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Life Is a Highway: Addressing Legal Obstacles to Foster Youth Driving

Lucy Johnston-Walsh*

ABSTRACT

The simple and relatively mundane act of driving a car, which many of us take for granted, can have a profound impact on many aspects of adulthood. The ability to drive a car can provide a means to pursue education and employment, to earn income, and to ultimately obtain independence. As a young adult, a car is often the first acquired asset, which leads to developing credit history for other major life purchases.¹ Owning a car may also be a significant contributor to a person's economic wellbeing and future buying power.² Yet the simple act of driving a car is too often unobtainable for youth who grow up within the foster care system. The simple steps of obtaining a driver's license, learning to drive, and purchasing a car can present insurmountable hurdles to foster youth. This article seeks to address the legal obstacles that remain as impediments to foster youth driving, despite recent legislative changes designed to improve

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¹ See generally Jennifer Brozic, *Car Loans for Teens. Do They Exist?*, CREDIT KARMA: LEARN MORE ABOUT AUTOS (Dec. 5, 2019), <https://bit.ly/2wQgo0G> [<https://perma.cc/R3FL-T56H>] (describing the difficulty faced by teenagers who wish to obtain a car loan and the ways that building credit can lessen that difficulty).

² See Piyushimita Thakuriah et al., *Car Ownership Among Young Adults*, 2156 TRANSP. RSCH. REC.: J. TRANSP. RSCH. BD. 6, 6 (2010), <https://bit.ly/39SOG1Z> [<https://perma.cc/8SE9-SDDY>] (“[T]he car has become greatly more important to being employed and staying in employment among young adults today than it was in previous generations.”).

foster care experiences for foster youth, and to recommend solutions for overcoming those obstacles.

I. INTRODUCTION

Remember the thrill of passing your driver's license test? Remember the feeling of the first time when you were behind the wheel and able to drive a car all on your own? Perhaps you may remember begging your parents for the car keys for a quick pleasure ride, or perhaps you needed the keys to drive to your first job. These early driving experiences are one seminal step towards adulthood and an expected rite of passage. As years go by, driving becomes less about the thrill of freedom with wheels to a necessary means towards independence. This opportunity of freedom and independence is too often unavailable to foster youth. Tori,³ for example, had been abandoned by her adoptive parents and entered foster care at age fourteen. When she turned sixteen, she started working at multiple jobs to save money for her first vehicle. She resided in a rural area and had trouble getting to work without available public transportation. She struggled for over two years to get her driver's license due to complications related to a lack of driver's education classes, an unavailability of her birth certificate for license application, and a need for someone to escort her to the driving test. Tori planned to leave foster care immediately upon her eighteenth birthday, with a car, to escape the challenges she faced within her foster home. Upon discharge by the court system, Tori moved out of her foster home and in with friends. After a brief and precarious stay with her friends, she wished to return to her safer, though not ideal, foster care placement. Tori quickly learned of the complications associated with owning a car while in foster care. Her foster home was no longer available, and her caseworker informed her that she was not allowed to drive a car if she was

³ Tori is not her real name. The name was changed to protect the confidentiality of a child client.

to return to the residential placement and that she would need to pay a rate of insurance above the state minimum to keep ownership of her car. Imagine learning you must hand over your keys for the car you worked so hard to purchase, knowing that it was the only way you could get to work in a rural community without public transportation. Tori made the perilous decision that her car would also be her home, leaving the “safety” of foster care in her rear-view mirror.

II. BACKGROUND

Children enter the foster care system after a court determines that a child needs protection.⁴ While federal laws require the governmental child welfare agencies to work towards reunification with family, children can be placed in a variety of settings while parents work to address the issues within the family that led to the child’s removal from home.⁵ Children may be placed in kinship homes, foster care settings, or residential congregate institutions.⁶ Child protection laws require government entities to place children in the least restrictive environment,⁷ yet home-like settings are not always available. Consequently, foster youth can reside in settings that do not always support their needs to develop independent living skills. Federal and state laws require child welfare agencies to assist foster youth in developing the ability to live independently.⁸

⁴ CHILD WELFARE INFORMATION GATEWAY, FACTSHEET FOR FAMILIES: UNDERSTANDING CHILD WELFARE AND THE COURTS (2016), <https://www.childwelfare.gov/pubPDFs/cwandcourts.pdf> [<https://perma.cc/R9FF-ZD3D>].

⁵ Adoption and Safe Families Act, 42 U.S.C. § 671(a)(15)(B) (2018).

⁶ National Conference of State Legislatures, *The Child Welfare Placement Continuum: What’s Best for Children?*, NAT’L CONF. OF STATE LEGISLATURES (2019), <https://www.ncsl.org/research/human-services/the-child-welfare-placement-continuum-what-s-best-for-children.aspx> [<https://perma.cc/HB85-RPKD>].

⁷ 42 U.S.C. § 671(a)(15).

