

**NOTE**  
**IMPROVING OUTCOMES FOR YOUTH AGING  
OUT OF FOSTER CARE BY INCREASING THE AGE  
AND QUALITY OF CARE**

I. INTRODUCTION

Imagine knowing that the day you turn eighteen every choice you make going forward has to be about surviving.<sup>1</sup> That is what former foster youth Breanna Bullock’s life has been like since her eighteenth birthday.<sup>2</sup> After going from home to home for twelve years in the foster system, she was suddenly responsible for her own life with no biological family to turn to for help.<sup>3</sup> When describing her experience, Bullock said, “I didn’t have any financials, I didn’t have a job, and my [social] worker told me it was my responsibility.”<sup>4</sup>

Adulthood does not occur overnight, but “that is exactly what happens to youth exiting the foster care system.”<sup>5</sup> “Each year, approximately 20,000 youth will age out<sup>6</sup> of [] foster care [] when they turn [eighteen] or [twenty-one],” exposing themselves to an increased risk of negative outcomes.<sup>7</sup> At age eighteen foster youth are expected to

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1. Lex Talamo, *Youth Aging Out of Foster Care Struggle to Survive in the ‘Real World,’* SHREVEPORT TIMES (Mar. 16, 2017), <https://www.shreveporttimes.com/story/news/2017/03/12/youth-aging-out-foster-struggle-survive-real-world/98535912> [<https://perma.cc/3SAX-53JG>].

2. *Id.*

3. *Id.*

4. *Id.*

5. Melinda Atkinson, *Aging Out of Foster Care: Towards A Universal Safety Net for Former Foster Care Youth*, 43 HARV. C.R.-C.L. L. REV. 183, 183 (2008).

6. Sacred B. Huff, “*Abandoned All Over Again*”: *A Discussion on Aging Out of Foster Care & Homelessness*, WASH. LEGAL CLINIC FOR THE HOMELESS (Apr. 17, 2018), <https://www.legalclinic.org/abandoned-all-over-again> [<https://perma.cc/6WNP-K7E>] (defining “aging out” as when youth in foster care reach “the maximum age to be eligible for foster care services”).

7. *About the Children*, ADOPT US KIDS, <https://www.adoptuskids.org/meet-the-children/children-in-foster-care/about-the-children> [<https://perma.cc/U2LW-QR29>] (last visited Aug. 12, 2023); see *infra* Part III.B; see also Jennifer Sapp, *Aging Out of Foster Care: Enforcing the Independent Living Program Through Contract Liability*, 29 CARDOZO L. REV. 2861, 2864 (2008) (stating that “[i]n New York, approximately 1,200 foster youth over the age of eighteen leave foster care each year”).

live independently,<sup>8</sup> presuming that “one has a place to live[,] a job or other means of financial support sufficient to pay the rent[,] utilities, food, clothes, and other necessities[,] transportation, health care, a cell phone, and occasional entertainment.”<sup>9</sup> Therefore, aging out means “losing everything” in their safety net; they “no longer [have] housing, healthcare, financial assistance, or a social worker to call in emergencies.”<sup>10</sup>

Some states, like New York, have made progress towards addressing the age-out problem, but much more is needed.<sup>11</sup> New York Family Court Act § 1055(e) permits youth to consent to staying in care past their eighteenth birthday, until age twenty-one.<sup>12</sup> However, state and federal programs provided to youth when they do decide to remain in care, such as for housing and education, are not as effective as legislators may have envisioned them to be when passed.<sup>13</sup> Due to these poor programs, youth who age out at any age experience significantly more negative outcomes during their life than their counterparts who were not in care, for reasons such as being homeless, lacking an education and/or employment, and being in poor health with no insurance.<sup>14</sup>

The purpose of this Note is to suggest how New York can engage in a two-pronged approach to fully address the needs of youth aging out of care.<sup>15</sup> First, New York State should amend § 1055(e) of its Family Court Act by increasing the age youth can consent to remain in care, from age twenty-one to twenty-six.<sup>16</sup> However, this will not fix all the issues youth face due to aging out because they will still be leaving the foster system’s security net, just at a later age.<sup>17</sup> Therefore, this Note will also recommend that the State restructure the programs currently available for youth.<sup>18</sup> The goal is for youth to gain the life skills and

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8. Lucy Wieland & Jenny L. Nelson, *Aging Out of Foster Care: How Extended Foster Care for Youth Eighteen to Twenty-One Has Fostered Independence*, 40 WM. MITCHELL L. REV. 1115, 1115 (2014). A survey revealed that “one in four teens [do] not believe [they] will be able to support [themselves] financially until at least [their] mid-twenties.” *Id.*

9. *Id.*

10. Atkinson, *supra* note 5, at 183.

11. *See infra* text accompanying notes 47-49.

12. N.Y. FAM. CT. ACT § 1055(e) (Consol. 2021); *see also* N.Y. FAM. CT. ACT § 756-a(g) (Consol. 2020).

13. *See infra* Part III.A.

14. *See infra* Part III.B.

15. *See infra* Part IV.

16. *See infra* Part IV.A.

17. *See infra* Part IV.

18. *See infra* Part IV.C.

access to external resources, like college and housing, that these programs intend to provide but have failed to.<sup>19</sup>

This Note will begin with Part II explaining the background of foster care, such as the framework of the system and how states are able to extend a youth's stay until age twenty-one (at most), as well as current New York law and available programs to assist youth.<sup>20</sup> In Part III, this Note will address the problems with the current programs, the negative outcomes youth face when they do finally age out (proving the current laws and programs are not as beneficial as the legislature may have hoped for), and why youth leave care when there are benefits for remaining in extended foster care.<sup>21</sup> Part IV will propose a solution to this issue: amending New York Family Court Act § 1055(e) to extend care, by consent, until age twenty-six and the benefits associated with it.<sup>22</sup> Further, it will explain why twenty-six should be the age and detail the programs youth will have available if they do consent to stay in foster care past their eighteenth birthday.<sup>23</sup>

## II. THE FOSTER CARE SYSTEM AND NEW YORK'S LAW AND RESOURCES

Part II of this Note will begin by discussing how a child enters the foster care system and the goals the system has for the child.<sup>24</sup> It will then explain how Title IV-E eligibility permits states to extend youths' stay in foster care past age eighteen.<sup>25</sup> Part II will briefly state New York's current law for extended foster care.<sup>26</sup> Lastly, there will be an overview of some state and federal programs available to assist youth in extended foster care.<sup>27</sup>

### *A. Framework of Foster Care*

It has been explained that “[f]oster care is a temporary living situation for children whose parents cannot take care of them and whose need for care has come to the attention of child welfare agency staff.”<sup>28</sup>

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19. *See infra* Part IV.C.

20. *See infra* Part II.

21. *See infra* Part III.

22. *See infra* Part IV.

23. *See infra* Part IV.

24. *See infra* Part II.A.

25. *See infra* Part II.B.

26. *See infra* Part II.C.

27. *See infra* Part II.D.

28. *Foster Care Explained: What It Is, How It Works and How It Can Be Improved*, ANNIE E. CASEY FOUND. (Aug. 3, 2021), <https://www.aecf.org/blog/what-is-foster-care> [https://perma.cc/3LYB-7XPL].

The typical reason these youth are removed from their parents and placed in foster care is because they are living in “unsafe conditions, [are] abuse[d], [or] neglect[ed,] or [their] parents [] are unable to care for them.”<sup>29</sup> Most of the time, the agencies are aware of a child in need of their assistance because of child abuse or neglect report others make.<sup>30</sup> If after an investigation of allegations the agency determines the home is not safe for the child, they must go to court to obtain temporary custody of the child.<sup>31</sup> Once the court gives the agency temporary legal custody of the child, the child is either “cared for by a relative or non-relative foster parent under the guidance of a foster care agency.”<sup>32</sup>

The goal of foster care is to get children into “stable, long-term family situations [] as soon as possible.”<sup>33</sup> This may be achieved by returning the child to their parents, living permanently with a relative or guardian, or getting adopted.<sup>34</sup> However, some youth in foster care do not find this long-term family home and have to age out of the system on their eighteenth birthday.<sup>35</sup> In 2019, more than 20,000 youth “aged out of foster care, simply because they were too old to remain.”<sup>36</sup>

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29. *Id.*; see generally *Foster Care*, AM. ACAD. OF CHILD & ADOLESCENT PSYCHIATRY (Oct. 2018), [https://www.aacap.org/AACAP/Families\\_and\\_Youth/Facts\\_for\\_Families/FFF-Guide/Foster-Care-064.aspx](https://www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/Foster-Care-064.aspx) [<https://perma.cc/WL2D-BVQL>] (explaining that another reason for foster placement can be severe behavioral problems that the child’s parent cannot manage themselves).

30. *Foster Care Explained: What It Is, How It Works and How It Can Be Improved*, *supra* note 28. Some professions require one to report suspected child abuse or maltreatment cases. *Summary Guide for Mandated Reporters in New York State*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/publications/Pub1159/OCFS-Pub1159.pdf> [<https://perma.cc/ZVV9-RPS9>] (last visited Aug. 12, 2023).

31. *Foster Care Explained: What It Is, How It Works and How It Can Be Improved*, *supra* note 28.

32. *Parent’s Guide to Foster Care*, NYC CHILD., <https://www1.nyc.gov/site/acs/child-welfare/parents-guide-to-foster-care.page> [<https://perma.cc/VGV4-KJKN>] (last visited Aug. 12, 2023); *Foster Care Explained: What It Is, How It Works and How It Can Be Improved*, *supra* note 28. The procedure most agencies follow after they receive a report is possibly placing the child “with relatives, [with] foster families or in group facilities,” subjecting the child to routine visits by a caseworker and check-ins from the judge. *Id.*

33. *Foster Care Explained: What It Is, How It Works and How It Can Be Improved*, *supra* note 28; see *You Are Not Alone!*, LAWS. FOR CHILD. (2007), <https://www.lawyersforchildren.org/sites/all/themes/lfc/images/handbooks/lfc-aging-out.pdf> [<https://perma.cc/8L7A-JXKC>] (explaining that there are about five different types of permanency planning goals: return to parent, adoption, custody or guardianship, placement with a fit and willing relative, or another planned permanent living arrangement (“APPLA”) (independent living)); see also *id.* (defining an independent living plan to be that you are on your own when you leave foster care).

34. See *Foster Care Explained: What It Is, How It Works and How It Can Be Improved*, *supra* note 28 (revealing the data that each year about half of the foster youth return to their parents, one in six kids live with a relative or guardian, and one in four are adopted).

35. *Aging Out*, CHILD.’S RTS., <https://www.childrensrights.org/newsroom/fact-sheets/aging-out> [<https://perma.cc/YY8W-GYCW>] (last visited Aug. 12, 2023).

36. *Id.*

### B. How States Can Extend Foster Care—Title IV-E Eligibility

Title IV-E, authorized under the Social Security Act, is a primary federal source of funding for foster care.<sup>37</sup> By implementing services that further the “safety, permanency, and well-being of all children in foster care,” states are eligible for Title IV-E funding.<sup>38</sup> For example, the state will “assist [the] youth in developing what is known as a transition plan, which addresses housing and other needs when they have emancipated from foster care.”<sup>39</sup> Through the development of transition plans, regarding services for youth ages fourteen and older, the state “help[s] the child prepare for a successful transition to adulthood.”<sup>40</sup>

In 2008, President George W. Bush signed the Fostering Connection to Success and Increasing Adoptions Act,<sup>41</sup> which increased “federal support to states so they can place more children permanently with relative guardians or adoptive parents, and enhance aid to foster youth.”<sup>42</sup> Section 201 of this Act<sup>43</sup> states that, starting in 2011, “states that support foster youth up to age [nineteen], [twenty], or [twenty-one] will receive federal reimbursement.”<sup>44</sup> In order to receive this, “youth must be Title IV-E Eligible”<sup>45</sup> and

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37. 42 U.S.C. §§ 671–679(c); *The Social Security Act of 1935, Legislative History*, SOC. SEC., <https://www.ssa.gov/history/35act.html> [<https://perma.cc/TN38-RYCK>] (last visited Aug. 12, 2023). The Social Security Act provides for the general welfare through federal benefits and enables states “to make more adequate provision[s] for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.” *Id.*

38. *Youth Transitioning from Foster Care: Issues for Congress*, EVERYCRSREPORT.COM (Oct. 8, 2014), [https://www.everycrsreport.com/reports/R40218.html#\\_Toc401144646](https://www.everycrsreport.com/reports/R40218.html#_Toc401144646) [<https://perma.cc/RP5M-2K98>] (listing examples of activities such as having detailed case plans and reviewing the child on a regular basis).

