

**Implementing the  
Preventing Sex Trafficking and Strengthening Families Act  
(P.L. 113-183)  
To Benefit Children and Youth**

**A Collaborative Effort of the  
Children's Defense Fund  
Child Welfare League of America  
First Focus  
Generations United  
Foster Family-based Treatment Association  
and Voice for Adoption**

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This brief will be updated as additional questions for clarification come to our attention or further issuances are released from the Children's Bureau at the Department of Health and Human Services. Please check back for the latest dated version of this brief.

# **Implementing the Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183) To Benefit Children and Youth**

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**PREVENTING SEX TRAFFICKING AND STRENGTHENING FAMILIES ACT  
(P.L. 113-183)  
IMPLEMENTATION TIMELINE**

*The following timeline summarizes the upcoming dates by which state and federal agencies will be required to implement provisions of the Preventing Sex Trafficking and Strengthening Families Act, enacted on September 29, 2014.*

<b>Effective as if enacted on October 1, 2013</b>
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*Improving Adoption Incentive Payments*

- Sec. 201: Extension of program through fiscal year 2016. The Adoption Incentive program – renamed the “Adoption and Legal Guardianship Incentive Payments” program – is extended for three years (through FY 2016).
- Sec. 205: Increase in period for which incentive payments are available for expenditure. States are allowed to spend money awarded through the adoption and guardianship incentive program for up to three years (previous law limited the use of incentive payments to two years).

*Extending the Family Connection Grant Program*

- Sec. 221: Extension of the Family Connection Grant Program. Extends the Family Connection Grant Program for one year (through FY2014) at the current authorization of \$15 million per year. Allows institutions of higher education to receive grants, in addition to other groups already allowed to receive grants. Requires that kinship navigator grantees specifically include foster children who are parents in their partnership efforts with agencies. The Act also removes the requirement for HHS to reserve \$5 million for kinship navigator programs.

<b>Effective upon enactment</b> (September 29, 2014, or October 1, 2014 where asterisked)
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*Identifying and Protecting Children and Youth at Risk of Sex Trafficking*

- Sec. 103: Including sex trafficking data in the Adoption and Foster Care Analysis and Reporting System. States must submit data on the annual number of children in foster care who are identified as sex trafficking victims either before or while they were in foster care to be included in the Adoption and Foster Care Analysis Reporting System (AFCARS).

*Improving Adoption Incentive Payments*

- Sections 202,\* 203\* and 204: The Adoption and Legal Guardianship Incentive Payment Program. The Adoption Incentive Program, renamed “Adoption and Legal Guardianship Incentive Payments” (Section 203), is reauthorized and makes structural changes to how incentive payments are calculated. Section 202 improves the award structure by determining incentives based on improvements in rates rather than absolute numbers, and allows for a transition period in FY2014 before the new incentive structure is fully implemented. It also expands the incentives to include both exits from foster care to adoption and/or guardianship. States will also have the ability to earn additional incentives for timely adoptions (where the adoption is finalized in less than 24 months) if

additional appropriated incentive funds are available. Section 204 clarifies that states must use the adoption and guardianship incentive payments to supplement – not supplant – other funds (federal or non-federal) already being used for services under Titles IV-E or IV-B of the Social Security Act.

- Sec. 206\*: State report on calculation and use of savings resulting from the phase-out of income eligibility requirements for Title IV-E adoption assistance; requirement to spend at least 30 percent of savings on certain services. Based on the *Fostering Connections to Success and Increasing Adoptions Act of 2008* (P.L. 110-351), which began delinking federal adoption assistance payments from the AFDC income eligibility requirements, states are required to calculate and report savings resulting from this change, and how these savings are being reinvested in child welfare programs. States are required to spend at least 30 percent of these savings on post-adoption services, post-guardianship services, and services to prevent foster care (with at least two-thirds of this 30 percent being spent on post-adoption or post-guardianship services). For fiscal year 2014, states receive an amount equal to half the sum of the total award based on the old incentive structure (improvements based on absolute numbers, adoptions only) and the total award based on the new structure and categories.
- Sec. 207: Preservation of eligibility for kinship guardianship assistance payments with a successor guardian. Children who are receiving Title IV-E Guardianship Assistance Program can continue receiving such payments in the event that their legal guardian dies or is no longer able to care for them and they are placed with a successor guardian.
- Sec. 208: Data collection on adoption and legal guardianship disruption and dissolution. HHS is required to provide regulations to states on collecting data on children who enter into foster care from a dissolved or disrupted adoption or guardianship placement. The regulations require each state to collect and report the number of children who enter foster care under supervision of the state after the disruption and dissolution of an adoption or legal guardianship.
- Sec. 209: Encouraging the placement of children in foster care with siblings. Ensures that when a child is removed from their home that agencies also notify all parents of siblings to the child (where the parent has legal custody of the sibling) within 30 days after the removal of a child from the custody of the parent(s). *A delayed effective date is permitted if state legislation is required.*

<b>Effective 1 year after enactment (by September 29, 2015)</b>
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*Identifying and Protecting Children and Youth at Risk of Sex Trafficking*

- Sec. 101: Identifying, documenting, and determining services for children and youth at risk of sex trafficking. States must demonstrate that they have developed (in consultation with other agencies that have experience with at risk youth) policies and procedures (including caseworker training) to identify, document, and determine appropriate services for children or youth in the placement, care or supervision of the state who are victims of sex trafficking or at risk of becoming a sex trafficking victim. States also have the option to extend services to youth under age 26 who were or were never in foster care.
- Sec. 104: Locating and responding to children who run away from foster care. Requires states to develop and implement plans for: expeditiously locating any child missing from foster care; determining the primary factors that contribute to the child's running away or being absent from foster care; determining the child's experiences while absent from

foster care (including screening and the child was a victim of sex trafficking); and reporting such related information as required to HHS.

*Improving Opportunities for Children in Foster Care and Supporting Permanency*

- Sec. 111: Supporting normalcy for children in foster care. States must implement a “reasonable and prudent parent standard” allowing foster parents to make more day-to-day decisions for youth in their care. *A delayed effective date is permitted if state legislation is required.*
- Sec. 112: Improving another planned living arrangement as a permanency option. Prohibits the use of “Another Planned Permanent Living Arrangement” (APPLA) as a permanency goal for children under age 16 in foster care, and adds requirements on the agency to ensure that youth age 16 and older with an APPLA permanency goal are appropriately placed in APPLA. For children in foster care under the responsibility of an Indian tribe, tribal organization or tribal consortium, the APPLA changes will not apply until three years after enactment of this Act. *A delayed effective date is permitted if state legislation is required.*
- Sec. 113: Empowering foster children age 14 and older in the development of their own case plan and transition planning for a successful adulthood. Youth in foster care age 14 or older must be consulted in the development of their own case plan, including selecting two trusted adults to be part of the permanency planning team (state has the ability to reject an individual selected if there is good reason to believe they would not act in the best interest of the child), and must receive a list of their rights while in foster care regarding education, health, visitation, court participation, and other matters. Youth ages 14 and older must also receive a free annual credit report and help resolving any inaccuracies. *A delayed effective date is permitted if state legislation is required.*
- Sec. 114: Ensuring foster children have a birth certificate, social security card, health insurance information, medical records, and a driver’s license or equivalent state-issued identification card. To better equip former foster youth for success as adults, States must ensure youth who exit foster care at age 18 (or older in states that extend foster care assistance beyond 18), and who have spent at least six months in care, are provided the following when they leave foster care: a birth certificate, Social Security card, health insurance information, medical records, and a driver’s license or State ID. *A delayed effective date is permitted if state legislation is required.*

<b>Effective 2 years after enactment</b> (by September 29, 2016)
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*Identifying and Protecting Children and Youth at Risk of Sex Trafficking*

- Sec. 101: Identifying, documenting, and determining services for children and youth at risk of sex trafficking. States must demonstrate to HHS that the state is implementing the policies and procedures that were developed in year 1 of enactment (refer back to Sec 101 in previous section).
- Sec. 102: Reporting instances of trafficking. States must report immediately (within 24 hours) to law enforcement after receiving information on a child or youth who was identified as being a sex trafficking victim.
- Sec. 104: Locating and responding to children who run away from foster care. States must also report within 24 hours of receiving information on missing or abducted children to law enforcement authorities so that the information can be entered into the

National Crime Information Center database and also report the same information to the National Center for Missing and Exploited Children. (NCMEC).

- Sec. 105: Increasing information on children in foster care to prevent sex trafficking. HHS must report to Congress information on children who run away from foster care and their risk of becoming victims of sex trafficking; information on state efforts to provide specialized services, foster family homes, child care institutions, or other forms of placement for children who are sex trafficking victims; and information on state efforts to ensure children in foster care form and maintain long-lasting connections to caring adults, even when a child is placed under the supervision of a new caseworker.

#### *Improving Opportunities for Children in Foster Care and Supporting Permanency*

- Sec. 113: Empowering foster children age 14 and older in the development of their own case plan and transition planning for a successful adulthood. HHS must report to Congress regarding the implementation of the new requirements in Sec. 113. The report must include an analysis on how states are administering the requirement to be consulted in the development of their plans (permitting children age 14 and older to select two members of their case planning team) and to receive a “List of Rights” as they pertain to their care. It must also describe best practices being used.
- Sec. 115: Information on children in foster care in annual reports using AFCARS data; consultation. HHS must annually report detailed information on children placed in a child care institution or other setting that is not a foster family home. Data must include the number of children in placements and their ages, the number and ages of children with a permanency goal of APPLA, the duration of the placements, the types of child care institutions used and the number of children residing in each such institution, any clinically diagnosed special needs of such children, services and treatment provided in these settings, and the number of children in foster care who are pregnant or parenting. HHS must also consult with states, child welfare organizations, and Congress on other issues to be analyzed and reported on using data from AFCARS and the National Youth in Transition Database.

#### *National Advisory Committee*

- Sec. 121: Establishment of a National Advisory Committee on the Sex Trafficking of Children and Youth in the United States. HHS is required to establish and appoint up to 21 individuals to serve on a national advisory committee to advise HHS and the Attorney General on policies to improve the nation’s response to sex trafficking of children.

<b>Effective 3 years after enactment (by September 29, 2017)</b>
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#### *Identifying and Protecting Children and Youth at Risk of Sex Trafficking*

- Sec. 102: Reporting instances of trafficking. States must report annually to HHS the number of children and youth who are sex trafficking victims.
- Sec. 112: Improving another planned living arrangement as a permanency option. The changes made to Another Planned Permanent Living Arrangement (APPLA) go into effect for children who are under the responsibility of an Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of a state). For tribal children age 16 and older (who may continue to have APPLA as a goal), additional requirements are placed on the agency to ensure they are appropriately placed in APPLA.

**Effective 4 years after enactment (by September 29, 2018)**

*Identifying and Protecting Children and Youth at Risk of Sex Trafficking*

- Sec. 102: HHS Report to Congress instances of trafficking. HHS must report annually to Congress the number of children and youth reported by the states as sex trafficking victims.

*National Advisory Committee*

- Sec. 121: Establishment of a national advisory committee on the sex trafficking of children and youth in the United States. Within two years after the establishment of the Committee, the Committee must develop two tiers of recommendations for best practices for states to follow in combating sex trafficking of children and youth.

