

## VIRGINIA RANKS FORTY-NINTH OF FIFTY: THE NEED FOR STRONGER LAWS SUPPORTING FOSTER YOUTH

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### INTRODUCTION

In 2017, 446 youths left the foster care system in Virginia without a permanent family.<sup>1</sup> The most recent data shows that nationwide, approximately 20,500 youths leave the foster care system without a permanent family each year.<sup>2</sup> Out of fifty states, Virginia is ranked forty-ninth for the rate at which youth exit the foster care system without permanency.<sup>3</sup> In 2016, Virginia had 19% of foster youth age out of foster care as compared to 8% nationally.<sup>4</sup>

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1. Va. Dep't of Soc. Servs., *Foster Care (FC) Related Reports*, VIRGINIA.GOV, <http://dss.virginia.gov/geninfo/reports/children/fc.cgi> (last visited Oct. 1, 2018).

2. U.S. DEP'T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT: PRELIMINARY FY 2016 ESTIMATES AS OF OCT. 20, 2017, at 3 (2017), <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport24.pdf>.

3. JOINT LEGISLATIVE AUDIT & REVIEW COMM'N, STUDY RESOLUTION: FOSTER CARE AND ADOPTION SERVICES IN VIRGINIA (Sept. 11, 2017), [http://jlarc.virginia.gov/pdfs/resolutions/2017\\_Foster\\_adoption.pdf](http://jlarc.virginia.gov/pdfs/resolutions/2017_Foster_adoption.pdf); see also *Children Exiting Foster Care by Exit Reason*, KIDS COUNT, <https://datacenter.kidscount.org/data/tables/6277-children-exiting-foster-care-by-exit-reason?loc=1&loct=2#ranking/2/any/true/870/2632/13051> (last visited Oct. 1, 2018).

4. *Children Exiting Foster Care by Exit Reason*, *supra* note 3.

The transition from adolescence to adulthood is a critical and often challenging time in a youth's life. With the support of a stable family, friends, and community, youth can grow and transition into healthy, productive adults. When youth lack that support, as most youth with foster care experience do, the transition can be more difficult. Without that support, youth are less likely to obtain safe, stable housing, obtain employment, and build permanent relationships within their community. Foster youth lacking this support are more likely to be homeless and involved in the criminal justice system, and less likely to graduate from high school or college.<sup>5</sup>

The vast majority of the country performs significantly better than Virginia in finding permanent families for children and youth<sup>6</sup> who have been traumatized through no fault of their own, removed from their homes and families, and placed into foster care. When a state does not find a permanent family for a foster youth, the youth is left to fend for himself once he becomes an "adult," despite the fact that the youth overwhelmingly lacks the emotional, mental, practical, and educational skills to succeed as an adult.

## I. VIRGINIA'S FOSTER CARE SYSTEM

### A. *Background*

Children and youth enter and exit foster care through the Virginia Department of Social Services. The Virginia Social Services System ("VSSS") is responsible for the administration, supervision, and delivery of social services in the state. The VSSS is comprised of three organizations: the Virginia Department of Social Services ("VDSS"), Local Departments of Social Services ("LDSS"), and the Virginia Community Action Partnership ("VaCAP").<sup>7</sup> In Virginia,

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5. See GARET FRYAR ET AL., CHILD TRENDS, SUPPORTING YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE: FINDINGS FROM A NATIONAL SURVEY 2 (2017), <https://www.childtrends.org/wp-content/uploads/2017/11/SYPTFC-Findings-from-a-National-Survey-11.29.17.pdf>.

6. The terms children and youth are both used in reference to foster care. The term youth is used when referring to young people transitioning from childhood to adulthood.

7. *Organizational Structure*, VA. DEP'T OF SOC. SERVS., <https://www.dss.virginia.gov/division/> (last visited Oct. 1, 2018). VaCAP is a statewide membership association for Virginia's nonprofit and public community action agencies, who fight poverty and build self-sufficiency for Virginia's families. *About*, VA. COMMUNITY ACTION PARTNERSHIP, <http://www.vacap.org/page.cfm/about-1> (last visited Oct. 1, 2018). VaCAP will not be discussed

the VDSS is responsible for the supervision of social services, and the LDSS are responsible for the administration and delivery of social services.<sup>8</sup> This means Virginia is a state-supervised, locally administered social services system.

At the state level (VDSS), a home office is located in Richmond, and houses the Divisions and Program Areas. In addition, there are five regional offices—Central, Eastern, Northern, Piedmont, and Western<sup>9</sup>—which are responsible for overseeing the local social services organizations and providing support. At the local level (LDSS), there are 120 local departments of social services.<sup>10</sup>

Virginia Code section 63.2-200 establishes the Department of Social Services as a part of the executive branch. The Department of Social Services is answerable to the Governor of Virginia and is “under the supervision and management of the Commissioner of Social Services.”<sup>11</sup> The Commissioner is appointed by the Governor and confirmed by the Virginia General Assembly,<sup>12</sup> and is responsible for establishing divisions and regional offices, as necessary.<sup>13</sup> The Commissioner is required to cooperate with local authorities, including encouraging and directing the training of all personnel of local boards and local departments, and collecting and publishing statistics and data that are valuable to public authorities and social agencies in improving the care of people.<sup>14</sup> The Commissioner must encourage local boards to report information related to the administration of social services and review the local boards’ budget requests.<sup>15</sup> In addition to appointing the Commissioner, the Governor appoints eleven members to the State Board of Social Services (“Board”).<sup>16</sup> The Board acts as an advisor to the Commissioner and, when requested or on its own initiative, investigates questions and problems, and submits findings and conclusions.<sup>17</sup>

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further for the purposes of this article.

8. *Organizational Structure*, *supra* note 7.

9. *Regional Offices of Social Services*, VA. DEP’T OF SOC. SERVS., [https://www.dss.virginia.gov/division/regional\\_offices/](https://www.dss.virginia.gov/division/regional_offices/) (last visited Oct. 1, 2018).

10. *Organizational Structure*, *supra* note 7.

11. VA. CODE ANN. § 63.2-200 (Repl. Vol. 2017).

12. *Id.* § 63.2-201 (Repl. Vol. 2017).

13. *Id.* § 63.2-209 (Repl. Vol. 2017).

14. *Id.* § 63.2-204 (Repl. Vol. 2017).

15. *Id.* § 63.2-205 (Repl. Vol. 2017).

16. *Id.* § 63.2-215 (Repl. Vol. 2017).

17. *Id.* § 63.2-216 (Repl. Vol. 2017).

In addition, the Board is responsible for adopting regulations that the Commissioner carries out.<sup>18</sup>

The General Assembly has specifically set out certain duties of the VDSS, which include:

1. Develop a plan for the design and implementation of a statewide human services information and referral program;
2. Coordinate and supervise the implementation and operation of the information and referral program;
3. Coordinate funding for the system;
4. Select regional providers of information and referral services;
5. Supervise coordination of information management among information and referral regions across the Commonwealth;
6. Encourage effective relationships between the system and state and local agencies and public and private organizations;
7. Develop and implement a statewide publicity effort;
8. Provide training, technical assistance, research, and consultation for regional and local information and referral centers, and to localities interested in developing information and referral services;
9. Determine a core level of services to be funded from state government resources;
10. Coordinate standardization of resource data collection, maintenance and dissemination;
11. Stimulate and encourage the availability of statewide information and referral services;
12. Develop and implement a program for monitoring and assessing the performance and success of the information and referral program; and
13. Collect information on child-specific payments made through the Title IV-E foster care program and submit information, when available, to the Office of Children's Services.<sup>19</sup>

In addition, the General Assembly has prescribed certain duties to the regional offices, which include:

1. Collect, maintain and disseminate resource data;
2. Provide citizen access to information about resources throughout the Commonwealth;
3. Assist in planning functions by providing selected data to the Department on a regular basis;
4. Provide data to public and private agencies other than the Department on a contractual basis;
5. Cooperate with the state administering agency;
6. Seek funds from available sources;
7. Maintain effective relationships between the system and state and local agencies and public and private organizations; and

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18. *Id.* § 63.2-217 (Repl. Vol. 2017).

19. *Id.* § 63.2-226 (Repl. Vol. 2017).

8. When feasible and appropriate and within the limits of available funds, establish satellite offices or develop cooperative agreements with local information and referral groups and resource and referral groups that can assist the regional providers in performing their duties and responsibilities.<sup>20</sup>

While the VDSS supervises the administration of social services, it is actually the LDSS that administer the services. The General Assembly requires a local board in each county and city, but also allows counties and cities to establish one local board for jurisdictions.<sup>21</sup> For example, the Shenandoah Valley Department of Social Services serves both Staunton and Augusta counties.<sup>22</sup> Each local department has a board whose members are appointed by the local governing bodies.<sup>23</sup> The local board may consist of local residents or a local government official.<sup>24</sup> The local board is responsible for administering child welfare services in its jurisdictions. These responsibilities include:

1. Protecting the welfare of all children including handicapped, homeless, dependent, or neglected children;
2. Preventing or remedying, or assisting in the solution of problems that may result in the neglect, abuse, exploitation or delinquency of children;
3. Preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving these problems and preventing the break up of the family where preventing the removal of a child is desirable and possible;
4. Restoring to their families children who have been removed by providing services to the families and children;
5. Placing children in suitable adoptive homes in cases where restoration to the biological family is not possible or appropriate; and
6. Assuring adequate care of children away from their homes in cases where they cannot be returned home or placed for adoption.<sup>25</sup>

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20. *Id.* § 63.2-227 (Repl. Vol. 2017).

21. *Id.* § 63.2-300 (Repl. Vol. 2017). In Virginia, each county and city is a separate political entity. Under this statute, however, they may join together to form one local board.

22. *Shenandoah Valley Social Services*, AUGUSTA COUNTY, <https://www.co.augusta.va.us/government/social-services> (last visited Oct. 1, 2018).

23. VA. CODE ANN. § 63.2-301 (Repl. Vol. 2017).

24. *Id.* § 63.2-302 (Repl. Vol. 2017). If the local board consists of a local government official, the governing body must also establish an advisory board to advise the local government official on duties and functions required by the local board. *See id.* § 63.2-305 (Repl. Vol. 2017).

25. *Id.* § 63.2-319 (Repl. Vol. 2017).

In addition to those responsibilities, the local board must appoint a local director,<sup>26</sup> who serves as the department's administrator and as the secretary to the local board.<sup>27</sup> The local director also acts as an agent of the Commissioner when implementing federal and state laws and regulations.<sup>28</sup>

It should be noted that Virginia is currently one of only nine states that administers social services at the county level.<sup>29</sup> North Carolina, one of the other eight county-administered systems, is currently exploring the option of transitioning to a regional- or state-administered system.<sup>30</sup> There are some downsides to a county-administered system versus a state-administered system. State-administered systems tend to “[h]ave a more structured approach to risk assessments, licensing of kinship homes, and trainings for child welfare workers and caregivers.”<sup>31</sup> Finally, state-administered systems tend to require structured risk assessments and licensing for foster care placements.<sup>32</sup> State-administered systems are more likely to provide specialized trainings on the over- or under-representation of minority children in the foster care system.<sup>33</sup> They are also more likely to have higher adoption rates and innovate differently by using certain counties to develop and test specialized services.<sup>34</sup>

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26. *Id.* § 63.2-325 (Repl. Vol. 2017).

