

AVOIDING POT HOLES ON FLORIDA’S “ROAD TO INDEPENDENCE”: ADVOCACY FOR INDEPENDENT LIVING SERVICES FOR FOSTER YOUTH¹

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

A. Summary of Federal Law

1. History of Federal Independent Living Initiative

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

Despite the federal Independent Living Initiative, states have not adequately prepared foster children to survive on their own upon reaching adulthood. Nationwide studies have shown that 20% to 40% of our country's homeless population consists of

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

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

former foster children.⁴ In fact, a National Association of Social Workers study found that more than a fifth of teens at homeless shelters arrived directly from foster care.⁵ Thus, by failing our children, our foster care system has created a whole new category of homeless people. In addition, studies also have shown that former foster children are disproportionately represented on public assistance rolls, in state prisons, and in state psychiatric institutions.⁶

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

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

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

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

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

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

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

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

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

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

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

In order to receive federal Chafee funding, the Florida Department of Children & Families submitted an application and state plan to the federal government. In its application and plan, DCF committed itself to providing Florida’s foster youth, and

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

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

former foster youth, with a wide range of Independent Living services, training, and financial assistance. *See Florida Department of Children and Families FY 2001-2004 Application for the Chafee Foster Care Independence Program.*

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

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

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

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

Fla. Stat. Sec. 409.1451 (3) (a).⁹

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

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

For children age 13 to 15, pre-independent living services include life skills training, educational field trips, and conferences. Fla. Stat. Sec. 409.1451(4)(a). The specific services to be provided to a child are to be determined using a pre-independent living assessment, which is a tool designed to establish the child's baseline strengths and weakness with respect to independent living readiness. *Id.* In 2004, the Florida legislature enacted additional requirements for DCF and its community-based care providers to ensure that children in this age group are receiving adequate pre-independent living preparation. Fla. Stat. Sec. 409.1451(4)(a). Pursuant to the 2004 amendments, DCF must conduct an annual staffing to ensure that preindependent living training and services to be provided to the child as determined by the assessment are being received and to evaluate the progress of the child in developing the needed independent living skills. *Id.* DCF must also provide to the child at the first staffing following the child's 14th birthday, and at each subsequent staffing, information on services provided by the Road to Independence scholarship program and information about scholarship and other educational benefits available to children seeking to enroll in the Road to Independence scholarship program. *Id.* Information relating to both the preindependent living

⁹The Appendix to these materials includes Florida statutes pertinent to independent living needs of foster care children and youth formerly in foster care. The major 2004 substantive changes to existing law are highlighted in **bold**.

assessment and all staffings must be reduced to writing and submitted to the court as part of the required written report at judicial review hearings held pursuant to Fla. Stat. Sec. 39.701. *Id.* Attorneys representing these children should participate in and advocate for their clients in the staffings and, of course, the court hearings.

For children age 15 to 18, life skills services include independent living skills training, educational support, employment training, and counseling. Fla. Stat. Sec. 409.1451(4)(b). The specific services to be provided to a child are to be determined using an independent living assessment. *Id.* In the calendar month following each foster child's 17th birthday, DCF must provide the child an independent-living assessment. *Id.* Based on the results of the assessment, DCF must provide services and training in order for the child to develop the necessary independent living skills and abilities prior to the child's 18th birthday. *Id.* Information related to both the independent living skills assessment and the deliberations of all staffings must be reduced to writing and submitted to the court prior to each judicial review held pursuant to Fla. Stat. Sec. 39.701. *Id.*

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

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

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

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

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

Finally, youth age 18 and over are eligible for a Road to Independence Scholarship if they are in school full-time and meet certain criteria. Fla. Stat. Sec. 409.1451(5)(b). Essentially, the Road to Independence scholarship provides eligible youth with a monthly payment of financial assistance that currently totals \$892 per month. The amount of the award is based “on the living and educational needs of the

young adult and may be up to, but shall not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.” *Id.*

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

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

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

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

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

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

- a. Was a dependent child, pursuant to chapter 39, and was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday;
- b. Spent at least 6 months living in foster care before reaching his or her 18th birthday.
- c. Is a resident of this state as defined in s. 1009.40; and
- d. Meets one of the following qualifications:
 - (I) Has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, or has earned a special diploma or special certificate of completion as described in s. 1003.438, and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in s. 1009.533;
 - (II) Is enrolled full time in an accredited high school¹¹; or
 - (III) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent.¹²

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

Youth who receive the Road-to-Independence Scholarship are provided with educational fee waivers for workforce development postsecondary programs, community colleges, and universities. *See* Fla. Stat. Sec. 1009.25(2)(c). The 2004 amendments now require the Road to Independence scholarship applicant “to apply for any other grants and scholarship for which he or she may qualify” and to receive help from DCF in the application process. *See* Fla. Stat. Sec. 409.1451(5)(b). Furthermore, youths who receive the Road to Independence Scholarship also are provided with Medicaid coverage.

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

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

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

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

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

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

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

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

Fla. Stat. Sec. 409.1673.

¹³The Florida Independent Living Advisory Council supports “the expansion of Medicaid to all young adults formerly in foster care exiting the system but recognizes the fiscal limitations.” REVIEW AND RECOMMENDATIONS ON INDEPENDENT LIVING TRANSITION SERVICES, Dec. 31, 2004, at 20. In its recent publication, the Council recommends to the Florida Legislature that it enact provisions to expand Medicaid coverage “for the priority population of high school students and young adults with mental health issues and developmental disabilities. The Advisory Council supports expansion of Medicaid to all young adults formerly in foster care exiting the system but urges priority be given to these vulnerable subgroups.” *Id.* at 24.