39. *Id.*

40. *Id.*

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

42. *Fostering Connections to Success and Increasing Adoptions Act*, N. AM. COUNCIL ON ADOPTABLE CHILD. (May 3, 2017), <https://www.nacac.org/resource/fostering-connections-to-success-and-increasing-adoptions-act> [<https://perma.cc/QPC7-AD5V>].

43. § 201, 122 Stat. at 3957.

44. *Fostering Connections to Success and Increasing Adoptions Act*, *supra* note 42.

45. *Id.*; *Eligibility Manual for Child Welfare Programs*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS. (Sept. 2012), <https://ocfs.ny.gov/main/publications/eligibility/Chapter%20One%20Title%20IV-E%20Eligibility.pdf> [<https://perma.cc/DY2D-C2JR>]. In order to be Title IV-E eligible, eight conditions must be met: (1) the child must have been under the age of eighteen when they entered foster care; (2) the child must be a U.S. citizen or a qualified immigrant; (3) the child was placed in care due to a court order or voluntarily by a parent or legal guardian; (4) the initial court order must explicitly stipulate that removal was in the child’s best interest; (5) the court must make a judicial determination that reasonable efforts to prevent removal were made within sixty days of removal; (6) the child was living with someone who had legal custody of them; (7) the child was deprived of

[c]ompleting secondary education or a program leading to an equivalent credential[,] [e]nrolled in an institution that provides post-secondary or vocational education[,] [p]articipating in a program or activity designed to promote, or remove barriers to, employment[,] [e]mployed for at least [eighty] hours per month[,] [or] [i]ncapable of doing any of the above because of a medical condition.<sup>46</sup>

As a result, twenty-five states and the District of Columbia have offered federally funded extended foster care for youth ages eighteen to twenty-one, as of February 2018.<sup>47</sup> Of the states with extended care, twenty-three “chose to adopt all five eligibility criteria for extended care”<sup>48</sup> and twenty-five “set the maximum age of eligibility at [twenty-one].”<sup>49</sup>

### C. Current New York Law

Under New York Family Court Act § 1055(e), a youth ages out of the foster care system at the age of eighteen.<sup>50</sup> However, “upon consent a placement may be extended by six-month increments until age [twenty-one].”<sup>51</sup> Also, if the youth was discharged from care and is still under the age of twenty-one, they may motion to return to care.<sup>52</sup> Nonetheless, this Note will not be focusing on the reentry of care.<sup>53</sup>

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parental support because of absence, incapacity, unemployment, or death; and (8) the child would have been financially eligible for Aid to Families with Dependent Children (“AFDC”) based on the family’s income and sources the month they were removed. *Id.*

46. *Older Youth Housing, Financial Literacy and Other Supports*, NAT’L CONF. OF STATE LEGISLATURES (Apr. 23, 2020), <https://www.ncsl.org/research/human-services/supports-older-youth> [<https://perma.cc/H9HP-JXWY>].

47. *States with Approval to Extend Care Provide Independent Living Options for Youth Up to Age 21*, U.S. GOV’T ACCOUNTABILITY OFF. (May 2019), <https://www.gao.gov/assets/gao-19-411.pdf> [<https://perma.cc/5MRQ-YSGQ>]. Defining “federally funded” to mean “that the state’s costs for carrying out the program are eligible for partial federal reimbursement under Title IV-E of the Social Security Act.” *Id.* Of those twenty-five states and the District of Columbia, twenty require youth to voluntarily opt-in to extended foster care. *Id.*

48. *Id.* Whereas, “in West Virginia, youth can only participate in extended care if they are enrolled in secondary or postsecondary educational programs” and then in Wisconsin, “participation in extended care is limited to youth completing secondary education who also have a documented disability.” *Id.*

49. *Id.* (stating that “Indiana extend foster care to age [twenty]”).

50. N.Y. FAM. CT. ACT § 1055(e) (Consol. 2021); see FAM. CT. § 756-a(g); see also *What Does It Mean to Age Out?*, N.Y.S., <https://www.msnavigator.org/transition-to-adulthood/transitions-big-picture/what-does-it-mean-age-out> [<https://perma.cc/56ZE-8A8M>] (last visited Aug. 12, 2023) (defining “aging out” as reaching the ceiling age of the system and losing your ability to be in the program).

51. FAM. CT. § 1055(e) Supplementary Practice Commentaries (West 2010).

52. See *id.*

53. See *infra* Part IV.

### D. Current Programs to Assist Youth

In New York State, the Office of Children and Family Services (“OCFS”) “oversees child welfare services on a statewide level, whereas the local services district administers foster care on the county or local levels.”<sup>54</sup> When youth opt to stay in care, some services they had as a minor extend.<sup>55</sup> Their extended-care services include “educational and employment services, housing assistance, independent living skills, and medical care . . . .”<sup>56</sup> Some examples of these services and their benefits are the Chafee Foster Care Independence Act, which funds independent living services;<sup>57</sup> the Affordable Care Act, which provides healthcare;<sup>58</sup> the Education and Training Voucher Program’s assistance with financing higher education;<sup>59</sup> and housing options with reduced costs.<sup>60</sup>

#### 1. Chafee Foster Care Independence Act of 1999

In 1999, Congress enacted the Chafee Foster Care Independence Act (“Chafee”).<sup>61</sup> This federally funded program “provides the states flexibility to create programs that meet the specific needs of a state’s foster youth provided that the plan meets the requirements outlined in the law.”<sup>62</sup> New York’s Chafee plan “requires Independent Living Services to be provided to any child in foster care over the age of fourteen who will be discharged to independent living, and that such services continue until the child reaches twenty-one.”<sup>63</sup> Some services the Independent Living Programs provide youth are life skills training,<sup>64</sup> “access to college, vocational training, or formal job training.”<sup>65</sup> For example, in New York, the OCFS has a four-module, eight-topic training program “for youth placed in the care of OCFS by the courts, as

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54. Sapp, *supra* note 7, at 2872.

55. *See infra* Part II.D.

56. Sapp, *supra* note 7, at 2868-69.

57. *See infra* Part II.D.1.

58. *See infra* Part II.D.2.

59. *See infra* Part II.D.3.

60. *See infra* Part II.D.4.

61. 42 U.S.C. § 677 (2000); Sapp, *supra* note 7, at 2867 (explaining that Chafee was enacted after the Independent Living Program did not “give youths leaving foster care the necessary life skills to complete basic education, find and maintain employment, or otherwise live self-sufficiently after leaving care”).

62. Sapp, *supra* note 7, at 2868.

63. *Id.* at 2871.

64. *An Independent Living Skills Program Pub. 5053*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/main/publications/pub5053text.asp> [<https://perma.cc/7J55-WRSA>] (last visited Aug. 12, 2023).

65. Sapp, *supra* note 7, at 2873.

well as other at-risk youth.”<sup>66</sup> The modules teach youth about transportation skills, employment skills, managing money, housing and home management, healthy living, and skills for parenting.<sup>67</sup>

## 2. Affordable Care Act

The Affordable Care Act (“ACA”)<sup>68</sup> is a federal health insurance program that provides people with more access to health insurance coverage.<sup>69</sup> The ACA has “a provision [that permits foster youth] who [left the system] to remain on Medicaid until age [twenty-six], regardless of income or resources.”<sup>70</sup> This was intended “to mirror the extended coverage available to young adults whose parents have private health insurance.”<sup>71</sup> The only requirements are that the youth must have been in the system on their eighteenth birthday and that they have been in receipt of Medicaid on their eighteenth birthday or day of their final discharge.<sup>72</sup>

## 3. Education and Training Voucher Program

In 2002, Congress created the Education and Training Voucher Program (“ETV”)<sup>73</sup> in order to help youth aging out of foster care “make the transition to self-sufficiency and receive the education, training and services necessary to obtain employment.”<sup>74</sup> The program assists these youth by awarding them “up to \$5,000 a year for qualified school related

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66. *An Independent Living Skills Program Pub. 5053*, *supra* note 64.

67. *Id.* The modules are interactive; when learning about managing money the participants budget their own income and expenses weekly. *Id.*

68. Patient Protection and Affordable Care Act (Affordable Care Act) (Obamacare), Pub. L. No. 111-148, 124 Stat. 119 (2010).

69. *Former Foster Care Youth and the Affordable Care Act*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/main/sppd/health-services/affordable-care-act.php> [<https://perma.cc/3P55-8X8K>] (last visited Aug. 12, 2023).

70. *Id.* (stating that all states must cover former foster youth). One provision of the ACA permits youth to stay on their parent’s health insurance until age twenty-six. *Id.*

71. *The Affordable Care Act, Medicaid, and Youth Transitioning from Foster Care*, NAT’L CTR. FOR CHILD. IN POVERTY (Sept. 2021), <https://www.nccp.org/the-affordable-care-act-medicaid-and-youth-transitioning-from-foster-care> [<https://perma.cc/A2FN-UXFS>].

72. *Former Foster Care Youth and the Affordable Care Act*, *supra* note 69; *see You Are Not Alone!*, *supra* note 33. While youth are in care, they are covered by Medicaid through the system, but that is turned off once they are discharged. *Id.* Upon discharge, they are transferred to Community Medicaid that will cover them for four months after leaving and are sent a package to reapply. *Id.*

73. 42 U.S.C. § 677(i).

74. *Education and Training Vouchers*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS., <https://ocfs.ny.gov/programs/youth/yes/etv.php> [<https://perma.cc/8YUQ-E5B3>] (last visited Aug. 12, 2023).



expenses,” specifically post-secondary education.<sup>75</sup> ETV funds can be used for tuition, on-campus room and board, meal cards, books and school supplies, federal students loans, and transportation.<sup>76</sup> Although states vary in their use of the funds and eligibility requirements, New York permits youth who are eligible to participate past age eighteen.<sup>77</sup>

#### 4. Housing Options

New York’s Code of Rules and Regulations requires a youth’s agency to ensure that upon discharge from foster care, they have housing for at least one year when they leave, and the housing cannot be a shelter.<sup>78</sup> There are three main housing programs<sup>79</sup> for youth aging out of foster care: (1) the New York City Housing Authority (“NYCHA”);<sup>80</sup> (2) Section 8;<sup>81</sup> and (3) the Administration of Children’s Services (“ACS”) Housing Subsidy.<sup>82</sup> NYCHA provides “housing for low- and moderate-income residents of New York City,” while giving priority to aged out foster care applicants.<sup>83</sup> Section 8 is run by NYCHA and “provides vouchers to help pay for housing for those who qualify.”<sup>84</sup> Lastly, the ACS Housing Subsidy “pays up to \$300 per month towards your rent, directly to your landlord, for up to three years or until your twenty-first birthday.”<sup>85</sup>

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75. *Welcome to the New York State Education and Training Voucher Program*, N.Y. STATE EDUC. AND TRAINING VOUCHER PROGRAM, <https://etv-nys.smapply.org> [<https://perma.cc/QRD7-KLQV>] (last visited Aug. 12, 2023); Karla V. Mardueño, *Fostered or Forgotten? Leveling the Playing Field for Foster Youth Aging Out of the Foster Care System*, 62 HOW. L.J. 989, 1002 (2019).

76. *FAQs About ETV*, FOSTER CARE TO SUCCESS, <https://www.fc2sprograms.org/faqs> [<https://perma.cc/K8YT-4K64>] (last visited Aug. 12, 2023).