⁸ *See generally* Chafee Foster Care Program for Successful Transition to Adulthood, 42 U.S.C. § 677 (2018); Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No 110-351, 122 Stat. 3949.

III. OLDER YOUTH IN CARE: DRIVING AS AN INDEPENDENT LIVING SKILL

All children must develop certain skills in order to eventually function as independent adults. For many youths, learning to drive is one of those important learned skills. For youth residing in rural areas, driving a private vehicle may be the sole means to get to work and advanced education. For youth who are part of the foster care system, unique challenges must be addressed in learning to drive. This article will cover how recent legislative changes have led to older youth remaining in the foster care system. Additionally, the article will address the various legal obstacles which impact the ability of foster youth to be able to drive. Finally, the article offers solutions to address the various impediments to foster youth driving.

A. *Changing Landscape with Fostering Connections Act and Extension of Care*

As a society, we strive for our children to become productive and independent adults. Towards that goal, we work with our children to develop independent living skills. Yet many young adults remain dependent upon their parents well into their mid-twenties.⁹ Child welfare agencies and

⁹ See, e.g., Mark E. Courtney, *The Difficult Transition to Adulthood for Foster Youth in the US: Implications for the State as Corporate Parent*, SOC. POL'Y REP. 8 (2009), <https://bit.ly/369NgyG> [<https://perma.cc/UZC8-BZ36>] (“Demographers have drawn attention to the fact that traditional markers of the transition to adulthood, such as living apart from one’s parents, completion of education, family formation and financial independence, are all happening later in life than was the case for much of the 20th century. Most young people today will not experience these transitions until their mid to late 20s and many not until their 30s. Along with these developments has been an extension of the period during which children are dependent upon their parents for significant care and support. For example, in 2001 approximately 63 percent of men between 18 and 24 years old and 51 percent of women in that age range were living with one or both of their parents. Young adults in the U.S. also rely heavily on their parents for material assistance during the transition to adulthood with parents providing roughly \$38,000 for food, housing, education, or direct cash assistance from 18-34.”) (internal citations omitted). The federal government has also recognized the reliance of American youth on their parents until well into their 20s by extending dependent health insurance coverage until the dependent reaches the age of 26. 42 U.S.C. § 300gg-14 (2010).

court systems work with foster youth to develop competencies to achieve long term goals for a healthy and productive life.¹⁰ However, research has highlighted the painful inadequacies of the foster care system in preparing children to be able to support themselves after time spent in the foster care system.¹¹ Foster youth experience higher rates of homelessness, incarceration, unemployment, and teenage pregnancies.¹² Recognizing that many foster children were ill-prepared for adulthood upon their eighteenth birthday, federal and state laws have extended the ability of youth to stay in foster care until age twenty-one.¹³ Legal mandates now require caseworkers to develop transition plans for foster youth to assist them in meeting goals of independence,¹⁴ including completing education, obtaining employment, and planning for their future.¹⁵ The shift in 2008 to allow foster youth to remain in care to age twenty-one was monumental. With a goal of supporting youth who experienced foster care, Congress enacted the Family First Prevention Services Act in February of 2018.¹⁶ States that have chosen to extend foster care to age twenty-one now have the option to provide aftercare services to youth leaving care at twenty-one up until age twenty-

¹⁰ See *Casey Life Skills Assessment*, CASEY FAMILY PROGRAMS, <https://bit.ly/2ABjGGz> [<https://perma.cc/7HYL-R4x1>].

¹¹ Mark E. Courtney, Amy Dworsky, Adam Brown, Colleen Cary, Kara Love, Vanessa Vorhies “MidWest Evaluation of Adult Functioning of Former Foster Youth: Outcomes at Age 26,” Chapin Hall at the University of Chicago, 2011.

¹² *Id.*

¹³ See 42 U.S.C. § 675(8)(B) (2018). The Fostering Connections to Success and Increasing Adoptions Act of 2008 was the first piece of federal legislation to permit states to keep children in foster care past the age of 18. See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 201, 122 Stat. 3949, 3957–58 (2008).

¹⁴ 42 U.S.C. § 675(5)(H) (2018).

¹⁵ *Id.*

¹⁶ Bipartisan Budget Act of 2018, Pub. L. No. 115-123, 132 Stat. 232; *Family First Prevention Services Act*, NAT’L CONF. OF STATE LEGISLATURES (Apr. 1, 2020), <https://www.ncsl.org/research/human-services/family-first-prevention-services-act-ffpsa.aspx> [<https://perma.cc/SK2J-E6EA>].

three.¹⁷ Furthermore, states have the option to provide education and training vouchers until age twenty-six.¹⁸ Extending these services recognizes developmentally appropriate practices.

