

Issue Brief

The Role of the Court in Implementing the Older Youth Provisions of the Strengthening Families Act

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overseeing these provisions and working with the child welfare agency to develop policies and enforce the provisions.

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Introduction

On September 29, 2014, President Obama signed the Preventing Sex Trafficking and Strengthening Families Act (“SFA”) into law.¹ The law includes important provisions for older youth in foster care. Courts are key to

This issue brief outlines the provisions of the SFA relating to older youth and suggests how courts can effectively implement them. There are four sections:

- **Section 1:** Older Youth Permanency
- **Section 2:** Youth Engagement, Transition Planning, and Discharge Documents
- **Section 3:** Normalcy
- **Section 4:** Youth Who Run Away from Foster Care

For each section, the brief outlines the basic legal requirements, discusses court implementation, suggests questions the court can ask, and gives strategies for attorneys and advocates to prepare youth for court and case planning so that they can experience the benefits of these provisions of the SFA.

¹ Pub. L. No. 113-183.

I. Older Youth Permanency

Part 1: Understanding the Law

What are the permanency provisions?

The SFA contains several provisions related to permanency for older youth. Some provisions directly add elements to the court review process. Several others mandate that the child welfare agency document for the court the steps it has taken to achieve permanency for the youth. The court will need to determine how it wants to incorporate these changes into the review process for effective implementation.

The Act requires that:

- Another Planned Permanent Living Arrangement (APPLA) is prohibited for youth under age 16.²
- To select or maintain the plan of APPLA, the court:
 1. Should determine whether the agency has documented the intensive, ongoing, unsuccessful efforts³ to achieve reunification, adoption, guardianship, or placement with a fit and willing relative;⁴
 2. Must find that APPLA is the best permanency plan for the child;⁵ and
 3. Must find that there is a compelling reason that it is not in the best interest of the youth to return home, be placed for adoption, enter a guardianship arrangement, or be placed with a fit and willing relative.⁶
- If APPLA is this proposed permanency plan, the court:
 1. Must ask the child about his or her desired permanency outcome.⁷
 2. Should confirm that the agency is taking steps to ensure the reasonable and prudent parent standard is being exercised;⁸ and
 3. Should confirm that the agency has documented that the child has regular and ongoing opportunities to engage in age or developmentally appropriate activities.⁹

² 42 U.S.C.A. § 675(5)(C)(i).

³ Please see sidebar on page 4 for more information.

⁴ 42 U.S.C.A. § 675a(a)(1).

⁵ 42 U.S.C.A. § 675a(a) (2)(B).

⁶ 42 U.S.C.A. § 675a(a) (2)(B).

⁷ 42 U.S.C.A. § 675a(2)(2)(A).

⁸ 42 U.S.C.A. § 675a(a)(3)(A). See Section 3 for more information on the reasonable and prudent parent standard.

⁹ 42 U.S.C.A. § 675a(a)(3)(B).

How do these provisions change the law?

For youth under age 16, the law has changed to create a new prohibition on the use of APPLA for youth under age 16. There are no permissible uses of APPLA for any child under age 16.

The law also creates new limitations on the use of APPLA for youth ages 16 and older. Before the SFA, to select or maintain an APPLA goal, the agency was required to document to the court a compelling reason that it was not in the best interest of the child at the date of the hearing to return home, be adopted, enter a guardianship arrangement, or be placed with a fit and willing relative.¹⁰ The SFA adds a new section to the law—42 U.S.C.A. § 675a, Additional Case Plan and Case Review System Requirements—which mandates the requirements listed above. The court must now *also* determine that APPLA is the *best* permanency plan for the child and document the agency’s intensive, ongoing, and unsuccessful efforts to achieve the more preferred permanency plans.

In addition to increasing the amount and type of evidence the agency must present to maintain or change the plan to APPLA, the SFA now requires that, in those cases where the proposed plan is APPLA, the court ask the child about his or her desired permanency plan. While previously the court was required to “consult”¹¹ with all youth on their permanency and transition plans, this new provision explicitly requires a direct inquiry with the child. Finally, the SFA adds a “normalcy” inquiry to the court review. It is recommended that this inquiry apply to all youth regardless of permanency plan.

Finally, if the court determines that the permanency plan will change or remain as APPLA, the APPLA itself must be described and approved by the court. This is not a change in the law, but an existing requirement that is often overlooked to the detriment of older youth permanency outcomes. To fulfill this requirement, the child welfare agency must present the placement, service, and relationships that will be provided or exist that are the child’s planned permanent living arrangement. The acronym APPLA is a type of permanency plan; the exact contours of the plan must be described. A court order that contains only the letters APPLA and nothing more is not consistent with the law.¹²

¹⁰ 42 U.S.C.A. § 675(5)(C)(i).

¹¹ 42 U.S.C.A. § 675(5)(C)(iii).

¹² For more information see Cecilia Fiermonte & Jennifer L. Renne, [Making It Permanent: Reasonable Efforts to Finalize Permanency Plans for Children in Foster Care](#) 79-84 (American Bar Association 2002), available at <http://goo.gl/iF02GM>.

What are the goals of the permanency provisions and how will they improve outcomes?

For many years it has been clear that APPLA is an overused permanency plan for older youth. Far too often, when APPLA is assigned as a permanency goal, the system gives up on finding permanency for the child. In many cases, youth with the plan of APPLA have no permanent living arrangement at all, but rather are just in long-term placements.

The new requirements ensure child welfare agencies and courts work together to secure permanency for all youth, including older youth. These provisions aim to increase the number of older youth who achieve permanency and have the support of family and caring adults as they enter adulthood.

The provisions require more scrutiny when APPLA is selected as a permanency plan or a request is made to maintain APPLA as the plan. In case planning, the child welfare agency provides services to youth and families that reflect the hierarchy of permanency outcomes: reunification, adoption, guardianship, and placement with a fit and willing relative. At each case planning meeting and court review, the hierarchy of goals must be considered; even if APPLA is set as a goal, it must be reviewed repeatedly until the youth leaves care.

These provisions reflect the expectation to strive toward permanency as long as a child is in the child welfare system, including up to age 21. No assumption should be made that older youth, or youth with special and complicated needs, cannot or do not want permanency or family, and the law requires consistent focus on that goal.

What are intensive and ongoing efforts for family placement?

While this determination should be individualized for each case, there are some basic principles for the court to consider when evaluating if sufficient efforts for family placement have been made:

1. Permanency is possible for all children regardless of age or special needs.
2. Many diverse permanency services can be used. Some services prepare youth for permanency and address barriers to permanency. Others may include seeking an adoptive resource, guardian, or mentor; working with family; and finding supports for those resources.
3. Permanency services should be tried repeatedly over time. Some services will not be the right fit, others may need to be provided more than once due to changes in opportunities or circumstances.
4. Some youth say “no” to permanency options not because they do not want family or connection, but because of bad past experiences, trauma, or failures of the system. For example, when a youth is resistant to adoption, it is important for the court to explore what is behind that resistance. A youth’s wishes should be valued and respected, but the system has a duty to find family and supportive connections for every youth.