77. *See infra* Part III.A.3; *New York State’s FY 2015-2019 Final Report and FY 2020-2024 Child and Family Services Plan*, N.Y. STATE OFF. OF CHILD. & FAM. SERVS. (June 2019), <http://fosteringchamps.org/wp-content/uploads/2020/06/New-York-2020-24-CFSP.pdf> [<https://perma.cc/Z7YA-Y59V>].

78. *You Are Not Alone!*, *supra* note 33 (emphasizing that a youth’s agency is obligated by law, the New York Code of Rules and Regulations); N.Y. COMP. CODES, R. & REGS. tit. 18, § 430.12(f)(3)(i)(c).

79. *You Are Not Alone!*, *supra* note 33 (stressing that the youth can only choose one program).

80. *Id.* This program “locates apartments for them in a public housing complex.” *Id.*

81. *Id.* This program has been frozen but “re-opened on a limited basis for a small group of applicants,” therefore it is viewed to be unreliable. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

### III. THE CURRENT SYSTEM DOES NOT SET ONE UP FOR SUCCESS

Part III of this Note will first state why these current programs are not as beneficial as they were intended to be.<sup>86</sup> Next, it will further prove this with statistics illustrating that even with these current programs and laws in place, youth still do not benefit when they do age out of foster care.<sup>87</sup> Lastly, it will be demonstrated that staying in extended foster care for even just a year is beneficial.<sup>88</sup> However, these benefits are not lasting and Part III will address the possibility of why,<sup>89</sup> as well as why youth do not want to remain in care, despite these benefits.<sup>90</sup>

#### *A. These Current Programs Are Not Doing Their Job*

There are many services available to foster youth and requirements in place for states to provide these services in exchange for certain funds.<sup>91</sup> Yet, youth are “continuously leaving care without a safety net of housing, medical care, and education.”<sup>92</sup> For example,

only [twenty-two] percent of eligible youth are provided access to an employment or vocational program, only [twenty-eight] percent receive post-secondary support and less than [forty] percent get budgeting or financial management training or any instruction in managing a home on their own while they are still being taken care of by their state.<sup>93</sup>

This low rate of service access and usage is even greater if the youth opted out of extended foster care, since they neither take advantage of the programs available nor receive as many services as they would have if they remained in care.<sup>94</sup> This is due to foster youth “struggl[ing] to

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86. See *infra* Part III.A.

87. See *infra* Part III.B.

88. See *infra* Part III.C.

89. See *infra* Part III.C.

90. See *infra* Part III.C.

91. Sapp, *supra* note 7, at 2875; Jill Bloch, *Youth Aging Out of Foster Care Need a Runway, Not a Cliff*, YOUTHTODAY (Mar. 5, 2019), <https://youthtoday.org/2019/03/youth-aging-out-of-foster-care-need-runway-not-a-cliff> [<https://perma.cc/Q2DX-YKPF>]; see *supra* Part II.A. There are many services available to youth in care, and some that are state-specific, but this Note discusses the Chafee Foster Care Independence Act of 1999, Affordable Care Act, Education and Training Voucher Program, and housing options. See *supra* Part II.D.

92. Sapp, *supra* note 7, at 2876.

93. Bloch, *supra* note 91.

94. Mark Courtney et al., *At Age 19, Youth Transitioning Out of Foster Care Face Multiple Challenges*, CHAPIN HALL (2005), <https://www.chapinhall.org/research/at-age-19-youth-transitioning-out-of-foster-care-face-multiple-challenges> [<https://perma.cc/GFK6-TL5N>]; see Rachel Rosenberg & Samuel Abbott, *Supporting Older Youth Beyond Age 18: Examining Data and Trends in Extended Foster Care*, CHILD TRENDS (June 3, 2019),

identify and access programs available to them.”<sup>95</sup> On top of this obstacle, they also do not want to ask for help because they believe that once they leave, they should not and cannot come back.<sup>96</sup> This Section will reveal how despite the low usage rate, these programs have been shown to not be effective,<sup>97</sup> requiring them to be remodeled before the state permits older foster youth to access them.<sup>98</sup>

### 1. Chafee Foster Care Independence Act of 1999

The Chafee program provides funding to states for Independent Living Services “to support older youth in foster care and youth who have recently left foster care.”<sup>99</sup> Despite this plan,<sup>100</sup> there have not been positive outcomes for youth when they leave the system.<sup>101</sup> It has been revealed that many youth “left care without adequate counseling and discharge plans . . . [.]”<sup>102</sup> did not have access to their case planners (social workers), did not know them, or did not know what was in their Independent Living Plan.”<sup>103</sup> Even if youth did receive these formal plans, many were still “receiving insufficient services due to lack of funding and poor implementation of the independent living skills programs.”<sup>104</sup> Also, having Independent Living Services start at the age

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<https://www.childtrends.org/publications/supporting-older-youth-beyond-age-18-examining-data-and-trends-in-extended-foster-care> [<https://perma.cc/YT8V-2MME>].

95. *Keeping Foster Youth Off the Streets: Improving Housing Outcomes for Youth that Age Out of Care in New York City*, FED’N OF PROTESTANT WELFARE AGENCIES (Jan. 2014), <http://www.fpwa.org/wp-content/uploads/2015/01/Keeping-Foster-Youth-Off-the-Streets.pdf> [<https://perma.cc/2D55-VZTH>] (revealing that this data was based on four of the six foster youth interviewed).

96. *Id.*

97. *See supra* text accompanying note 93.

98. *See infra* Part III.

99. *States with Approval to Extend Care Provide Independent Living Options for Youth Up to Age 21*, *supra* note 47.

100. *See supra* Part II.D.1.

101. Sapp, *supra* note 7, at 2785-86; *see infra* Part III.B.

102. *See Palmer v. Cuomo*, 503 N.Y.S.2d 20, 22 (App. Div. 1986). The New York Appellate Division held that New York City “is required to provide training in independent living skills” such as “apartment hunting, budgeting, shopping and cooking” before their discharge. *Id.* New York City must also “ensure training for the child directed toward career objectives, such as training in a marketable skill or trade, counseling around career choices, and assistance in locating or enrolling in appropriate programs . . . until the child is discharged.” *Id.*; Talamo, *supra* note 1 (quoting a former foster youth who said, “[w]hen you’re in foster care, they shelter you . . . [therefore] [a]ging out is scary because you don’t know where to go or how to pick up the pieces”).

103. Sapp, *supra* note 7, at 2876.

104. *Id.*

of fourteen makes it unlikely that the youth are prepared to understand what they are learning and take it seriously.<sup>105</sup>

In addition, it has been found that “[e]ach year, approximately 186,000 youth between ages of [fourteen] and [twenty-three] are estimated eligible for Chafee funds.”<sup>106</sup> However, “just [sixty] percent receive assistance.”<sup>107</sup> Of those that receive help, they are only provided “about \$1,300 in services and financial assistance per youth.”<sup>108</sup> This defeats the purpose of Chafee’s mission, to assist all foster youth in achieving self-sufficiency.<sup>109</sup>

## 2. Affordable Care Act

Although the ACA<sup>110</sup> “requires states to provide young people who have aged out of the foster care system with health insurance via Medicaid until their [twenty-sixth] birthday,”<sup>111</sup> there is still an issue with enrollment.<sup>112</sup> Due to the ACA’s many other provisions and the number of eligible individuals, “few states have made [foster youth

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105. See *supra* text accompanying note 63; Talamo, *supra* note 1 (quoting a former foster youth who said the Independent Living Services program was “not engaging for a [fourteen]-year-old, nor was it important to her [at that age]”).

106. *Chafee Independent Living Spending Analysis*, FOSTERCLUB (May 18, 2020), <https://www.fosterclub.com/blog/announcements/chafee-spending-analysis> [<https://perma.cc/2BP9-Q34K>].

107. *Id.*

108. *Id.*; see Jessica Suriano, *What Happens When You Age Out of Foster Care During a Pandemic?*, NATION (May 19, 2020), <https://www.thenation.com/article/society/what-happens-when-you-age-out-of-foster-care-during-a-global-pandemic> [<https://perma.cc/LL6L-UM9E>].

In fiscal year 2020, California, New York, and Texas received the largest allotments of Chafee funds, at over \$16 million, \$11 million, and \$9 million, respectively. Wyoming, Vermont, New Hampshire, and Delaware each received the smallest amount, at \$500,000 each. States are permitted to use up to 30 percent of their yearly Chafee funds to cover the costs of room and board, but, according to the [National Center for Housing and Child Welfare (“NCHCW”)], this isn’t happening nearly as frequently as it should. As few as 30 percent of former foster youth in many states end up receiving Chafee funding and services. “There is no excuse for this persistent failure and flouting of Congress’s intent,” the NCHCW wrote in a list of recommendations for states it released in February.

*Id.*

109. *John H. Chafee Foster Care Independence Program*, CHILD.’S BUREAU (June 28, 2012), <https://www.acf.hhs.gov/cb/grant-funding/john-h-chafee-foster-care-independence-program> [<https://perma.cc/DT3Q-ZYN6>].

110. See Patient Protection and Affordable Care Act (Affordable Care Act) (Obamacare), Pub. L. No. 111-148, 124 Stat. 119 (2010).

111. *The Affordable Care Act, Medicaid, and Youth Transitioning from Foster Care*, *supra* note 71.

112. Christine Vestal, *States Enroll Former Foster Youth in Medicaid*, PEW RSCH. CTR. (Apr. 30, 2014), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2014/04/30/states-enroll-former-foster-youth-in-medicaid> [<https://perma.cc/MM78-GH5P>].

their] priority [and] [t]heir numbers are reported to be low.”<sup>113</sup> Although the youth can enroll themselves, it is a quicker process if they provide documents such as a statement from the agency or a copy of a court order verifying they were in custody at age eighteen, or “a copy of their Foster Care Transition Plan that includes foster care and Medicaid status.”<sup>114</sup> Such documents are only obtainable if the youth are able to contact someone from the agency to get them, like their social worker, which as stated many do not have relationships with.<sup>115</sup> In the alternative, social workers struggle to inform the youth that they are eligible and provide them with the paperwork since it is a constant obstacle trying to track down youth once they age out and leave the system.<sup>116</sup> Overall, youth’s lack of healthcare is an alarming issue because they have relatively poor health.<sup>117</sup> As a result, “foster youths cost Medicaid two to three times as much as other youths enrolled in Medicaid.”<sup>118</sup>

### 3. Education and Training Voucher Program

Even though the ETV government-funded grants assist current and former foster youth with paying for college, career school, or training,<sup>119</sup> the program still “has major deficiencies.”<sup>120</sup> For starters, the cap of \$5,000 ignores certain needs the youth may have while attending school, causing many youth to have full-time jobs to fund these expenses.<sup>121</sup> Also, the program provides \$42.4 million in vouchers, but it has been discovered that that is not enough.<sup>122</sup> Even “[i]f each youth served [a

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113. *Id.*; *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, CTRS. FOR MEDICARE & MEDICAID SERVS., [https://www.cms.gov/CCIIO/Resources/Files/adult\\_child\\_fact\\_sheet](https://www.cms.gov/CCIIO/Resources/Files/adult_child_fact_sheet) [<https://perma.cc/A9RH-DNPT>] (last visited Aug. 12, 2023) (stating that “[a]bout [thirty percent] of young adults are uninsured”).

114. *Former Foster Care Youth and the Affordable Care Act*, *supra* note 69.

115. Sapp, *supra* note 7, at 2876; see *supra* text accompanying note 103; *Keeping Foster Youth Off the Streets: Improving Housing Outcomes for Youth that Age Out of Care in New York City*, *supra* note 95 (stating that “[m]ost youth are under the impression that they are not able to seek help or guidance once they have aged out of the system”).

116. Vestal, *supra* note 112 (quoting Tricia Brooks, senior fellow at Georgetown University’s Center for Children and Families).

117. See *infra* Part III.B.1.

118. Vestal, *supra* note 112.

119. *Educational and Training Vouchers for Young People Currently and Formerly in Foster Care*, FED. STUDENT AID (Jan. 2022), <https://studentaid.gov/sites/default/files/foster-youth-vouchers.pdf> [<https://perma.cc/5R3W-LS46>]; 42 U.S.C. § 677(i).

