

2000

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## Recommended Citation

Platt, Stacey E., Heybach, Laurene, Termination of Older Youth from Foster Care: A Protocol for Illinois, 5 PUB. INT. L. REP. 9 (2000)

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# TERMINATION OF OLDER YOUTH FROM FOSTER CARE: A PROTOCOL FOR ILLINOIS

by Laurene Heybach and Stacey Platt

*“Where a youth is not amply exhibiting each of these characteristics [for self sufficiency], however, it cannot be in her best interest -- or the best interest of society -- to close her case, leaving her unprepared for the ordinary demands of life.”*

Each year over 20,000 youth leave the nation's foster care system and are expected -- often suddenly -- to support themselves. Research has consistently shown that many of these youth are not safe or prepared for what lies ahead. They have great difficulty making the transition to adulthood. Children aging out of foster care have high rates of homelessness, poverty, and early parenthood. They are more likely to enter the criminal justice system, and more likely to become victims of crime than their mainstream peers. Less than half graduate high school and very few have the opportunity to attend college. In short, their ability to become healthy, productive citizens is severely compromised. *Challenges Confronting Older Children Leaving Foster Care, Hearings on H.R. 1802 Before the Ways and Means Subcommittee on Human Resources, 106<sup>th</sup> Cong. 101 (1999)* (Statement of Robin Nixon, Director of Youth Services, the Child Welfare League of America).

## The Transition to Adulthood

National data suggests that young people transitioning from wardship to adulthood experience the expectation of self sufficiency as too fast, unplanned and unexpected, making them feel “dumped” by the system, helpless to take control of their lives, and unhopeful about the future. *Id.* In Illinois, approximately 2,000 youth spend their seventeenth birthday in foster care. The picture of youth aging out of the system in Illinois is no more hopeful than the national picture, as shown in a recent study of the Illinois Department of Children and Family Services (“DCFS”), in which caseworkers responded to questions about a sampling of 580 older youth living in substitute care. The study showed that only 52% of the wards age 18 and older had a high school diploma and only 12.8% were working full time.

Eleven percent of the wards were entirely idle, neither working nor attending school, and 51% of those who were idle had entered the foster care system before their 12<sup>th</sup> birthday. Twenty-two percent of those who were working earned less than minimum wage; 56% earned minimum wage or slightly better; and 74% of those who dropped out of school were reported as unemployed. Furthermore, 21% of the youth had serious difficulties, including drug problems (5%); or medical, developmental or behavioral problems (16%), which placed them at high to moderate risk, according to their caseworkers. The study also reported that 34% of the female wards over age 17 either had custody of a child or were pregnant at the time of the study. See Mark Testa & Sonya Leathers, *Older Wards Study, Caseworkers Reports on the Status of DCFS Wards Aged Seventeen and One-Half Years Old and Older*, ILLINOIS DEPARTMENT OF CHILDREN & FAMILY SERVICES (January 1999).

In a recent study collecting data from youth that had exited the child welfare system in a sister state, Wisconsin, researchers found that: "a significant proportion of foster youth have a very difficult time making the transition to self-sufficiency.... Only half of our samples were employed when we found them 12 to 18 months after the child welfare system had relinquished its responsibility for them.... Too large a group encountered housing instability or even homelessness and too many were victims of violence. Policy makers interested in crime prevention would be hard pressed to find a group at higher risk of incarceration than the males in our sample. In short, it appears that the glass is little more than half full for the bulk of the young adults we interviewed and near empty for many of the rest." See Mark E. Courtney & Irving Piliavin, *Foster Youth Transitions to Adulthood: Outcomes 12 to 18 Months After Leaving Out-of-Home Care*, UNIVERSITY OF WISCONSIN-MADISON, SCHOOL OF SOCIAL WORK AND INST. FOR RESEARCH ON POVERTY (July 1998).<sup>1</sup> It is not surprising that youth who have grown up in the nation's child welfare systems, having experienced both the

