

The **Fleecing** of Foster Children

How We Confiscate Their Assets and Undermine Their Financial Security



Children's Advocacy Institute



Acknowledgements

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The **Children's Advocacy Institute** (CAI) was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law. CAI's mission is to improve the health, safety, development, and well-being of children and youth. CAI advocates in legislatures to make the law, in courts to interpret the law, before administrative agencies to implement the law, and before the public to provide information on the status of children. CAI's goal is to ensure that children's interests are represented effectively whenever government makes policy and budget decisions.

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First Star was founded in 1999 as a national 501(c)(3) public charity dedicated to improving life for child victims of abuse and neglect. We fight for a future in which America's abused and neglected children will have won full recognition of their fundamental right to be heard and protected by the systems legally entrusted with their care. A future in which those systems are fully resourced, transparent and accountable to the public. First Star improves the lives of America's abused and neglected children by strengthening their rights, illuminating systemic failures and igniting necessary reforms. We pursue our mission through research, public engagement, policy advocacy, education and litigation.

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Preface

Post-Partisan Imperative: Morality in Communal Parenthood

We all want to cut the deficit, we all want government to save money and we all want better value and better results for the taxes we pay. And yes, we want to do everything we can to help all American children reach their full potential. So why then do we consistently spend money in ways that create massive social cost for all of us in the future, while blighting the lives of countless foster children? This is a perfect storm of short-sighted practice. We have illuminated here the large and endless social burden on all of us in dealing with the end product of specific misguided policies we follow in supporting foster children while they are our responsibility. As a result, we all end up spending a fortune later as their lives go horribly wrong.

In America, hundreds of thousands of children are removed from their homes by the state. These children have done nothing wrong. They are taken for their own protection and then become “children of the state.” State court judges legally assume “jurisdiction” over all these children, supplanting any other parental authority. These foster children thus depend entirely upon our public officials — and that means they depend upon each of *us*, the citizens who elect those officials. We *are* the state. We *are* their parents.

What happens to our foster children is no matter for national pride. Yet very little attention is paid. Kids don't march, write Op-Eds, vote, employ lobbyists or have money to make their voices heard. The nation's media choose mostly to cover celebrities, the shocking and the prurient. And our citizenry is preoccupied with other matters. Few detailed public discussions focus on our profound obligation to the 700,000 children served by our foster care system each year — children who are truly members of our extended families. Virtually no attention is paid to major flaws in policies that exacerbate the vast long-term social and humane costs of broken lives. Worse still, we hide our failing behind the confidentiality we impose in our juvenile dependency courts and around the children who are subject to those courts. We think we have placed barriers of silence around hundreds of thousands of children to protect them, but the rationale is an unworthy self-deception that allows us to continue our culpable negligence without being exposed to the inconvenient or embarrassing light of day. It is a secrecy that is often and inexplicably maintained after a child dies of abuse or neglect, hindering the quest for answers, the path to prevent repetition of the tragedy. And in one third of the states we erect no such barrier of secrecy, with no apparent adverse consequence.

The median age of initial self-sufficiency for the average American youth is 26. Imagine how difficult the transitional years following age 18 are for a youth leaving our foster care system! Things that most of us took for granted during our struggle to achieve self-sufficiency are not available to former foster youth. For example, American parents give a median of almost \$50,000 in assistance to each of their own children after age 18 to help them achieve self-sufficiency. And the help parents give their young adult children goes far beyond money: we advise them on major decisions, we guard their important documents in our homes, and we often continue to provide homes for them as they work to establish themselves in our economy.

Former foster youth receive none of this assistance from us, their default parents. Even if a former foster youth is fortunate enough to receive all available financial help, it totals less than one-fifth of the median amount per child that the average private parent provides, and it is skewed to the miniscule 2–3 % of foster kids who are able to earn a higher education degree. The rest are abandoned to fend for themselves. Thus former foster youth have wildly disproportionate levels of unemployment,

arrest and suicide. Over one-third of them experience homelessness. And the public costs of our failure to nurture in the first place are enormous and often last a lifetime.

Even during actual foster care, as this report carefully documents, in state after state we are sabotaging foster children's futures rather than providing guidance and help. Every state has criminal "child neglect" statutes that provide for incarceration of natural parents who fail to provide for their children, including providing or funding room and board. Indeed, until the 1970s, these obligations lasted until youth reached age 21. Each state likewise has a special affirmative obligation to provide for the care of foster children. But when a foster child is eligible for survivor benefits or disability funds, states confiscate the child's money to compensate themselves for the costs of care, instead of conserving the child's own funds to assist him/her during the difficult transitional years ahead. Is that what we should do as responsible parents: launch destitute children into the world on their own at age 18 with zero assets and no familial safety net to catch them when they fall? Does that reflect American values?



Beyond this stealing from our foster kids, things get even worse: If they try to save their own money to help them live post-18, accruing more than paltry amounts makes them ineligible for many programs. We encourage our own kids to save, but not these kids who arguably need savings the most! This Report calls upon the states *not to steal from their children*, but to provide for them as do all responsible, caring parents, and to encourage and ring-fence their savings.

We hope these accusations sound truly outlandish: bad for the children, bad for society — entirely wrong-headed by every standard! But brace yourselves for the revelations that follow. This is not a pretty set of truths. If this report causes you discomfort or if it makes you angry, then the Children's Advocacy Institute and First Star will have accomplished our goal.

The suggested policies in this report should draw bi-partisan support by ensuring our investment in the most vulnerable among us, and helping these youth in their struggle towards self-sufficiency, while simultaneously protecting the individual property rights of those children from unwarranted government takings.

Please support us in driving change. The kids can't do it on their own.

Handwritten signature of Peter Samuelson in black ink.

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EXECUTIVE SUMMARY*

I. WHAT IT MEANS TO GROW UP IN FOSTER CARE

Each year, 30,000 of the nation’s foster children “age out” of the foster care system, typically at 18, and are expected to become independent, self-sufficient and contributing members of society with little or no assistance from others. These are young adults who experienced significant psychological trauma during their formative years — including being neglected and/or abused, being separated from their homes, friends, families and most things familiar to them, and often enduring multiple placements in homes and institutions. Particularly those foster youth who live their teen years in group homes do not benefit from normal growing-up experiences that most of us took for granted, but which prepared us for adult life, such as seeing an adult pay bills each month, do the laundry, buy groceries, pay taxes, arrange for car insurance, or undertake the dozens of other mundane tasks required to run a household.

The foster care system itself creates huge barriers to the normalcy of a child’s growing-up experience, causing foster youth to miss out on many rites of passage experienced by their peers. Many foster youth lack control over even minor aspects of their lives, giving them little opportunity to make decisions about their lives. Unlike their peers who were not raised by the foster care system, most foster youth alumni do not have a strong familial support system to offer guidance and to which they can go for help if they experience the difficulties that typically face young adults. We essentially abandon our foster youth in the wilderness when they age out, with no resources, no map or compass, and no one to serve as guide.

II. TYPICAL OUTCOMES OF YOUTH AGING OUT OF FOSTER CARE

The consequences of our failure to adequately prepare foster youth for life on their own are woven throughout every aspect of their lives after foster care. They are evident in the bleak outcomes these youth experience, which include the following:

- **Educational attainment.** Although most foster youth express a desire to attend college, only about 3% earn four-year degrees.
- **Employment.** By age 24, less than half of foster care alumni are employed — and they earn less than half, on average, than their peers with no history of foster care.
- **Housing / homelessness.** By age 24, 37% of foster care alumni experienced homelessness or had “couch surfed.”
- **Health outcomes.** Many experience chronic health problems as a result of the abuse and neglect they endured. Up to 85% of foster youth experience mental health issues.
- **Credit issues.** Identity theft is a growing problem among foster youth — a problem that many do not discover until they exit care. When applying for a college loan, an apartment, a car loan, etc., they discover that their credit has been destroyed.

* Additional details, including endnotes and references, are included in the body of the report.

These issues of education, employment, housing, health, and credit are intertwined. Because most foster care alumni lack the social and familial safety net their peers with no history of foster care enjoy, a negative outcome in any one of these areas can spiral into a lifetime of poverty. Responsible parents give their children the tools, framework and knowledge they need to achieve financial security — and we must give that same foundation to our foster children. To do so, however, we must address several federal and state policies and practices that currently impede the ability of foster youth to achieve self-sufficiency and financial security.

III. SPECIFIC FEDERAL AND STATE POLICIES AND PRACTICES THAT CONFISCATE ASSETS FROM FOSTER YOUTH AND UNDERMINE THEIR FINANCIAL SECURITY

A. Diversion of Foster Children’s OASDI/SSI Benefits to Pay for Foster Care

Thousands of children in foster care are eligible for benefits from the Old Age, Survivors and Disability Insurance Benefits program (OASDI) and/or the Supplemental Security Income for Aged, Blind and Disabled (SSI) program. Generally a child entitled to such benefits is required to have a representative payee appointed by the Social Security Administration (SSA) to manage his or her funds, and to ensure that the funds are used to serve the best interests of the child beneficiary. A duly appointed representative payee serves in a fiduciary capacity to the beneficiary.

For most child beneficiaries, SSA appoints the child’s parent or guardian to serve as representative payee. However, for foster children, that is often not possible or appropriate. In such cases, SSA is required to identify and select the representative payee who will best serve the child’s interests, using preference lists contained in federal regulations. Although the lists provide guidelines that are meant to be flexible, foster care agencies are ranked last in order of preference. However, in many jurisdictions, the assignment of the responsible child welfare agency as representative payee for a foster child is practically automatic. Instead of conducting a meaningful, proactive inquiry to determine who would best serve a child’s interests, SSA often automatically appoints the foster care agency—neglecting a critical oversight step in the appointment process.

Regrettably, most of those agencies then routinely confiscate foster children’s SSI and OASDI money to pay for the cost of foster care. The vast majority of states openly admit to — and actually defend — taking and using foster children’s Social Security benefits to pay for child welfare services that these children are entitled to receive as a matter of right. Although *Washington State Dep’t of Social and Health Services v. Keffeler* held that a foster care agency serving as a foster child’s representative payee did not violate the Social Security Act’s anti-attachment provision when using the child’s benefits to reimburse itself for the cost of the child beneficiary’s foster care placement, ***the Keffeler decision did not excuse foster care agencies serving as representative payees from their affirmative fiduciary duties to ensure that such use best serves the unique interests of each child beneficiary*** — a determination that must be made on a individualized, case-by-case basis following a meaningful examination of each child’s circumstances, special needs, age, etc.

B. Failure to Notify the Foster Child’s Attorney/GAL that an Agency Has Applied To Be or Was Appointed as the Child’s Representative Payee

Further, children usually have no idea that states have even applied for benefits on their behalf, let alone that the states are confiscating the funds. Before it selects a representative payee, SSA is required to notify the beneficiary and give the beneficiary an opportunity to appeal SSA’s

decision. Because of their age, foster children are typically not notified directly about the impending appointment, nor are most of them even told they are eligible for (or receiving) benefits.

Instead, for most foster youth, SSA provides notice solely to the child's legal guardian or legal representative — and this is often the same state or county agency that is applying to be the child's representative payee in the first place. Current federal law does not require the foster care agency to notify the child, the child's attorney/guardian ad litem (GAL) or the juvenile court (which is ultimately responsible for the child's well being) that it has applied to be or has been appointed as a foster child's representative payee. Without notification, the child, the child's attorney/GAL and the juvenile court have no opportunity to notify SSA that there is a parent, relative, family friend, or other person in the child's life who might be a more appropriate choice. The result is a rather clandestine process in which the foster care agency applies to be representative payee, is appointed, and uses a child's benefits to benefit itself. Many youth leave foster care unaware that they had been receiving benefits— and for those receiving SSI, they leave care unprepared for the cumbersome redetermination process that awaits them.

C. Failure to Screen Foster Children for OASDI / SSI Eligibility and To Provide Assistance in Applying for Benefits

Unfortunately, foster children are not accessing all the government programs available to them while they are in care or after they age out of care. Among 25 states responding to a recent survey of state child welfare agencies, 7 indicated that SSI eligibility screening was not routine. This is particularly troubling because these are youth who, through no fault of their own and by institutional design, have only the government to act as their safety net.

D. Asset and Resource Caps: Limiting How Much Money Foster Youth Can Save for the Future

Most parents encourage their kids to save money that comes their way, perhaps from part-time employment, bequests, gifts, etc. Saving for the future is a basic value that all responsible parents imbue in their children. It is difficult to imagine a responsible parent telling his or her child, "OK, that's it. You've hit the limit — you are not allowed to save any more money for your future." And yet that is exactly the message that we send to our foster children in a variety of ways. For example, those who are eligible SSI benefits because of a qualifying disability are not allowed to accumulate resources that exceed \$2,000 — a figure that has been in place since 1989 and is not indexed for inflation. While the SSI cap applies to all SSI beneficiaries, not just foster kids, its impact is arguably more severe for children who lack a familial support system and will be expected to support themselves. While some mechanisms allow for the accumulation of assets beyond the \$2,000 cap, those vehicles carry their own restrictions and can be burdensome for foster youth to create and maintain.