120. Mardueño, *supra* note 75, at 1002.

121. *Id.* (providing examples of these additional needs, like “food, clothing, and transportation needs”).

122. *Chafee Independent Living Spending Analysis*, *supra* note 106.

voucher] received the maximum award benefit of \$5,000, . . . the ETV program would [only] serve approximately 8,500 youth of the potentially 100,000 youth between the ages of [eighteen] and [twenty-two] who would be eligible (or [eight] percent).”<sup>123</sup>

In addition, the eligibility requirements are not in favor of youth who age out of the system and are above the age of eighteen.<sup>124</sup> One group that is eligible for the ETV program are “youth who were participating in the ETV program on their [twenty-first] birthday, until the youth turns [twenty-three] years old, as long as they are enrolled in a post-secondary education or vocational training program and are making satisfactory progress toward completion of that program.”<sup>125</sup> Therefore, those who “were first time applicants over the age of [twenty-one], or were previous recipients who are older than [twenty-three]” but still in school cannot receive this funding.<sup>126</sup> Due to the youth frequently changing schools while in the system, making it difficult to stay on track, some foster youth graduate by the time they are twenty-six.<sup>127</sup> Meaning, they more than likely did not receive ETV funding for a majority of their college education due to the age limits for eligibility.<sup>128</sup>

#### 4. Housing Options

All three of the main housing programs—NYCHA, Section 8, and the ACS Housing Subsidy—have requirements that may limit a youth’s access to their services.<sup>129</sup> NYCHA and Section 8 have requirements about income and passing a criminal background check.<sup>130</sup> Due to a foster youth’s high probability of engaging in crime and the lack of resources which impacts their income level (or lack of an income at the

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123. *Id.*; *Welcome to the New York State Education and Training Voucher Program*, *supra* note 75. The reason for this small percentage of recipients may be due to the fact that “[f]unding is limited and available on a first-come, first-served basis.” *Id.*

124. *New York State’s FY 2015-2019 Final Report and FY 2020-2024 Child and Family Services Plan*, *supra* note 77.

125. *Id.*

126. *Id.*

127. Lacey Johnson, *As More Schools Aid Foster Students, Data on Results Needed, Researchers Say*, YOUTH TODAY (Mar. 28, 2019), <https://youthtoday.org/2019/03/as-more-colleges-states-aid-youth-in-foster-care-data-on-results-is-needed-researchers-say> [<https://perma.cc/8D8J-W88V>]; Mardueño, *supra* note 75, at 1010 (explaining that the ETV requirements make this aid “unreachable to the vast majority of youth in foster care who have not graduated high school or enrolled in a training program at the age of majority”).

128. *New York State’s FY 2015-2019 Final Report and FY 2020-2024 Child and Family Services Plan*, *supra* note 77.

129. *See supra* Part II.D.4.

130. *You Are Not Alone!*, *supra* note 33.

time of applying), these requirements work against them.<sup>131</sup> For the ACS Housing Subsidy, which provides the most resources,<sup>132</sup> there are many more requirements.<sup>133</sup> In order to qualify, “you must be on trial discharge to independent living [], with a documented source of income, and you must be able to pay [thirty] percent of your income towards your housing costs.”<sup>134</sup> In addition, this “subsidy is paid directly to the landlord,” if the landlord agrees to accept the payment, and “ACS must also inspect the apartment and determine if it qualifies.”<sup>135</sup> As a result, the subsidy program only served thirty-one youth in New York City in 2018.<sup>136</sup>

If the youth do not use these programs, but they need quick and temporary assistance, they can use ACS’s “one shot grant” that provides funds up to a total of \$1,800.<sup>137</sup> To secure an apartment, one must pay for a rental application fee; the first month of rent, which is expected when signing a lease; and the security deposit, which is typically one month’s rent.<sup>138</sup> In New York City’s most affordable neighborhoods, rent can be approximately \$2,000-\$3,000 per month, causing the one shot grant to not be of much assistance.<sup>139</sup> Aside from this issue, the one shot grant is only accessible up to six months past a youth’s twenty-first birthday.<sup>140</sup> Therefore, if the youth is in need of it seven months or later after their twenty-first birthday, they are likely no longer eligible.<sup>141</sup>

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131. *Striking Back in Anger: Delinquency and Crime in Foster Children*, ADOPTION IN CHILD TIME, <https://adoptioninchildtime.org/bondingbook/striking-back-in-anger-delinquency-and-crime-in-foster-children> [<https://perma.cc/YTN8-FS3C>] (last visited Aug. 12, 2023) (stating that “[forty-four] percent of children placed in foster care are arrested at least once, while the same was true of only [fourteen] percent of children” who were not in care); *Housing Support for Youth Aging Out of Foster Care*, FAIR FUTURES, <https://resources.fairfuturesny.org/AppendixI19> [<https://perma.cc/RM6J-7FYX>] (last visited Aug. 12, 2023) (listing a disadvantage of NYCHA to be that one “[m]ust have [a] source of income at the time of eligibility interview”).

132. *You Are Not Alone!*, *supra* note 33.

133. *Id.*

134. *Id.*

135. *Id.* (explaining that the caseworkers will look at the apartment’s size and condition).

136. Megan Conn, *Older New York Foster Youth with Roommates Can Now Get Rent Assistance*, IMPRINT (Jan. 15, 2020, 8:21 AM), <https://imprintnews.org/child-welfare-2/new-york-foster-roommates-rent-assistance/40167> [<https://perma.cc/384D-YJGZ>].

137. *You Are Not Alone!*, *supra* note 33 (listing some of the payments it is used for being part of a youth’s “real estate broker’s fee, security deposit, moving expenses, or other one-time expenses”).

138. *What Are the Up-front Costs to Rent an Apartment in New York City? (Tip #21)*, FRELE (Sept. 21, 2019), <https://www.frele.com/learn/apartment-tips/what-are-the-upfront-costs-to-rent-an-apartment-in-new-york-city> [<https://perma.cc/JQ5J-TQ2E>].

139. Kimi Kaneshina et al., *Average Rent in New York City & Rent Price Trends*, APARTMENT LIST (July 15, 2021), <https://www.apartmentlist.com/renter-life/average-rent-in-new-york-city> [<https://perma.cc/2MW6-QDXX>].

140. *You Are Not Alone!*, *supra* note 33.

141. *Id.*

### B. Negative Outcomes Youth Face After Leaving Foster Care

As seen, the federal and state programs are not as beneficial as designed.<sup>142</sup> But even if the services were adequate, foster youth are still likely to face negative outcomes when they do age out.<sup>143</sup> Many studies have indicated that “foster youths who age out of the system ‘fare poorly relative to their counterparts in the general population . . .’” in many areas such as mental health, education, employment, and homelessness.<sup>144</sup> Thus, the system presents a paradox: youth are removed from their families and are placed into foster care for a higher chance at “better” outcomes, but “placement in foster care correlates with higher rates of homelessness, incarceration, and poverty.”<sup>145</sup>

#### 1. Health (Mental and Physical)

Some foster youth “suffer from health problems” due to situations that caused them to enter care, such as “parental neglect, maternal substance abuse, and physical or sexual abuse.”<sup>146</sup> Others develop health problems while in care or when they exit “due to both increased risk-taking behaviors and more limited healthcare access.”<sup>147</sup> Regardless of what caused the health conditions, “[f]oster children have disproportionately high rates of physical, mental, and developmental problems compared to young adults who have had no contact with the foster care system.”<sup>148</sup> This is evidenced by only 18 to 22% of the general population having significant mental health problems, whereas up to 80% of children in foster care do.<sup>149</sup> Some factors that may have led to this statistic are “the history of complex trauma, frequently changing situations and transitions, broken family relationships, inconsistent and inadequate access to mental health services[,] and the over-prescription of psychotropic medications.”<sup>150</sup> In a recent study, 49% of foster youth in New York City reported they felt “down,

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142. See *supra* Part III.A.

143. See *infra* Part III.B.1–4.

144. May Shin, *A Saving Grace? The Impact of the Fostering Connections to Success and Increasing Adoptions Act on America’s Older Foster Youth*, 9 HASTINGS RACE & POVERTY L.J. 133, 137 (2012).

145. Huff, *supra* note 6.

146. Atkinson, *supra* note 5, at 194.

147. *Id.* at 195.

148. Shin, *supra* note 144, at 142.

149. *Mental Health and Foster Care*, NAT’L CONF. OF STATE LEGISLATURES (Nov. 1, 2019), <https://www.ncsl.org/research/human-services/mental-health-and-foster-care.aspx> [<https://perma.cc/Q56K-C2XB>]; see Vestal, *supra* note 112 (explaining that Medicaid claims data showed “as many as [fifty-seven] percent of youths in foster care have a mental disorder”).

150. *Mental Health and Foster Care*, *supra* note 149.



depressed, or hopeless during the last two weeks.”<sup>151</sup> This is not surprising since “[f]ormer foster children are nearly two times as likely to experience [post-traumatic stress disorder] as United States war veterans.”<sup>152</sup>

Not only do young adults have a high likelihood of poor mental and physical health, but they also have the highest likelihood of being uninsured of any age group.<sup>153</sup> Of young adults, those formerly in foster care were more likely “to report having Medicaid or no insurance.”<sup>154</sup> A factor causing this statistic may be because foster youth typically have entry-level jobs, part-time jobs, or jobs that do not provide health insurance, which is even more of an issue for foster youth due to the poor employment statistics discussed.<sup>155</sup> Other barriers include “[high rates of] poverty, lack of familiarity with the healthcare system, and [a] lack of appropriate healthcare providers.”<sup>156</sup>

## 2. Education

On average, foster children are likely to have “one to two home placement changes per year.”<sup>157</sup> These home placements typically result in the child being placed in a different school, which has significant negative consequences on the child’s academics.<sup>158</sup> For example, it takes about “four to six months to recover academically” for every school

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151. *Youth Experience Survey 2021*, N.Y.C. CHILD. (2021), <https://www1.nyc.gov/assets/acs/pdf/data-analysis/2021/YES2021.pdf> [https://perma.cc/C2XA-FUXH]. The demographic of the survey was all youth aged thirteen and older who had been in foster care for at least ninety days. *Id.* Of the 2,277 eligible to participate, 1,192 completed the survey. *Id.*

152. *Post-Traumatic Stress Disorder (PTSD) in Foster Youth*, WALDEN FAM. SERVS. (June 27, 2018), <https://waldenfamily.org/post-traumatic-stress-disorder-ptsd-in-foster-youth> [https://perma.cc/D3PW-6EL6]; see Laura Bauer & Judy L. Thomas, *Why a Broken Foster-Care System Is Sending More Kids to Prison than College*, POPAI (Dec. 15, 2019), <https://www.gopopai.org/why-a-broken-foster-care-system-is-sending-more-kids-to-prison-than-college> [https://perma.cc/Y24N-RFM7].

153. *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, *supra* text accompanying note 113.

154. Kym Ahrens et al., *Health Outcomes in Young Adults from Foster Care and Economically Diverse Backgrounds*, NAT’L LIBR. OF MED. (2014), <https://pubmed.ncbi.nlm.nih.gov/25367543> [https://perma.cc/K9XG-VVL6] (providing that these same youth “[were] least likely to report not getting needed care”).

155. See *infra* Part III.B.3; *Young Adults and the Affordable Care Act: Protecting Young Adults and Eliminating Burdens on Families and Businesses*, *supra* note 113.

156. Atkinson, *supra* note 5, at 195.

157. *The Importance of School Stability for Youth in Foster Care*, ADVOCS. FOR CHILD. OF N.Y. (Sept. 2009), [https://www.advocatesforchildren.org/sites/default/files/library/school\\_stability\\_youth\\_fostercare.pdf?pt=1](https://www.advocatesforchildren.org/sites/default/files/library/school_stability_youth_fostercare.pdf?pt=1) [https://perma.cc/2YBU-EETS].