**Effective 5 years after enactment (by September 29, 2019)**

*National Advisory Committee*

- Sec. 121: Establishment of a national advisory committee on the sex trafficking of children and youth in the United States. Within three years after the establishment of the Committee, it must submit an interim report to HHS and the Attorney General that describes what states have done to implement the recommendations of the Committee. Not later than three years after the establishment of the Committee, the Committee must submit an interim report on the work of the Committee to HHS, the Attorney General, the Senate Committee on Finance, and the House Committee on Ways and Means.

**Effective 6 years after enactment (by September 29, 2020)**

*Improving Opportunities for Children in Foster Care and Supporting Permanency*

- Sec. 111 Supporting normalcy for children in foster care. Beginning in FY 2020, an additional \$3 million will be made available each year under the Title IV-E Independent Living program to support foster youths' participation in age-appropriate activities.

*National Advisory Committee*

- Sec. 121: Establishment of a national advisory committee on the sex trafficking of children and youth in the United States. Not later than four years after the establishment of the Committee, the Committee must submit a final report on the work of the Committee to HHS, the Attorney General, the Senate Committee on Finance, and the House Committee on Ways and Means.

**Effective 7 years after enactment (by September 29, 2021)**

*National Advisory Committee*

- Sec. 121: Establishment of a national advisory committee on the sex trafficking of children and youth in the United States. The Committee will terminate 5 years after the date of its establishment.

# **Implementing the Preventing Sex Trafficking and Strengthening Families Act To Benefit Children and Youth (P.L. 113-183)**

*The bipartisan Preventing Sex Trafficking and Strengthening Families Act (P.L. 113-183/HR 4980), signed into law by President Obama on September 29, 2014, takes important steps forward in protecting and preventing children and youth in foster care from becoming victims of sex trafficking and makes many important improvements to the child welfare system to help improve outcomes for children and youth in foster care. The improvements represent significant steps forward, but will mean little to children unless and until they are effectively implemented so as to truly benefit children. There is much work to be done.*

*This brief is intended to help ensure full and prompt implementation of the improvements in the Preventing Sex Trafficking and Strengthening Families Act. It includes a summary and rationale for each of the Act's provisions and answers a number of questions being asked or likely to be asked as implementation gets underway. It is a collaborative effort of the Children's Defense Fund, Child Welfare League of America, First Focus, Generations United, Foster Family-based Treatment Association and Voice for Adoption.*

*\*To stay updated on the latest information on the Act from the Administration for Children and Families to the states, please go to the Children's Bureau's website (<http://www.acf.hhs.gov/programs/cb>).*

## **TITLE I: PROTECTING CHILDREN AND YOUTH AT RISK OF SEX TRAFFICKING**

### **Sec. 101. Identifying, Documenting, and Determining Services for Children and Youth at Risk of Sex Trafficking.**

Summary: Section 101 requires states to identify, collect and report data and determine appropriate services for victims of sex trafficking or those at risk of sex trafficking. This requirement only applies to children for whom the state has responsibility for placement, care, or supervision, including those children who have an open case but who were not removed from the home, children from foster care who have run away (under age 18, or under age 21 if the state has extended foster care), and those receiving services under the Chaffee program.

Rationale: Current estimates on how many children are trafficked domestically vary substantially. The most widely cited study estimates that anywhere from 100,000-300,000 children are at risk for sex trafficking in the United States<sup>1</sup> and the National Center for Missing and Exploited Children (NCMEC) estimates that 100,000 American children are victims of sex trafficking each year.<sup>2</sup> Collecting data on this population identifies characteristics and signs and vulnerabilities to help respond to youth who have been trafficked and inform communities to

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<sup>1</sup> Richard J. Estes and Neil Alan Weiner, *The Commercial Sexual Exploitation of Children in the U.S., Canada, and Mexico* (Sept. 19, 2001) [http://www.sp2.upenn.edu/restes/CSEC\\_Files/Exec\\_Sum\\_020220.pdf](http://www.sp2.upenn.edu/restes/CSEC_Files/Exec_Sum_020220.pdf).

<sup>2</sup> Testimony of Ernie Allen, President and CEO of National Center for Missing and Exploited Children, 2010, at [http://www.missingkids.com/en\\_US/archive/documents/TestimonyErnieAllen9-10.pdf](http://www.missingkids.com/en_US/archive/documents/TestimonyErnieAllen9-10.pdf)



help combat future incidents of trafficking. Additional information can inform how to best serve victims through trauma-informed approaches and aid in the development of comprehensive screenings to identify trafficked youth. Moreover, emerging data from several states and jurisdictions reveals that foster youth can be particularly susceptible to trafficking, as exploiters have learned to capitalize on their vulnerabilities. Therefore, it is important to screen this population for commercial sexual exploitation and trafficking in order to identify victims as early as possible and connect them with vital support services and interventions.

Effective Dates: States must develop policies and procedures (including caseworker training) to identify, document, and determine appropriate services within one year (by September 29, 2015). Within two years (by September 29, 2016), Title IV-E agencies must demonstrate that they are implementing these policies and procedures.

#### Questions and Answers:

- *Who is a victim of sex trafficking?*  
Any minor under the age of 18 engaged in a commercial sex act is a victim of sex trafficking. Child sex trafficking is not limited to prostitution, but can include stripping, pornography, live-sex shows, or the exchange of sex acts for necessities such as food, shelter, and/or clothing (what is sometimes referred to as “survival sex”). Under U.S. federal law, a victim of sex trafficking is a person who is recruited, harbored, transported, provided for, or obtained for the purpose of a commercial sex act. A victim of severe sex trafficking is one who is induced by force, fraud, or coercion, or under the age of 18 to perform a commercial sex act.<sup>3</sup> The term “sex trafficking victim” is the same definition as found under the Trafficking Victims Protection Act of 2000 (TVPA) including that Act’s definition of “a severe form of trafficking in persons.”
- *What does “at-risk” of being sex trafficked mean?*  
The law does not define who is “at risk of being a sex trafficking victim,” but it would be useful for HHS to provide a definition so that the population is adequately captured in data and children do not fall through the cracks. While we urge HHS to be careful so as not to stigmatize all youth in foster care as being at risk of becoming a victim of sex trafficking, or language that sweeps every homeless or at risk youth into the child welfare system, it is important that common risk factors be taken into consideration, including, but not limited to: youths for whom family connections are limited or severed; youths in foster, group home, and juvenile justice care; youths with a history of physical or sexual abuse or neglect; runaway/throwaway status; LGBTQ status; prior involvement with law enforcement; and those who have dropped out of high school.<sup>4</sup>

To help identify youth at risk of being trafficked, it would be helpful to integrate data from treatment professionals (e.g., Treatment Foster Care placements, or Runaway and Homeless Youth shelters) both with public child welfare SACWIS/electronic records, and Runaway and Homeless Youth Management and Information System (RHYMIS)/Homeless Management Information System (HMIS) electronic records, to meet the tracking and reporting requirements of this Act.

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<sup>3</sup> 22 U.S.C. §7102(15).

<sup>4</sup> Possible suggestions: Greenbaum, Current Problems in Peds and Adole Care, 2014, 44(9):245-269

- *What can states do to ensure victims are being identified and are connected to appropriate services?*

All children in the child welfare system – not just those deemed “at risk” – under the responsibility of the state should be screened for sex trafficking using a validated screening tool. States should be encouraged to form multidisciplinary teams including law enforcement, adult protective services, rape crisis, child welfare, Runaway and Homeless Youth service providers, health care, juvenile justice, courts, Community Advocacy Centers (CACs), and education to come together to inform training and the design of a plan for identifying, documenting, determining services and providing necessary services to victims of sex trafficking. CACs may be particularly important places to start because they already have multidisciplinary teams in place. A thorough assessment should be administered to each youth identified as or suspected as a trafficking victim. It must use effective and comprehensive screening tools that accurately assess a youth’s need for safety, his or her levels of psychological and medical trauma, and the treatment setting and services most conducive to full recovery. Appropriate placements for victims of sex trafficking must be available and effective therapeutic services made available to them. The child’s trauma history should inform the provision of health and mental health.

In order to provide the most appropriate services and treatments for victims of sex trafficking, it is imperative that service providers receive specific, in-depth training in trauma-informed, gender-responsive, and developmentally appropriate practices. A lack of developmentally appropriate or trauma informed care is often the reason adolescents and young adults are not receptive to services and/or run away from foster care. “Service providers” refer to all adults who may interact with the child or youth once he or she is identified as a victim of sex trafficking.

- *Training for Law Enforcement.* Technical assistance should be provided to states to prepare law enforcement personnel in recognizing when a child is the victim of sex trafficking.
- *Training for Child Welfare Personnel.* Child welfare agencies should provide training to ensure service providers screen children appropriately so as to not re-traumatize victims and understand the complex psychosocial issues involved with sex trafficking victimization. Providers need to be trained to adequately assess for safety, to interact appropriately with victims, and to identify necessary resources.
- *Ensuring Access to Therapeutic Foster Homes.* Whenever possible, victims of sex trafficking should be placed in therapeutic foster homes or other therapeutic settings where adults are properly trained to address the needs of children who are trafficked.
- *Training for Foster Parents and Kinship Families.* Education for traditional foster parents and kinship families about the possible signs of trafficking activity by the children in their care should be provided. Possible indicators include: runaway behaviors, inability to attend school on a regular basis, “boyfriend” considerably older, and child has a sudden change in attire, behavior, or material possessions.
- *Training for Physicians:* Physicians should receive training given the special nature of their profession and their ongoing relationship with a child. Physicians should receive training that allows them to provide anticipatory guidance for sex trafficking prevention, helps them to recognize possible victimization, and assists them in using trauma-informed practices for assessment and intervention. Training should include

- mandatory reporting requirements, common referral needs, and ways in which physicians can advocate for victims and their families
- *Training for Other Key Contacts.* Health care workers (e.g., nurses, dentists and hygienists), runaway and homeless youth shelter staff and school employees should receive training in identifying signs that suggest a child may have been trafficked. Many states and jurisdictions are already providing such trainings; effective models should be shared for replication in other states or jurisdictions. (See CA, CT & FL models.<sup>5</sup>)
  - *Training for the Courts:* Judges, court personnel, and court affiliated programs, such as Foster Care Review Boards (FCRBs), CASAs, court services, and probation, would also benefit from training to help them recognize and appropriately address victims and potential victims.<sup>6</sup>
- *What should treatment plans for victims include?*  
 Agencies should consider several factors when determining appropriate treatment plans for trafficked youth. Plans should at a minimum include: (1) access to safe and suitable housing; (2) a safety plan to keep perpetrators away from victims and treatment settings; (3) a safety plan for youth who are trafficked should they be approached by the perpetrator when away from the treatment setting; (4) access to trauma-informed, evidence-based mental health services (provided by professionals experienced in complex trauma when possible) and physical health services (including reproductive health screenings, STD testing, and access to specialized care such as an OB/GYN or drug rehabilitation) and legal services; and (5) rehabilitative services including counseling, education and job training. Trafficked youth should be served in community placements, including runaway and homeless youth programs. Unnecessary administrative barriers to expeditious and safe placement must be avoided.
  - *Utilizing Mentors and Informal Supports.* Where possible, victims should be paired with mentors who are trained to guide victims through the rehabilitation process. Victims' informal support networks should be accessed and/or built up to ensure they have caring adults to support their rehabilitation process. Where possible, efforts should be made to connect child victims with survivor advocates or mentors.