How can the court implement these provisions?

Under the law, the court has a clear mandate to ensure protections for older youth in care. Several provisions of the SFA clearly impact judicial review of the permanency plan through added requirements for the case review process.

Evidence supporting the goal of APPLA.

Because the standard has been raised for selecting or maintaining a plan of APPLA, the court should make sure sufficient evidence is presented to show:

- “Intensive, ongoing, and unsuccessful efforts” have been made to achieve the preferred permanency plans;
- APPLA is the best permanency plan for the child; and
- Compelling reasons why it is not in the best interest of the child to have one of the more preferred permanency plans.

The court should ensure sufficient evidence is presented and the findings reflect *individualized determinations*. Compelling reasons are forceful and convincing facts and case-specific evidence. Evidence that is not current or reflects generalizations and assumptions should not be accepted. Generalizations include: “He is too old for adoption.” “She does not get along in family settings.” “The youth is too disabled to be adopted.” Findings should be specific and detailed. The law raises the bar for promoting and achieving permanency and the court plays a pivotal role ensuring this bar is raised in practice.¹³

Examples of Permanency Services

- Family finding, including use of search technology and social media
- Identifying and rekindling connections with caring adults who are not relatives or kin
- Child-specific recruitment
- In-depth review of case file
- Creating a child profile or life book
- Preparing and supporting an identified permanency resource
- Team-based planning (family group decision making, permanency teaming)
- Helping youth join community activities that will build a support network
- Post-permanency supports

Permanency services may also include counseling or therapeutic services that address the child’s history of trauma, separation and loss, and other mental health needs. These services may also help address challenges that may reduce the child’s ability to achieve a permanent family. Services may include:

- Grief and loss therapy
- Treatments for trauma and other issues that prevent healthy relationships and connections
- Assessments of emotional security and follow-up therapeutic services
- Family therapy

¹³ Federal regulations, which predate the new law and have not been revised in many years, provide some examples of compelling reasons. 45 C.F.R. § 1356(h)(3). Under the new law, the court would also be required to include the added findings listed above.

Reducing Group Placement and improving Permanency Outcomes

Reducing group placement and providing appropriate, high quality alternatives is a vital strategy to reduce APPLA and improve permanency outcomes for older youth. As discussed in Every Kid Needs a Family, research clearly shows that group placement produces poor outcomes for youth in terms of educational attainment, criminal justice involvement, and exposure to abuse. It also prevents them from forming the caring and long lasting relationships with family and supportive adults that lead to permanency.

Nearly one in three teens in the child welfare system is placed in group care; many with the permanency plan of APPLA. Courts play a powerful role in reducing the use of group care in individual cases and by developing policies with the child welfare agency to achieve this goal system-wide. The following are key principles to guide the court's inquiry when a child is placed in group care:

- Group care should be used rarely.
- When used, it should be for treatment purposes that cannot be met in a community setting and only for very limited periods of times.
- There should always be a concrete plan for how family/community placement will be achieved.
- Having a disability is not sufficient justification for placement in group care.
- Youth with disabilities can and must—under federal and state anti-discrimination laws—be provided all services and supports in the community and reasonable accommodations must be provided to make this possible.

Acceptable APPLA plans. The court must ensure that if APPLA is selected an acceptable APPLA plan is presented to the court. The court should ensure that the APPLA plan, at a minimum, provides:

1. placement stability,
2. placement in the least restrictive and most family like setting,¹⁴
3. relational permanency demonstrated by connections with family and other supportive adults, and
4. services and supports that meets all special and general well-being needs.¹⁵

Children with APPLA plans should be in family-based placements. If the child is in a group placement, the court should require that the child welfare agency demonstrate the time limited treatment need that the current placement serves and the steps that being taken to reduce the level of restriction. See the text box on this page for more details about the role of the court in reducing group placement. Because efforts at reduction can improve permanency outcomes, they should be an important component of implementing the permanency provisions of the SFA. For more information on this topic see the Policy Report, Every Kid Needs a Family.¹⁶

¹⁴ 42 U.S.C.A. § 675 (5).

¹⁵ The Americans with Disabilities Act, 42 U.S.C.A. § 12101, and Rehabilitation Act, 29 U.S.C.A. § 701, prohibit discrimination in the provision of services, including child welfare services and placements. Reasonable accommodations must be provided to avoid discrimination, and individuals must be offered services in the most integrated settings appropriate to their needs.

¹⁶ Every Kids Needs a Family: Giving Children in the Child Welfare System the Best Chance for Success (Annie E. Casey Foundation 2015), available at <http://www.aecf.org/resources/every-kid-needs-a-family/>.

Normalcy findings. The court must also ensure youth are experiencing normalcy by making findings about the exercise of “the reasonable and prudent parent standard”¹⁷ and the youth’s participation in age or developmentally appropriate activities. While ensuring normalcy is important in itself as a legal requirement, it is worth noting the degree to which normalcy and permanency are interdependent. The more exposure youth have to activities and individuals in the community, the more opportunities they have to form healthy, supportive relationships with peers and supportive adults who can facilitate permanency. While federal law requires this inquiry only for youth with APPLA goals, courts are encouraged to make this inquiry in all cases given the importance of normalcy to child development and permanency.

Youth engagement in APPLA plans. Finally, the court must ensure youth are engaged in deciding their permanency plans. Courts now must directly ask the child about his or her desired permanency goal when the child welfare agency seeks the plan of APPLA. This requirement supports engaging youth in important decisions about their lives and empowering them to participate in these discussions. It also provides an additional “check” for the court when being asked to change the goal to APPLA. The court’s discussion with the youth on his or her desired permanency plan can provide insight into the barriers to achieve permanency as well as potential services and supports the court can order to overcome those barriers. For example, if the youth tells the court that she does not want to be adopted because she does not want to lose touch with her biological parents, the court may conclude that more discussions need to occur with the youth about potential ways to maintain contact with her biological family and still be adopted or pursue other options such as guardianship.

How do the new requirements relate to the existing requirement to document reasonable efforts to achieve the permanency plan?

Currently, the law requires the court to make a judicial determination that the child welfare agency “has made reasonable efforts to finalize the permanency plan that is in effect.”¹⁸ This finding must be made at least once every twelve months. This finding relates to the efforts that are being made to achieve a permanency plan that is in place. When the court makes this finding, it is confirming that the child welfare agency has met its obligation to work towards the assigned permanency goal.

In addition, under the SFA the court must now also consider the agency’s documented intensive, ongoing, and unsuccessful efforts to achieve the permanency plans of return home, adoption, guardianship or placement with a fit and willing relative in order to rule out these more preferred permanency plans before it can assign or maintain the permanency goal of Another Planned Permanent Living Arrangement (APPLA). When the court considers this, it is confirming that the child welfare agency has made appropriate efforts, but has not been successful in working towards the preferred permanency plans. If the court finds that intensive, ongoing, and unsuccessful efforts

¹⁷ See Section 3 for more information on the reasonable and prudent parent standard.