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

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

Unfortunately, the realities for foster youth over age 18 have been even bleaker, and some of the recent changes to Florida law have been harmful to many of these youth, rather than beneficial to them. In the 1980's, pursuant to former Florida Statute Section 409.145 (3), Florida began offering the services of the children's foster care program, including foster care placements, to youth from age 18 to 21, providing that the youth were in school full-time. In 2000, the Florida legislature amended Section 409.145 to expand eligibility for extended foster care to age 23, providing that the youth were still in school. Thus, until 2002, when the Road to Independence Act was enacted,

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

DCF provided youth over age 18 with a foster care placement, while other youth who were able to live independently were placed in the Subsidized Independent Living Program and resided in their own apartments. In consultation with DCF, the older youth formerly had two options (continued foster care placement or subsidized independent living), depending on the individual needs of the youth.

However, the Road to Independence Act eliminated the option of extended foster care, and now DCF no longer provides the youth with a foster home placement.¹⁵ Instead, DCF offers the youth limited cash assistance, and those youth who seek the monthly support provided by the Road to Independence scholarship must now meet more stringent academic requirements to receive this assistance. DCF strongly lobbied for this change in the law, as it relieves DCF of the responsibility to provide these youth with placements and enables DCF to terminate these youth from workers' caseloads.

¹⁵The 2004 amendments to the Road to Independence Act added the following language: "A young adult who is eligible for the Road-to-Independence Program and who so desires shall be allowed to remain in the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday." Fla. Stat. Sec. 409.1451(5)(b) 5.e. However, this option still does not serve the needs of those youths whose foster families or group care providers do not desire to continue providing them room and board, or those youths who were unsuccessful in securing living arrangements after their 18th birthday and who now desire to return to a licensed foster care or group living arrangement while they complete their education.

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

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

The elimination of extended foster care has had a particularly negative impact on foster youth who have children.¹⁶ In some cases, DCF has either removed or threatened to remove children from teen mothers upon DCF terminating the young mothers from foster care at age 18. In some cases if young mothers do not qualify for the Road to Independence scholarship, then DCF alleges that they are financially unable to care for their children. Additionally, in some cases DCF alleges that young mothers lack the skills to care for their children on their own without the guidance of foster parents that extended foster care formerly provided. Thus, in some cases the elimination of extended foster care has led to families being broken apart and children of former foster care youth being taken into state custody by DCF.

¹⁶See, e.g., Megan O’Matz and Shana Gruskin, *State to 18-Year-Olds: You’re on Your Own; Advocates Worry About What Will Happen to Teens Who Are No Longer Eligible for DCF Foster Care*, SUN-SENTINEL (FT. LAUD.), June 4, 2003, at 1A.

The impact of the elimination of extended foster care also has been especially tragic for youth with disabilities. One of the most tragic cases has been that of Marcel Teague Taylor who died two summers ago at the age of 18 shortly after being discharged from foster care.¹⁷ Since the age of four when he was placed in DCF custody, Marcel had lived in foster homes and psychiatric institutions for the next fourteen years. Although he had no job, had not been enrolled in school and had only an elementary school reading level, and suffered from a severe mental illness for which he took daily psychotropic medications, DCF discharged Marcel from foster care on his eighteenth birthday. Marcel went directly from living in a children's psychiatric institution to living in a motel. Without the care and supervision of foster parents, Marcel drowned in a waterway behind the motel.

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

¹⁷See Megan O'Matz, *All Alone, Too Soon; Some Florida Legislators are Trying to Alter the Law That Ends Foster Care at Age 18; Marcel Taylor's Case Shows Why*, SUN-SENTINEL (FT. LAUD.), July 11, 2003, at 1A.

¹⁸*Congressional Hearings on Foster Care Independent Living*, at 12 (May 13, 1999) (statement of Mark Kroner).

Because of the dire outcomes that have befallen many youth who have been forced out of extended foster care, Florida's Road to Independence Act has been dubbed the "Road to Homelessness Act" by child advocates.¹⁹ Legislation is currently being drafted that seeks to restore extended foster care as an option for Florida's former foster youth, as well as to remedy other concerns with the Road to Independence Act. However, there is much that attorneys can do to help older foster youth within the boundaries of existing law.

D. Advocacy Strategies for Attorneys Who Represent Older Foster Youth

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

1. Advocacy for Older Foster Children Under Age 18

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

¹⁹See, e.g., Megan O'Matz and Shana Gruskin, *State to 18-Year-Olds: You're on Your Own; Advocates Worry About What Will Happen to Teens Who Are No Longer Eligible for DCF Foster Care*, SUN-SENTINEL (FT. LAUD.), June 4, 2003, at 1A; Megan O'Matz, *A Tough Road to Independence: Advocates Say the State Does Little For Foster Kids Who Reach Age 18*, SUN-SENTINEL (FT. LAUD.), June 25, 2003, at 1B; Editorial, *Protect Foster Teens: Reverse New Law's Cruel Effects*, MIAMI HERALD, June 27, 2003; Editorial, *No Home, No Money, No Help*, ST. PETERSBURG TIMES, Oct. 27, 2003, at 8A.

In addition, every child in foster care must have a case plan that is approved by the court. *See Fla. Stat. Secs. 39.601-39.603.* Federal law specifically mandates that, in addition to all other requirements for a foster child's case plan, "for a child age 16 or over, the case plan must also include a written description of the programs and services which will help such child prepare for the transition from foster care to independent living." 42 U.S.C. Sec. 675(1) (C).

