current EFC Program

In 2023, the California Senate considered California Senate Bill 9 (“SB-9”), which would have extended the age maximum of foster care services from age twenty-one to twenty-two for certain classes of NMDs.⁴⁷ In particular, SB-9 would extend benefits for NMDs who were both (1) outside the court’s jurisdiction and (2) experiencing or

41. *Id.* at 2.

42. *In re Jonathan C.M.*, 308 Cal. Rptr. 3d 724, 725 (Cal. Ct. App. 2023).

43. *Id.* at 729.

44. Cal. Welf. & Inst. Code § 11403(b) (2024).

45. CAL. WELF. & INST. CODE § 11401(e).

46. CAL. WELF. & INST. CODE § 11400(u)(1); Welf. § 11403(b).

47. S.B. 9, 2023-2024 Leg., Reg. Sess. (Cal. 2023).

being at risk of homelessness.⁴⁸ Although the bill “died in committee,” its implementation would have required the State Department of Social Services to launch “a [three]-year pilot program in at least [three participating] counties.”⁴⁹ Extending foster care services beyond age twenty-one under SB-9 might have widened the definition of an NMD.⁵⁰ Existing law defines an NMD as a foster child or a nonminor in “transition jurisdiction” of the juvenile court who: (1) turned eighteen years old in foster care but is not yet *twenty-one* years old; (2) is a “dependent child or ward of the juvenile court;” and (3) is in accordance with “a transitional independent living case plan.”⁵¹ In other words, someone qualifies as an NMD if they previously were under the court’s dependency jurisdiction, have aged out of the system, and are eligible for continued care services. SB-9’s age extension could have led to similar extensions in the broader EFC program, allowing more former foster youth to receive NMD services up to age *twenty-two*.

The rationale for this proposed bill comes from a foundational study titled *CalYOUTH*,⁵² which found numerous positive outcomes among California youth following the implementation of EFC.⁵³ This study revealed that with each additional year in EFC, the likelihood of experiencing food insecurity in the past twelve months decreased by approximately 21%, homelessness for those aged twenty-one through twenty-three decreased by about 19%, and arrests since the youths’ last CalYOUTH interview decreased by about 28%.⁵⁴ This bill was drafted

48. *Id.*

49. *Id.*; *SB: 9 Raising the Age for Extended Foster Care Pilot Program Act of 2023*, DIGIT. DEMOCRACY CALMATTERS (2023), https://digitaldemocracy.calmatters.org/bills/ca_202320240sb9.

50. S.B. 9.

51. WELF. & INST. § 11400(v); *Extended Foster Care in California*, JUV. L. CTR., <https://jlc.org/issues/extended-foster-care/california> (last visited Oct. 11, 2024).

52. The CalYOUTH study was conducted by Chapin Hall, which is “an independent policy research center at the University of Chicago focused on providing public and private decision-makers with rigorous data analysis and achievable solutions to support them in improving the lives of children, families and communities.” See Mark E. Courtney et al., *Report from CalYOUTH: Findings on the Relationship between Extended Foster Care and Youth’s Outcomes at Age 23*, CHAPIN HALL (June 2021), <https://www.chapinhall.org/wp-content/uploads/Impacts-of-EFC-on-Outcomes-at-age-23.pdf> [Courtney et al., *Report from CalYOUTH*].

53. S.B. 9.

54. Courtney et al., *Report from CalYOUTH*, *supra* note 52, at 14.

with careful consideration of the challenges that foster youth face in their transition to adulthood, specifically the “rampant homelessness among foster youth aging out of the system at age 21.”⁵⁵

Some may criticize SB-9 and EFC, arguing that extending foster care merely delays, rather than resolves, the challenges faced by NMDs. Others may argue that more efforts should be made while the youth are still in the foster care system. Part V, Section B, of this Comment will address the former critique. In response to the latter critique, while it is true that more could be done to help foster youth prepare for adulthood while in the system, it is in the *transition* where the majority of challenges lie.⁵⁶ Transitioning into adulthood presents unique obstacles, such as finding housing employment and applying for and continuing education after high school.⁵⁷ Many of these beasts must be confronted as they arise, rather than when the youth is in the system. While the transition from youthhood into adulthood is challenging for all, it is particularly challenging for foster youth because of their unique vulnerabilities.⁵⁸ While in care, foster youth are supported by a broad network of individuals dedicated to their well-being.⁵⁹ This support system includes foster parents, relatives, caseworkers, guardians ad litem,⁶⁰ therapists, coaches, and teachers, among others.⁶¹ These

55. Jeremy Loudanback, *Grappling with Homelessness, California Lawmakers to Consider Extending Foster Care to 26*, IMPRINT (Feb. 22, 2023, 11:00 PM), <https://imprintnews.org/top-stories/california-lawmakers-will-weigh-extending-foster-care/238645>.

56. See generally Courtney, *The Difficult Transition to Adulthood for Foster Youth*, *supra* note 27, at 1.

57. *Id.* at 5–6.

58. See generally *id.* at 1.

59. See generally *Who’s in a Child’s Village? Key Roles Supporting the Journal from Foster Care to Permanency*, DAVE THOMAS FOUND. FOR ADOPTION (Aug. 13, 2024), <https://perma.cc/KJ2Z-EA76>.

60. A guardian ad litem is a court-appointed individual responsible for looking after and protecting the interests of someone who can’t take care of themselves, such as a minor. See *Guardian ad Litem*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/guardian_ad_litem (last reviewed Jan. 2023).

61. See generally *Who’s in a Child’s Village? Key Roles Supporting the Journal from Foster Care to Permanency*, *supra* note 59; *The Child and Family Team (CFT) Meeting*, ADVOKIDS, <https://advokids.org/child-and-family-team/> (last visited Apr. 3, 2025) (discussing the key individuals in foster children’s lives and the legal requirement for such individuals to be included in regular Child and Family Team

individuals provide guidance, advocacy, and emotional stability, helping youth navigate the challenges of the foster care system and prepare for adulthood.⁶² Then suddenly, at the entrance to possibly the most crucial transition in their lives, foster youth are formally cut off from this support and expected to live independently.

In further response to the critiques on SB-9, the backgrounds and stories of foster youth before judging the foster care system's effectiveness in preparing them for adulthood. Many foster youth come from marginalized communities, making their transition to adulthood even more challenging.⁶³ For example, roughly one-third of California's foster youth identify as LGBTQ.⁶⁴ These individuals are not only navigating the transition into adulthood, but also their own identity.⁶⁵ Additionally, most young people transitioning to adulthood from foster care did not spend the majority of their childhood in the care system, but rather endured many years in abusive or unstable home environments before child protective authorities intervened.⁶⁶ One prominent child welfare researcher identifies that "the outcomes [these youth] experience during the transition to adulthood may largely be a function of the problems that they brought with them to the child welfare system rather than an effect of poor care while in the system."⁶⁷ It is important to recognize that a person's experience in foster care, whether brief or lengthy, is not the only factor that affects their transition to adulthood.

meetings); *Youth Resources*, FOSTER YOUTH HELP, <https://perma.cc/3NLV-DZ8E> (last visited Mar. 25, 2025) (outlining various resources available for foster youth).

62. See generally *Who's in a Child's Village? Key Roles Supporting the Journal from Foster Care to Permanency*, *supra* note 59.

63. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 160.

64. Sydney Johnson, *California Bill Would Enhance Protections for LGBTQ Youth in Foster Families*, KQED (Mar. 17, 2023), <https://www.kqed.org/news/11943932/california-bill-would-enhance-protections-for-lgbtq-youth-in-foster-families>.

65. *Creating Successful Transitions for LGBT Youth*, ADMIN. FOR CHILD. & FAMS. (Mar. 16, 2012), <https://www.acf.hhs.gov/archive/blog/2012/03/creating-successful-transitions-lgbt-youth> (emphasizing that on top of the typical challenges young adults face in the transition into adulthood, LGBTQ youth struggle to find their identity and often face rejection from close friends and family members).

66. Courtney, *The Difficult Transition to Adulthood for Foster Youth*, *supra* note 27, at 4.

67. *Id.*

III. DECONSTRUCTING THE LEGAL STATUS OF ADULTHOOD

The qualities that distinguish juveniles from adults do not disappear when an individual turns 18 [H]owever, a line must be drawn The age of 18 is the point where society draws the line for many purposes between childhood and adulthood.⁶⁸

The legal age of adulthood disserves foster youth because, although most young adults today transition into adulthood later in life, foster youth in many states are legally required to be self-sufficient by age eighteen or twenty-one.⁶⁹ Throughout time, age-based laws have changed depending on the social context (e.g., war or social norms).⁷⁰ Developmental factors have also influenced age-based laws.⁷¹ For example, in juvenile law, culpability has shifted as researchers better understand the brain's maturation timeline.⁷² The status of legal adulthood in the context of foster care should be based on a combination of sociocultural and developmental factors and remain flexible to ensure it continues to meet the needs of those it intends to serve. Furthermore, the numerous exceptions to age of majority laws in other

68. *Roper v. Simmons*, 543 U.S. 551, 574 (2005).