Without a vehicle, youth who live in rural areas lacking public transportation face challenges in pursuing an education and employment.¹⁹ To assist foster youth in becoming drivers, various forms of support must be put into place. Recent legal reforms now allow foster youth to stay in foster care until age twenty-one.²⁰ Previously, states could not receive federal reimbursement of expenditures past a child's eighteenth birthday.²¹ States can now seek federal reimbursement for youth remaining in care if they meet certain criteria.²² Such reimbursement criteria should be extended to include the costs of driving-related expenses. As a greater number of

¹⁷ 42 U.S.C. § 1397g(c)(1) (2018); *Family First Prevention Services Act: Section by Section*, FIRST FOCUS: CAMPAIGN FOR CHILD, (Mar. 2018), <https://campaignforchildren.org/wp-content/uploads/sites/2/2016/06/FFCC-Section-by-Section-FFPSA.pdf> [<https://perma.cc/9KVJ-3N32>] (this option can be found in section 50753).

¹⁸ ADMIN. ON CHILD., YOUTH & FAMILIES, ADDITIONAL INFORMATION AND INSTRUCTIONS FOR THE ANNUAL PROGRESS AND SERVICES REPORT, AS A RESULT OF PASSAGE OF THE FAMILY FIRST PREVENTION SERVICES ACT (2018), <https://www.acf.hhs.gov/sites/default/files/cb/pi1806.pdf> [<https://perma.cc/SX9P-R3LX>].

¹⁹ “Although 60% of rural residents have access to public transit, roughly two-thirds of these publicly funded systems are single-county or single-city or -town in scope. This situation limits the range of employment destinations available to the individual. Particularly because of such limited access to alternative transportation options and the great dispersal of economic opportunities in rural areas, young adults are possibly motivated to enter car ownership at an earlier age compared with their urban counterparts.” Thakuria, *supra* note 2, at 6.

²⁰ See Fostering Connections to Success and Increasing Adoptions Act of 2008, Pub. L. No. 110-351, § 201, 122 Stat. 3949, 3957–58.

²¹ EMILIE STOLTZFUS, CONG. RSCH. SERV., RL34704, CHILD WELFARE: THE FOSTERING CONNECTIONS TO SUCCESS AND INCREASING ADOPTIONS ACT OF 2008 (P.L. 110-351) 9 (2008).

²² 42 U.S.C. § 675(8)(B)(iv) (2018). To be eligible for federal reimbursement, the youth must be: enrolled in school; employed at least 80 hours a month; participating in an activity designed to promote or remove barriers to employment; or exempt from aforementioned requirements if the youth has a medical condition rendering them incapable of participating in such activities.

“older” foster youth remain in government-funded and supervised care, more youth will need to work towards independence by taking that critical step of learning to drive and purchasing a car²³ as well as assuming the costs associated with driving.²⁴ Consequently, federal or state funding must be made available to support this necessary step. When foster youth initially enter the child welfare system, upon a court determination that it is no longer appropriate for the child to remain at home, the local government assumes legal and physical custody of the children.²⁵ This legal determination effectively assumes that the governmental entity can provide better care of the child than the parents. The governmental entity must then assume the responsibilities and risks associated with raising youth.

B. Focus on Normalcy: Strengthening Families Act and the Reasonable and Prudent Parent Standard

In 2014, Congress recognized the significance of normalizing life experiences for foster youth.²⁶ Provisions of federal law required states to develop standards for how decisions should be made on behalf of foster youth in custody.²⁷ The law developed a “reasonable and prudent parent

²³ In a survey of foster youth aged 16-21, only 5% reported owning a vehicle. LUCY JOHNSTON-WALSH & BRIAN BORNMAN, PA. CHILD. & YOUTH ADMIN’RS ASS’N & PENN STATE DICK. L.’S CHILD.’S ADVOC. CLINIC, KEYS TO INDEPENDENCE: DRIVING FOR FOSTER YOUTH 8 (2016), <https://bit.ly/2JH5i0y> [<https://perma.cc/5J97-7XG2>] [hereinafter KEYS TO INDEPENDENCE]. Contrast that number with another study of 9,000 young adults aged 13-17 in 1997 that found 50% were likely to own cars at age 18. That likelihood reached close to 80% by age 24. Thakuria, *supra* note 2, at 2, 5.

²⁴ In a survey, only 17% of foster youth aged 16-21 had a learner’s permit, and only 12% of foster youth aged 16-21 had a driver’s license. Out of the foster youth surveyed, only 30% had either a learner’s permit or driver’s license. See KEYS TO INDEPENDENCE, *supra* note 23, at 7–8.

²⁵ 42 U.S.C. § 672(a)(2)(A)–(B) (2018) (requirements for removing youth to foster placement and state custody).

²⁶ See generally Preventing Sex Trafficking and Strengthening Families Act, Pub. L. No. 113-183, 128 Stat. 1919 (2014).