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

DCF Operating Procedure further provides that: “Staff must assist the youth in re-assessing his or her skill level and update the case plan accordingly prior to each judicial review.” *Id.*²⁰

In addition to the case plan requirements set forth in Fla. Stat. Secs. 39.601-39.603, and the DCF Operating Procedure, the 2004 amendments to the Road to Independence Act are especially significant for children age 13 to 18 in that they require that the court exercise much greater oversight of DCF’s provision of independent living services to the youth, pursuant to its judicial review authority in Fla. Stat. Sec. 39.701, than was previously mandated or permitted by Florida law. New section 39.701(6) (a) requires that the court conduct a judicial review hearing within 90 days after a child’s 17th birthday. *Id.* It permits the court the discretion to review the status of the child more frequently during the year prior to the child’s 18th birthday. *Id.* At each judicial review held after the child’s 17th birthday, in addition to hearing from DCF or the community-based care provider, the child’s foster parent, or guardian ad litem about the child’s best interests and particularly the provision of independent living transition services, the statute also requires the court to give the child the opportunity to speak directly to the court about any concerns relating to independent living transition services or any other matters. *Id.*

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

1. has been provided a current Medicaid card; a certified copy of his or her birth certificate;
2. has a valid driver’s license or Florida identification card;

²⁰To the extent that these guidelines differ from the 2004 changes to Fla. Stat. Sec. 409.1451 (3) & (4), which are described above, the statutory requirements take precedence.

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

Id.

At the first judicial review hearing held after the child's 17th birthday, DCF is required to provide the court with an updated case plan that includes specific information related to independent living services that have been provided since the child's 13th birthday, or since the child came into care, whichever came first. *Id.*

Most notably for purposes of the court's authority to assure DCF compliance with its obligations under the requirements of the Road to Independence Act, Fla. Stat. Sec. 39.701(6) (c) specifies that the court may exercise contempt powers against DCF if the agency fails to comply with its obligations as set out in the youth's permanency case plan or in Fla. Stat. Sec. 409.1451(4) (a) 4. The court can issue a show cause order and "[i]f cause is shown for failure to comply with this or any subsequent order, the department may be held in contempt." However, once the child turns 18, the court is divested of authority to enforce any previous order of civil contempt,²¹ although case law establishes

²¹*See* note 24, *infra*.

that a finding of criminal contempt against the department can be enforced after the juvenile court jurisdiction over the child has terminated.²²

Attorneys who represent an older foster child should advocate before the juvenile court to ensure that the child's case plan includes specific Independent Living services and skills training tailored to the child's individual needs.²³ Attorneys should also ensure that the youth is involved in the development of the plan. The Chafee Act emphasizes the importance of youth involvement and requires states to ensure that "adolescents participating in the program under this section participate directly in designing their own program activities that prepare them for independent living." 42 U.S.C. Sec. 677 (b) (3) (H) (2003). The youth's attorney should ensure that the youth participate in the development of the case plan at all of the statutorily required pre-independent living and life skills staffings (meetings) and the attorney should actively advocate for the child's legal interests in the case planning staffings.

Additionally, once the court adopts the child's case plan, it becomes an order of the court. By invoking the authority of the court, attorneys can ensure that the child's case plan is not merely a "paper plan" and that the child is actually provided the mandated services. If DCF fails to provide the services, then the child's attorney can file motions to compel and motions for a rule to show cause as to why DCF should not be held in contempt, as set forth in Fla. Stat. Sec. 39.701(6). If every adolescent foster child

²²*See, e.g., Sprouse v. Sprouse*, 408 So.2d 632, 633 (Fla. 5th DCA 1982) ("Criminal contempt is separate and distinct from the case in chief. A criminal contempt, direct or indirect, is an offense against the court itself for which punishment is the penalty. An indirect criminal contempt proceeding is not instituted by motion of a party but by motion of the court or affidavit of any person having knowledge of the facts. The court then issues and signs an order to show cause.").

²³*See Kathi Grasso, Litigating the Independent Living Case*, 18 ABA CHILD LAW PRACTICE 8 (October 1999).

had an attorney to advocate for him or her in this way, then statistics would no longer show that 75% of Florida's foster youth do not receive the Independent Living skills training to which they are legally entitled.

2. Advocacy for Youth Age 18 and Over

Although foster children under age 18 have access to judicial relief through the jurisdiction of the circuit court's juvenile division, jurisdiction ends when the child turns age 18. Fla. Stat. Sec. 39.40(2). Presently juvenile courts do not have authority to retain jurisdiction over cases of foster youth once the youth turns eighteen.²⁴ Thus, foster youth who depend on juvenile court oversight to provide them with some redress for actions taken or not taken by DCF are no longer afforded this remedy at age 18.²⁵

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

Appeals process.

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

2. The procedure developed by the department must be readily available to young adults, must provide timely decisions, and must provide

²⁴See *DCF v. C.K.*, 851 So. 2d 206 (Fla. 3d DCA 2003); *N.L. and L.R. v. DCF*, 770 So. 2d 220 (Fla. 3d DCA 2000); *L.Y. and Melody v. HRS*, 696 So. 2d 430, 432 (Fla. 4th DCA 1997).

²⁵Youth over 18 may, however, assert federal statutory and constitutional causes of action in federal court. See, e.g., *Bonnie L. v. Bush*, 180 F. Supp. 2d 1321, 1338 (S.D. Fla. 2001) (“As juvenile court jurisdiction is not extended to individuals in extended foster care pursuant to Fla. Stat. § 409.145 [2000], such [federal statutory claims] are not barred by *Younger* [*v. Harris*, 401 U.S. 37 (1971)] as the first *Middlesex* [*County Ethics Comm. V. Garden State Bar Assn.*, 457 U.S. 423 (1982)] prong is not met as there is no ongoing state proceeding.”)(citations omitted), *aff'd by 31 Foster Children v. Bush*, 329 F.3d 1244 (11th Cir. 2003); *Mathis v. Regier*, Case No. 04-20169 (S.D. Fla. 2004)(Americans With Disabilities Act claim by 18 year old former foster youth in federal district court); *Ocean v. Kearney*, 123 F. Supp. 2d 618 (S.D. Fla. 2000)(14th Amendment procedural due process claim by 18 year old in federal court)

for an appeal to the Secretary of Children and Family Services. The decision of the secretary constitutes final agency action and is reviewable by the court as provided in s. 120.68.