69. Fry et al., *supra* note 14 (describing that young adults are more likely now than ever before to live with their parents well into their twenties); Richard Fry, *For First Time in Modern Era, Living With Parents Edges Out Other Living Arrangements for 18- to 34-Year-Olds*, PEW RSCH. CTR. (May 24, 2016), <https://www.pewresearch.org/social-trends/2016/05/24/for-first-time-in-modern-era-living-with-parents-edges-out-other-living-arrangements-for-18-to-34-year-olds/> (describing factors that lead to young adults living with their parents well into their twenties, such as young adults getting married later in life); Carmen González & David Garcia, *Adult Children Living with Parents, the New Norm Amidst Housing Challenges*, BOYLE HEIGHTS BEAT (June 13, 2024), <http://boyleheightsbeat.com/adult-children-living-with-parents-the-new-norm-amidst-housing-challenges/> (explaining that an increase in rent prices since the COVID-19 epidemic has caused more young adults to live with their parents during their twenties).

70. Vivian E. Hamilton, *Adulthood in Law and Culture*, 91 WM. & MARY L. REV. 55, 62 (2016).

71. *Id.* at 87–90.

72. See generally Kayla Pope et al., *Developmental Neuroscience and the Courts: How Science is Influencing the Disposition of Juvenile Offenders*, 51 J. AM. ACAD. CHILD & ADOLESCENT PSYCHIATRY 341, 341 (2012) (discussing two Supreme Court cases which affirmed that juveniles have less culpability because their brains are still developing, making them more prone to reckless behavior).

contexts show that it would not be burdensome for lawmakers to extend foster care beyond the age of twenty-one.⁷³

*A. The Age of Majority: A Reflection of Societal Norms
and Legal Standards*

Throughout time and in various countries, the age at which a person could vote, own a gun, or get married without parental consent has fluctuated.⁷⁴ This fluctuation primarily reflects changing societal norms and legal standards regarding the age of majority.⁷⁵ The age of majority is defined as “the age at which an individual will be legally considered an adult.”⁷⁶ Once individuals reach the age of majority, they “become fully responsible for their own actions, contractual obligations, and other undertakings. *Parental duties of support . . . also cease.*”⁷⁷ In Medieval England, the age of majority focused narrowly on social roles and varied depending on the capacity needed to fulfill that role.⁷⁸ For example, if a male were to become a knight, the age of majority was twenty-one because by that age, a male was expected to have completed his training and gained the necessary strength to fulfill his military role.⁷⁹ In contrast, a male working in agriculture reached the age of majority at age fifteen because by then, he had achieved the skills and strength needed to complete his unique tasks.⁸⁰

While Medieval England emphasized social roles to establish the age of majority, early Rome focused on intellectual capacities.⁸¹ In early Roman law, the legal age of majority was defined as the age at which

73. Hamilton, *supra* note 70, at 76.

74. See generally *The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects* 113–122 (The L. Reform Comm’n, Working Paper No. 2, 1977), https://www.lawreform.ie/_fileupload/consultation%20papers/wpAgeofMajority.htm; *Who Can Have a Gun: Minimum Age to Purchase & Possess*, GIFFORDS LAW CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/who-can-have-a-gun/minimum-age/> (last visited Mar. 20, 2025).

75. Hamilton, *supra* note 70, at 63–65.

76. *Age of Majority*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/age_of_majority (last reviewed Nov. 2021).

77. *Id.* (emphasis added).

78. Hamilton, *supra* note 70, at 62.

79. *Id.*

80. *Id.* at 62–63.

81. *Id.* at 63.

individuals were expected to have “attained the intellectual capacities required to exercise full citizenship, manage their affairs, and become parents and the heads of families themselves—age fifteen for males.”⁸² In other words, Romans believed that by age fifteen, a free male should have reached puberty, enabling him to start a family and manage his own affairs. Although these young men were physically capable of starting a family, the Romans (and likely any person you ask on the street today) believed that puberty and intellectual maturity did *not* occur simultaneously.⁸³ Therefore, under the ancient Roman legislation *Lex Lætoria*, all free males were placed “under the temporary control of a new class of guardians, called *Curatores*.”⁸⁴ For a young man’s “acts or contracts” to be valid, he required the *Curator*’s permission until reaching *plenam maturitatem*, or *full maturity*, at age twenty-five.⁸⁵

In the United States, the age of majority was set at twenty-one, following English common law.⁸⁶ This law remained unchanged until 1942, when due to the demands of World War II, Congress lowered the enlistment age from twenty-one to eighteen.⁸⁷ This change eventually led to the age of majority in the United States being reduced to eighteen.⁸⁸ In 1971, the 26th Amendment was ratified, lowering the voting age for all Americans from twenty-one to eighteen.⁸⁹ Further, in California, the age of majority was defined in two distinct ways *before* and *after* March 4, 1972.⁹⁰ Before March 4, 1972, “age of majority”

82. *Id.*

83. *Id.*

84. HENRY SUMNER MAINE, *ANCIENT LAW: ITS CONNECTION WITH THE EARLY HISTORY OF SOCIETY AND ITS RELATION TO MODERN IDEAS* 143 (5th ed. 1873).

85. *Id.*; Hamilton, *supra* note 70, at 63 (explaining that under Roman law, “age of majority” referred not to age fifteen, but to age twenty-five).

86. Hamilton, *supra* note 70, at 64.

87. *Id.*

88. *Id.* at 65.

89. *Constitutional Amendments – Amendment 26 – “Voting at the Age of Eighteen,”* RONALD REAGAN PRESIDENTIAL LIBR. & MUSEUM, <https://www.reaganlibrary.gov/constitutional-amendments-amendment-26-voting-age-eighteen> (last visited Apr. 14, 2025) (explaining how the movement to lower the voting age to eighteen was prompted by public vitriol that while eighteen-year-olds could be enlisted to fight in Vietnam, they could not vote).

90. CAL. FAM. CODE § 6502 (Deering, LEXIS through 2024 Reg. Sess. Ch 268).

referred to individuals aged twenty-one, whereas after this date, the term referred to individuals aged eighteen.⁹¹

These historical examples illustrate that age-related laws are influenced by social, cultural, and developmental factors and often change depending on the context. The status of legal adulthood in foster care should consider both sociocultural factors (as in Medieval England) and developmental factors (as in Ancient Rome), with flexibility to adapt over time.

B. *Exceptions to the Age of Majority*

The numerous exceptions to the age of majority law and the existence of context-specific laws show that context-based rulemaking is not unduly burdensome for lawmakers.⁹² Legislation affecting young people is already evolving to better address societal needs and youth capacities or limitations.⁹³ A few examples include the age of sexual consent, the age of licensure, and the age of health insurance coverage under the Affordable Care Act.

1. *Age of Sexual Consent and Driving Licensure as Exceptions to the Age of Majority*

The age of sexual consent is sixteen in most states, although some states have raised the age of sexual consent to eighteen while other states have lowered it to fourteen.⁹⁴ The state-by-state fluctuation in the age of consent primarily reflects the increasing rates of teenage sexual activity.⁹⁵ Another example of state-specific age-related legislation is the age at which a person can drive.⁹⁶ In all states, the age of driving licensure is below the age of majority, despite the high crash rates among teenagers.⁹⁷ In most states, the age of driving licensure is

91. *Id.*

92. Hamilton, *supra* note 70, at 76.

93. *Id.*

94. *Id.* at 77.

95. *Id.*

96. *Id.* at 78.

97. See Matt Clark, *What Age Group Causes the Most Car Accidents?*, CHAIN LAW (Aug. 2, 2024), <https://www.chainlaw.com/what-age-group-causes-the-most-car-accidents/>; Hamilton, *supra* note 70, at 78.

sixteen.⁹⁸ Some states set the age at fourteen,⁹⁹ and one state, New Jersey, sets the age of driving licensure at seventeen.¹⁰⁰ In South Dakota, a state bill attempted to raise the driving age from fourteen to fifteen but failed due to “the inconvenience such a change would place on the agricultural industry and on the ability of fourteen-year-olds to get to school and to work.”¹⁰¹ What works in one state (or for one group of people) may not work elsewhere.