27. *Id.* § 63.2-332 (Repl. Vol. 2017).

28. *Id.* § 63.2-333 (Repl. Vol. 2017).

29. *State vs. County Administration of Child Welfare Services*, CHILD WELFARE (Mar. 2018), <https://www.childwelfare.gov/pubPDFs/fservices/pdf>. The eight other county-administered states are: California, Colorado, Minnesota, New York, North Carolina, North Dakota, Ohio, and Pennsylvania). *Id.*

30. H.R. 630, 44th Gen. Assemb., Reg. Sess. (N.C. 2017); *see also Social Services*, U.N.C. SCH. GOV'T, <https://www.sog.unc.edu/resources/microsites/social-services/background> (last visited Oct. 1, 2018).

31. ELIZABETH JORDAN ET AL., CHILD TRENDS, SUPPORTING YOUNG PEOPLE TRANSITIONING FROM FOSTER CARE: VIRGINIA FINDINGS FROM A NATIONAL SURVEY AND POLICY SCAN 17–18 (2017), <https://www.childtrends.org/wp-content/uploads/2017/11/SYPT-FC-Virginia-Findings-from-a-National-Survey-and-Policy-Scan-11.29.17.pdf> (citing U.S. DEP'T OF HEALTH & HUMAN SERVS., NATIONAL SURVEY OF CHILD AND ADOLESCENT WELL BEING: LOCAL CHILD WELFARE AGENCY SURVEY 4 (2001), [https://www.acf.hhs.gov/sites/default/files/opre/wellbeing\\_local.pdf](https://www.acf.hhs.gov/sites/default/files/opre/wellbeing_local.pdf)).

32. *Id.*

33. *Id.*

34. *Id.*

### B. *Entry into the Foster Care System*

Currently, in Virginia, there are about 5000 children in foster care, including the Fostering Futures program, ranging in age from birth to twenty-one years old.<sup>35</sup> Children and youth enter the foster care system through an LDSS. Children enter foster care when a court commits a child to an LDSS or, in rare cases, through an entrustment agreement or an agreement in which the parent or guardian retains legal custody.<sup>36</sup> Prior to placing a child in foster care, an LDSS must first seek kinship care options.<sup>37</sup> If kinship care is not an option, a child may be placed in family foster care, treatment foster care, or residential care.<sup>38</sup> Family foster care is a placement for a child to reside with a family.<sup>39</sup> This differs from treatment foster care, which is a community-based program that delivers services through treatment foster parents, who are trained and supervised by a community-based agency's staff.<sup>40</sup> Residential care involves a facility or group home that provides "full time care, maintenance, protection and guidance" to children separated from their parents or guardians.<sup>41</sup>

When siblings are in foster care, "all reasonable steps" are required to be taken to place siblings together.<sup>42</sup> However, there are times where siblings are split up and placed in separate foster homes; in those instances, a plan must be developed to encourage regular and frequent visitation and communication between siblings.<sup>43</sup>

In addition to placing the child in foster care, an LDSS must provide services in the best interests of the child. These services may include "assessment and stabilization, diligent family search, intensive in-home, intensive wraparound, respite, mentoring, family

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35. *Foster Care*, VA. DEP'T OF SOC. SERVS., <https://dss.virginia.gov/family/fc/index.cgi> (last visited Oct. 1, 2018).

36. VA. CODE ANN. § 63.2-900(A) (Cum. Supp. 2018).

37. *Id.*

38. *Id.*

39. VA. DEP'T OF SOC. SERVS., CHILD AND FAMILY SERVICES MANUAL 7 (2015), [https://www.dss.virginia.gov/files/division/dfs/fc/intro\\_page/guidance\\_manuals/fc/07\\_2015/Section\\_01\\_Foster\\_Care\\_Overview.pdf](https://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2015/Section_01_Foster_Care_Overview.pdf).

40. *Id.* at 12.

41. *Id.* at 5.

42. VA. CODE ANN. § 63.2-900.2 (Repl. Vol. 2017).

43. *Id.*

mentoring, adoption support, supported adoption, crisis stabilization or other community-based services.”<sup>44</sup>

### C. *Youth in the Foster Care System*

At the end of 2017, there were 5033 children in the Virginia foster care system.<sup>45</sup> Additionally, in 2017, 2738 children were discharged from the foster care system through reunification, adoption, placement with a relative, or emancipation.<sup>46</sup> That year, children who were discharged to reunification with their family remained in foster care for an average of 13.75 months.<sup>47</sup> Children who were discharged to adoption remained in foster care for an average of 33.06 months.<sup>48</sup> Children who were discharged to relatives remained in foster care for an average of 9.82 months.<sup>49</sup> Youth who were discharged to emancipation remained in foster care the longest—for an average of 33.87 months.<sup>50</sup>

While in foster care, youth move an average of one to two times a year.<sup>51</sup> This means that, on average, multiple times a year, a child is removed from his or her current home, where he or she is familiar with the family members, his or her school, the community, extracurricular activities, and other familiarities, and is placed in a new home full of strangers. These constant moves and uncertainty can retraumatize these children and impede their progress towards healing and resiliency.

### D. *Exiting the Foster Care System*

According to the VDSS, there are four ways youth can be discharged from the foster care system: reunification with family, adoption, discharge to relatives, or emancipation. The first three categories result in permanency for the youth, while the fourth

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44. *Id.* § 63.2-900 (Cum. Supp. 2018); Va. Dep’t of Soc. Servs., *supra* note 1.

45. Va. Dep’t of Soc. Servs., *supra* note 1.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. *Questions and Answers: Credit Transfer and School Completion*, LEGAL CTR. FOSTER CARE & EDUC. (2008), [https://www.americanbar.org/content/dam/aba/migrated/child/education/QA\\_2\\_Credits\\_FINAL.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/migrated/child/education/QA_2_Credits_FINAL.authcheckdam.pdf).

does not.<sup>52</sup> In 2017, Virginia had 2738 children and youth discharged from the foster care system.<sup>53</sup> Of those, 759 were reunited with family, 842 were adopted, 599 were discharged to relatives, and 446 left the foster care system to emancipation without a permanent family.<sup>54</sup> More than 16% of youth leaving the foster care system are left without a permanent family.

In 2016, Virginia implemented the Fostering Futures program to provide extended support to youth aging out of foster care until the age of twenty-one.<sup>55</sup> Interestingly, even with the implementation of Fostering Futures, 77% of states, including Virginia, report that youth typically leave foster care prior to the maximum age.<sup>56</sup> Fostering Futures, which only applies if a youth elects to remain in the program, provides financial and social services support to youth until age twenty-one.<sup>57</sup> In Virginia, once the youth turns twenty-one, there is a steep decline of all financial and social services.<sup>58</sup> One important question that needs to be answered is: why are youth not electing to participate in Fostering Futures and leaving foster care before the maximum age?

## II. VIRGINIA'S FOSTER YOUTH FACE SIGNIFICANT TRAUMA

Children in the foster care system are removed from their caregivers for a variety of reasons, but often as a result of abuse, neglect, or abandonment. Long-term abuse and neglect are forms of chronic trauma. Most children in foster care have faced repeated traumas, both in their original homes and as a result of the uncertainty of foster care. Removal from their families, separation from familiar social circles, and transitions from homes and schools are all examples of trauma that children in the foster care system face. In fact, one-half to three-quarters of youth in foster care outwardly exhibit behavioral or social-emotional issues, and 61% meet the “diagnostic criteria for at least one psychiatric disorder during

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52. Va. Dep't of Soc. Servs., *supra* note 1.

53. *Id.*

54. *Id.*

55. Fostering Futures will be discussed at greater length later in this article. *See infra* Part III.A.

56. FRYAR ET AL., *supra* note 5, at 7–8.

57. VA. DEP'T OF SOC. SERVS., FOSTERING FUTURES PROGRAM FOR YOUNG ADULTS 18 TO 21, at 3 (2016), [http://www.dss.virginia.gov/files/division/dfs/fc/intro\\_page/guidance\\_manuals/fc/07\\_2016/section\\_14B\\_Fostering\\_Futures.pdf](http://www.dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/07_2016/section_14B_Fostering_Futures.pdf).

58. *See* FRYAR ET AL., *supra* note 5, at 3.

their lifetime.”<sup>59</sup> While removal from their original homes is sometimes the best option for the children, it is necessary to recognize the trauma they have experienced and the healing that needs to occur. When looking at the outcomes of youth in foster care and the laws that support or impede their success as adults, it is important to do so with an understanding of the trauma they have faced and the effects of that trauma.

From 1995 to 1997, the Division of Violence Prevention at the Centers for Disease Control and Prevention conducted an adverse childhood experience (“ACE”) study in partnership with Kaiser Permanente.<sup>60</sup> The study involved over 17,000 participants and studied the prevalence and effects of ACEs.<sup>61</sup> ACEs are traumatic, stressful events, and include: physical abuse, sexual abuse, emotional abuse, physical neglect, emotional neglect, intimate partner violence, parent violence, household substance misuse, mental illness within the household, parental separation or divorce, and incarceration of a household member.<sup>62</sup>

Most, if not all, foster youth have experienced at least one ACE. For a child to be removed from his or her home, there must be an allegation, and ultimately a finding, of abuse or neglect.<sup>63</sup> Hence, most, if not all, children and youth in the foster care system have experienced abuse or neglect.<sup>64</sup> Many children and youth have faced multiple ACEs.<sup>65</sup> On top of those experiences, they have faced the trauma of being removed from their families and other community relationships. Many have also faced the trauma associated with moving in and out of multiple foster homes.<sup>66</sup>

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59. See Erin Kim Hazen, *Youth in Foster Care: An Examination of Social, Mental, and Physical Risks*, 7 ONLINE PUB. UNDERGRADUATE STUD. 34, 34–35 (2014), <https://steinhardt.nyu.edu/appsych/opus/issues/> (citing McMillen et al., *Prevalence of Psychiatric Disorders Among Older Youths in the Foster Care System*, 44 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 88, 90–91 (2005)).

60. *Adverse Childhood Experiences*, SAMHSA, <https://www.samhsa.gov/capt/practicing-effective-prevention/prevention-behavioral-health/adverse-childhood-experiences> (last visited Oct. 1, 2018).