serious difficulties that led to their removal from their family as well as the difficulties of achieving optimal development while in state care, are hindered in their transition to adulthood. But studies show that even youth growing up with their families need significant assistance in the transition to adulthood. Census data from 1998 reports that a full 59% of males and 48% of females between 18-24 years old were living at home. U.S. BUREAU OF THE CENSUS, *YOUNG ADULTS LIVING AT HOME: 1960 TO PRESENT* (March 1998 Update).<sup>2</sup> Even between the ages of 25-34, 15% of males and 8% of females remain at home. *Id.* Thus, while our society expects former wards to make it on their own early, their mainstream counterparts often continue to rely upon significant family support for many years past "adulthood."

### Termination of Wardship

Despite the data which shows overwhelmingly that our nation's teen wards are leaving child welfare systems woefully unprepared for self sufficient citizenship, many youth are turned away from the child welfare system at age 18 or earlier, due to state laws which require that their cases be closed when they reach the age of majority or allow termination and emancipation at too-early an age. Other states, including Illinois, recognize, at least on the legislative level, that termination at age 18 -- often before completion of secondary school -- is not appropriate for many children. The Illinois' Juvenile Court Act expressly provides that wardship can be extended to age 21 "for *good cause* when there is satisfactory evidence presented to the court and the court makes written factual findings that the health, safety and best interest of the minor and the public require the continuation of the wardship." 705 ILCS 405/2-31 (1), (3) (Emphasis added).

However, state custody or guardianship is permitted to expire when a minor reaches age 19 absent a determination of "good cause."

<sup>1</sup> The relationship between foster care and homelessness is well established. See *Breaking the Foster Care Homelessness Connection*, SAFETY NETWORK (Newsletter of the National Coalition for the Homeless), September-October 1998, available at <<http://nch.ari.net/sn/sept/foster>>.

<sup>2</sup> The "at home" category includes unmarried college students living in dormitories, who typically spend vacations and holidays at home. Many state wards who have aged out of the system have no home to return to for holidays and vacations.

And cases may also be closed prior to a child's 19<sup>th</sup> birthday whenever the court finds that continuing wardship is no longer in the best interest of the minor or the public. 705 ILCS 405/2-31(2). Unfortunately, many Illinois youth are forced out of the system too early as courts face confusion over the proper criteria to apply in making case closure decisions.

### **The Good Cause Standard**

What constitutes "good cause" for maintaining a ward's case past their 19<sup>th</sup> birthday or the criteria for termination of wardship at earlier ages has been a subject of significant debate. The state child welfare agency often seeks case closure at 19 or earlier in order to concentrate state resources on younger children perceived to be more vulnerable and to avoid agency responsibility and liability for often hard-to-manage youth. Advocates for children argue for retention of wardship to age 21, in order to maximize services and assistance to ensure a more careful transition from wardship to full self sufficiency.

The law itself provides guidance on the meaning of "good cause," requiring that the court assess whether the "health, safety and best interests of the minor and the public" warrant continued wardship. 705 ILCS 405/2-31(1) (Emphasis Added). "Best interest of the child" is a familiar standard (if not always entirely clear) that focuses on the uniqueness of each individual child and what is best -- not simply adequate or minimal -- for him or her. The Juvenile Court Act references a definition of "best interests" which requires consideration of specific factors whenever a best interest determination is required under the Act. In the context of each child's age and developmental needs, the court must consider, among other things: the child's physical safety and welfare, including shelter, food, and health; the development of the child's identity; the child's sense of security; the child's community and personal attachments; and the child's wishes and long-term goals. 705 ILCS 405/1-3 (4.05). These are the true, statutorily sound bases for assessing the "best interests" of the child.

In the authors' experience, however, decisions about case closure are often made *not* on the basis of the child's best interest, or health, or safety, but rather on the basis of whether a particular adolescent ward is deemed "cooperative" or "non-cooperative." Thus, many courts

have shifted the focus from the needs and interest of the adolescent child to the perspective of the child welfare bureaucracy and its concerns: the desire for compliance by children in custody with the demands of caseworkers and courts. Many attorneys practicing in the juvenile court have accepted this shift from the proper statutory inquiry without serious reflection or argument. Yet, an improper bias in the making of such subjective evaluations of cooperation is well established.