2. *The Affordable Care Act as an Exception to the Age of Majority*

Finally, the Affordable Care Act (“ACA”), signed into law in 2010, is a further example of an exception to the age of majority. The ACA extends health insurance coverage to young adults until they turn twenty-six.¹⁰² The law states that “[a] group health plan . . . that provides dependent coverage of children shall continue to make such coverage available for an adult child . . . until the child turns [twenty-six] years of age.”¹⁰³ At the time the law was enacted, “almost 50 million Americans were uninsured.”¹⁰⁴ Since 2010, “more than 6 million young adults ages 19 to 25 have gained coverage under the ACA. . . .”¹⁰⁵ The extension of *healthcare* coverage holds significance because of its obvious and direct connection to the wellbeing of young adults in today’s context. In passing the ACA, Congress recognized that young adults have the highest uninsured rates, the lowest access to healthcare through their employer,

98. Hamilton, *supra* note 70, at 78.

99. DAVID L. ORTBACH, S.D. LEGIS. RSCH. COUNCIL, MINIMUM DRIVING AGE, Issue Memorandum 96-09, at 1 (1996).

100. See Denise Witmer, *Driving Age by State*, PARENTS, <https://www.parents.com/driving-age-by-state-8607683> (updated Aug. 28, 2024); Hamilton, *supra* note 70, at 78.

101. ORTBACH, *supra* note 99.

102. Patient Protection and Affordable Care Act, 42 U.S.C. § 300gg-14(a) (2010).

103. *Id.*

104. Gerald F. Kominski et al., *The Affordable Care Act’s Impacts on Access to Insurance and Health Care for Low-Income Populations*, 38 ANN. REV. PUB. HEALTH 489, 490 (2017).

105. *Id.* at 492.

and are at risk of illness, injury, and expensive medical bills.¹⁰⁶ While Congress did not explicitly state why age twenty-six was chosen, it was likely selected to reduce the number of uninsured individuals during a transitional period when many young adults are in school, starting careers, or financially unstable.¹⁰⁷ Instead of ending health insurance at the arbitrary age of twenty-one, lawmakers likely based their decision on data and the specific challenges young adults face. Like the ACA, EFC should be adjusted to better support the vulnerable population it intends to serve. Similarly, extended foster care (EFC) should be adjusted to better support the vulnerable population it aims to serve. Just as the Affordable Care Act (ACA) allows young adults to remain on their parents' insurance until age twenty-six, EFC should be extended to provide foster youth with additional time and resources as they transition into adulthood. Expanding EFC until age twenty-six would offer critical support, giving youth more time to secure stable housing, complete their education, and establish careers.

IV. THE NEED FOR EXTENDED FOSTER CARE BEYOND AGE TWENTY-ONE

With over ten years of data on the effects of EFC on foster youth, researchers express that despite receiving additional support, EFC recipients are “‘faring poorly compared to [non-foster] peers their age,’ and that ‘more work can and should be done to better support them during the transition to adulthood.’”¹⁰⁸ This data is found across “educational attainment, employment, economic self-sufficiency, physical and mental health, and involvement with the criminal justice system.”¹⁰⁹ It is important to note that this data compares foster youth

106. See *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, CMS.GOV, https://www.cms.gov/cciiio/resources/files/adult_child_fact_sheet (last modified Sept. 10, 2024, 6:11 PM).

107. “When the [ACA] was enacted in 2010, almost 50 million Americans were uninsured” Kominski et al., *supra* note 104, at 490.

108. Courtney et al., *Improved Outcomes*, *supra* note 24; Rachel Maguire, *On the Threshold of Change: Forces That Could Transform Future Conditions for Youth in Extended Foster Care (EFC)*, INST. FOR FUTURE 1, 4 (Jan. 19, 2024), https://www.ylc.org/wp-content/uploads/2024/01/OTTC_final_report_2024.pdf; Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 1, 160.

109. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 160; Courtney et al., *Improved Outcomes*, *supra* note 24.

to non-foster youth. However, studies clearly show the positive effects of EFC when compared to non-EFC foster youth who exited care at eighteen or nineteen.¹¹⁰ Because young adults typically receive ongoing support from their parents as they transition into adulthood, the state, acting as the foster youth's "surrogate parent," should continue supporting them during this transition.¹¹¹ Doing so may place foster youth on a more even playing field as non-foster youth in the transition into adulthood.

Since the FCA was passed in 2008, researchers have conducted longitudinal studies to evaluate whether the FCA had the anticipated impact on foster youth's transition to adulthood.¹¹² CalYOUTH evaluated the effect of EFC on California foster youth at age twenty-one.¹¹³ The participants in this study were California foster youth who had chosen to receive additional support by remaining in foster care beyond age eighteen.¹¹⁴ Researchers chose California because it has the largest foster youth population in the United States, making its child welfare policies nationally significant as other states often look to California as a model.¹¹⁵ In considering extending foster care beyond twenty-one, a few critical takeaways from the CalYOUTH study are valuable to note.¹¹⁶ First, most young adults in the California foster care system chose to extend their care to nineteen, and many extended until twenty-one.¹¹⁷ Both categories reported being "generally satisfied" with

110. See generally Courtney et al., *Improved Outcomes*, supra note 24.

111. Courtney, *The Difficult Transition to Adulthood for Foster Youth*, supra note 27, at 1, 4.

112. *Id.* (releasing a study one year after the FCA was passed and one year before California's Extended Foster Care bill (AB 12) was passed); Courtney et al., *Improved Outcomes*, supra note 24; Courtney et al., *Report from CalYOUTH*, supra note 52 (updating the 2018 CalYOUTH study with EFC's impact on foster youth at age 23); see also Courtney et al., *Findings from CalYOUTH*, supra note 19.

113. Courtney et al., *Improved Outcomes*, supra note 24.

114. *Id.*

115. In 2023, California had over 60,000 children in the foster care system. *Foster Care Facts*, CHILD.'S L. CTR. CAL. (2024), <https://www.clccal.org/resources/foster-care-facts/>; Courtney et al., *Findings from CalYOUTH*, supra note 19. See generally Courtney et al., *Improved Outcomes*, supra note 24.

116. The CalYOUTH study is a foundational study that California and many other states have relied upon in making policy decisions regarding foster care. Courtney et al., *Improved Outcomes*, supra note 24.

117. Courtney et al., *Findings from CalYOUTH*, supra note 19, at 160.

the services they received through extended care.¹¹⁸ Second, despite the aid foster youth received during their transition to adulthood, their overall well-being averaged much lower than their non-foster youth peers.¹¹⁹ Specifically, foster youth averaged lower in terms of “educational attainment, employment, economic self-sufficiency, physical health, and involvement with the criminal justice system.”¹²⁰ Third, a “one-size-fits-all” approach to extending foster care is inappropriate because each youth varies developmentally and situationally.¹²¹ Fourth, foster youths’ experiences in their transition to adulthood are tempered by gender, race, and ethnicity.¹²² Lastly, California could improve its approach to EFC in specific areas, particularly in helping youth “find and maintain housing and acquire financial literacy.”¹²³

The CalYOUTH study noted that foster youths’ overall well-being was poorer than their non-foster peers.¹²⁴ While true, compared to their non-EFC *foster* peers, EFC recipients averaged better in terms of homelessness, educational attainment, employment opportunities, food security, earning capacity, and incarceration for each additional year spent in EFC.¹²⁵ Many of these factors are likely interrelated, meaning that a positive outcome in one area likely will positively impact other areas of a foster youth’s life.¹²⁶ However, to assist foster youth in reaching similar outcomes as non-foster youth, more can be done.

While extending foster care beyond age twenty-one has many benefits, some worry that if California is one of the only states to offer this, it could attract an influx of foster youth seeking to benefit from the policy. This is a concern because California already holds the largest

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.* at 161.

122. *Id.*

123. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 162.

124. These measures included “educational attainment, employment, economic self-sufficiency, physical and mental health, and involvement with the criminal justice system.” *Id.* at 160.

125. See *supra* Part IV; see generally Courtney et al., *Report from CalYOUTH*, *supra* note 52.

126. See generally Courtney et al., *Report from CalYOUTH*, *supra* note 52.

population of foster youth in the nation and funding is limited.¹²⁷ However, an influx of foster youth is unlikely. Trends have indicated that participation in the EFC program has remained low despite foster care being extended to age twenty-one.¹²⁸ To ameliorate a potential influx of foster youth into the state, California could require proof of state residency prior to receiving funding.¹²⁹

*A. Extending EFC Will Likely Decrease Homelessness
Among NMDs*

Many young adults live with their parents well into their twenties while they complete post-secondary schooling or save money to live independently.¹³⁰ However, for emancipated foster youth, one of the most prominent challenges is homelessness.¹³¹ Research shows that by age twenty-six, 31% to 46% of emancipated foster youth experienced homelessness.¹³² However, with each additional year a foster youth

127. In 2022, California was reported to have 46,214 foster youth in the state—more than twice as much as Florida, which had the second highest foster youth population. *50 Foster Care Statistics for 2025*, SEVITA HEALTH (Aug. 22, 2023), <https://blog.sevitahealth.com/50-foster-care-statistics-for-2023>; see *infra* Part IV. A.