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

The Road to Independence Act took effect on October 1, 2002. However, to date, over two years later, DCF has not adopted any administrative rules describing the procedures by which youth may appeal DCF's determinations to deny or terminate services. While the current practice in DCF districts varies, most youth statewide are not provided *any* notice of how they can appeal, or if they are provided notice of some administrative appellate procedure and the judicial review following exhaustion of the administrative appeals process, it is so complex that it is impossible for them to navigate it themselves. Children's attorneys are currently attempting to remedy the serious system-wide problem of DCF's failure to adopt administrative rules as required by the statute and DCF's violation of the fundamental rights of these youth to receive the procedural due process safeguards that are afforded to all clients of government benefit programs.

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

Administrative Procedure Act, Chapter 120 of the Florida statutes, including the right to judicial review of final agency action.

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

3. Advocacy for Youth with Special Needs

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

a) Advocacy for Youth with Children

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

for youth with children should ensure that their clients are provided with the services to which they are legally entitled to enable the youth to care for their children while achieving independence.

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

b. Advocacy for Youth With Disabilities

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

them achieve independence, and state child welfare agencies must provide developmentally appropriate independent living services.²⁶

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

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

All youth in foster care are eligible for independent living services and they are provided an equal opportunity to participate. Youth with disabilities, who are in foster care, are eligible for this program and the subsidized independent living program and may not be deemed ineligible from this program on the basis of their disability, according to the Americans with Disabilities Act of 1992, Title II.

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

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

²⁶See Juvenile Law Center, *Dependent Youth Aging Out of Foster Care; A Guide for Judges* (2003), available at <http://www.jlc.org/Resources/pdfs/agingoutjudgesguide.pdf>.

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

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

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

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

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

Additionally, many foster youth with disabilities are in special education programs, and attorneys who represent these youths should ensure that appropriate educational services are coordinated with the youth's school.²⁷ Pursuant to the Individuals with Disabilities Education Act (IDEA), every youth in a special education program must have an Individualized Education Plan (IEP). 20 U.S.C. Secs. 1414-1415.

²⁷*See generally* Florida Statute Sec. 39.0016 ("Education of Abused, Neglected and Abandoned Children") (2004 amendment to Florida law establishing goals for the Department of Children and Families or community-based care providers and the Department of Education to aspire to with respect to the education and related care of children known to DCF).

For adolescent youth, the IEP must contain educational transition services to help the youth make the transition to adulthood. *Id.* Attorneys for these youth should advocate to ensure that DCF coordinates DCF's independent living plan for the youth with the school's IEP for the youth.

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

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

APPENDIX

West's F.S.A. § 409.1451

WEST'S FLORIDA STATUTES ANNOTATED
TITLE XXX. SOCIAL WELFARE (CHAPTERS 409-434)
CHAPTER 409. SOCIAL AND ECONOMIC ASSISTANCE
409.1451. Independent living transition services

(1) System of services.--

(a) The Department of Children and Family Services, its agents, or community-based providers operating pursuant to s. 409.1671 shall administer a system of independent living transition services to enable older children in foster care and young adults who exit foster care at age 18 to make the transition to self-sufficiency as adults.

(b) The goals of independent living transition services are to assist older children in foster care and young adults who were formerly in foster care to obtain life skills and education for independent living and employment, to have a quality of life appropriate for their age, and to assume personal responsibility for becoming self-sufficient adults.

(c) State funds for foster care or federal funds shall be used to establish a continuum of services for eligible children in foster care and eligible young adults who were formerly in foster care which accomplish the goals for the system of independent living transition services by providing services for foster children, pursuant to subsection (4), and services for young adults who were formerly in foster care, pursuant to subsection (5).

(d) For children in foster care, independent living transition services are not an alternative to adoption. Independent living transition services may occur concurrently with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

(2) Eligibility.--

(a) The department shall serve children who have reached 13 years of age but are not yet 18 years of age and who are in foster care by providing services pursuant to subsection (4). Children to be served must meet the eligibility requirements set forth for specific services as provided in this section.

(b) The department shall serve young adults who have reached 18 years of age but are not yet 23 years of age and who were in foster care when they turned 18 years of age by providing services pursuant to subsection (5). Young adults to be served must meet the eligibility requirements set forth for specific services in this section.

(3) Preparation for independent living.--

(a) It is the intent of the Legislature for the Department of Children and Family Services to assist older children in foster care and young adults who exit foster care at age 18 in making the transition to independent living and self-sufficiency as adults. The department shall provide such children and young adults with opportunities to participate in life skills activities in their foster families and communities which are reasonable and appropriate for their respective ages, and shall provide them with services to build the skills and increase their ability to live independently and become self-sufficient. To support the provision of opportunities for participation in age-appropriate life skills activities, the department shall:

- 1. Develop a list of age-appropriate activities and responsibilities to be offered to all children involved in independent living transition services and their foster parents.**
- 2. Provide training for staff and foster parents to address the issues of older children in foster care in transitioning to adulthood, which shall include information on supporting education and employment and providing opportunities to participate in appropriate daily activities.**
- 3. Develop procedures to maximize the authority of foster parents to approve participation in age-appropriate activities of children in their care.**
- 4. Provide opportunities for older children in foster care to interact with mentors.**
- 5. Develop and implement procedures for older children to directly access and manage the personal allowance they receive from the department in order to learn responsibility and participate in age-appropriate life skills activities to the extent feasible.**

(b) It is further the intent of the Legislature that each child in foster care, his or her foster parents, if applicable, and the department or community-based provider set early achievement and career goals for the child's postsecondary educational and work experience. The department and community-based providers shall implement the model set forth in this paragraph to help ensure that children in foster care are ready for postsecondary education and the workplace.