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<sup>5</sup> California: Protecting Children: The Role of Schools in CSEC Prevention and Intervention, <http://www.iom.edu/~media/Files/Activity%20Files/Children/SexualExploitationSexTrafficking/Jennee%20Littrell%20CSEC%20Presentation-OJJDP.pdf>; San Diego County Regional Human Trafficking And Commercial Sexual Exploitation of Children Advisory Council Report To the San Diego County Board of Supervisors October 2014, <http://www.abolishhumantrafficking.com/wp-content/uploads/2014/10/Human-Trafficking-Advisory-and-CSEC-Council-Report-Final-Submission-10-21-14.pdf>

Connecticut: Practice Guide for Intake and Investigative Response To Human Trafficking of Children, [http://www.ct.gov/dcf/lib/dcf/policy/pdf/Human\\_Trafficking\\_PG.pdf](http://www.ct.gov/dcf/lib/dcf/policy/pdf/Human_Trafficking_PG.pdf)

Florida: Florida Safe Families Network (FSFN), Commercial Sexual Exploitation of a Child: How Do I ... Guide, <http://centerforchildwelfare.fmhi.usf.edu/kb/FSFN/CommercialSexualExploitationofChildHDIG11-10-2013.pdf>;

Protections for Child Victims of Human Trafficking\* INFORMATION KIT: <http://www.dcf.state.fl.us/programs/humantrafficking/docs/InformationKit.pdf>

<sup>6</sup> Even though the legislation only specifically mentions a court role in Section 112, because of the court oversight role, the court should have a role in monitoring all of the requirements placed on the state child welfare agencies to ensure compliance and accountability. For all of the above provisions, the training for courts should include best practices, protocols, and tools to assist them to fulfill their responsibilities.

- *Individualized Treatment Plans.* Treatment plans should also acknowledge the reality that outcome measures or metrics may be different for victims of sex trafficking than those established for the traditional child welfare population. For both groups it is important to convey higher expectations for success and also offer essential adult support.
- *How will treatment outcomes for sex trafficked youth be measured?*  
Features of dependency statutes, Children and Family Services Review (CFSR) outcomes, and Adoption and Foster Care Analysis and Reporting System (AFCARS) data sets generally are assumed to benefit most foster children. However, trafficked children may actually be harmed by such mechanisms that promote alternatives to foster care, quick reunification, and fast-tracked permanency. Outcomes for to this population should be responsive to their unique needs. Special consideration is needed specifically for measures such as: timeliness and permanency of reunification, median length of stay in care, achieving permanency, placement stability, and safety.

To the extent practicable, we would suggest the use of data indicators used for measuring adherence to the Health Oversight and Coordination Plans required under the Fostering Connections Act, including oversight of psychotropic medication. We also suggest that these measures apply for children who are victims of sex trafficking, but not otherwise involved in the child welfare system.

Other measures of progress and well-being should be included for trafficked youth: stability of relationship with foster parent/home; improvement in education or employment attendance and performance; improvement in physical health, sleep patterns, and relationships with others, co-workers, and foster parents; improvement in grooming and personal presentation; improvement in mental health status, including reduction in any self-destructive behaviors, outbursts of emotion and impulses, and withdrawal and depressive traits; and changed perception/idealization/bonding with former perpetrators.

## **Sec. 102: Reporting Instances of Trafficking**

Summary: Section 102 requires state agencies to inform law enforcement within 24 hours of receiving information on any child or youth who has been identified as a sex trafficking victim. States must also report the total number of youth sex trafficking victims to the Secretary of HHS. The Secretary must in turn report this number to Congress and make the information public on the HHS website.

Rationale: The purpose of this provision is to increase coordination between state agencies and to ensure that law enforcement can investigate claims of trafficking as soon as possible after the act occurs so perpetrators can be arrested and victims can be recovered.

Effective Dates: States must incorporate the requirement to report to law enforcement within two years (by September 29, 2016). States must begin reporting to HHS the number of trafficked victims within three years of enactment and annually thereafter (by September 29, 2017). HHS must report to Congress on the number of trafficked victims within four years of enactment (by September 29, 2018) and annually thereafter.

## Questions and Answers:

- *What is the timeline for state agencies to report instances of trafficking?*  
After September 29, 2016 (within two years of enactment) states must report to law enforcement within 24 hours of receiving information that a child has been identified as a confirmed victim of sex trafficking. Agencies should be encouraged, however, to report immediately when a trafficked victims is identified.
- *What information in addition to the numbers of trafficking victims should be reported?*  
While the law itself says numbers and the Administration for Children and Families (ACF) in HHS might require additional data, to be most useful states should report the type of setting the youth was in (foster care, congregate care, therapeutic foster care, kinship care, biological home, or other placement), their age, race/ethnicity, and length of time involved in care, where relevant, and in sex trafficking prior to recovery of the youth from trafficking activity, additional legal charges if any, and information about current disposition/placement of each youth. To guide future assessment and care practices, it would also be helpful to gather data on incidences of sexually transmitted infections (STI) and pregnancy at time of recovery, other medical diagnoses at time of recovery (injury, infection, malnutrition), and if possible, mental health disorders diagnosed at or after recovery.
- *Are states to report annually to law enforcement and HHS, and HHS to Congress?*  
Yes, after September 29, 2017 for states and September 29, 2018 for HHS, all must report annually.
- *Can victims reported to law enforcement under this provision be charged with prostitution by law enforcement?*  
Given that not all states have adopted safe harbor laws to protect victims of trafficking from criminal prosecution, it is important that child welfare agencies and law enforcement, as they respond to the reporting requirement, make special provision so as not to put these victims at risk of prosecution. Under federal law, any minor under the age of 18 involved in a commercial sex act is a victim per se. State agencies and law enforcement should work together to ensure that juvenile prosecutors are aware that charges should not be brought against these children and that they need services, like any other child victim of abuse or rape. This reporting provision is intended to help law enforcement find perpetrators and charge them rather than prosecuting children.
- *If a state fails to provide safe harbor laws and victims of trafficking are still vulnerable to prosecution, what is the responsibility of the child welfare agency in protecting the victim of trafficking from prosecution?*  
States that have not adopted safe harbor laws should be encouraged to do so to reduce confusion and to be consistent with federal law. If charges are brought against a minor, caseworkers should be trained to make a case to judges and prosecutors for services and protection from prosecution for the charged minors. HHS and the Department of Justice should issue a joint letter to child welfare agencies and law enforcement that includes best practices and guidance on how to respond to victims without encouraging prosecution them and how to serve their needs once identified and referred to law enforcement. HHS should include guidance to child welfare agencies on the importance of keeping open cases of

children and youth who have been identified as victims of sex trafficking and referred to law enforcement, including cases of youth ages 18 and older who remain in care (up to age 21 in some states) to prevent them being prosecuted as criminals.

HHS is also encouraged to provide guidance to child welfare agencies on the special considerations and need for protection for undocumented children identified as victims of sex trafficking.

### **Sec. 103: Including Sex Trafficking Data in the Adoption and Foster Care Analysis and Reporting System (AFCARS)**

Summary: Section 103 requires that the annual number of children in foster care who are identified as sex trafficking victims either before or while they were in foster care be included in the Adoption and Foster Care Analysis Reporting System (AFCARS).

The term ‘sex trafficking victim’ is the same definition as found under the Trafficking Victims Protection Act of 2000 (TVPA) including that Act’s definition of “a severe form of trafficking in persons.” Under the TVPA the definitions are:

*“The term ‘victim of a severe form of trafficking’ means a person subject to an act or practice described in paragraph (8).*

*The term ‘victim of trafficking’ means a person subjected to an act or practice described in paragraph (8) or (9)*

*(8) SEVERE FORMS OF TRAFFICKING IN PERSONS.—The term ‘severe forms of trafficking in persons’ means— (A) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or ....*

*(9) SEX TRAFFICKING.—The term ‘sex trafficking’ means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.”*

Rationale: Current reports from law enforcement and victims of sex trafficking indicate a high correlation of victims and current/prior involvement with public child welfare agencies, foster care in particular. Reporting these data might inform predictive analytics for preventing youth from running away from foster care and other indicators of trafficking activity. Reported data can lead to development of best practices in prevention, intervention, and support and finally give the field a better sense of the overall prevalence of sex trafficking in the child welfare system.

Effective Date: Effective upon enactment (September 29, 2014).

#### Questions and Answers:

- *What steps are involved in implementing this provision?*  
Generally HHS would amend AFCARS to include these new data requirements and then states will be obligated to report on them. Hopefully more detail from HHS will be forthcoming soon. States must be held to the prompt reporting of all data required in this section

## **Sec. 104: Locating and Responding to Children Who Run Away from Foster Care**

Summary: Section 104 requires states to develop and implement plans to expeditiously locate any child missing from foster care; determine the primary factors that contribute to the child's running away or being absent from foster care; and determine the child's experiences while absent from foster care, including screening whether the child was a victim of sex trafficking. Within 24 hours of receiving information on missing or abducted children, states must 1) report to the law enforcement authorities so the information can be entered into the National Crime Information Center (NCIC) database, and 2) report the same information to the National Center for Missing and Exploited Children (NCMEC).

Rationale: Studies have shown that runaway youth are highly vulnerable to sex traffickers and may turn to traffickers as a means of survival. To reduce the incidence of trafficking and ensure the well-being of runaway youth, strong efforts must be made to locate them promptly.

Effective Dates: The provision for states to expeditiously locate any child missing from foster care goes into effect one year after enactment (by September 29, 2015). The reporting requirement to law enforcement goes into effect two years after enactment (by September 29, 2016).

### Questions and Answers:

- *What procedures are in place and what data does your state currently collect about children missing from foster care?*  
To meet the September 2015 deadline for having a system in place for locating missing children from foster care, it is important to learn now what current procedures and data requirements are in place and to begin to explore additional steps that are needed. HHS should provide or recommend a definition of a "missing child."
- *Who must be provided information on children missing from care?*  
The new law requires state agencies to complete two separate reports when a child goes missing from care: (1) a report to the law enforcement authorities for entry into the National Crime Information Center (NCIC) database and (2) a report to the National Center for Missing and Exploited Children (NCMEC). Law enforcement does not report all missing children to NCMEC, so under the new law state agencies will be reporting separately to law enforcement and to NCMEC.
- *Must states only report on children missing who they suspect to be victims of trafficking?*  
No. Plans must be put in place to locate any child missing from foster care and determine the primary factors contributing to the child running away or being absent from care. Children run for a variety of reasons and it is important to determine those factors in order to appropriately respond to their needs or improve the system (i.e. if youth keep running away from the same group home or placement, then further examination may be needed about the staff, rules, location, etc.). Once a child runs away from care, they are more susceptible to being trafficked and exploited, so reporting their absence from care immediately is essential to preventing exploitation from occurring in the first place.