¹⁸ 45 C.F.R. § 1356.21(b)(2)(i).

have been made to achieve the more preferred permanency plan and all the other required findings and inquiries are made that are detailed in this Section, the court can assign or maintain the permanency goal of APPLA and delineate the precise APPLA in place for the youth.

Once the court is satisfied that an acceptable APPLA has been presented the court, it must also determine whether reasonable efforts are being made to achieve the APPLA described.

Part 2: The Court's Role in Policy Development

Implementing the new law requires changing policy and practice in the child welfare agency and the courts. Courts have an important role as leaders and partners in policy development, and are uniquely suited to model collaboration.

Questions the Court Can Ask about Policy Development around the Permanency Provisions

1. Have law, regulation, and court rule been amended or developed to implement federal policy?
2. Has the court been involved in the development of this policy?
3. Are there areas that the court believes it should lead, or for which it should develop its own policy through court rule or other means?
4. Have youth been engaged in developing policy on the permanency provisions?
5. Has the state provided guidance on what must be shown to determine that intensive, ongoing, and unsuccessful efforts¹⁹ have been made to achieve the more preferred permanency plans before APPLA can be selected or maintained? Is this something the judiciary has already determined?
6. What permanency services are available in the state? Are there any older youth-focused permanency services?
7. What incentives does the state have to support older youth permanency (e.g. extended adoption and guardianship subsidies, extended foster care, or training kin caregivers to be treatment/therapeutic foster or adoptive parents)?
8. What legal options does the state provide to allow creative permanency arrangements? For example:
 - a. Does the state provide open adoption or other arrangements that allow contact with biological parents after adoption?
 - b. Does the state have a law or policy to undo termination of parental rights?
 - c. Does the state have a policy on how to engage biological parents whose rights were terminated, but may now be a permanency resource?
9. Is there policy to ensure judges ask youth about a current or proposed APPLA plan? (e.g., How will youth be notified about court and attend hearings?)

¹⁹ Please see sidebar on page 4 for more information.

10. Do court personnel need additional training to engage youth in discussions about permanency options?
11. Has the state established a clear policy on what constitutes an acceptable APPLA plan, or what must be presented to the court?
 - a. When the plan is APPLA, does policy require at least one supportive adult be identified as a connection to the youth?
 - b. When the plan is APPLA, does policy require that living arrangement and relationship permanency be shown as well as that the child's well-being and any special needs are being met?

Part 3: Questions to Ask at all Hearings--Permanency

See the text boxes on the following pages for questions to ask at all permanency hearings.

Questions to Ask at Hearings: Permanency

Questions for the Agency if the Proposed Plan is Return Home, Adoption, Guardianship, or Placement with a Fit and Willing Relative

- What is the permanency plan for the child? Why has this plan been selected?
- If the plan has not been achieved, what services and efforts should be made to achieve the goal?

Questions for the Agency if APPLA is the Proposed Plan

- What services and efforts have been made that serve as the intensive, ongoing, and unsuccessful efforts for family placement?
- Has family been fully considered? Have the parents of any step- or half-siblings been explored as permanency resources?
 - a. Have all technologies been used to search? Have all services and supports been considered to make a family arrangement viable?
 - b. Have kin and non-family resources been sought through special recruitment and in-depth case file review?
- Have all barriers to the youth accepting permanency or establishing relationships been addressed through treatment or supports?
 - a. What are the barriers to family placement?
 - i. Do they reflect the youth's special needs?
 - ii. Do they reflect a need for support by the caregiver?
 - b. How often has the array of permanency services described been tried? Should any be tried again?
- What are the compelling reasons that it is not in the child's best interest to return home, be adopted, placed in a guardianship or with a fit and willing relative? What are the specific facts and reasons for this case?
- If the child has a sibling, are they placed together? If no, what reasonable efforts have been made to make a joint placement? If joint placement is not possible due to the safety and well-being of either sibling, is visitation occurring? What efforts are being made to sustain and nurture that relationship?

Questions for the Agency to Determine if the APPLA Plan is Acceptable

- What is the child's current placement? Does it provide stability and consistency?
- If the child is in a group placement:
 - a. How long has he or she been in the placement?
 - b. What is the treatment rationale for the placement?
 - c. What services or supports have been considered to support a family-based placement?
 - d. If the child has a disability, have reasonable accommodations been requested to support a community/family-based placement?
 - e. What is the action plan for moving the child to a family placement?
- Are all of the child's health, education, and transition to adulthood needs being met?
- Does the child have any special needs? If yes, are they being met and is the child making progress in treatment?
- How is the child being provided relational permanency? Is the child connected with family or kin? Are any supportive adults identified who are consistent in the child's life and will be involved as he or she transitions to adulthood?
- If the child has siblings, is visitation occurring and is the relationship being supported and nurtured?
- What activities is the child engaged in, such as extracurricular, cultural, social, and community activities?
- Are there any barriers to the child participating in these activities?
- Are the child's caregivers supporting the child in participating in extracurricular, cultural, social, and community activities? Does the caregiver need any support finding or supporting activities for the child?
- Do any barriers need to be addressed that prevent the child from participating in activities?
 - a. If the child has a disability, are accommodations needed to make participation possible?
 - b. If the child identifies as LGBTQ, does the youth or caregiver need support finding activities that are affirming and supportive?
 - c. If the child is a parent, is support needed (e.g., child care) to participate in activities?
 - d. If the youth wants to participate in or learn about traditions related to racial, ethnic, or cultural identity, does the youth or caregiver need support or information to make this possible?

Questions for the Child if the Proposed Plan is APPLA

- Has anyone talked to you about permanency? Do you understand what permanency is?
 - a. Do you want help strengthening or repairing relationships with your biological family?
 - b. Do you want to learn more about adoption? (If the state has open adoption or other way to maintain contact with biological family, does the youth understand this?)
 - c. Do you want to learn more about guardianship? (Does the youth understand that guardianship does not terminate any legal relationships with the biological family?)
 - d. Do you want to learn more about kinship care and ways to be placed with relatives or people you have a relationship with?
- Has anyone asked you who you consider family? Do you get to see the people you consider family often? How much time do you get to spend with them? How do you spend time with them?
- Who are the supportive adults in your life?
- Do you want help finding supportive adults?
- If you have siblings, how often do you get to see and talk with them?
- Are your needs being met in your current placement?
- Is there anything about your current situation you would like to change?
- What activities, interests, and hobbies are you involved in? What activities would you like to do?

***Note: See Section III (3) for questions the court should ask youth about normalcy. Ask these questions of all youth, including youth with APPLA goals.

