

# Collaborative Courts: Implementation with AB12 Foster Youth to Ensure Meaningful Participation and Positive Outcomes Post-Emancipation

By CHRISTINE MACDONALD\*

“This is it, you know,” she said. “Your life starts here. No one to blame but yourself from here on out.”

Meredith Combs, the social worker responsible for selecting the stream of adoptive families that gave me back, wanted to talk to me about blame.<sup>1</sup>

“It’s like they are saying to us, ‘you must be independent by age 18,’ but then they don’t give us the room to learn to be independent. Don’t over-shelter us and then tell us to be independent.”<sup>2</sup>

## Introduction

IN HER FICTIONAL NOVEL, *The Language of Flowers*, Vanessa Diffenbaugh tells the story of a young girl’s journey through the foster care system, her emancipation, and her struggle to accept the love of adults in her life and the love of her newborn daughter. The story begins with Victoria, a foster youth who has emancipated from the foster system on her eighteenth birthday, being told by her social

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1. VANESSA DIFFENBAUGH, *THE LANGUAGE OF FLOWERS* 7 (2011).  
2. ELIZABETH CALVIN, HUMAN RIGHTS WATCH, *MY SO-CALLED EMANCIPATION: FROM FOSTER CARE TO HOMELESSNESS FOR CALIFORNIA YOUTH* 6 (2010).

worker that she has to take control of her own life.<sup>3</sup> Although the story is fictional, it mirrors the reality of over 4000 youths who emancipate from foster care each year.

Prior to the passage of the Fostering Connections to Success and Increasing Adoptions Act of 2008<sup>4</sup> (“Act”) and California’s Assembly Bill 12, or the California Fostering Connections to Success Act of 2010<sup>5</sup> (“AB 12”), youth in California were emancipated from the foster care system at the age of eighteen.<sup>6</sup> Under the passage of the Act, states may now retain dependency jurisdiction for youth until the age of twenty-one.<sup>7</sup> AB 12 was California’s adoption of the federal legislation and allowed for transitional foster care support for qualifying youth up to age 21.<sup>8</sup>

Youth who emancipate from the foster care system at the age of eighteen are more likely to have educational deficits, mental health issues, economic instability, and early childbearing.<sup>9</sup> Further, when youth are forced to leave the foster care system at the age of eighteen, they are confronted with frightful outcomes such as “high rates of homelessness, incarceration, reliance on public assistance, teen pregnancy, and low rates of high school and postsecondary graduation.”<sup>10</sup> On the other hand, youth who stay in care until the age of twenty-one are three times more likely to enroll in college,<sup>11</sup> 38% less likely to become pregnant as a teenager,<sup>12</sup> and 65% less likely to be arrested.<sup>13</sup> Contrary to concerns that keeping youth in care longer just encourages continued dependency on the foster care system, these statistics

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3. DIFFENBAUGH, *supra* note 1.

4. Pub. L. No. 110-351, 122 Stat. 3949 (2008) (codified in scattered sections of 42 U.S.C.).

5. A.B. 12, California Fostering Connections to Success Act, ch. 559, 2010 Cal. Legis. Serv. 2753 (West) (codified in scattered sections of CAL. FAM. CODE, CAL. HEALTH & SAFETY CODE, and CAL. WELF. & INST. CODE).

6. Jurisdiction of the dependency system was previously under age eighteen. *See* CAL. WELF. & INST. CODE § 391 (West 2008).

7. U.S.C. §§ 673(a)(4)(A)(i)(I), 675(8)(B)(iii) (Supp. V 2012) (allowing states to define child as an individual who has not reached the age of twenty-one).

8. Ch. 559, 2010 Cal. Legis. Serv. at 2754 (“This bill would extend the court’s jurisdiction to a ward who has been placed into foster care or a dependent who reaches the age of majority before jurisdiction is terminated until the nonminor reaches 21 years of age.”).

9. CALVIN, *supra* note 2, at 42.

10. CHRIS REEFE, DEP’T OF HEALTH AND HUMAN SERVS., BILL ANALYSIS, A.B. 1712, 2011–2012, at 4 (Cal. 2012), *available at* [http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab\\_1701-1750/ab\\_1712\\_cfa\\_20120529\\_182005\\_asm\\_floor.html](http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_1701-1750/ab_1712_cfa_20120529_182005_asm_floor.html).

11. CALVIN, *supra* note 2, at 51.

12. *Id.*

13. *Id.*

demonstrate that they appear to benefit from continued court involvement and oversight.<sup>14</sup>

AB 12 will see its first so-called graduating class in 2015.<sup>15</sup> Are these young adults more prepared for adulthood than they would have been if they had emancipated from the system three years prior? Although the verdict is still out, there are several court models that are being implemented across the country<sup>16</sup> that predict continued involvement of the court, and in particular the support of a caring adult figure, leads to improved outcomes for at-risk youth.<sup>17</sup> In the case of collaborative court models, judges have the potential to create more positive outcomes for young adults leaving the system.<sup>18</sup>

This Comment argues that the use of collaborative court models should be employed with youth in extended foster care to ensure meaningful participation in case planning, create positive interactions with authority figures, and develop self-sufficiency in the transition to adulthood. These collaborative courts create more positive outcomes for youth. Part I will examine the Federal Fostering Connections Act and California's subsequent legislation, California Fostering Connections Act. Part II will explore the origin and development of benchmark hearings and their use to create better-established adult-youth relationships for older foster youth. Part III will discuss some examples of collaborative courts in Northern California—San Francisco's Re-Entry Court for Juvenile Offenders and Teen Court in Santa Clara County. Part IV examines how Judge Shawna Schwarz in Santa Clara County works with AB 12 participants in her court and the perceived strengths and weaknesses of AB 12. Finally, Part V argues Benchmark Hearings should be the judicial standard in working with AB 12 participants. Benchmark hearings engage youth in meaningful participa-

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14. Angelique Day & Maribeth Preston, *Reevaluating the Government's Role in Parenting Older Foster Care Youth: An Analysis of the Fostering Connections to Success and Increasing Adoptions Act of 2008 and Its Implementation in California and Michigan*, 17 U.C. DAVIS J. JUV. L. & POL'Y 1, 13 (2013).