²⁷ Heidi Redlich Epstein & Anne Marie Lancour, *The Reasonable and Prudent Parent Standard*, Child Law Practice Today, Oct 1, 2016, https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_prac

standard” (“RPP”) for determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.²⁸ A foster parent is to apply the RPP standard when making decisions about whether a youth should participate in any activity.²⁹ When a youth is living in a congregate or institutional care setting, an appointed staff member must follow the RPP standard in decision-making.³⁰ This shift in decision-making power for foster youth has had profound effects on the lives of youth in care by eliminating the need for the court’s intervention in daily decisions. Despite this significant shift in decision-making power, the RPP standard has not clearly and consistently been extended to include decisions related to driving. Additional action must be taken to provide foster youth with the legal allowances to drive. Doing so will ensure they have similar driving privileges to those enjoyed by non-foster youth so they may also access employment and education opportunities.

A shift in the decision-making power from courts to caregivers has not expanded as definitively in issues related to youth driving. Although foster parents and caregivers must be trained pursuant to the parenting standards,³¹ many caregivers hesitate when making decisions regarding allowing foster youth to drive. Concerns for liability and increased costs³² have led caregivers to oppose or interfere with a youth’s ability to drive. While a significant shift has been made in accepting risks associated with other youth activities (i.e. sleepovers), foster youth need caregivers and governmental entities to extend that acceptance of risk to driving. Governmental entities which have assumed legal custody of children per court directive, must accept that teenage drivers are expensive and are part

ticeonline/child_law_practice/vol-35/october-2016/the-reasonable-and-prudent-parent-standard/ [https://perma.cc/P72Z-3YQS].

²⁸ 42 U.S.C. § 675(10) (2018).

²⁹ *Id.* § 675(10)(A).

³⁰ *Id.* § 675(10)(B).

³¹ 42 U.S.C. § 671(a)(24) (2018).

³² KEYS TO INDEPENDENCE, *supra* note 23, at 13–15.

of a high-risk pool.³³ Governmental entities must consequently pay the cost of the associated risk and learn about the limits of their own liability. Legal reforms to foster care have made tremendous strides to improve the system in recent years, yet barriers to driving must also be addressed.

Caregivers of foster youth range from in-home foster parents, to kinship care providers, to staff at a residential treatment facility. While in-home foster parents may be more likely to provide driving training because they have been able to develop a more personal relationship with the youth, facility staff must also assist youth in taking the necessary steps to driving. The caregiving individuals must assist youth in obtaining a driver's permit, supervise youth holding driver's permits for practice and skill development, and eventually assist youth in obtaining a driver's license. Too often, concerns for liability interfere with these steps. Governmental entities must respond to and address the caregivers' concerns in order for caregivers to provide the presumed "reasonable and prudent parenting" that is to occur when the government obtains legal custody of our youth.

Regardless of whether youth live in rural or urban areas, transportation is a critical need to further independence. Youth who reside in metropolitan areas are likely to have access to public transportation, whereas youth who reside in rural communities have limited to no access to public transportation. Alternative private transportation, such as Uber or Lyft, are also often inaccessible in these rural areas. Foster youth in rural communities have an even greater need to obtain access to a private vehicle and a driver's license. Without reliable transportation, youth miss an

³³ See Penny Gusner, *13 Things That Affect Your Car Insurance Rates*, INSURE (June 17, 2020), <https://www.insure.com/car-insurance/car-insurance-factors.html#age> [<https://perma.cc/WZX8-JK85>]; *Insider Information: How Insurance Companies Measure Risk*, INS. COMPANIES.COM, <https://www.insurancecompanies.com/insider-information-how-insurance-companies-measure-risk/> [<https://perma.cc/3F82-LSZ3>]; Mathew B. Sims, *3 Auto Insurance Premium Factors You Can't Ignore*, AUTOINSURANCE.ORG (Apr. 21, 2020), <https://www.autoinsurance.org/3-auto-insurance-premium-factors-you-cant-ignore/> [<https://perma.cc/TGD8-E7UR>].

opportunity to gain employment, impacting their ability to ultimately develop independence. Youth residing in non-urban areas share the same need to obtain employment and earn money yet face the additional burden of complicated transportation needs.

IV. OVERCOMING LEGAL OBSTACLES

Various legal obstacles impact a foster youth's ability to begin driving. Youth who are not involved in foster care may have the assistance of parents or family members, whereas foster youth must rely on foster parents or facility staff. Too often, simple tasks such as locating a birth certificate can present barriers.

A. Permits and Licensing

When any youth under age eighteen completes an application for driver's permits or licenses, typically, a parent or relative must also sign the application. Parental signatures can present a challenge for foster youth who do not reside with their biological parents. Many states require the applicant to have a cosigner to verify the information on the application, and some states go further and require the co-signer to assume responsibility for the new driver.³⁴ Non-foster youth typically have a parent sign these forms, whereas foster youth frequently need a non-parent to sign the forms. Some states attach liability and assumption of responsibility for accidents to the individual signing the forms, which would deter non-relative adults from co-signing the application. In fact, out of the fifty states, twenty-three states currently require the parent or guardian to provide consent and verify the content of the application.³⁵ The other twenty-seven states' applications assign legal and/or financial liability to the signer of the application in the

³⁴ See LUCY JOHNSTON-WALSH, PENN STATE DICK. L., BEHIND THE WHEEL: DRIVING AS A ROUTE TO INDEPENDENCE FOR FOSTER YOUTH 5 (2018), <https://bit.ly/3496WBw>.