128. See generally *Fostering Youth Transitions 2023: State and National Data to Drive Foster Care Advocacy*, ANNIE E. CASEY FOUND. (2023), <https://assets.aecf.org/m/resourcedoc/aecf-fosteringyouth-executivesummary-2023.pdf> [hereinafter *Fostering Youth Transitions*].

129. CalWORKs, GR, CAPI, Medi-Cal, and other social programs all require California residency to qualify for benefits. See *Assistance and Social Programs*, CA.GOV, <https://www.ca.gov/topics/assistance/> (last visited Jan. 5, 2024).

130. Carmen González & David Garcia, *Adult Children Living with Parents, the New Norm Amidst Housing Challenges*, BOYLE HEIGHTS BEAT (June 13, 2024), <https://boyleheightsbeat.com/adult-children-living-with-parents-the-new-norm-amidst-housing-challenges/>.

131. See generally Amy Dworsky et al., *Homelessness During the Transition from Foster Care to Adulthood*, AM. J. PUB. HEALTH, Dec. 2013, Issue S2, at S318.

132. *Child Welfare System*, *supra* note 13; ADMIN. FOR CHILD. & FAMS., U.S. DEP'T OF HEALTH AND HUMAN SERVS., ACF-ACYF-IM-42-01, LEVERAGING THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT'S FOSTER YOUTH TO INDEPENDENCE (FYI) PROGRAM FOR ELIGIBLE YOUTH EXPERIENCING OR AT-RISK OF EXPERIENCING HOMELESSNESS 2 (2024) (stating that 22% “experienced at least one night of homelessness within the first year after they left the foster care system,” and 5% “experienced homelessness for the first time within a week after leaving”).

spent receiving EFC, the odds of them “being homeless or couch surfing between the ages of 21 and 23 [decreased] by about 19%.”¹³³

Regardless, some may criticize EFC, pointing to the high costs associated with the program. Funding is a challenge to extending foster care beyond twenty-one. Bills that require government funding are typically harder to pass, especially considering California’s \$68 billion budget deficit.¹³⁴ Realistically, many counties in California struggle to provide housing and other services to foster youth enrolled in EFC.¹³⁵ In 2022, California gave \$300 million to Los Angeles County’s child welfare system to compensate for a “structural deficit” partially due to “larger-than-expected costs of EFC for its roughly 2,500 enrolled youth.”¹³⁶ Therefore, extending foster care to cover more youth for longer periods would exacerbate that deficit.

In reality, EFC benefits cities and taxpayers because of the high costs associated with caring for the unhoused.¹³⁷ For example, during the 2024 fiscal year, the largest share of San Diego, California’s budget went toward permanent housing.¹³⁸ Most of the funding was used towards federal rent vouchers to *prevent* homelessness rather than to aid those who were already homeless.¹³⁹ In the 2021–2022 fiscal year, California spent \$7.2 billion on the homelessness crisis, averaging about \$42,000 per unhoused individual.¹⁴⁰ These costs largely come

133. Courtney et al., *Report from CalYOUTH*, *supra* note 52 at vi.

134. GABRIEL PETEK, LEGIS. ANALYST’S OFF., THE 2024-25 BUDGET: CALIFORNIA’S FISCAL OUTLOOK 3 (2023), <https://lao.ca.gov/reports/2023/4819/2024-25-Fiscal-Outlook-120723.pdf>.

135. *E.g.*, Loudenback, *supra* note 55.

136. *Id.*

137. See Blake Nelson, *As San Diego Homelessness Spending Tops \$230M, Budget Experts Call for Comprehensive Plan, Transparency*, SAN DIEGO UNION-TRIBUNE, <https://www.sandiegouniontribune.com/2024/08/20/as-san-diego-homelessness-spending-tops-230m-budget-experts-call-for-comprehensive-plan-transparency/> (last updated Aug. 24, 2024, 2:00 AM).

138. *Id.*

139. *Id.*

140. During that fiscal year the homeless population in California was estimated to be about 172,000. Marc Sternfield, *Here’s How Much California Spends on Each Homeless Person*, KTLA5, <https://ktla.com/news/california/heres-how-much-california-spends-on-each-homeless-person/> (last updated Oct. 17, 2024, 4:43 AM); *The 2021-22 California Spending Plan: Housing and Homelessness*, LAO (Oct. 29, 2021), <https://perma.cc/KE9G-WTK9>.

from hospitalization and medical treatment, incarceration, and shelters.¹⁴¹ The typical cost of a prison bed is \$20,000 per year.¹⁴² Thus, preventative spending to better support NMDs beyond age twenty-one is likely more economically efficient than paying for medical treatment, incarceration, shelters, and drug rehabilitation.¹⁴³ Because of the high costs associated with the homelessness crisis, it is in the government's best interest to help emancipated foster youth, a population highly vulnerable to housing instability.

B. Extending EFC Will Likely Increase Educational Attainment Among NMDs

Foster youth face unique challenges in achieving an education. One of these challenges is the high likelihood that foster youth will change high schools.¹⁴⁴ Only about two-thirds of foster care students attended the same school for the entire school year, compared to over 90% of low-SES and statewide students.¹⁴⁵ In fact, research shows that “about 1 in 10 students in foster care attended three or more schools during the school year, a level of school mobility experienced by only about 1% of the low-SES and general student populations.”¹⁴⁶ While changing schools may not cause a foster youth to drop out of high school, there are numerous reasons why changing schools—especially multiple times—could result in a foster youth dropping out of school altogether.¹⁴⁷ For instance, “changing schools alters important connections to teachers, peers, and extracurricular opportunities, and can disrupt instructional practices.”¹⁴⁸ Further, entering a new school

141. *Fact Sheet: Cost of Homelessness*, NAT'L PREVENTION SCI. COAL. TO IMPROVE LIVES, <https://www.npscoalition.org/post/fact-sheet-cost-of-homelessness> (updated Apr. 6, 2023).

142. *Id.*

143. See generally Courtney et al., *Findings from CalYOUTH*, *supra* note 19.

144. *Future Savings: The Economic Potential of Successful Transitions from Foster Care to Adulthood*, ANNIE E. CASEY FOUND. 8 (Jan. 30, 2019), <https://www.aecf.org/resources/future-savings>.

145. BARRAT & BERLINER, *supra* note 28, at ii–iii.

146. *Id.* at iii.

147. See generally Joseph Gasper et al., *Switching Schools: Reconsidering the Relationship Between School Mobility and High School Dropout*, 49 AM. EDUC. RES. J. 487 (2012).

148. *Id.* at 492.

where friend networks have already been established may cause a youth to feel socially isolated.¹⁴⁹ Overall, given that research shows even a single school change increases the likelihood of dropping out, foster youth are at a high risk for dropping out of high school.¹⁵⁰

The benefits of EFC are clearly seen in the educational attainment of former foster youth. Each additional year that eligible foster youth remained in EFC led to significant increases in their likelihood of educational attainment.¹⁵¹ By age twenty-six, 87% of youth who stayed in foster care until age twenty-one had graduated high school, compared to 78% of those who left the system at age twenty.¹⁵² For each additional year of care, the odds of the youth earning a high school degree or GED are almost two times greater than the odds of completing less than a high school degree.¹⁵³

EFC also influences education beyond high school. Foster youth not only are less likely to enroll in college compared to the general student population, but also are far less likely to graduate college.¹⁵⁴ Youth supervised by public child welfare agencies, however, are far more likely to enroll in post-secondary education by their twenty-first birthday.¹⁵⁵ However, while plenty of data exists regarding postsecondary education enrollment, researchers have yet to find

149. *Id.* at 491.

150. *Id.* at 501. Only 64% of foster youth living with their relatives graduated from high school, compared to 79% of students with low socio-economic status and 84% of the general student population nationwide. *Invisible Achievement Gap, Part 2 Released*, *supra* note 29. However, foster youth in group homes fare even worse than foster youth living with their relatives, with a graduation rate of just 25%. *Id.*

151. See Courtney et al., *Report from CalYOUTH*, *supra* note 52, at 5.

152. Courtney & Hook, *supra* note 17, at 128 (“By age 21, a statistically significant difference emerges in high school degree completion, 69% of youth who exited at age 19 or prior had completed high school compared to 78% of youth who remained in care until age 20.”).