Part 4: Preparing Youth for Court

To ensure these provisions are effective, youth will need adequate preparation for court and case planning. Attorneys, advocates, and other adults will also need to prepare to respond to the court's inquiries, take legal positions, and request orders when necessary. To prepare, attorneys, advocates, and other adults should consider the following questions:

Issues to investigate and discuss with the youth

1. Does the youth understand what permanency is?
 - a. Does the youth understand the available permanency options and what they mean for living arrangements, services, and involvement with the child welfare agency and court? Does the youth know he or she should receive permanency and transition to adulthood services?
 - b. What is the youth's relationship with his or her biological family? Are there services or supports that could help repair or strengthen those connections, including counseling?
 - c. Is the youth placed or connected with his or her siblings?
 - d. Is the youth aware of permanency options that would allow him or her to maintain connections with the biological family, if available in the jurisdiction?
 - e. Who does the youth consider "family"?
 - f. Can the youth identify at least one supportive adult who will be connected to him or her after transitioning to adulthood and out of the child welfare system?
 - g. If the youth resists permanency:
 - i. Have his or her reasons been explored with you, the caseworker, or a therapist?
 - ii. Have trauma issues been addressed through treatment?
 - iii. Have grief and loss issues been addressed through treatment?
 - iv. Has the youth been given multiple opportunities over time to consider and discuss permanency options and his or her feelings about permanency?
2. Is the youth prepared to respond to the court about his or her desired permanency plan?
 - a. Have you helped the youth practice his or her response verbally or in writing?
 - b. Have you explained to the youth what will happen in court and who will be present?
 - c. Do you need to make any special requests or arrangements to ensure the youth is comfortable responding in court about permanency?
 - i. Would the youth like to submit a written statement?
 - ii. Would the youth like to speak to the judge in chambers if allowed?

- iii. Would the youth like a support person, like a therapist or friend or mentor?
- 3. Have you researched the permanency services for youth available in your jurisdiction?²⁰
 - a. Has the youth had access to all the permanency services? Should certain services be tried again or delivered by a different provider?
 - b. Are therapeutic services needed to address barriers to permanency for the youth?
 - c. Are there services that could be provided to a caregiver that would facilitate permanency?
 - d. Are you prepared to request specific orders for services to achieve the preferred permanency plans?
 - e. Are you prepared to take a position on the appropriate permanency plan for the child?
- 4. If APPLA is the proposed permanency plan, are you prepared to describe the planned permanent living arrangement that is being proposed?
 - a. Is the current placement/living arrangement stable?
 - b. Are the youth's basic and special needs being met?
 - c. Is the youth making progress in all case planning goals, including transition to adulthood goals?
 - d. Is the youth connected to at least one supportive adult willing to be in his or her life after transitioning to adulthood?
 - i. What is the nature of this relationship? Has it been formalized in any way, such as the creation of a Permanency Pact²¹?
 - ii. Are there any services that can support or strengthen this relationship?
 - e. What permanency services should be tried or repeated in the coming months to continue to achieve the more preferred permanency goals?
 - f. Are you prepared to request orders for:
 - i. permanency services,
 - ii. services that address any issues related to the stability or appropriateness of the placement, and/or
 - iii. any unmet treatment or service needs.

***Note: See Section III(3) for questions the court should ask youth about normalcy. Ask these questions of all youth, including youth with APPLA goals.

²⁰ Please see sidebar on page 4 for more information.

²¹ FosterClub's Permanency Pact can be found at https://www.fosterclub.com/files/PermPact_0.pdf.

II. Youth Engagement, Transition Planning, and Discharge Documents

Part 1: Understanding the Law

What are the case planning²² provisions related to youth engagement?

For children ages 14 and older, the SFA requires the following:

- The child welfare agency documents that the youth is consulted when developing the case plan.²³
- Youth must be provided with a list of their rights as part of the case planning process. The list of rights must be part of the case plan and should address “education, health, visitation, and court participation,” the right to discharge documents, and to “stay safe and avoid exploitation.”²⁴ The case plan must include a signed acknowledgement that the list of rights has been received and “explained to the child in age-appropriate way.”²⁵
- The youth must be allowed to involve two individuals in case planning who are not a foster parent or part of the casework staff. One of these individuals may be an advocate on normalcy issues.²⁶

²² The case planning responsibility is defined at 42 U.S.C.A. § 675(1) and applies to youth of all ages. Beginning at age 14, the case plan must include “a written description of the programs and services which will help such a child prepare for the transition from foster care to a successful adulthood.” 42 U.S.C.A. § 675(1)(D). No later than during the 90-day period prior to a youth’s discharge from the child welfare system or the termination of services provided under 42 U.S.C.A. § 677 at age 18 or older, a transition plan must be developed with the youth. 42 U.S.C.A. § 675(5)(H). The transition plan should be part of the case plan and aligned with its goals. It should at least include “specific options on housing, health insurance, education, local opportunities for mentors and continuing support services, and work force supports and employment services” and information about health care decision making, including the “option to execute a health care power of attorney, health care proxy, or other similar document recognized under State law.” 42 U.S.C.A. § 675(5)(H). As discussed in more detail below, when a youth discharges from the child welfare system at age 18 or older, the child welfare agency must also provide to the young adult his or her birth certificate, social security card, state identification card/driver’s license, health insurance information, including any cards needed to access care, and medical records. 42 U.S.C.A. § 675(5)(I).

²³ 42 U.S.C.A. § 675(5)(C)(iv).

²⁴ 42 U.S.C.A. § 675a(b)(1).

²⁵ 42 U.S.C.A. § 675a(b)(2).

²⁶ 42 U.S.C. § 675(5)(C)(iv). This provision also requires that the child welfare agency develop a policy to challenge the identification of any of these individuals if the agency believes they are not acting in the child’s best interest.

What are the “aging out” and transition to adulthood provisions?

The SFA requires that:

- The case plan document the services provided to a youth beginning at age 14 to aid in the successful transition to adulthood.²⁷
- If leaving care at age 18 or older, the youth must be provided with the original or certified copy of the following documents: birth certificate, social security card, state identification card/driver’s license, health insurance information, including any cards needed to access care, and medical records.²⁸

How do these provisions change the law?

The SFA makes positive changes to the transition planning requirements for older youth.

- It lowers the age at which transition to adulthood services must be provided to youth to age 14 from age 16.
- It creates a new requirement to provide youth with their vital documents upon discharge from the system at age 18 or older. No such requirement previously existed.
- It requires the child welfare agency to consult with youth when developing their permanency and transition plans. Prior to this requirement, only the court needed to consult with youth regarding their permanency and transition plans.
- It creates a new requirement that youth age 14 and older be permitted to select additional members of the case planning team, including an advocate on normalcy.
- It creates a new requirement that beginning at age 14 youth be provided with a list of their rights as part of the case planning process.

What are the goals of the provisions and how will they improve outcomes?

The provisions aim to improve outcomes by enhancing the quality and effectiveness of case planning. Planning for adulthood is more effective when it is started earlier and when attention is paid to crucial elements of a successful transition such as the provision of vital documents. In addition, when youth are educated and informed they are better equipped to advocate for themselves and to be invested in the goals and progress of their case plan. Similarly, providing youth with advocacy and support in case planning enhances the system’s responsiveness to the youth and builds in more accountability.

²⁷ 42 U.S.C.A. § 675(1)(D).

²⁸ 42 U.S.C.A. § 675(5)(I). While this requirement applies to youth who have been in the child welfare system for at least 6 months, it is recommended that this requirement be applied to any youth who discharges at age 18 or older even if they were in care for less than 6 months since they will still have similar transition needs that rely on these vital documents.