³⁵ *Id.* at 8.

event the minor driver causes harm while driving.³⁶ Eliminating this requirement for assumption of liability and/or responsibility would increase the likelihood that non-parent adults would be willing to co-sign an application on behalf of foster youth. For example, Pennsylvania's permit application form does not include language about liability nor do the state's statutes assign joint and several liability to the adult application signer. Liability for accidents can be assigned through other legal mechanisms beyond the application form.

In addition to needing a co-signer, youth must also produce a birth certificate, a requirement that often presents unique challenges for foster youth.³⁷ Youth in foster care often do not enter foster care with a birth certificate stuffed in their back pocket. Child welfare agencies often struggle to track down child's important documents such as birth certificates. Recent federal laws have required governmental agencies to obtain birth certificates for youth who are transitioning out of care upon age eighteen or twenty-one.³⁸ Yet, to obtain a driver's license while in foster care, youth will need birth certificates prior to discharge. State or federal laws should be amended to require governmental agencies to obtain birth certificates immediately upon a child entering legal and physical custody of a governmental agency foster care, instead of when foster youth are transitioning out of care.

³⁶ *Id.*

³⁷ Those youth who do have identifying documents such as Social Security cards and birth certificates when they come into care often have difficulty obtaining those documents while in or when exiting care because the child welfare agency has them. KEYS TO INDEPENDENCE, *supra* note 23, at 10. Pennsylvania law requires child welfare agencies to obtain permanent documents for children in foster care upon the time of discharge. 55 PA. CODE § 3130.45 (1982).

³⁸ Adoption and Safe Families Act, 42 U.S.C. § 675(5)(I) (2018).

B. Driver's Education Programming

Foster youth also face obstacles in obtaining adequate driver's education programming. Recently, public schools have eliminated driver's education programs due to fiscal restrictions.³⁹ J. Peter Kissinger, president and CEO of the AAA Foundation for Traffic Safety, addressed this reduction in available in-school programs:

In more than half the states, minors who want a license must take driver's education from a certified instructor. High schools started rolling back driver's education in the 1980s. The more recent cutbacks have been driven by school funding shortages, and the trend might be accelerating because of the downturn in the economy.⁴⁰

Yet, youth still need to log time behind the wheel to proceed from the permit stage to a license.⁴¹ If a young person's parents are not willing to provide training, youth often privately pay for a driver's education program. The cost of driver training programs could negatively impact the ability of a foster youth to participate.⁴²

Spending time behind the wheel is far more challenging for youth living in foster care and for youth living in congregate care facilities.⁴³ Too often,

³⁹ See, e.g., Joy Lukachick Smith, *Running on Empty: Georgia Schools Cutting Driver's Education Classes*, CHATTANOOGA TIMES FREE PRESS (June 25, 2012), <https://bit.ly/2WAG6QO> [<https://perma.cc/U4XF-R2CT>].

⁴⁰ *Some Schools Drop Driver's Ed to Cut Costs*, NBC NEWS (Dec. 18, 2009, 8:01 PM), <https://nbcnews.to/2LBdXCE> [<https://perma.cc/LS2V-FVNV>].

⁴¹ See generally 75 PA. CONS. STAT. § 1505 (2018) and 75 PA. CONS. STAT. § 1503 (2011).

⁴² Costs of driver training vary according to region. The following websites provide cost comparisons: *How Much Do Driving Lessons Cost?*, THUMB TACK (Aug. 26, 2020), <https://www.thumbtack.com/p/how-much-do-driving-lessons-cost> [<https://perma.cc/G56U-ETRL>]; Jen K., *How Much Do Driving Lessons Cost?*, LESSONS.COM, <https://lessons.com/costs/driving-lessons-cost> [<https://perma.cc/ABN5-J3FC>].

⁴³ In a survey of foster youth, only 26% reported taking a driver's education course; 74% did not take a course but had it available to them; and 15% took a course that included in-car training. KEYS TO INDEPENDENCE, *supra* note 23, at 6–7. “The majority of the youth surveyed reported they were not able to take a driver's education course while they were

foster parents or group home staff are unwilling or unable to provide the requisite hours of behind-the-wheel training. Foster parents may be concerned about liability for potential accidents, and congregate care facilities rarely have the physical and human staff resources to cover the costs associated with teaching driving lessons.⁴⁴ When governmental agencies assume responsibility for the care and custody of a youth through foster care, the agency should also assume the responsibility to provide the resources to include the costs related to driver's education programs. A youth can either pay privately for the driver's education programming or the governmental entities can choose to spend their federal funding to support this activity. An alternative proposed later in this article is to offer a state-funded program for driver's education, as in the states of Washington and Florida.⁴⁵ The investment in such programming will yield an increase in the number of foster youth with driver's licenses, as the investment has worked in Florida.⁴⁶

in the foster care system. They were not able to take the course for a variety of reasons, which include school program was cut, moved into new school without meeting driver's education requirements because of prior moves, cost of a private driver's education program, and more." *Id.* at 6.