Further, many foster youth will need to rely temporarily on programs such as Temporary Assistance for Needy Families, Medicaid, and Supplemental Nutrition Assistance Program (Food Stamps) for support after they age out of foster care. In many states, they will be disqualified for some or all of these programs if their assets exceed certain levels — a disincentive to foster youth to save for their future. Considering that these youth age out of foster care with little or no safety net or support, it is irresponsible and short-sighted not to allow them to save as much as possible for their futures.

E. Failure to Require Dedicated Accounts to Hold Benefits for Each Youth

Where a representative payee lives with the child, that payee has firsthand knowledge of the long- and short-term needs of the child, and knows how the child's funds are being used to meet those needs. However, when governments act as representative payee for foster children, benefits are frequently dumped into an account and billed for services by someone who often has not even met the child and has no direct knowledge of the best interest needs of the child. SSA's Office of the Inspector General (OIG) has found that oversight mechanisms are often not in place to ensure that a foster child's benefits are spent on that specific child and that unspent money is were saved for the child's use at a later date. With so many government agencies acting as representative payees for foster children nationwide, OIG's audits reveal a system that takes abused and neglected children and subjects them to further abuse — this time by a fiduciary. Without individualized, dedicated accounts for each child, it is nearly impossible for a foster care agency to track foster youth income and expenditures and conserve unused funds — *i.e.*, to comply with the most basic aspects of the fiduciary relationship.

F. Failure to Require States to Check into Foster Youths' Credit Records and Repair Credit Where Necessary

Identity theft is a common problem in the foster care system. Parents, grandparents, family members, foster parents, social workers, group home personnel and many others regularly have access to a foster youth's Social Security number and other personal information. Too often, this access is abused for everything from opening credit cards to fraudulently providing identification for criminal matters. Many foster youth do not learn that their identities have been stolen and their credit destroyed until they have exited care and apply for credit.

Identity theft can have devastating consequences. Former foster youth may face problems finding safe and adequate housing; they may be denied loans for cars and other larger necessities, and they may be denied financial aid and the opportunity to attend college, all as a result of identity theft that occurred while they were in foster care. Complicating the problem is the reality that repairing credit problems caused by identity theft can be a complex, expensive, and time-consuming process.

G. Failure to Pass Conserved Funds — When They Do Exist — to the Youth in a Timely Manner upon Aging Out

Until very recently, when a representative payee who had conserved funds for a foster youth stopped serving as payee, the payee was required to return the conserved funds and any interest earned to SSA, which would then reissue the funds to the youth. The unfortunate result was a delay between when the youth left the system and when the youth received his/her own funds. Given the lack of a familial safety net, and the limited resources most foster youth have when they age out of the system, the delay had a very real potential for disastrous consequences.

Although SSA's Program Operations Manual System now specifies that the SSA may permit a former payee to transfer conserved funds directly to a new payee or to a capable beneficiary, it is not clear how a payee should proceed with requesting a direct transfer of funds to a beneficiary. SSA should more clearly define the process for requesting and obtaining approval for this expedited transfer.

H. Slashing of State and County Social Services Budgets

Most of the problems discussed above are exacerbated by the fact that state and county social services budgets have been reduced over the last several years — and face more cuts as a result of the struggling economy and focus on deficit reduction. As they watch their budgets shrink and caseloads and needs grow, government officials are tempted to explore any and all available options to raising revenue — even if that means abusing their fiduciary role as representative payee to take Social Security benefits out of the pockets of abused and neglected children.

One notable federal policy regarding foster children unduly exacerbates the financial woes of states and counties. Eligibility for federal reimbursement of foster care benefits through Title IV-E funding is linked to the Aid to Families with Dependent Children (AFDC) income requirements as they existed in 1996 — with no adjustment to reflect inflation over the past fifteen years. If a child does not meet the 1996 eligibility criteria, federal Title IV-E funds are not available to reimburse the state. According to one source, 53% of children in foster care were eligible for federal support in 1998, but by 2005 the percentage had declined to 46% — and the number was projected to decline by approximately 5,000 children each year thereafter. As long as the federal eligibility remains linked to the 1996 AFDC income requirements, the financial burden on states and counties will continue to grow. Child welfare agencies are in desperate need for more funds, but they obviously must not take money from the very children they are trying to help.

IV. RECOMMENDATIONS FOR POLICY REFORMS AT THE FEDERAL LEVEL

When foster youth age out of care, they generally have nobody to answer basic questions about life's concerns. There is no opportunity to move back home when things get tough. They have nobody to ask for a loan. There is no family health insurance policy providing coverage. Their caseworker is no longer available. Their attorney (if they were lucky enough to have one) has closed their file. They are, quite literally, on their own.

Foster children are “our” children. It is our legal, ethical, and moral imperative to take good care of them and prepare them for life. As taxpayers and responsible citizens, we must ask ourselves, “How are my kids doing now that they have left the nest? How can I help them do better?”

Two excellent measures would provide this population with the safety net and tools for success they desperately need. If enacted, they will help give some of our most vulnerable youth a better chance for a successful start.

First, the **Foster Children Self-Support Act** will safeguard some of our foster children's Social Security benefits, creating a basic safety net for when they age out of foster care. Just as parents work hard to raise children who will become self sufficient, we should work hard to prepare foster youth to have the same capabilities. Key provisions would:

- Require that all foster children be screened for OASDI and SSI eligibility while in care, and require child welfare agencies to notify the child's attorney and/or GAL;
- Require foster care agencies to notify the child's attorney or GAL (and the child if he/she is 14 or older) of eligibility for and receipt of Social Security benefits;

- Develop and implement a “Plan for Achieving Self Support” specific to each child receiving Social Security benefits, with the goal of using Social Security benefits to meet the child’s current and future needs;
- Create an Individual Development Account for each child receiving benefits, so that these Social Security assets will be conserved to assist the youth in securing housing, education, or job training after they leave care;
- Restrict state agencies from using a child’s benefits as a general revenue source; and
- Exclude conserved funds, personal earnings, inherited assets, and civil judgments from the \$2,000 resource limit under the SSI program.

Second, the **Foster Youth Financial Security Act** seeks to redress identity theft or credit fraud issues and ensure that youth transitioning out of care have the most basic documents and tools for achieving independence. To strengthen the financial security of foster youth and to empower them to make responsible financial decisions as adults, key provisions of the Act would:

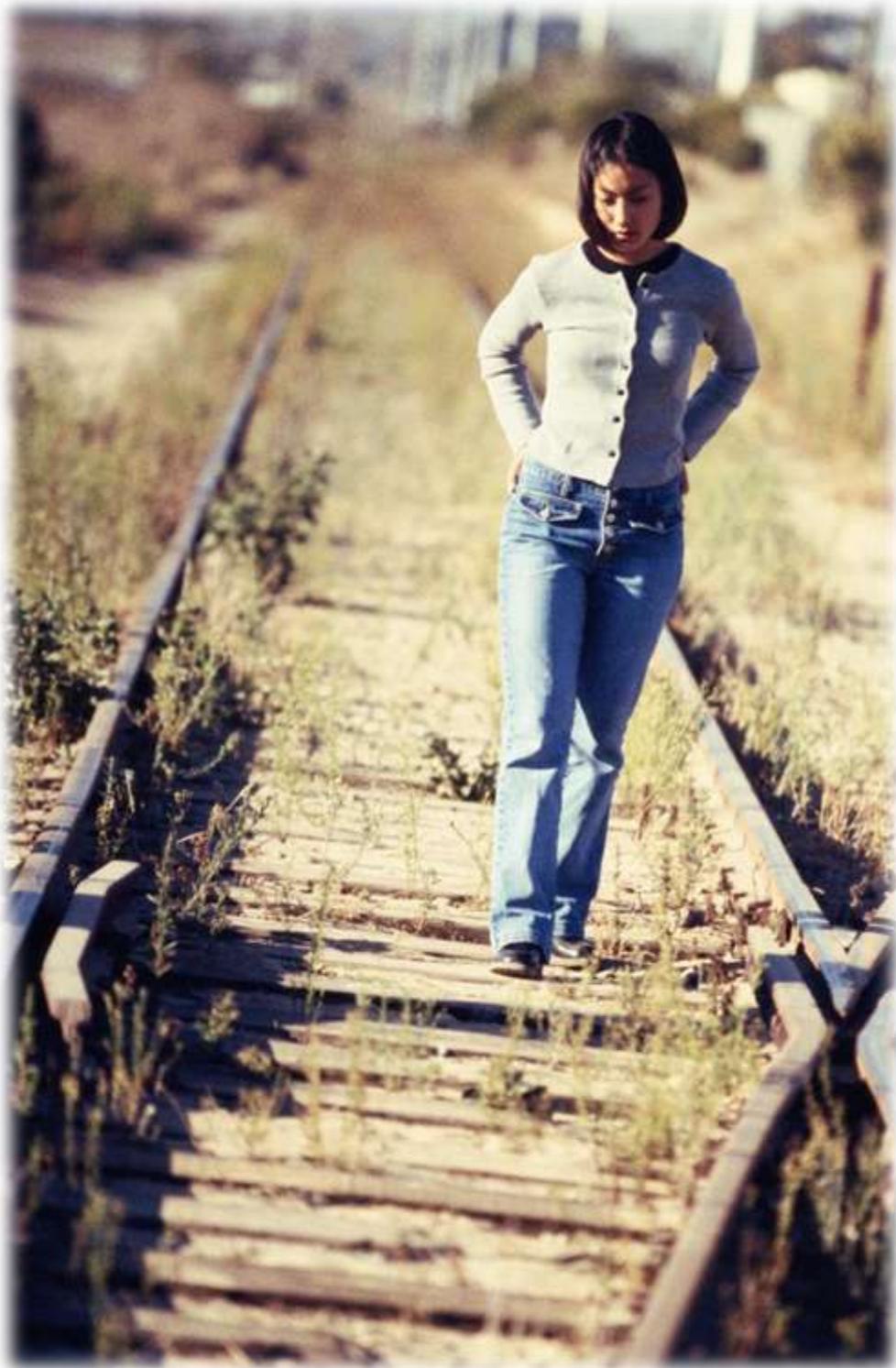
- Protect against identity theft and credit fraud by requiring that foster care agencies review the credit reports of all foster children, take actions to clear them if there is an inaccuracy, and end the use of a child’s Social Security number as an identifier.
- Ensure that youth leave foster care with the documents they need, and require agencies to help them apply for state benefits and financial aid, educate them about obtaining health and auto insurance, and provide them and any interested caretakers with financial literacy courses.
- Provide modest financial seed money to set up Individual Development Accounts (IDAs) for foster youth so they leave care with a small nest egg to cover the first costs of specific items such as housing, education, and job training.

The federal government is also called upon to delink Title IV-E funding from 1996 AFDC income eligibility requirements. It is widely acknowledged that these standards are antiquated, irrelevant, and harmful to the very groups that were meant to benefit from the program.

Finally, the federal government should ensure that youth staying in care beyond age 18 pursuant to the landmark 2008 Fostering Connections to Success and Increasing Adoptions Act are entitled to the continuation of juvenile court involvement and legal representation to ensure that their rights are being protected and their best interests served.

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I. WHAT IT MEANS TO GROW UP IN FOSTER CARE

Jimmy Carter once said that “there is probably no group of young people in America more at risk than those who have ‘aged out’ of foster care....The reality is that young people who leave foster care at age eighteen are no more ready to become independent than our own children. In fact most are probably less ready.”¹ Those who practice in the child welfare field know that as troubling as this statement is, it is entirely accurate. And while there is bi-partisan support for assisting youth who are aging out of foster care, as was evidenced by the recently-enacted Fostering Connections to Success and Increasing Adoptions Act of 2008, it is worth taking a moment to examine why the former President’s statement still rings true for most of the 30,000 youth who age out of the foster care system in this country each year.² The answers start with the child’s initial entrance into the world of foster care and continue throughout his or her life in care.

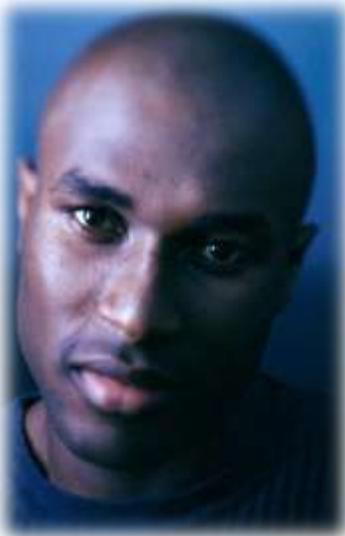
“The psychological trauma created by the removal [of a child from their parents’ home] combined with the neglect or abuse that preceded it, leaves [a] child forever changed and forever different from other children.”³ Once removed from their parents’ homes, children in foster care are typically shuttled from home to home or from institution to institution. The average foster child lives in two to five different homes over a period of just two and a half years.⁴ Some studies have found that most foster children are moved once or twice *per year* while in out-of-home care, typically leading to frequent school changes. Studies have also found that high school students who change schools even once are less than half as likely to graduate than their peers (even when other variables that affect high school completion are controlled).⁵ Additionally, “foster youth are disproportionately funneled into low-quality alternative schools” and few have an adult overseeing their academic progress, returning teacher phone calls, or attending parent-teacher nights.⁶ “Research on youth about to age out of foster care found that they are more likely to have been held back a grade, suspended from school, or expelled than most other youth. At age seventeen, they read, on average, at a seventh grade level.”⁷ As these studies make clear, even when removed from their initial “trauma,” foster children are relegated to a lifestyle that not only is very different than that of their peers, but which leaves them with fewer opportunities to attain future personal, educational, or financial success.