How can courts implement these provisions effectively?

The court ensures youth are engaged in case planning by modeling practices in court and asking questions that ensure that the SFA provisions are being implemented.

Youth who feel engaged in the court process are more likely to speak up and participate in permanency and transition planning.²⁹ Similarly, the case planning team will take its cues from the court: if the court values youth participation, it is more likely the case planning team will too.

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The court enforces the law and reinforces its value. In terms of enforcement of SFA provisions, the court can ask about the frequency and type of youth participation in case planning. The court can inquire into whether youth are given the required list of rights, help youth understand what they mean, and provide avenues for redress if they are violated.

The court enforces the law and reinforces its value.

Finally, the court plays a gatekeeping role: ensuring that transition planning occurs beginning at age 14, and that youth do not leave the system at age 18 or older without an appropriate plan. Under the SFA, these inquiries should be part of the court review. Court oversight is also important to ensure youth receive their vital documents before transitioning from the system.

Part 2: The Court's Role in Policy Development

Implementing the new law will require changes to policy and practice in the child welfare agency and the court. Courts have an important role as leaders and partners in policy development, and they are uniquely suited to model collaboration.

Questions the Court Can Ask about Policy Development Related to the Youth Engagement, Transition Planning, and Discharge Documents Provisions

1. Has law, regulation, and court rule been amended or developed to implement federal policy?
2. Has the court been involved in the development of this policy?

²⁹ For more information and tools related to the importance of youth engagement in their court hearings, please visit the webpage of the American Bar Association's National Youth Engagement Project: http://www.americanbar.org/groups/child_law/what_we_do/projects/youth-engagement-project/expertise/engaging-youth-in-court.html.

3. Are there areas that the court believes it should lead, or for which it should develop its own policy through court rule or other means?
4. Have youth been engaged in developing policy around the youth engagement provisions?
5. Has any training been provided so youth are more equipped to participate, and so the court and those involved in case planning are more equipped to engage youth?
6. How does the court ensure the youth age 14 and older have been provided a list of rights as part of the case planning process? For example, will the list be provided at court hearings? Will the court play a role in explaining the rights?
7. How does the court ensure youth who are discharging at 18 or older receive the newly required documents? Will the court make a finding whether these documents have been provided before a case can be discharged?
8. How does the court promote new policies that allow youth to involve two individuals who are not the foster parent or caseworker in case planning? Will the court ask if the youth is aware of this option?
9. Are there court policies/initiatives to facilitate youth engagement in court?
 - a. Youth-friendly notices about court?
 - b. Older youth specialty courts?
 - c. Peer advocates in court?
 - d. Youth-friendly court schedules?
 - e. Policies to allow different modes of participation?
 - f. Surveys to get consistent feedback about youth participation in court?

Part 3: Questions to Ask at Hearings—Youth Engagement, Transition Planning, and Discharge Documents

See the text Box on the following page for questions to ask youth at court.

Questions to Ask at Hearings:

Youth Engagement, Transition Planning, and Discharge Documents

- What services is a youth age 14 or older receiving to successfully transition to adulthood? Are these services helping the youth achieve established goals?
- Was the youth allowed to identify two individuals to be part of the case planning team who are not the social worker or foster parent?
- Has the youth age 14 and older participated in developing the case plan?
 - a. How did the youth participate?
 - b. Does the youth understand the main case plan goals?
- Has the youth age 14 or older been provided a list of rights as part of the case planning process?
- If the youth is approaching age 18 or older and preparing to discharge from the system, has he or she been provided an original or certified copy of: birth certificate, social security card, state identification card/driver's license, health insurance information, including any cards needed to access care, and medical records?
- Are there any other documents under state law and policy that must be provided to the youth before discharge?
 - a. Proof the youth was in foster care at age 16 or older to be eligible for Chafee services, including the Education and Training Voucher?
 - b. Proof the youth was in foster care at age 18 or older and enrolled in Medicaid at that time to be eligible for Medicaid until age 26?

Part 4: Preparing Youth for Court

Issues to investigate and discuss with the youth

1. How has the youth been included in case planning?
 - a. Does he or she attend case planning meetings?
 - b. Does he or she speak and actively participate?
 - c. Has the youth received any training or support preparing for case planning meetings?
 - d. Are there peer advocacy programs or trainings in your jurisdiction that the youth could join?
2. Do you attend the youth's case planning meetings?
3. Do you prepare the youth to participate in these meetings?
4. Was the youth allowed to select two people who are not the caseworker or foster parent to attend case planning meetings?
5. Have you helped the youth identify individuals to attend the case planning meetings?
6. Has the youth received the required list of rights?
 - a. Does the youth understand these rights?
 - b. Does the youth identify any rights that have been violated or are of concern that should be addressed in court?
7. Have you reviewed the case plan, including the services a youth age 14 or older should be receiving to help transition to adulthood?
8. Does the youth need any transition or other services that are not identified in the plan?
9. If the youth is not a U.S. citizen or Lawful Permanent Resident, does his or her case plan identify and include efforts to achieve permanent immigration status?
10. If the youth is approaching age 18 or older and preparing to discharge from the system, have all vital documents (including proof of valid immigration status, if applicable) been provided to the youth?
 - a. If no, what orders should be requested to obtain the needed documents?
 - b. If no, should another hearing date be requested before the youth can be discharged?
11. If the youth is age 18 or older and preparing to discharge from the system, has an acceptable transition plan been presented?
 - a. If no, what orders should be requested to ensure an appropriate plan is in place?
 - b. If no, should another hearing date be requested before the youth can be discharged?
12. Is the youth prepared to respond to the court about his or her involvement in the case plan?
 - a. Have you helped the youth practice his or her response verbally or in writing?
 - b. Have you explained to the youth what will happen in court and who will be present?

- c. Do you need to make any special requests or arrangements so the youth is comfortable responding in court about participation and case planning?
 - i. Would the youth like to submit something in writing?
 - ii. Would the youth like to speak to the judge in chambers if allowed?
 - iii. Would the youth like a support person, like a therapist available?

III. Normalcy

Part 1: Understanding the Law

What are the “normalcy” provisions of the SFA?

The law includes several provisions that support “normalcy,” the idea that youth in care should have the same experiences and opportunities as their peers who are not in the system. The law does this by:

1. Requiring that states institute a “reasonable and prudent parent standard”³⁰ for caregivers in family foster care and congregate and other placement settings³¹ to decide whether children in their care can participate in daily childhood extracurricular, enrichment, social, and cultural activities without prior agency or court approval.³²
2. Requiring the child welfare agency to ensure, as a condition of contracting, that child care institutions (group care) have an official on-site who can act as a caregiver to exercise the standard.³³
3. Requiring that caregivers in family foster care and child care institutions are trained in the reasonable and prudent parent standard.³⁴

³⁰ Federal law defines the reasonable and prudent parent standard as “the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.” 42 U.S.C.A. § 675 (10).

