

AB350 HELPS FOSTER YOUTH TRANSITION INTO ADULTHOOD

BY JANICE WOLF, ESQ.



In July 2011, the Nevada Legislature passed Assembly Bill 350 (AB350), a law that has radically changed the way Nevada deals with children coming into the child welfare system and those aging out as young adults.

For children coming into foster care, AB350 minimizes the trauma they experience when Child Protective Services (CPS) removes them from their parents' custody and places them with strangers. AB350 requires immediate placement with family or friends whenever possible. For these children, AB350 makes foster care the placement of last resort, not the first, as was often the case in the past.

As for children turning 18, AB350 gives them the right to remain under juvenile court jurisdiction until age 21 so they can transition to independence more gradually. AB350 assists in the achievement of educational, financial, employment and self-sufficiency goals and pays young adults a substantial monthly stipend as they work toward independence. The law also requires that every foster youth be provided with legal counsel at age 17.

Nationally, about 20,000 foster children age out of foster care each year¹. At the time the Nevada Legislature enacted AB350, there were approximately 220 young people ages 17 and up in the child welfare system in Nevada. Of the 220, approximately 80 were over 18.

This article will focus on the aging-out provisions of AB350, the reasons for the changes, the impact on older children in the foster care system, and the opportunities and challenges AB350 provides for legal advocacy.

The Problem Defined

The year was 2010. Foster youth turning 18 that year had two choices: Sign a voluntary agreement to remain a foster child and ward of the juvenile court, or kiss the child welfare system goodbye. The first choice meant continuing to be treated like a child and being supervised by a caseworker, a team of professionals and a judge. The second choice meant flying solo. This was the choice facing my identical twin clients, Matthew and Mark, who attained the age of majority late in 2010.

Matthew couldn't wait to turn 18. Two months before his 18th birthday, he was already counting down the weeks, days and hours. For him, the "Big 18," as he called it, was his ticket to freedom. Like so many young people growing up in foster care, Matthew was done: done with court, done with caseworkers, done living life under the judicial microscope. "Done, done, done," he would say. That he was only a high school junior didn't matter. Matthew was of legal age and he had a plan ... sort of.

Mark, on the other hand, felt nowhere near ready to be out on his own. He complained constantly and loudly about his caseworker, his group home, his therapist and his probation officer, but the thought of cutting the umbilical cord utterly terrified him. So Mark opted to stay in and Matthew opted to go out.

Matthew's plan was to leave Nevada, live with a distant relative, go to school and get a job. The first part of the plan worked. He moved out of state, graduated and even got into community college. Step Up, a Clark County social services program that provides, among other things, rental assistance to former foster youth, paid rent money to Matthew's relative. Then things went south. There were no jobs in his rural community and Matthew quickly found himself with no money and no way to support himself. The relative, who had promised to give Matthew \$200 a month from the rent payments, kept all the money and put Matthew and his belongings out on the sidewalk. Discouraged and disappointed, Matthew took a bus back to Las Vegas and moved in with a family member who had physically and emotionally abused him as a child.

Mark struggled as well. He found jobs and lost them and had some minor brushes with the law. But with the support of his caseworker, his counselor and his attorney, Mark settled down, graduated from high school and worked his way off probation.

Fast-forward to July 2011: While Matthew's life was unraveling and Mark was struggling to get his together, AB350 was enacted. Because Mark had opted to remain in foster care after turning 18, he was eligible for AB350 benefits. Because Matthew had chosen to exit care at 18, he was not eligible for AB350. With hindsight, he admits he should have taken the other road.

The ABCs of AB350

The "aging-out" provisions of AB350 grew from the reality that youth such as Matthew who leave the child welfare system without a financial safety net and without a stable family do not do well as adults. These young men and women face major barriers: a lack of education and marketable job skills, homelessness, teen pregnancy and poverty, to name just a few. Many become involved in the mental health and criminal justice systems. Legal Aid Center of Southern Nevada (LACSN) regularly receives calls from Step Up seeking help for former foster youth who have been evicted, whose electricity has been shut off, who have lost Medicaid or Social Security benefits or who have been cheated by used car dealers and payday loan outfits. Not surprisingly, many of the desperate calls involve outstanding traffic warrants. The list of legal problems affecting former foster youth goes on and on.

The centerpiece of AB350 is a monthly stipend that is paid to young adults who volunteer to remain under court jurisdiction. The amount – approximately \$780 a month – is sent directly to the client. By statute, the stipend cannot exceed the going foster board payment rate. In exchange for the money, AB350 requires that every participating adult develop a written transitional plan with the guidance of his or her youth support worker and attorney. The plan sets forth each young adult's life goals: college, career and financial stability, and the action steps necessary to achieve them. In order to remain AB350 eligible, participants must demonstrate a good faith effort in working toward achieving their goals. The expectation is that when young adults exit AB350, they will have put away a sizable nest egg.

The architects of AB350 also had the foresight to eliminate the hot buttons that drive foster children to leave the child welfare system before they are ready; caseworker micromanagement and mandatory court review hearings top that list. There is a youth support worker for guidance, but the Department of Family Services is no longer the legal custodian, as is the case when a child is in foster care. The young adults are legally responsible for themselves and their own decisions, and the role of the dependency court is limited to resolving disputes that cannot be resolved administratively.