Where a ward is exhibiting the capacity for true self sufficiency as evidenced by educational achievement, employment sufficient to support oneself, emotional stability and knowledge of resources to meet health and safety needs, it may seem appropriate to close her case and terminate wardship, 'though, like all adolescents, the youth likely will need additional future support. Where a youth is not amply exhibiting each of these characteristics, however, it cannot be in her best interest -- or the best interest of society -- to close her case, leaving her unprepared for the ordinary demands of life. The Illinois Appellate Court affirmed this approach in *In Re Shawn B.*, granting a minor's counsel leave to petition the juvenile court for reinstatement of the court's wardship and DCFS' guardianship anytime prior to the minor's 21<sup>st</sup> birthday, where the minor required further care, protection or education. As the court explained:

"Turning Shawn B. and other young people like him out to fend for themselves merely because they have reached the age of 18, without ensuring that they are prepared to become useful and independent members of society, does an injustice to both the minor and society at large and fails to satisfy the court's statutory obligation to act in the best interest of the child." 218 Ill.App.3d 374, 382, 578 N.E.2d 269, 274 (1<sup>st</sup> Dist. 1991). The courts must therefore be guided by adherence to the specific language of the statute -- which makes no mention of "cooperation" as a standard -- and by an informed and common sense understanding of self-sufficiency and adolescent development.

### **The Permanency for Teens Workgroup and a Meaningful Protocol for Case Closure**

In 1998, the Honorable Nancy Sidote Salyers, then-Presiding Judge of the Child Protection Division of the Juvenile Court of Cook County, Chicago, Illinois,

convened a panel of experts and advocates to examine issues related to teen wardship, asking the group to consider how the court might become a model for supporting adolescent wards and enabling them to function more effectively.<sup>3</sup> In April 1999, the group presented a Preliminary Report containing numerous recommendations. Chief among the recommendations are those regarding case closure, in which a majority of the group -- excepting representatives of the state child welfare agency -- proposed a specific protocol for case closure grounded in a realistic evaluation of whether the child has genuinely achieved the ability to live independently.

Under this protocol, a determination of "good cause" to extend wardship requires that the court consider the presence or absence of certain specific attributes of "independence," i.e. what elements should be present if a youth is to be safe and stable enough to be on his or her own. These elements are grounded in the statutory concerns outlined above. The protocol posits five such characteristics of a truly independent adolescent. An independent youth: (A) has a high school diploma or GED; (B) has an achievable career or vocational path with supports in place to enable the path to be pursued (i.e., the plan is a viable one even after the state child welfare agency ceases to be involved); (C) is employed in a manner sufficient to meet his/her subsistence needs, including housing, food, and clothing (receipt of public benefits is not a sufficient plan unless the individual is disabled, impaired in a manner serious enough to preclude employment, or in a post-secondary education program); (D) has access to minimally sufficient health care; and (E) is emotionally capable of living independently.

These elements are not to be inflexibly applied. The Preliminary Report provides: "If any of these elements has not been accomplished, wardship may be extended by the court, unless preparation in other elements strongly suggests that the goal of independence has been achieved and that the health, safety and best interest of the minor and the public do not require extending wardship." Permanency for Teens Workgroup, *Preliminary Report*, April 7, 1999.

The protocol does, however, require the court to consider each benchmark of independence. Each of the benchmarks relates to a critical requirement of independence as well as an area of identified deficiency for wards who are expected to age out of the foster care system. We cannot expect youth to transition well into adulthood and self sufficiency without minimal education, a vocational path, employment, medical insurance and emotional readiness.