In addition to the frequent placement changes, many of the nation’s foster children live in institutional-type settings. An estimated 40% of foster children fourteen and older live in group homes or other institutionalized settings⁸ where their caretakers are often poorly paid shift workers.⁹ Such a setting leaves these young people — who have been dropped into a world full of unknowns — without the connections, familiarity and supports that other children take for granted.¹⁰ Furthermore, and particularly for children who live their teen years in group homes, these youth do not benefit from normal growing-up experiences. As one report notes, “[m]any youth in group care never see an adult pay bills, fill out income tax forms, arrange for car insurance, or undertake the dozens of other mundane tasks required to run a household.”¹¹

The foster care system itself, often focused on the safety of the child and, understandably, concerned with liability, can create huge barriers to the normalcy of a foster child’s growing-up experience. “Social workers and court officers are acutely aware that their primary legal responsibility is the safety and protection of the minor, as opposed to the minor’s empowerment.”¹² Additionally, many youth in foster care lack control over even minor aspects of their lives. Particularly, youth living in group homes rarely have access to kitchen or laundry facilities, and they need court permission for typical activities such as teenage social outings. This lack of control

“creates a dependency on others that disables them after they age out. They have had little opportunity to make decisions about their lives.”¹³

Foster youth miss out on many rites of passage experienced by their peers. “While their friends are getting their driver’s licenses, most youth in foster care aren’t since they generally have no one to teach them to drive or the money for insurance or driver’s education, let alone access to a car.”¹⁴ Other rites of passage are anything but typical for foster youth, as each one requires some additional layers of bureaucracy. Getting a first job, participating in sports, going camping with friends, and even going to the prom are all examples of activities that — while may be a normal part of growing up for most children and teenagers — are not readily available to most foster youth.



After being deprived of so many of life’s lessons while growing up in foster care, it is no wonder that foster youth enter the adult world at a disadvantage that is not easily quantifiable. Many youth in care “are still being sent out into the world with little more than a list of apartment rental agencies, a gift certificate for Wal-Mart, a bag full of manufacturer’s samples, perhaps a cooking pot, maybe a mattress.”¹⁵ Further, unlike their peers who were not raised by the foster care system, the majority of foster youth do not have a strong familial support system to offer guidance and to which they can go for help if they experience the difficulties that are typical for individuals in their late teens and early twenties.

We essentially abandon our foster youth in the wilderness when they age out, with no resources, no map or compass, and no one to serve as guide. The Fostering Connections to Success and Increasing Adoptions Act of 2008 began to address this issue by providing states with the option to extend foster care maintenance payments to age 21 — thus providing some extra time and preparation prior to aging out, which are greatly needed. Without further action, however, Fostering Connections may simply delay the negative outcomes these youth face, rather than prevent them.

II. TYPICAL OUTCOMES OF YOUTH AGING OUT OF FOSTER CARE

The consequences of our failure to adequately prepare foster youth for life on their own are woven throughout every aspect of their lives after foster care. They are evident in the outcomes foster care alumni experience in employment, housing, educational attainment, health, mental health, etc. The stark contrast between outcomes experienced by foster care alumni and those of their peers not raised by the foster care system demonstrates that while we have made strides in recent years to address the needs of foster youth as they age out of the foster care system, there is still much more to do.

Ensuring that former foster youth have the tools to attain a basic level of financial security will improve each and every aspect of their lives.

Educational attainment. Education is the foundation upon which a child’s future is built. A good education can lead to a lifetime of gainful employment and financial security. Alternatively,

lack of access to an appropriate education may mean years of struggle, unemployment, and even homelessness. The level of an individual's education is directly linked to his or her earnings potential. An individual's median income increases by 28% with a high school diploma and an additional 15% with an Associate's Degree. Individuals with a Bachelor's Degree have a median income that is 59% higher than those with no high school diploma and 44% higher than those with only a high school diploma.¹⁶

In addition to a higher earning potential, education provides more employment security. In 2009, the U.S. saw the worst economic downturn since the Great Depression. The national unemployment rate for individuals with no high school diploma was a staggering 14.6%; for individuals with only a high school diploma, the national unemployment rate stood at 9.7%.¹⁷ Compare this with the national unemployment rate for individuals with Bachelors' degrees — 5.2%¹⁸ — and the value of education to an individual's financial security becomes abundantly clear.

Given the importance of educational attainment to earnings potential, stable employment and financial security, it is disheartening that so few of our foster youth achieve their educational goals. Although most foster youth express a desire to attend college, studies reveal that only about 3% of foster care alumni have earned four-year degrees.¹⁹

Employment. When foster youth leave care today, their employment and earnings outlooks are grim. Recent studies around the country reveal that by age 24, 22–33% of foster youth are not connected to the labor market.²⁰ A recent study released by Chapin Hall focused on foster care alumni in Iowa, Illinois and Wisconsin and found that by age 24, less than half of foster care alumni were employed²¹ — and those who were employed were earning less than half, on average, than their peers with no history of foster care.²² According to the findings in the Chapin Hall study, 56% of the foster care alumni studied would be classified as poor, even when their partners' income was considered; this does not include the 9% of foster care alumni not in the workforce due to incarceration or disability.²³

Housing / homelessness. The lack of an adequate education, low earning potential and the lack of connection to the labor market are apparent in the poor outcomes experienced by alumni of foster care in other areas such as housing. Many studies have found that former foster youth experience homelessness at high rates. For example, one recent study found that by age 24, 37% of foster care alumni have experienced an episode of homelessness or have “couch surfed.”²⁴

Health outcomes. Many foster youth experience chronic health problems as a result of the abuse and neglect they endured before their entry into the foster care system.²⁵ Many of these problems are still present when the youth age out of the system, making access to health care an important necessity. In most states, foster care alumni qualify for Medicaid until they reach age 21. However, failure to strictly comply with Medicaid requirements can result in many youth losing their coverage prior to age 21. Further, recent studies have found that less than one-third of foster care alumni are employed full-time at age 24,²⁶ and very few part-time jobs offer health care. For a young person in need of health care, the lack of insurance can be devastating to their finances for years to come.



Up to 85% of foster youth experience mental health issues, and again these issues often follow youth after they age out. Not only can mental health issues be expensive to treat, they can also be costly in other areas of a youth's life. Mental health issues can be problematic in the areas of education, employment and housing, and they can put strain on important relationships.

Credit issues. Identity theft is a growing problem among foster youth²⁷ — a problem that many of them do not discover until after they exit care. When applying for a college loan, an apartment, a car loan, etc., they discover that their credit has been destroyed by state actors, family members, caregivers or others. Even for sophisticated consumers, resolving a credit-related issue can be a long and complex process — and the issue will continue to wreak havoc on a person's life until it is properly addressed.

These issues of education, employment, housing, health, and credit are intertwined. Because most foster care alumni lack the social and familial safety net their peers with no history of foster care enjoy, a negative outcome in any one of these areas can spiral into a lifetime of poverty. Moreover, the poor outcomes of foster youth are costly to states. One analysis estimated that the cost of each annual cohort of youth aging out of the foster care system is approximately \$5.7 billion; these costs come in the form of lost earnings (and thus lost revenues), criminal justice system expenditures, and unplanned pregnancy expenses such as government cash assistance and health programs.²⁸ On an individual level, each foster youth who drops out of high school costs the public sector \$209,100 over a lifetime due to lost wages and greater need for public support services.²⁹



Responsible parents give their children the tools, framework and knowledge they need to achieve financial security — and we must give that same foundation to our foster children as well. To do so, however, we must address several federal and state policies and practices that currently impede the ability of foster youth to achieve self-sufficiency and financial security.

III. SPECIFIC FEDERAL AND STATE POLICIES AND PRACTICES THAT CONFISCATE ASSETS FROM FOSTER YOUTH AND UNDERMINE THEIR FINANCIAL SECURITY

A. Diversion of Foster Children's OASDI/SSI Benefits to Pay for Foster Care

1. OASDI/SSI Benefits for Children

The Old Age, Survivors and Disability Insurance Benefits program (OASDI) is a federal insurance plan which provides financial benefits for elderly and disabled workers, their survivors and dependents.³⁰ A child is entitled to OASDI benefits if the child is unmarried, younger than 18, and had (1) a parent who is disabled or retired and entitled to Social Security benefits or (2) a parent who died after having worked long enough in a job where he or she paid Social Security

taxes.³¹ Foster children, though often not living with their parents, are still considered dependent on their parents and qualify for OASDI. The purpose of providing OASDI benefits to a child is to replace lost financial support due to a parent's disability or death.³² As is discussed in more detail below, the financial support provided by average private parents to their children — the very support that OASDI is intended to replace — does not end when their children reach age 18, and typically continues for several more years. OASDI benefits, however, typically terminate when a youth turns 18.³³

Supplemental Security Income for Aged, Blind and Disabled (SSI) is income provided by the federal government to individuals found to be unable to work due to their age, blindness or disability.³⁴ Children under the age of 18 are considered disabled and entitled to SSI if the child has a physical or mental impairment which severely limits their ability to function and will last for more than 12 months.³⁵ As it pertains to children, the basic purpose of SSI is to provide a minimum level of income to children who would not have sufficient income and resources to maintain a standard of living at the established federal minimum income level.³⁶ However, legislative history provides support for a broader purpose of child SSI benefits — to serve the special needs of disabled and impoverished children with a goal of promoting their successful transition to economic independence as adults.³⁷

Estimates of the number of foster children receiving OASDI and/or SSI benefits vary. The Congressional Research Service has estimated that 30,000 (or 6%) of the nation's foster children received Supplemental Security Income (SSI) or other Social Security benefits.³⁸ However, with regard to SSI specifically, the number of foster youth receiving benefits appears to be substantially lower than the number of foster youth eligible for such benefits.³⁹ For example, California estimates that 15–20% percent of youth aging out of its foster youth system are eligible for SSI benefits.⁴⁰

2. The Role, Obligations and Appointment of a Representative Payee

Generally a person under the age of 18 receiving OASDI or SSI benefits is required to have a representative payee appointed by the Social Security Administration (SSA) to manage his or her funds.⁴¹ Federal law specifies who may be a representative payee, and clearly states that a representative payee must use the funds to serve the best interests of the beneficiary.⁴²

A duly appointed representative payee serves in a fiduciary capacity to the beneficiary — and SSA claims to “ensure that the payee understands the fiduciary nature of the relationship, that benefits belong to the beneficiary and are not the property of the payee.”⁴³

For most child beneficiaries, SSA appoints the child's parent or guardian to serve as representative payee. However, for children in the foster care system, such an appointment is not often possible or appropriate. At least on paper, SSA is conscious of the precarious position that foster children are in:

[p]ayments made to children in foster care are among the most sensitive payments SSA makes. According to SSA policy, it is essential that the Agency do all it can to protect the rights of children who may not be able to rely on their parents to do so. SSA policy further states that it is extremely important that SSA follow all legal requirements including conducting a complete investigation of the representative payee applicant; using the representative payee preference list appropriately to

identify when other potential representative payees should be considered; and providing due process to the child's parent and/or legal guardian.⁴⁴

As this statement indicates, federal law sets forth a representative payee preference list. For beneficiaries under age 18, the preference is as follows:⁴⁵

- (1) A natural or adoptive parent who has custody of the beneficiary, or a guardian;
- (2) A natural or adoptive parent who does not have custody of the beneficiary, but is contributing toward the beneficiary's support and is demonstrating strong concern for the beneficiary's well being;
- (3) A natural or adoptive parent who does not have custody of the beneficiary and is not contributing toward his or her support but is demonstrating strong concern for the beneficiary's well being;
- (4) A relative or stepparent who has custody of the beneficiary;
- (5) A relative who does not have custody of the beneficiary but is contributing toward the beneficiary's support and is demonstrating concern for the beneficiary's well being;
- (6) A relative or close friend who does not have custody of the beneficiary but is demonstrating concern for the beneficiary's well being; and
- (7) An **authorized social agency** or custodial institution.