- *What type of actions should be taken to adequately “respond” when a child runs away from foster care?*

Runaway behavior by youth in state custody is a common precursor to sex trafficking activity, among other activities detrimental to youth well-being. In addition to increasing authentic youth engagement in their case planning and better training workers on trauma-informed and developmentally appropriate practices, state child welfare agencies and private child placing agencies should collaborate in communities with programs addressing Runaway and Homeless Youth (RHY). Immediate safe placements must be available as runaway youth are located. Youth who report sexual or physical assault or sex trafficking during their absence need immediate medical evaluation, preferably by trained health care providers. Law enforcement must decriminalize both runaway and sex trafficking activity for youth under age 18 and coordinate with social services and child welfare to address safety and assessment of treatment needs for runaway youth. When a child in state custody has run away, judges, Foster Care Review Boards (FCRBs), and CASAs should be inquiring about actions agencies have taken to locate the child and should be trained on this provision. Youth should be engaged about why they ran away and how their needs could better be met. States are encouraged to consider placements that are the least restrictive and developmentally appropriate and therapeutic for these youth. HHS should provide information on effective placement models in responding to runaway and homeless youth, including emergency placements or the Basic Center Program to assess whether these may be appropriate in responding to victims of sex trafficking.

Training about developmentally appropriate and trauma-informed care can help caregivers better understand and respond to youth, ultimately reducing the numbers of runaway youth who often leave because their voices have not been heard or they are feeling further traumatized by the care they are receiving.

### **Sec. 105: Increasing Information on Children in Foster Care to Prevent Sex Trafficking**

Summary: Section 105 requires HHS to report to Congress on the number of children who run away from foster care and their risk of becoming victims of sex trafficking; information on state efforts to provide specialized services, foster family homes, child care institutions, or other forms of placement for children who are sex trafficking victims; and information on state efforts to ensure children in foster care form and maintain long-lasting connections to caring adults, even when a child is placed under the supervision of a new caseworker.

Rationale: There is limited national data and information on children and youth that run from care. Limited studies provide some information on youth that run – from temporary runners who run back home for a few days to those with longer-term absences whereby the child may be more susceptible and vulnerable. Annual AFCARS data provide limited data under current placements in care and exits from care categories but data from all 50 states is inconsistent.

Effective Date: Within two years of enactment (by September 29, 2016).



### Questions and Answers:

- *In reporting data to Congress, will HHS distinguish the setting from which a child runs, such as group care, traditional foster care, or therapeutic/treatment level foster care and also any special needs of the child?*

HHS should require states to report settings from which children run away from foster care and become victims of sex trafficking, including foster family homes, treatment/therapeutic foster care, child care institutions, or other forms of care. LGBTQ youth may be especially vulnerable to sex trafficking and collecting data on this population would be important in helping to inform state efforts to keep particularly vulnerable populations protected from victimization.

- *What areas of training for foster and kinship families should states/private agencies provide?*

Education for traditional foster parents and kinship families about the possible signs of trafficking activity by the children in their care should be provided. Possible indicators include: runaway behaviors, inability to attend school on a regular basis, “boyfriend” considerably older, and child has a sudden change in attire, behavior, or material possessions. Training about developmentally appropriate and trauma informed care can help caregivers better understand and respond to youth, ultimately reducing the numbers of runaway youth who often leave because their voice has not been heard or they are feeling further traumatized by the care they are receiving.

### **Sec. 111: Supporting Normalcy for Children in Foster Care**

Summary: Section 111 requires states to implement a “reasonable and prudent parent standard” for decisions made by a foster parent or a designated official in a child care institution. States must revise licensing rules to incorporate the standard and also provide training to foster parents on the new standard. Private child placing agencies under contract with public child welfare entities must also assure such training for their foster parents. Beginning in 2020, \$3 million annually in additional funds will be available through states’ independent living programs to support youths’ participation in age-appropriate activities. HHS will also provide technical assistance on best practices for assisting foster parents to apply the reasonable and prudent parent standard in a way that protects children while also allowing them to experience normalcy. The technical assistance also provides methods for appropriately considering the concerns of the biological parents of the child in decisions related to participating in activities (with the understanding that those concerns should not necessarily determine the participation of the child in any activity).

Rationale: While attempting to keep children safe from harm, some foster care policies and practices unnecessarily create barriers for youth to live out normal adolescent experiences similar to their peers. For example, many current and former foster youth often cite rules that made it hard for them to participate in sports, stay over at a friend’s house, get a driver’s license, or hold down a part-time job. While these policies and practices are often intended to ensure the youth’s safety, such policies can also further isolate foster youth when they are seeking to integrate into a new family, school, and community. In addition, research findings shed light on the generally poor outcomes of youth aging out, yet participation in extracurricular and social activities was found to be effective in changing the course for many of these youth and preparing them for a

successful transition to adulthood and independence. This new law builds on some states' actions to eliminate overly burdensome requirements by making reforms to allow foster youth to be treated more like other youth – allowing participation in age-appropriate activities such as sports and extracurricular events, getting haircuts, staying over with friends, and obtaining a driver's license.

Effective Date: This provision goes into effect one year after enactment (by September 29, 2015), but delays are permitted if state legislation is required.

#### Questions and Answers:

- *What does normalcy mean?*  
“Normalcy” as a goal for youth in foster care means to ensure these youth have growing up experiences similar to their peers who are not in foster care. “Normalcy” aims to create a “family-based settings” so youth grow up in families. It should include participation in age-appropriate extracurricular enrichment and social activities. States should be encouraged to engage young people, who are in or formerly in foster care, in developing a state’s definition of normalcy. States should also be encouraged to engage RHY program youth in hearing about the restrictive policies and positive youth development approaches to providing intensive services that RHY programs use.
- *Why is the focus on “normalcy” and a “reasonable and prudent parent” standard necessary?*  
Much discourse and evidence have been presented reflecting an unnecessary ‘stigma’ on foster youth due their frequent inability to participate in extracurricular activities and those cultural, educational, and social opportunities normally provided to youth not in custody. This stigmatization and re-traumatizing of youth can be avoided to a great degree by enactment of the reasonable and prudent parent standard. Furthermore, this standard is particularly crucial for youth in therapeutic foster care who frequently are deemed ‘no longer in need of a TFC level of care’ when their participation in normalcy activities is cited as progress in their treatment plan.

Allowing caregivers to have more decision-making authority can also ultimately translate into youth in their care being able to take on gradually increasing levels of responsibility and leadership of their own lives – a process vital to the development of skills and capacities needed for a successful transition to adulthood. Increasing a youth’s ability to participate in activities in their communities also helps them develop and broaden their networks of informal supports that can serve as safety nets when they leave foster care. These processes are important to improving the well-being of foster youth, which is critical to their health and development, and reduce their risk of becoming victims of child sex trafficking.

- *Does this new focus on normalcy also apply to children in kinship foster homes?*  
Yes. Children in licensed kinship foster homes may face similar challenges related to getting permission for age-appropriate extracurricular enrichment and social activities because, similar to children in foster care with unrelated caregivers, kinship foster parents do not have legal custody of the children which limits their decision-making authority on behalf of the child.

- *What is the “reasonable and prudent parent” standard?*

The “reasonable and prudent parent” standard is based on consideration of the child’s age, maturity, mental and physical health, developmental level, behavioral propensities and aptitude and provides for a child’s caregiver to make decisions about participation in age-appropriate extracurricular, enrichment, and social activities for a child in their care so as to promote the most family-like environment for the child. Below is the Act’s definition of the reasonable and prudent parent standard:

*“The term ‘reasonable and prudent parent standard’ means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.”*

States should be encouraged to provide opportunities for input into implementation of the prudent parent standard from foster youth through various youth councils or other youth convenings.

- *What considerations should be made for the “reasonable and prudent parent” standard to address sexual development and for pregnant or parenting youth in foster care?*

Understanding and forming healthy relationships, including healthy sexual development, is a key factor in adolescent well-being. Given the unique circumstances many youth in care face when it comes to sex, it is important foster parents are well trained and equipped to discuss and provide developmentally appropriate guidance on sex, relationships, and preventing pregnancy and sexually transmitted infections.

For pregnant or parenting youth, the framework for healthy sexual development must acknowledge the youth’s position as a parent or expectant parent and include a focus on decisions moving forward, as well as those specific to healthy development through pregnancy. In addition, efforts should be made to include the young father’s need to pursue “normal” activities. A reasonable and prudent parent standard should note the need for young fathers to be supported, encouraged, and included in the pre-pregnancy activities and birth of their child to increase parental bonding and co-parenting.

Part of teenagers’ normal experience is typically receiving information about sex and relationships in school and/or from their biological parents, and exploring dating and relationships. Given the unique circumstances of youth in care, they may miss these opportunities or need information that is responsive to their experience, including trauma. It is important to provide support and training to foster parents, as well as child welfare personnel, in communicating with youth about healthy relationships and sexual health. The National Campaign to Prevent Teen and Unplanned Pregnancy has developed several resources that could be helpful (10 Tips for Foster Parents and It’s Your Responsibility to Talk to Youth: Pregnancy Prevention for Youth in Foster Care: A Tool for Caregivers and Providers (done with NAPCWA). Illinois has also developed training for foster parents and caregivers.

In addition, caregivers need training to understand the special considerations for parenting youth. For example, caregivers shouldn’t expect to always provide care for the

youth's child; however, sensitivity is needed for the youth to balance adolescent development and responsibilities of a parent.

*(See the brief from the Center for the Study of Social Policy (CSSP), [A Guide for States Implementing the Preventing Sex Trafficking and Strengthening Families Act](#), for more information)*

- *Does this law apply to unsupervised time at home?*  
No. The federal law specifically addresses extracurricular, enrichment, social and cultural activities. It does not include unsupervised time at home (e.g. children being left at home alone after school).
- *Does the “reasonable and prudent parent” standard only apply to individuals who become foster parents on or after the effective date of this provision (after September 29, 2015)?*  
No. This provision applies to all foster parents, including those who are currently caring for children in foster care.
- *Are there states that already use a “reasonable and prudent parent” standard?*  
Yes, there are states that already passed legislation to establish reasonable and prudent parenting standards, including California (Passed legislation in 2005, Senate Bill 358, CHAPTER 628, STATUTES OF 2005)<sup>7</sup>, Florida (Passed 2013, “Let Kids be Kids” Law, Committee Substitute for House Bill No. 215, CHAPTER 2013-21)<sup>8</sup>, Utah (Passed, 2014, House Bill 346, 2014 General Session (Rule R512-310 is pending))<sup>9</sup>, and Washington (Passed 2014, Engrossed Substitute Senate Bill 6479, 63rd Legislature 2014 Regular Session(Regulations pending)).<sup>10</sup>
- *Does the application of the reasonable and prudent parent standard transfer liability to foster parents for actions they take about the children in their care or actions children take while in their care?*

The “reasonable and prudent parent” standard as applied to foster parents raises questions as to 1) who might be liable for actions children take while in the care of foster parents; and 2) the ability of foster parents to make decisions without fear of reprisal from the child’s social worker, the licensing or approval agency, or the juvenile court.

Many, if not most, insurance companies place coverage restrictions on the policies of adults who foster children and youth. States should consider providing insurance for foster parents to cover claims made against them both for personal injury and property damage. (See examples in WA and OK.<sup>11</sup>)

The perceived liability or risk to fostering may be a barrier to recruiting and retaining prospective foster parents. States should clarify any liability issues and ensure that foster parents receive training so they know what their responsibilities are and what they may

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<sup>7</sup> [http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb\\_0351-0400/sb\\_358\\_bill\\_20050909\\_enrolled.pdf](http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0351-0400/sb_358_bill_20050909_enrolled.pdf)

<sup>8</sup> <http://laws.flrules.org/2013/21>

<sup>9</sup> <http://le.utah.gov/~2014/bills/hbillenr/HB0346.pdf>

<sup>10</sup> <http://apps.leg.wa.gov/documents/billdocs/2013-14/Pdf/Bills/Session%20Laws/Senate/6479-S.SL.pdf>

<sup>11</sup> Washington: <https://www.dshs.wa.gov/sites/default/files/SESA/publications/documents/22-090.pdf>; Oklahoma: <http://www.okbridgefamilies.com/wp-content/uploads/2011/04/FP-Ins-Claim-Forms-INSTRUCTIONS.pdf>

be liable for. States should cover foster parents under the state's tort laws in the same manner that employees of state child welfare agencies are protected from liability. In ensuring that the prudent parent standard is appropriately and efficiently implemented in group home settings, dependency courts should monitor compliance with the standard at each court hearing on behalf of the youth.