³¹ The standard must be applied to family foster care and child care institutions. Federal law defines “child care institution” as: “a private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State...but the term shall not include detention facilities, forestry camps, training schools, or any other facility operated primarily for the detention of children who are determined to be delinquent.” 42 U.S.C.A. § 672 (c).

³² The reasonable and prudent parent standard does not intrude upon the rights of parents. Parents still retain their crucial decision making authority, especially in matters of education and health care, unless the court has otherwise restricted them. The reasonable and prudent parent standard is intended to facilitate the experience of normalcy for youth and promote participation in daily childhood experiences by allowing caregivers of children to give permission after a decision making process. Child welfare agencies should make sure caregivers understand the scope of the standard and that caregivers and the child welfare agency should engage parents in the decision making process to the greatest extent possible.

³³ 42 U.S.C.A. § 671(a)(10)(B). The law defines “caregiver” to include: “a foster parent with whom a child in foster care has been placed or a designated official for a child care institution in which a child in foster care has been placed.” 42 U.S.C.A. § 675(10)(B).

³⁴ 42 U.S.C.A. § 671(a)(24).

4. Requiring that states have policies related to the liability of caregivers and private entities when they exercise the reasonable and prudent parent standard appropriately.³⁵
5. Requiring that, for youth with a current or proposed permanency plan of APPLA, the child welfare agency document for the court that (1) the youth has received regular and ongoing opportunities to engage in age or developmentally appropriate activities,³⁶ and (2) the youth’s caregivers are exercising the reasonable and prudent parent standard.³⁷

How do the provisions change current law?

The SFA is the first federal law to discuss the concept of “normalcy.” Prior to the SFA, at least five states—Florida, California, Utah, Washington, and Ohio—enacted laws that reflect the requirements of the SFA. For most states, however, promoting normalcy and establishing and implementing the reasonable and prudent parent standard will be new to law and practice and the court should play a central role in ensuring appropriate standards are set and enforced as states develop their policies.³⁸

What are the goals of the provisions and how will they improve outcomes?

The goal is to let kids be kids.

The “normalcy” provisions of the SFA provide youth in the child welfare system opportunities to enjoy the same kinds of activities as their peers. They will reduce barriers to getting permission to participate in everyday childhood activities. Simply put, the goal is to let kids be kids. This means eliminating policies and practices that are at odds with this new standard and expectation.

The new standard applies to “extracurricular, enrichment, cultural, and social activities.” that a child would normally participate in.³⁹ To illustrate the scope of the standard, the law also provides the following examples: “sports, field trips, and overnight activities lasting one or more days, and...decisions involving the signing of permission slips and arranging of transportation for the child to and from extracurricular, enrichment, and social activities.”⁴⁰

Exposure to age-appropriate activities improves outcomes for youth by supporting social interaction and developing and maintaining healthy relationships. The social

³⁵ 42 U.S.C.A. § 671(a)(10)(C).

³⁶ 42 U.S.C.A. § 675a(a)(3)(B).

³⁷ 42 U.S.C.A. § 675a(a)(3)(A).

³⁸ The deadline for implementing the normalcy provisions of the SFA was October 29, 2015. Some states requested extensions for implementation based on the need for statutory change. For states that received extensions, the implementation deadline was January 1, 2016.

³⁹ 42 U.S.C.A. § 675(10)(A).

⁴⁰ 42 U.S.C.A. § 671(a)(24).

relationships youth develop in activities build their social capital⁴¹ and help them successfully transition to adulthood. Opportunities for employment, references, and connections to people and resources help with this transition. In addition, the more opportunities youth have to connect and spend time with supportive and responsible adults through community, extracurricular activities, employment and internships, the more chances they have to connect with people who can be permanency resources or lifelong connections. Finally, youth in foster care frequently mention feeling isolated while in foster care; more opportunities to be with peers and in community activities help them to feel included and respected.

How do these provisions impact the rights of biological parents?

These provisions leave intact the existing rights of parents that have not been limited by the court and should not conflict with their traditional rights to make important decisions about health, education, and their child's upbringing. The reasonable and prudent parent standard applies to decisions about daily activities the child may engage in, such as social and extracurricular activities. The SFA seeks to improve youths' access to these opportunities and reduce the red tape that has been in place in the form of court and agency approval. It is not intended to reduce the involvement or alter the rights of biological parents.

While the result of the implementation of the normalcy provisions of the SFA is to empower caregivers—foster parents and group care caregivers—to make more decisions on their own about daily activities, the purpose is to expand the opportunities that youth have to access age-appropriate experiences, not to exclude parents from the involvement in their children's lives. Courts can help ensure that the implementation of the SFA is done in a way that expands the opportunities of youth but also respects parents' rights by ensuring that training on the new standard occurs and is available widely, and by encouraging the involvement of parents in making decisions about daily activities where possible. The engagement and involvement of parents should be encouraged in all aspects of the case. The normalcy provisions of the SFA should be implemented with this principle in mind.

How can the court implement the normalcy provisions effectively?

The court ensures the normalcy provisions are enforced by providing oversight and setting expectations. Implementing the normalcy provisions may mean a significant culture change in many jurisdictions where permission of the agency or court is sought

⁴¹Social capital is the "value that is created by investing in relationships with others through processes of trust and reciprocity." Jim Casey Youth Opportunities Initiative, *Social Capital: Building Quality Networks for Young People in Foster Care* 1 and passim (2012), available at <http://www.jimcaseyyouth.org/sites/default/files/documents/Issue%20Brief%20-%20Social%20Cap.pdf>. These relationships tend to be developed through family, school, extracurricular groups (including religious communities, clubs and sports), and informal communities of friends. Building social capital creates support networks for youth that can lead to lifelong connections, resources, and opportunities such as a job or internships. *Id.*

for every decision that is made with respect to a child's activities. The court should be a leader and enforcer of these changes to help ensure that they are felt in the everyday lives of children.

The court can do this by:

- Communicating the importance of normalcy to child well-being and permanency.
- Making findings that the reasonable and prudent parent standard is being exercised.
- Making findings of the regular and ongoing opportunities to engage in age or developmentally appropriate activities.
- Issuing orders to eliminate barriers to youth participation in activities, such as
 - providing transportation, obtaining funding to make participation possible, or directing that planning meetings occur to discuss participation.
 - ensuring agency policies and practices are not at odds with new federal and state policy on normalcy.
 - Modeling collaborative decision making that facilitates youth involvement in age appropriate activities and respects the roles of all parties, including the biological parents.

Because of these new provisions, the court should no longer be enmeshed in decisions about day-to-day social and recreational activities unless there is a conflict. Parties should no longer need to ask for hearings to get court approval to attend a camp or to take a school picture. Instead, the court can focus its time on areas of conflict regarding normalcy, and on permanency and well-being issues in general.

The court should set the tone about the importance of normalcy and what is expected in court reviews. The SFA allows the caregiver to make decisions about daily activities using the reasonable and prudent parent standard with the support and training of the agency.

Part 2: The Court's Role in Policy Development

Implementing the new law will require changes to policy and practice in the child welfare agency and the court. Courts have an important role as leaders and partners in policy development, and they are uniquely suited to model collaboration.