These lists are meant to help SSA select the representative payee who will best serve the beneficiary's interests.⁴⁶ Although the lists provide guidelines that are meant to be flexible, SSA ranks foster care agencies last — arguably indicating its determination that they be the “representative payee of last resort”⁴⁷ in most cases.⁴⁸ And even when a foster care agency applies to be a child's representative payee, SSA employees are required to “use the payee preference list as an aid to identify and develop potential payees **who would better serve the interests of the child.**”⁴⁹

Thus, when a foster care agency applies to be appointed as representative payee for a foster child, SSA is legally mandated to take affirmative action to identify and develop alternate potential payees who would better serve the interests of the child. Indications that SSA is not fulfilling this mandate abound, and include the following:

- Youth Law News has reported that “[a]lthough in theory SSA conducts an individualized investigation to select the representative payee,...in practice it generally relies on the agency's statement that no other payee is available or suitable to protect the child's interests. Indeed, in many jurisdictions, the assignment of the responsible child welfare agency as representative payee for a disabled foster child is practically automatic.”⁵⁰
- One leading expert recently wrote about the “kiddie loop” — a computerized shortcut used by the SSA to process applications in batches when a single applicant files to be the representative payee for multiple beneficiaries.⁵¹ The same expert noted that from

1994 to 1996, the Illinois foster care agency submitted 3,588 requests to be appointed representative payee for children in its custody, and that “not a single one of those applications was denied in favor of some other payee despite the agency’s least-preferred status and the duty of the Social Security Administration to try to locate any other more preferred payee.”⁵²

- In *Keffeler* (discussed below), the U.S. Supreme Court noted that of the 1,480 children in Washington’s foster care system who were receiving Social Security benefits, the foster care agency acted as representative payee for 1,411.⁵³ Thus, the entity that the Court held out as being “last in the line of eligibility for appointment as representative payee” and which SSA “appoints...only when no one else will do” was in fact serving in that capacity for over 95% of Washington’s foster children.⁵⁴
- The American Bar Association’s Commission on Youth at Risk and Commission on Homelessness and Poverty found that “child welfare agencies are often currently automatically assigned as the representative payee for children in foster care....SSA currently does not perform adequate investigations to determine whether a more suitable payee is available....Agencies that receive a poor review by SSA or fail to submit payee accounting reports to SSA continue to serve as payees.”⁵⁵
- An *amici curiae* brief submitted by 39 states to the U.S. Supreme Court acknowledges that “[s]tates are mindful of the possibility that children in foster care may qualify for social security benefits. To varying degrees, States investigate this possibility, and, where a child appears to qualify for [Social Security] benefits, States may complete the detailed application process on the child’s behalf and apply to be the child’s representative payee. ***The Commissioner regularly grants those applications and designates the appropriate state agency as the child’s representative payee.***”⁵⁶



Thus, instead of SSA conducting a meaningful, proactive inquiry with regard to the person or entity who would best serve the interests of foster child beneficiaries, it automatically appoints the foster care agency to serve in that capacity on a regular basis — neglecting a critical oversight step in the appointment process.

3. Foster Care Agencies, as Representative Payees, Breaching the Fiduciary Duty Owed to Foster Children Beneficiaries

If SSA did comply with the mandate to identify other possible payees, finding one who would serve the interests of the child better than a foster care agency does not seem to be a difficult chore — especially in states where ***foster care agencies routinely confiscate foster children’s SSI and OASDI money to pay for the cost of foster care.*** The State of Washington — which spawned the *Keffeler* opinion discussed below — is hardly alone in this ugly practice. In fact, no less than 39 other states have openly admitted to — and actually defend — the practice of taking and using foster children’s Social Security benefits to pay for child welfare services that these children are

entitled to receive as a matter of right.⁵⁷ And those 39 states have stated on the record that to their knowledge, “all states” engage in this practice.⁵⁸

It is difficult to understand how it is in a child’s best interests to use that child’s own money to reimburse the state for services that the child is under no obligation to pay for in the first place. As one commentator noted:

The notion that state confiscation of SSI beneficiary monies as reimbursement for public-assistance expenditures is in the “best interests” of beneficiary children fails under the most summary review. While the concept of beneficiary “best interests” may be nebulous, the notion that it encompasses state reimbursement for foster-care expenses is both unfathomable and unreasonable.⁵⁹

That a state or county confiscates a foster child’s own funds to pay for the state or county’s financial obligation is perverse enough to many people — but what is even more shocking is the often automatic nature of that confiscation. While a representative payee is legally obligated to determine the best use of a beneficiary’s funds on an individualized, case-by-case basis, it appears

that many states have pre-determined that for all the foster children for whom they serve as representative payee, such funds will first and foremost be used for state reimbursement. For example, a Washington regulation states that its state foster care agency “must use income not exempted to cover the child’s cost of care.”⁶⁰ This mandate provides no discretion to consider an individual child’s needs or best interest.⁶¹ A one-size-fits-all approach to the expenditure of these benefits for children with such unique and critical needs cannot possibly be justified.

Regrettably, states justify this practice of self-reimbursement by referencing *Washington State Dep’t of Social and Health Services v. Keffeler*,⁶² a 2003 U.S. Supreme Court opinion holding that a foster care agency serving as a foster child’s representative payee did not violate federal law protecting Social Security benefits from execution, levy, attachment, garnishment, or other legal process when using the child’s benefits to reimburse itself for the cost of the child beneficiary’s foster care placement. The case only held that such use of a foster child’s benefits does not violate the Social Security Act’s anti-attachment provision — ***the Keffeler decision did not excuse foster care agencies serving as***

representative payees from their affirmative fiduciary duties to ensure that such use best serves the unique interests of each child beneficiary, a determination that must be made on a

How does this impact real kids? Meet Katy.

Katy received a portion of her father’s Social Security benefits while she was in foster care. This amounted to a \$10,000 lump sum payment and \$300 per month. Tennessee took all but \$2,000 of Katy’s money to reimburse itself for costs of her care — despite the fact that it did not go after Katy’s mom or dad to pay for the cost of her foster care. In essence Katy wound up paying for her own care instead of the parents who had abused and neglected her, or the state that had subsequently assumed the role of parent. After leaving foster care at 18, Katy started to go to college. However, without a familial safety net or even basic support, she found herself with no place to live during school breaks, and in debt trying to pay for school and living expenses. *Katy ended up homeless and buried in debt because of Tennessee’s decision that it better served Katy’s interests to reimburse the state for the cost of her care than to give her a meaningful opportunity to achieve her future goals.*

individualized, case-by-case basis following a meaningful examination of each child's circumstances, special needs, age, etc.

When *Keffeler* was pending before the U.S. Supreme Court, some advocates expressed concern that if states are not allowed to serve as a foster child's representative payee and use the child's SSI benefits to pay for the cost of the child's care, the state would have no incentive to pursue such benefits on behalf of the child while the child is in care, and benefits might not be in place when the youth ages out of care.⁶³ Although some such advocates have appeared to have revised their position on this issue,⁶⁴ it is important to view this concern from the child's perspective. Of course it is beneficial to have the foster care agency assist in getting SSI benefits in place where appropriate; however, that goal could be accomplished simply by requiring foster care agencies to screen children in care for SSI eligibility and apply where appropriate — ***much as a parent would do in the normal course on behalf of his or her child.*** And if benefits are in place prior to the youth's exit from care, it would similarly benefit the youth to require a foster care agency serving as his or her representative



payee to conserve some or all of the youth's own funds for use after he or she exits the foster care system. With regard to OASDI benefits, which typically end when a child reaches age 18, the only time to capture and conserve any part of these benefits for use during the difficult transitional years is while the youth is still in care; allowing a state or county acting as representative payee to completely exhaust the youth's own funds to pay for an obligation not owed by the child demonstrates a complete breach of the payee's fiduciary duty to that child. Although bribery may work in allowing a state to confiscate the funds as an incentive to seek eligibility for the benefits, bribery is clearly not good social policy.

How can this issue be resolved? Foster care agencies should simply not take Social Security benefits from children to reimburse costs that the states are obligated to pay. The funds should be used for other specialized needs not met by regular foster care services provided by the state or conserved for future needs. The needs are particularly strong leading up to the difficult transition out of foster care. These youth lack the post-18 safety net and financial assistance that families typically provide for their young adult children (discussed in more detail below). Such a financial



commitment to conserving funds for the transition would properly befit the parental role we have assumed *vis-à-vis* all foster children. Ideally, we would allow that 100% of a ***child's own funds*** be conserved for his/her use upon aging out of care. At a minimum, starting at a certain age (such as age 10), 100% of a child's Social Security benefits not needed for additional specialized services should be conserved so that they are available to help support the youth during the difficult transitional years he/she will face after aging out of foster care.

How does this policy impact real kids? Read about Amber I., in her own words.

“Hello, my name is Amber. I was in foster care for seven years until I signed myself out at the age of 19. Shortly after my 18th birthday the Social Security Administration began sending me...death benefit checks, which had all been going to, and kept by, DFCS before then. When DFCS discovered that I was getting the checks they demanded that I surrender all of the money to them or risk being forced out of care. I was also at risk of losing the only stable family I had ever known if I did not surrender the death benefit checks because the foster family was not going to let me stay in the home if DFCS and the therapeutic foster agency were not going to support them. And DFCS was not going to support the therapeutic foster agency or the foster family unless I signed over the checks. DFCS also stopped paying for my tutoring classes, which I needed for Math and Reading.

With help from a couple of advocates DFCS was persuaded to work with me and agreed to let me remain in care. I still was required to sign my social security death benefits over to DFCS, and they agreed to save one-half (1/2) of each monthly death benefit check in a special account for me. When I left care, DFCS sent me a check for approximately \$8,000.00. I used this money to pay for the down payment on a car, but I had nothing left for college or housing. I had to go back to my birth mom, who DFCS and the Judges, had worked hard all those years to get her rights terminated, to help me pay for my car insurance, because I had no other place to go. I was still in high school when I signed out of care. DFCS did not give me my birth certificate, my social security card, or a state ID and never helped me transfer the death benefits back to me after I signed out of care.

DFCS promised to pay for college and never did. I have not been able to go to college. When I left DFCS care I had insurance through Medicaid, but it ran out when I turned 20, even though DFCS told me I would have it until I was 21. That hurt me a lot financially because I got very sick and needed surgery and I am paying for that out of pocket. *If my social security benefits had been saved for me, rather than kept by DFCS, I would almost be finished with college and better able to support myself and maybe a family some day.*”

4. Conflicting Federal Policy Regarding the Use of a Child Beneficiary’s Social Security Benefits to Pay a Debt Belonging to Somebody Other Than the Child

Before and since the 2003 *Keffeler* decision, SSA has supported states’ use of foster children’s SSI and/or OASDI benefits to pay the states back for the children’s foster care costs⁶⁵ — despite the facts that (1) these benefits belong to the children, (2) these children have no legal obligation to pay the state for the costs of their care, and (3) the legal obligation to provide support and maintenance for these children belongs entirely to somebody other than the child (*e.g.*, the child’s parents and the state).

However, SSA takes the opposite stance when it comes to whether a private representative payee can use a child’s benefits to satisfy the payee’s personal financial obligations. Specifically, a father serving as representative payee for his own two children continued to receive the children’s benefits even after the children’s mother moved out of the family home and took their two children with her. In determining that the father could not use the children’s Social Security benefits to satisfy his court-ordered child support obligation, SSA noted that the “benefits belong to the children and may not be used by [the father] for his personal use, in this case to satisfy his personal legal obligation.”⁶⁶ SSA added that allowing such use of the children’s benefits “is akin to a conversion of the children’s property to pay a debt owed to the children.”⁶⁷

Consider these two scenarios from the child beneficiary's perspective. In both cases

- a child is receiving Social Security benefits — and these benefits belong to that child;
- the obligation to provide the child's basic support and maintenance belongs to somebody other than the child;
- somebody other than the child is benefitting from the interception and use of the child's funds;
- the child's Social Security benefits have become a windfall for somebody else who is legally obligated to support that child from other resources.

From the child's perspective, these two scenarios are identical — and yet one practice is condoned while the other is prohibited.

Both of the above scenarios differ significantly from a third situation, where a custodial parent or guardian serves as representative payee for a child beneficiary and uses a reasonable portion of the child's benefits to cover the child's current maintenance costs and other household expenses. SSA approaches this third scenario "with the expectation that families pool their resources" and that "[t]he overall well being and stability of the family unit is of value to the child beneficiary and, in limited instances may justify a somewhat disproportionate contribution of the child's benefits to the household."⁶⁸ In other words, SSA assumes that where a custodial parent or guardian serves as representative payee, a child beneficiary's funds are additive to all of the other types of income generated by household members, and as such help to improve the overall quality of life for all members of the household — ***including the child beneficiary him/herself***. There is another extremely important distinction with regard to this third scenario, in which a custodial parent or guardian serves as representative payee for a child receiving OASDI or SSI benefits, and might use such benefits for the current support and maintenance of the child and household. In such settings, the parents or guardians are probably not going to forsake their children at age 18 — as we currently do to our foster children. Instead (and as is discussed in detail below), such families typically continue to provide substantial financial and other types of support to their young adult children for several years beyond age 18.

B. Failure to Notify the Foster Child's Attorney/GAL that an Agency Has Applied To Be or Was Appointed as the Child's Representative Payee

As noted above, when a child under the age of 18 is eligible to receive Social Security benefits, federal law generally requires that these benefits be given to an adult representative payee on the child's behalf.⁶⁹ In choosing a representative payee, the SSA Commissioner must identify and appoint the individual who will best serve the interests of the child.⁷⁰

The appointment of a representative payee is important because the representative payee has the authority to use the child's Social Security benefits as he/she sees fit as long as the use falls within Social Security guidelines.⁷¹ The guidelines are very broad, allowing a representative payee to use a child's Social Security benefits for almost any purpose as long as that purpose ultimately serves the best interests of the child⁷² — a determination that can only be made after a careful review of the child's unique circumstances and needs. The person or entity serving as representative payee is ultimately responsible for deciding how to use a child's precious and limited resources. The payee's decisions have life-changing consequences for the child.