15. See CAL. DEP'T OF SOC. SERVS., CALIFORNIA FOSTERING CONNECTIONS TO SUCCESS ACT (AB 12) EXTENDING FOSTER CARE BENEFITS FACT SHEET 1 (2011) [hereinafter FOSTER CARE BENEFITS FACT SHEET], available at <http://www.childsworld.ca.gov/res/pdf/AB12FactSheet.pdf> ("Effective January 1, 2012, the bill allows eligible 18 year olds in foster care to remain in foster care up to age 19 years. Starting January 1, 2013 foster care youth can remain in foster care up to age 20 years, and starting January 1, 2014 up to age 21 contingent upon budget appropriations by the state legislature.").

16. See *infra* Parts II–IV.

17. See *infra* Part II for a description of the outcomes of youths with positive adult role models.

18. Lisa Beth Greenfield Pearl, *Using Storytelling to Achieve a Better Sequel to Foster Care than Delinquency*, 37 N.Y.U. REV. L. & SOC. CHANGE 553, 587 (2013).

tion in transition planning, and the judicial oversight that results will have positive effects in the lives of this vulnerable population of youth.

For so many youth exiting care today, knowing someone has cared about them can make all the difference in how their life turns out. Victoria, the character in *The Language of Flowers*, defies the odds and manages to find sustaining life connections with caring adults and find the love she has always craved. We want many more Victorias in this world.

## I. Fostering Connections Act and AB 12

In 2008, Congress passed the Act.<sup>19</sup> The Act amended parts B and E of Title IV of the Social Security Act, specifically reforming the protocol for youth emancipating from the dependency system.<sup>20</sup> The goal of the Act is to improve outcomes for youth in foster care.<sup>21</sup> The amendments allow states to receive federal funding for extension of foster care beyond the age of eighteen.<sup>22</sup> The amendments also allow states to decide how to implement this extended foster care.<sup>23</sup> In order for one to remain under the dependency system's jurisdiction,<sup>24</sup> the individual must meet one of five criteria: (1) completion of secondary education or a program leading to an equivalent credential, (2) enrollment in an institution that provides post-secondary or vocational education, (3) participation in a program or activity designed to promote or remove barriers to employment, (4) employment at

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19. Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, 122 Stat. 3949 (2008) (codified in scattered sections of 42 U.S.C.).

20. See *Fostering Connections to Success and Increasing Adoptions Act of 2008* P.L. 110-351, DEP'T OF HEALTH & HUMAN SERVS., [https://www.childwelfare.gov/systemwide/laws\\_policies/federal/index.cfm?event=federallegislation.viewlegis&id=121](https://www.childwelfare.gov/systemwide/laws_policies/federal/index.cfm?event=federallegislation.viewlegis&id=121) (last visited Apr. 28, 2014) [hereinafter *Fostering Connections*].

21. Fostering Connections to Success and Increasing Adoptions Act, 122 Stat. at 3949 ("To amend . . . the Social Security Act . . . to improve outcomes for children in foster care . . .").

22. *Implementation of the Fostering Connections to Success and Increasing Adoptions Act of 2008 Working Document*, CHILD. BUREAU (Sept. 10, 2013), [http://www.acf.hhs.gov/programs/cb/resource/implementation-of-the-fostering-connections#five\\_requirements](http://www.acf.hhs.gov/programs/cb/resource/implementation-of-the-fostering-connections#five_requirements) ("Generally, the law amends the Social Security Act to . . . create an option to extend eligibility for title IV-E foster care . . . payments to age 21 . . .").

23. *Fostering Connections*, *supra* note 20.

24. A child becomes a ward of the court for dependency jurisdiction when it is found that the child suffered from physical abuse, sexual abuse, or neglect; the parents voluntarily relinquished their rights; or the parent(s) caused the death of another child. CAL. WELF. & INST. CODE § 300 (West 2008).

least eighty hours a month, or (5) diagnosis of a medical condition that prevents one from engaging in one of these requirements.<sup>25</sup>

In 2010, California passed AB 12.<sup>26</sup> AB 12 was California's adoption of the federal legislation, which allowed for transitional foster care support for qualifying youth up to age twenty-one.<sup>27</sup> AB 12 will be phased in over a three-year period beginning in 2012.<sup>28</sup> AB 12 was designed to help foster-youth transition into adulthood through individually tailored case plans—with the youth's engagement in the process—that foster independence through increasing levels of responsibility.<sup>29</sup> AB 12's goal is to provide continued guidance similar to the type of assistance a biological family is expected to provide a child at this age.<sup>30</sup> One of the most important parts of AB 12 is it allows youth to leave the dependency court's jurisdiction with the option to petition for re-entry of care before the age of twenty-one.<sup>31</sup> In more privileged families, young people are provided the opportunity to independently explore their world upon turning eighteen.<sup>32</sup> Many also may return to their family if they fail.<sup>33</sup> California Welfare & Institutions Code section 303(b) now outlines the court's option to retain jurisdiction over a non-minor dependent<sup>34</sup> and allows a petition for re-entry into dependency under Welfare & Institutions Code section 388(e).<sup>35</sup> Although California has recently adopted the Act with AB 12, it was long overdue for the courts to allow children that they are

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25. 42 U.S.C. § 675(8)(B)(iii) (Supp. V 2012).

26. A.B. 12, California Fostering Connections to Success Act, ch. 559, 2010 Cal. Legis. Serv. 2753 (West) (codified in scattered sections of the CAL. FAM. CODE, CAL. HEALTH & SAFETY CODE, and CAL. WELF. & INST. CODE).

27. *Id.* at 2754 (“This bill would extend the court’s jurisdiction to a ward who has been placed into foster care or a dependent who reaches the age of majority before jurisdiction is terminated until the nonminor reaches 21 years of age.”).

28. CAL. WELF. & INST. CODE § 16120(d)(3) (West Supp. 2014).

29. REEFE, *supra* note 10, at 4.

30. See FOSTER CARE BENEFITS FACT SHEET, *supra* note 15, at 1.

31. CAL. WELF. & INST. CODE § 388(e). Youth may reenter foster care if they were in a foster care placement prior to turning eighteen, have not reached the maximum age limit (twenty-one by 2014), and comply with one of the five criteria for remaining in the care of the state. *Id.*

32. Richard A. Settersten Jr. & Barbara Ray, *What’s Going on with Young People Today? The Long and Twisting Path to Adulthood*, 20 FUTURE OF CHILD., no. 1, Spring 2010, at 19, 32.