- 1. Children in foster care entering the 9th grade, their foster parents, and the department or community-based provider shall be active participants in choosing a post-high school goal based upon both the abilities and interests of each child. The goal shall accommodate the needs of children served in exceptional education programs to the extent appropriate for each individual. Such children may continue to follow the courses outlined in the district school board student progression plan. Children in foster care, with the assistance of their foster parents, and the department or community-based provider shall choose one of the following postsecondary goals:**

a. Attending a 4-year college or university, a community college plus university, or a military academy;

b. Receiving a 2-year postsecondary degree;

c. Attaining a postsecondary career and technical certificate or credential; or

d. Beginning immediate employment after completion of a high school diploma or its equivalent, or enlisting in the military.

2. In order to assist the child in foster care in achieving his or her chosen goal, the department or community-based provider shall, with the participation of the child and foster parents, identify:

a. The core courses necessary to qualify for a chosen goal.

b. Any elective courses which would provide additional help in reaching a chosen goal.

c. The grade point requirement and any additional information necessary to achieve a specific goal.

d. A teacher, other school staff member, employee of the department or community-based care provider, or community volunteer who would be willing to work with the child as an academic advocate or mentor if foster parent involvement is insufficient or unavailable.

3. In order to complement educational goals, the department and community-based providers are encouraged to form partnerships with the business community to support internships, apprenticeships, or other work-related opportunities.

4. The department and community-based providers shall ensure that children in foster care and their foster parents are made aware of the postsecondary goals available and shall assist in identifying the coursework necessary to enable the child to reach the chosen goal.

(c) All children in foster care and young adults formerly in foster care are encouraged to take part in learning opportunities that result from participation in community service activities.

(d) Children in foster care and young adults formerly in foster care shall be provided with the opportunity to change from one postsecondary goal to another, and each postsecondary goal shall allow for changes in each individual's needs and preferences. Any change, particularly a change that will result in additional time required to achieve a goal, shall be made with the guidance and assistance of the department or community-based provider.

(4) Services for children in foster care.--The department shall provide the following transition to independence services to children in foster care who meet prescribed conditions and are determined eligible by the department. The service categories available to children in foster care which facilitate successful transition into adulthood are:

(a) Preindependent living services.--

1. Preindependent living services include, but are not limited to, life skills training, educational field trips, and conferences. The specific services to be provided to a child shall be determined using a preindependent living assessment.

2. A child **who has reached 13 years of age but is not yet 15 years of age** who is in foster care is eligible for such services.

3. The department shall conduct an annual staffing for each child who has reached 13 years of age but is not yet 15 years of age to ensure that the preindependent living training and services to be provided as determined by the preindependent living assessment are being received and to evaluate the progress of the child in developing the needed independent living skills.

4. At the first annual staffing that occurs following a child's 14th birthday, and at each subsequent staffing, the department shall provide to each child detailed information on services provided by the Road-to-Independence Scholarship Program, including requirements for eligibility; on other grants, scholarships, and waivers that are available and should be sought by the child with assistance from the department, including, but not limited to, the Bright Futures Scholarship Program, as provided in ss. 1009.53-1009.538; on application deadlines; and on grade requirements for such programs.

5. Information related to both the preindependent living assessment and all staffings, which shall be reduced to writing and signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

(b) Life skills services.--

1. Life skills services may include, but are not limited to, independent living skills training, including training to develop banking and budgeting skills, interviewing skills, parenting skills, educational support, employment training, and counseling. Children receiving these services should also be provided with information related to social security insurance benefits and public assistance. The specific services to be provided to a child shall be determined using an independent life skills assessment.

2. A child who has reached 15 years of age but is not yet 18 years of age who is in foster care is eligible for such services.

3. The department shall conduct a staffing at least once every 6 months for each child who has reached 15 years of age but is not yet 18 years of age to ensure that the appropriate independent living training and services as determined by the independent life skills assessment are being received and to evaluate the progress of the child in developing the needed independent living skills.

4. The department shall provide to each child in foster care during the calendar month following the child's 17th birthday an independent living assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the results of the independent living assessment, services and training shall be provided in order for the child to develop the necessary skills and abilities prior to the child's 18th birthday.

5. Information related to both the independent life skills assessment and all staffings, which shall be reduced to writing and signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

(c) Subsidized independent living services.--

1. Subsidized independent living services are living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175.

2. A child who has reached 16 years of age but is not yet 18 years of age is eligible for such services if he or she:

a. Is adjudicated dependent under chapter 39; has been placed in licensed out-of-home care for at least 6 months prior to entering subsidized independent living; and has a permanency goal of adoption, independent living, or long-term licensed care; and

b. Is able to demonstrate independent living skills, as determined by the department, using established procedures and assessments.

3. Independent living arrangements established for a child must be part of an overall plan leading to the total independence of the child from the department's supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and ability; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in the independent living program;

documentation of proposed services to be provided by the department and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with the family, other adults, friends, and the community, as appropriate.

4. Subsidy payments in an amount established by the department may be made directly to a child under the direct supervision of a caseworker or other responsible adult approved by the department.

