

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

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- ❖ 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.

***Please Note: This FAQ represents the interpretation of Juvenile Law Center***

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### **The Basics**

- **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.

### **Foster Care Extensions**

- **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 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,<sup>1</sup> 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.
- **What activities can a youth engage in to remain in care past age 18?**
  - ✓ **Now a youth can remain in care past 18 if they are doing any one of the following:**

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<sup>1</sup> *In re S.J.*, 906 A.2d 547 (Pa. Super. 2006).

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 as a basis for continued court jurisdiction.
  - **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 amended 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 examples of 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. This is a new category in the law. 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 on a monthly basis. 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 total 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 criteria 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 provisions 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 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 before turning age 18 and renew the request regularly thereafter. In the request, the youth should state the activity they plan to engage in, or whether they have a health or behavioral health condition that prevents them from meeting the activity requirements. The FSP and ISP meetings are good times to bring up the issue of extension of care and make sure the youth's intentions are clear and documented. 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 91 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 91, 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.
  - ✓ A cost analysis completed by the Finance Project showed that implementing Act 80 and 91 will save the state and counties money by both increasing the federal share of the cost of care and by incentivizing permanency.
- **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 the cost of supervised independent living (SIL) settings. These settings are age-appropriate and provide youth an opportunity to practice their independent living skills while still receiving support and guidance.

- ✓ Federal guidance makes clear that states have great discretion in providing SIL placements that are eligible for federal reimbursement. The Administration for Children and Families (ACF) stated that “a title IV-E agency has the discretion to develop a range of supervised independent living settings which can be reasonably interpreted as consistent with the law, including whether or not such settings need to be licensed and any safety protocols that may be needed. For example, a title IV-E agency may determine that when paired with a supervising agency or supervising worker, host homes, college dormitories, shared housing, semi-supervised apartments, supervised apartments or another housing arrangement meet the supervised setting requirement. We encourage the title IV-E agency to be innovative in determining the best living arrangements that could meet an older child's needs for supervision and support as he/she moves toward independence.”<sup>2</sup>
- ✓ Fostering Connections and federal guidance have created the conditions for expanding age-appropriate placement options, however, much advocacy will need to be done to ensure that these placements are available for youth throughout the state.

### **Resumption of Dependency Court Jurisdiction: Re-Entry**

- **Can youth who age out of care really re-enter care?**
  - ✓ Yes. If a youth aged out within 90 days of turning age 18 or any time after turning age 18, they can re-enter care any time before turning age 21.
- **What is the legal mechanism for allowing re-entry 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

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<sup>2</sup> U.S. Department of Health and Human Services Administration on Children, Youth and Families, [Guidance on Fostering Connections to Success and Increasing Adoptions Act of 2008, Program Instruction](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm#sectb). ACYF-CB-PI-10-11 (July 9, 2010), available at [http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2010/pi1011.htm#sectb](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm#sectb)

court procedural rules and a Department of Public Welfare Bulletin 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. It is recommended that in motions or requests to resume jurisdiction that the youth state the activity they intend to engage in, any steps they have taken to begin that activity as well as any assistance needed.
- **What if the youth is not yet engaging in one of the required activities when he or she inquires about re-entry?**
  - ✓ The intention of the re-entry provision is to provide a safety net for youth who aged out without a proper plan or whose plan fell through and they have now come upon difficult times.
  - ✓ The provision was intended to allow the court and child welfare system to respond to the youth and take advantage of this opportunity to re-engage the youth.
  - ✓ Youth who inquire about re-entry and express a firm commitment to engage in one of the required activities should be assisted in identifying and taking steps to meet the activity requirement. For example, a youth who has become homeless, may no longer have the identification documents needed for school enrollment or funds for transportation to seek employment. Working with the youth to overcome the barriers to meeting the requirements should be done simultaneously with filing a motion to resume jurisdiction to ensure that the process can respond to the situation of the

youth while also taking steps towards meeting the requirements of the statute.