How does this impact real kids? Meet Daniel.*

Daniel has been in and out of California's foster care system since he was four years old; his father died when Daniel was 15. Daniel, who is now 17 and nearing the end of his foster care eligibility, receives OASDI benefits related to his father's disability and subsequent death. As Daniel's representative payee, San Diego County had been using Daniel's benefits to reimburse itself for his care — despite the fact that Daniel is approaching 18 and completely lacks adult family support to help him transition out of foster care and into adulthood. Daniel's GAL found out through her own efforts that Daniel was receiving Social Security benefits, and she was able to successfully advocate for the conservation of some of these funds for his use upon aging out of care. However, if SSA had notified Daniel's attorney and/or GAL when the benefits initially became available, a more meaningful sum might have been conserved on Daniel's behalf for his use during the difficult transitional years to come.

**This youth's name has been changed to protect his identity.*

As is noted above, federal law understands the importance of selecting the most appropriate representative payee for all beneficiaries, and for foster children in particular. Before it selects a representative payee, SSA is required to notify the beneficiary and give the beneficiary an opportunity to appeal SSA's decision to appoint a specific individual as a representative payee or to appeal the appointment of a representative payee altogether.⁷³ Because of their age, foster children are typically not notified directly about the impending appointment of a representative payee,⁷⁴ nor are most of them even told they are eligible for (or receiving) benefits. Instead, for most foster youth, federal law requires that SSA provide notice of a representative payee appointment "solely to the legal guardian or legal representative of such individual."⁷⁵

For foster children, their legal representative is often the same state or county agency that is applying to be the child's representative payee in the first place. Current federal law does not require the foster care agency to notify the child, the child's attorney/guardian ad litem (GAL) or the juvenile court (which is ultimately responsible for the child's well being) that it has applied to be or has been appointed as a foster child's representative payee. Without such notification, the child, the child's attorney/GAL and the juvenile court have no opportunity to notify SSA that there is a parent, relative, family friend, or other person in the child's life who might be a more appropriate choice as representative payee. Although SSA is mandated to try to identify a payee who might serve the foster child's interests better than the foster care agency, its

compliance with that mandate is questionable at best (see discussion above). SSA's failure to proactively identify other payee options, combined with the lack of notice to the child, the child's attorney/GAL and juvenile court, result in a rather clandestine process in which the foster care agency applies to be representative payee, is appointed as such, and uses a child's benefits to benefit itself — without anybody else made aware of what has happened or given an opportunity to object.

In order to ensure that the best interests of the child are being served, it is imperative that the foster child, the foster child's attorney/GAL, and the juvenile court be notified when anybody applies or has been appointed to serve as representative payee for a foster child. As is noted above, requiring notification to the child, the child's attorney/GAL and the court that an agency is seeking appointment as a foster child's representative payee provides them with the opportunity to identify others who might better serve the child's interests. Further, requiring notification to these parties that an agency has been appointed to serve as a foster child's representative payee provides them with the opportunity to provide input to the agency regarding specific and unique needs of the child, and suggest uses that would best serve the child's interests.

Further, for foster children receiving SSI benefits, such notification would enable the child's attorney/GAL and juvenile court to give the child information about the redetermination process that the child will encounter post-18, including what kind of documentation SSA will require in order to continue providing SSI benefits. In an ideal world this information would be provided to the children by their representative payee prior to their attaining the age of 18. Commendably, California law requires that when a foster youth who is receiving SSI payments is approaching his or her 18th birthday, the county shall do all of the following: (a) provide information to the youth regarding the federal requirement that the youth establish continuing disability as an adult, if necessary, in order for SSI benefits to continue beyond his or her 18th birthday; (b) provide information to the youth regarding the process for becoming his or her own payee, or designating an appropriate representative payee if benefits continue beyond his or her 18th birthday, and regarding any SSI benefits that have accumulated on his or her behalf; and (c) assist the youth, as appropriate, in fulfilling the requirements of (a) and (b).⁷⁶ However, such requirements are not mandated nationwide, and as a result many children leave foster care unaware that they were even receiving benefits in the first place — and completely unprepared for the cumbersome redetermination process that awaits them.

How does this impact real kids? Meet Amber.

Amber was placed in foster care at the age of 11 and bounced from placement to placement until she was 18. Sometime after Amber entered foster care, the state applied for and began receiving SSI on her behalf. The state used this money to reimburse itself for the cost of her care. Amber knew nothing about these funds until she turned 18 and was told that she would receive a check every month because she was disabled and that she should use this money to pay for a place to live and her care. Despite the fact that the state had been receiving SSI benefits for her for years, it had failed to conserve any of those funds for her — and Amber had no assets to her name when she aged out of foster care. In addition to failing to conserve assets for Amber, the state failed to inform her that she would have to prove to SSA that she was still eligible for the funds under the adult criteria, nor did it inform her how to do that. After leaving foster care, Amber met new “friends” who took her SSI benefits and ran up bills in her name. She stopped seeing her doctors and taking her medicine, and soon found herself homeless and starving. While Amber was living on the streets, SSA requested documentation from her to prove that she met the adult SSI criteria. *Amber has spent two years battling SSA to hold on to the benefits she so desperately needs — a struggle that might not have been necessary had her attorney/GAL or the juvenile court known that she was receiving benefits and assisted her in the process of retaining them as an adult.*

C. Failure to Screen Foster Children for OASDI / SSI Eligibility and To Provide Assistance in Applying for Benefits

When compared to children in the general population, children in foster care have greater physical and mental health and developmental needs. Unfortunately, even given these greater needs, foster children are not accessing all the government supports available to them both while they are in care and, more concerning, as they are aging out of care. Among 25 states that responded to a recent American Public Human Services Association survey of state child welfare agencies, 7 states indicated that SSI eligibility screening was not routine.⁷⁷ This is especially troubling because these are youth who, by definition, do not have available adults to turn to for support. They are children who, through no fault of their own and by institutional design, have only the government to act as their safety net. Unlike children raised by their own parents, the State parents of foster youth are not screening their children to see if they are receiving every resource available to them.

How does this impact real kids? Meet Johnny*.

Johnny, a foster youth, suffers from severe disabilities. He is fed through a G-tube, cannot speak or move around on his own accord and has to wear diapers. Luckily for him he has a loving aunt who cared for him with needed financial support through kinship foster care. Now age 18, he is no longer eligible for foster care benefits. His aunt informed County officials that she would only be able to continue to care for him if some financial assistance was available. However, the entire time Johnny was in foster care, nobody applied for SSI on his behalf despite his severe disabilities. He will need to be placed in a state-funded group home placement because of the financial strain he caused on his aunt. *Had the state screened Johnny for SSI while he was in foster care, those benefits would have been in place when he turned 18, and he would have been able to continue living with his aunt instead of in an institutional setting.*

**This youth's name has been changed to protect his identity.*

It is imperative that we require states to screen all children in foster care for potential eligibility for OASDI and SSI benefits. These screenings, while the children are still under the helpful guidance of their adult caretakers, is the first step toward giving them a stronger footing as they emerge into adulthood. If, for example, a child is eligible for OASDI benefits, the child should be screened for, and should receive those benefits so that, if it is in the child's best interest, they develop their own safety net in the form of a nest egg as they venture out on their own as an adult. Similarly, if a child is eligible for SSI benefits, it is imperative to screen the child early and then, as adulthood approaches, to assist the child in applying for the appropriate adult SSI benefits. While the continuation of SSI benefits from childhood to adulthood is not automatic, the receipt of these benefits, where appropriate, can save the young adult from future homelessness and provide necessary and appropriate support. However, if proper screening is not done while the child still has the assistance of the adults who are supposed

to support her into adulthood, the task of accessing these services becomes much more arduous and much less likely.

D. Asset and Resource Caps: Limiting How Much Money Foster Youth Can Save for the Future

Most parents encourage their kids to save any money that comes their way, perhaps from part-time employment or gifts. Saving for the future is a basic value that all responsible parents imbue in their children. It is difficult to imagine a responsible parent telling his or her child, "OK, that's it. You've hit the limit — you're not allowed to save any more money for your future."

And yet that is exactly the message that we send to our foster children in a variety of ways. For example, foster children who are eligible for Supplemental Security Income (SSI) benefits because of a qualifying disability are not allowed to accumulate resources that exceed \$2,000 — a figure that has been in place since 1989 and is not indexed for inflation.⁷⁸ While the SSI cap applies to all SSI beneficiaries, and not just foster kids, its impact is arguably more severe for children and youth who lack a familial support system and will soon be expected to support themselves. While some mechanisms allow for the accumulation of assets beyond the \$2,000 cap, those vehicles carry their own restrictions and can be burdensome for foster youth to create and maintain.

Another example is more generally applicable to all foster youth, most of whom would benefit tremendously by participating in the Independent Living Program (ILP) and/or Educational and Training Vouchers (ETV) program, or who might need to temporarily rely on programs such as

Temporary Assistance for Needy Families (TANF), Medicaid, and Supplemental Nutrition Assistance Program (SNAP) (Food Stamps) for support after they age out of foster care. In many states, youth will be disqualified for some or all of these programs if their assets exceed certain levels — most of which are extremely low⁷⁹ and which discourage foster youth from saving funds for their future while they are in care.

For kids who have homes they can move back to as young adults when money gets tight, who can count on mom or dad for a loan until payday, and who have the safety net of a responsible family, there are no limits on how much they can save for their future. For kids who have been abused and neglected, who are often dealing with serious mental and physical issues, who have no such safety net and who will soon be expected to pay for their own housing, food, schooling, transportation, etc., we put a cap on how much they can save for their future. We expect former foster kids to become self-sufficient years ahead of their peers who were not raised by the foster care system — and then we make that mission impossible by arbitrarily and unnecessarily limiting the amount of resources they have when they exit the foster care system. This is counter-intuitive and cruel.



On at least one occasion, our policymakers have acknowledged the extremely difficult challenges that await youth aging out of foster care. In 1999, the Congress increased the asset limit for Title IV-E foster care benefit eligibility from \$1,000 to \$10,000. If a child is Title IV-E eligible, the state can seek reimbursement from the federal government for a portion of foster care expenditures paid on behalf of that child, and being IV-E eligible is also one of requirements that must be satisfied in order for a foster youth to participate in an ILP or ETV program. In increasing the asset limit from \$1,000 to \$10,000, the House Ways and Means Committee commented on the unique need that these youth have to accumulate resources to prepare for when they exit foster care:

Children in foster care have a special need for resources. Unlike children reared in families, these children often have little or no support from relatives. Thus, when they turn age 18 and are no longer eligible for government foster care payments, they are on their own. Under current law, these adolescents cannot accumulate more than \$1,000 in assets and still remain eligible for Federal foster care payments. The Committee believes children in foster care should be allowed to accumulate a much higher level of assets to prepare for the day when they must support themselves. Thus, we are increasing the asset limit to \$10,000.⁸⁰

The Committee was right. As a 2007 Congressional Research Service report noted, the \$1,000 limit served as a “disincentive for youth to accumulate earnings or other resources to assist in their transition to independent living.”⁸¹ However, conditioning a youth’s ability to access critical transitional services on having assets of \$10,000 or less still presents that youth with a disincentive to save and furthers their dependence on the “system.”



To make matters worse, even when combined, the value of the transitional services typically made available to former foster youth and a “nest egg” of \$10,000 fall seriously short of the level of support that today’s average young adult needs post-18 to achieve self-sufficiency. Studies reveal that the average young adult receives significant financial assistance from his or her parents well beyond age 18; the bulk of such assistance tapers off after age 26, but in many cases parental support continues up to age 34.⁸² In 2010 dollars, the average youth receives \$47,500 in financial support from his or her parents **post age 18** — in the form of food, housing, education, or direct cash assistance,⁸³ while foster youth are expected to attain self-sufficiency with just a fraction of the resources that it takes their peers to do so.

Encouraging a child to save money and plan for his or her future are basic parts of responsible parenting. And even where a child has acquired his or her own resources, the duty of the parent to support that child continues. As the U.S. Supreme Court noted in 1973, “[t]he law has long recognized the parental duty to nurture, support, and provide for the welfare of children...”⁸⁴ Considering that these children will age out of foster care with little or no safety net or support system, it is irresponsible and short-sighted not to allow them to save as much as possible for their futures.

E. Failure to Require Dedicated Accounts to Hold Benefits for Each Youth

Any person, agency, or state acting as a child’s representative payee is responsible for using a child’s Social Security funds for the sole benefit of the child consistent with the child’s best interests.⁸⁵ How a representative payee keeps track of the accounting is left largely up to the representative payee but all spending must be documented and reported to the Social Security Administration.