153. See *id.* at 128–29.

154. Yvonne A. Unrau et al., *Readiness for College Engagement Among Students Who Have Aged Out of Foster Care*, 34 CHILD. & YOUTH SERVS. REV. 76, 76 (2012) (describing that just 20% of former foster youth attend college compared to 60% of their non-foster peers, and degree completion for former foster youth ranges from 1% to 10.8% compared to non-foster peers at 24%).

155. Nathanael J. Okpych et al., *California Foster Youth in Extended Care Have Better Postsecondary Education Outcomes*, CHAPIN HALL (2019), <https://www.chapinhall.org/research/california-foster-youth-in-extended-care-have-better-postsecondary-education-outcomes/>.

evidence that EFC increases the number of college semesters completed by youth in care.¹⁵⁶ The reduced pressures of meeting one's basic living needs likely encourages youth to enroll in post-secondary school, yet former foster youth are often unprepared for the academic rigors of college and do not obtain a degree.¹⁵⁷ This lack of preparation may in part be because students in foster care are more likely than the general population to be enrolled in the lowest-performing schools.¹⁵⁸ In response to this data, researchers at Chapin Hill suggest "redoubled efforts to support foster youth after they make it into postsecondary education and to rigorously evaluate the college support programs that have been created in recent years."¹⁵⁹ In the United States, the average student who began college at age eighteen or nineteen graduates with their bachelor's degree by age twenty-four or twenty-five, and the average college student is age twenty-six.¹⁶⁰ Therefore, extending foster care beyond twenty-one may increase the likelihood that a former foster youth graduates from college because the extension would allow them to receive support beyond age twenty-one during the crucial years of college studies.¹⁶¹

Government programs, like the Chafee Educational Training Voucher ("ETV") program, support former foster youth by providing up to \$5,000 annually for postsecondary education or training until they turn twenty-six.¹⁶² However, with foster care ending at age eighteen or twenty-one, youth are left to themselves to manage housing, employment, finance, physical and mental health, and other needs,

156. *Id.*

157. *Id.*

158. BARRAT & BERLINER, *supra* note 28.

159. Okpych et al., *supra* note 154.

160. *What is a Normal Age to Finish College?*, LEARN.ORG, https://learn.org/articles/normal_age_finish_college.html (last visited Nov. 24, 2024).

161. See *Extended Foster Care Explained*, ANNIE E. CASEY FOUND., <https://www.aecf.org/blog/extended-foster-care-explained> (last updated May 20, 2023); Unrau et al., *supra* note 153.

162. *Chafee Educational and Training Vouchers Program (ETV)*, CAL. DEP'T SOC. SERVS., <https://www.cdss.ca.gov/inforesources/foster-care/chafee-education-and-training-vouchers-program> (last visited Jan. 3, 2025); Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 36 (describing that the purpose of the Chafee Educational and Training Voucher ("ETV") program is to "assist youth in obtaining an academic college education or technical and skill training in college to be prepared to enter the workforce.").

which may make degree completion more challenging despite receiving financial aid.¹⁶³ While the \$5,000 grant is helpful, it is insufficient to meet the youths' expenses while attending school.¹⁶⁴ While states could do more to support foster youth after high school, the increase in high school graduation rates and the higher likelihood of college enrollment due to EFC demonstrate the program's positive effect on foster youth's education and future earning potential and the benefits that could come from extending foster care beyond age twenty-one.¹⁶⁵

Vocational and technical training are alternatives to a college degree program. While participation in a vocational or technical school may positively impact the youth and provide a stable income, participation in these programs is low.¹⁶⁶ In 2021, the total percentage of foster youth across the United States who participated in an employment program or vocational training was just 14%.¹⁶⁷ The most common areas of training among former foster youth are "health and health care (e.g., nursing assistant) and beauty (e.g., cosmetology or barber school)."¹⁶⁸ However,

163. Unrau et al., *supra* note 153, at 77.

164. See Louisa Maria Portnoy, Note, *Improving Outcomes for Youth Aging Out of Foster Care by Increasing the Age and Quality of Care*, 51 HOFSTRA LAW REV. 1047, 1059 (2023).

165. See generally Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 33 (discussing that youth who remain in foster care beyond eighteen had higher educational attainment and earning capacity).

166. In the 2018 CALYOUTH study, only 12% reported completion of one or more years of vocational school, 31% reported completion of one or more years of college, and the majority reported high school completion as their highest form of education. *Id.* at 34. See generally *Youth Transitioning Out of Foster Care: Received Employment Programs or Vocational Training Services by Race/Ethnicity in United States*, ANNIE E. CASEY FOUND., <https://datacenter.aecf.org/data/tables/10224-youth-transitioning-out-of-foster-care-received-employment-programs-or-vocational-training-services-by-race-ethnicity> (last updated May 2024) (reflecting data of youth broken down by race and ethnicity leaving the foster care system and receiving vocational services for years 2015–2017).

167. *Youth Transitioning Out of Foster Care: Received Employment Programs or Vocational Training Services by Race/Ethnicity in United States*, *supra* note 165. In 2021, across the U.S., 49% of foster youth ages eighteen to twenty-four were enrolled in or had completed college. *Young Adults Ages 18-24 Who Are Enrolled in or Have Completed College in United States*, ANNIE E. CASEY FOUND., <https://datacenter.aecf.org/data/tables/77-young-adults-ages-18-to-24-who-are-enrolled-in-or-have-completed-college> (last updated Jan. 2024).

168. Other areas of training were "[j]ob training through city/county/state federal government," "[b]usiness school/financial institute/secretarial school,"

as with pursuing a college degree, the *transition* from high school to a vocational or technical school has challenges. The most common challenges foster youth report are “balancing school and work, organizing their time to finish their responsibilities, and transportation issues.”¹⁶⁹

C. Extending EFC Will Likely Result in Better Employment Opportunities and Higher Earnings Among NMDs

The quality and amount of education received in early adulthood dramatically influences one’s economic well-being.¹⁷⁰ In fact, “[l]ow educational attainment is a *primary* risk factor for low rates of employment and earnings.”¹⁷¹ NDMs receiving care beyond eighteen years of age have better employment opportunities and, as a result, higher earning capacity.¹⁷² Studies show that “[e]ach additional year that youth spent in care past age 18 increased the expected total earnings between ages 21 and 23 by more than \$3,000.”¹⁷³ One result of more education is greater job opportunities, which increase NMDs’ ability to support themselves financially.¹⁷⁴ Therefore, investing in youths’ transition into adulthood benefits the individual youth and also society. By helping foster youth become self-sufficient, workforce members, states recoup their investment through these young people working in the community and paying taxes.

While high school completion is an achievement for foster youth, with positive impacts on their future, some argue that a high school degree is not enough to support oneself today and opens fewer doors than completing college or other vocational training.¹⁷⁵ To solve this problem relative to foster youth, more must be done to encourage former foster youth to pursue education post high school. One commentator warns that

“[t]rained by private employer,” and “[a]rmed forces.” Courtney et al., *Findings from CalYOUTH*, *supra* 19, at 44.

169. Eighty percent of foster youth reported balancing school and parenting responsibilities as a challenge. *Id.* at 45.

170. Courtney & Hook, *supra* note 17, at 124.

171. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 53.

172. *Id.* at 33.

173. Courtney et al., *Report from CalYOUTH*, *supra* note 52, at 12.

174. Courtney & Hook, *supra* note 17, at 124.

175. Hamilton, *supra* note 70, at 67.

“[f]ailing to recognize the importance of supporting young people as they strive to become the sorts of workers required in today’s economy disservices them in the short term, and the larger society in the longer term.”¹⁷⁶ As previously noted, the state, as the foster youths’ parent, should consider extending its care beyond age twenty-one to best support efforts to further foster youths’ education given the direct impact that educational attainment has on job and earning prospects.¹⁷⁷

Most studies of foster youth compare amongst foster groups, specifically between those who participated in EFC and those who did not.¹⁷⁸ However, the reality is that when compared to their non-foster peers, former foster youth have lower rates of employment.¹⁷⁹ The findings of these studies suggest that more could be done to give foster youth work experiences while in foster care, which will better prepare them for working after foster care has ended.¹⁸⁰ Though important, what can be done while youth are still in foster care, including how to extend further work opportunities and foster more educational pursuit, is beyond the scope of this Comment.

V. CONCERNS ABOUT EXTENDING FOSTER CARE BEYOND AGE TWENTY-ONE

As with other government support programs, it could be argued that extending foster care beyond twenty-one could disincentivize self-sufficiency and encourage interdependency in foster youth.¹⁸¹ However, because of EFC’s general eligibility requirements, alongside the incentive to live independently, extending foster care beyond twenty-one may encourage self-sufficiency, as EFC acts as training wheels in the transition into adulthood.¹⁸²

176. *Id.* at 96.

