Fostering Connections Older Youth Extensions in Pennsylvania: Frequently Asked Questions about Act 80 and Act 91

- Two new Pennsylvania laws will provide greater opportunities and support to older youth in foster care. Not only will these laws help provide support and guidance for youth who are not ready to be on their own at age 18, it will also increase the number of youth who leave the system and achieve permanency by extending adoption and guardianship subsidies to age 21 for some youth.

- **Act 91**, which amends various provisions of the Juvenile Act, expands the criteria for youth to stay in care past age 18 and also allows youth to re-enter care before turning 21 if they aged out at 18 or older.

- **Act 80**, which amends provisions of the Public Welfare Code, extends guardianship and adoption subsidies to age 21 for eligible youth who enter those arrangements at age 13 or older.

---

- **When does Act 91 take effect?**
  - Act 91 was signed by the Governor on July 5, 2012, and became effective on that date.

- **What sections of the law does Act 91 change?**
  - Act 91 amends and expands the definition of a child in the Juvenile Act at 42 Pa. C.S.A. § 6302.
  - Act 91 amends two sections of the disposition section of the Juvenile Act.
    - 42 Pa. C.S.A. § 6351 (f) is amended to:
      - Require that the court determine for a youth between ages 18 and 21 if they continue to meet the definition of a child under the Juvenile Act.
      - Require that the court find that an appropriate transition plan has been presented to the court before a youth who is between the ages of 18 and 21 can be discharged.
    - 42 Pa. C.S.A. § 6351 (j) is amended to allow youth to re-enter care before turning age 21.
• **When does Act 80 take effect?**
  ✓ Act 80 was signed by the Governor and became effective on July 1, 2012.

• **What sections of the law does Act 80 change?**
  ✓ Act 80 amends the Public Welfare Code in several sections.
    ▪ It amends the definition of child in the Adoption Opportunity Act at 62 P.S. § 772.
      It amends the definition of child in the Kinship Care Act at 62 P.S. § 1302.
    ▪ It creates the Subsidized Permanent Legal Custodianship Program at 62 P.S. § 1303.1 and §1303.2.

• **What does the law change about the conditions for staying in care past age 18?**
  ✓ Act 91 expands the criteria for staying in care past age 18 and provides more detail regarding eligible activities. Prior to the Act 91, youth could only stay in care past age 18 if they were in a program of “treatment “ or “instruction.” While case law made clear that the term instruction was broad and at least included post-secondary education, interpretation of the term has varied throughout the state. Thus, many eligible youth did not remain in care. Act 91 provides much more clarity on eligible activities while leaving the focus on youth and their individual plan to develop the skills they need to support themselves and be productive and healthy when they leave care. The law also adds criteria that will enable youth to stay in care if they are working at least 80 hours a month.

  *Now a youth can remain in care past age 18 if they are doing any one of the following:*

  1. completing secondary education or an equivalent credential;
  2. enrolled in an institution which provides postsecondary or vocational education;
  3. participating in a program actively designed to promote or remove barriers to employment;
  4. employed for at least 80 hours per month.

• **Does a youth have to do more than one of these activities to remain in care?**
  ✓ No. The youth must do at least one of the listed activities. Of course, a youth can combine activities such as work part time in addition to going to college.
or a trade school. However, if the youth chooses to focus on one activity that is permissible as well.

- **Is a GED preparation program a program which leads to a credential that is the equivalent of secondary education?**
  - Yes. Programs that prepare a youth for getting their General Equivalency Diploma (GED) are alternatives to completing secondary education and are eligible activities under the Juvenile Act.

- **What are examples of institutions which provide postsecondary or vocational education?**
  - These may include, but are not limited to:
    - Community colleges or junior colleges
    - 4 year colleges or universities
    - Trade schools, including Job Corps

- **What are programs actively designed to promote or remove barriers to employment?**
  - These may include, but are not limited to:
    - Programs funded or designed by the Office of Vocational Rehabilitation (OVR)
    - Vocational or trade programs
    - Programs designed for individuals with disabilities to improve work readiness or work skills
    - Vocational or job skills development programs through the Office of Income Maintenance (welfare), Career Link or other Workforce Development entities
    - Courses of programs recommended by the county Independent Living Program may also fall into this category.