- ✓ Youth feedback received by JLC and the PA Youth Advisory Board indicate that a youth's request to re-enter is a serious step by the youth, signaling either the experience of a crisis or a significant change perspective. All efforts to respond to this serious step should be taken to re-engage the youth and facilitate getting the case before the court.<sup>3</sup>

- **Can eligible youth who have children apply to re-enter?**

- ✓ If the youth meets the eligibility requirements, yes.
- ✓ That the youth has children herself is relevant to her disposition (placement and services) once she re-enters care, but her status as a parent does not impact her ability to request that the court resume jurisdiction.

- **Can a youth who has a juvenile adjudication or a criminal conviction re-enter care?**

- ✓ If the youth meets the eligibility requirements, yes.
- ✓ That a youth has a juvenile adjudication or criminal conviction may be relevant to placement or disposition options, but should not have an impact on eligibility for re-entry.

- **Is there any time period or limitation during which re-entry is allowed?**

- ✓ No. The law does not establish a limited time window, such as six months or one year, for re-entry. An eligible youth can re-enter any time before reaching age 21. An eligible youth is one who:

1. Discharged from care 90 days before turning age 18 or any time after age 18,

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<sup>3</sup> It is also important to remember that if the youth was already meeting the activity requirements, it is unlikely that they would have left care. Most of the youth requesting re-entry will need assistance and likely will be facing difficult living situations. Asking them to come back and inquire about re-entry when they have gotten their life together (enrolled in school, gotten a job, etc) would seem to undercut to purpose of the safety net provision.

2. Agrees to engage in at least one of the required activities or has a documented medical or behavioral health condition that prevents such activity, and
3. Is under age 21.

- **What about the concept of a “trial discharge”?**

- ✓ “Trial discharge” was a term and process describe in the Independent Living Services promulgated by DPW prior to the enactment of Act 91. It was an attempt to encourage counties to provide youth some flexibility when they discharged prematurely. In effect, it was an attempt to cover the gap in the law that Act 91 has now filled.
- ✓ Now that the Juvenile Act has been amended to allow youth to request the court to resume jurisdiction under specific circumstances, the trial discharge procedure outlined in the Independent Living Bulleting is no longer required and conflicts with the new law. The Juvenile Act now provides clear direction on re-entry and 42 Pa. C.S.A. § 6351 (j) is he prevailing law on re-entry into care.

- **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 within 90 days of turning age 18 or after age 18. This interpretation is based on case law and federal guidance regarding Title IV-E reimbursement.
  - ✓ HHS Guidance provides that youth who re-enter can establish or re-establish Title IV-E eligibility.<sup>4</sup>
  - ✓ Case law supports that Act 91 is not impermissibly retroactive as applied to youth who were discharged from care prior to the enactment of the law if they meet eligibility criteria. *See In re S.A.*, 925 A.2d 838 (Pa. Super. 2007).<sup>5</sup>

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<sup>4</sup>See [http://www.acf.hhs.gov/programs/cb/laws\\_policies/policy/pi/2010/pi1011.htm#sectb](http://www.acf.hhs.gov/programs/cb/laws_policies/policy/pi/2010/pi1011.htm#sectb) (explaining that Title IV-E reimbursement can be drawn down for these youth and how a IV-E re-determination can be avoided and, alternatively, how a new determination only needs to consider the youth’s income and therefore a previously ineligible youth may be IV-E eligible upon re-entry).

<sup>5</sup> The court, among other things, explains the standards for when a law is impermissible retroactive. For example, the court explains that “a statute is not regarded as operating retroactively because of the mere fact that it relates to antecedent events, or draws upon antecedent facts for its operation.”

## **Extension of Adoption and Permanent Legal Custodianship Subsidies Past Age 18**

- **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 youth who turned age 13 before the adoption or guardianship subsidy became effective.**
  
- **Do children whose plc or adoption 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.

- ✓ 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 maintain a file where proof of a child’s activities or disability can be updated at least every six months to assure continued eligibility.
- **Which children and families are eligible for 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 must be age 13 or older when the adoption or guardianship subsidy agreement becomes effective.
  - **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.

**For more information on Act 91 and Act 80 and legal resources related to Fostering Connections, please see:**

**<http://www.jlc.org/fosteringconnections>**

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