61. *Id.*

62. *Id.*

63. VA. CODE ANN. §§ 16.1-251 to -252 (Cum. Supp. 2018).

64. See JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, ISSUE BRIEF #5: TRAUMA-INFORMED PRACTICE WITH YOUNG PEOPLE IN FOSTER CARE 3 (2012), <http://www.aecf.org/resources/trauma-informed-practice-with-young-people-in-foster-care/> (citing Mary Dozier et al., *Interventions for Foster Parents: Implications for Developmental Theory*, 14 DEV. PSYCHOPATHOLOGY 843, 843 (2002)); Kerri M. Schneider & Vicky Phares, *Coping with Parental Loss Because of Termination of Parental Rights*, 84 CHILD WELFARE 819, 820 (2005).

65. See *Adverse Childhood Experiences*, *supra* note 60.

66. See CHRISTINE COLLAZO, FLA. STATE UNIV., PLACEMENT INSTABILITY IN THE FOSTER

### A. *Short and Long-Term Effects of Trauma*

There is substantial scientific evidence that trauma, abuse, and neglect alter the brain functioning of children.<sup>67</sup> Research shows that both genetics and human experiences, including interactions with other people, play a significant role in human brain development.<sup>68</sup>

Children and youth may react to trauma in a variety of ways, some of which are internal and some of which are external reactions. Some of the most common internal reactions include: emotional numbing, avoidance of stimuli, flashbacks and nightmares, confusion, depression, withdrawal and isolation, somatic complaints, sleep disturbances, academic or vocational decline, suicidal thoughts, guilt, and revenge fantasies.<sup>69</sup> Some common external reactions include: interpersonal conflicts, aggressive responses, school refusal and avoidance, substance use, and antisocial behavior.<sup>70</sup>

Physical abuse can have a major physical impact on a child's brain. One of the most common examples is shaken baby syndrome.<sup>71</sup> By shaking a child, the brain tissue can be destroyed and blood vessels can tear.<sup>72</sup> This leads to seizures, loss of consciousness, and even death.<sup>73</sup> In the long term, it can lead to sensory im-

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CARE SYSTEM: A STUDY FRAMED BY ATTACHMENT THEORY 2 (2013), <http://diginole.lib.fsu.edu/islandora/object/fsu:253327/datastream/PDF/view>.

67. See CHILD WELFARE INFORMATION GATEWAY, CHILDREN'S BUREAU, ISSUE BRIEF: UNDERSTANDING THE EFFECTS OF MALTREATMENT ON BRAIN DEVELOPMENT 1 (2015), [https://www.childwelfare.gov/pubPDFs/brain\\_development.pdf](https://www.childwelfare.gov/pubPDFs/brain_development.pdf) [hereinafter CHILD WELFARE].

68. See *id.* at 2.

69. See JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, *supra* note 64, at 4 (citing Bruce D. Perry, *Examining Child Maltreatment Through a Neurodevelopmental Lens: Clinical Applications of the Neurosequential Model of Therapeutics*, 14 J. LOSS TRAUMA 240 (2009); Bruce D. Perry & Ronnie Pollard, *Homeostasis, Stress, Trauma, and Adaptation: A Neurodevelopmental View of Childhood Trauma*, 7 CHILD ADOLESCENT PSYCHIATRIC CLINICS N. AM. 33, 34 (1998); Bruce D. Perry et al., *Childhood Trauma, the Neurobiology of Adaptation, and "Use-Dependent" Development of the Brain: How "States" Become "Traits,"* 16 INFANT MENTAL HEALTH J. 271 (1995)).

70. See *id.*

71. Cindy W. Christian et al., *Abusive Head Trauma in Infant Children*, 123 PEDIATRICS 1409, 1409 (2009).

72. *Abusive Head Trauma*, KIDSHEALTH, <https://kidshealth.org/en/parents/shaken.html> (last visited Oct. 1, 2018); *Shaken Baby Syndrome*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/shaken-baby-syndrome/symptoms-causes/syc-20366619> (last visited Oct. 1, 2018).

73. See CHILD WELFARE, *supra* note 67, at 7; Christian et al., *supra* note 71, at 1409–

pairments, as well as cognitive, learning, and behavioral disabilities.<sup>74</sup> Many other types of head injuries can also result in similar effects on the brain and developmental impairments.<sup>75</sup>

Neglect, without physical abuse, can also affect a child's brain development. Children's brains develop, partially, based on implicit and explicit memories.<sup>76</sup> After babies are born, they develop trillions of synapses.<sup>77</sup> Over the course of their childhood, they discard synapses that have not been engaged.<sup>78</sup> During childhood, synapses and memories work together to develop the child's brain.<sup>79</sup> If a child is exposed to something, and therefore has an implicit memory, the child uses a synapse and will keep that synapse.<sup>80</sup> On the other hand, if a child is not exposed to something and does not have that experience, the child does not use a synapse and will lose it.<sup>81</sup> For example, a baby that is constantly around her mother learns to recognize her mother's voice through implicit memories.<sup>82</sup> She does not have an explicit memory of hearing her mother's voice at some specific point in the past, but implicitly learns it from consistent exposure.<sup>83</sup> Similarly, when babies hear people speaking on a regular basis, their neural systems are able to receive the necessary stimulation that will lead to increased functioning.<sup>84</sup> On the other hand, babies that are not exposed to that interaction will lose that synapse, making it more difficult for their brains to develop language.<sup>85</sup> The effects of losing synapses can last indefinitely.<sup>86</sup>

Similarly, when children in healthy, appropriate caregiver relationships babble, gesture, or cry, they receive appropriate reactions from their caregivers. This allows for the strengthening of neuronal pathways for social interactions.<sup>87</sup> However, when children

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74. See CHILD WELFARE, *supra* note 67, at 7; Christian et al., *supra* note 71, at 1410.

75. See CHILD WELFARE, *supra* note 67, at 7.

76. See *id.* at 4–5.

77. See *id.* at 2.

78. See *id.* at 4.

79. See *id.* at 2, 4.

80. See *id.* at 3–4.

81. See *id.*

82. See *id.* at 4–5.

83. See *id.*

84. See *id.* at 3–4.

85. See *id.* at 4.

86. See *id.*

87. See *id.* at 5.

are neglected or live in a chaotic or threatening home, their brains may become hyperalert to danger and not fully develop because their cries are not met with the appropriate reactions.<sup>88</sup> Instead, their brains develop in a negative environment, preparing them to cope with negative conditions and may diminish their ability to respond to nurturing and kindness.<sup>89</sup> The effects of neglect, abuse, and trauma on the brain during developmental years can last well into adulthood.<sup>90</sup> Early adversity has a dramatic effect on infants and young children.<sup>91</sup> Even babies need treatment for trauma, despite the fact that they cannot understand or remember the experience.<sup>92</sup>

While the specific effects of childhood trauma may depend on age, duration of maltreatment, identity of the perpetrator, intervention, and other factors, there are physiological ways that the child's brain may be affected. Childhood trauma can cause reduced volume in the hippocampus, the corpus callosum, the cerebellum, and the orbitofrontal cortex, as well as result in a smaller prefrontal cortex and abnormal cortisol levels.<sup>93</sup> These changes can be connected to specific instances and types of abuse and neglect, and these changes in the makeup of the brain have direct effects on an individual's abilities and behaviors.<sup>94</sup> Maltreatment can reduce volume in the hippocampus, leading to learning and memory impairment.<sup>95</sup>

Decreased volume in the corpus callosum can lead to emotional regulation impairment and decreased cognitive abilities.<sup>96</sup> Decreased volume in the cerebellum can impair motor behavior and executive functioning.<sup>97</sup> Many children, and adults who were neglected as children, have a smaller prefrontal cortex, leading to impaired cognition, behavior, and emotion regulation.<sup>98</sup> Working with the prefrontal cortex is the locus coeruleus, which is the part

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88. *Id.*

89. *Id.*

90. *Id.* at 6, 13.

91. *Id.*

92. NADINE BURKE HARRIS, *THE DEEPEST WELL: HEALING THE LONG-TERM EFFECTS OF CHILDHOOD ADVERSITY* 101 (2018).

93. *CHILD WELFARE*, *supra* note 67, at 6.

94. *Id.* at 6, 8.

95. *Id.* at 6.

96. *See id.*

97. *Id.*

98. *Id.*

of the brain responsible for aggression.<sup>99</sup> A dysregulated locus coeruleus can result in increased arousal, anxiety, and aggression.<sup>100</sup>

Children who have been physically abused may have reduced volume in the orbitofrontal cortex, leading to difficulties with emotion and social regulation.<sup>101</sup> These children may have either lower or higher cortisol levels than average.<sup>102</sup> Lower cortisol levels lead to decreased energy, which affects learning and socialization, and “increased vulnerability to autoimmune disorders.”<sup>103</sup> On the other hand, increased cortisol levels can harm cognitive processing, subdue the immune system, and increase the risk for affective disorders.<sup>104</sup> Children can also suffer from decreased electrical activity in the brain, decreased brain metabolism, and ability to integrate complex information.<sup>105</sup>

Chronic trauma or stressors also affect the amygdala, which is the part of the brain that triggers fear responses. For many maltreated children, their amygdala is enlarged, which causes exaggerated fear responses and false alarms to fear.<sup>106</sup> Finally, evidence shows that malnutrition can impair brain development and function by slowing neuron, axon, and synapse growth.<sup>107</sup> These are only a few examples of how trauma directly affects a child’s behaviors.

In addition, the ACEs study found that as the number of ACEs an individual experiences increases, the risk for physical, emotional and behavioral health concerns also increases.<sup>108</sup> These concerns include, but are not limited to, alcoholism and alcohol abuse, chronic obstructive pulmonary disease, depression, fetal death, health-related quality of life, illicit drug use, ischemic heart disease, liver disease, poor work performance, financial stress, intimate partner violence, multiple sexual partners, sexually transmitted diseases, smoking, suicide attempts, unintended pregnancies, early initiation of smoking, early initiation of sexual

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99. HARRIS, *supra* note 92, at 67.

100. *Id.* at 68.

101. CHILD WELFARE, *supra* note 67, at 6.

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. HARRIS, *supra* note 92, at 67.

107. CHILD WELFARE, *supra* note 67, at 6.

108. *Adverse Childhood Experiences*, *supra* note 60.

activity, adolescent pregnancy, sexual violence, and poor academic achievement.<sup>109</sup> These health outcomes are a result of ACEs that children experience through no fault of their own.

Unfortunately for children and youth, ACEs and traumatic experiences tend to cluster in families. In many cases, when one ACE is present in a family, there are others that are present as well.<sup>110</sup> Specifically, at least one study found that emancipated foster youth have higher rates of ACE exposure and traumatic events.<sup>111</sup> This means that many of the youth who are suffering from trauma are not facing one instance of trauma, but multiple instances, which increases their risk for poor health outcomes.

Repeated exposure to trauma can affect youth response early on as well. When a child is exposed to trauma multiple times, it may turn a reaction into a trait.<sup>112</sup> Essentially, the brain, instead of responding to a specific reaction, becomes wired in a way that it responds similarly on an ongoing basis. However, the flip side of this is that the brain can also be rewired with the appropriate support and trauma-informed services to reduce or eliminate that trauma-response trait.<sup>113</sup> This means that if a society appropriately supports these vulnerable children and youth, healing can be promoted, which will lead to better life outcomes.