- **So can a youth who works and does not attend school or any educational or training program stay in care past age 18?**
  - Yes. As long as youth are working at least 80 hours a month, they can remain in care past age 18. This provision reflects concerns that some youth were not opting to continue their education after high school or wanted to take some time to figure out the direction of their career before continuing their education. These youth may not be ready to be independent and leave care and should also have the opportunity to continue in care.
• **How will youth prove that they are working 80 hours a month?**
  ✓ The law does not provide direction on this. Attorneys should advise their clients to keep and copy work schedules, pay stubs and any other documents that record their hours. If the youth’s employment comes from a combination of sources, such as paid employment and an unpaid internship for example, special care should be taken in documenting work hours.

• **Can a youth work more than 80 hours a month?**
  ✓ Yes. 80 hours a month is a minimum requirement. Many youth who opt to stay in care based on this exception will likely be working full time or working towards a full time schedule. Other youth who face more barriers to employment may only be able to complete 80 hours per month.

• **Does Act 91 provide any exceptions for activities for youth with disabilities?**
  ✓ Yes. If a youth has a medical or behavioral health condition that prevents them from meeting any of the listed criteria, they may remain in care. Documentation of the condition must be included in the permanency plan and updated at least at each permanency plan review and revision. The youth’s attorney should help ensure that appropriate documentation is in the youth’s file and included in the permanency plan to assure continued eligibility.

• **Are youth automatically continued in care past age 18 if they are meeting any of the listed criteria?**
  ✓ No. Act 91 does not change the practice that the *youth* must make a “request” to “the court” that jurisdiction be continued past age 18. For this reason, it is still extremely important that the youth’s attorney make the request clear to the court and the children and youth agency. Youth should also put their request in writing as soon as they can. The FSP and ISP meetings are good times to bring up the issue and make the youth’s intentions are clear. Juvenile Law Center will post sample templates for youth requests on our website in the coming days at [www.jlc.org/fosteringconnections](http://www.jlc.org/fosteringconnections).

• **Does the law result in bringing more funds to children and youth agencies so they can better serve youth who stay in care past age 18?**
  ✓ Yes. Act 19 is Pennsylvania’s implementation of the older youth provisions offered to all states in the Fostering Connections to Success and Increasing Adoptions Act of 2008 (“Fostering Connections”). That law encouraged states to allow more youth to stay in care past age 18 in exchange for the
federal government providing the state with Title IV-E reimbursement for placement and services for those youth.

✓ While PA has allowed youth to stay in care past age 18, prior to Act 19, the state could not draw down Title IV-E funds for those youth after age 18. Thus, state and local dollars had to be used instead. This created fiscal pressures to discourage youth from staying in care because the state and county would have to pick up the entire cost. Now, the county and state can draw down the same IV-E funds for foster youth until 21 that they can for foster youth under age 18.

• **Will placement options expand for youth ages 18-21?**
  ✓ Fostering Connections also allows states that extend youth in care past 18 to receive federal reimbursement for youth in supervised independent living (SIL) settings. HHS is allowing states discretion to define what is considered a reimbursable SIL. HHS has encouraged states to be creative and flexible in their definition, and has advised that the following settings should be included in the definition of SIL: apartments, dorms, host homes.

• **Can youth who age out of care really re-enter care?**
  ✓ Yes. If a youth aged out 90 days or less before turning age 18 or any time after turning age 18, they can re-enter care any time before turning age 21.

• **What is the mechanism for allowing dependency jurisdiction of a youth over age 18?**
  ✓ The new law allows the juvenile court to resume jurisdiction over a youth who was previously adjudicated dependent before turning age 18. A new adjudication of dependency is not required.