158. *Id.*

change, and even one change of schools causes high schoolers to be less likely to graduate by 50%.<sup>159</sup> As of August 2020, in New York State only 49% of youth in foster care graduated high school, 3% received a General Educational Development (“GED”), and 11% dropped out, compared to their counterparts with an 85% percent graduation rate, one percent receiving a GED, and 5% dropping out.<sup>160</sup>

In addition, numerous studies have indicated that youth in foster care have aspirations to attend college.<sup>161</sup> Yet, it has been proven that youth in foster care have lower enrollment rates and lower college completion rates than their counterparts not in foster care.<sup>162</sup> The low enrollment rate is likely due to aging out at the young age of eighteen, when most are applying or starting college, and not having an adult present to help with the applications.<sup>163</sup> The need for work has also been revealed as a reason for the low college completion rate.<sup>164</sup>

### 3. Employment and Income

Foster care youth, former and current, are more likely to experience unemployment than their counterparts, with half unemployed by age twenty-four.<sup>165</sup> This is not due to a lack of “trying,” since sixty-two percent of foster youth ages eighteen to twenty expressed that they

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159. *Id.*

160. *NY State Graduation Rate Data 4 Year Outcome as of August 2020*, DATA.NYSED.GOV, <https://data.nysed.gov/gradrate.php?year=2020&state=yes> [https://perma.cc/PCW5-RRJC] (last visited Aug. 12, 2023); see Shin, *supra* note 144, at 139 (proving that this statistic has not changed by reporting that less than half of all former foster youths have graduated from high school).

161. *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care*, FOSTER ED. (Apr. 13, 2018), <https://foster-ed.org/fostering-success-in-education-national-factsheet-on-the-educational-outcomes-of-children-in-foster-care> [https://perma.cc/N547-P79M] (download “Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care”) (indicating that 70 to 80% of youth reported they want to go to college).

162. *Id.* This survey indicated that 31.8 to 45.3% of youth in foster care graduated from high school and enrolled in college, compared to the national college enrollment rate of 69.2% in 2015. *Id.* Of those who enroll, only three to 10.8% of foster care alumni attain a bachelor’s degree, compared to the national college completion rate of a BA or higher of 32.5%. *Id.*

163. Johnson, *supra* note 127 (listing questions a youth may ask for applications, such as “How do you apply to schools? How do you decide which schools to apply to? How do you fill out the FAFSA form?”).

164. *Id.* (referencing a study done by Amy Dworsky that surveyed students who dropped out and said their main reason was because they needed work).

165. Tim Ross & Yana Mayevskaya, *Trends in NYC Youth Employment*, ACTION RSCH., [https://static1.squarespace.com/static/5bc8f25ea9ab953f77c47204/t/5c8fd0871c10baa96d305bf/1552932616890/2018+Policy+Brief+%235\\_Youth+Workforce\\_2.pdf](https://static1.squarespace.com/static/5bc8f25ea9ab953f77c47204/t/5c8fd0871c10baa96d305bf/1552932616890/2018+Policy+Brief+%235_Youth+Workforce_2.pdf) [https://perma.cc/D4FC-JYLD] (last visited Aug. 12, 2023).

“wanted to work but did not have a job.”<sup>166</sup> Some foster youth expressed that they felt their unemployment was due to the fact “that they did not have adequate support in areas such as finding places that are hiring, learning what jobs to apply for, learning interviewing skills, learning how to create a resume and fill out a job application, and struggled to arrange dependable transportation.”<sup>167</sup> One former foster youth stated that his career goal meetings with his case worker consisted of him signing off that they worked on his goals, but it really meant “that we drove around and put in job applications at fast food restaurants,” as well as being told to “be more realistic” when discussing his desires to become a lawyer.<sup>168</sup>

#### 4. Housing and Homelessness

In 2016, the U.S. had approximately 35,686 homeless youth, and 89% of that population was between the ages of eighteen and twenty-four.<sup>169</sup> Of youth who age out of foster care, 40 to 50% become homeless within eighteen months of aging out.<sup>170</sup> To put this into perspective, as of January 2020, New York had an estimated 91,271 homeless individuals.<sup>171</sup> Of that population, 1,251 were veterans and 3,072 were unaccompanied young adults aged eighteen to twenty-four.<sup>172</sup>

In addition, the number of homeless youth has increased over the years in New York whereas the number of homeless veterans has

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166. *Id.*; 6 *Quick Statistics on the Current State of Foster Care*, IFOSTER (Nov. 9, 2020), <https://www.ifoster.org/blogs/6-quick-statistics-on-the-current-state-of-foster-care> [<https://perma.cc/RSK7-L7X8>]. Among those who are able to obtain employment, their average annual income is approximately \$7,500. *Id.*

167. Ross & Mayevskaya, *supra* note 165; see *Youth Experience Survey 2021*, *supra* note 151 (revealing from a survey of 1,192 foster youth that finding job openings to apply to (forty percent) and learning interview skills (thirty-two percent) were the most common unmet needs for youth seeking employment).

168. Huff, *supra* note 6.

169. *Youth Homelessness Statistics & Facts*, SAFE HORIZON, <https://www.safehorizon.org/get-informed/homeless-youth-statistics-facts/#statistics-and-facts> [<https://perma.cc/QML8-WT6G>] (last visited Aug. 12, 2023). In 2015, New York had approximately 2,493 homeless youth between the ages of eighteen and twenty-four. *Id.*

170. Shin, *supra* note 144, at 140-41. Approximately sixty-five percent need housing upon release. *Id.*

171. *New York Homelessness Statistics*, U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, <https://perma.cc/2GJK-49B8> (last visited Aug. 12, 2023).

172. *Id.*; *Veteran Homelessness Facts*, GREEN DOORS, <https://greendoors.org/facts/veteran-homelessness.php> [<https://perma.cc/MLF4-YY3J>] (last visited Aug. 12, 2023). This statistic is alarming because “[v]eterans between the ages of [eighteen] and [thirty] are twice as likely as adults in the general population to be homeless.” *Id.*

decreased.<sup>173</sup> From the years 2015 to 2019, the number of homeless youth has risen from 2,493 to 2,978.<sup>174</sup> Whereas since 2015 to 2019, the number of homeless veterans has gone down from 2,399 to 1,270.<sup>175</sup> A potential reason for this is the high rent in cities, such as New York, and the lack of affordable housing.<sup>176</sup> This reason is also tied with foster youth's low levels of education and lack of employment to increase their likelihood of having a steady and reliable income.<sup>177</sup>

### *C. The (Limited) Impact of Staying in Care from Eighteen to Twenty-One*

One way to reduce these negative outcomes is for youth to consent to remaining in care.<sup>178</sup> Studies have shown that even remaining in care for just one year past age eighteen can have a positive impact on their life in the above categories.<sup>179</sup> For example, foster youth who consent to stay in care would have “lower odds of being disconnected (i.e., neither employed nor enrolled in school),<sup>180</sup> being homeless, and having a child,<sup>181</sup> compared to their peers who leave care before their [nineteenth] birthday.”<sup>182</sup> In general, older youth who are in care at age twenty-one have better outcomes than their peers who left care before twenty-one.<sup>183</sup> But despite the positives one has by remaining in care, the outcomes are

173. *New York Homelessness Statistics*, *supra* note 171.

174. *Id.* (indicating a 485 person increase).

175. *Id.* (indicating a 1,129 person decrease).

176. Huff, *supra* note 6; *see supra* text accompanying note 139.

177. *See supra* Part III.B.2; *see supra* Part III.B.3.

178. Rosenberg & Abbott, *supra* note 94.

179. *See infra* Part IV.A.1.

180. Atkinson, *supra* note 5, at 191. A Note from 2008 cited a study that found that “youths who voluntarily remained in foster care until at least age nineteen were twice as likely as those who age out to be enrolled in school or vocational training.” *Id.*

181. *Older Youth Housing, Financial Literacy and Other Supports*, *supra* note 46. Youth remaining in care beyond eighteen reduced pregnancies among women in care before age twenty by thirty-eight percent. *Id.*

182. Rosenberg & Abbott, *supra* note 94 (explaining that the data compared youth who were reported to be in extended foster care at age nineteen and age twenty-one with old youth who were reported to not be in care at either age); *see id.* (stating that youth who remained in the system past age eighteen are “more likely to achieve important young adult milestones such as finishing school and gaining employment than their counterparts who do not stay in care”).

183. *Id.*; *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care*, *supra* note 161. A study indicated that “college enrollment is more likely when young people are allowed to remain in care until age twenty-one.” *Id.* The results of this study indicate that “Illinois [foster youth] who [are permitted] to remain in [the system] until age [twenty-one] were 1.7 times more likely to have completed at least one year of college by age [twenty-three] or [twenty-four] than their counterparts from Iowa and Wisconsin, [who cannot remain in the system].” *Id.* However, there was no higher chance of completing a college degree. *See id.*

not lasting.<sup>184</sup> Therefore, more needs to be done than simply extending the age to twenty-six.<sup>185</sup>

### 1. The Positive Outcomes Are Not Lasting

Although there has been research proving that youth who remain in care past age eighteen experience more positive outcomes than their counterparts who leave at age eighteen, it has been shown that some of these benefits appear to fade once they leave care or within their first two years out.<sup>186</sup> A potential reason for this negative statistic is that “they lost access to the services and supports that made it possible for them to pursue their educational goals,”<sup>187</sup> causing them to have to “refocus their efforts on meeting their basic needs, like securing and maintaining housing.”<sup>188</sup> Another reason may be that the programs available are not quality services that adequately prepare youth for independence; therefore, it delays the likelihood of facing negative outcomes rather than decreasing it.<sup>189</sup> For example, although there are programs that assist youth with college tuition, the programs do not provide “other support to help them in school, such as academic and social/emotional support.”<sup>190</sup> Lastly, the decreased effect of extended care may be due to youth lacking a safety net,<sup>191</sup> because unlike most

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184. See *infra* Part III.C.1.

185. See *infra* Part IV.C.

186. *Youth Transitioning from Foster Care: Issues for Congress*, *supra* note 38; Amy Dworsky & Mark Courtney, *Extended Foster Care Delays but Does Not Prevent Homelessness*, CHAPIN HALL (2010), <https://www.chapinhall.org/research/extended-foster-care-delays-but-does-not-prevent-homelessness> [<https://perma.cc/VJT7-DBWW>]. At age nineteen, those who left care at eighteen were more likely to have been homeless than those who stayed in care (12.2% versus 4.5%), but by age twenty-three or twenty-four, those who aged out were no worse off than those who remained in care (29.9% versus 28.9%). *Id.*; Huff, *supra* note 6 (stating a study showed that extended foster care had lowered rates of homelessness compared to youth who aged out at eighteen, but that “once services were cut off at twenty-one, the difference in homelessness rates diminished”); Mark E. Courtney et al., *Impacts of Extended Care on Youth Outcomes Two Years After Foster Care Has Ended*, CHAPIN HALL (2021), <https://www.chapinhall.org/research/cal-youth-efc-outcomes-age23> [<https://perma.cc/B9YV-QTCG>] (reporting that “extended care does not appear to positively influence other outcomes, including youths’ physical and behavioral health and their likelihood of experiencing victimization”).

187. *Youth Transitioning from Foster Care: Issues for Congress*, *supra* note 38; Rosenberg & Abbott, *supra* note 94. In 2019, it was found that “[sixty-five] percent of older youth in extended foster care through their [nineteenth] birthday receive services compared to only [thirty-five] percent . . . who left care at age [eighteen].” *Id.*

188. *Youth Transitioning from Foster Care: Issues for Congress*, *supra* note 38.

189. See Huff, *supra* note 6; see also Sapp, *supra* note 7, at 2876 (explaining that a reason for the benefits not lasting may be that the youth are not adequately prepared for aging out and do not have access to their social workers); see *supra* text accompanying note 104.

190. *Youth Transitioning from Foster Care: Issues for Congress*, *supra* note 38.