⁴⁴ See, e.g., Sarah Alvarez, *Here's Why It's So Hard to Get Your Driver's License While in Foster Care*, MICH. RADIO (Aug. 5, 2015), <https://bit.ly/2LBsU7V> [<https://perma.cc/3Q48-HJDT>] (describing how Michigan requires accumulation of 80 driving hours for license applications but does not permit foster children to acquire those hours by driving in state-owned vehicles "even if a state worker would be willing to ride with them.").

⁴⁵ FLA. STAT. § 409.1454 (2017); WASH. REV. CODE § 74.13.338 (2017). Furthermore, there is a national database that is organized to show what states provide financial benefits for youth in foster care who are obtaining driver's licenses/education/insurance. *Older Youth in Foster Care*, NAT'L CONF. OF STATE LEGISLATURES (Feb. 11, 2020), <https://www.ncsl.org/research/human-services/older-youth-transitioning-from-care-50-state-data-map-and-8-state-profile.aspx> [<https://perma.cc/87HX-PCFQJ>].

⁴⁶ Florida Keys to Independence Program White Paper 2019, <https://k2i.us/> (scroll down to "Resources"; then click on "Florida White Paper – 2019").

C. Contracting with Minor: Purchase of Vehicles and Automobile Insurance

After overcoming obstacles in obtaining a license, the next concern for young drivers is purchasing vehicles and automobile insurance. Often, non-foster youth are added to a pre-existing family insurance plan. However, for youth in foster care, this is usually not an option as foster parents may be unwilling to incur the additional expense associated with adding a new driver to their policy.⁴⁷ Not all congregate care facilities have a fleet of vehicles available for residents to drive. Even when a facility owns vehicles, it is unlikely that the facility could add the youth to the agency's car insurance policy. Foster youth often must purchase car insurance individually at a higher rate, if they cannot be added to a family insurance plan.⁴⁸ If a foster youth is independently purchasing insurance and under age eighteen, they could also face challenges with the insurance company because they are entering into a contract for insurance as a minor.⁴⁹

As per the infancy doctrine in contract law, children cannot be bound to the terms of a contract.⁵⁰ Courts have allowed youth to void contracts they entered into due to concern that adults were taking advantage of the youths' immaturity.⁵¹ The opportunity to void a contract is conferred by law for protection against improvidence or overreaching of adults.⁵² The public

⁴⁷ In a survey of foster youth aged 16-21, only 7% reported having vehicle insurance coverage, and 69% of those youth that did have coverage were on their own insurance policy that they themselves paid for. KEYS TO INDEPENDENCE, *supra* note 23, at 9, 14.

⁴⁸ Ann Carns, *Buying Car Insurance for Teenagers Can Be a Balancing Act*, N.Y. TIMES (Aug. 11, 2015), <https://www.nytimes.com/2015/08/12/business/buying-car-insurance-for-teenagers-can-be-a-balancing-act.html> [<https://perma.cc/K7AZ-NFVK>].

⁴⁹ JOSEPH M. PERILLO, CONTRACTS 258 (7th ed. 2014).

⁵⁰ See Elizabeth S. Scott, *The Legal Construction of Adolescence*, 29 HOFSTRA L. REV. 547, 553 (2000).

⁵¹ See, e.g., *Keifer v. Fred Howe Motors, Inc.*, 158 N.W.2d 288, 290 (Wis. 1968).

⁵² See W. E. Shipley, Annotation, *Infant's Liability for Use or Depreciation of Subject Matter, in Action to Recover Purchase Price upon His Disaffirmance of Contract to Purchase Goods*, 12 A.L.R.3d 1174 § 3(a) (1967) ("The courts in a number of jurisdictions have applied the rule that an infant, on disaffirming his contract for the purchase of goods and returning, or offering to return, the object purchased, in whatever

policy rationale for voidable contracts was developed to discourage adults from contracting with children who are in an unfair bargaining position. However, the privilege of this “infancy doctrine”⁵³ (the youth’s ability to void a contract) does not enable youth to escape liability in all cases. A well-established exception to this rule is that a child will remain liable for a purchase of items which are necessities. No bright line rule exists to define what is a “necessity.”⁵⁴ Case law indicates that the necessity exception to the infancy doctrine of contract law may not apply consistently to the purchase of automobile insurance.⁵⁵ For example, in the Pennsylvania case *State Farm Mutual Automobile Insurance Co. v. Skivington*, the court acknowledged the varied definitions of necessities, ultimately deciding the necessity exception applies for an automobile insurance contract.⁵⁶ However, the *State Farm* case does not provide a solid legal precedent, and it presents an example of how the court might reason that car insurance is a necessity when it is purchased by a minor.⁵⁷ Young adults over age eighteen do not have the same complications associated with contracting powers.