(5) Services for young adults formerly in foster care.--Based on the availability of funds, the department shall provide or arrange for the following services to young adults formerly in foster care who meet the prescribed conditions and are determined eligible by the department. The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(a) Aftercare support services.--

1. Aftercare support services are available to assist young adults who were formerly in foster care in their efforts to continue to develop the skills and abilities necessary for independent living. The aftercare support services available include, but are not limited to, the following:

a. Mentoring and tutoring.

b. Mental health services and substance abuse counseling.

c. Life skills classes, including credit management and preventive health activities.

d. Parenting classes.

e. Job skills training.

f. Counselor consultations.

g. Temporary financial assistance.

The specific services to be provided under this subparagraph shall be determined by an aftercare services assessment and may be provided by the department or through referrals in the community. Temporary assistance provided to prevent homelessness shall be provided as expeditiously as possible and within the limitations defined by the department.

2. A young adult who has reached 18 years of age but is not yet 23 years of age who leaves foster care at 18 years of age but who requests services prior to reaching 23 years of age is eligible for such services.

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

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

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

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

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

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

d. Meets one of the following qualifications:

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

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

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

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

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

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

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

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

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

e. A young adult who is eligible for the Road-to-Independence Program and who so desires shall be allowed to remain in the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday.

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

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

h. The department shall provide information concerning young adults receiving the Road-to-Independence Scholarship to the Department of Education for inclusion in the student financial assistance database, as provided in s. 1009.94.

i. Scholarship funds are intended to help eligible students who are former foster children in this state to receive the educational and vocational training needed to become independent and self-supporting. Such funds shall be terminated when the young adult has attained one of four postsecondary goals pursuant to subsection (3) or reaches 23 years of age, whichever occurs earlier. In order to initiate postsecondary education, to allow for a change in career goal, or to obtain additional skills in the same educational or vocational area, a young adult may earn no more than two diplomas, certificates, or credentials. A young adult attaining an associate of arts or associate of science degree shall be permitted to work toward completion of a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree. Road-to-Independence Scholarship funds shall not be used for education or

training after a young adult has attained a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree.

j. The department shall evaluate and renew each award annually during the 90- day period before the young adult's birthday. In order to be eligible for a renewal award for the subsequent year, the young adult must:

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

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

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

l. An award recipient who does not qualify for a renewal award or who chooses not to renew the award may subsequently apply for reinstatement. An application for reinstatement must be made before the young adult reaches 23 years of age, and a student may not apply for reinstatement more than once. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the scholarship program.

(c) Transitional support services.--

1. In addition to any services provided through aftercare support or the Road-to-Independence Scholarship, a young adult formerly in foster care may receive other appropriate short-term services, which may include financial, housing, counseling, employment, education, mental health, disability, and other services, if the young adult demonstrates that the services are critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system.

2. A young adult formerly in foster care is eligible to apply for transitional support services if he or she has reached 18 years of age but is not yet 23 years of age, was a dependent child pursuant to chapter 39, was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday, and had spent at least 6 months living in foster care before that date.

3. If at any time the services are no longer critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system, they shall be terminated.

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

(e) Appeals process.--

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

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

(6) Accountability.--The department shall develop outcome measures for the program and other performance measures.

(7) Independent living services advisory council.--The Secretary of Children and Family Services shall establish the Independent Living Services **Advisory Council for the purpose of reviewing and making recommendations concerning the implementation and operation of the independent living transition services. This advisory council shall continue to function as specified in this subsection until the Legislature determines that the advisory council can no longer provide a valuable contribution to the department's efforts to achieve the goals of the independent living transition services.**

(a) Specifically, the advisory council shall assess the implementation and operation of the system of independent living transition services and advise the department on actions that would improve the ability of the independent living transition services to meet the established goals. The advisory council shall keep the department informed of problems being experienced with the services, barriers to the effective and efficient integration of services and support across systems, and successes that the system of independent living transition services has achieved. The department shall consider, but is not required to implement, the recommendations of the advisory council.

(b) The advisory council shall report to the appropriate substantive committees of the Senate and the House of Representatives on the status of the implementation of the system of independent living transition services; efforts to publicize the availability of aftercare support services, the Road-to-Independence Scholarship Program, and transitional support services; specific barriers to financial aid created by the scholarship and possible solutions; the success of the services; problems identified; recommendations for department or legislative action; and the department's implementation of the recommendations contained in the Independent Living Services Integration Workgroup Report submitted to the Senate and the House substantive committees December 31, 2002. This advisory council report shall be submitted by December 31 of each year that the council is in existence and shall be accompanied by a report from the department which identifies the recommendations of the advisory council and either describes the department's actions to implement these recommendations or provides the department's rationale for not implementing the recommendations.

(c) Members of the advisory council shall be appointed by the secretary of the department. The membership of the advisory council must include, at a minimum, representatives from the headquarters and district offices of the Department of Children and Family Services, community-based care lead agencies, the Agency for Workforce Innovation, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, Workforce Florida, Inc., the Statewide Guardian Ad Litem Office, foster parents, and advocates for foster children. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years.

(8) Personal property.--Property acquired on behalf of clients of this program shall become the personal property of the clients and is not subject to the requirements of chapter 273 relating to state-owned tangible personal property. Such property continues to be subject to applicable federal laws.

(9) Rulemaking.--The department shall adopt by rule procedures to administer this section, including balancing the goals of normalcy and safety for the youth and providing the caregivers with as much flexibility as possible to enable the youth to participate in normal life experiences. **The department shall not adopt rules relating to reductions in scholarship awards.** The department shall engage in appropriate planning to prevent, to the extent possible, a reduction in scholarship awards after issuance.