33. *Id.*

34. CAL. WELF. & INST. CODE § 303(b) (“On and after January 1, 2012, the court shall have within its jurisdiction any nonminor dependent, as defined in subdivision (v) of Section 11400.”).

35. *Id.* § 388(e).

charged with parenting under the Welfare & Institutions Code<sup>36</sup> the same opportunities youth are afforded in families that include support and the ability to come home if things don't go as planned.

Prior to the implementation of AB 12, youth were often transported straight from their then-existing placement to emergency shelters, transitional shelters, or straight onto the streets.<sup>37</sup> With AB 12 allowing youth to stay in care until twenty-one, they are not put out on their eighteenth birthday; AB 12 allows for youth to live in a variety of different living situations: approved relative or fictive kin, licensed family foster homes, certain group homes, supportive transitional housing, supervised independent living programs ("SILP"), and Transitional Housing Placement ("THP") Plus Foster Care.<sup>38</sup> THP Plus Foster Care is currently funded by the State.<sup>39</sup>

SILPs and THP Plus Foster Care are the most recently added placement options for transition aged youth and were a byproduct of AB 12 legislation.<sup>40</sup> They appeal to non-minor dependents because they offer more independence and self-sufficiency,<sup>41</sup> as most youth would rather be anywhere but the dependency system.<sup>42</sup>

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36. See CAL. WELF. & INST. CODE § 202(a) (West 2008) ("If the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.").

37. CALVIN, *supra* note 2, at 17–18. "Social workers transport some youth directly from foster homes to emergency shelters, fully aware that these shelters will house them for limited periods before turning them out onto the streets. Others are sent to transitional living situations with no back-up plan or safety net in place if things do not work out. Child welfare agencies release some youth from care when they have nowhere to live." *Id.* at 18.

38. MARK COURTNEY, AMY DWORSKY & LAURA NAPOLITANO, CHAPLIN HALL AT THE UNIV. OF CHI., PROVIDING FOSTER CARE FOR YOUNG ADULTS: EARLY IMPLEMENTATION OF CALIFORNIA'S FOSTERING CONNECTIONS ACT 10 (2013), available at [http://www.chapinhall.org/sites/default/files/Providing%20Foster%20Care%20For%20Young%20Adults\\_2\\_13.pdf](http://www.chapinhall.org/sites/default/files/Providing%20Foster%20Care%20For%20Young%20Adults_2_13.pdf).

39. SANTA CLARA CNTY., CALIFORNIA CONNECTED BY AGE 25: SANTA CLARA COUNTY ANNUAL REPORT 14 (2012), available at <http://sccgov.iqm2.com/Citizens/FileOpen.aspx?Type=4&ID=113490&MeetingID=1011>.

40. Amy Lemley, *Extended Foster Care: A New Tool to Help Homeless Youth*, JOHN BURTON FOUND. (Mar. 26, 2012), <http://johnburtonfdn.wordpress.com/2012/03/26/extended-foster-care-a-new-tool-to-help-homeless-youth/>.

41. See *id.*

42. Shawna Schwarz, *Dependency Teen Court in Santa Clara County*, COURT APPOINTED SPECIAL ADVOCATES (Sept. 2012), [http://www.casaforchildren.org/site/c.mtjSJ7MPIsE/b.8173523/k.9823/JP\\_4\\_Schwarz.htm](http://www.casaforchildren.org/site/c.mtjSJ7MPIsE/b.8173523/k.9823/JP_4_Schwarz.htm).

## II. Benchmark Permanency Hearings as a Judicial Standard for Working with Older Foster Youth

Nearly fifteen years ago, Cook County Illinois began a new process of working with youth in extended foster care. In 1999, based on concerns that youth aging out of the foster care system were not equipped to handle independent living, Judge Patricia Martin Bishop—then presiding judge of the circuit court’s Child Protection Division—created benchmark permanency hearings.<sup>43</sup> In 2000, Judge Bishop appointed Judge Patricia Brown Holmes to hold the hearings.<sup>44</sup>

These hearings in effect today differ from formal court hearings. They are held informally, usually in a conference room where an important element of the young person’s support is the relationship between the youth and the judge.<sup>45</sup> The hearing is meant to mirror a child sitting around the kitchen table with his or her parents.<sup>46</sup> The goal of the hearings is to facilitate direct communication between the judge and the youth in order to develop a relationship in which the judge serves as a mentor and to simultaneously emphasize the importance of taking responsibility for one’s decisions and actions.<sup>47</sup>

The importance of having a single judge preside over the hearings is essential: The judge helps create a caring relationship where his or her role is to help the youth prepare for lifelong, independent decision making.<sup>48</sup> Not all judges are equipped to handle working with participants, and the judges involved “must have the disposition and inclination for comprehensive, direct engagement with young people.”<sup>49</sup> The hearings are focused on this adult-child, mentor-mentee relationship because having a strong, stable adult role model:

give[s] the foster child further chance to benefit from the judge’s own heroic qualities, e.g., wisdom, solid judgment, focus, motivation, and leadership, which are the very qualities that have produced the judge/mentor capable of helping the foster child/hero

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43. Gayle Worland, *Fostering Independence: Cook County Circuit Court’s Innovative Hearings Serve as Bridge Between Troubled Kids Exiting State Care and Making Leap to Adulthood*, CHI. TRIBUNE (Jan. 12, 2005), [http://articles.chicagotribune.com/2005-01-12/features/0501120034\\_1\\_foster-youth-family-services-intact-families](http://articles.chicagotribune.com/2005-01-12/features/0501120034_1_foster-youth-family-services-intact-families).

44. *Id.*

45. *See id.*

46. *See id.*

47. *See id.*

48. *See* Greenfield Pearl, *supra* note 18, at 584.