1. Reporting Requirements of Representative Payees

As a general rule a representative payee is required to keep a child’s Social Security benefits separate from his or her own funds and to identify those funds as belonging to the child.⁸⁶ At least once a year a representative payee must provide an accounting of its spending of a child’s Social Security benefits to the Commissioner of Social Security, providing proof that the Social Security funds were used for the sole benefit of the child, consistent with that child’s best interest needs.⁸⁷ The Commissioner of Social Security also has the right to require an accounting from a representative payee at any time where misuse of funds is suspected.⁸⁸

State and local governments acting as representative payees on behalf of a foster child *may* be exempted from the yearly written reporting requirement where the government agency has opted to participate in a separate onsite review program.⁸⁹ While this exemption may free a state

or local government agency from submitting a yearly accounting report to the Social Security Commissioner it **does not** exempt a state or local government agency from federal law requiring that a foster child's benefits be used for the best interests of that child and only that child.⁹⁰

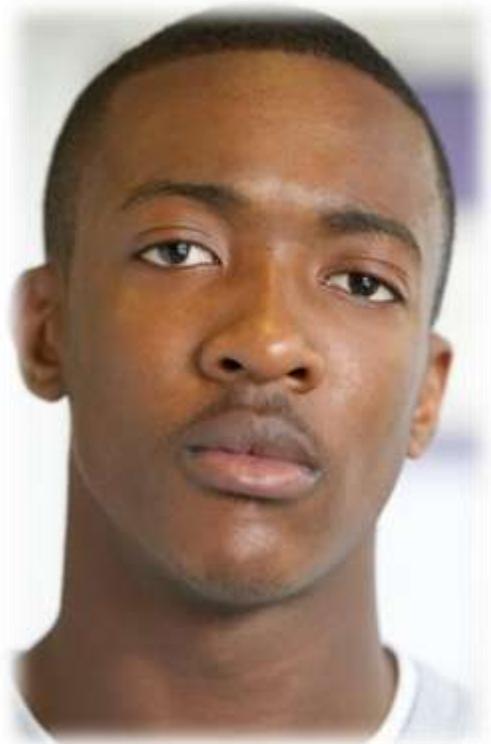
The fraudulent use of a child's Social Security benefits by a representative payee is of great concern. Usually a representative payee lives with the child and has firsthand knowledge of the long and short term needs of the child. However, with governments acting as representative payees for foster children, Social Security benefits are frequently dumped into an account and billed for services by someone who often has never even met the child let alone has intimate knowledge of the best interest needs of the child.

2. Office of the Inspector General — Independent Audits of State and Local Government Representative Payees

The Office of the Inspector General (OIG) was created as an independent audit and investigative unit to improve Social Security Administration programs and protect them against fraud, waste, and abuse.⁹¹ Since its inception in 1995, the OIG has audited various — albeit relatively few — state or local governments acting as foster children's representative payees.⁹² In such audits, the OIG was tasked with determining two things:

1. Did the government agency have effective safeguards over the receipt and disbursement of Social Security Benefits?
2. Did the government agency use and account for the Social Security benefits in accordance with Social Security Administration policies and procedures?⁹³

In OIG's audit of the Hawaii Department of Human Services (HI-DHS), OIG took a random sample of 50 foster care children who received Social Security benefits and reviewed how the Hawaii Department of Human Services acting as representative payee used and then reported the use of those funds. Of the 50 children HI-DHS received and administered Social Security benefits, OIG had found that HI-DHS misused funds belonging to 36 of these children and owed these children a combined \$114,680.⁹⁴ In one foster child's case OIG found that HI-DHS continued to collect the foster child's Social Security benefits for 33 months after HI-DHS stopped caring for the child, placing the child's Social Security benefits in its general fund and reimbursing itself for the child's care even though it was not caring for the child.⁹⁵ In essence HI-DHS was robbing this child to pad its own coffers.



In an audit of Kentucky's Cabinet for Families and Children (CFC) in 2004, the OIG found that foster children's Social Security benefits were dumped into Kentucky's "General Depository" account and commingled with other State funds making it nearly impossible to ensure that a specific foster child's benefits were spent on that specific child, and that any money not spent on behalf of that specific child was saved for the child's use at a later date.⁹⁶

In a 2003 audit of San Francisco's Department of Human Services (SFDHS), the OIG found that SFDHS continued to receive and keep seven children's Social Security benefits, robbing these children of \$49,432.⁹⁷ OIG also found that SFDHS did not keep accounting records for each individual child. SFDHS could not show that a foster child's social security benefits were even used to benefit the child at all and in the case of four children the OIG found that SFDHS had spent \$4,064 belonging to these children on things completely unrelated to the child,⁹⁸ once again stealing from the most vulnerable population, our abandoned and abused children.

OIG has also found that local and state governments engage in "double dipping" with regard to federal funds by using OASDI funds as matching funds for Title IV-E funds or receiving both SSI funds and Title IV-E funds in violation of federal law.⁹⁹ For example, OIG's audit of HI-DHS (discussed above) revealed that HI-DHS used OASDI benefits to partially reimburse itself for the foster care payments it disbursed to the children's providers, contrary to federal regulations that require a state to pay its share of the foster care costs with state funds, and concluded that "***OASDI benefits for a child who also receives Title IV-E benefits must be saved or used for a child's other needs.***"¹⁰⁰

With 50 states and thousands of local government agencies acting as representative payees for foster children nationwide, these audits are very telling of a system that takes already abused and neglected children and subjects them to further abuse — this time by a fiduciary. For many foster children, their Social Security benefits may be the only legacy they have from a deceased parent or the only financial resource to stave off homelessness or pay for college once they age out of foster care. A foster child's Social Security benefits and other assets are not the property of the state or local government but instead are to be used or safely conserved for the best interest of that child. How is a government agency supposed to use funds for the best interest of the child if they are not even sure which funds belong to which child or what a child's best interests are? It is clear from the audits that state and local government agencies have continually defied federal law and treated foster children's funds as their own private income source to be used as needed throughout their budget. This is worse than fraud — this is a parent stealing her child's future. Without having individualized, dedicated accounts for each child beneficiary, it is nearly impossible for a foster care agency to track a foster youth's income and expenditures and conserve any unused funds — in other words, to comply with the most basic aspects of this particular fiduciary relationship.

F. Failure to Require States to Check into Foster Youths' Credit Records and Repair Credit Where Necessary

Identity theft is a common problem in the foster care system.¹⁰¹ Parents, grandparents, extended family members, foster parents, social workers, group home personnel and many other people regularly have access to a foster youth's social security number, birth date, birth certificate, and other identifying information. Too often, this access is abused and used for everything from opening credit cards, buying cars and obtaining cable to fraudulently providing identification for medical and criminal matters. Many foster youth do not learn that their identity has been used and their credit destroyed until they age out of the system and apply for credit on their own.

**How does this impact real kids?
Meet Jaleesa.**

I turned 21 this past September and because 21 is a milestone from youth to adulthood, I decided to evaluate my life in regards to where I've been and where I want to go. I concluded that I need to continue to heal from the pain of my past and begin to build a foundation for my future. This foundation included financial stability so that I would be able to live and provide for myself. Upon drawing on this conclusion I asked a family friend for advice and she suggested that I request a credit score report before I apply for a credit....When I received the report I discovered a fraudulent account on my report. I called the bank where the account was opened and they confirmed that the account was opened using my Social Security number.

I have filed a police report and a report with the Federal Trade Commission in attempts to dispute the inaccuracy, but my attempts have been unsuccessful. Subsequently, I applied for a student credit card and was denied. A line of credit is crucial to living independently. I will need [good credit] to buy a car, to rent an apartment, and to pay for graduate school. I worked really hard to overcome the adversity of my childhood and endure that I wouldn't struggle as an adult, and just as I often found myself not knowing if i was going to have a place to stay while I was in care, I do not know if I am going to have a place to stay after I graduate from college.

I feel that if there were measures in place to protect my personal information as they moved me from hand to hand between placements and agencies, this could have been prevented.... Because foster youth are so vulnerable to identity theft, it is necessary that we are protected. *If my credit report was reviewed before I left the system, I now would not be fretting about indiscretions that are no fault of mine, but will and have affected me greatly.*

Identity theft can have devastating consequences for foster youth who lack the familial and social safety net and support that their peers, with no history of foster care, enjoy. Former foster youth may face problems finding safe and adequate housing; they may be denied loans for cars and other larger necessities and they may be denied financial aid and the opportunity to attend college, all as a result of identity theft that went undetected and unaddressed while they were in the foster care system. Complicating the problem is the reality that repairing credit problems caused by identity theft can be a complex, expensive, and time-consuming process, particularly for a youth with no familial or social safety net. Victims of identity theft spend an average of 330 hours repairing damage to their credit caused by identity theft.¹⁰² Further, victims of identity theft average over \$3,300 in lost wages due to the theft and, on average, incur over \$850 in expenses to repair the damage to their credit.¹⁰³ Thus, once a youth has determined that her identity has been stolen, she must have immediate and appropriate assistance to repair the problem.

Identity theft in foster care has been receiving increased attention and media coverage over the past two years.¹⁰⁴ However, while the Federal Fair Credit Reporting Act provides tools for consumers to monitor and protect their credit,¹⁰⁵ there is no federal law that specifically addresses the issue of identity theft in foster care. Although states have yet to institute any practical, effective measures to address the issue, several states — such as California and Connecticut — have enacted legislation to address the problems:

- In 2006, California passed a law requiring its county welfare departments, which are responsible for implementing the state's foster care system, to check the credit of each foster youth prior to emancipation and, upon finding an issue with a youth's credit, to refer that youth to a credit counseling agency for assistance. Unfortunately, California's law falls short because it does not

require counties to take any steps beyond referring youth with negative items on their credit or any indication of possible identity theft to an approved counseling organization that provides assistance to victims of identity theft.¹⁰⁶ There is no requirement that the state or the county ensure that the youth's credit is repaired. Further, the law does not address repairing types of identity theft that do not appear

How does this impact real kids?
Meet Selena.*

Selena was a developmentally delayed child, placed with her foster mother who was appointed as her legal guardian. While Selena was in her foster mother's care, her foster mother opened up credit cards and bank accounts in Selena's name. The foster mother wrote bad checks from Selena's bank account and placed the household utilities in Selena's name, never paying the bills and destroying Selena's credit with the utility companies. The foster care agency did not run a credit check for Selena before she turned 18, and she left foster care completely unaware that she was deep in debt and her credit was destroyed. One of Selena's relatives took her in and tried to repair some of the damage the foster mother had done, but the relative was overwhelmed with trying to care for Selena, who at age 18 still functioned at the level of a third or fourth grader. A local attorney volunteered his time to try and resolve Selena's debts and credit issues *but at age 21 when Selena was completely dropped from the state system her financial issues remained unresolved.*

**This youth's name has been changed to protect her identity.*

on a credit report, such as identity theft related to criminal, medical, or employment issues.

- In 2010, Connecticut passed a measure requiring the Commissioner of Children and Families to request, annually, a free credit report on behalf of each youth sixteen years of age or older that is in the custody of the commissioner and placed in foster care.¹⁰⁷ If the commissioner or the commissioner's designee finds any evidence of identity theft, no later than five business days after receipt of the credit report, the commissioner must (1) report findings to the office of the Chief State's Attorney and (2) advise the youth, the youth's foster parent, the youth's caseworker, and any legal representative of the youth of any findings at the time the commissioner reviews the youth's plan. Again, while Connecticut's plan provides excellent tools to help foster youth identify identity theft and begin to address it prior to aging out of the foster care system; there are no requirements that the state ensure that the youth's credit is clear and any issues associated with the theft are resolved.¹⁰⁸

Federal law provides tools for consumers to monitor and protect their credit, and some states are implementing legislation to begin to help current and former foster youth repair credit damaged by identity theft. However, given the

situation in which many older foster youth find themselves, and their position as the children of the state, it is our responsibility to implement a more concrete, proactive approach to help these youth identify and repair credit problems that occur while they are in foster care. Legislation should include the components California and Connecticut have enacted, such as required credit checks, notification of the youth, the youth's foster parent, caseworker, attorney, and any legal representative of the youth of any findings. Finally, and importantly, legislation must include a requirement that the state ensure that if a foster youth has been the victim of identity theft while in foster care, that youth's credit will be repaired in a timely manner.

G. Failure to Pass Conserved Funds — When They Do Exist — to the Youth in a Timely Manner upon Aging Out

When a foster youth is receiving Social Security benefits, he or she is assigned a representative payee. There are some instances in which that payee may have conserved funds for the youth. Until very recently, when a payee, who had conserved funds for the foster youth beneficiary, stopped serving as payee, the payee was required to return the conserved funds and the interest earned thereon to the Social Security Administration (SSA). SSA would then reissue the funds to the beneficiary foster youth.¹⁰⁹ The unfortunate result of this policy for foster youth was that when a foster youth aged out of care and had a payee who was required to return funds to the SSA, there was a delay between the time when the youth left the system and the time when the youth could receive the funds. Given the lack of a familial safety net, and the limited resources most

foster youth have when they age out of the system, the delay had a very real potential for disastrous consequences for the youth.

SSA's Program Operations Manual System (POMS) specifies that the SSA may permit a former payee to transfer conserved funds directly to a new payee or to a capable beneficiary, rather than to return them to the SSA, if it serves the best interest of the beneficiary.¹¹⁰ The POMS goes on to give guidance on determining "best interests." The guidelines specify that:

A foster care agency serving as payee provides documentation that when a child in foster care attains age 18 and ages out of the foster care system, State law requires the agency to disburse any conserved funds and assets of the child directly to the child to facilitate transition into adult life. Direct transfer may serve the beneficiary's best interest.¹¹¹

The new guidelines and the best interest standard help to ensure that a foster youth beneficiary will be able to obtain funds conserved on his or her behalf and avoid a potentially damaging delay. However, the language in POMS states that best interests is determined on a case by case basis, and it is not clear from the information available from the SSA in POMS, or in any letters associated therewith how a payee should proceed with requesting a direct transfer of funds to a foster youth beneficiary. To ensure that as many foster youth as are able to receive funds that have been conserved for them by their payee, the SSA should more clearly define the process for requesting and obtaining approval for this transfer.