Trauma, even early, infant trauma, can be treated. One of the leading trauma treatments for young children is Child-Parent Psychotherapy (“CPP”), which is based on attachment between a parent and a child.<sup>114</sup> Specifically, CPP recognizes that healthy attachments between a parent and a child are fundamental to the child’s health and well-being.<sup>115</sup> CPP is typically used for children from birth to age five.<sup>116</sup> CPP focuses on strengthening the attachment

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109. *About the CDC-Kaiser ACE Study*, CTRS. DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/violenceprevention/acestudy/about.html> (last updated June 14, 2016).

110. *Trauma Resilience Resources*, SAMHSA, <https://www.samhsa.gov/capt/tools-learning-resources/trauma-resilience-resources> (last updated Nov. 22, 2016).

111. Rebecca Rebbe et al., *Adverse Childhood Experiences Among Youth Aging Out of Foster Care: A Latent Class Analysis*, 28 CHILD. & YOUTH SERVS. REV. 174 (2017) (citing Amy Salazar et al., *Trauma Exposure and PTSD Among Older Adolescents in Foster Care*, 48 SOC. PSYCH. & PSYCHIATRIC EPIDEMIOLOGY 345, 545–51 (2013)). Of note, this study was done on a predominately white middle-class population. *Id.*

112. JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, *supra* note 64, at 5.

113. *Id.*

114. HARRIS, *supra* note 92, at 99–101.

115. *Id.* at 101.

116. *Child-Parent Psychotherapy (CPP)*, NAT’L RES. CTR. PERMANCY & FAMILY CONNECTIONS (June 2013), <http://nrcpfc.org/ebp/downloads/CommonlyUsedEPBs/Child->

relationship between the child and parent, using that relationship as “a vehicle for restoring the child’s sense of safety, attachment, and appropriate affect,” which improves the child’s behavioral, cognitive, and social functioning.<sup>117</sup> In addition to trauma-based therapy—diet, exercise, and meditation can affect a child’s healing from trauma.<sup>118</sup> For a child to heal from trauma, having healthy relationships is essential.<sup>119</sup> Children who remain in the foster care system and age out have a difficult time finding the permanent, healthy relationships necessary for healing.<sup>120</sup> Reunification, adoption, and placement with relatives—assuming they are adequate caregivers and provide a safe, stable, and calm environment—can all provide a permanent solution to allow these children to heal from the early adversity in their lives.

### B. *Outcomes for Foster Youth in the United States*

Because youth in the foster care system face serious health concerns and developmental barriers as a result of the trauma they have faced, and in light of the large number of youth who age out of the foster care system without a permanent family each year, Children’s Home Society of Virginia, in collaboration with Richmond’s Better Housing Coalition, launched the Possibilities Project to support those youth.<sup>121</sup> As part of the program, the two organizations commissioned research through Child Trends, a nationally recognized research firm, to identify existing data on life outcomes for youth with foster care experience as compared to youth without foster care experience.<sup>122</sup> Using a nationwide study

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Parent\_Psychotherapy(CPP)\_8.22.13.pdf.

117. *Id.*

118. See SAMHSA, U.S. DEPT OF HEALTH AND HUMAN SERVICES, TREATMENT IMPROVEMENT PROTOCOL (TIP) SERIES, NO. 57, A TREATMENT IMPROVEMENT PROTOCOL: TRAUMA—INFORMED CARE IN BEHAVIORAL HEALTH SERVICES 65 (2014).

119. JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, *supra* note 64, at 1, 6; see also HARRIS, *supra* note 92, at 101.

120. GINA MIRANDA SAMUELS, CHAPIN HALL, A REASON, A SEASON, OR A LIFETIME: RELATIONAL PERMANENCE AMONG YOUNG ADULTS WITH FOSTER CARE BACKGROUNDS 3 (2008), [https://rhyclearinghouse.acf.hhs.gov/sites/default/files/docs/18916-A\\_Reason\\_a\\_Season\\_or\\_a\\_Lifetime-Relational\\_Permanence.pdf](https://rhyclearinghouse.acf.hhs.gov/sites/default/files/docs/18916-A_Reason_a_Season_or_a_Lifetime-Relational_Permanence.pdf).

121. CHILDREN’S HOME SOC’Y OF VA., THE POSSIBILITIES PROJECT: CREATING A NEW PATH TO INDEPENDENT ADULTHOOD FOR YOUTH TRANSITIONING OUT OF FOSTER CARE, [https://chsva.org/wp-content/uploads/2017/11/CHSVA\\_FinalWEB\\_11.9.17.pdf](https://chsva.org/wp-content/uploads/2017/11/CHSVA_FinalWEB_11.9.17.pdf) (last visited Oct. 1, 2018) [hereinafter POSSIBILITIES PROJECT].

122. *Id.*

from the Independent Living Coordinators, Child Trends also identified the support that states, including Virginia, provide to those youth throughout the country.<sup>123</sup>

Child Trends used data from two different studies to compile the national outcomes for youth involved in foster care in comparison to the general population.<sup>124</sup> Child Trends found that youth with foster care experience fare worse than the general population in many key life outcomes. The findings include:<sup>125</sup>

Life Outcome	Youth with foster care experience	General population
Graduate high school by age 19	58%	87%
Earn a college degree by age 25	Less than 3%	28%
Employed at age 26 <sup>126</sup>	46%	80%
Have their own residence at age 26	9%	30%
Experience at least one economic hardship	45%	18%
Women who reported being diagnosed with STI by age 26	44%	23%
Females arrested between age 18 and 26	42%	5%
Males arrested between age 18 and 26	68%	22%
Females convicted of a crime between age 18 and 26	22%	3%
Males convicted of a crime between age 18 and 26	48%	11%
Average earnings of employed 26-year-olds	\$13,989	\$32,312

In addition, more than one in five youth who experience foster care will become homeless after the age of eighteen.<sup>127</sup> Within two years of leaving the foster care system, 25% of youth will be involved in the criminal justice system.<sup>128</sup> Thirty-one percent of prior foster youth reported being arrested by the age of twenty-one, 15% reported having a criminal conviction, and 30% reported being incarcerated.<sup>129</sup>

123. FRYAR ET AL., *supra* note 5, at 2. Independent Living Coordinators are responsible for helping foster care youth access services that will help them achieve self-sufficiency. *Id.* at 1–2.

124. See MARK E. COURTNEY, CHAPIN HALL, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGE 26 (2011), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-26.pdf> [hereinafter OUTCOMES AT AGE 26]; JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH AGING OUT OF FOSTER CARE (2013), <http://www.aecf.org/m/resourcedoc/JCYOI-CostAvoidance-2013.pdf> [hereinafter COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH].

125. FRYAR ET AL., *supra* note 5, at 5–6.

126. Of those not employed, the majority were looking for employment.

127. FRYAR ET AL., *supra* note 5, at 6.

128. *Id.*

129. COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH, *supra* note 124, at

In addition, there are worse outcomes for youth while they are in the foster care system. The White House Task Force for Disadvantaged Youth has acknowledged the problem in the education field reporting that

[a]bout 70 percent of [foster youth] are school age, and their school work often suffers for a whole range of reasons [. . .] They score lower on standardized tests, have higher absentee and tardy rates, are more likely to drop out of school, and are three times more likely to be referred for special education and related services.<sup>130</sup>

Seventy-one percent of young women who experience foster care will become pregnant by age twenty-one.<sup>131</sup> Further, the Midwest Study found that 33% of females in foster care were pregnant by age seventeen or eighteen.<sup>132</sup> It also found that repeat pregnancies were common, with 62% of those pregnant youth having been pregnant before.<sup>133</sup> In addition, 61% of the male foster youth reported having gotten a female pregnant.<sup>134</sup>

These poor outcomes for foster youth are intertwined and cannot be siloed. Homelessness, teen pregnancy, failure to graduate from high school, and involvement in the criminal justice system all affect each other. Trauma-induced changes in the brain's development are directly related to the ability to succeed in key life outcome areas. When a youth turns eighteen or twenty-one and leaves foster care, he is presumed to be an adult and have the responsibilities of an adult.<sup>135</sup> However, the youth may not have been taught how to secure stable housing; he likely does not have the required credit, savings, and income to secure housing on his or her own without the help of a family member. On top of the childhood trauma, the trauma of homelessness and instability make it exceptionally difficult for these youth to function, let alone to heal and thrive as adults.

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130. *Id.* at 5 (alterations in original).

131. *Id.* at 7.

132. *Id.*

133. *Id.*

134. MARK E. COURTNEY, CHAPIN HALL, MIDWEST EVALUATION OF THE ADULT FUNCTIONING OF FORMER FOSTER YOUTH: OUTCOMES AT AGES 23 AND 24, at 51 (2010), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-23-and-24.pdf>.

135. OUTCOMES AT AGE 26, *supra* note 124, at 1.

### C. *Virginia Life Outcomes for Foster Youth*

In 2014, Virginia had the lowest percentage of youth exit the foster care system to permanency (78%) nationally.<sup>136</sup> In contrast, 88% of youth across the nation leave the foster care system to permanency.<sup>137</sup> The latest data from 2016 ranks Virginia forty-ninth out of the fifty states for youth exiting foster care without a permanent family.<sup>138</sup> Of note, from 2000–2013, Virginia was ranked in last place.<sup>139</sup> In 2014, Virginia moved up to forty-ninth out of fifty.<sup>140</sup> In 2015, Virginia moved up to fourth-eighth, but moved back down to forty-ninth in 2016.<sup>141</sup> In addition, Virginia has a higher percentage of youth aged sixteen to twenty in the foster care system (15%) than the national average (10%).<sup>142</sup> In Virginia, youth at age twenty-one with foster care history experience the following outcomes: 64% have Medicaid,<sup>143</sup> 55% are employed, 31% are attending school, 30% had children within the last two years, 27% experienced homelessness in the last two years, and 25% have been incarcerated within the past two years.<sup>144</sup>

### D. *Barriers to Success*

In order to provide better support to these youth, Virginia must first identify and understand the barriers to success these youth face as a result of their trauma and lack of appropriate familial support. While some of those barriers are currently known, Children’s Home Society and Better Housing Coalition are convening a “Panel of Experts” in six key areas (housing, education, employment and career development, mental and physical healthcare, financial capabilities, and establishing permanent relationships) to identify those barriers and the policies that could reduce or eliminate those barriers and promote success for Virginia’s foster

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136. JORDAN ET AL., *supra* note 31, at 10.

137. *Id.*

138. *Why Is Virginia Ranked Nearly Last for Youth Aging Out of Foster Care . . . and What Can We Do to Change The Paradigm*, CHILD. HOME SOC’Y VA., <https://chsva.org/blog/virginia-ranked-nearly-last-youth-aging-foster-care> (last visited Oct. 1, 2018).