49. Emily Buss, *Juvenile Court for Young Adults? How Ongoing Court Involvement Can Enhance Foster Youths’ Chances for Success*, 48 FAM. CT. REV. 262, 272 (2010).

on her passage through juvenile court and, hopefully, toward a positive outcome.<sup>50</sup>

Research studying youth response to police interactions suggests a correlation between personal experience with the legal system and one's attitude about it.<sup>51</sup> Research suggests that when youth perceive fair treatment from legal actors, they have greater respect for legal authority.<sup>52</sup> This implies that a participant's involvement with a judge who listens willingly and provides the youth with support will lead to a more positive interaction with legal actors in the future.

The benchmark hearings differ from normal court proceedings in another important way. When the child does not meet an expectation, rather than simply lecturing the child or taking away a privilege, the judge responds with disappointment and communicates ways to avoid a similar outcome in the future.<sup>53</sup> The hearing ends with the judge and the teen agreeing to certain goals that should be met by the next meeting; these plans should "take[ ] into account the child's past difficulties but also recognize[ ] the child's future potential."<sup>54</sup> Judge Holmes summed up her experience saying:

I guess, . . . the biggest thing with the teenagers is . . . there's nobody who really touches them on a daily basis, who says, 'I love you,' who encourages them, who motivates them. And [I am not saying that it] has to be the court, but it has to be someone.<sup>55</sup>

Increased youth participation is a central goal of these hearings and, although not formally studied, appears to lead to better outcomes for children once they are emancipated from the system.<sup>56</sup> Under the Fostering Connections Act, all of the legislative and regulatory requirements that apply to foster youth also apply to transitional youth who choose to stay in care.<sup>57</sup> This includes the involvement of youth in ongoing case planning and required reviews.<sup>58</sup> Youth must be "consulted" in an "age-appropriate manner" during these review processes.<sup>59</sup> For older youth, benchmark hearings could best accomplish this. The process of involving youth in the decision-making pro-

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50. Greenfield Pearl, *supra* note 18, at 573–74.

51. Emily Buss, *Failing Juvenile Courts, and What Lawyers and Judges Can Do About It*, 6 *Nw. J. L. & Soc. Pol'y* 318, 328–29 (2011).

52. *Id.* at 329 (citing Jeffrey Fagan & Tom R. Tyler, *Legal Socialization of Children and Adolescents*, 18 *Soc. Just. Res.* 217, 236 (2005)).

53. Greenfield Pearl, *supra* note 18, at 584.

54. *Id.* at 587.

55. Worland, *supra* note 43, at 3.

56. Buss, *supra* note 51, at 327–28.

57. Buss, *supra* note 49, at 263.

58. *Id.*

59. *Id.* at 264.



cess is two-fold: It ensures that they have a say in creating their own permanency plans based on their own wishes and desires, and it allows them to gain developmental value<sup>60</sup> from participating in the process.<sup>61</sup> When benchmark permanency hearings are used to make transition plans for youth, they can gain the valuable life experiences of articulating their own opinions of others' concerns about their behaviors and working out compromises that they feel are attainable.<sup>62</sup> In order to prepare for adulthood, it is important for adolescents and young adults to make their own decisions and benchmark hearings allow for this flexibility.<sup>63</sup> Judges, as facilitators of the court, are best situated to help ensure youth participation—in the decision-making process—that is essential for a successful transition into adulthood.<sup>64</sup> Additionally, when judges ensure youth are engaging in meaningful participation in the hearings, the youth are more likely to feel respected and understand the importance of their participation, which makes the process all the more meaningful.<sup>65</sup> Rather than assuming that continued judicial involvement will foster dependence on the system, benchmark hearings treat these young adults as “mature individuals who are taken seriously and of whom much is expected.”<sup>66</sup>

Furthermore, judges have the authority to hold service providers and the youth accountable for agreements made about care for the child.<sup>67</sup> Although the hearing is focused primarily on the interactions of the judge and the child, caseworkers and other important adults in the child's life may also be seated in the room.<sup>68</sup> This allows the judge the ability to consult with caseworkers about available services as well as mandate certain requirements be met prior to the next hearing, both by the youth and their social worker.<sup>69</sup> This emphasizes that the child has the ultimate responsibility for his or her future.<sup>70</sup>

The Benchmark Hearings have been replicated in several model courts across the United States with the hopes of securing positive out-

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60. *Id.* at 268 (“Providing youth with opportunities to take on decision-making responsibility and gain experience with self-advocacy will help them develop the skills necessary to function independently in adulthood.”).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.* at 265.

65. *Id.* at 268.

66. *Id.* at 271.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

comes for older youth in care; New York, Indianapolis, Newark, New Orleans, and Washington D.C. are just a few that have developed their own special hearings for older youth.<sup>71</sup> For example, in 2003, the Family Court of Washington D.C. established the Benchmark Permanency Hearing Pilot Program and placed Family Court Magistrate Judge Juliet McKenna as the program's judicial officer.<sup>72</sup> The response to the program was overwhelmingly positive.<sup>73</sup> One guardian ad litem reported feeling as though the hearing "bolstered the youth's confidence in verbalizing plans for the future."<sup>74</sup> Additionally, the hearings were seen to give the child a unique voice in his or her own life, since the plan is developed by the child, not a team of workers acting on behalf of the child.<sup>75</sup> The development of this pilot program and the dedication of Judge McKenna to invest in these children show the commitment of one individual can change an entire court system.<sup>76</sup>

### III. Collaborative Courts with Youth in California

Just as Judges Bishop and Holmes in Cook County, and Judge McKenna in Washington, D.C. created these collaborative courts on their own initiative, similar steps towards collaborative courts have been made in California, notably in the Bay Area. San Francisco's Reentry Court for juvenile offenders and Santa Clara County's Teen Court are just two models which serve to stand for the importance of using collaborative courts to ensure better outcomes for youth.

San Francisco's Reentry Court began in 2009 as a three-year pilot program funded by a grant from the Department of Justice, Juvenile Justice and Delinquency Prevention and originally staffed by Judge Kathleen Kelly.<sup>77</sup> The court was designed as an effort to improve outcomes for juvenile offenders upon returning home from out-of-home

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71. *Id.*

72. COUNCIL FOR COURT EXCELLENCE, DISTRICT OF COLUMBIA CHILD WELFARE SYSTEM: COMPLIANCE WITH THE ADOPTION AND SAFE FAMILIES ACTS AND THE DISTRICT OF COLUMBIA FAMILY COURT ACT 53 (2004), available at <http://www.courtexcellence.org/uploads/publications/ChildWelfareSystCongressionalReport2004.pdf>.