• **What is the procedure for re-entry?**
  ✓ The law does not prescribe any specific procedure or process. It only describes the right and the authority of the court. It is likely that juvenile court procedural rules will establish a statewide process. Until that time, children’s attorneys should:
    1. inform their clients of the right to re-enter if and when they leave care before turning age 21, and
    2. be prepared to file motions for resumption of court jurisdiction.

Juvenile Law Center will post templates for motions to request that the court resume jurisdiction of a child on our website in the coming days at [www.jlc.org/fosteringconnections](http://www.jlc.org/fosteringconnections).
• **What does a youth need to do once he or she re-enters care?**
  ✓ A youth will need to agree to engage in at least one of the activities listed in the new definition of child to remain in care. If the youth cannot engage in one of the activities due to a medical or behavioral health condition, that condition must be documented.

• **Is a youth who aged out of care prior to the enactment of the law, but who is still under age 21, eligible to re-enter?**
  ✓ Juvenile Law Center believes that these youth will be eligible to re-enter as long as they aged out 90 days before turning age 18 or after age 18. This a reasonable reading of the clear language of the law.

• **Do the changes in the law impact adoption and permanent legal custodianship?**
  ✓ Yes. Act 80 sought to correct disincentives to permanency that existed in the law. Because adoption and guardianship subsidies ended at age 18, some families would opt to have the child remain in foster care because benefits and services could extend until age 21. Families who wanted the permanent arrangement of adoption or guardianship were afraid to choose these option for fear that benefits and support would be lost to the child. **Act 80 now allows adoption and guardianship subsidies to extend until age 21 for any arrangement entered into when an eligible youth is 13 or older.**

• **Do children whose subsidies are extended past age 18 have to engage in any particular activities to be eligible?**
  ✓ Yes. Youth in extended subsidy arrangements must meet the same criteria as youth in extended foster care. They must engage in at least one of the following activities:
    1. completing secondary education or an equivalent credential;
    2. enrolled in an institution which provides postsecondary or vocational education;
    3. participating in a program actively designed to promote or remove barriers to employment;
    4. employed for at least 80 hours per month.
  ✓ Similarly, if the youth has a medical or behavioral health condition that prevents them from meeting any of the listed criteria they, remain eligible as long as documentation of the condition is maintained. Until more direction is provided, families should be encouraged to create a file and update their
records at least every six months with proof of the condition and any related treatment.

- **How will a youth's compliance with the activity requirements be monitored?**
  - It is not yet clear how compliance will be monitored for youth in adoption or guardianship arrangements because their cases are no longer open, case management is not provided, and permanency planning is not required.
  - If a Department of Public Welfare Bulletin is not released in the near future, it is likely that compliance monitoring will be detailed in the subsidy agreement. Children’s attorneys should review this document with the caregiver and child so they understand any requirements to send documents or other proof of continued eligibility. This might include proof of enrollment, work schedules, as well as proof of a medical or behavioral health condition that prevents a child from meeting any of the activity requirements.
  - If the process for assuring compliance is not clear, families should be maintain a file where proof of a child’s activities can be updated at least every six months to assure continued eligibility.

- **Which children and families are eligible for an extended subsidies?**
  - In addition to the existing eligibility requirements for adoption and guardianships subsidies, to be eligible for a subsidy past age 18, the child’s adoption or guardianship agreement must be finalized when the child is age 13 or older.

- **What about children who are still under 21, but had their adoption or guardianship arrangement finalized when they were age 13 or older, but before the date of the enactment of Act 80?**
  - At this time, it is not clear if these youth will receive the benefit of Act 80. Juvenile Law Center encourages individuals who fall into this class to call their children and youth agency and request to renegotiate the terms of their subsidy agreement based on Act 80.

**For more information please contact Jenny Pokempner at Juvenile Law Center:**

- 215-625-0551 x111
- jpkempner@jlc.org