CREDIT(S)

Added by Laws 2002, c. 2002-19, § 3, eff. Oct. 1, 2002. Amended by Laws 2003, c. 2003-1, § 44, eff. July 1, 2003; Laws 2003, c. 2003-146, § 6, eff. July 1, 2003; Laws 2004, c. 2004-362, § 1, eff. June 24, 2004.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL AND STATUTORY NOTES

Amendment Notes:

Laws 2004, c. 2004-362, § 5, provides:

"The Office of Program Policy Analysis and Government Accountability develop recommendations for the minimum system standards for the independent living transition services system required in section 409.1451(6), Florida Statutes. These recommendations shall be developed with advice from the key stakeholders in the independent living transition service system, including, but not limited to, independent living services staff of the Department of Children and Family Services and community-based care lead agencies, representatives of the State Youth Advisory Board, other youth and young adults who are or have been in the foster care system, foster parents, and representatives from other state agencies and community service providers who are involved in serving this population. These recommendations shall be provided to the Department of Children and Family Services on or before November 30, 2004."

RESEARCH REFERENCES

2004 Electronic Pocket Part Update
Encyclopedias

FL Jur. 2d Family Law § 5, Family Self-Help Programs.

FL Jur. 2d Welfare § 94, Particular Placement Options.

West's F. S. A. § 409.1451, FL ST § 409.1451
Current through Chapter 484 and H.J.R. No. 1 and S.J.R. No. 2394 (End) of
2004 Special 'A' Session of the Nineteenth Legislature

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END OF DOCUMENT

West's F.S.A. § 39.701

WEST'S FLORIDA STATUTES ANNOTATED
TITLE V. JUDICIAL BRANCH (CHAPTERS 25-44)
CHAPTER 39. PROCEEDINGS RELATING TO CHILDREN
PART X. JUDICIAL REVIEWS
39.701. Judicial review

(1)(a) The court shall have continuing jurisdiction in accordance with this section and shall review the status of the child at least every 6 months as required by this subsection or more frequently if the court deems it necessary or desirable.

(b) The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months following the reunification, but, at that time, based on a report of the social service agency and the guardian ad litem, if one has been appointed, and any other relevant factors, the court shall make a determination as to whether supervision by the department and the court's jurisdiction shall continue or be terminated.

(2)(a) The court shall review the status of the child and shall hold a hearing as provided in this part at least every 6 months until the child reaches permanency status. The court may dispense with the attendance of the child at the hearing, but may not dispense with the hearing or the presence of other parties to the review unless before the review a hearing is held before a citizen review panel.

(b) Citizen review panels may conduct hearings to review the status of a child. The court shall select the cases appropriate for referral to the citizen review panels and may order the attendance of the parties at the review panel hearings. However, any party may object to the referral of a case to a citizen review panel. Whenever such an objection has been filed with the court, the court shall review the substance of the objection and may conduct the review itself or refer the review to a citizen review panel. All parties retain the right to take exception to the findings or recommended orders of a citizen review panel in accordance with Rule 1.490(h), Florida Rules of Civil Procedure.

(c) Notice of a hearing by a citizen review panel must be provided as set forth in subsection (5). At the conclusion of a citizen review panel hearing, each party may propose a recommended order to the chairperson of the panel. Thereafter, the citizen review panel shall submit its report, copies of the proposed recommended orders, and a copy of the panel's recommended order to the court. The citizen review panel's recommended order must be limited to the dispositional options available to the court in subsection (8). [FN1] Each party may file exceptions to the report and recommended order of the citizen review panel in accordance with Rule 1.490, Florida Rules of Civil Procedure.

(3)(a) The initial judicial review hearing must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever comes first, but in no event shall the review be held later than 6 months after the date the child was removed from the home. Citizen review panels shall not conduct more than two consecutive reviews without the child and the parties coming before the court for a judicial review.

(b) If the citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was removed from the home or the case plan was adopted, whichever date came first, the court must schedule a judicial

review hearing to be conducted by the court within 30 days after receiving the recommendation from the citizen review panel.

(c) If the child is placed in the custody of the department or a licensed child-placing agency for the purpose of adoptive placement, judicial reviews must be held at least every 6 months until the adoption is finalized.

(d) If the department and the court have established a formal agreement that includes specific authorization for particular cases, the department may conduct administrative reviews instead of the judicial reviews for children in out-of-home care. Notices of such administrative reviews must be provided to all parties. However, an administrative review may not be substituted for the first judicial review, and in every case the court must conduct a judicial review at least every 6 months. Any party dissatisfied with the results of an administrative review may petition for a judicial review.

(e) The clerk of the circuit court shall schedule judicial review hearings in order to comply with the mandated times cited in this section.

(f) In each case in which a child has been voluntarily placed with the licensed child-placing agency, the agency shall notify the clerk of the court in the circuit where the child resides of such placement within 5 working days. Notification of the court is not required for any child who will be in out-of-home care no longer than 30 days unless that child is placed in out-of-home care a second time within a 12-month period. If the child is returned to the custody of the parents before the scheduled review hearing or if the child is placed for adoption, the child-placing agency shall notify the court of the child's return or placement within 5 working days, and the clerk of the court shall cancel the review hearing.

(4) The court shall schedule the date, time, and location of the next judicial review during the judicial review hearing and shall list same in the judicial review order.

(5) Notice of a judicial review hearing or a citizen review panel hearing, and a copy of the motion for judicial review, if any, must be served by the clerk of the court upon:

(a) The social service agency charged with the supervision of care, custody, or guardianship of the child, if that agency is not the movant.

(b) The foster parent or legal custodian in whose home the child resides.

(c) The parents.

(d) The guardian ad litem for the child, or the representative of the guardian ad litem program if the program has been appointed.

(e) Any preadoptive parent.

(f) Such other persons as the court may in its discretion direct.

Service of notice is not required on any of the persons listed in paragraphs (a)-(f) if the person was present at the previous hearing during which the date, time, and location of the hearing was announced.