73. *Id.* ("In addition to attending hearings, CCE interviewed Magistrate Judge McKenna and 25 participating [guardians *ad litem*] to assess their experiences with and suggestions for the program. The responses were overwhelmingly positive.")

74. *Id.*

75. *Id.*

76. Buss, *supra* note 49, at 272.

77. *San Francisco's Juvenile Reentry Court to Participating Youth: "We've Got Your Back,"* FOSTER CARE REFORM UPDATE: A BRIEFING FOR COUNTY AND STATEWIDE COLLABORATIONS, Sept.-Oct. 2010, <http://www.courts.ca.gov/10620.htm> [hereinafter *We've Got Your Back*].

placements<sup>78</sup> through the use of a Juvenile Collaborative Reentry Team<sup>79</sup> (“JCRT”), which provides youth with reentry case planning and supportive services.<sup>80</sup> Participation is mandatory for eligible youth, and the judge orders assignment to the program at disposition.<sup>81</sup> The youth and JCRT begin developing a plan for release from the out-of-home placement immediately following disposition.<sup>82</sup> The youth’s probation officer performs a risk-needs assessment and Youth Assessment and Screening Instrument to guide in the creation of the youth’s reentry plan.<sup>83</sup> The screening tool has been used in all juvenile courts in Washington State and is considered a best practice for linking youth with appropriate services upon release.<sup>84</sup> The release plan includes information about programs and services relating to housing, vocational training, education, therapy, and/or drug treatment options for when the youth completes the placement and returns to the community.<sup>85</sup> In assessing the need for these pro-social activities, the JCRT hopes to secure a real chance of success for the youth.<sup>86</sup> The JCRT actively engages the youth’s family in the planning as well; research has shown involving family members in learning how to work with the youth upon return carries a tremendous impact on the success of the child.<sup>87</sup>

On reentry court days, Judge Susan Breall presides over the court.<sup>88</sup> Prior to court starting, Judge Breall meets with probation officers, public defenders or private counsel, case managers, and addi-

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78. An out-of-home placement is generally a group home, ranch, or juvenile detention facility. San Francisco has significantly reduced the use of out-of-home placements, but they are still used for youth who require more intensive supervision. OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, SAN FRANCISCO JUVENILE PROBATION DEPARTMENT—JUVENILE COLLABORATIVE REENTRY TEAM 4 (2010) [hereinafter JUVENILE COLLABORATIVE REENTRY TEAM], *available at* [http://www.ojjdp.gov/funding/SanFrancisco\\_Juvenile\\_Collaborative\\_2ndChance.pdf](http://www.ojjdp.gov/funding/SanFrancisco_Juvenile_Collaborative_2ndChance.pdf).

79. The Juvenile Collaborative Reentry Team is a collaborative effort of the juvenile court, the juvenile probation department, the public defender’s office, and the Center of Juvenile and Criminal Justice. *Id.* at 14. The team consists of the Judge, a probation officer, public defender, social worker, youth advocate, and community case manager. *Id.*

80. *Id.*

81. CAL. WELF. & INST. CODE § 702 (West 2008) (prescribing the juvenile disposition process); *see also We’ve Got Your Back*, *supra* note 77.

82. *We’ve Got Your Back*, *supra* note 77.

83. JUVENILE COLLABORATIVE REENTRY TEAM, *supra* note 78, at 15.

84. *Id.* at 15–16.

85. *Id.* at 14–16.

86. *Id.* at 16.

87. *Id.* at 14.

88. *Id.*; Court Observation with Susan Breall, Judge, San Francisco Superior Court (Nov. 1, 2013) (on file with author) [hereinafter Court Observation].

tional support staff to discuss the youth's plans.<sup>89</sup> The public defender begins by giving the judge an overview of the youth's progress including issues with which he or she is struggling, based on insight directly from probation officers and case managers.<sup>90</sup> During this time, since the youth is not present, the JCRT members are able to talk candidly about the best options for the youth; the plans are tailored to the developmental needs of each.<sup>91</sup> Once Judge Breall has heard from the public defender, court officially begins.<sup>92</sup> When Judge Breall has the youth in front of her in the courtroom, the emphasis is placed on the successes of the child and encouragement in the form of advice: "I want you to make the honorable choice when you go back home; the honorable choice is often the hard choice. It takes courage."<sup>93</sup> The judge solicits participation from the youth's supporters in the courtroom regarding the youth's success, and the youth is able to have an entire room full of supporters to provide support upon exit.<sup>94</sup> Youth may decide on his or her own volition to stay in an out-of-home placement longer if, for example, he or she is not "ready to come home."<sup>95</sup>

The judge also plays a crucial role in implementing orders that need to be carried out for the youth. If a youth requires a medical evaluation, the judge may order an evaluation occur the same day.<sup>96</sup>

Most importantly, the structure of the hearing has the ability to remind youth over and over how much support is in the plan. In one case, while looking around the courtroom and observing ten to twelve adults all present for the youth, the youth was reminded: "We are all here for you. You are not in this alone."<sup>97</sup>

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89. JUVENILE COLLABORATIVE REENTRY TEAM, *supra* note 78, at 14; Court Observation, *supra* note 88.

90. See JUVENILE COLLABORATIVE REENTRY TEAM, *supra* note 78, at 17; Court Observation, *supra* note 88.

91. One youth was unable to pass the General Educational Development ("GED") test offered in Juvenile Hall. Court Observation, *supra* note 88. The team discussed enrolling the youth in a vocational program for children with developmental disabilities since the youth was not having success with regular school. *Id.* The developmentally appropriate program would allow the youth the opportunity to be more successful following placement. *Id.*

92. *See id.*

93. *See id.*

94. *Id.*

95. *Id.* (statement of youth participant).

96. *Id.*

97. *See id.*

In the five years the program has been in place, the recidivism rate for youth has dropped from 69% to 13% in the last data reporting cycle;<sup>98</sup> clearly the efforts seem to be working.