139. *Id.*

140. *Id.*

141. *Id.*

142. JORDAN ET AL., *supra* note 31, at 8.

143. *Id.* at 12. All foster youth are eligible for Medicaid coverage until age twenty-six, making this a particularly low percentage. *Id.* at 36.

144. *Id.*

youth.<sup>145</sup> The Panel of Experts includes local, state, and national experts on the key support areas, policy, and youth in foster care.<sup>146</sup> They will work over the course of nine to twelve months to identify barriers to success, as well as policy initiatives that can overcome those barriers to provide better life outcomes to youth aging out of foster care.<sup>147</sup>

Some of the barriers to success that aged-out youth face include:

- \* Poor credit due to identity theft, misuse of identity, and creditor errors through no fault of the youth;
- \* Chronic trauma and its long-term effects;
- \* Challenges navigating systems to locate and obtain benefits;
- \* Lack of housing and permanent addresses;
- \* Lack of appropriate, supportive, permanent adult relationships;
- \* Reliable transportation;
- \* Poor educational outcomes;
- \* Underemployment or unemployment; and
- \* Higher incidents of mental illness.<sup>148</sup>

#### E. *What Is Being Trauma-Informed?*

How can Virginia improve these life outcomes for so many of its youth? Youth in the foster care system and youth who have aged out of foster care have faced significant trauma in their lives. The trauma these youth have faced has led to social, behavioral, physical, mental, and emotional health issues. To support these vulnerable youth, Virginia can become both individually and systemically trauma-informed.

A program, organization, or system that is trauma-informed: (1) *Realizes* the widespread impact of trauma and understands potential paths for recovery; (2) *Recognizes* the signs and symptoms of trauma in clients, families, staff, and others involved with the system; (3) *Responds* by fully integrating knowledge about trauma into policies, pro-

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145. POSSIBILITIES PROJECT, *supra* note 121.

146. *See id.*

147. *Local and National Experts Convene at CHS to Begin Policy Work for Transitioning Foster Youth*, CHILD. HOME SOC'Y VA., <https://chsva.org/blog/local-national-experts-convene-chs-begin-policy-work-transitioning-foster-youth/> (last visited Oct. 1, 2018). The Panel of Experts expects to release a report on their findings in early 2019. *Id.*

148. JORDAN ET AL., *supra* note 31, at 2, 19, 20, 24, 31, 36, 40; U.S. DEP'T OF EDUC., FOSTER CARE TRANSITION TOOL KIT 8 (2016), <https://www2.ed.gov/about/inits/ed/foster-care/youth-transition-toolkit.pdf>.

cedures, and practices; and (4) Seeks to actively resist *re-traumatization*.<sup>149</sup>

Using a trauma-informed approach reduces the risk of re-traumatization, addresses the consequences of trauma, and facilitates healing for those who have suffered trauma. In creating a system with a trauma-informed approach, the Substance Abuse and Mental Health Services Administration (“SAMHSA”) recommends using principles rather than a set of procedures and practices.<sup>150</sup> Those principles include: safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment, voice and choice, and cultural, historical, and gender issues.<sup>151</sup>

Every person experiences some traumatic event in their life and most are able to overcome the trauma. This is referred to as resilience.<sup>152</sup> To understand trauma and implement a trauma-informed approach, resilience must be understood as well. Children and youth are naturally resilient, but they need support to heal from trauma. Following trauma, a child may respond with minimal distress or respond with a dip in the ability to cope.<sup>153</sup> Particularly for those who are more affected by trauma on a daily basis, they need critical support to help them on their pathway to resilience.<sup>154</sup>

A child’s ability to be resilient can be affected by multiple factors, including, but not limited to: support from family and the community, feeling safe at home, having a high self-esteem and sense of self-efficacy, and having talents and skills in certain areas.<sup>155</sup> On the other hand, factors, such as “[c]hallenging life circumstances or adversities, living in poverty, racism, ongoing community violence, social isolation, or illness,” can impede a child’s resilience and ability to heal from trauma.<sup>156</sup> Children who are adopted from foster care have support, which helps them reach resiliency. However, youth who age out of foster care face many of the factors that

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149. *Trauma-Informed Approach and Trauma-Specific Interventions*, SAMHSA, <https://www.samhsa.gov/nctic/trauma-interventions> (last updated Apr. 27, 2018).

150. *Id.*

151. *Id.*

152. See *The Road to Resilience*, AM. PSYCHOL. ASS’N, <https://www.apa.org/helpcenter/road-resilience.aspx> (last visited Oct. 1, 2018).

153. THE NAT’L CHILD TRAUMATIC STRESS NETWORK, RESILIENCE AND CHILD TRAUMATIC STRESS 1 (2016), [https://www.nctsn.org/sites/default/files/resources/resilience\\_and\\_child\\_traumatic\\_stress.pdf](https://www.nctsn.org/sites/default/files/resources/resilience_and_child_traumatic_stress.pdf).

154. *Id.* at 2.

155. *Id.*

156. *Id.*

prevent healing and resiliency. These youth need a social system that provides the type of support a permanent family typically provides to youth and adolescents.

Certain traumatic events can prevent healing and resilience. As a child moves from placement to placement in the foster care system, he may be traumatized by continuing and ambiguous loss. Examples of ambiguous loss are the loss of parents, siblings, friends, and a community.<sup>157</sup> These are ambiguous losses because the child loses an important bond and is unsure if those people will return to his life. “Ambiguous loss freezes the grief process [and] prevents closure,” which exacerbates the detrimental effects of trauma and impedes the pathway to resilience.<sup>158</sup> This explains why many children and youth in foster care experience emotional and behavioral issues, including post-traumatic stress disorder (“PTSD”).<sup>159</sup> In fact, almost twice as many children in the foster care system scored in the clinical range for PTSD (11.6%) as a normative sample (6.7%),<sup>160</sup> and one study found that youth formerly in foster care are twice as likely to experience PTSD as United States war veterans.<sup>161</sup>

Prevention alone is not enough. These children deserve help when prevention has failed them. Prevention must be implemented along with trauma-informed support to ensure all children have what they need to be successful in life. If trauma is reduced and resiliency is promoted, children can heal, which would result in fewer health issues and more successful life outcomes. The best solution to promoting resiliency for youth in foster care is to find them a permanent family—for many youth that means adoption. Youth who do not find a permanent family, however, are still deserving of the support needed to promote resiliency and healing.

#### F. *Cost Analysis*

Failing to support youth costs society and the state. In 2013, the Jim Casey Youth Opportunities Initiative completed an extensive

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157. JIM CASEY YOUTH OPPORTUNITIES INITIATIVE, *supra* note 64, at 3.

158. *Id.*

159. *Id.* at 4.

160. *Id.*

161. *Id.*

cost evaluation of foster youth outcomes.<sup>162</sup> It calculated that, nationally, for each annual group of foster youth exiting foster care without a permanent family, the cost to society is \$7,783,000,000 over the course of the group's lifetime.<sup>163</sup>

If the United States were able to raise the rate of foster youth high school graduation (58%) to be the equivalent of the general population (87%), it could increase earnings and tax revenues by over \$2,000,000,000; an estimated impact of \$61,047,000 would occur in the first year alone.<sup>164</sup>

There is also an economic benefit to preventing youth pregnancy. Becoming a parent too young can cause interruptions in education and employment, resulting in decreased earning power. Because of this, there is a far greater likelihood that pregnant youth (under age twenty-one) will live below the poverty line than those who delay pregnancy.<sup>165</sup> If the teen pregnancy rate among foster youth (71%) were reduced to reflect the national average (6.8%), society would save \$250,000,000 for each annual group of youth leaving the foster care system without permanency.<sup>166</sup>

Similarly, if the rate in which foster youth are entangled in the criminal justice system was decreased to the national average, there would be significant savings. It is estimated that approximately 2600 youth in each annual group of youth exiting foster care without permanency will be involved in the criminal justice system in a serious and prolonged way, making them a "career criminal."<sup>167</sup> This is 1950 more youth than the general population.<sup>168</sup> It is estimated that a career criminal costs society \$2,685,409 to \$4,795,270 over his lifetime.<sup>169</sup> Using the low estimate of \$2,685,409 and taking into account the difference in number between foster youth and the national average, each annual group of youth leaving foster care without permanency costs society at least \$5,236,000,000.<sup>170</sup> If the rate of involvement in the criminal justice system for foster youth was reduced to the national

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162. COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH, *supra* note 124.

163. *Id.* at 9.

164. *Id.* at 5–6.

165. *See id.* at 6–7.

166. *Id.* at 7.

167. *Id.* at 8.

168. *Id.*

169. *Id.*

170. *Id.*

average, it would create savings of a minimum of \$5,236,000,000, and potentially up to \$9,350,000,000.<sup>171</sup>

Taking the cost analysis locally to Virginia, the simplified calculation to determine the cost of failing to support youth as a state is to look at the number of youth aging out of the foster care system and the cost per youth. The Jim Casey Youth Opportunities Initiative estimates a societal cost of \$300,000 per youth aging out of foster care over the course of his lifetime.<sup>172</sup> In 2017, Virginia had 446 youth that aged out of foster care<sup>173</sup>—that equates to \$133,800,000.<sup>174</sup> This means that if Virginia could create better outcomes for these youth, equal to the national averages for youth without foster care experience, Virginia would save \$133,800,000 per annual group of youth exiting foster care without permanency.<sup>175</sup>

### III. RECENT VIRGINIA LEGISLATION AFFECTING FOSTER CARE YOUTH

#### A. *Fostering Futures*

In 2016, Virginia implemented a federal program to allow the LDSS to provide social services to youth aged eighteen to twenty-one.<sup>176</sup> The program began with youth who reached the age of eighteen on or after July 1, 2016.<sup>177</sup> The LDSS offices are now able to continue providing services until those youth reach twenty-one.<sup>178</sup> Prior to the implementation of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, foster care services ended when a youth reached eighteen.<sup>179</sup> This program provides foster care maintenance and services, including adoption assistance, until the age of twenty-one.<sup>180</sup> In Virginia, this

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171. *Id.*

172. ANNIE E. CASEY FOUNDATION, AGING OUT OF FOSTER CARE IN AMERICA (2013), <https://www.aecf.org/resources/aging-out-of-foster-care-in-america/>.

173. Va. Dep't of Soc. Servs., *supra* note 1.

174. This number reflects a rough estimate of the cost of poor educational attainment outcomes, too early pregnancy and involvement with the criminal justice system.