D. Costs Associated with Car Insurance

After obtaining a driver’s license and access to a vehicle, drivers must address additional expenses related to driving. In addition to costs of licenses and vehicle purchases, the driver will need car insurance. For many youth, the cost of car insurance can be overwhelming, and experts note that “Auto insurance companies use many factors to set the cost to insure a

condition it might be at the time of return or tender, may recover what he has paid, without diminution for depreciation in the value of the property.”);

⁵³ *Dodson v. Shrader*, 824 S.W.2d 545, 547 (Tenn. 1992).

⁵⁴ *See generally* Larry A. DiMatteo, *Deconstructing the Myth of the “Infancy Law Doctrine”*: *From Incapacity to Accountability*, 21 Ohio N.U. L. Rev. 481 (1994) (outlining youth liability and specifically describing the necessities doctrine).

⁵⁵ *See, e.g.*, *Rodriguez v. Reading Hous. Auth.*, 8 F.3d 961, 964 (3d Cir. 1993).

⁵⁶ *State Farm Mut. Auto. Ins. Co. v. Skivington*, 28 Pa. D. & C.4th 358 (C.P. Cumberland Cnty. 1996).

⁵⁷ *Id.*

car.”⁵⁸ When any individual purchases insurance, the individual’s insurance rate quotes are determined by variable factors and formulas such as age, credit history, driving records, level of education, etc.⁵⁹ These variables impact an individual’s insurance rates based on risk tolerance of the insurance companies. Due to these variables, younger drivers necessarily have higher risk exposure, and consequently, higher automobile insurance rates.

If a foster parent or care provider were to pay for the car insurance costs of a foster youth, a legal issue presented is the ability for the government entity to reimburse the foster parents for this expense. Generally, a local child welfare governmental entity could reimburse this expense to the providers with funding from their budget received from the state government. The local government entity has legal care and responsibility for the youth in their foster care system. The government entity should reimburse an expense, if there are funds in the budget to cover the expense and if the government provides the funding consistently to any eligible youth.

State and county governments should use federal funds to reimburse driving related expenses. Title IV-E of the Social Security Act allocates federal funding to states to provide safe and stable out-of-home care for children.⁶⁰ The federal funding has very specific eligibility requirements.⁶¹

⁵⁸ Rob Berger, *22 Factors That Affect Auto Insurance Premiums*, DOUGROLLER (Sept. 14, 2020), <https://bit.ly/2ThqcZp> [<https://perma.cc/ZL6W-8U27>].

⁵⁹ Kira Botkin, *11 Factors That Affect Car Insurance Rates – How to Lower Your Costs*, MONEY CRASHERS, <https://www.moneycrashers.com/factors-affect-car-insurance-rates/> [<https://perma.cc/W3RE-YX5B>].

⁶⁰ *Title IV-E Foster Care*, U.S. DEP’T OF HEALTH & HUM. SERVS, CHILD.’S BUREAU (May 17, 2012), <https://www.acf.hhs.gov/cb/resource/title-ive-foster-care> [<https://perma.cc/DSM7-MB8T>].

⁶¹ *A Primer on Title IV-E Funding for Child Welfare*, CHILD TRENDS, 1 (2016) <https://www.childtrends.org/wp-content/uploads/2016/01/2016-04TitleIV-EPrimer.pdf> [<https://perma.cc/8597-FCYZ>]; CHILD WELFARE: A DETAILED OVERVIEW OF PROGRAM ELIGIBILITY FUNDING FOR FOSTER CARE, ADOPTION ASSISTANCE AND KINSHIP GUARDIANSHIP ASSISTANCE UNDER TITLE IV-E OF THE SOCIAL SECURITY ACT, (2012)

Reimbursable expenses of foster care maintenance payments cover the cost of food, clothing, shelter, supervision, personal incidentals, liability insurance with respect to a child, and reasonable travel for a child's visitation with family or other caretakers, etc.⁶² To have car insurance costs reimbursed using federal funds, a determination needs to be made to see if the expense is "Title IV eligible."⁶³ To determine Title IV-E eligibility, the following factors are considered: the child must be in an out-of-home placement; the child must have been removed from a family that is considered financially needy (family's neediness is based on measures in place in 1996 under the Aid to Families with Dependent Children program); the child must have entered care through a judicial determination or voluntary placement; and the child must be in a licensed or approved foster care placement.⁶⁴ Assuming a youth meets the eligibility criteria for federal funding, the state could seek reimbursement with Title IV-E funding. Another funding source could be the Chafee Foster Care Program, which offers funding to help current and former foster youth achieve self-sufficiency.⁶⁵ Unlike the Title IV-E programs, the Chafee program funds

https://www.everycrsreport.com/reports/R42792.html#_Toc339461868 pdf
[<https://perma.cc/KRK7-ET32>].