In Santa Clara County, Judge Shawna Schwarz started Teen Court, which is similar in form to the benchmark permanency hearings. The voluntary program is designed to work with youth whose permanency plan is long-term foster care, which means there is little hope of returning home.<sup>99</sup> In contrast to the current dependency system, this problem-solving court places the emphasis on the challenges of the foster youth instead of his or her parents.<sup>100</sup> Judge Schwarz has three main goals for youth in her program: (1) get your high school diploma or G.E.D.; (2) don't get pregnant (or get someone else pregnant); (3) stay out of trouble with the law.<sup>101</sup> The judge meets with youth off the record for about forty-five minutes every four to seven weeks in which the judge speaks openly with them about issues they are facing while praising their successes.<sup>102</sup> The judge acts more like a parent figure and less like a judge<sup>103</sup> so the child feels acquainted with the judge and in a safe place where he or she will not be subjected to the judge's personal beliefs, views, or morals. In Judge Schwarz's opinion, the problem with the foster care system is children feel no one knew or cared about them. "We don't want that. I won't let a child leave my court saying that," she remarks.<sup>104</sup>

Although there is relatively little empirical data around the use of these problem-solving courts with dependency youth, an unpublished dissertation that studied the court was completed last year.<sup>105</sup> The research studied eighty-four participants, ages twelve to nineteen, who were participating or had participated in Teen Court.<sup>106</sup> Demographics of the youths in this research indicate that participants

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98. S.F. COLLABORATIVE COURTS, JUVENILE REENTRY COURT FACT SHEET 2 (Mar. 2014), available at <http://www.sfsuperiorcourt.org/sites/default/files/images/Juvenile%20Reentry%20Court%20fact%20sheet%20MARCH%202014%20FINALFINAL.pdf>.

99. Schwarz, *supra* note 42.

100. Alison Bort, *The Impact of Judicial Oversight and the Judge-Youth Alliance in a Problem-Solving Court for Disconnected Foster Youth* 43 (May 2012) (unpublished Ph.D. dissertation, Palo Alto University, Pacific Graduate School of Psychology) (on file at the Omar Seddiqui Research Library, Palo Alto University).

101. Schwarz, *supra* note 42.

102. See Interview with Judge Shawna Schwarz, Judge, Santa Clara Cnty. Superior Court, in San Jose, Cal. (Nov. 5, 2013) [hereinafter Interview with Judge Schwarz].

103. *Id.*

104. *Id.*

105. Bort, *supra* note 100, at 43.

106. *Id.* at 58.

tended to be females of color in mid-adolescence.<sup>107</sup> The research studied the judge-youth working alliance using a Working Alliance Inventory (“WAI”)<sup>108</sup> to score the strength of the relationship through an exploratory study of Teen Court.<sup>109</sup> The researcher also conducted focus groups with the youths to measure their perception of the value of the court intervention.<sup>110</sup> Results from the Working Alliance Inventory suggest a positive correlation between the youths and judge indicating that both the youths and the judge perceived their alliance as being strong.<sup>111</sup> The focus groups revealed that youths had a positive view towards the judge and towards the program; they identified their relationship with the judge as the key in making their participation in the process positive.<sup>112</sup> Youths identified extra time spent with the judge, perceived power in the hearings, and the youth-focused approach as beneficial in making them feel connected to the court process as opposed to feeling disposed of in a normal court proceeding.<sup>113</sup> The youths agreed that traditional courts focus on telling the youths what to do, whereas this court allowed them to feel respected when interacting with the judge.<sup>114</sup>

Despite being underused, problem-solving or collaborative courts in delinquency and dependency systems result in positive outcomes. The use of these courts does not require dramatic changes in the legal system, but simply a more child-focused approach to handling at-risk youth, particularly older youth who are at risk of exiting the systems with negative outcomes.

#### IV. AB 12 Participants in Santa Clara County

Older youth choosing to stay in extended foster care under AB 12 are a particular subset of youth that could benefit from the use of problem-solving courts. In Santa Clara County, in the year preceding May 2014, 91% of eligible youth in the county chose to opt-in for ex-

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107. *Id.* at 65. The youth were 71.4% female, 28.6% male, 50% Latino, 23.2% African American, and 19.5% Asian/Pacific Islander. *Id.*

108. “The WAI is not a [s]tandardized [m]easure. . . . Therefore[,] if you want to compare alliance scores, they provide useful . . . information to the extent that some of these parameters can be assumed to be reasonably similar across measurements.” *Criteria for “Good Alliance,”* WORKING ALLIANCE INVENTORY, <http://wai.proffhorvath.com/criteria> (last visited Apr. 21, 2014).

109. Bort, *supra* note 100, at 55–56.

110. *Id.* at 63.

111. *Id.* at 77.

112. *Id.* at 80.

113. *Id.* at 80–81.

114. *Id.* at 82.

tended foster care,<sup>115</sup> which makes them non-minor dependents under the law.<sup>116</sup> One-third of Judge Schwarz's caseload is non-minor dependents.<sup>117</sup> All the hearings for AB 12 participants are held on the same day,<sup>118</sup> which allows social workers to dedicate a set day for them. These specialized social workers are able to serve most effectively this population because they are able to learn the nuances of the systems that non-minor dependents will need to navigate (such as housing, educational, and other supportive services).<sup>119</sup>

For the youth in her courtroom, Judge Schwarz wants their lives to be so normal that coming to court is abnormal.<sup>120</sup> Ideally, AB 12 should be functioning to make the lives of older foster youth much like those of other children at the same age.

Although the county anticipated AB 12's enactment and was able to prepare for its implementation in 2011, some flaws are still apparent within the system. Judge Schwarz identifies money management as one of the biggest challenges for AB 12 participants in her courtroom.<sup>121</sup> Under AB 12, non-minor dependents receive cash support in the form of Extended Foster Care Benefits.<sup>122</sup> They receive a monthly payment (usually around \$800) to help support their basic living needs (e.g., rent, food, bills, transportation, etc.);<sup>123</sup> however, there is little oversight on how non-minor dependents value and spend this money.<sup>124</sup> Judge Schwarz posits that a sense of "entitlement" and the "victim mentality" influence participants' financial choices.<sup>125</sup> Many feel they are owed this money and that the State is responsible for

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115. E-mail from Dana Sugiyama, Sr. Mgmt. Analyst, Santa Clara Cnty. Social Servs. Agency, to Christine MacDonald, Student, Univ. of S.F. Sch. of Law (May 22, 2014) (on file with author).