175. COST AVOIDANCE: THE BUSINESS CASE FOR INVESTING IN YOUTH, *supra* note 124, at 12.

176. VA. DEP'T OF SOC. SERVS., *supra* note 57, at 3.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

program is known as the Fostering Futures program and is intended to assist youth as they transition into adulthood.<sup>181</sup> Ideally, the Fostering Futures program should account for the transition years that most youth experience with both the financial and social support of their families, and recognize that youth transition into adulthood over a period of time and at different rates.<sup>182</sup>

Virginia's Fostering Futures program operates under two guiding principles. The first guiding principle is that the program should be youth-driven.<sup>183</sup> The second guiding principle is that youth deserve a permanent family, as well as lifelong family and adult connections.<sup>184</sup> Under this program, youth aged fourteen and older must be included in the development of their foster care plan and are given the opportunity to identify and include two additional members of their case planning team that would help advocate for them.<sup>185</sup> Additionally, the foster care plan must include a document signed by the youth, which identifies his rights in regards to things like health, education, and court participation.<sup>186</sup> Each LDSS is required to obtain a copy of each youth's credit report for youth aged fourteen and older.<sup>187</sup> Additionally, when youth age out of foster care, and they have been in foster care for more than six months, each LDSS is required to give them documents, including their social security card, driver's license, birth certificate, and medical records.<sup>188</sup>

In implementing Fostering Futures, each LDSS strives to achieve two broad outcomes for foster youth that are reflective of outcomes for other youth. Specifically, each LDSS strives for the following outcomes: children to have permanency in their living situations, and to preserve the continuity of family relationships and connections for children.<sup>189</sup>

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181. *Id.*

182. *Id.* Only certain youth are covered by this program. Because this program was implemented in 2016, those youth who turned eighteen prior to July 1, 2016 are not eligible to participate in Fostering Futures, even if they are currently between the ages of eighteen and twenty-one. *Id.*

183. *Id.* at 4.

184. *Id.* at 4–5.

185. *Id.* at 38.

186. *Id.* at 41.

187. *Id.* at 6.

188. *Id.* at 6–7.

189. *Id.* at 9–10.

Youth must opt into the Fostering Futures program by signing a Voluntary Continuing Services and Support Agreement (“VCSSA”), which authorizes an LDSS to have placement and care responsibility for them.<sup>190</sup> Youth who opt into the Fostering Futures program must meet at least one of five criteria either through current participation or intent and planning for the activity in the immediate future.<sup>191</sup> Those criteria include the following: “[c]ompleting secondary education or a program leading to a General Education Diploma,” enrolling at least half-time in a post-secondary or vocational education institution, participating in a program designed to promote employment or remove employment barriers, and working at least eighty hours a month (unless a youth is “[i]ncapable of engaging in any of the above activities due to a medical condition”).<sup>192</sup>

Although Virginia has implemented Fostering Futures, it has not been codified and, therefore, may not be funded in the future. One recommendation of the Child Trends report is for key stakeholders to monitor the implementation of Fostering Futures to ensure it is as effective as possible.<sup>193</sup>

While Fostering Futures is a significant step in the right direction, more can be done. Virginia should codify the program to ensure funding in the future. Additionally, foster youth need support beyond age twenty-one. Adolescent brains do not fully develop to maturity, or to the point of achievement of adult-like capacities until they are in their mid-twenties.<sup>194</sup> Research on the effects of chronic trauma on brain development show significantly delayed brain development can and does occur. Yet Virginia’s policies reflect an expectation that foster youth achieve adulthood by age twenty-one, which is well before many of them are capable of taking on adult responsibilities.

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190. *Id.* at 15.

191. *Id.* at 13.

192. *Id.* at 13–14.

193. FRYAR ET AL., *supra* note 5, at 3.

194. Sara B. Johnson et al., *Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health Policy*, 45 J. ADOLESCENT HEALTH 216, 216–21 (2009).

### B. *Kinship Guardianship Assistance*

In 2018, the General Assembly passed House Bill 1333 and Senate Bill 636, which were then signed into law by the Governor.<sup>195</sup> This law is a positive step toward improving life outcomes for youth in foster care. As discussed, having a stable, supportive family often fosters resilience in youth. This law promotes placement of children in supportive family homes with kinship guardians and prevents youth from aging out of foster care without a permanent family.

This law applies to children who have been removed from their home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare and for whom adoption or returning home are not viable options.<sup>196</sup> Instead of keeping a child in the foster care system, which moves him or her from foster family to foster family, this law allows placement with a relative with whom the child has a strong attachment.<sup>197</sup> In cases where the child is permanently placed with a relative under this statute, the relative is entitled to receive assistance payments through Title IV-E maintenance payments, state-funded maintenance payments, state special services payments, and nonrecurring expense payments.<sup>198</sup>

Before this law, many children remained in the foster care system when there were relatives who wanted to care for them.<sup>199</sup> In many cases, family members wanted to become the caregiver for their relative, but simply were unable to afford the cost associated with raising another child.<sup>200</sup> Aunts and uncles may have been raising their own children and simply could not afford another child, despite their desire to be a stable, supportive family for their niece or nephew. This was even more common in the case of siblings, where relatives would need to be able to afford multiple additional children. The Kinship Guardianship Assistance Program

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195. H.B. 1333, Va. Gen. Assembly (Reg. Sess. 2018) (enacted as Act of Apr. 4, 2018, ch. 769, 2018 Va. Acts \_\_, \_\_); S.B. 636, Va. Gen. Assembly (Reg. Sess. 2018) (enacted as Act of Apr. 4, 2018, ch. 769, 2018 Va. Acts \_\_, \_\_).

196. Ch. 739, 2018 Va. Acts at \_\_.

197. *Id.* ch. 739, 2018 Va. Acts at \_\_.

198. VA. CODE ANN. § 63.2-1305 (Cum. Supp. 2018).

199. See *Supporting Kinship Guardian Assistance Program (KinGAP)*, VA. POVERTY L. CTR. BLOG (Feb. 5, 2018), <https://www.vplc.org/supporting-kinship-guardian-assistance-program-kingap/>.

200. See *id.*

removes a barrier to permanency and promotes a path to resiliency for these vulnerable children. By promoting resiliency, better outcomes are expected for youth with foster care experience, and fewer children should leave foster care without first finding a permanent family.

### C. *Close Relative Placement*

In 2018, the General Assembly also passed House Bill 241, which was signed into law by the Governor amending Virginia Code section 63.2-1242.3.<sup>201</sup> This law provides for a streamlined adoption process by eliminating the requirement for an order of reference, investigation, probationary period, and interlocutory order for adoptions when a child has resided with a potential adoptive parent, who is a close relative for an extended period of time.<sup>202</sup> The law reduced the necessary extended period of time from three years to two years, which will promote permanence for children and youth in foster care.<sup>203</sup>

Streamlining the process removes barriers to adoption and comes with little risk when the child has resided with his relative for an extended period of time under the supervision of an LDSS. This will significantly reduce the length of time that a child has to wait to achieve permanency, which ultimately reduces the length of time the child suffers from ambiguous loss. Ambiguous loss is a barrier to resiliency and healing for children because they are uncertain if their parent, whom they have lost in some way, will reenter their lives as a parent figure.<sup>204</sup> This law will promote resiliency earlier in the child's life, which will lead to better health and improved life outcomes for the child.

### D. *Foster Parent Adoption*

Similar to House Bill 241, House Bill 418, which also promotes permanency, was signed into law in 2018.<sup>205</sup> This law applies to

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201. Act of Feb. 19, 2018, ch. 4, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 63.2-1242.3 (Cum. Supp. 2018)).

202. *See id.* ch. 4, 2018 Va. Acts at \_\_.

203. *See id.* ch. 4, 2018 Va. Acts at \_\_.

204. *See generally* Jae Ran Kim, *Ambiguous Loss Haunts Foster and Adopted Children*, NACACC (Feb. 9, 2009), <https://www.nacac.org/resource/ambiguous-loss-foster-and-adopted-children/> (discussing the lasting effect of ambiguous loss on foster and adopted children).

205. Act of Mar. 2, 2018, ch. 94, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE

the adoption of children by their foster parent when they have resided with the foster family continuously for six months and the child-placing agency consents to the adoption.<sup>206</sup> Previously, the circuit court was directed to accept such a petition for adoption only when the child had resided in the foster care home continuously for eighteen months.<sup>207</sup>

This amendment promotes permanency by reducing the length of time a child must wait to achieve permanency. Similar to the Close Relative Placement Amendment, this will lead to a reduction in ambiguous loss, promote resiliency, and lead to better life outcomes for youth in the foster care system.

#### E. *Foster Care Review*

In 2018, the General Assembly passed, and the Governor signed into law, House Bill 1219.<sup>208</sup> This law is essentially a procedural change relating to foster care reviews. When a child in foster care has his or her parents' rights terminated, the child has an annual judicial foster care review hearing.<sup>209</sup> At this hearing, the court considers the appropriateness of both the services provided to the child and his or her permanent foster parents, taking into account any changed circumstances since the entry of the previous order.<sup>210</sup>

This law now requires that the judge shall inquire at this hearing of the guardian ad litem and the LDSS whether the child is interested in having the restoration of parental rights of his biological parents considered.<sup>211</sup> If the child has expressed that interest, the court directs the guardian ad litem or the LDSS to conduct an investigation and, if appropriate, file a petition for restoring parental rights.<sup>212</sup>

Practically, this law ensures that the child's wishes are presented to the court and considered. It does not allow the child to

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ANN. § 63.2-1229 (Cum. Supp. 2018)).

206. *See id.* ch. 94, 2018 Va. Acts at \_\_.

207. *See* VA. CODE ANN. § 63.2-1229 (Repl. Vol. 2017).

208. Act of Mar. 2, 2018, ch. 104, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 16.1-282.2 (Cum. Supp. 2018)).

209. VA. CODE ANN. § 16.1-282.2(A) (Cum. Supp. 2018).

210. *See id.* § 16.1-282.2(B) (Cum. Supp. 2018).

211. *See id.* § 16.1-282.2(C) (Cum. Supp. 2018).

212. *See id.*

decide whether parental rights are restored. Pursuant to this statute, when a child does not want parental rights restored, no investigation will occur. If the child wants parental rights restored, however, then there will be an investigation. That investigation may or may not result in the restoration of parental rights.

#### F. *Substance-Exposed Infants*

House Bill 1157 has been entered into law as Virginia Code section 32.1-73.12, and requires monitoring during its implementation stage.<sup>213</sup> This new law provides a trauma-informed plan for infants exposed to substances, including drugs and alcohol.<sup>214</sup> The Department of Health is the lead agency and must “work cooperatively with the Department of Social Services, the Department of Behavioral Health and Developmental Services, community services boards and behavioral health authorities,” among others.<sup>215</sup> This plan will include “options for improving screening and identification of substance-using pregnant women.”<sup>216</sup> By screening prior to birth, the state may be able to identify, at the earliest possible stage, children at risk of facing abuse and neglect. By identifying these at-risk children at an early age, support services, monitoring, and potential intervention can improve the chances of success for these vulnerable youth.