Unlike other independent living programs, participation in AB350 is a right, not a privilege, and is open to all 18-year-old foster youths, regardless of any history of truancy, delinquency or bad behavior. By statute, if a child asks to remain in the system, he or she cannot be turned down. Similarly, a child who wants to age out cannot be forced to remain under court jurisdiction regardless of whether his caseworker or the court believe it would be in the youth's best interest to do so.

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A Historical Perspective

In 2008, Congress enacted the Fostering Connections to Success and Increasing Adoptions Act (Fostering Connections Act), which amended many of the provisions of Title IV-B and IV-E of the Social Security Act. These amendments were designed to improve outcomes for foster children both while they are in the child welfare system and after they exit. Requiring child welfare agencies to make more vigorous efforts to track down family members, requiring siblings to be placed together whenever possible and requiring coordination between child welfare agencies and schools to minimize educational disruption whenever a child changes placements, are just a few of the measures set forth in the Fostering Connections Act to make foster children more successful in the long term.

Most of the provisions in the Fostering Connections Act did not require state enabling legislation. However, one key provision that permitted states to maintain youth in foster care until age 21 did require enabling legislation, primarily because of the potential fiscal impact. Until AB350 passed, Nevada had been one of the states that had not enacted the necessary enabling legislation. This lack of enabling legislation bubbled into a controversy in the juvenile court in Clark County in late 2010 and early 2011 and created the backdrop for the creation and passage of AB350.

In Nevada, child welfare law is covered by Chapter 432B of the Nevada Revised Statutes (NRS). Prior to July 2011 and the passage of AB350, NRS 432B.040 defined a “child” as a “person who is under the age of 18.” In Clark County, this definition was loosely interpreted to mean that no new child welfare action involving a “person over the age of 18” could occur, but children who came into the system before turning 18 could stay under court jurisdiction until their case closed if they chose to do so. Those who opted to stay in care signed a voluntary agreement, and those who opted out were directed to county social services programs that provided rental assistance and aftercare to former foster youth. While not perfect, the system worked reasonably well.

In late 2010, a controversy arose within the child welfare community concerning efforts to interpret the definition of “child” as stated in NRS 432B.040 literally. This view held that foster youth aged 18 and over were statutorily precluded from remaining under the jurisdiction of the dependency court. A hearing was scheduled to remove the individuals aged 18 and older (80 plus of them) from the child welfare system. This position was obviously contrary to the welfare and best interest of these young adults, many of whom were still in high school. Fortunately cooler heads prevailed and the parties agreed to maintain the status quo and clarify the statute during the 2011 legislative session.

Impact of AB350 on Older Youth

Because AB350 is new, the jury is still out on its long-term impact. What can be said with certainty is that AB350 attracts young adults who otherwise would exit care and face real trouble.

My client John is a case in point. John grew up in foster care, having been removed from his parents when he was 8 years old. By age 17, John had been through numerous placements, including stays in two psychiatric hospitals and one residential treatment center. Frustrated with foster care and angry with his caseworker, John ran away on his 17th birthday; he began living on the streets and getting paid under the table for small day jobs. John contacted me a week before his 18th birthday, and when I explained AB350, he wanted in. He met with his youth support worker and developed a transitional plan that included getting his diploma and a job. John enrolled in AB350 last December. He attends adult high school, has a job and is saving money for his future.

Legal Challenges and Opportunities

AB350 requires every 17 year old in foster care to have an attorney, not only to assist the youth in deciding whether to stay under the jurisdiction of the juvenile court, but also to advocate for the youth when things go wrong between the client and the Department of Family Services. Most of the disputes between the client and the department center on whether or not the client is making a “good faith effort” to work toward achieving his or her goals. The statute does not define “good faith effort,” leaving it open to subjective interpretation.

Mechanically, when the department believes a participant is not making a “good faith effort,” AB350

requires that a certified letter be sent to the client's attorney. The letter states the department's intention to recommend removal from the program. The attorney then must request an administrative review. If the reviewers decide against the client, the matter may be put before a judicial officer for a decision. This situation has arisen only twice since the implementation of AB350; in both cases, the court resolved the disputes in favor of the clients. In one of the disputed cases, the department had recommended termination from AB350 before the client had received her first monthly check.

Surprisingly, AB350 received some pushback from judicial officers in the Eighth Judicial District, with most of the push back centering on the elimination of regular child welfare hearings in AB350 cases. Although the intent was to free up judicial resources for cases with more serious child abuse and neglect issues, several of the hearing masters felt they were losing touch with the children who had grown up before them and wanted to have a say in the transitional planning.

With the steady flow of foster youth turning 18, there's a strong demand for competent legal representation. These cases are special; the clients are special. Our clients look to us not only for legal advice, but also because they know that they can trust us, that our word is our bond and that we are there for them when no one else is. Attorneys can make a difference.

Legal Aid Center of Southern Nevada (LASCN) partners with individual attorneys and firms to take on special projects through its Pro Bono Project. LASCN would like to thank Snell & Wilmer for adopting AB350 cases as its firm pro bono project.

If you or your firm is interested in taking on a case or a cause, please contact Melanie Kushnir, Pro Bono Project Director at (702) 386-1070 ext. 137.



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1. Mark Courtney, *Youth Aging out of Foster Care* (Network on Transitions to Adulthood Policy Brief, 2005, Issue 19), (citing *On your Own without a Net: The Transition to Adulthood for Vulnerable Populations* (D. Wayne Osgood, E. Michael Foster, Constance Flanagan & Gretchen Ruth eds., University of Chicago Press)).