191. Huff, *supra* note 6.

young adults, youth do not have a family or adult figure to help pay rent, co-sign for a loan, or temporarily move in with when needed.<sup>192</sup>

## 2. Why They Leave Care

As stated, “[e]ach year approximately 20,000 youth will age out of the foster care system when they turn [eighteen] or [twenty-one],” exposing themselves to an increased risk of negative outcomes.<sup>193</sup> In 2018, the difference between the number of youth still in care between their eighteenth and nineteenth birthday dramatically decreased.<sup>194</sup> In the U.S., there were 24,797 youth in care on their eighteenth birthday and 6,489 on their nineteenth.<sup>195</sup> In New York, this number went from 1,229 to 638, proving youth neither remain nor make use of their option to consent to stay until their twenty-first birthday.<sup>196</sup> Research has shown that the majority of youth have expressed a desire to stay in care after age eighteen, however the main reason they leave is “the desire to gain more freedom.”<sup>197</sup> These youth also stated that they were aware of the

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192. *Id.*

193. *About the Children*, *supra* note 7; see John Kelly, *Why Aren't Older Foster Youth Extending Stay in Care?*, IMPRINT: YOUTH SERVS. INSIDER (Nov. 14, 2018, 10:33 AM), <https://imprintnews.org/youth-services-insider/report-teens-aging-out-foster-care-permanency-extended-care/32761> [<https://perma.cc/ZUR3-497H>] (contending that not many youths are voluntarily staying in care past age eighteen because out of the 171,000 youth ages fourteen to twenty-one in foster care, only twenty-two percent are eighteen or older).

194. *Transition-Age Youth in Foster Care*, 2018 N.Y. PROFILE, <https://assets.aecf.org/m/blogimg/newyork-fosteringyouthtransitions-2018.pdf> [<https://perma.cc/GT3N-E6NV>] (last visited Aug. 12, 2023); Suriano, *supra* note 108. The Foster Care Alumni of America and the National Center for Housing and Child Welfare to the National Governors Associations predicted that in 2020, more than 17,000 young adults were going to be emancipated from state foster care. *Id.*

195. *Transition-Age Youth in Foster Care*, *supra* note 194.

196. *Id.*; see Suriano, *supra* note 108 (revealing that in 2019, “1,075 young adults age [eighteen] or older left the New York foster care system”); Megan Conn, *In New York, No Help Coming from State for Aging-Out Foster Youth*, IMPRINT (May 19, 2020, 12:23 PM), <https://imprintnews.org/child-welfare-2/in-new-york-no-help-coming-from-state-for-aging-out-foster-youth/43740> [<https://perma.cc/SES4-7GAA>] (stating that, in New York, within “the first six weeks of the coronavirus emergency . . . [fifty-eight] young people ages [eighteen] to [twenty-one] either aged out or signed themselves out of extended foster care”); see also *Out of Foster Care — and Into What?*, GOTHAM GAZETTE, <https://www.gothamgazette.com/index.php/about/811-out-of-foster-care-and-into-what> [<https://perma.cc/NW5J-HWBE>] (last visited Aug. 12, 2023) (stating that, at the time the article was written, there were 16,000 children in New York foster care and about 1,100 leave the system each year).

197. Laura Napolitano et al., *Foster Youth Motivated to Stay in Care Beyond Age 18 but Desire More Freedom*, CHAPIN HALL (2015), <https://www.chapinhall.org/research/foster-youth-motivated-to-stay-in-care-beyond-age-18> [<https://perma.cc/H6PX-RCPX>] (explaining the survey “included 727 foster youth aging between 16.75 and 17.75 years old”); Conn, *supra* note 196 (providing more reasons New York youth do not remain in care, such as they do not “want to be a burden on foster parents, while others hope to reunite with their biological family or feel pressure from caseworkers to move on”).

option to remain in care and the process to do so, but were less aware of what is required of them if they did decide to remain in care.<sup>198</sup>

#### IV. MAKING THE CONSENT TO STAY WORTH IT

Part IV will propose a solution to the issues youth face in foster care: amending the New York Family Court Act § 1055(e) to raise the age one can extend their access to services, through consent, to age twenty-six.<sup>199</sup> This Part will go through the reasons why amending the law to raise the age is needed, as well as why age twenty-six.<sup>200</sup> But a higher age with the same weak programming would be ineffective.<sup>201</sup> Therefore, Part IV will also introduce a program New York State should adopt for youth to join if they do consent to remain in care and the resources this program will provide them.<sup>202</sup>

##### *A. Amend the Law to Age Twenty-Six*

Turning twenty-one should not automatically mean one is an adult.<sup>203</sup> Foster youth are not always capable or prepared to take on the tasks of an adult such as housing, budgeting, and responsibility for themselves.<sup>204</sup> Therefore, this Note proposes for New York's Family Court Act to be amended from consenting to remain in care on one's eighteenth birthday until age twenty-one to age twenty-six.<sup>205</sup> The eight additional years (from age eighteen) will permit the youth to make a smoother transition to adulthood since studies have shown each additional year is beneficial, as well as replicating the lifestyle of most of their counterparts.<sup>206</sup>

##### 1. Benefits for Staying in Care Additional Years

It has been shown that not only is extending youths' access to services beneficial, but each additional year in the system is more

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198. Napolitano et al., *supra* note 197.

199. *See infra* Part IV.A.

200. *See infra* Part IV.B.

201. *See supra* Part III.A.

202. *See infra* Part IV.C.

203. Suriano, *supra* note 108.

204. *Id.* (paraphrasing former foster youth Bianca Bennett, who aged out at age twenty-one). Bennett further stated that foster youth are not prepared for adult responsibilities, especially in New York due to its high cost of living. *Id.*

205. FAM. CT. § 1055(e); *see also* FAM. CT. § 756-a(g).

206. *See supra* Part IV.A.1; *see also supra* Part IV.B.

beneficial than the last.<sup>207</sup> With just one year in extended foster care (from age eighteen to nineteen), youth will experience better outcomes at age twenty-one, such as securing employment and obtaining a high school diploma and housing, than their peers who were not in care at age nineteen.<sup>208</sup> One study found that every year in extended care

[s]ignificantly increased the probability that youth completed a high school credential by about [eight percent][,] [i]ncreased their expected probability of enrolling in college by [ten to eleven percent][,] [i]ncreased the number of quarters that youth were employed between their [eighteenth] and [twenty-first] birthdays[,] [i]ncreased the amount of money youth had in bank accounts by about \$404[,] . . . [d]ecreased the odds of experiencing an additional economic hardship between the ages of [seventeen] and [twenty-one] by about [twelve percent][,] and [d]ecreased the odds of being homeless or couch-surfing between the ages of [seventeen] and [twenty-one] by about [twenty-eight percent].<sup>209</sup>

This same study was conducted again, but rather than focusing on outcomes until age twenty-one, it examined “the impact of extended foster care on youth outcomes at age [twenty-three],” two years after they reached their state’s age limit.<sup>210</sup> The reports did not show signs of “deleterious consequences of remaining in extended foster care.”<sup>211</sup> Rather, it found that “remaining in care past age [eighteen]” allowed the youth “to further their education, to gain work experience and increase earnings, to save money, and to reduce the likelihood of being homeless,” and these benefits are maintained even after they leave care.<sup>212</sup> Therefore, since the option to remain until age twenty-six will

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207. Mark E. Courtney et al., *Improved Outcomes at Age 21 for Youth in Extended Foster Care*, CHAPIN HALL (2018), <https://www.chapinhall.org/research/improved-outcomes-at-age-21-for-youth-in-extended-foster-care> [<https://perma.cc/UDE7-86KK>]; Rosenberg & Abbott, *supra* note 94. By age nineteen youth in extended foster care were 1.2 times more likely to secure employment than their counterparts, and youth still in care at age twenty-one were 1.3 times more likely to be employed than those not in care. *Id.* At age nineteen, youth in extended care were 2.8 times more likely to have enrolled in school than their counterparts, and by age twenty-one they were three times more likely. *Id.*

208. *Id.*

209. Courtney et al., *supra* note 207 (sampling 616 youths who completed their interviews at the ages seventeen and twenty-one, on average).

210. Courtney et al., *supra* note 186 (explaining the sample was from 622 youths who completed their interviews at the ages seventeen and twenty-three, on average).

211. *Id.*

212. *Id.* The results of the study found that extended care significantly increased the probability that youth completed a high school credential by about [eight percent], increased their expected probability of enrolling in college by [five to twelve percent], increased the number of quarters that youth were employed and the



provide the youth more beneficial additional years, it can be inferred that these statistics will positively increase with the raised age.<sup>213</sup>

### B. Why Age Twenty-Six?

This Section discusses why the law should be amended to age twenty-six, rather than any other age.<sup>214</sup> This Section will state how an adult, regardless of whether they are in foster care or not, is not considered financially independent until age twenty-six.<sup>215</sup> It will also mention the age the brain is fully developed,<sup>216</sup> as well as demonstrate through statistics how many youth who have not been in foster care rely on their parents for support and the benefits that derive from that.<sup>217</sup> Lastly, it will provide detail into the cost of raising the age.<sup>218</sup>

#### 1. Financial Independence

In the U.S., “the average age of financial independence [] is twenty-six.”<sup>219</sup> Due to the aging out laws in New York, it is expected that foster care youth be financially prepared by age eighteen or twenty-one.<sup>220</sup> However, in 2018 only “[twenty-four percent] of young adults were financially independent by age [twenty-two] or younger” and fifty-three percent of young adults ages eighteen to twenty-nine were not financially independent.<sup>221</sup> As evidenced by these statistics, it is unrealistic to expect “an eighteen-year-old [or twenty-one-year-old] to be fully self-sufficient in finances and employment.”<sup>222</sup> Rather, age

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amount youth had earned between their [twenty-first] and [twenty-third] birthdays, [and] increased the amount of money youth had in bank accounts by about \$650.

*Id.*

213. See *supra* Part IV.A.1.

214. See *infra* Part IV.B for further discussion on why it should be age twenty-six.

215. See *infra* Part IV.B.1.

216. See *infra* Part IV.B.2.

217. See *infra* Part IV.B.3.

218. See *infra* Part IV.B.4.

219. Shin, *supra* note 144, at 139.

220. FAM. CT. § 1055(e); see also FAM. CT. § 756-a(g).

221. Amanda Barroso et al., *Majority of Americans Say Parents Are Doing Too Much for Their Young Adult Children*, PEW RSCH. CTR. (Oct. 23, 2019), <https://www.pewresearch.org/social-trends/2019/10/23/majority-of-americans-say-parents-are-doing-too-much-for-their-young-adult-children> [<https://perma.cc/R8SJ-CXMC>]. This is based on their data that forty-seven percent of eighteen- to twenty-nine-year-olds were financially independent. *Id.* The analysis considered financially independent to mean “if their total income is at least 150% of the poverty level for a one-person household.” *Id.*

222. Shin, *supra* note 144, at 138.

twenty-six is an appropriate age.<sup>223</sup> Therefore, New York must amend its law and consider what the societal norm is.<sup>224</sup>

## 2. Brain Fully Develops

Science on “brain development suggests that most people don’t reach full [brain] maturity until the age [of] [twenty-five].”<sup>225</sup> Therefore, until age twenty-five, the prefrontal cortex has not fully developed.<sup>226</sup> The prefrontal cortex is best known for executive function, which involves “planning, decision-making, problem-solving, self-control, and acting with long-term goals in mind.”<sup>227</sup> These are all things needed to make informed decisions about one’s daily life and future decisions that the current law is expecting foster youth to do at a young age.<sup>228</sup>

## 3. Statistics on Young Adults Still Supported by Parents Past Age Eighteen

In addition, youth should be able to receive assistance (and remain in foster care) for longer, like their counterparts (by virtue of parental assistance).<sup>229</sup> For instance, “[forty-five percent] of adults ages [eighteen] to [twenty-nine] (with at least one living parent) say they have received a lot of or some financial help from their parents in the past [twelve] months.”<sup>230</sup> However, parents provide more than just financial

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223. See *supra* text accompanying note 219.