H. Slashing of State and County Social Services Budgets

Most of the problems discussed above are exacerbated by the fact that many state and county social services budgets have been decimated over the last several years — and face more cuts as a result of the struggling economy and a draconian focus on deficit reduction.¹¹² As they watch their budgets shrink and caseloads and needs grow, government officials are desperate. They are willing to explore any and all available options to raising revenue — even if that means abusing their fiduciary role as representative payee to take Social Security benefits out of the pockets of abused and neglected children.



One notable federal policy regarding foster children unduly exacerbates the financial woes of states and counties. Eligibility for federal reimbursement of foster care benefits through Title IV-E funding is linked to the Aid to Families with Dependent Children (AFDC) income requirements as they existed in 1996 — with no adjustment to reflect inflation over the past fifteen years. If a child does not meet the 1996 eligibility criteria, federal Title IV-E funds are not available to reimburse the state for the care of that child. Over the past decade, the number of children who meet the federal IV-E eligibility requirements has decreased substantially. According to one source, 53% of children in foster care were eligible for federal support in 1998, but by 2005 the percentage had already declined to 46% — and the number of foster children eligible for federal financial assistance was projected to decline by approximately 5,000 children each year thereafter.¹¹³

As long as the federal eligibility remains linked to the 1996 AFDC income requirements, the number of children eligible for federal IV-E foster

care benefits will continue to drop, and the financial burden on states and counties will continue to grow. According to the National Governors Association, “Because of the link between Title IV-E and the former Aid to Families with Dependent Children (AFDC) rules, many children are not eligible for federal foster care assistance. Further, basing eligibility on the outdated “look-back” date of July 16, 1996, poses a heavy administrative burden on states and has the unintended consequence of causing fewer children to be eligible for federal foster care assistance. The number of children needing foster care services yet who are rendered ineligible due to the 1996 criteria has reached a crisis level in many states.”¹¹⁴

IV. RECOMMENDATIONS FOR POLICY REFORMS AT THE FEDERAL LEVEL

The many challenges faced by youth that the state has failed to place with a family make them even more vulnerable to a host of obstacles when they are thrust out on their own as adults. Just like other young adults, these young people need answers to a plethora of serious and scary questions — questions that almost all of us have probably asked and had answered by a loving parent or family member:

- *How and where should I open a bank account?*
- *Where are my birth certificate and immigration papers? How do I get a passport or drivers license?*
- *Who will serve as a guarantor for my apartment lease and how will I find the money for a security deposit?*
- *How do I apply for health insurance and how will I pay for it?*
- *Will the benefits that I was entitled to as a minor continue now that I'm an adult, and how do I apply?*
- *I have a minimum-wage job and am having a hard time making ends meet. How am I supposed to “budget” my money and how do I get a credit card?*
- *How do I apply for financial aid for college, and if I don't get enough, how do I qualify for a loan?*
- *I tried to apply for credit, and found out that my identity was stolen, and now I have a bad credit record. How did this happen and how do I fix it?*

When foster youth age out of care, they generally have nobody to turn to answer these questions. There is nowhere to move back “home” to. They have nobody to turn to and ask for a loan. There is no family health insurance to join. Their caseworker (if they were lucky enough to have a good one), is no longer available. Their attorney (if they were lucky enough to have had one at all) has closed their case. They are, quite literally, on their own with nowhere to turn.

These are “our” children. Foster children are wards of the state, thus each of us is their parent. It is our legal, ethical, and moral imperative to take good care of them and prepare them for life. When these youth transition into adulthood and towards independence, it is worthwhile to contemplate how their experience correlates to the same transition experienced by a youth with a permanent loving family. Then, as taxpayers and responsible citizens, we must ask ourselves, “What kind of parent am I? How are my children doing now that they have left the nest?” Then, we must ask ourselves, “How can I do better?”

Abused and neglected children are our collective responsibility. Far too many of these youth are pushed off the foster care cliff each year with few supports to assist in the difficult transition to adulthood. Many end up high-school dropouts, homeless, incarcerated, or living in poverty within a few years of exiting care. After having failed to find them a permanent loving family while in foster care, the very least we can do is to help fashion a net to protect them, and provide them with the tools they need to succeed.

A. Federal Legislation

We can begin to address the needs of these young people through the passage of federal legislation. Two excellent measures would provide this population with the safety net and tools for success already discussed. They have been deemed budget-neutral and have been received with bipartisan support. If enacted, they will help give some of our most vulnerable youth a better chance for a successful start.

1. Foster Children Self-Support Act¹¹⁵

For children with disabilities and those who have lost one or both of their parents, the Foster Children Self Support Act requires states serving as representative payee to use the Social Security benefits of those children for their immediate and future needs rather than as a state revenue source. According to the Congressional Research Service, over \$150 million in federal benefits, including OASDI benefits that children are entitled to because their deceased parent paid into the Social Security system, are intercepted by child welfare agencies each year.¹¹⁶ As explained previously, states do a poor job of using children's funds in a manner that truly serves the children's best interests. Many children (and their attorneys or GALs) have no knowledge that they are eligible for or receiving these federal benefits; the agency simply applies on their behalf and starts receiving the funds as the child's representative payee. As a result of how the benefits of these vulnerable children are used, scarce assets that belong to the child are not available to them as they transition to adulthood and try to achieve independence.

The Foster Children Self Support Act will safeguard some of these children's Social Security benefits, creating a basic safety net for when they age out of foster care. Just as parents work hard to raise children who will become self sufficient, we should work hard to prepare foster youth to have the same capabilities. Key provisions of this bill would:

- Require that all foster children are screened for Social Security (both Title II and XVI) eligibility while in care, and require child welfare agencies to notify the child's attorney and/or *guardian ad litem*;
- Require child welfare agencies to notify the child's attorney or *guardian ad litem* (and the child if he/she is 14 or older) of the child's eligibility and receipt for Social Security benefits while in care;
- Develop and implement a "Plan for Achieving Self Support" that is specific to each child receiving Social Security benefits. The plan will be designed in collaboration with the agency, the child (on an age-appropriate basis), and the child's advocates with the goal of using the child's Social Security benefits to meet the child's current and future needs;
- Create an Individual Development Account for each child receiving benefits, so that these Social Security assets will be conserved to assist the youth secure housing, education, or job training after they emancipate from care;
- Restrict state agencies from using a child's benefits as a general revenue source;
- Exclude conserved funds as well as personal earnings, inherited assets, and civil judgments from the \$2,000 resource limit under the SSI program.

2. Foster Youth Financial Security Act¹¹⁷

Children in foster care have already suffered abuse or neglect at the hands of their parents. While in foster care, many children are then victimized again by identity theft or credit fraud. In addition, youth transitioning out of care often lack the most basic documents and tools necessary to achieve independence. To strengthen the financial security of foster youth and to empower them to make responsible financial decisions as adults, the Foster Youth Financial Security Act contains the following provisions:

Protection against Identity Theft & Credit Fraud. As explained above, foster children are disproportionately victims of identity theft because their personal information passes through many hands, increasing the chances that someone will open an account in their name or use their Social Security number (SSN). This bill would require that all foster children have their credit reports reviewed, and cleared if there is an inaccuracy, prior to leaving care. It would also end the use of a child's SSN as an identifier. Currently, there is no available data on how many children have been affected by identity theft; this legislation will track the number of stolen identities by state. The bill allows the states to obtain assistance from both the Department of Health and Human Services and Federal Trade Commission on how best to protect their foster youth against this fraud.

Toolkits for Financial Success. It is easy to take for granted the basic tools that every person needs to get started in life as an adult — copies of their birth certificate, a driver's license or state-issued ID, a bank account, health and auto insurance, and perhaps a student loan. Foster children often leave care without these important documents and tools that they need to begin their lives and follow their dreams. This bill would ensure that they leave foster care with the documents they need. It also will help them apply for state benefits and financial aid, will educate them about obtaining health and auto insurance, and will provide them and any interested caretakers with financial literacy courses.

Creating Individual Development Accounts. Individual Development Accounts (IDAs) are savings accounts to help low-income families and other vulnerable groups save for specified purposes. Certain states and nonprofit organizations have set up IDAs specifically for foster youth, but this practice is not uniform. This bill would provide modest financial seed money to set up IDAs for foster youth so they leave care with a small nest egg to cover the first costs of specific items such as housing, education, and job training after they leave care.

B. Child Welfare Finance Reform

Title IV-E funding must be delinked from 1996 AFDC income eligibility requirements. It is widely acknowledged that these standards are antiquated, irrelevant, and harmful to the very groups that were meant to benefit from the program. Delinking will benefit states, families, and foster youth and ensure that federal dollars are wisely spent.

C. Federal Mandate to Extend Court Supervision to Older Foster Youth

The landmark 2008 Fostering Connections to Success and Increasing Adoptions Act provided states with the option to extend foster care up to the age of 21. Unfortunately, there was not a concurrent provision in the legislation nor in the Child Abuse Prevention and Treatment Act to extend the court case and provision of legal representation as well. Dependency court cases of

foster youth ages 18–21 should remain open so that the court can help monitor the child’s progress, intervene to ensure adherence to the Plan for Achieving Self Support and ensure that the Individual Development Accounts are being disbursed properly. For many foster youth, the court is the only consistent authority figure or entity present during their tumultuous experience in foster care. It would benefit transition age foster youth tremendously to maintain that presence for as long as they remain in care.

One mechanism to coordinate and deliver assistance post-18 is the creation of trusts by the juvenile courts who have served as the parents of these kids to that point. Under a plan such as the Transition Life Coach proposal of the Children’s Advocacy Institute,¹¹⁸ state assistance could combine with existing resources to produce the average \$50,000 that private parents provide to their post-18 adult children; such an option allows the court as parent to stay involved, monitor progress and issue orders to third parties if necessary and appropriate. It also allows the youth to have a say in the plan authorized by the trust (the trust agreement), allows personal mentoring by the appointed trustee and allows for coordination with all of the other sources of assistance to maximize self-sufficiency. Like the support offered by typical private parents, assistance under such a plan need not stop at age 21.

D. Budget and Deficit Reduction Considerations

During 2011, the Congress is expected to contemplate cutting benefits and scaling back funding for programs that impact foster youth and youth aging out back to 2008 levels or worse. While these developments pose new challenges, advocates can take action to fight for the rights and security of foster youth through coalitions and with effective grassroots advocacy. Now, more than ever, advocates for children across the country must come together to fight any proposed cuts to services that benefit foster children and work towards helping these children, our children, more towards a future full of possibility.

Endnotes

¹ Martha Shirk and Gary Stangler, *On Their Own*, Basic Books (2004), foreword by Jimmy Carter, at v–vi.

² Administration for Children & Families, U.S. Department of Health and Human Services, *The AFCARS Report: Preliminary FY 2009 Estimates as of July 2010* (Washington, D.C.) available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/tar/report17.htm. The total number of children in foster care as of September 30, 2009 was 424,000; the total number of children served by the foster care system during fiscal year 2009 was 700,000. Administration for Children & Families, U.S. Department of Health and Human Services, *Trends in Foster Care and Adoption—FY 2002–FY 2009* (Washington, D.C.), available at http://www.acf.hhs.gov/programs/cb/stats_research/afcars/trends.htm.

³ *Supra* note 1, at 4.

⁴ Children's Rights, *Facts About Foster Care*, available at <http://www.childrensrights.org/issues-resources/foster-care/facts-about-foster-care>.

⁵ National Center for Youth Law, *Education Advocacy Systems: A Study of How California Counties Ensure Foster Youth Receive the Educational Advocacy and Opportunities They Need* (2010) at 4, available at http://www.youthlaw.org/fileadmin/ncyl/youthlaw/education/CA_Education_Advocacy_Systems_1_.pdf.

⁶ *Id.*

⁷ *Supra* note 1, at 2, citing *Midwest Evaluation of Adult Functioning of Former Foster Youth: Conditions of Youth Preparing to Leave State Care*, Mark E. Courtney, Sherri Terao, and Noel Bost, (Chicago: Chapin Hall Center for Children, 2004), available at http://www.chapinhall.org/sites/default/files/CS_97.pdf.

⁸ *Supra* note 1, at 5.

⁹ *Id.*

¹⁰ *Id.*, at 1.

¹¹ *Id.*, at 12.

¹² *Id.*, at 13–14.

¹³ *Id.*, at 13.

¹⁴ *Id.*, at 12.

¹⁵ *Id.*, at 8.

¹⁶ Bureau of Labor Statistics, *Current Population Survey: Earnings and Education in the Second Quarter of 2008*, available at <http://www.bls.gov/opub/ted/2008/jul/wk3/art01.htm>.

¹⁷ Bureau of Labor Statistics, *Employment Projections: Education Pays...Unemployment Rates in 2009*, available at http://www.bls.gov/emp/ep_chart_001.htm.

¹⁸ *Id.*

¹⁹ P.J. Pecora, R.C. Kessler, et al., *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*, Casey Family Programs (Seattle, WA; 2005). See also Mark Courtney, Amy Dworsky, et al. *Midwest Evaluation of the Adult Functioning of Foster Youth: Outcomes at Age 23 and 24*, Chapin Hall at the University of Chicago (2010) at 22, available at: http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf. Note that this study included foster youth alumni from Illinois, where youth have the option to continue in care until age 21.