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

- 1. Has been provided with a current Medicaid card.**
- 2. Has been provided with a certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card issued pursuant to s. 322.051.**
- 3. Has been provided information relating to Social Security Insurance benefits if the child is eligible for such benefits. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds shall be provided and the child must be informed about how to access those funds.**
- 4. Has been provided with information and training related to budgeting skills, interviewing skills, and parenting skills.**
- 5. Has been provided with all relevant information related to the Road-to-Independence Scholarship, including, but not limited to, eligibility requirements, forms necessary to apply, and assistance in completing the forms.**
- 6. Has an open bank account, or has identification necessary to open such an account, and has been provided with essential banking skills.**
- 7. Has been provided with information on public assistance and how to apply.**
- 8. Has been provided a clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in.**

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, in addition to the requirements of subsection (7), the department shall provide the court with an updated case plan that includes specific information related to independent living services that have been provided since the child's 13th birthday, or since the date the child came into foster care, whichever came later.

(c) At the time of a judicial review hearing held pursuant to this subsection, if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan or in the provision of independent living services as required by s. 409.1451 and this subsection, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the department may be held in contempt.

(7)(a) Prior to every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child and the continuing necessity for and appropriateness of the placement.
2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the plan.
3. The amount of fees assessed and collected during the period of time being reported.
4. The services provided to the foster family or legal custodian in an effort to address the needs of the child as indicated in the case plan.
5. A statement that either:
 - a. The parent, though able to do so, did not comply substantially with the provisions of the case plan, and the agency recommendations;
 - b. The parent did substantially comply with the provisions of the case plan; or
 - c. The parent has partially complied with the provisions of the case plan, with a summary of additional progress needed and the agency recommendations.
6. A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to the parent or parents.

7. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future visitation.

8. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.

9. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.

10. If the child has reached 13 years of age but is not yet 18 years of age, the results of the preindependent living, life skills, or independent living assessment; the specific services needed; and the status of the delivery of the identified services.

11. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the child, parents, or any caregiver since the last judicial review hearing.

(b) A copy of the social service agency's written report and the written report of the guardian ad litem must be served on all parties whose whereabouts are known; to the foster parents or legal custodians; and to the citizen review panel, at least 72 hours before the judicial review hearing or citizen review panel hearing. The requirement for providing parents with a copy of the written report does not apply to those parents who have voluntarily surrendered their child for adoption or who have had their parental rights to the child terminated.

(c) In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, long-term custody, long-term licensed custody, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.

(d) In addition to or in lieu of any written statement provided to the court, the foster parent or legal custodian, or any preadoptive parent, shall be given the opportunity to address the court with any information relevant to the best interests of the child at any judicial review hearing.

(8) The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem if one has been appointed for the child, and any other person deemed appropriate; and any

relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

(a) If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.

(b) If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.

(c) If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed.

(d) The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.

(e) The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.

(f) The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply if such is the case.

(g) The appropriateness of the child's current placement, including whether the child is in a setting which is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement.

(h) A projected date likely for the child's return home or other permanent placement.

(i) When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.

(j) For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living.

(9)(a) Based upon the criteria set forth in subsection (7) and the recommended order of the citizen review panel, if any, the court shall determine whether or not the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time,

or initiate termination of parental rights proceedings for subsequent placement in an adoptive home. Modifications to the plan must be handled as prescribed in s. 39.601. If the court finds that the prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(b) The court shall return the child to the custody of the parents at any time it determines that they have substantially complied with the case plan, if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

(c) If, in the opinion of the court, the social service agency has not complied with its obligations as specified in the written case plan, the court may find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents.

(d) The court may extend the time limitation of the case plan, or may modify the terms of the plan, based upon information provided by the social service agency, and the guardian ad litem, if one has been appointed, the parent or parents, and the foster parents or legal custodian, and any other competent information on record demonstrating the need for the amendment. If the court extends the time limitation of the case plan, the court must make specific findings concerning the frequency of past parent-child visitation, if any, and the court may authorize the expansion or restriction of future visitation. Modifications to the plan must be handled as prescribed in s. 39.601. Any extension of a case plan must comply with the time requirements and other requirements specified by this chapter.

(e) If, at any judicial review, the court finds that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interest of the child, it may authorize the filing of a petition for termination of parental rights, whether or not the time period as contained in the case plan for substantial compliance has elapsed.

(f) No later than 12 months after the date that the child was placed in shelter care, the court shall conduct a judicial review to plan for the child's permanency. At this hearing, if the child is not returned to the physical custody of the parents, the case plan may be extended with the same goals only if the court finds that the situation of the child is so extraordinary that the plan should be extended. The case plan must document steps the department is taking to find an adoptive parent or other permanent living arrangement for the child.

(g) The court may issue a protective order in assistance, or as a condition, of any other order made under this part. In addition to the requirements included in the case plan, the protective order may set forth requirements relating to reasonable conditions of behavior

to be observed for a specified period of time by a person or agency who is before the court; and such order may require any such person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

CREDIT(S)

Laws 1987, c. 87-289, § 9; Laws 1990, c. 90-306, § 11; Laws 1990, c. 90-309, § 3; Laws 1991, c. 91-183, § 3; Laws 1992, c. 92-58, § 49; Laws 1992, c. 92-158, § 6; Laws 1994, c. 94-164, § 27; Fla.St.1997, § 39.453. Renumbered as 39.701 and amended by Laws 1998, c. 98-403, § 78, eff. Oct. 1, 1998. Amended by Laws 1999, c. 99-193, § 38, eff. July 1, 1999; Laws 2000, c. 2000-139, § 32, eff. July 1, 2000; Laws 2004, c. 2004-362, § 2, eff. June 24, 2004.