In at least three states (Florida, Utah, Washington<sup>12</sup>), laws explicitly include a provision in their reasonable and prudent parent standard that a caregiver is not liable for harm caused to a child in an out-of-home placement if the child participates in an activity approved by the caregiver, when the caregiver has acted in accordance with a reasonable and prudent parent standard.

- *What steps should be taken to ensure that all parties are aware of what the reasonable and prudent parent standard means?*

Once the state child welfare agency has verified that state licensed/certified foster homes and private agencies providing out-of-home services to dependent children have policies consistent with the training required by this statute and can promote and protect the ability of dependent children to participate in age-appropriate extracurricular, enrichment, and social activities, the public agency may offer advice to support the caregiver in making decisions as a reasonable prudent parent; however, they may not make the decisions for caregivers. Foster parents and private agencies should be protected from harassment, intimidation, or any other form of obstruction, either real or perceived, by the state child welfare agency concerning decisions made under the “reasonable and prudent parent” standard.

- *Training for Child Welfare Personnel.* Training should be provided to all child welfare agency personnel in order to ensure all parties understand this new “reasonable and prudent parent” standard as well as insurance coverage and liability issues it raised, and can adequately speak to or respond to concerns expressed by current or prospective foster parents.
- *Training for Foster Parents.* In order for foster parents to apply the reasonable and prudent parent standard, they must understand the unique needs of the child(ren) in their care. To better prepare them, foster parents should be given relevant training to support informed decision making concerning: normal and abnormal stages of infant, child and youth development; topics relevant for successful parenting and family life such as healthy relationship building, permanency, behavior management, and talking to youth about sexual health (both preventative information for young people before they are pregnant/parenting, and information to help young people in care delay and space subsequent pregnancies until they are older, further along in their goals, etc.); cultural competency to prepare families to accept and nurture children and youth whose culture, language, socioeconomic status, race, ethnic background, religion, gender, political affiliation, gender identity, sexual orientation, and/or ability differs from those of the foster family; principles of trauma-informed care; and the role of grief, loss, and trauma in the lives of children and youth who have histories of abuse and neglect.

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<sup>12</sup> Florida (Passed, 2013) “Let Kids be Kids” Law, Committee Substitute for House Bill No. 215, CHAPTER 2013-21; Utah (Passed, 2014) House Bill 346, 2014 General Session (Rule R512-310 is pending); Washington (Passed, 2014) Engrossed Substitute Senate Bill 6479, 63rd Legislature 2014 Regular Session

- *Inclusion of Normalcy Considerations for Youth receiving Therapeutic Foster Care (TFC).* Therapeutic foster care serves youth with intense treatment needs for mental and/or behavioral health problems, as well as medically fragile youth. States determine individually their own criteria for entry into this level of care. However, typically TFC care requires the availability of 24/7 supervision of youth in care by a responsible adult. It is crucial that the reasonable and prudent parent standard be available to youth in therapeutic foster care as well as youth in traditional foster care. As youth succeed with intensive treatment in TFC, some activities of normalcy, such as a three-hour shift working in the fast foods industry, are appropriate for certain youth. Participation in activities supported by the youth's treatment plan and under the supervision of trusted adults other than the foster parents should not otherwise jeopardize the youth's qualification for TFC level of care.
- *How can states promote foster youth participation in extracurricular activities?*  
One of the main goals of the new reasonable and prudent parent standard is to ensure young people have access to the same normative activities and experiences their peers enjoy, such as extracurricular sports, school clubs and proms. These activities frequently have an associated fee, and foster parents and kinship foster parents may not be able to afford these. HHS and the Department of Education should create a joint letter of commitment and recommendations urging states to help youth participate in these activities so they can implement the intent and requirements of P.L. 113-138.

To implement this provision as intended and effectively promote improved well-being outcomes for youth in foster care, states should allocate money to pay for such activities and transportation for young people to facilitate their participation. This can be in the form of increasing foster parent payment rates and/or by creating an extracurricular budget. It is difficult for many foster parents and kinship caregivers to finance additional costs associated with these activities without additional financial support from the state.

- *What is the role of the courts in promoting the reasonable and prudent parent standard?*  
It is important that training is provided to judges, court personnel and other court affiliated programs. As part of the review hearing, the judge, Foster Care Review Boards (FCRBs) and CASA workers should be inquiring about the child's extracurricular activities. With regard to a potential appeal process for the child, there will need to be a protocol to ensure the child understands there is an expectation that the child should participate in extracurricular activities and that there is a safe/comfortable way for the child to ask for an appeal when he/she isn't being allowed to participate without feeling that he/she might be jeopardizing his/her placement.

## **Sec. 112: Improving Another Planned Permanent Living Arrangement as a Permanency Option**

Summary: Section 112 of the Act improves Another Planned Permanent Living Arrangement (APPLA) as a permanency option for children by prohibiting its use for children under the age of 16 and adding additional case plan and case review requirements for older youth with a permanency goal of APPLA. For children in foster care under the responsibility of an Indian tribe, tribal organization or tribal consortium, the APPLA changes will not apply until three years

after enactment of this Act. To ensure the appropriate use of APPLA for youth 16 and older, the state agency, at each permanency hearing, must:

- Document the intensive, ongoing and unsuccessful efforts for family placement, including efforts to locate biological family members using search technologies.
- Ask the child about her desired permanency outcome.
- Make a judicial determination explaining why APPLA is still the best permanency plan for the child and why it is not in the child's best interest to be returned home, adopted, placed with a legal guardian, or with a fit and willing relative.
- Specify steps the agency is taking to ensure the reasonable and prudent parent standard is being followed, and the child has regular, ongoing opportunities to engage in age or developmental appropriate activities.

Rationale: The permanency goal of APPLA is intended to replace “long term foster care” and come a step closer to an option that is a “planned” response to the individual needs of a particular child for whom other permanency goals – like returning home, adoption or guardianship – are not appropriate. However, too often APPLA provides an easy way out for states, and rather than continuing to look for planned permanent living arrangements for children and youth who they think will not or cannot be returned home, adopted or placed with guardians, they give up and often look to residential placements and various forms of congregate care for these youth rather than attempting to reengage family members or other important people in their lives who could truly be permanent connections beyond their time in care. While APPLA is an appropriate permanency goal for some youth, there was concern that many children were being inappropriately placed in APPLA and that agencies needed to be held accountable for ensuring they were taking the necessary steps to connect these children to permanent families. There was also concern that young children in particular were being inappropriately placed in APPLA and a general consensus that APPLA should be prohibited for children under age 16.

Effective Date: This provision goes into effect one year after enactment (by September 29, 2015), but delays are permitted if state legislation is required. Title IV-E/IV-B tribes have three years to implement the new APPLA restrictions (by September 29, 2017).

#### Questions and Answers:

- *What is “Another Planned Permanent Living Arrangement” (“APPLA”) and why has it been problematic for some children and youth in foster care?*  
Federal law requires that children and youth in foster care have a permanency plan to dictate their path out of foster care and into a permanent family. Federal law, recognizing the needs of children will vary, provides multiple permanency options: return to the parent, placement for adoption with a petition to terminate parental rights, and referral for legal guardianship, or (in cases where the state agency has documented to the state court a compelling reason for determining that it would not be in the best interests of the child to return home, be referred for termination of parental rights, or be placed for adoption, with a fit and willing relative, or with a legal guardian) placement in another planned permanent living arrangement – also known as “APPLA.” The fifth permanency option, APPLA, was added to Title IV-E of the Social Security Act in 1997 to replace “long term foster care.” It was intended to be a permanency option for children for whom the other permanency options were not in their best interest. Although federal law intended it to

replace “long term foster care” as a permanency option, in reality both the federal government and many states still refer to children as being in “long term foster care.”

- *What changes were made to APPLA under the new law?*  
Section 112 prohibits the use of APPLA for a child under age 16 and adds additional case plan and case review requirements for youth 16 and older with a permanency goal of APPLA.
- *Why are the changes to APPLA important to children achieving permanency?*  
Although foster care is intended to be a temporary placement for children, experience demonstrates that far too many children remain in long-term foster care without anyone considering more appropriate permanency goals for them. Too many of these youth now end up with a permanency goal of APPLA, and they too often are overrepresented in group or congregate care settings, often not the least restrictive setting appropriate for them (despite their being such a requirement in federal law). The availability of APPLA as a permanency option enables states to give up on children too early and not bother to explore other permanency options such as return home, adoption or permanent placements with guardians. By eliminating APPLA as a permanency option for children under 16, the likelihood of the state agency giving up on finding a permanency option that is in the child’s best interest should be reduced. And even though APPLA is allowed for youth 16 and over, new rules require that continuing consideration be given to alternative permanency options for them, documentation of intensive, ongoing and unsuccessful efforts for family placement and a predetermination of the appropriateness of APPLA as a permanency option at each permanency hearing.
- *Why are the changes to APPLA important to preventing child sex trafficking?*  
A number of states and communities have documented that children and youth in foster care are at risk of being victims of child sex trafficking. Moving children and youth out of foster care and into permanent families more promptly can help combat the risk of trafficking. The APPLA changes will help reduce the number of children and youth lingering in long-term foster care, connect children more promptly to permanent families, and reduce the number of youth in group or other congregate care placements where they may be at greater risk of becoming victims of sex trafficking.
- *Do these new requirements only apply to children who are eligible for Title IV-E?*  
No. APPLA applies to all children in foster care, not just Title IV-E eligible children, and the changes to APPLA will apply to all children who are in or enter foster care on or after September 29, 2015, with the exception of Indian children, regardless of whether or not their foster care is reimbursed by Title IV-E funds. In part because of tribal rules limiting termination of parental rights proceedings, Indian children who are in foster care under the responsibility of an Indian tribe, tribal organization, or tribal consortium (either directly or under supervision of a state) will be exempt from the APPLA restrictions for up to three years after enactment.