177. Courtney & Hook, *supra* note 17, at 124.

178. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 53.

179. Courtney & Hook, *supra* note 17, at 125.

180. *Id.* at 131.

181. Maguire, *supra* note 108, at 11.

182. See generally Nadia Goforth, *Belonging and Support as Interventions in the Foster Care-to-Homelessness Pipeline*, IMPRINT (June 26, 2023, 6:00 AM), <https://imprintnews.org/youth-voice/belonging-and-support-as-interventions-in-the-foster-care-to-homelessness-pipeline/242444> (discussing the effects of EFC’s requirements and outcomes relative to housing insecurity in foster youth). See also

Another concern that relates to the extension of foster care beyond the age of twenty-one is the belief that continued participation in the system was not feasible once former foster youth began to navigate adulthood.¹⁸³ Yet, extended care during such a transitional time may be exactly what is needed to give youth the guidance and support they otherwise lack from family members or parents.

Lastly, some have argued that EFC merely delays the challenges foster youth face, such as homelessness.¹⁸⁴ However, extensive longitudinal studies have found that for each year in EFC, foster youth reap beneficial results, including higher rates of education and earning potential.¹⁸⁵ Therefore, extending care beyond age twenty-one may significantly ease foster youths' transition into adulthood and could help prevent homelessness.

A. *Disincentivizing Self-Sufficiency and Interdependency*

Scholars have defined self-sufficiency in terms of employment, earnings, and reliance on public assistance.¹⁸⁶ Providing transitional housing, a monthly stipend, and other support to youth throughout their early twenties may appear to disincentivize youths from being self-sufficient; however, the purpose of EFC is to *ease* former foster youth into adulthood, rather than drowning them with decisions and responsibilities.¹⁸⁷ Moreover, some argue that EFC puts too much emphasis on independence and not enough on interdependence.¹⁸⁸ In other words, EFC doesn't emphasize the importance of building

CAL. HEALTH AND HUM. SERVS. AGENCY, DEP'T. SOC. SERVS., EXTENDED FOSTER CARE (EFC), All County Letter No. 11-61, Extended Foster Care (EFC), at 2 (2011).

183. Laura S. Abrams et al., *The Influence of Policy Context on Transition Age Foster Youth's Views of Self-Sufficiency*, 43 J. SOC. SERV. RSCH. 37, 39 (2017).

184. See generally Amy Dworsky & Mark Courtney, *Extended Foster Care Delays but Does Not Prevent Homelessness*, CHAPIN HALL (2010), <https://www.chapinhall.org/research/extended-foster-care-delays-but-does-not-prevent-homelessness>.

185. See, e.g., Amy Dworsky & Mark Courtney, *Assessing the Impact of Extending Care beyond Age 18 on Homelessness: Emerging Findings from the Midwest Study*, CHAPIN HALL (Mar. 2010), https://www.chapinhall.org/wp-content/uploads/Midwest_IB2_Homelessness.pdf.

186. See Abrams et al., *supra* note 182, at 38.

187. See generally *id.*

188. Maguire, *supra* note 108, at 11.

meaningful connections with friends and family to ease the transition into adulthood. However, one could argue that meeting physiological needs such as shelter and food is essential before one can foster meaningful relationships, and Extended Foster Care (EFC) helps provide for these basic needs.¹⁸⁹

Foster youth often go from being in a world where every decision is made for them—acting as passive participants in their own lives—to turning eighteen or twenty-one and suddenly becoming independent decision-makers.¹⁹⁰ Because of this sharp change, transition-aged youth report feeling “unequipped to gain control over their lives when so many basic decisions have been made for them by workers and foster parents.”¹⁹¹ One way in which EFC eases youth into independence is through transitional housing and supportive services.¹⁹² EFC extended transitional housing for foster youth beyond age eighteen.¹⁹³ This means that an NMD can live with a host family or in an apartment, condo, or single-family dwelling, with rent provided by that transitional housing service.¹⁹⁴ Thus, the goal of transitional housing is to ease foster youth into independence through a supervised living plan.¹⁹⁵ While it is true that transitional housing is available until their twenty-first birthday, it is clear that foster youth would significantly benefit from having stable housing well into their twenties, just as many of their non-foster peers continue to rely on their parents or other family members for support.¹⁹⁶ Therefore, the concerns that EFC would disincentivize self-sufficiency are not well founded in reality. Under EFC, NMDs must meet one of

189. Saul McLeod, *Maslow's Hierarchy of Needs*, SIMPLY PSYCH., <https://www.simplypsychology.org/maslow.html> (last updated Mar. 14, 2025).

190. Abrams et al., *supra* note 182, at 38.

191. *Id.*

192. Susanna R. Curry & Laura S. Abrams, “*They Lay Down the Foundation and Then They Leave Room for Us to Build the House*”: A Visual Qualitative Exploration of Young Adults’ Experiences of Transitional Housing, 6 J. SOC’Y FOR SOC. WORK & RSCH. 145, 164 (2015); *Transitional Housing Programs for Current and Former Foster Youth*, CAL. DEP’T SOC. SERVS., <https://www.cdss.ca.gov/inforesources/foster-care/transitional-housing-programs> (last visited Mar. 30, 2025).

193. *Transitional Housing Programs for Current and Former Foster Youth*, *supra* note 191.

194. *Id.*

195. *Id.*

196. *See supra* Part I.

five education and employment participation requirements to continue receiving EFC benefits after age eighteen.¹⁹⁷ The five requirements are: (1) “[completion of a] secondary education or a program leading to an equivalent credential;” (2) “enrollment in an institution which provides post-secondary or vocational education;” (3) “[participation] in a program or activity designed to promote or remove barriers to employment;” (4) “[employment] for at least 80 hours per month;” or (5) be “incapable of doing any of the activities above.”¹⁹⁸

It could be argued that these requirements ease former foster youth into independence by requiring that they complete school and work, absent a showing that they are incapable of doing so.¹⁹⁹ Given these requirements, the argument that participating in EFC would disincentive self-sufficiency loses merit. Still, given the various requirements of extended foster care, some NMDs who need extended care could feel that the requirements are impractical.

B. *The Impracticality of EFC Requirements on Foster Youth*

Young adults may find extended foster care impractical as they balance school, work, childcare, and EFC requirements.²⁰⁰ Foster youth aging out of the system are more than twice as likely than their non-foster care peers to have at least one living child at age twenty-one.²⁰¹

197. CAL. HEALTH AND HUM. SERVS. AGENCY, DEP’T. SOC. SERVS., EXTENDED FOSTER CARE (EFC), All County Letter No. 11-61, Extended Foster Care (EFC), at 2 (2011) (outlining the specific “eligibility criteria . . . for both the state and federal Extended Foster Care Programs.”).

198. *Id.* at 4–7.

199. *See generally id.*

200. Researchers identified that certain subgroups of young adults face significant challenges in meeting EFC eligibility requirements. Specifically, the “Struggling Parents” subgroup, which was predominantly female youth raising children. This group was found to be the least likely to have completed high school and the most likely to be receiving need-based assistance from government programs. *See generally* Mark E. Courtney et al., *Distinct Subgroups of Former Foster Youth during Young Adulthood: Implications for Policy and Practice*, CHAPIN HALL 6 (Mar. 2010), https://www.chapinhall.org/wp-content/uploads/Midwest_IB4_Latent_Class_2-1.pdf.

201. Compared to their non-foster peers, foster youth were less likely to use contraceptives and also “less likely to have wanted to become pregnant.” Mark E. Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth*:

Specifically, among former foster youth aged twenty-one, 56% of females reported having at least one child living with them, and 30% of males reported the same.²⁰² Compare this to non-foster youth aged twenty-one, where just 23% of females reported having at least one living child living with them, and only 11% of males reported the same.²⁰³ Meeting the EFC requirements—such as going to school or working eighty hours per month, as well as attending monthly case worker meetings and biannual Review Hearings²⁰⁴—can be impractical and burdensome for NMDs, especially for young parents, trying to balance competing demands.²⁰⁵

These concerns are valid, and for that reason, EFC is an entirely *optional* program.²⁰⁶ Additionally, if a former foster youth chooses to opt-in to EFC, they may try EFC for a period and then decide to leave.²⁰⁷ If a youth changes their mind after opting out, EFC has a re-entry program, where in moments of crisis, a former EFC recipient may re-enter the program and receive benefits again until age twenty-one.²⁰⁸ While some may complain of the inconvenience of monthly case worker meetings or attending hearings, foster youth may *especially* benefit from these beyond age twenty-one. For example, during the monthly meetings, case workers ensure that the youth are actively working towards their goals and assist with health care decisions, financial

Outcomes at Age Twenty-one, CHAPIN HALL 51, 55 (Dec. 2007), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-21.pdf>.