116. "Nonminor dependent" means a foster child who is a current dependent child or ward of the juvenile court, or is a nonminor under the transition jurisdiction of the juvenile court who has turned eighteen under the order of a foster care placement, is in a tribal foster care placement, or is participating in a transitional independent living case plan. CAL. WELF. & INST. CODE § 11400 (West Supp. 2014).

117. Interview with Judge Schwarz, *supra* note 102.

118. E-mail from Shawna Schwarz, Judge, Santa Clara Superior Court, to Christine MacDonald, Student, Univ. of S.F. Sch. of Law (Apr. 7, 2014) (on file with author).

119. Interview with Judge Schwarz, *supra* note 102.

120. *See id.*

121. *Id.*

122. FOSTER CARE BENEFITS FACT SHEET, *supra* note 15, at 1.

123. Interview with Judge Schwarz, *supra* note 102; *AB 12 Questions of the Week*, JOHN BURTON FOUND. (Feb. 4, 2014), <http://ab12questionoftheweek.wordpress.com/2014/02/04/treatment-of-silp-payments-for-tax-purposes/> ("Like all youth in a SILP, she receives an \$820 monthly foster care payment directly.").

124. Interview with Judge Schwarz, *supra* note 102.

125. *Id.*

their care.<sup>126</sup> By creating a sense of entitlement about receiving continued support, non-minor dependents are set up to fail.

This dynamic actually conflicts with the law, which mandates that the dependency court care for a child with a relationship like that of a natural parent.<sup>127</sup> Whereas natural families often require a child to earn any financial support they receive after turning eighteen—by going to school or working—AB 12 youth without benchmark hearings will not have the additional guidance that communicates the importance of earning one's keep.<sup>128</sup> Fortunately for Judge Schwarz's participants, they have this additional guidance. All AB 12 participants throughout the state should be under the impression that they earn their support from the system by attending school, working, or participating in beneficial activities.<sup>129</sup> This is where benchmark hearings can help fill the void. A judge working in tandem with the youth's other workers can play an integral role in assuring that the youth understands the financial assistance provided through AB 12 is not simply a hand out. Since the law requires youth to be actively engaged in activities designed to ease the transition into adulthood,<sup>130</sup> the judge can impress upon young adults the importance of participation to receive financial assistance.

AB 12 participants report that practical life experiences are important for their success later in life but that they were not given these opportunities. One participant remarked, "It's like they are saying to us, 'You must be independent by age 18,' but then they don't give us the room to learn to be independent. Don't over-shelter us and then tell us to be independent."<sup>131</sup> Judge Schwarz also agrees that youth need to learn practical life experiences to be independent. She states that many children emancipate from the system and do not know how to do basic things like make a doctor's appointment, so they just don't end up going.<sup>132</sup>

The first graduating class of non-minor dependents will be in 2014. Until then, results of how youth are faring in the system are

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126. *See id.*

127. CAL. WELF. & INST. CODE § 202(a) (West 2008).

128. Interview with Judge Schwarz, *supra* note 102.

129. *Id.*

130. CAL. WELF. & INST. CODE § 11400(v) (defining nonminor dependent as a foster child under the federal definition that requires youth be younger than twenty-one and engaged in one of five listed activities); FOSTER CARE BENEFITS FACT SHEET, *supra* note 15, at 1.

131. Calvin, *supra* note 2, at 37.

132. Interview with Judge Schwarz, *supra* note 102.



unclear. Early research indicates that many non-minor dependents benefit from the implementation of extended foster care, but more definitive results of the legislation will not be seen until the lives of these individuals can be studied in their later adult years.

## V. Recommended Judicial Response to AB 12 in California Courts

California courts should utilize collaborative models to address factors that impact AB 12 participants' transition into adulthood. Research has identified three components that have a direct impact on successful transition into adulthood: protective factors that reduce risk, negative factors that increase risk and barriers, and programs that are utilized to reduce risk and increase chances of successful transition into adulthood.<sup>133</sup> Protective factors include good physical and mental health, completion of post-secondary education, access to employment that pays a living wage, stable and affordable housing, a strong social support network, and a permanent connection to at least one caring adult figure.<sup>134</sup> Negative factors or behaviors include poor physical health or living with disabilities (physical or mental), low educational attainment, indebtedness, unemployment and under employment, reliance on public assistance, homelessness, early pregnancy or fatherhood, and involvement with the criminal justice system.<sup>135</sup> Programs and interventions that are designed to remove negative factors while increasing positive factors include access to comprehensive health insurance, connection to a primary health care provider, access to mental health and substance abuse treatment, tutoring and information regarding financial aid and scholarships for college, employment training, transitional housing programs, financial literacy courses, and access to connections with permanent adults.<sup>136</sup> These factors appear to break down into general categories of health care, education, life skills, housing, and positive adult relationships. In order to help AB 12 participants to transition successfully into adulthood, all of these areas should be addressed while they are still under the supervision of the State.

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133. Angelique G. Day, Wayne State University, *Youth Aging Out of Foster Care: The Invisible Public Health Care Crisis Emergent Findings and Implications for Policy and Practice 1* (Jan. 2013) (unpublished article), available at [http://works.bepress.com/angelique\\_day/6/](http://works.bepress.com/angelique_day/6/).

134. *Id.* at 1–2.

135. *Id.*

136. *Id.*

Because more frequent interactions are the result of the collaborative court process, judges and other key adults in the participant's life have the opportunity to address these issues at length and to track progress more closely.<sup>137</sup> AB 12 directly addresses all of the factors that are shown to increase the likelihood of success, and collaborative courts offer the extra component of adult-participant relationship through the stable bond built with the judge.