Questions Courts Can Ask about Policy Development Related to the Normalcy Provisions

1. Has law, regulation, and court rule been amended or developed to implement federal policy regarding the standard, liability, and training?
2. Has the court been involved in the development of this policy?
3. Are there areas that the court believes it should lead or for which it should develop its own policy through court rule or other means?
4. Have youth been engaged in developing policy around the normalcy provisions?
5. Has policy been developed that clarifies the scope of the standard?

- a. Has the role of parental decision making been made clear?
 - b. Has the importance of the engagement of parents been made clear?
6. Have caregivers been trained?
7. Have court and judicial personnel been trained?
8. Have policies that conflict with new federal law been eliminated at all levels, including private agencies?
9. Have any special policies been made to ensure the provisions are adequately enforced in congregate care settings? Is the court aware of how caregivers will be designated in those settings and how youth will request permission to participate in activities?
10. Is the court working with child welfare stakeholders to implement the law?

Part 3: Questions to Ask at all Hearings—Normalcy

See the text box on the following pages for questions to ask at court about normalcy.

Questions to Ask at Hearings: Normalcy

- If the youth is in family foster care, is he or she being provided regular and ongoing opportunities to participate in age or developmentally appropriate activities and experiences?
 - a. Can the youth describe these activities?
 - b. If opportunities are not being provided or taken advantage of, what are the barriers?
 - i. Does the child face barriers to participation because of a disability; special need; lesbian, gay, bisexual, transgender, or queer status (LGBTQ); parenting; or any other identified issue?
 - ii. Are barriers related to cost of an activity or transportation?
 - c. Does the child or caregiver need support or help addressing these barriers? Are there any orders the court can issue to address the barriers?
- If the youth is placed in a child care institution, is he or she receiving regular and ongoing opportunities to participate in age or developmentally appropriate activities and experiences?
 - a. Can the youth describe these activities?
 - b. Does the child understand how to request permission to participate in activities from the designated caregiver?
 - c. If opportunities are not being provided or taken advantage of, what are the barriers?
 - i. Does the child face barriers to participation because of a disability, special need, LGBTQ status, parenting, or other identified issues?
 - ii. Does the child or caregiver need support or assistance in addressing these barriers?
 - d. Are there orders the court can issue to address barriers to participation?
- Is the reasonable and prudent parent standard being exercised? Has the caregiver received the required trainings?
- How are the child's parents being involved in the child's experience of normalcy?

Part 4: Preparing Youth for Court

Issues to investigate and discuss with the youth

1. In what school and community activities is the youth participating?
2. Is the youth getting to take part in such experiences as:
 - a. Spending time with peers?
 - b. Spending time with mentors?
 - c. Afterschool employment, internships, or work experiences?
 - d. Taking on more independence and responsibility in the home or placement, such as chores, later curfew, budgeting, etc.?
 - e. Driver's education and getting a driver's license?
 - f. Cultural activities?
 - g. Activities or groups that support a youth's ethnic, religious, or racial identity?
 - h. Activities or groups that support a youth's gender identity or sexual orientation?
3. If the youth is in a family foster care setting:
 - a. Is he or she able to participate in activities with the family, such as trips, celebrations, etc.?
 - b. Have you discussed with the foster parents how they are adjusting to the new reasonable and prudent parent standard? Are they experiencing any challenges? Do they need any support to help facilitate the youth's access to age or developmentally appropriate activities (e.g., information about activities, transportation, and funding)?
4. If the youth is in a child care institution, including a congregate facility:
 - a. Do you and the youth know how to ask the caregiver about participation in activities?
 - b. Is the youth facing any challenges to making requests and getting permission that need to be addressed, such as timeliness?
 - c. Have you discussed with staff at the child care institution whether they need any support to help facilitate the youth's access to age or developmentally appropriate activities? Assistance could include things such as: information about activities, transportation, and funding.
5. Is normalcy discussed in case planning and included in the case plan goals? How is the youth being included? Are the biological parents being included?
6. If the youth is not participating in age or developmentally appropriate activities—or not participating to the extent you believe is appropriate—what are the barriers?
 - a. Have you discussed with the youth's team how to address the barriers?
 - b. Are you prepared to make recommendations or propose orders to the court to address the barriers?
7. Is the youth prepared to respond to the court about normalcy?
 - a. Have you helped the youth practice his or her response verbally or in writing?

- b. Have you explained to the youth what will happen in court and who will be present?
- c. Do you need to make any special request or arrangements to ensure the youth is comfortable responding to questions about normalcy?
 - i. Would the youth like to submit something in writing?
 - ii. Would the youth like to speak to the judge in chambers if allowed?
 - iii. Would the youth like a support person, like a therapist?

IV. Addressing the Needs of Youth Who Run Away from Foster Care

Part 1: Understanding the Law

What are the “runaway” provisions?

The law requires that by October 29, 2015 the child welfare agency must:

- Develop policies to quickly locate youth who run away or are missing from foster care.⁴²
- Determine the primary factors that cause youth to run away from foster care and respond to them “in current and subsequent placements.”⁴³
- Determine youths’ experiences when they are absent from foster care. This includes screening to determine if the youth is a victim of sex trafficking.⁴⁴
- Put in place policies to ensure children missing from foster care are reported to law enforcement within 24 hours and are listed in the National Crime Information Center (NCIC) database of the National Center for Missing and Exploited Children (NCMEC), which can provide assistance to the child welfare agency and local law enforcement to locate missing children.⁴⁵

How do the provisions change current law?

Before the SFA, federal child welfare law did not require states to report to law enforcement youth who had run away or are missing from foster care. States were required only to report to the appropriate agencies or officials “known or suspected instances of physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment.”⁴⁶ One significant change the law brings to policy and practice is requiring the child welfare agency to analyze the root causes why youth run away and develop strategies to respond on an individual and systematic level.

⁴² 42 U.S.C.A. § 671(a)(35)(A)(i).

⁴³ 42 U.S.C.A. § 671(a)(35)(A)(ii).

⁴⁴ 42 U.S.C.A. § 671(a)(35)(A)(iii).

⁴⁵ 42 U.S.C.A. § 671(a)(35)(B). This requirement must be met by October 29, 2016.

⁴⁶ 42 U.S.C.A. § 671(a)(9)(A).

What are the goals of the provisions and how will they improve outcomes for youth?

When youth are on the run, they are vulnerable to dangerous situations and exploitation. The sex trafficking provisions of the law acknowledge that foster youth in general, and youth who run away from the system in particular, are at special risk for being victims of the sex trafficking. Between 2010 and 2013, approximately 23,011 youth ran away or were missing from foster care.⁴⁷ This is a significant number of youth who are the responsibility of the child welfare agency and who are vulnerable to dangerous situations and poor outcomes. These new provisions embed in the law a more targeted and proactive response to these youth with the long-range goal of reducing the numbers of youth who run away and improving their outcomes.

These provisions are also interconnected with other provisions of the law, including promoting normalcy for youth in care. It is likely that some youth run away from foster care because they do not have opportunities for normalcy and exposure to people and activities in the community that provide stability, structure, and security. These various provisions are designed to work together to support the safety, permanency, and well-being of youth in care.