#### G. *Joint Legislative Audit and Review Commission Study*

On September 11, 2017, the Joint Legislative Audit and Review Commission (“JLARC”) authorized a study on “[f]oster care and adoption services in Virginia.”<sup>217</sup> In authorizing the study, JLARC acknowledged that “nearly 5,000 of Virginia’s children and youth are in foster care placements,” Virginia ranks forty-ninth for the “proportion of foster care youth who are adopted,” and “foster care youth who are never adopted face greater lifetime challenges.”<sup>218</sup> JLARC will be reviewing the administration of adoption and foster

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213. Act of Mar. 30, 2018, ch. 695, 2018 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 32.1-73.12 (Cum. Supp. 2018)).

214. *See id.*; *see also* U.S. Dep’t Health & Hum. Servs., *Responding to Infants Affected by Substance Exposure*, CHILD WELFARE INFO. GATEWAY, <https://www.childwelfare.gov/topics/systemwide/bhw/casework/families-sud/children-sud/responding/> (last visited Oct. 1, 2018).

215. VA. CODE ANN. § 32.1-73.12 (Cum. Supp. 2018).

216. *Id.*

217. JOINT LEGISLATIVE AUDIT & REVIEW COMM’N, *supra* note 3.

218. *Id.*

care programs in Virginia, and issuing a report in December 2018.<sup>219</sup>

The issues JLARC will be studying are complex. In JLARC's authorization, it notes that "Virginia ranks low (forty-ninth) in the proportion of foster care youth who are adopted, even though the number of adoptions has increased."<sup>220</sup> While adoption is a viable permanency option for many of Virginia's youth, adoptions have not increased enough to keep up with the needs of children in Virginia. There is no one-size-fits-all solution. The permanency solution needs to be individualized for each child. For some, reunification with family may be appropriate; for others, guardianship with relatives may be the best answer. For some children, adoption may be the most appropriate solution. It will be important, moving forward, to understand that each child's experience and circumstances are different and require different solutions in order to serve the best interests of the child. The key will be achieving stable, healthy permanency for each and every child in Virginia.

#### H. *Relevant Legislation Introduced But Not Passed*

In 2018, other legislation relating to foster youth was introduced, but not passed. These proposed bills are important to note, as the General Assembly may revisit them in the future.

House Bill 196 relates to the appeals of actions by the local social services departments.<sup>221</sup> When the local department makes a finding that an individual has committed child abuse or neglect, the individual can appeal the determination.<sup>222</sup> House Bill 196 adds a provision that the individual, after requesting an amendment of the determination, may request up to two delays, resulting in a delay period of up to ninety days.<sup>223</sup> This, in turn, may result in a child remaining in foster care longer and experiencing ambiguous loss for an additional ninety days. At the end of the 2018 session,

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219. *See id.*

220. *Id.*

221. H.B. 196, Va. Gen. Assembly (Reg. Sess. 2018).

222. *See id.*

223. *See id.*

this legislation remained in the Senate Rehabilitation and Social Services Committee.<sup>224</sup>

House Bill 1218 also affects the ambiguous loss children experience in foster care.<sup>225</sup> Under current law, when a child is placed in foster care, the parents' residual rights may be terminated if the parent does not remedy the situation leading to placement in foster care within a reasonable time not to exceed twelve months.<sup>226</sup> House Bill 1218 sought to extend the twelve-month period to fifteen months.<sup>227</sup> Specifically, the bill, if passed, would have created a timeline that the parental rights could be terminated if the situation was not remedied within a reasonable amount of time not to exceed fifteen months "from the date the child was *first* placed in foster care within the most recent twenty-two months."<sup>228</sup> The bill's major effect would have been extending the amount of time a child is in foster care and, ultimately, the length of time it takes for a child to be eligible for adoption and placement with a permanent family.

#### IV. WHAT CAN VIRGINIA LEARN FROM OTHER STATES?

Virginia has both strengths and weaknesses supporting better outcomes for foster youth. The state has a wide array of support and services available to youth, but those supports and services are, for the most part, not available statewide.<sup>229</sup> Additionally, while Virginia has implemented Fostering Futures as a policy, it has not codified the program and Child Trends recommends that stakeholders monitor the implementation of the program to ensure success.<sup>230</sup> To improve on weaknesses, Child Trends recommends grounding services in a strong research base, strengthening relationships across the Commonwealth, and fostering relationships with other states that are similarly situated or have had success in reducing the rate at which their youth age out of foster care.<sup>231</sup>

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224. *HB 196 Child Abuse or Neglect; Extension of Hearings to Review Findings by Local Departments of Social Services*, VA. LEGIS. INFO. SYS., <https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+HB196> (last visited Oct. 1, 2018).

225. H.B. 1218, Va. Gen. Assembly (Reg. Sess. 2018).

226. See VA. CODE ANN. § 16.1-283 (Repl. Vol. 2017).

227. H.B. 1218.

228. *Id.*

229. JORDAN ET AL., *supra* note 31, at 3.

230. *Id.* at 3, 13.

231. *Id.* at 50.

The Child Trends study found that the best way to support these youth is to find them a permanent family prior to aging out.<sup>232</sup> However, if youth age out, the best approach is a holistic one, including support in six key areas: housing, education, employment and career development, financial capability, physical and mental healthcare, and establishing permanent relationships.<sup>233</sup> But as support in those areas is provided, a trauma-informed approach is also needed to allow these youth to actually find and access these supports.<sup>234</sup> While Virginia is one of the worst states for the percentage of youth leaving foster care without a permanent family, this is a national issue and other states are taking steps to help these youth.<sup>235</sup> Virginia should look to the results of the Child Trends study to find approaches that are working well and consider taking a similar approach for foster youth in Virginia.

#### A. *Housing*

In Virginia, 13% of youth with foster care experience have been homeless within the past two years at age nineteen.<sup>236</sup> That number increases to 27% at age twenty-one.<sup>237</sup> In other studies, more than 22% of youth aging out of foster care reported being homeless for at least one day within a year of leaving foster care and 36% experience homelessness at least once by the time they reach age twenty-six.<sup>238</sup> It is well established that homelessness is a strong indicator of poor outcomes in areas like adult role acquisition, safety, and mental health.<sup>239</sup>

Virginia does not currently provide statewide housing support to youth who have aged out of foster care.<sup>240</sup> Virginia does, however, have support in some parts of the Commonwealth, including assistance with: first month's rent and security deposit; finding safe,

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232. *Id.* at 4.

233. *Id.* at 10.

234. *Id.* at 13, 22 app.

235. *Id.* at 3, 50.

236. *Id.* at 32.

237. *Id.*

238. Rebbe et al., *supra* note 111, at 113–14 (citing Peter J. Pecora et al., *Educational and Employment Outcomes of Adults Formerly Placed in Foster Care: Results from the Northwest Foster Care Alumni Study*, 28 CHILD. & YOUTH SERVS. REV. 1459, 1473 (2006); Amy Dworsky et al., *Homelessness During the Transition from Foster Care to Adulthood*, 103 AM. J. PUB. HEALTH 318, 319 (2013)).

239. *Id.* at 113.

240. JORDAN ET AL., *supra* note 31, at 33.

stable, affordable housing; housing-related “startup” costs; ongoing rental assistance; priority access to rental assistance; housing facilities specifically for young people transitioning from care; and contracts with housing developers specifically for young people with current or prior foster care experience.<sup>241</sup>

In California, extended foster care placement occurs at three different levels. Each youth is assessed for his independence level, and his living arrangements depend on his level of independence.<sup>242</sup> The three levels are: (1) placement with a host family, (2) placement in an apartment leased or owned by the provider, or (3) placement in a remote site.<sup>243</sup> In addition, several states provide Family Unification Program vouchers for youth transitioning from the foster care system and specialized housing for foster youth who are pregnant or parenting.<sup>244</sup>

### B. *Employment and Career Development*

Despite the fact that only one-half of youth formerly in foster care are employed by age twenty-four, the majority of those unemployed are searching for work.<sup>245</sup> While Virginia provides support in this area, it is clear that these youth need additional support based on the low percentage of youth employed. Throughout the Commonwealth, Virginia provides “information about career options and opportunities, career counseling/coaching, and job readiness training.”<sup>246</sup> In addition, in some localities, youth are provided with job placement assistance and mentorship from professionals in desired fields or organizations.<sup>247</sup>

Nationwide, there are programs that Virginia could learn from and adopt to better support youth. Sixteen states partnered with Workforce Innovations and Opportunity Act agencies.<sup>248</sup> These partnerships develop programs geared towards foster youth that include educational support, career training, job placement, and mentoring. Ohio’s “Connecting the Dots” program is one example

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241. *Id.* at 32–33.

242. *Id.* at 35.

243. *Id.*

244. *Id.* at 34–35.

245. *Id.* at 24.

246. *Id.* at 25.

247. *Id.* at 26.

248. *Id.*

of this partnership.<sup>249</sup> In addition, states like Arizona and Maryland provide internships, mentoring, and life skills classes to prepare youth for the workforce.<sup>250</sup> Maine and Washington focus on summer employment programs for youth who attend school.<sup>251</sup>

### C. *Post-Secondary Education*

While 65% of Virginia's youth who have aged out of foster care are enrolled in an education program at age nineteen, there is a steep drop to only 31% enrolled at age twenty-one.<sup>252</sup> To better support youth in this area, Virginia needs to understand why there is such a large decline in enrollment between ages nineteen and twenty-one.

Virginia is currently providing statewide support in the form of tuition and fee waivers, assistance with exploration of post-secondary educational opportunities, and help with vocational trainings and alternatives to post-secondary education.<sup>253</sup> In some localities, youth are provided with educational advocates/liaisons and priority for state-funded scholarships.<sup>254</sup>

Although Virginia has some support for youth, successful programs in other states could still benefit Virginia's youth. For example, Arizona, Michigan, California, and Missouri have a strong focus on recruitment and retention of foster youth in post-secondary education programs. In Arizona and Michigan, higher-education institutions have on-campus programs to support foster youth.<sup>255</sup> California's community colleges have a designated support person who works with foster youth in their programs.<sup>256</sup> Missouri requires all foster children aged fifteen or older to visit a state university, technical college, or armed services recruiter prior to

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249. *Connecting the Dots—From Foster Care to Employment and Independent Living*, OHIO DEP'T JOB & FAMILY SERVS., <http://jfs.ohio.gov/owd/Initiatives/ConnectingTheDots.stm> (last updated Mar. 21, 2014).

250. JORDAN ET AL., *supra* note 31, at 27.

251. *Id.* at 27.

252. *Id.* at 20.

253. *Id.* at 21.

254. *Id.* at 22.

255. *Id.* at 23.