202. *Id.* at 55.

203. *Id.*

204. Judicial Review Hearings occur every six months for the purpose of ensuring the minor still qualifies for the EFC program and addressing any questions or concerns the minor might have. *All About Court*, FOSTER POWER, <https://fosterpower.org/all-about-court/> (last visited Mar. 25, 2025).

205. In one case, a soon-to-be mother's supportive benefits were threatened "because she had canceled visits with her social worker and had 'failed to produce proof of hospitalization.'" Sara Tiano & Karen De Sá, *California Extended Foster Care to 21. Was it Enough?*, IMPRINT (June 14, 2020), <https://imprintnews.org/foster-care/california-extended-foster-care-to-21-was-it-enough/44351>. See *Mutual Agreement for Extended Foster Care*, CAL. DEP'T SOC. SERVS. (Oct. 2011), <https://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC162.pdf>.

206. *Extended Foster Care (AB 12)*, CAL. DEP'T SOC. SERVS., <https://www.cdss.ca.gov/inforesources/foster-care/extended-foster-care-ab-12> (last visited Nov. 8, 2024).

207. *Id.*

208. *Id.*

concerns, and housing stability.²⁰⁹ Case workers offer support and guidance to youth as they transition into adulthood, which may be of greater value, particularly for foster youth caring for children of their own.²¹⁰

C. EFC Delays but Does Not Prevent Challenges

A criticism of EFC is that the program delays problems rather than resolves them.²¹¹ In other words, the challenges that a foster youth typically faces at eighteen are simply postponed until their extended care ends, whether at age twenty-one or twenty-six. Researchers found this to be true regarding homelessness in a 2010 study following over 700 youth who aged out of the foster care system in the Midwest.²¹² The research showed that those who participated in EFC were just as likely as their non-EFC counterparts to become homeless.²¹³ This study was published only two years after the federal FCA was passed.²¹⁴ However, since this study, evidence of EFC's success has rebutted these statistics. Eight years later, with more time to implement the program and more data available, the same researcher published a study evaluating the outcomes of California foster youth who had participated in EFC.²¹⁵ The study revealed incredible benefits from extending foster care just one year longer (from eighteen to nineteen).²¹⁶ Each year a foster youth spent receiving EFC, the odds of being unhoused or couch surfing between the ages of twenty-one and twenty-three decreased by about 28%.²¹⁷ Further, the likelihoods of completing high school,

209. See generally Jennifer Pokempner, *Know Your Rights Guide: Chapter 10 – Extended Foster Care and Re-Entry*, JUV. LAW CENT. (May 13, 2020), <https://jlc.org/resources/know-your-rights-guide-chapter-10-extended-foster-care>; *Extended Foster Care Explained*, *supra* note 160.

210. See generally Pokempner, *supra* note 208.

211. Dworsky & Courtney, *supra* note 182; Courtney et al., *Improved Outcomes*, *supra* note 24; Maguire, *supra* note 108.

212. See generally COURTNEY ET AL., *supra* note 200, at 5.

213. “Being homeless was defined as ‘sleeping in a place where people weren’t meant to sleep, or sleeping in a homeless shelter, or not having a regular residence in which to sleep.’” Dworsky & Courtney, *supra* note 184, at 3.

214. See generally COURTNEY ET AL., *supra* note 200, at 5.

215. Courtney et al., *Improved Outcomes*, *supra* note 24.

216. See generally *id.*

217. *Id.*

enrolling in college, being employed between their eighteenth and twenty-first birthday, and the amount of money in their bank accounts also increased.²¹⁸

The CalYOUTH study was conducted again two years later to evaluate how the same youth who were previously twenty-one when surveyed were doing at age twenty-three.²¹⁹ The reports showed that there were no “deleterious effects of remaining in EFC[.]”²²⁰ Rather, remaining in foster care beyond one’s eighteenth birthday increased the likelihood of completing high school and enrolling in college, obtaining gainful employment, and having financial savings.²²¹ Notably, these benefits were “maintained years after the youths have left care.”²²² Rather than delaying problems, extending foster care beyond age twenty-one would offer youth more time and resources to navigate this highly consequential period.²²³

VI. RECOMMENDATIONS TO MAXIMIZE THE IMPACT OF EFC

The current age limit for EFC does not accurately address the needs of foster youth aging out of the system in 2025.²²⁴ Additionally, rent and housing costs are significantly greater than when the FCA was enacted in 2008, so without higher education or marketable skills, many foster youth are unable to afford suitable housing.²²⁵ While many young adults are relying on their parents for support now more than ever, foster youth are at a distinct disadvantage due to their lack of strong bonds to parental figures.²²⁶ Two recommendations to ease the

218. *Id.*; Portnoy, *supra* note 163, at 1070.

219. Courtney et al., *Report from CalYOUTH*, *supra* note 52; Portnoy, *supra* note 162, at 1070.

220. Courtney et al., *Report from CalYOUTH*, *supra* note 52, at vii.

221. *Id.* at 1.

222. *Id.* at 26; *see also* Portnoy, *supra* note 163, at 1070.

223. Courtney et al., *Improved Outcomes*, *supra* note 24.

224. *See supra* Part IV.

225. *See generally* Jacob Fabina, *Cost of Rent and Utilities Rose Faster Than Home Values in 2023*, U.S. CENSUS BUREAU (Sept. 12, 2024), <https://www.census.gov/library/stories/2024/09/acs-rent-burden.html>.

226. *See* Fry et al., *supra* note 14. There is a lack of research regarding the way in which birth parents support foster youth and the benefits and costs that come from this support. Judy Havlicek, *Systematic Review of Birth Parent-Foster Youth*

transition into adulthood for foster youth are to: (1) extend foster care services to age twenty-six and (2) make the EFC program more accessible by changing it from an *opt-in* to an *opt-out* system.

A. *Extending Foster Care to Age Twenty-Six*

The purpose of the FCA is to “support relative caregivers, improve outcomes for children in foster care, provide for tribal foster care and adoption access, [and] improve incentives for adoption.”²²⁷ If the FCA’s purpose is to be fulfilled, then the law must be shaped by the realities foster youth face in aging out of the system and the norms for young adults post-pandemic. “Policy and practice should be informed by a deeper understanding of the strengths and challenges these young people bring to the transition to adulthood as well as by what the youth say about the effectiveness of services intended to help them.”²²⁸ The decision to extend foster care to age twenty-six should be informed by data detailing its benefits. This includes showing that with each additional year of extended foster care, homelessness rates substantially decrease and more foster youth graduate from high school and go on to earn more than their non-EFC foster peers.²²⁹

1. *The ACA as a Model for Extending Care Until Age Twenty-Six*

In the decision to extend care, lawmakers may look to the ACA as a model.²³⁰ The ACA, which extends health care coverage until age twenty-six, considers that young adulthood is a transitional time and that many young adults do not have jobs or schooling that provide health insurance.²³¹

Like the ACA, EFC is a program designed to ensure the physical and mental wellbeing of young adults during a transitional period. While the years after high school and into the twenties are difficult for

Relationships Before and After Aging Out of Foster Care, CHILD. & YOUTH SERV. REV., Jan. 2021, at 1, 10.

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

228. Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 160.

229. See *supra* Part IV.

230. See *supra* Part III.B.2.

231. See *supra* Part III.B.2.

most, emancipated foster youth are particularly vulnerable and need additional support to reduce the risk of homelessness, low educational attainment, involvement in the justice system, and other challenges. Like the ACA, an argument could be made for extending foster care until age twenty-six, as it would increase the likelihood that the young adult completes high school or a GED, finishes post-secondary schooling, secures employment, and obtains secure housing. Data, context, and research should guide lawmakers' decisions on how far to extend foster care.

*2. The Chafee Foster Care Independence Program
as a Model for Extending Care Until Age Twenty-Six*

The John H. Chafee Program for Successful Transition to Adulthood ("Chafee program") is a federal program dedicated to supporting former foster youth in their transition to adulthood.²³² The Chafee program was created to help foster youth become more self-sufficient by helping with "education, employment financial management, housing, emotional support, and assured connections to caring adults"²³³ In 2021, these services were extended until a foster youth turns age twenty-three.²³⁴ Further, the Chafee program provides educational and training vouchers to support qualifying young adults until the age of twenty-six.²³⁵ While the Chafee program serves

232. *Planning a Next Generation Evaluation Agenda for the John H. Chafee Foster Care Program for Successful Transition to Adulthood*, OFF. PLAN., RSCH. & EVAL., <https://www.acf.hhs.gov/opre/project/planning-next-generation-evaluation-agenda-john-h-chafee-foster-care-program> (last visited Nov. 24, 2024) [hereinafter *Planning a Next Generation*].