During discussions about the protocol, the state agency representatives argued that some of the benchmarks of independence, such as receipt of a high school diploma and having a career path, were unrealistic for state wards. The other members of the group disagreed, believing that the protocol provides flexibility, allowing the court to determine whether a minor has achieved independence even where each and every benchmark has not been fully achieved. The state agency also argued that a youth's cooperation ought to be a factor which the court should consider in relation to the public interest, so that the protocol should allow non-cooperation by the youth to be a factor favoring termination. A majority of the group disagreed, for two primary reasons. First, as explained more fully above, cooperation is not one of the factors stated in the statute or the "best interest" definition of the statute. Rather, the statute focuses on protection (health and safety) of the minor as well as the best interests of the minor and the public.

Second, and most important, the majority of the group was concerned about how "cooperation" can fairly be assessed in a system which often blames and dismisses wards for what it terms "noncooperation" but is really normal adolescent behavior -- particularly where the system's response to adolescent needs is often faulty itself, with few workers being trained to handle the issues of adolescence adeptly. Independent research supports the majority of the groups views. Typical benchmarks of adolescence include the emergence of independence, the need to be allowed to make decisions about one's own life, rebellion against rules, curfew, and chores as a way of defending against dependency on the caretaker, as well as limit-testing, rebelling against

<sup>3</sup> The interdisciplinary work group included representatives of the Court, the child welfare agency, the Public Guardian and advocates who frequently represent children as well as an expert social worker and a psychologist.

parental values, and conflict with siblings. *See* Janice Gabe, *Is It Adolescence or Is It Pathology?*, Seminar Given at Portland State University, Portland, Oregon (Mar. 2, 2000). Any one of those benchmarks could well prompt the condemnation of a caseworker or court that a child is "not cooperating." Moreover, research suggests that caseworker attitudes are critical influences in the assessment process, and that many negative attitudes about poor and minority clients -- who comprise the overwhelming majority of children involved in juvenile court cases -- may be based upon stereotypes of them as members of devalued and stigmatized social groups. *See* Donna Franklin, *Differential Clinical Assessments: The Influence of Class and Race*, 44 SOCIAL SERVICE REVIEW 57 (March 1985).<sup>4</sup>

Research shows that for the vast majority of people, the transition from childhood to adulthood is characterized by maladaptive behavior occurring at some time during adolescence, including anti-social or even potentially life threatening behavior. Adolescents may act out in an attempt to attain adult status, despite their lack of adult judgment. Moreover, hormonal and cognitive shifts in adolescence may foster sensation seeking behaviors and a reduced perception or concern about negative consequences. In fact, a certain amount of experimentation with risky behaviors is an essential component of a healthful adolescent development. U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES, ADMINISTRATION FOR CHILDREN & FAMILIES, UNDERSTANDING YOUTH DEVELOPMENT: PROMOTING POSITIVE PATHWAYS OF GROWTH (January 1997).

While these "noncooperative" behaviors -- such as running away from home and experimenting with drugs, alcohol and sexual activity -- are normal, they may at times become very risky. *Id.* From the perspective of the health, safety and best interest of the child, termination of wardship is most harmful and

least desirable when a child is engaging in risky behaviors. Often the uncooperative adolescent is the one who needs adult help the most. Yet a system focused on cooperation, rather than best interests, is most likely to close the adolescent's case.

### Conclusion

It is imperative that the crucial, sometimes devastating decision to terminate wardship of an adolescent in foster care be undertaken with reference to the objectives of the foster care system: to protect and prepare. Adherence to the statutory criteria in Illinois as applied in the Preliminary Report's protocol is both legally correct and grounded in a realistic understanding of adolescent development and the achievement of real independence. Advocates for children must strive to reorient the courts to this approach, so that the most forgotten children of the juvenile court may be given the opportunity of a planned, caring and meaningful transition to adulthood.

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<sup>4</sup> Franklin's research also exposes another common mistake of practitioners: "solving" problems based upon assumptions about case situations without first discussing them with the client. *Id.* Thus, courts should be wary of caseworker assessments where there has been little to no client contact. In particular with so-called "runaways", caseworkers must be required to locate and meet with their clients to determine what difficulties they are experiencing and what services and assistance they require, rather than simply reporting to the court that a client is "missing" and asking for case closure.