224. Shin, *supra* note 144, at 138.

225. *Brain Maturity Extends Well Beyond Teen Years*, NPR (Oct. 10, 2011, 12:00 PM), <https://www.npr.org/templates/story/story.php?storyId=141164708> [<https://perma.cc/E2QN-DCKJ>]; see *Understanding the Teen Brain*, UNIV. OF ROCHESTER MED. CTR., <https://www.urmc.rochester.edu/encyclopedia/content.aspx?ContentTypeID=1&ContentID=3051> [<https://perma.cc/KZU7-FLJX>] (last visited Aug. 12, 2023) (stating that the brain is not fully developed and will not be until age twenty-five or so).

226. Erin Brodwin & Skye Gould, *The Age Your Brain Matures at Everything—It Isn’t Even Fully Developed Until Age 25*, INSIDER (Nov. 8, 2017, 9:46 AM) <https://www.businessinsider.com/age-brain-matures-at-everything-2017-11> [<https://perma.cc/9PMY-APTY>].

227. *Know Your Brain: Prefrontal Cortex*, NEUROSCIENTIFICALLY CHALLENGED (May 17, 2014), <https://neuroscientificallychallenged.com/posts/know-your-brain-prefrontal-cortex> [<https://perma.cc/9C9F-QMP8>]; *Why Is 18 the Age of Adulthood if the Brain Can Take 30 Years to Mature?*, BIG THINK (Mar. 20, 2019), <https://bigthink.com/neuropsych/adult-brain> [<https://perma.cc/FJ62-2L4M>]. The prefrontal cortex “affects how we regulate emotions, control impulsive behavior, assess risk and make long-term plans.” *Id.*

228. *Know Your Brain: Prefrontal Cortex*, *supra* note 227.

229. Barroso et al., *supra* note 221.

230. *Id.*; see Johan Uvin & Isabel Soto, *21, 23, or 26? Rethinking Eligibility for Youth Who Have Aged Out of Foster Care*, U.S. DEP’T OF EDUC. (Feb. 4, 2016), <https://sites.ed.gov/octae/2016/02/04/21-23-or-26-rethinking-eligibility-for-youth-who-have-aged-out-of-foster-care> [<https://perma.cc/8W5C-2W8L>] (revealing that recent U.S. Census data showed

assistance.<sup>231</sup> On average, parents give “367 hours of family help per year even when their grown children live away from home.”<sup>232</sup> Accordingly, “it is unrealistic to expect those in foster care to be fully prepared for independence at age eighteen with no support, financial or otherwise.”<sup>233</sup> Especially because “foster youth never asked to grow up with the state as their parent . . . .”<sup>234</sup>

Youth receiving parental support during these pivotal years, one’s twenties, provides them a better sense of well-being.<sup>235</sup> Some other positive outcomes that derive from familial assistance are having “clearer goals, better psychological adjustment, and higher life satisfaction than grown children who did not receive such support.”<sup>236</sup> Further, adults that received familial assistance have “more material goods and more social resources, and ha[ve] higher occupational status, earnings, and overall economic well-being.”<sup>237</sup> As developmental psychologist Urie Bronfenbrenner said, when a family works well it is the “most elegantly designed social service system.”<sup>238</sup>

#### 4. Costs to Raise the Age

Although there are costs the state and government have to make to raise the age, there are benefits to this investment.<sup>239</sup> For example, California has shown that over time, it saves money by extending care to age twenty-one.<sup>240</sup> For every dollar spent, California sees a return of

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that “[eighteen- to thirty-four] year-olds are less likely to be living on their own today than they were during the Great Recession”).

231. Diana Divecha, *What Gen Y Needs from Parents (and Why You Should Give It to Them)*, *GREATER GOOD MAG.* (Jan. 22, 2013), [https://greatergood.berkeley.edu/article/item/what\\_generation\\_y\\_needs\\_from\\_parents](https://greatergood.berkeley.edu/article/item/what_generation_y_needs_from_parents) [<https://perma.cc/GJC4-NNVM>]; see *supra* text accompanying note 71. Under the ACA, foster youth are eligible for Medicaid coverage until age twenty-six as a result of an effort to replicate the Act permitting parents to have their kids on their health insurance until age twenty-six. *Id.*

232. Divecha, *supra* note 231.

233. Atkinson, *supra* note 5, at 193.

234. Megan Conn, ‘Once You Sign the Paper, It’s Over:’ Older Foster Youth Plead for Help from New York Governor, *IMPRINT* (May 29, 2020, 8:12 PM), <https://imprintnews.org/coronavirus/older-foster-youth-plead-help-new-york-governor/44001> [<https://perma.cc/MKS5-H4TD>] (quoting former foster youth Jeanette Rivera).

235. Divecha, *supra* note 231.

236. *Id.*

237. *Id.*

238. *Id.*

239. Clark M. Peters et al., *Extending Foster Care to Age 21: Weighing the Costs to Government Against the Benefits to Youth*, *CHAPLIN HALL ISSUE BRIEF* (June 2009), [https://www.kvc.org/wp-content/themes/KVC/sugargrove/files/Chapin\\_Hall\\_Report.pdf](https://www.kvc.org/wp-content/themes/KVC/sugargrove/files/Chapin_Hall_Report.pdf) [<https://perma.cc/RB6K-XS6K>].

240. *Frequently Asked Questions on the Provisions Designed to Impact Youth and Young Adults*, *NAT’L FOSTER CARE COAL.* (June 2009), <https://www.childrensdefense.org/wp->

approximately \$2.40.<sup>241</sup> Since California “has about four times more youth in foster care than New York,” this return rate may not be as high, but is comparable.<sup>242</sup>

### C. *The Requirements/Life Staying in the Program*

Simply raising the age will not result in a beneficial experience in extended care and higher chance of success in adulthood when fully aged out.<sup>243</sup> Therefore, there needs to be a mentoring program for the youth to participate in and a housing option available if they consent to remain in care.<sup>244</sup> This Section will describe what the mentoring program is and the benefits of providing youth with an adult in their life.<sup>245</sup> It then will introduce an existing housing and skills training service in New York City that the state should adopt for youth who consent to stay in care.<sup>246</sup>

#### 1. Mentorship Program

Of the approximate 4,000 youth in New York City’s foster care system, about “600-700 age out of the system each year without a consistent adult to rely on.”<sup>247</sup> This is concerning because “[p]arental assistance, in terms of emotional and tangible support, such as finances to pay for housing or educational expenses, has been a major factor in a youth’s successful transition into independent living.”<sup>248</sup> Without this support, foster youth experience even more difficulty aging out.<sup>249</sup>

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content/uploads/2018/08/frequently-asked-questions-provisions-impact-youth-young-adults.pdf  
[<https://perma.cc/XXX3-Z6FN>].

241. *Id.*; *Youth Transitioning from Foster Care: Issues for Congress*, *supra* note 38. A study in Illinois found that the state’s return rate for extending care would be about \$2 for every \$1 spent. *Id.* This study was based on “additional wages that the youth could earn because remaining in care would enable them to attend at least some college.” *Id.* The study was also based on an approximate two-year extended stay with an estimate cost of about \$20,800 annually (or \$19,000 when you subtract the costs of providing them assistance if they left at age eighteen). *Id.*

242. Conn, *supra* note 196.

243. See *supra* Part III.B.

244. See *infra* Part IV.C; N.Y. COMP. CODES, R. & REGS. tit. 18, § 407.4 (1993). This solution satisfies many of the requirements in this code for social service programming. *Id.*

245. See *infra* Part IV.C.1.

246. See *infra* Part IV.C.2.

247. *SCO Family of Services Rallies with Fair Futures at Queens Borough Hall*, SCO FAM. OF SERVS. (May 16, 2009), <https://sco.org/fair-futures-rally-at-queens-borough-hall> [https://perma.cc/2J5B-7QXC].

248. Shin, *supra* note 144, at 137-38.

249. *Id.* at 138 (explaining that foster youth have difficulty “finding steady employment, developing the life and educational skills to support themselves, maintaining financial security, securing stable housing, staying out of prison or jail, and maintaining good mental and physical health”).

Therefore, since most foster youth who age out lack this parental assistance, a mentorship program will be beneficial to them.<sup>250</sup>

A study revealed that having a mentor is crucial with regard to education.<sup>251</sup> Evidence has shown that “[t]he odds of enrolling in college were 4.6 times higher for Washington State foster youth who participated in a mentoring program than for non-mentored peers with similar characteristics.”<sup>252</sup> It has also been discovered that foster youth were “more likely to stay in a postsecondary program if they had independent living stability and tangible supports” such as tutoring and help with paperwork.<sup>253</sup> In addition, the “most frequently cited impediment to graduating from high school or applying to/attending college” was “a lack of supportive relationships with caring adults.”<sup>254</sup>

## 2. The Chelsea Foyer

A solution that solves many of the issues stated above<sup>255</sup> is for New York State to adopt the Chelsea Foyer at the Christopher (the “Chelsea Foyer”) or develop a housing program similar to it.<sup>256</sup> The Chelsea Foyer, located at 202 West 24<sup>th</sup> St., New York, NY 10011, is a transitional housing program that launched in 2004 for youth aging out of foster care and youth who are homeless or at risk of being homeless.<sup>257</sup> Their belief is that “no young person is ready to be fully independent at [eighteen], and young people with no adult support have

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250. Jill K. Jensen, *Fostering Interdependence: A Family-Centered Approach to Help Youth Aging Out of Foster Care*, 3 WHITTIER J. CHILD & FAM. ADVOC. 329, 354 (2004) (indicating that “young people who have mentors are more likely to go to school, get good grades, attend college, and have improved self-esteem”); *id.* at 355 (identifying the mentors to be someone who is “at least twenty-one, employed or in school, ha[s] good decision-making skills, [is] willing to advocate for the youth, and learn about the life skills necessary for the youth to succeed in adult life”).

251. *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care*, *supra* note 161. It is important to emphasize that college is not the path for everyone, but foster youth who decide to pursue a higher education should not face a barrier due to being in the system. *Id.* Studies have shown that a four-year degree would increase a foster youth’s average work-life earnings by \$481,000 over their work-life compared to if they just had a high school diploma. *Id.*; see also *Older Youth Housing, Financial Literacy and Other Supports*, *supra* note 46 (stating that foster youth have a projected \$481,000 earning over their work-life with a college degree than those with a high school diploma).

252. *Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care*, *supra* note 161.

253. *Id.*

254. *Id.*

255. See *supra* Part III.B.

256. See *infra* Part IV.C.2.

257. *The Chelsea Foyer at the Christopher at Five Years*, COMMON GROUND COMM. GOOD SHEPARD SERVS. (Oct. 2009), <https://www.issuelab.org/resources/15089/15089.pdf> [<https://perma.cc/B9ZH-GB8A>].

vastly diminished chances for sustaining stable housing and financial independence.”<sup>258</sup> Therefore, they have provided approximately 165 youths, ages eighteen to twenty-five, co-ed room and board with suite or studio-style apartments.<sup>259</sup>

There are many requirements one must meet in order to get a bed at this facility.<sup>260</sup> The youth must:

[c]omplete an application process, [d]evelop and follow an “Action Plan” to achieve self-sufficiency, . . . [w]ork [at least] [twenty] [hours] a week, [b]e enrolled in school or [a] vocational program, [d]evelop and execute a plan to secure stable housing,<sup>261</sup> . . . and [m]eet with a case manager twice a month [on-site].<sup>262</sup>

They must also pay a monthly program fee, which is approximately thirty percent of their income and is turned over to them as a “savings” when they are discharged from the program.<sup>263</sup> In addition, they “must attend four life skills workshops” every month where they are taught about “cooking, hygiene, household management, time management, first aid, substance abuse, chemical dependency and effects on the family, [sexually transmitted diseases] and family planning,” and rest techniques, and they also discuss current events.<sup>264</sup>

Proof that this housing program will resolve many of the issues foster youth face when aging out is the success the Chelsea Foyer has seen within just five years.<sup>265</sup> For example, “participants had

258. *Id.*

259. *Id.*; *You Are Not Alone!*, *supra* note 33.

260. *See infra* text accompanying notes 261-64.

261. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257. Youth have to attend a mandatory workshop within thirty days of joining the program to learn about housing options and finances; then they attend monthly meetings to learn about budgeting for rent, neighborhoods to target, how to find housing, and what a lease is. *Id.* Also, six months before discharge they meet with an alumnus of the program to learn about their experience, learn how to notify the post office of their new address, and learn who their supports are. *Id.*; *see* Atkinson, *supra* note 5, at 195 (stating that “foster care youths report difficulties in securing housing because they lack a credit history or a willing cosigner”).

262. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257.

263. *Id.*; *see Chelsea Foyer*, GOOD SHEPHERD SERVS., <https://goodshepherds.org/wp-content/uploads/2021/01/Foyer-Dashboard-Sept-Nov-2020-1.pdf> [<https://perma.cc/48BY-NEXL>] (last visited Aug. 12, 2023) (stating that their average savings is \$158/month and \$2,438 saved total).

264. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257; *see also* Atkinson, *supra* note 5, at 193 (emphasizing the importance of this by stating “only [forty-six percent] of the former foster care youths . . . possessed a savings or checking account, compared with [eighty-two percent] of their peers”).

265. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257. This program resolves the employment issue by collaborating with Columbia University’s Workplace Center and has four programs: an individual work assessment to learn about their experience and aspirations once they enter; the career club, which is a peer-driven workshop that meets multiple times per

significantly lower rates of shelter use than the comparison group,”<sup>266</sup> as well as “significantly lower rates of jail stays.”<sup>267</sup> In addition, comparing the participants during the two years after the program started to the pre-period, participants’ enrollments in college “increased by 37.6%,” and their employment rate “increased by 10.5%.”<sup>268</sup> Thus, all negative outcomes foster youth were expected to face when aging out can be mitigated through this housing program.<sup>269</sup>

Despite these benefits, the Chelsea Foyer does have its difficulties, one being that “[s]upport for youth aging out of foster care only covers young people up to age [twenty-one].”<sup>270</sup> In addition, they anticipate an attrition rate of twenty percent.<sup>271</sup> A common reason for youth leaving the program is that they find its requirements too rigorous.<sup>272</sup> However, “in about [seventy] percent of cases, a young person who gets past six months at the Foyer will complete the program successfully.”<sup>273</sup>

Due to its success rate and positive outcomes, New York State should adopt this program but make some modifications so it will have a better retention rate.<sup>274</sup> One adjustment is to increase the number of beds available for youth to join and to only permit these beds to be filled by

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month to discuss problems and resources, and where they learn skills such as how to read a pay stub and create a resume; a labor market development program where the housing staff actively finds employment suitable for the youth to apply for in the community; and a “Vocationalizing the Environment” program to promote employment conversation and ads in the facility to make the atmosphere supportive and focused on work. *Id.*; see *infra* text accompanying notes 266-68.

266. *Chelsea Foyer Outcome Study*, N.Y.C. CTR. FOR INNOVATION THROUGH DATA INTEL., <https://www1.nyc.gov/site/cidi/projects/chelsea-foyer-outcome-study.page> [https://perma.cc/9H28-D5RL] (last visited Aug. 12, 2023) (revealing that participants were “[thirty-six percent] less likely to have a stay in the single adult shelter system”); *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257 (stating that “[seventy-seven] percent of young people have secured stable housing upon leaving the program”); see also *Chelsea Foyer*, *supra* note 263 (revealing from a survey of 206 alumni youth that eighty-eight percent live in stable housing).

267. *Chelsea Foyer Outcome Study*, *supra* note 266.

268. *Id.*; *Chelsea Foyer*, *supra* note 263 (stating that of the thirty-eight youths who exited Chelsea Foyer in the last year, eighty-two percent secured stable housing, with thirty-nine percent renting an apartment); *id.* (explaining that ninety-five percent of residents attained a support network and ninety-seven percent of residents had health insurance); *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257 (finding that seventy-five percent of the participants are employed leaving the program).

269. See *supra* Part III.B.

270. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257. Due to having foster youth only be supported until age twenty-one, the program shifted from a dual education/employment focus to just an employment-focused environment since they need the youth “to develop financial self-sufficiency in two years.” *Id.* Therefore, extending the age to twenty-six and providing them the support can help education be a focus of the program if the State adopts both solutions. *Id.*

271. *Id.*

272. *Id.*; see *supra* text accompanying notes 261-264.

273. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257.

274. See *supra* text accompanying notes 266-269, 271.

foster youth.<sup>275</sup> This will increase the number of participants and create a peer-motivated environment since they are all having similar life experiences.<sup>276</sup> Also, only admitting foster youth will allow the case workers hired on site to be specialized in assisting foster youth to provide more individualized care.<sup>277</sup>

A financial burden Chelsea Foyer faced was not having foster youth covered past the age of twenty-one.<sup>278</sup> However, if New York State raises the extended care age to twenty-six and adopts a housing model similar to the Chelsea Foyer, they can likely receive support to cover aging out youth with federal and state funding past age twenty-one.<sup>279</sup> In addition, it is cheaper to adopt the Chelsea Foyer model than to let the youth find other housing and exit care earlier.<sup>280</sup> It costs approximately \$126 per night to house and support a young person at the Chelsea Foyer.<sup>281</sup> Although this will be a substantial investment for the State, this will be a saving compared to the “costs associated with young people who do not successfully transition and become incarcerated . . . or homeless (. . . in a shelter without supports).”<sup>282</sup>

#### D. Counterarguments

Some may argue that this solution will fail since former foster youth have stated that they do not remain in extended care because of a “desire to have more freedom.”<sup>283</sup> Others may argue that it will fail because the Chelsea Foyer program has been reported to have a low retention rate due to its rigorous demands.<sup>284</sup> The key to this program,

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275. See *supra* text accompanying notes 257, 259.

276. See *supra* text accompanying notes 257, 259.

277. See *supra* text accompanying note 262.

278. See *supra* text accompanying note 270.

279. See *supra* Part II.B.

280. See *infra* text accompanying notes 281-82.

281. *Chelsea Foyer*, *supra* note 263.

282. *The Chelsea Foyer at the Christopher at Five Years*, *supra* note 257; see also *Chelsea Foyer*, *supra* note 263 (stating that a prison sentence costs \$361 per night, a congregate foster care home costs \$491 per night, and a New York City shelter costs \$117 per night (which is comparable but lacks the support the Chelsea Foyer has)); Bauer & Thomas, *supra* note 152 (stating that “many [former foster youth] come back into the state’s care as adults, this time as inmates”); Elisabeth Balistreri, *What Happens to Kids Who Age Out of Foster Care?*, HOUSE OF PROVIDENCE (Mar. 28, 2021), <https://www.thehofp.org/articles/what-happens-to-kids-who-age-out-of-foster-care> [<https://perma.cc/GFV5-SQ85>] (illustrating the likelihood of a former foster youth entering the criminal justice system with the following statistics: “[one] in [four] foster youth go to prison after aging out of foster care,” “foster youth placed in group homes are 2.5 times more likely to be incarcerated,” and “[ninety percent] of youth with [five] or more foster placements will enter the criminal justice system”).

283. Napolitano et al., *supra* note 197.

284. See *supra* text accompanying notes 197, 272.



however, is that New York State will still need the youth's consent to enter extended care.<sup>285</sup> Therefore, the youths will not feel forced to meet the requirements in housing since they made the choice, which in itself is freedom.<sup>286</sup> It will take time to develop the data on this solution and whether it is as positive as anticipated, but for now this will assist those who choose to remain in care, requiring information be given to youth by their case workers as they approach the age of eighteen in order to make an informed decision.<sup>287</sup>

Another argument that may arise is that allowing foster youth to stay in care until age twenty-six “may create a mentality of dependency on the government,” but that is unlikely.<sup>288</sup> By not only raising the age, but also adopting the Chelsea Foyer model, youth will be provided with stable housing and resources.<sup>289</sup> This itself is beneficial because “a lack of stable housing can impede efforts to become self-sufficient.”<sup>290</sup> It has been shown to be “difficult for young people to pursue [an] education and training or to find and keep a job if their housing is unstable.”<sup>291</sup> It has been demonstrated that for young adults who do not desire a post-secondary education, “the journey to self-sufficiency often requires additional support from policies and programs implemented in the public and private sectors.”<sup>292</sup> Therefore, having a housing program or raising the age to support foster youth is actually more likely to cause them to be self-sufficient.<sup>293</sup>

## V. CONCLUSION

Approximately 20,000 “[eighteen] or [twenty-one]-year-olds will receive the harshest of birthday gifts . . . they will be given a stack of paperwork, brochures, and resource lists” to prepare them for life outside

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285. FAM. CT. § 1055(e); *see also* FAM. CT. § 756-a(g).

286. *Id.*

287. *See supra* text accompanying note 198 (stating that youth are not aware of the option to remain in care and the process and requirements if they desire to).

288. Huff, *supra* note 6.

289. *See supra* Part IV.

290. *Housing for Youth Aging Out of Foster Care: A Review of the Literature and Program Typology*, U.S. DEP'T OF HOUS. & URB. DEV. (2012), [https://www.huduser.gov/publications/pdf/HousingFosterCare\\_LiteratureReview\\_0412\\_v2.pdf](https://www.huduser.gov/publications/pdf/HousingFosterCare_LiteratureReview_0412_v2.pdf) [<https://perma.cc/35DW-ECG7>].

291. *Id.*

292. *What Works to Increase Self-Sufficient Employment*, HEALTH POL'Y INST. OF OHIO (Aug. 27, 2018), <https://www.healthpolicyohio.org/what-works-to-increase-self-sufficient-employment> [<https://perma.cc/E5GJ-CET7>].

293. *See supra* text accompanying notes 288-291.

of foster care.<sup>294</sup> One former foster youth<sup>295</sup> stated that it took her twenty years since aging out to learn how to really take care of herself.<sup>296</sup> Another youth<sup>297</sup> described his aging out story as being prepared for the transition out of foster care just a few days before his birthday.<sup>298</sup> Once he aged out, he was left without someone to guide him through life and struggled to obtain important documents, get insurance coverage, and enroll in supportive programs.<sup>299</sup> One thing he wished he had was to have someone inform him of the importance of an education and to prioritize school while getting assistance through programs, rather than working while in school to support himself.<sup>300</sup> Just based on these stories it is clear that “[t]he current system of government abandonment of former foster care youths highlights the need for comprehensive reform in this area.”<sup>301</sup> Raising the extended care age and adopting the Chelsea Foyer housing program is a step towards decreasing the likelihood of facing these negative outcomes foster youth are almost guaranteed to encounter if they age out of care.<sup>302</sup>

*Louisa Maria Portnoy\**

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294. *Aging Out of Foster Care*, ENGAGE TOGETHER, <https://engagetgether.com/2018/05/21/aging-out-of-foster-care> [<https://perma.cc/8K62-2VZ8>] (last visited Aug. 12, 2023); *About the Children*, *supra* note 7.

295. *Aging Out Stories*, TRINITY OPPORTUNITY ALL., <https://perma.cc/VV26-XH8A> (last visited Aug. 12, 2023). The youth’s name is Anastasia. *Id.*

296. *Id.*

297. *Id.* The youth’s name is RB. *Id.*

298. *RB’s Story*, TRINITY OPPORTUNITY ALL., <https://perma.cc/Y3XG-YQS8> (last visited Aug. 12, 2023).

299. *Id.*

300. *Id.*

301. Atkinson, *supra* note 5, at 212.

302. *See supra* Part III.B.

\* J.D., 2023, Maurice A. Deane School of Law at Hofstra University; B.S., Human Services, 2019, University of Delaware. I am deeply grateful to my parents, Edward and Lucy Portnoy, and my siblings, Kyla, Antoinette, and Thomas Portnoy, for their support throughout law school. I would also like to thank my faculty advisor, Professor Theo Liebmann, for his support and guidance during my Note writing process and beyond. Finally, I want to thank my Notes Editor, Erin Daley, and the entire staff of *Hofstra Law Review* who helped from drafting to publication of this Note.