256. *Id.*

aging out of foster care.<sup>257</sup> In Connecticut, planning for post-secondary education begins in eighth grade, and the youth review their plans with their social worker every six months.<sup>258</sup>

#### D. *Financial Capability*

Without financial capability, youth aging out of foster care will struggle in other areas of life. Families teach children how to budget, save, and obtain good credit. However, youth in foster care often miss these crucial life lessons. Youth who are disconnected, meaning they are neither employed nor enrolled in an educational program, are at a higher risk of facing financial difficulties. In Virginia, 23% of youth with foster care experience are disconnected at age nineteen, and that percentage increases to 33% at age twenty-one.<sup>259</sup>

Virginia currently provides youth with credit reports and identity theft protection statewide, and some localities provide budget counseling, money management training, and assistance with opening bank accounts and matched savings for asset purchases.<sup>260</sup> Colorado and Illinois employ strategies to increase financial literacy education to youth in foster care. Colorado requires budgeting and financial literacy education for all foster youth ages fourteen and older, and Illinois partners with the Economic Awareness Council to provide a nine-module curriculum for all youth prior to exiting foster care.<sup>261</sup> Maryland provides every foster youth with free annual credit reports and credit consultations, and works to remove any derogatory marks.<sup>262</sup> Additionally, ten states partner with the Jim Casey Youth Opportunities Initiative to provide financial education and matched savings for youth in foster care.<sup>263</sup>

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257. *Id.* at 24.

258. *Id.* at 23.

259. *Id.* at 29.

260. *Id.*

261. *Id.* at 31.

262. *Id.*

263. *Id.*

### E. *Healthcare and Mental Healthcare*

Despite the fact that youth who have aged out of foster care are eligible for Medicaid coverage until twenty-six, only 64% of Virginia's foster youth have coverage at age twenty-one.<sup>264</sup> This is a decrease from the 80% who have Medicaid coverage at age nineteen.<sup>265</sup> Virginia needs to understand why these youth are not reenrolling in Medicaid and remove any barriers to reenrollment. Youth are unaware of how to reenroll, do not have a permanent address to use for reenrollment, and do not have the skills to manage their healthcare due to lack of guidance or trauma due to developmental impairments resulting from childhood.<sup>266</sup> Up to 60% of youth entering foster care have at least one chronic or acute health condition that requires treatment, and up to 75% of youth exhibit behavioral or social competencies that may require treatment.<sup>267</sup>

This becomes another issue for youth who have aged out of foster care. These youth do not understand the consequences of not having insurance; they have also not been taught when to go to a primary care physician versus the emergency room. This cumulative lack of information results in significant medical bills that foster youth are simply unable to pay. This issue crosses into other areas of success as well. When a youth has an unpaid medical bill, he is less likely to be able to afford housing, his credit score will decrease, and he may lose the ability to pay for and attend educational programs.

Statewide, Virginia provides assistance in enrolling and reenrolling in Medicaid, education on accessing and managing both physical and mental healthcare, and education on youth's own medical histories and records.<sup>268</sup> Despite the fact that Virginia's policy manual requires the transfer of complete medical records to youth,

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264. *Id.* at 36.

265. *Id.*

266. *See id.* at 38; FRYAR ET AL., *supra* note 5, at 14, 20.

267. FRYAR ET AL., *supra* note 5, at 20 (citing DINA EMAM & OLIVIA GOLDEN, ST. POL'Y ADVOC. & REFORM CTR., THE AFFORDABLE CARE ACT AND YOUTH AGING OUT OF FOSTER CARE: NEW OPPORTUNITIES AND STRATEGIES FOR ACTION 2 (2014), <http://childwelfare.sparc.org/wp-content/uploads/2014/04/The-Affordable-Care-Act-and-Youth-Aging-Out-of-Foster-Care.pdf>).

268. JORDAN ET AL., *supra* note 31, at 27. It is not clear at what age this assistance becomes unavailable. *Id.*

Virginia reports that this only occurs in some parts of the Commonwealth.<sup>269</sup>

California, Arizona, and Tennessee also provide critical support in healthcare. California provides funding for mental health services geared specifically for transition-age youth, and the localities work to provide foster youth with Early and Periodic Screening, Diagnostic and Treatment funds, and also provide foster youth with their Mental Health Bill of Rights.<sup>270</sup> Arizona uses a Healthcare Toolkit and provides a special insurance program under Medicaid that allows youth to access low or no-cost checkups, medicine, and doctor's visits.<sup>271</sup> Tennessee provides specialized training to transition-age youth on how to access and manage their mental and physical healthcare.<sup>272</sup> Indiana, Iowa, Montana, Ohio, and West Virginia all presume Medicaid eligibility for former foster care youth.<sup>273</sup> Indiana and Colorado provide for auto-renewal of enrollment for former foster care youth.<sup>274</sup>

#### F. *Establishing Permanent Relationships*

Foster youth struggle with establishing permanent relationships because of, among other things, the trauma they have faced and their past experiences with unstable adult relationships. If youth can establish a permanent relationship with an adult, they will have some of the support they are missing from not having a permanent family. Trusted adults can help youth navigate systems to access support (like Medicaid enrollment and re-enrollment), understand responsibilities, obtain safe and stable housing, and find educational and employment opportunities. In fact, in a recent study of a program called *My Life*, reoffending outcomes were measured for foster youth in the juvenile justice system.<sup>275</sup> Some

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269. *Id.* at 38.

270. *Id.* at 38–39.

271. FRYAR ET AL., *supra* note 5, at 21.

272. JORDAN ET AL., *supra* note 31, at 17.

273. MEDICAID AND CHIP LEARNING COLLABORATIVES, CMS ALL-STATE SOTA CALL: ENSURING ACCESS TO MEDICAID COVERAGE FOR FORMER FOSTER CARE YOUTH 9 (2017), <https://www.medicare.gov/state-resource-center/mac-learning-collaboratives/downloads/foster-care-ensuring-access.pdf>.

274. *Id.* at 35.

275. JENNIFER E. BLAKESLEE & THOMAS E. KELLER, NAT'L CRIMINAL JUSTICE REFERENCE SERVICE, EXTENDING A RANDOMIZED TRIAL OF THE MY LIFE MENTORING MODEL FOR YOUTH IN FOSTER CARE TO EVALUATE LONG-TERM EFFECTS ON OFFENDING IN YOUNG ADULTHOOD 1, 4 (2018), [www.ncjrs.gov/pdffiles1/ojdp/grants/251418.pdf](http://www.ncjrs.gov/pdffiles1/ojdp/grants/251418.pdf).

youth had a weekly mentor through the program and other youth chose not to participate.<sup>276</sup> For the male youth who chose not to participate, they were twice as likely to reoffend in the next two years compared to those male youth who participated in the mentor program.<sup>277</sup>

In Virginia, LDSS involve individuals identified by the youth in key decisions, explore and support connections to the youth's birth family, if appropriate, and have specific initiatives aimed at finding family/kin and securing legal permanency.<sup>278</sup> It is unclear what support Virginia provides in this area after youth have aged out of foster care.

According to the Child Trends report, Virginia should address the disconnect between a rich service array in this area and the high rate at which youth do not achieve legal permanency.<sup>279</sup> Ideally, Virginia would identify adults who would adopt youth before they age out of foster care. Virginia could also look to how other states have implemented additional support to help youth after they have aged out of foster care. Hawaii provides a celebration for youth when they become emancipated, which brings together family and community support to help them create a plan for their independence.<sup>280</sup> New Hampshire uses the Casey Family Services Best tool to determine the solidity of a young person's connection to a caring adult and the Foster Club Permanency Pact to identify the level of commitment that members of the youth's support network are willing to provide after he or she transitions out of foster care.<sup>281</sup> Several states, including Michigan, Missouri, and New Mexico, provide mentoring programs geared towards youth aging out of foster care.<sup>282</sup>

While it is important to learn from the successes of other states, Virginia can also learn from its own success. Virginia could adopt the models from its localities that have high rates of success statewide. Additionally, Virginia needs to ensure that the policies in place are executed by each locality with every child in foster care

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276. *Id.* at 12, 30.

277. *Id.* at 4, 26.

278. JORDAN ET AL., *supra* note 31, at 41.

279. *Id.* at 41–42.

280. *Id.* at 48.

281. *Id.* at 42.

282. *Id.* at 43.

and each youth that ages out of foster care.<sup>283</sup> If the policies are not consistently implemented, Virginia can expect poor outcomes for foster youth.

As Virginia looks to implement new strategies, it should include the voice of youth in foster care and youth who have aged out of foster care. Virginia can accomplish this by including youth in the development of transition plans, including youth input in training and educational materials, and involving youth in the development of new services. For example, Connecticut and Missouri have boards or councils that encourage and facilitate the involvement of youth in policy planning and document development.<sup>284</sup> Colorado and New Hampshire include the voice of transition-age youth in state agencies.<sup>285</sup> Louisiana and New Jersey include youth voice in documents used to support and implement programs for youth aged out of foster care.<sup>286</sup> Pennsylvania and Hawaii include youth at presentations, conferences, and trainings about foster care.<sup>287</sup>

#### CONCLUSION

While Virginia is making some progress in terms of policy and law, there is still room to grow. Foster care youth have been traumatized and face poor life outcomes, due to no fault of their own. The holistic solution is to eliminate barriers to adoption. When foster youth are adopted, they are much more likely to be successful adults. Once adopted, they can begin healing and begin their journey towards resiliency. Additionally, being adopted means they have found their permanent family—the family that will provide them the crucial support needed to transition from childhood to adulthood. For those youth who do not find a permanent family, however, Virginia can still encourage their development and guide them into a successful adult life.

As a state, Virginia helps children and youth while they are in the foster care system; however, there is a sharp cut off in support when the youth turn eighteen or twenty-one.<sup>288</sup> It is important to

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283. *See id.* at 49.

284. *Id.* at 47.

285. *Id.*

286. *Id.*

287. *Id.* at 48.

288. Age depends on whether a youth chooses to remain in the Fostering Futures program. *Id.* at 2.

remember that these youth, though they may physically look to be adults, have often faced trauma that has affected their mental and emotional development. Additionally, it is important to recognize that these youth were not provided with the real-life education and preparation that a permanent family would typically provide to a young adult. Thus, they may not be prepared for the responsibilities of adulthood.

Virginia should consider holistic support systems. While Virginia has made strides towards providing better supports for youth who age out of foster care, there is much more work that needs to be done. As noted, Children's Home Society of Virginia's Panel of Experts is in the process of identifying policy recommendations to eliminate or reduce systemic barriers facing youth who age out of foster care. There are barriers to finding affordable housing, finding employment, pursuing post-secondary education, maintaining healthcare, becoming financially stable and establishing permanent relationships. In the spring of 2019, the Panel of Experts will likely have policy recommendations related to these barriers. Some examples of these barriers include: damaged credit as a result of misuse of the child's personal information by third parties, youth obtaining applied studies high school diplomas and being unable to obtain financial aid for post-secondary education, and youth being unable to obtain employment because they lack adequate transportation.

Everything is connected—the trauma, the intertwining of poor outcomes, and resilience—and these vulnerable youth will be most successful with wraparound support. The conclusion is clear: based on the research, Virginia needs to continue to move forward with efforts to support these youth in a holistic, trauma-informed, and evidence-based manner.