- *Recognizing the exception for certain Indian children, are there any other exceptions from the new APPLA restrictions?*  
 No. Regardless of whether children have special needs or are categorized by some as “hard to place,” federal law prohibits them for having APPLA as a permanency goal if they are under age 16.
- *Will all children under age 16 currently with a permanency goal of APPLA have to immediately change their permanency goal on the effective date of this provision?*  
 A new permanency goal, other than APPLA, must be established for children under 16 and progress in achieving that new goal noted at the child’s first permanency hearing after September 29, 2015.
- *What additional requirements will the new restrictions on APPLA place on the courts?*  
 At each permanency hearing the court, or administrative body appointed or approved by the court, that is conducting the permanency hearing on the permanency plan for the child will need to 1) ask the child about their desired permanency outcome, and 2) make a judicial determination explaining why, as of the date of the hearing, APPLA is the best permanency plan for a child 16 or older and provide compelling reasons why it continues to not be in the best interests of the child to return home, be placed for adoption, placed with a legal guardian, or placed with a fit and willing relative. The court may not accept APPLA as the permanency plan for a child under age 16. Judges, court personnel, and court affiliated programs will need training on this provision.
- *Can youth ages 16 and older with a permanency goal of APPLA change permanency goals to adoption or guardianship later?*  
 Yes, the law encourages it. The law is clear that for youth ages 16 and older with APPLA as a permanency goal, the state agency must continue to document the intensive, ongoing and unsuccessful efforts made to return the child home, place the child with a fit and willing relative (including adult siblings), a legal guardian or an adoptive parent, including efforts that utilize search technology (including social media) to find biological families members for the children, and also re-determine the appropriateness of APPLA at each permanency hearing. These requirements will help ensure other permanency options continue to be pursued for youth 16 and older.
- *What can states start doing now in preparation for this provision to go into effect?*  
 States should immediately begin reviewing the cases of children with a permanency goal of APPLA who are under age 16, and establish for them new permanency goals, since APPLA will be prohibited as a goal for these children as of September 29, 2015. Progress in achieving the child’s new permanency goals will then be established at the child’s next permanency hearing. At the same time, states should review their policies and statutes to clarify that APPLA and long-term foster care may no longer be a permanency option for youth under 16 and with youth ages 16 and older may only be used with a rigid review of permanency efforts.

## **Sec. 113: Empowering Foster Children Age 14 and Older in the Development of Their Own Case Plan and Transition Planning for a Successful Adulthood**

Summary: Section 113 requires children age 14 and older to be consulted in the development of their case plan and directs states to allow youth to invite two other members, identified by the youth, to be a part of their the case planning team (other than a foster parent or his/her caseworker). A state has the ability to reject an individual selected by the youth if the state has good reason to believe they would not act in the best interest of the child.

Sec. 113 also requires states to provide a written “List of Rights” document to youth 14 or older outlining their rights in care as they pertain to education, health care, visitations, court hearings/participation, and the right to stay safe. Youth 14 and older must also receive a free annual credit report and help resolving any inaccuracies. A state must also document a signed acknowledgement from the child that they received their list of rights and that they have been “explained in an age-appropriate way”. Two years after enactment HHS is required to report to Congress an analysis of how states are administering the requirements under this section, including a description of best practices being used by states.

Rationale: Prior to this Act, current law required youth ages 16 and over to be consulted in the development of their case plan. The age was lowered to 14 and older because there was a recognition that young people should be included in these important processes and that youth as young as age 14 can have a very informed perspective that can lead to better permanency outcomes and compliance with the case plan. Involving youth in their case planning and providing them critical information on their rights also strengthens their self-sufficiency and prepares them for a successful transition out of foster care and into adulthood.

Effective Date: This new provision goes into effect one year after enactment (by September 29, 2015), but delays are permitted if state legislation is required. Within two years HHS must report to Congress on how states are administering the requirement and include examples of best practices.

### Questions and Answers:

- *What must be included in the case plan?*  
Federal law (Sec. 675 of Title IV-E) defines the case plan, which youth 14 and older must be consulted in developing, as a written document, which includes: a description of where the child will be placed, what services the child and his/her parents and foster parents will receive, the health and education records of the child, steps the agency is taking in finding the child an adoptive family, a transition plan for youth over 16 from foster care to independent living, a plan for education stability and explanations as to why a child cannot be reunified with his/her family if kinship care is determined to be permanent placement. State or local agencies also may require additional items be included in a case plan. ACF already encourages (see ACYF-CB-PI-10-11) caseworkers to include information in the plan relating to sexual health services, and resources to ensure youth are informed and prepared to make healthy decisions about their lives.

- *What must be included in the “List of Rights” provided to youth?*  
States must provide a written “List of Rights” document to youth ages 14 or older outlining their rights in care as they pertain to education, health care, visitations, court hearings/participation, the right to stay safe, and a free annual credit report and help resolving any inaccuracies. Youth must sign and acknowledge that they were provided with a copy of this document and that the rights in the list were explained to the youth in an age-appropriate way. It would be helpful for HHS to provide a model for the List of Rights. It is important that the text in the List of Rights be comprehensible, age-appropriate and accessible by youth in care. Providing youth information on the reproductive services they can obtain without parental consent and their rights to confidentiality in medical records is also important. California has a number of rights with respect to health and education, including having “access to age-appropriate, medically accurate information about reproductive health care, the prevention of unplanned pregnancy, and the prevention and treatment of sexually transmitted infections at 12 years of age or older.”<sup>13</sup> It is also important to encourage states to include information on their eligibility for Medicaid to age 26 if they age out of foster care at age 18. States should also be encouraged to develop Memorandums of Understandings between the child welfare agencies and the agencies performing the required credit reports.<sup>14</sup>

- *How can states ensure that youth are engaging in the development of their case plan and transition planning?*

In order for this provision to have a meaningful impact, caseworkers must receive training on how to authentically engage a young person in their case planning. Training in motivational interview techniques and reflective listening empower caseworkers and teens to ask questions, voice opinions and constructively participate in case planning discussions. One promising strategy currently in place in Iowa is to survey youth on their experience after a case planning session to ensure youth are truly engaged in the case planning process.

Judges, FCRBs, and CASAs should inquire about youth’s involvement in developing their case plan to ensure they have been fully engaged and had the opportunity to include two individuals of their choosing in the process. CASA workers, GALs, and attorneys are likely persons that a child might call upon for help, so training on the processes and how to participate is important for these group of individuals as well as judges.

- *How will youth be notified of their right to consult in the development of their case plan, including their right to invite two individuals of their choosing to be involved?*

States are required to get signed acknowledgement from youth that they have been notified of and received these rights in the “list of rights” document. Foster youth currently in mental health group homes should have a representative sign the acknowledgement on their behalf since there may be “informed consent” issues depending on the extend of any incapacity to do so on their own.

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<sup>13</sup> SB 528 [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB528](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB528)

<sup>14</sup> The Healthy Foster Care America [website](#) has good resources, including a brochure on managing your own health care needs

- *Does the law provide guidance on how a state can reject an individual selected by a child to be member of their case planning team if the state has good cause to believe that the individual would not act in the child's best interest?*

The law does not define “good cause” but states are encouraged to document the reasons for rejecting an individual chosen by the child.

### **Sec. 114: Ensuring Foster Children Have a Birth Certificate, Social Security Card, Health Insurance Information, Medical Records, and a Driver's License or Equivalent State-Issued Identification Card**

Summary: Section 114 requires that youth exiting foster care because they have turned 18 (or exited foster care before the age of 21 for youth in states that extend foster care beyond 18) and have spent at least six months in care must receive the following documents: a birth certificate, Social Security card, health insurance information, medical records, and a driver's license or state identification card.

Rationale: Youth exiting foster care are often not provided these important documents. Youth aging out of foster care without a permanent family are at increased risk of negative life outcomes, such as unemployment, barriers to attending higher education, and homelessness, and these documents are essential to ensuring youth aging out of foster care have the documentations they need to secure housing, apply to school or work, get appropriate health and mental health care or access other forms of assistance.

Effective Date: One year after the date of enactment (by September 29, 2015), but delays are permitted if state legislation is required.

#### Questions and Answers:

- *Does the required exit information include notification and documentation of a foster youth's eligibility for Medicaid coverage to age 26?*

The new law does not require that states include this important notification or documentation but it would be very helpful to youth for states to provide it. For example, states should be encouraged to require that a child exiting care be provided a letter prepared by the county welfare department that verifies the youth's name and date of birth, the dates of when the child was in foster care, and whether the child was in foster care on his 18th birthday (or such higher age if children continue eligibility beyond 18) and eligible for Medicaid. The Fostering Connections to Success and Increasing Adoptions Act of 2008 already requires states to include in their Health Oversight and Coordination Plans an outline of “steps to ensure that the components of any transition plan for children aging out of foster care includes information about the options for health insurance,” among other health information, which should include details about eligibility for Medicaid to age 26 and more.<sup>15</sup>

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<sup>15</sup> There is also information about Medicaid coverage up to 26 and a guide on aging out at the Health Foster Care America site: <http://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Pages/default.aspx>

- *Who is responsible for ensuring youth aging out of foster care have the proper documents in their possession and paying for any costs associated with obtaining the documents?*  
Many states are already making sure that youth who age out of foster care are provided with key documents to help them transition to adulthood. It is vital that caseworkers understand their responsibility to ensure youth are receiving these documents and that caseworkers are responsible for all fees associated with obtaining such documents (and that these fees are paid before the youth ages out of care). Caseworkers should reach out to CASA volunteers, guardian ad litem or attorneys who interact with the youth so they know the documents youth should receive. The courts play an important role in ensuring that agencies comply with this requirement and also will need training. States may also need to clarify liability issues relating to a youth's ability to obtain a driver's license. HHS should consider releasing a joint letter with the Department of Transportation on issuing driver's licenses, the importance of driver's education and how agencies can ensure this provision is successfully implemented.
- *What additional help is needed to assist undocumented youth who are aging out of care?*  
Undocumented youth aging out of care often lack any identifying documentation, limiting educational, employment and other prospects. If the youth is not a US citizen or does not have green card, caseworkers should ensure that they are on the path to obtaining permanent status such as Special Immigrant Juvenile Status (SIJS), Deferred Action for Childhood Arrivals (DACA) or asylum. It is important they are connected with legal counsel to explore their options before aging out, as youth may only qualify for specific types of relief while they are under the age of 18. Before Immigration Services can consider whether to grant the status, a state court judge must make a determination that the child is dependent and make certain findings on the record. To make the determination, there has to be some investigation of the child's circumstances and options. HHS should provide guidance on how to conduct such an investigation.

Child welfare workers should be trained on potential immigration relief options for undocumented young people in foster care. Youth should be screened for SIJS and other immigration relief options before or as part of their transition planning to ensure timely application for these relief options in advance of aging out of care.

- *How does the law define what is included in the medical records?*  
The law does not define what should be included in the medical records nor what time frame it should span (i.e. just the medical records while the child was in care or the youth's full medical records including his/her time before care.). HHS is encouraged to provide more information on what should be included in the medical records.
- *What other documents helpful to youth, not required by Section 114, are some states already providing to youth when they leave care?*  
Some states, like California<sup>16</sup>, are providing youth who age out of foster care with additional documentation. Examples are described below and we encourage other states to include similar documentation, in addition to that required by the new law:

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<sup>16</sup> CA Welf. & Inst. § 391

- a letter prepared by the county welfare department that verifies the youths name and date of birth, the dates of when the child was in foster care, and a statement that the youth was a foster youth in compliance with state and federal financial aid documentation requirements;
- the death certificate of the youth's parent(s) (if applicable);
- proof of the youth's citizenship or legal residence (if applicable);
- an advance health care directive form;
- a Judicial Council form that the youth would use to file a petition to resume dependency jurisdiction;
- a written 90-day transition plan;
- a list of physicians and other health care providers, with their contact information, date of next appointment; list of medications, with doses and why the youth is taking them, pharmacy contact information; and health history (including medication allergies, major illnesses, injuries, surgery, etc.)
- ensure youth who are parents have medical records, birth certificates for the child
- written information of the whereabouts of any siblings in foster care (unless not in the best interest of the sibling);
- written information regarding the youth' Indian heritage or tribal connection (if applicable);
- written information about the youth's family history and placement history (including any photographs of the youth and their family in possession of the welfare department);
- directions on how to access the documents that they are entitled to inspect and the date on which the jurisdiction of the court would be terminated.