²⁰ Jennifer L. Hook & Mark Courtney. *Employment of Former Foster Youth as Young Adults: Evidence from the Midwest Study*, Chapin Hall (March 2010), available at http://www.chapinhall.org/sites/default/files/publications/Midwest_IB3_Employment.pdf.

²¹ *Id.* Note that the Chapin Hall study is especially significant because it contains data from Illinois, a state which has extended care to age 21. Thus, this group of foster care alumni includes youth who had the option to remain in care until age 21.

²² *Id.* at 2.

²³ *Id.*

²⁴ Mark Courtney, Amy Dworsky, et al. *Midwest Evaluation of the Adult Functioning of Foster Youth: Outcomes at Age 23 and 24*, Chapin Hall at the University of Chicago (2010) at 10, available at http://www.chapinhall.org/sites/default/files/Midwest_Study_Age_23_24.pdf. Youth “couch surf” when they sleep on the couches of friends and families because they have no permanent living arrangement.

²⁵ Simms, M.D. et al., *Health Care Needs of Children in the Foster Care System*, PEDIATRICS 106 (4) at 909–918.

²⁶ *Supra* note 7.

²⁷ Jesse Ellison, *Sabotaged by the System*, NEWSWEEK (Feb. 7, 2009), available at <http://www.newsweek.com/2009/02/06/sabotaged-by-the-system.html>.

²⁸ Cutler Consulting, *Cost Avoidance: Bolstering the Economic Case for Investing in Youth Aging Out of Foster Care* (St. Louis, MO: Jim Casey Youth Opportunities Initiative, 2009) at 1; see also National Governors Association Center for Best Practices, *The Transition to Adulthood: How States Can Support Older Youth in Foster Care* (Dec. 2010) at 8 (available at <http://www.nga.org/Files/pdf/1012FOSTERCARE.PDF>).

²⁹ Henry Levin, Clive Belfield, Peter Muennig, and Cecilia Rouse, *The Costs and Benefits of an Excellent Education for All of America's Children* (New York: Columbia University, Teachers College, January 2007), available at

http://www.cbcse.org/media/download_gallery/Leeds_Report_Final_Jan2007.pdf; see also National Governors Association Center for Best Practices, *The Transition to Adulthood: How States Can Support Older Youth in Foster Care* (Dec. 2010) at 8 (available at <http://www.nga.org/Files/pdf/1012FOSTERCARE.PDF>).

³⁰ 42 U.S.C. §401 *et seq.*

³¹ 42 U.S.C. §402(d). See also Social Security Online, *Electronic Fact Sheet: Benefits for Children*, SSA Publication No. 05-10085 (Sept. 2009), available at <http://www.socialsecurity.gov/pubs/10085.html>.

³² *Mathews v. Lucas*, 427 U.S. 495, 507 (1976).

³³ 20 C.F.R. 404.352(b).

³⁴ 42 U.S.C. §1382 *et seq.*

³⁵ 42 U.S.C. §1382(c)(C) (2004).

³⁶ *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 390 (2003) (quoting 20 C.F.R. § 416.110).

³⁷ Daniel L. Hatcher, *Foster Children Paying for Foster Care*, 27 *CARDOZO L. REV.* 1797, 1804 (2006), citing H.R. Rep. No. 92-231, at 5133-34 (1971), reprinted in 1972 U.S.C.C.A.N. 4989, 5133 (“It is your committee’s belief that disabled children who live in low-income households are certainly among the most disadvantaged of all Americans and that they are deserving of special assistance in order to help them become self-supporting members of our society”); Frank S. Bloch, *Three Steps and You’re Out: The Misuse of the Sequential Evaluation Process in Child SSI Disability Determinations*, 37 *U. MICH. J.L. REFORM* 39, 48-51 (2003) (discussing history and purposes of child SSI benefits).

³⁸ Adrienne Fernandes, Scott Szymendera, Emilie Stoltzfus, *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*, Congressional Research Service (Feb. 2007) at 15, available at http://assets.opencrs.com/rpts/RL33855_20070201.pdf.

³⁹ See, e.g., National Survey of Child and Adolescent Well-Being, No. 12: *Estimates of Supplemental Security Income Eligibility for Children in Out-of-Home Placements* (Aug. 2009) at 3, available at http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/.

⁴⁰ California Department of Social Services, *Continuous Supplemental Security Income (SSI) Benefits for Disabled Foster Youth*, available at http://www.childsworld.ca.gov/res/FactSheets/SSI_FactSheet_wLetterhead.pdf.

⁴¹ 20 C.F.R. §416.610(b), 20 C.F.R. §404.2010(b).

⁴² 42 U.S.C. §405(j)(2), 20 C.F.R. §404.2035, 20 C.F.R. §416.635.

⁴³ Social Security Online, *Frequently Asked Questions: What to Do When Someone is Unable to Handle Their Benefits* (updated 12/28/2010), available at http://ssa-custhelp.ssa.gov/app/answers/detail/a_id/256.

⁴⁴ Office of the Inspector General, Social Security Administration, *Benefit Payments Managed by Representative Payees of Children in Foster Care, Evaluation Report* (June 2010), No. A-13-01-17137 at 3, citing SSA, Program Operations Manual System (POMS), GN 00502.159.

⁴⁵ See 20 CFR 416.621 (applicable to SSI payments) and 404.2021 (applicable to OASDI payments). See also Social Security Administration, Programs Administration Manual System, POMS § GN 00502.105 (Payee Preference Lists) (Effective Dates: 06/25/2010-Present) (emphasis added).

⁴⁶ *Id.* (emphasis added).

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⁴⁸ Although a foster care agency that had been expressly appointed by the court as a foster child’s legal guardian would have a higher standing on the payee preference list, such a scenario is unusual in many jurisdictions.

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⁵⁰ Bruce Boyer and Martha Mathews, *Should Agencies Apply for and Receive SSI on Behalf of Foster Children?* *YOUTH LAW NEWS*, Vol. XX No. 6 (Nov-Dec, 1999).

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Territories of the Virgin Islands and American Samoa, as *Amici Curiae* in Support of Petitioners in *Washington State Dep't of Social and Health Services v. Keffeler*, 2001 U.S. Briefs 1420 [2002 U.S. S. Ct. Briefs LEXIS 380] (2002).

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⁵⁹ Katherine M. Krause, *Issues of State Use of Social Security Insurance Beneficiary Funds for Reimbursement of Foster-Care Costs*, American Bar Association, 41 FAM. L. Q. 165 (2007) at 171.

⁶⁰ WAC § 388-25-0210 (2010).

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⁶³ See, e.g., Brief of Children's Defense Fund, Catholic Charities USA, Child Welfare League of America, and Alliance for Children and Families, as *Amici Curiae* in Support of Petitioners, in *Washington State Dep't of Social and Health Services v. Keffeler*, 2001 U.S. Briefs 1420 [2002 U.S. S. Ct. Briefs LEXIS 384] (2002).

⁶⁴ See, e.g., Child Welfare League of America, *Hope for America's Children, Youth and Families: Briefing and Recommendations to President-Elect Barrack Obama* (Nov. 7, 2008) at 47, available at <http://www.cwla.org/advocacy/preselect08cwbriefing.pdf> ("Under [proposed legislation], states would determine when a child or young person is eligible for Social Security or SSI benefits and then reserve those benefits in an account for that young person....Such a change could be of significant assistance to eligible young people leaving foster care").

⁶⁵ See, e.g., *supra* note 56 at *15 ("the amici States are unaware of any instance where anyone at the SSA has utilized § 407(a) to question, let alone disapprove, any of the countless instances where the States have applied foster children's RSDI or SSI benefits toward their foster care costs. As explained earlier in detail, the amici States (and, we believe, all States) have long followed this practice in full view of the SSA and never received any indication that they were violating the anti-alienation rule. To the contrary, the SSA has always found the amici States to be in compliance with federal law with regard to this aspect of their expenditures.")

⁶⁶ Social Security Administration, Programs Administration Manual System, POMS Section PR 07210.001, Effective Dates 8/4/2008 – Present, available at <https://secure.ssa.gov/apps10/poms.nsf/lrx/1507210001>.

⁶⁷ *Id.*

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⁶⁹ 20 C.F.R. §416.610(b), 20 C.F.R. §404.2010(b).

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⁷¹ 20 C.F.R. §404.2035, 20 C.F.R. §416.635.

⁷² *Id.*

⁷³ 42 U.S.C. §405(j)(2)(E)(i); 42 U.S.C. §405(j)(2)(E)(ii).

⁷⁴ 42 U.S.C. §405(j)(2)(E)(ii).

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⁷⁷ Adrienne Fernandes, Scott Szymendera, Emilie Stoltzfus, *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*, Congressional Research Service (Feb. 2007) at 15–16, available at http://assets.opencrs.com/rpts/RL33855_20070201.pdf

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⁸¹ Adrienne Fernandes, *Child Welfare: The Chafee Foster Care Independence Program*, Congressional Research Service (Jan. 2007) at CRS-2, available at http://assets.opencrs.com/rpts/RS22501_20070111.pdf.

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⁹⁷ *San Francisco Dep't. Of Human Services*, A-09-03-13011 (November 2003) at 6, available at <http://www.ssa.gov/oig/audit/auditreports.htm>.

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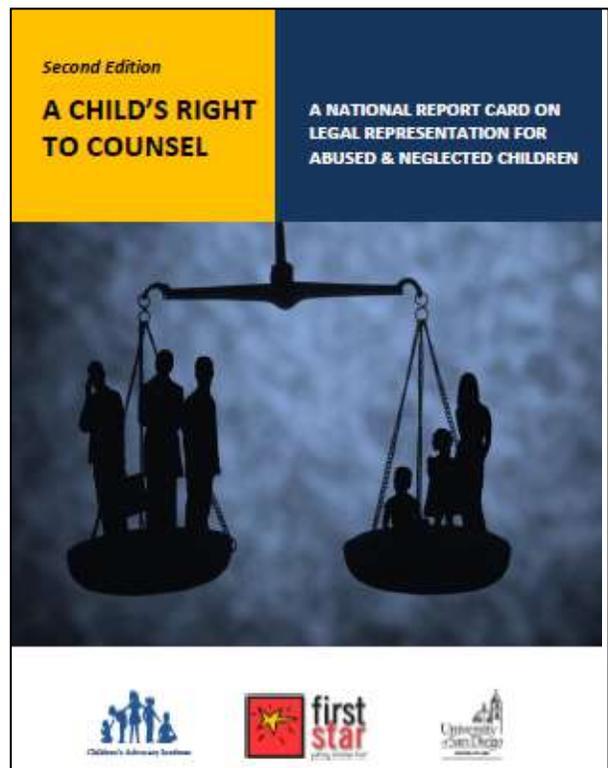
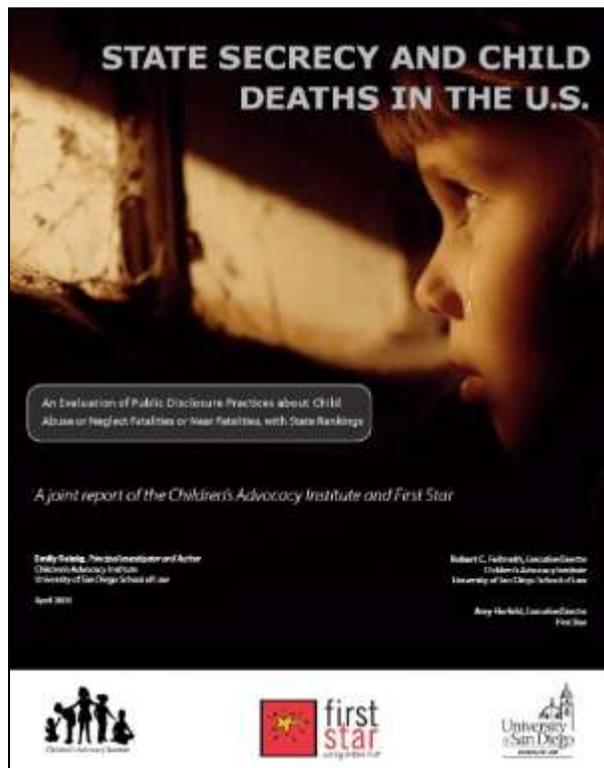
¹¹⁵ Originally introduced as H.R. 6192 in the 111th Congress; see <http://www.govtrack.us/congress/bill.xpd?bill=h111-6192>. The Act is expected to be re-introduced during 2011.

¹¹⁶ Adrienne Fernandes, Scott Szymendera, Emilie Stoltzfus, *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*, Congressional Research Service (Feb. 2007) at 17, available at http://assets.opencrs.com/rpts/RL33855_20070201.pdf.

¹¹⁷ Originally introduced as H.R. 6193 in the 111th Congress; see <http://www.govtrack.us/congress/bill.xpd?bill=h111-6193>. The Act is expected to be re-introduced during 2011.

¹¹⁸ See information on the Children's Advocacy Institute's Transition Life Coach proposal at <http://www.caichildlaw.org/TransitionalServices.htm>.

Other Joint Reports from First Star and the Children's Advocacy Institute



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