One of the biggest barriers facing older youth in care is the risk of homelessness upon emancipation;<sup>138</sup> research indicates that approximately 20% of the 20,000 youths who age out of foster care each year will become homeless.<sup>139</sup> Homelessness used to be a standard for youths aging out of foster care, but AB 12 has provided a much-needed bridge to stable housing through the ability of the State to continue to provide supportive housing. Although collaborative courts cannot ensure AB 12 participants avoid homelessness, they provide judges with a unique role that gives them the power to encourage youth to access the available living options. The psychosocial support the judge would be able to provide the participants in benchmark hearings would not directly address the systemic issue of the lack of available housing. And it should not be expected to do so because that is the job of legislators and policy makers. In these hearings, the judge should push individuals to enter the appropriate living situation based on the judge's experience with the participant. By attending directly to participants' concerns, the judge may evaluate which living-arrangement might be best since different housing options present different levels of supervision.<sup>140</sup> The purpose of benchmark hearings is to facilitate direct engagement from participants to ensure they are successful upon exiting care.<sup>141</sup> In working to address housing needs, the judge must use the relationship to encourage participants to enter a placement in which they will be most successful.

Furthermore, since AB 12 allows youth to re-enter care if they choose, it provides a safety net for participants who might face home-

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137. Teen Court in Santa Clara County conducts informal hearings every six to eight weeks even though the law only mandates status review hearings every six months. *Compare* Schwarz, *supra* note 42, with CAL. WELF. & INST. CODE § 366.31(e) (West Supp. 2014) (requiring nonminor dependents' status review hearings to occur every six months).

138. Homelessness is defined under federal law as "in need of safe and affordable housing." *See* CALVIN, *supra* note 2, at 16.

139. *Id.* at 1.

140. FOSTER CARE BENEFITS FACT SHEET, *supra* note 15, at 2.

141. *The Benchmark Hearing Program*, STATE OF ILL.: CIRCUIT COURT OF COOK CNTY., <http://www.cookcountycourt.org/ABOUTTHECOURT/JuvenileJusticeChildProtection/ChildProtection/BenchmarkHearingProgram.aspx> (last visited May 22, 2014).

lessness when they exit care. It is critical that they are still provided with support even if they are not initially successful in their choices. The psychosocial support of the judge allows participants to experience natural consequences, while still receiving support if they reenter care. It is not so much that collaborative courts are designed to directly address homelessness or the particular housing issues that youth face, but more that they help to remove barriers that are likely to lead to homelessness. If participants are provided with more support to increase their self-sufficiency, the results of achieving higher education, more work opportunity, etc. will lead to less homelessness as youth are given the opportunity to experience protective resilience factors in the face of adversity.<sup>142</sup> It is the continued time in care, as opposed to being kicked to the streets at eighteen, that will benefit participants in the area of housing.

### Conclusion

AB 12 participants could benefit greatly from the use of collaborative courts in the continued judicial oversight now required until age twenty-one. The benchmark hearings, as well as Judge Schwarz's Teen Court, are both examples of collaborative courts that take a youth-centered approach to creating support systems for at-risk youth. With AB 12 participants, hearing their voice is even more imperative as the law requires "meaningful participation" from youth in activities that are required for participation in extended care.<sup>143</sup> Young people are able to gain important decision-making skills when they are allowed to make their own decisions and benefit from positive adult engagement in the process.<sup>144</sup> These problem-solving courts allow judges to shift the decision-making process to youth in this setting and provide them with parent-like oversight, yet still allow young people to make mistakes and ask for help.<sup>145</sup>

The implementation of collaborative courts with AB 12 participants is essential for shifting the paradigm through which courts currently view youth. Currently, the system is designed to focus on

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142. See Bort, *supra* note 100, at 91 (citing Craig A. Olsson et al., *Adolescent Resilience: A Concept Analysis*, 26 J. ADOLESCENCE 1 (2003)) ("One's resilience, or capacity for overcoming obstacles in the face of adversity, is a function of the interactions between multi-dimensional vulnerability and protective factors.").

143. CAL. WELF. & INST. CODE § 11400(y) (West Supp. 2014) (describing a nonminor's meaningful participation in one of the required activities under section 11403(b)(1)–(5) as an aim of the transitional independent living case plan).

144. Buss, *supra* note 51, at 323–24.

145. *Id.* at 323–26.

meeting the necessary requirements of having review hearings every six months, creating transitional living plans addressing certain areas outlined in the law,<sup>146</sup> and simply checking off boxes to make sure youth are still complying with the criteria of AB 12. The Legislature has identified former foster youth as a “vulnerable population at risk of homelessness, . . . incarceration,” and poverty, which stemmed the implementation of AB 12.<sup>147</sup> The intent of the Legislature was to provide these youth with support like that of a natural family to guide them through post-secondary education or develop work opportunities.<sup>148</sup> If the State is to follow the intent of the Legislature to actually provide AB 12 participants with a meaningful chance to achieve these goals, then the use of collaborative courts with strong judicial oversight is crucial. The role of the judge as a mentor for youth will mirror that of a biological parent and provide the child with ongoing support more frequently than required by law.<sup>149</sup> It is through this frequent contact that a meaningful relationship with the participant can be established, which is essential for following through with the legislative intent of creating a support structure similar to a biological family. Collaborative courts shift the focus to the youth, which is essential for helping a child achieve the goal of self-sufficiency and allows for the foster youth’s mantra to be a reality: “nothing about us without us.”<sup>150</sup>

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146. Transitional living plans are required under CAL. WELF. & INST. CODE § 11403.1(c).

147. *Id.* § 11403.1(a)(1).

148. *See id.* § 11403.1(a)(1)–(3).

149. If collaborative courts are mirrored after Judge Schwarz’s approach, youth will see courts every six to eight weeks as opposed to the legally required six months. *Compare, e.g.,* Schwarz, *supra* note 42 (providing youth with opportunity to meet informally every six to eight weeks), *with* CAL. WELF. & INST. CODE § 366.31(e) (requiring nonminor dependents’ status review hearings occur every six months).

150. *Youth, Family, and Community Engagement*, STUART FOUND., <http://www.stuartfoundation.org/OurStrategy/vulnerableYouthInChildWelfare/YouthFamilyAndCommunityEngagement> (last visited Apr. 30, 2014).