**Sec. 115: Information on Children in Foster Care in Annual Reports Using AFCARS Data; Consultation**

Summary: Section 115 requires the Secretary of HHS to report state level data on children in foster care who have been placed in a child care institution or other setting that is not a foster family home. These data must include the number of children in placements and their ages, the number and ages of children with a permanency goal of APPLA, the duration of the placements, the types of child care institutions used and the number of children residing in each such institution, any clinically diagnosed special needs of such children, services and treatment provided in these settings, and the number of children in foster care who are pregnant or parenting. HHS must also consult with states, child welfare organizations, and members of Congress on other issues to be analyzed and reported on using data from AFCARS and the National Youth in Transition Database.

Rationale: There is increased interest in improving data collection for children involved in child welfare and gaining more specific data about different placement settings. The goal is to gain better knowledge about how to best ensure children's needs are being met and to ensure strong, permanent families for children long-term.

Effective Date: This provision is effective for fiscal year 2016 and each fiscal year thereafter.

## Questions and Answers:

- *How will HHS consult with states and child welfare organizations?*  
States must be held to the prompt reporting of all data required in Section 115. The Secretary should provide an annual informational bulletin to the public describing the activities scheduled or anticipated for consultation with states and organizations providing child welfare and/or adoption and foster care services and include issues to be analyzed and reported.
- *What new data on children in child care institutions and other settings that are not foster family homes will states be required to submit to HHS so HHS can report the data described above? What definitions will be provided so reporting can be done consistently across states?*

The law requires that the data at least include:

*“(A) children in foster care who have been placed in a child care institution or other setting that is not a foster family home, including--*

*(i) the number of children in the placements and their ages, including separately, the number and ages of children who have a permanency plan of another planned permanent living arrangement;*

*(ii) the duration of the placement in the settings (including for children who have a permanency plan of another planned permanent living arrangement);*

*(iii) the types of child care institutions used (including group homes, residential treatment, shelters, or other congregate care settings);*

*(iv) with respect to each child care institution or other setting that is not a foster family home, the number of children in foster care residing in each such institution or non-foster family home;*

*(v) any clinically diagnosed special need of such children; and*

*(vi) the extent of any specialized education, treatment, counseling, or other services provided in the settings; and*

*(B) children in foster care who are pregnant or parenting”*

It will be important to gather input from researchers, experts, and child welfare agencies on how to best gather and report information on whether teens are pregnant or parenting. Will this be provided via case worker records/interviews, or through data matching with other state systems such as Medicaid? (See models from UT and CA.<sup>17</sup>)

## **Sec. 121: Establishment of a National Advisory Committee on the Sex Trafficking of Children and Youth in the United States**

Summary: Section 121 establishes a National Advisory Committee on the Sex Trafficking of Children and Youth in the United States, which will develop guidelines for states and federal government.

Rationale: There is limited accurate data and information on children and youth who are victims of sex trafficking. This serious offense against children and youth covers a range of populations outside of child welfare including runaway and homeless youth, LGBTQ populations, and

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<sup>17</sup> [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB528](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB528)

victims transported into the United States. The National Advisory Committee will address all child and youth victims.

Effective Date: Within two years of the date of enactment, HHS must establish the Committee; Committee must develop two tiers of recommendations for best practices in combating sex trafficking within two years of its inception; Committee will produce an interim report within three years of its inception and final report within four years on best practices; Committee will terminate five years after the date it was established.

Questions and Answers:

- *Who will be part of the National Advisory Committee?*  
The Committee will be composed of no more than 21 members and must include at least one former sex trafficking victim, and a governor from the Democratic and Republican parties, respectively. The Secretary of HHS, in consultation with the Attorney General and National Governors Association, will appoint the members of the Committee.
- *Who else should be included in the National Advisory Committee?*  
The Committee should include a balance in membership of: 1) representatives from the legal and law enforcement fields with expertise on trafficking and populations at-risk-of being trafficked and 2) representatives from the social services and therapeutic communities, including child welfare, behavioral health, pediatrics, and housing professionals with experience working with this population.

**TITLE II: IMPROVING ADOPTION INCENTIVES AND EXTENDING FAMILY CONNECTION GRANTS**

**Secs. 201 – 205: The Adoption and Legal Guardianship Incentive Payments Program**

Summary: Sections 201 – 205 reauthorize for three years (FY2013-2015) the Adoption Incentive Program, renamed “Adoption and Legal Guardianship Incentive Payments,” and make structural changes to how incentive payments are calculated. Section 202 improves the award structure by determining incentives based on improvements in rates rather than absolute numbers, and allows for a transition period before the new incentive structure is fully implemented. One of the other most significant changes is that states will now be eligible to receive incentive payments based on moving children out of foster care to adoption and/or guardianship. States will also have the ability to earn additional incentives for timely adoptions (where the adoption is finalized in less than 24 months) if extra funds are available. The law clarifies that states must use the adoption and guardianship incentive payments to supplement – not supplant – other funds (federal or non-federal) already being used for services under Titles IV-E or IV-B of the Social Security Act. The period for which incentives received by a state are available for expenditure was increased from 24-months to 36-months.

Rationale: The law amends the current adoption incentive program to include incentive payments for exits from foster care to legal guardianship as well as adoption because of the recognition of the important role guardianship, as well as adoption, plays in connecting children to permanent families. The incentive payments structure also is improved. The current adoption incentive payment was determined by comparing the total number of children adopted in a given year to an



established baseline number from fiscal year 2007. This was problematic because using an absolute number from a previous year as a baseline did not take into account the fluctuating number of children in foster care annually. The new law amends the incentive structure so incentive payments are based on improvements in the rates of adoptions and guardianships, rewarding states on the increased proportion of children moving to permanent families.

Effective Date: Sections 201 and 205 are effective as if P.L. 113-183 was enacted on October 1, 2013; Sections 202 and 203 are effective October 1, 2014; Section 204 is effective upon enactment (September 29, 2014).

#### Questions and Answers:

- *How can states earn incentives through the extended Adoptions and Legal Guardianship Incentive Payment program? What are the incentive dollar amounts?*  
States are eligible to receive varying incentive payments based on improvements they make in moving more children out of foster care and into adoption or legal guardian placements through any of the four categories:
  - Foster Child Adoption Rate (\$5,000 per child above the baseline rate): Increase in the rate of children adopted from foster care.
  - Pre-adolescent Child Adoption and Guardianship Rate (\$7,500): Increase in the rate of preadolescent (ages 9 to 13) adoptions or guardianships.
  - Older Child Adoption and Guardianship Rate (\$10,000): Increase in the rate of older (ages 14 and older) foster child adoptions or guardianships.
  - Foster Child Guardianship Rate (\$4,000): Increase in the rate of children exiting foster care to guardianship.
  
- *Do states have to make improvements in all four categories to be eligible to receive incentive payments?*  
No. States can receive incentive payments in any one or multiple categories, regardless of whether they make improvements in all four categories.
  
- *How are the incentive payments determined?*  
States receive incentives for every child who is adopted or placed with a guardian that is attributed to the state's higher rate of adoption or guardianship compared to a "base rate."
  
- *How is the "base rate" determined?*  
The "base rate" is used to measure if a state is improving the rate of children exiting foster care to adoption or guardianship based on a state's past performances. There are two base rate options that states can use to measure their improvement in adoption and guardianship: 1) the rate of adoptions/guardianships during the immediate preceding year (e.g. for FY2014, the base rate would be FY2013), or 2) a three-year average of the rate of adoptions/guardianships during three immediate preceding years (e.g. for FY2014, the base rate would be an average of FYs 2013, 2012 and 2011). States are free to choose the base rate more advantageous to them.
  
- *How can states receive incentives for timely adoptions?*  
If extra funds are available from the incentive payment appropriations, the adoption incentive payment will be increased for each state where the average number of months

from the removal of a child from a home to a finalized adoption is less than 24 months. The award amount is based on the pool of extra funds available from the incentive program divided by the number of states with timely adoptions.

- *How can states spend their incentive payments and for how long?*  
States now have 36 months rather than 24 months to spend the incentive award money. It may be spent on any services (including post-permanency services) provided under Titles IV-B or IV-E. However, the new law clarifies that states must use these incentive payment to supplement – not supplant – other funds already being used for these services.

### **Sec. 206: Reporting on Calculations and Use of Savings Resulting from the Phase-out of Eligibility Requirements for Adoption Assistance; Requirement to Spend 30 Percent of Savings on Certain Services**

Summary: The Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) began to de-link a child’s eligibility for federal Title IV-E Adoption Assistance from the outdated AFDC program. By 2018 all children with special needs adopted from foster care (who meet other Title IV-E criteria) will be eligible for federal Adoption Assistance. As a result, states stand to accrue a significant savings over time as federal dollars for adoption assistance replace state dollars. The law previously in effect required that such savings be reinvested into child welfare services. Section 206 in the new Act requires states to annually calculate and report any savings (including the methodology used to determine savings) resulting from the “de-link” phase-out of federal income eligibility requirements for adoption assistance. Additionally it requires states to spend 30 percent of their savings on certain services: post-adoption and post-guardianship services and services to prevent foster care (at least 20% of these must go towards post-adoption/post-guardianship). HHS must make these state reports public on its website.

Rationale: Over several years parents and advocates have been building a case for the need for increased investments into post-permanency services to ensure children’s needs are met. By fiscal year 2018, when the Adoption Assistance eligibility is fully implemented, CBO projected that states would be saving \$500 million (\$1.4 billion over the ten year period). Congressional intent and the law as outlined require these savings to be reinvested into child welfare services. In May 2014, a U.S. Government Accountability Office found that “Although states are required to spend any resulting savings on child welfare services, only 21 states reported calculating these savings for fiscal year 2012, and 20 states reported difficulties performing the calculations.” As a result of these findings, GAO recommended that HHS provide guidance to states on how to calculate savings resulting from the change (or de-link) in federal Title IV-E Adoption Assistance eligibility criteria.

Effective Date: Effective October 1, 2014.

#### Questions: and Answers

- *What types of services should states be providing under this section?*  
HHS should clarify the term “post-adoption and post-guardianship services” and guidance should be offered to states about what types of services could be provided. A possible definition could read: *the term “post-adoption and post-guardianship services” means services needed to stabilize and support the child and family once children and youth have been adopted or go to live with guardians. Supports may include financial*

*support; case management; connections with community services; individual, group and family counseling and other mental health services; ensuring a youth has access to a medical home; educational advocacy; respite care; and training of caretakers, seminars, or conferences for resource families around critical topics (such as, but not limited to, identity formation, loss and grief, trust and attachment, birth family connections, effects of trauma, etc.).* Additionally, it would be helpful if HHS would identify and highlight what is known about best practices in post-permanency service delivery and share this information with the field.