233. While the Chafee program seeks to support youth who have aged out of the foster care system, many youths report leaving care "without adequate counseling and discharge plans." Portnoy, *supra* note 163, at 1057. Many youths leaving care report they "did not have access to their case planners (social workers), did not know them, or did not know what was in their Independent Living Plan." *Id.* These problems are primarily due to a lack of funding and "poor implementation of the independent living skills programs." *Id.* But see *Planning a Next Generation*, *supra* note 231 (regarding the FCIA's requirement of funding for the evaluation of independent living programs).

234. *Planning a Next Generation*, *supra* note 231.

235. The requirements for this program are similar to those for EFC. Each youth must satisfy one of the following: completing secondary education or the equivalent, enrolling in an institution that offers postsecondary or vocational education,

as a model for extending care beyond age twenty-one, more could be done in the both the Chafee program and EFC to provide NMDs with peer support or mentors as they navigate the transition into adulthood and independence.²³⁶

*B. Cut the Red Tape: Amending EFC to Be an Opt-out
Rather than an Opt-in Program*

While youth are enrolling in EFC, participation is still low.²³⁷ In 2023, “33 states, the District of Columbia, Puerto Rico, and nine tribes” offered federally reimbursable extended foster care.²³⁸ Unfortunately, “only about 22% of those in care on their 18th birthday remained in care on their 19th birthday in 2021.”²³⁹ While the ability to choose whether to receive extended foster care is undeniably valuable, the need to opt-in to the program may be a barrier to care. Just as voting registration discourages many individuals from voting in their states, the process of opting into care may decrease the number of youths who participate in EFC.²⁴⁰ A possible solution would be to eliminate the “bureaucratic red tape” and have extended foster care be an automatic process in which youth could opt out if they wanted to discontinue their care.²⁴¹

participating in a program that removes barriers to employment, working for at least eighty hours per month, or being medically incapable of meeting the above requirements. *See id.*; *supra* Part II. *See also John H. Chafee Foster Care Program for Successful Transition to Adulthood*, CHILD’S BUREAU, <https://acf.gov/cb/grant-funding/john-h-chafee-foster-care-independence-program> (last visited Mar. 31, 2025).

236. The lack of peer support and mentors largely stems from a funding deficit. *See Promoting Peer Support in Child Welfare*, GENERATIONS UNITED, <https://www.gu.org/app/uploads/2024/02/Peer-Support-in-Child-Welfare-Resource.pdf> (last visited Mar. 26, 2025).

237. *See generally Fostering Youth Transitions*, *supra* note 127, at 4.

238. *Id.*

239. *Id.*

240. *See generally* Denise-Marie Ordway, *How Voter Registration Rules Discourage Some Americans from Voting: An Explainer and Research Roundup*, JOURNALIST’S RES. (Mar. 12, 2024), <https://journalistsresource.org/politics-and-government/voter-registration-research/>.

241. EFC already is a program that youth can opt-out of if they no longer want to receive care. *See California’s Fostering Connections to Success Act: Court Procedures*, *supra* note 37. Additionally, if a youth is in a time of crisis, they may opt-in despite previously choosing to end care. *Id.* What this Comment proposes is

Automatically enrolling foster youth in EFC would likely ensure that more youth participate in the program, thus benefiting from continued support during the crucial transition period into adulthood. Studies have shown that default rules (e.g., opt-out programs) “produce[] significantly higher participation rates than [] opt-in design[s], even if it is easy for people to reject the default.”²⁴² This is likely because of “default bias,” which identifies people’s inclination to “choose inaction over action,” and a tendency to “stick with previously made decisions.”²⁴³ This phenomenon is also seen with organ donation; while most individuals approve of donating their organs, only a small fraction of people actually sign a donor card.²⁴⁴ With EFC, those who need support and guidance the most may not be the ones inclined to sign up for participation in the program. *Actively* choosing to remain in a system associated with negative stigma or traumatic experiences may seem irrational to foster youth aging out of care.²⁴⁵ Making EFC an opt-out program is likely to increase participation, allowing more young adults to take advantage of valuable support in their transition into adulthood.²⁴⁶

to have EFC be an automatic enrollment program and from there, allow youth to opt-out either before receiving EFC or after EFC benefits have begun.

242. Cass R. Sunstein, *Default Rules Are Better Than Active Choosing (Often)*, 21 *TRENDS COGNITIVE SCIS.* 600, 600 (2017).

243. *By the Power of Default*, CTR. FOR ADVANCED HINDSIGHT (Mar. 22, 2018), <https://advanced-hindsight.com/blog/by-the-power-of-default/>.

244. *Id.*

245. Much of the stigma associated with foster care may be shed as youth take on a form of independence in EFC. *See generally* Poppi O’Donnell, *Stigma Associated with Youth in the Foster Care System*, IMPRINT (Aug. 5, 2016), <https://imprintnews.org/child-welfare-2/stigma-associated-youth-foster-care-system/20086>. *See generally* Rhiannon Hall, *A Life Shaped by Foster Care*, CHILD.’S RIGHTS (May 12, 2013), <https://www.childrensrights.org/news-voices/a-life-shaped-by-foster-care> (entailing a former foster youth, Rhiannon, describing the challenges in feeling that she had to ask for permission before doing anything in her foster homes). In contrast to having a guardian and being placed in a foster home, EFC participants typically live independently in supportive housing or other settings. *See* Courtney et al., *Findings from CalYOUTH*, *supra* note 19, at 18. Rather than having a foster parent-guardian, the juvenile court oversees the NMD’s welfare. Courtney et al., *supra* note 7. The stigma of opting in and remaining a “child” by staying in the system may be negated by an opt-out program.

246. In the context of mental health services, opt-out programs were found to be dramatically more effective in individuals utilizing psychotherapy versus a self-initiated

CONCLUSION

The transition into adulthood is undoubtedly difficult, but for foster youth, this period is particularly burdensome. Intervention at a crucial transitional time for youth aging out of the foster care system will not only make a significant difference in the individual lives of those in the system, but for society at large. State child welfare systems are responsible for finding permanent placements for youth in foster care, so when a child ages out of the system without care, it should be the state's responsibility to ensure that the child has proper support as they transition into adulthood.²⁴⁷ As of 2008 and 2010, the FCA and EFC allow youth to receive government support until their twenty-first birthday.²⁴⁸ However, foster youths' experiences of becoming adults do not align with the legal age of adulthood in the United States.²⁴⁹ One former foster youth stated that after she graduated college, she stopped receiving a monthly stipend and, unable to pay rent, quickly became homeless.²⁵⁰ While she was able to stay with friends until she became more financially stable, she still felt "ill equipped" to support herself.²⁵¹ Both the FCA and EFC are steps in the right direction, but for youth to receive proper support during the transition into adulthood, care should be extended beyond age twenty-one, if youth meet the criteria outlined in the EFC requirements.

Generally, foster youth experience high rates of homelessness and low rates of educational attainment and employment opportunities. Utilizing insights from educational data, social workers, and data on child welfare policies (specifically EFC), as well as the youth themselves, to guide policy decisions will likely result in a smoother transition into adulthood for foster youth. This multi-disciplinary approach to caring for our nation's foster youth more accurately accounts for the challenges they face as they age out of the system, thus

approach. See Gregory Guldner et al., *Use of an Opt-Out vs Opt-In Strategy Increases Use of Residency Mental Health Services*, 16 J. GRAD. MED. EDUC. 195, 198 (2024).

247. See Courtney et al., *supra* note 7.

248. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949; Courtney et al., *supra* note 40.

249. See *supra* Part III; see generally Hamilton, *supra* note 70.

250. The youth's name is Anastasia. *Aging Out Stories*, TRINITY OPPORTUNITY ALL., <https://perma.cc/VV26-XH8A> (last visited Nov. 24, 2024).

251. *Id.*

allowing lawmakers to alter the current law in a way that better supports this vulnerable population.²⁵²

Studies indicate that providing support to foster youth beyond age eighteen yields positive benefits, and it is reasonable to assume that extending this support beyond twenty-one could reduce youth homelessness and increase both educational attainment and earning capacity among NMDs. The decision regarding when to end support for foster youth should be informed by data and the actual circumstances they face.

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252. See Hamilton, *supra* note 70 (discussing how the developmental and behavioral sciences should supplement traditional policymaking).

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