How can the court implement the provisions?

The court can:

- Make sure reporting systems are in place and the child welfare system is examining and addressing why youth run from foster care.
- Ensure diligent efforts are being made to find missing youth, such as ordering the agency to provide information about the youth to law enforcement and NCMEC and requiring that regular reports of efforts to locate the child are provided to the court.⁴⁸
- Reduce barriers youth face to accessing services when they return to care by retaining jurisdiction of the case while youth are on the run and ensuring appropriate screening, assessment, and debriefing when a youth returns.⁴⁹

⁴⁷Kids Count Data Center, Children in Foster Care by Placement Type, available at <http://datacenter.kidscount.org/data/tables/6247-children-in-foster-care-by-placement-type?loc=1&loct=1#detailed/1/any/false/36,868,867,133,38/2623,2620,2622,2625,2624,2626,2621/12994,12995>

⁴⁸ Missing Children, State Care, and Child Sex Trafficking: Engaging the Judiciary in Building a Collaborative Response (National Council of Juvenile and Family Court Judges & National Center for Missing and Exploited Children 2015) at 5. This publication explains the vital role that NCMEC can play in locating youth and that the child welfare agency could greatly benefit from increased collaboration with NCMEC. The court can reinforce effective use of the expertise of NCMEC by asking the child welfare agency to provide an update on the nature of the child welfare agency's collaboration and efforts with NCMEC. This is an important area where the court's inquiry can help establish effective practice.

⁴⁹ Supra note 42 at 6.

- Reinforce practices that prevent future runaway episodes, such as asking what services and approaches are in place to address the causes of the runaway episode.
- Ensure that the normalcy inquiry occurs so that connections to the community and supportive adults can be facilitated and supported.

Part 2: The Court's Role in Policy Development

Implementing the new law will require changes to policy and practice in the child welfare agency and the court. Courts have an important role as leaders and partners in policy development, and they are uniquely suited to model collaboration.

Questions the Court Can Ask about Policy Development around the Runaway Provisions

1. Has law, regulation, and court rule been amended or developed to implement federal policy?
2. Has the court been involved in the development of this policy?
3. Are there areas that the court believes it should lead or for which it should develop its own policy through court rule or other means, such as the status of court jurisdiction and court reviews when a child has run away?
4. Have youth been engaged in developing policy around the runaway provisions?
5. Have advocates and professionals serving homeless, runaway, and trafficked youth been included in policy development?
6. Have behavioral health professionals, especially those with expertise in trauma, been included in policy development?
7. What is the child welfare agency's plan to determine the primary factors that contribute to youth running away?
 - a. Will data be analyzed to determine patterns in placement types, diagnoses, and service receipt?
 - b. Will focus groups or surveys of youth be completed?
 - c. Will experts be consulted?
 - d. Will the current service and placement array be examined?
8. How will the child welfare agency develop the capacity to serve youth who run away or are missing from foster care?
 - a. What services will be available for the court to order to locate a child who is missing from foster care?
 - b. What services will be available for the court to order for youth who return to foster care after running away?
9. How will this work be coordinated with work to implement the normalcy and sex trafficking provisions of the SFA?
10. How will the court work with stakeholder groups to ensure smooth implementation?

Part 3: Questions to Ask at all Hearings—Youth who Run Away

See the text Box on the following pages for questions to ask at court about youth who run away from foster care.

Questions to Ask at Hearings: Youth who Run Away from Care

Questions to Ask When a Youth is Missing from Foster Care

- What efforts are being made to locate the youth?
- Have the required reports been made to law enforcement?
- How is the agency collaborating with NCMEC?
- Where was the youth placed when he or she ran away?
 - a. Was this the least restrictive, most family like placement?
 - b. Were any concerns raised about the placement before the youth ran away?
 - c. Was the youth participating in age or developmentally appropriate activities?
- What services or treatments was the youth receiving when he or she ran away?
 - a. Was the youth making progress with those services and treatments?
 - b. Were there any unmet service or treatment needs?
 - c. What was the status of the youth's education and educational progress when he or she ran away?
- Does the youth have any special needs or a disability or was there a need for any special screenings or assessments to determine if there is a disability or special need?
- Were there any unaddressed trauma or behavioral health issues?
- Was the youth connected to his or her biological family or other supportive adults?
- Was or are there any concerns or evidence of involvement in sex trafficking?
- What services will the child need when they return and what steps are being taking to arrange for those services?
- Is the child's previous caregiver willing to have the child return to the placement when he or she returns?

Questions to Ask When a Youth Returns from a Runaway Episode

- Is the youth safe and have his or her immediate needs been met?
 - a. Is there a need for any protective orders or geographic requirements for placement to ensure safety?
 - b. Are there any immediate health or therapeutic needs to address?
- What assessments or screening have been done to assess the youth's immediate and more long-term needs?
- Has the youth debriefed with anyone about his or her run away experience?
- Is the youth currently in the least restrictive, most family like placement?
 - a. Is the youth in the same placement or type of placement he or she ran from?
 - b. What changes have been made in the placement and service array to respond to the youth's needs?
- What is the plan for providing placement and services in the next six months to stabilize the youth and prevent future runaway episodes?

Part 4: Preparing for Court

Issues to investigate and discuss with youth

1. Have you talked with the youth about the reasons for running away?
 - a. Is there a service, placement, or treatment response to prevent future runaway episodes? (e.g., if being in an overly restrictive placement played a role, what placement and services can be requested to create a more appropriate setting?)
2. Are you prepared to request any screenings or assessments to determine positive placement or service options?
3. Are you prepared to request orders for special services (e.g., treatment, visitation, education) or placements that would help meet the child's needs and establish stability?
4. Are you prepared to request orders to allow the youth to participate in age-appropriate activities that would connect him or her to the community and develop strengths and skills?
5. Have you explained to the youth what will happen in court and who will be present?
6. Does the youth want to discuss his or her run away experience in court?

7. Do you need to make a special request or arrangements to ensure the youth is comfortable responding to questions or hearing conversations about his or her runaway experience?
 - i. Would the youth like to submit something in writing?
 - ii. Would the youth like to speak to the judge in chambers if allowed?
 - iii. Would the youth like a support person, like a therapist?

Conclusion:

Courts have an important opportunity to play a positive role in the effective implementation of the older youth provisions of the Preventing Sex Trafficking and Strengthening Families Act (“SFA”). Judges, attorneys, and advocates should be aware of the new provisions in the law, and should ensure that youth are receiving appropriate services and supports. The law also reinforces the importance of youth engagement in permanency and transition planning and the court review process itself.

In addition to necessary changes to court practice, there is also a role for the court in changes to child welfare agency policy. Courts are key to overseeing these provisions by working with the child welfare agency to develop policies and enforce the provisions. This new law presents an important opportunity for child welfare and court leaders to work together to support effective implementation and, most importantly, to improve outcomes for youth.



Juvenile
Law Center advancing the rights and
well-being of children in jeopardy

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