- *Can adoption assistance or guardianship assistance payments be counted as reinvestment services provided under this provision?*  
No. Reinvestments into services under this section should not include assistance payments paid on behalf of the child. The law outlines that that any state spending required under this reinvestment of savings section should be used to supplement, and not supplant, any Federal or non-Federal funds used to provide any service.
- *Can states count funding under TANF or Title XX-SSBG toward meeting this reinvestment?*  
No. Federal funding as well as state funding used to meet a state match or a Maintenance of Effort (MOE) required in order to draw down federal funds cannot count toward meeting this reinvestment.
- *Will HHS provide guidance to states of the methodology that should be used to determine savings as a result of the federal adoption assistance “de-link”?*  
The law says that a state shall calculate savings “using a methodology specified by the Secretary or an alternate methodology proposed by the state and approved by the Secretary.”
- *Who within the state determines state’s savings as a result of the federal adoption assistance “de-link”?*  
HHS will need to specify how savings are to be determined and computed.

## **Sec. 207: Preserving Eligibility for Kinship Guardianship Assistance Payments with a Successor Guardian**

Summary: Under previous federal law, a child who is eligible and receiving Title IV-E Guardianship Assistance would lose eligibility for this assistance in the event that her current kinship guardian passed away or was otherwise unable to care for her. Section 207 of the new Act would ensure, as is the case with children receiving Title IV-E Adoption Assistance who lose as adoptive parent, that children who lose their guardian can continue to receive Kinship Guardianship Assistance payments if they are cared for by another legal guardian who is named in the kinship guardianship assistance agreement (including an amendment to the agreement made at a later date).

Rationale: To prevent children receiving kinship guardianship assistance from needing to re-enter foster care when their guardians dies or becomes otherwise unable to care for them, Section 207 allows for the designation of a successor guardian to care for the child. Permanency is

maintained when the child moves from one relative guardian to another without the need to re-enter foster care. Maintaining the child with a permanent caregiver also reduces her risk of becoming a victim of child sex trafficking.

Effective Date: Effective upon enactment (September 29, 2014).

Questions and Answers:

- *What changes does this provision make to existing law in regard to the Title IV-E Guardianship Assistance Program?*  
The Title IV-E Guardianship Assistance Program, established in the Fostering Connections to Success and Increasing Adoptions Act of 2008, provides financial assistance for Title IV-E eligible children who exit foster care into guardianship with a relative guardian who has cared for them in foster care. This new provision ensures these children will continue receiving Title IV-E guardianship assistance should the relative guardian die or become incapacitated, without needing to reenter foster care, by providing for a successor guardian to be named in the kinship guardianship assistance agreement (including an amendment to the agreement made at a later date).
- *What is a successor guardian?*  
In the event a child's kinship guardian dies or is no longer able to play this role, a successor guardian can follow up with the same duties and powers of the previous guardian to prevent the child from reentering foster care. The successor guardian does not have to have cared for the child in foster care for six months before being eligible for payments. He or she must be noted in the guardianship assistance agreement before the child exits foster care, or in any amendment to the agreement.
- *What are states required to do now since this provision went into effect on September 29, 2014?*  
On November 21, 2014, the Administration for Children and Families released Program Instruction (PI) ACYF-CB-PI-14-06 that instructed states that have elected to opt into the Title IV-E Guardianship Assistance Program to submit a state plan amendment that incorporates the successor guardian provision. States are required to submit to the Children's Bureau a "Certification of Required Legislation" (see Attachment C from Program Instruction ACYF-CB-PI-14-06) no later than 30 days from the issuance of the PI indicating whether the state/tribe needs a delayed effective date because state/tribal legislation is required to comply with the successor guardian program, and an agency plan amendment (see Attachment B from Program Instruction ACYF-CB-PI-14-06) no later than 60 days from the issuance of the PI with a revised section 6.A.2 to implement the successor guardian.
- *Are there requirements the agency must place on the successor guardian?*  
The main requirement is that the successor guardian must be named in the guardianship assistance agreement or a later amendment to the agreement. Other requirements may also be placed on the new guardian when he or she is designated by the court.

- *Does the child maintain eligibility for Medicaid with the successor guardian?*  
A child who exits foster care to guardianship and is receiving Title IV-E GAP is eligible for Medicaid and should continue to be when with a successor guardian.
- *Can a child receive Title IV-E adoption assistance in place of guardianship assistance if the successor guardian decides to adopt the child?*  
Yes. A child eligible and receiving Title IV-E GAP may receive Title IV-E adoption assistance in the case where a successor guardian becomes the adoptive parent.

## **Sec. 208: Collecting Data on Adoption and Legal Guardianship Disruption and Dissolution**

Summary: Section 208 requires the Secretary of HHS to provide regulations to states around collecting data on children who enter into foster care from a dissolved or disrupted adoption or guardianship placement. The regulations require each state to collect and report (presumably under AFCARS) the number of children who enter foster care under supervision of the state after finalization of an adoption or legal guardianship. This data collection should include details concerning:

- the length of the prior adoption or guardianship,
- the age of the child at the time of the prior adoption or guardianship,
- the age at which the child subsequently entered or re-entered foster care under supervision of the state,
- the type of agency involved in making the prior adoptive or guardianship placement,
- and any other factors determined necessary to better understand factors associated with the child's post-adoption or post-guardianship entry to foster care.

Rationale: The goal is to gain better knowledge about how to best ensure strong, permanent families for children long-term. There are increased interests to learn more about children and what happens to the children whose adoptions or guardianships disrupt or dissolve.

Effective Date: Effective upon enactment (September 29, 2014).

## **Sec. 209: Encouraging the placement of children in foster care with siblings**

Summary: Section 209 adds clarifying language that all parents of siblings to the child (where the parent has legal custody of the sibling) also be identified and notified within 30 days after the removal of a child from the custody of the parent(s). This provision specifically provides that “sibling” is defined consistent with how each state’s law defines “sibling”, and that “sibling” includes those who would have been considered siblings under state law if not for a termination or other disruption of parental rights, such as the parent’s death. Congress goes on to note that this new section should not be construed to mean that the rights of foster or adoptive parents are less important than the rights of parents of a “sibling” of that child.

Rationale: According to reports, some states were not identifying or notifying parents of siblings of the child who had been removed from his/her parent’s home. States were thereby missing individuals who could be valuable kinship placements or other connections for the child.

Effective Date: Effective upon enactment (September 29, 2014), but delays are permitted if state legislation is required.

Questions and Answers:

- *Should states amend identification and notice policies immediately? Should states now be identifying and notifying these parents of “siblings” to the child?*  
Yes. This provision goes into effect immediately, so policies should be amended and all parents of “siblings” to the child removed from his or her parent’s home should now be identified and notified. It is important to make a special provision for circumstances where domestic violence or other threat of harm to the child may alter this practice.
- *Should states amend their definition of “relative” for purposes of identification and notification to include these parents of siblings to the child?*  
Most states formally define “relative” for purposes of identification and notification in their laws, regulations or written policies. Although not explicitly required, it would be best practice to amend those definitions so they are consistent with this new federal provision.
- *What if a state doesn’t define sibling. What definition should a state use?*  
Many states do not formally define “sibling” for child welfare purposes in their laws or regulations. States may continue to follow their practices concerning who they consider siblings, but now states must also include individuals who would have been considered siblings by the state, except for the fact that their parents’ rights were terminated or their parents died. State written policies should reflect this federal requirement even if there is no formal definition.
- *Will a state need to formally amend their definition of “sibling” if it is in the state code of law and/or regulations?*  
Although not explicitly required, it would be best practice to amend those definitions so they are consistent with this new federal provision.
- *Can states use the Federal Parent Locator Service to identify these parents of siblings to the child?*  
Yes. The *Fostering Connections to Success and Increasing Adoptions Act of 2008* allows states to use the Federal Parent Locator Service for child welfare purposes, including as a tool to identify parents and parents of siblings so they may be provided notice of a child’s removal.
- *What is the role of the courts in ensuring this requirement is met?*  
Courts should inquire about the agencies’ efforts to locate parents of siblings and the placement of children with their siblings. Courts will need training on this requirement.

**Sec. 221: Extending the Family Connection Grant program**

Summary: Section 221 extends the annual mandatory funding for the Family Connection Grant program through fiscal year 2014 at the current authorization of \$15 million. The Family Connection Grant program was established in the *Fostering Connections to Success and*

Increasing Adoptions Act of 2008 (Fostering Connections Act) and is intended to connect children to relatives by funding a number of activities that help support families. This provision:

- Removes the provision in prior law that stipulates that no less than \$5 million of the Family Connection Grants funding must be used to support kinship navigator programs.
- Makes institutions of higher education an eligible entity for matching grants.
- Requires that kinship navigator grantees specifically include foster children who are parents in their partnership efforts with agencies. The Fostering Connections Act called for kinship navigator programs to promote partnerships between public and private agencies, including schools, community-based or faith-based organizations, and relevant government agencies, to increase their knowledge of the needs of kinship care families. The new law amends this to increase the knowledge of the needs of “other individuals who are willing and able to be foster parents for children in foster care under the responsibility of the state who are themselves parents;” in other words, foster children who are parents.

Rationale: All of the Family Connection grantees who were awarded three year grants in 2012 were about to be denied their last year of funding, due to lack of a Congressional appropriation. This provision ensured that these grantees receive their promised third year of funding and be allowed to complete their work, including any ongoing evaluation of their grants.

Effective Date: These provisions are effective as if P.L. 113-183 was enacted on October 1, 2013.

Questions and Answers:

- *Is this a new funding opportunity? Will there be a new Request for Proposals (RFP)?*  
No, this is not a new funding opportunity. This was a one year extension that will be used to fund the third year of grants that were awarded in 2012.
- *The new law says that it is no longer mandatory that \$5 million in funding be used specifically for kinship navigators. Does this mean that Family Connection Grants can no longer be used for kinship navigators?*  
No. Grants can still be used for kinship navigators. The new provision just means that there is no guarantee that \$5 million of the total funding for Family Connection Grants will be used for navigators.
- *Will there be an RFP for institutions of higher education that are now eligible for matching grants?*  
There will be no new RFP now, but if future funding is made available, institutions of higher education will be eligible.
- *How are institutions of higher education defined under federal law?*  
They are defined as in the Higher Education Act of 1965, 42 USC 1001(a). Basically, “institutions of higher education” mean colleges, universities and other accredited institutions of education past high school.

- *Should current kinship navigator grantees be working with public and private agencies to increase the knowledge about the needs of foster children who are parents?*  
Yes. According to the new federal law, kinship navigator grantees should be working with other agencies to increase knowledge of the needs of foster children who are parents, just as they do with the needs of kinship families.
- *How can the Family Connection Grants be continued?*  
Congress would have to pass new legislation that would state up the Family Connection Grants again in FY2016 that begins October 1, 2015



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Preventing Sex Trafficking, Supporting Normalcy and Empowering Youth

(Sections 101, 102, 103, 104, 105, 111, 113, 114, 115, 121)

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Improving Another Planned Permanent Living Arrangement

(Section 112)

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The Adoption and Legal Guardianship Incentive Program

(Sections 201-205)

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Reporting on Calculations and Use of Savings Resulting from the Phase-out of Eligibility

Requirements for Adoption Assistance; Requirements to Spend 30 Percent of Savings on Certain Services

(Section 206)

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Preserving Eligibility for Title IV-E Guardianship Assistance Payments with a Successor Guardian

(Section 207)

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Collecting Data on Adoption and Guardianship Disruptions and Dissolutions

(Section 208)

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Encouraging the Placement of Children in Foster Care with Siblings

(Section 209)

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Extending the Family Connection Grant Program

(Section 221)

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