⁶² See *id.* at Section TITLE IV-E SUPPORTS CHILDREN IN FOSTER CARE, ADOPTION, AND KINSHIP GUARDIANSHIP.

⁶³ *Child Welfare Policy Manual: 8.1B Title IV-E, Administrative Functions/Costs, Allowable Costs – Foster Care Maintenance Payments Program*, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD.'S BUREAU, http://webcache.googleusercontent.com/search?q=cache:qMw1yMLUJ-QJ:https://www.acf.hhs.gov/cwpm/public_html/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID%3D36&hl=en&gl=us&strip=1&vwsr=0 [<https://perma.cc/7KCH-J2DY>].

⁶⁴ CHILD TRENDS, *supra* note 61.

⁶⁵ 42 U.S.C. §677 (2018); *John H. Chafee Foster Care Independence Program*, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD.'S BUREAU (June 28, 2012), [https://www.acf.hhs.gov/cb/resource/chafee-foster-care-program#:~:text=Program%20Description&text=Chafee%20Foster%20Care%20Independence%20Program%20\(CFCIP\)%20offers%20assistance%20to%20help,care%20youths%20achieve%20self%2Dsufficiency.&text=This%20program%20makes%20available%20](https://www.acf.hhs.gov/cb/resource/chafee-foster-care-program#:~:text=Program%20Description&text=Chafee%20Foster%20Care%20Independence%20Program%20(CFCIP)%20offers%20assistance%20to%20help,care%20youths%20achieve%20self%2Dsufficiency.&text=This%20program%20makes%20available%2)

are limited for programs dedicated to preparing foster youth to be self-sufficient upon transition out of foster care.⁶⁶ Some states have chosen to use Chafee funds to pay for car insurance.⁶⁷

E. Debunking the Myth of Liability

Perhaps the biggest obstacles to foster youth having normal teenage driving experiences are concerns related to liability and who would be fiscally responsible if the youth was involved in an automobile accident. Based on various liability issues as described in this article, foster parents and governmental entities respond cautiously to issues of financial liability for costly accidents of foster youth drivers. Administrators of government agencies are concerned that they will be liable for foster youths' actions, and foster parents are concerned about their individual liability, as are other non-profit child welfare organizations serving foster youth.⁶⁸ Without understanding the legal connections needed to create liability, these entities are simply denying the opportunity based on presumptions of responsibility. The following analysis will address various legal theories of liability.

1. Negligence Theory

The primary theory of liability is focused on negligence. Attributing liability to a foster parent or governmental agency based on negligence per se would be difficult because an accident caused by a foster youth's violation of a law would be that foster youth's responsibility. The general

0vouchers,and%20training%20for%20eligible%20youth [https://perma.cc/8GTP-LRXC].

⁶⁶ CHILD TRENDS, *supra* note 61.

⁶⁷ KATHLEEN MCNAUGHT ET AL., U.S. DEP'T OF HEALTH & HUM. SERVS., NAT'L RES. CTR. FOR YOUTH DEV., IMPROVING OUTCOMES FOR OLDER YOUTH: WHAT JUDGES AND ATTORNEYS NEED TO KNOW 46 n.81 (2004), <https://bit.ly/2LFQrEw> [https://perma.cc/6QT5-4GLW].

⁶⁸ Anecdotal information obtained from various Pennsylvania county administrators surveyed regarding concerns related to liability, referenced in a report by author and Brian Borman of Pennsylvania Children and Youth Administrations Association white paper entitled, *Keys to Independence: Driving for Foster Youth*, June 2016.

theory of negligence is “that a violation of statute is negligence in itself if the statutory violation causes the type of harm the statute was intended to avoid, to a person within the class of persons the statute was intended to protect.”⁶⁹ For this to apply, a law which is specifically designed to protect certain classes of people gives rise to a claim of negligence per se when that law is violated.⁷⁰ For example, a driver who is driving above the speed limit and hits a pedestrian gives rise to a claim of negligence per se, as it would be the driver’s responsibility to another adult under this circumstance.⁷¹

2. Negligent Entrustment Theory

Liability concerns arise as to when adults could become liable for allowing a youth to drive their car. The *Hornbook on Torts* describes negligent entrustment as a legal ground for imposing a duty to use reasonable care to control permissive uses to prevent negligent harm, in that the property owner (i.e. car owner) must determine whether a person could foreseeably use the property in a dangerous manner.⁷² The negligent entrustment theory regarding motor vehicles applies when a person who is responsible for another person’s actions lends an automobile to someone incompetent to drive.⁷³ Questions may arise as to whether a passenger in a car could be responsible for driver’s negligence. A passenger in a vehicle has no duty to supervise the driver unless the passenger knows or should have known of the driver’s impaired condition, the passenger may be found comparatively negligent or at fault.⁷⁴ However, the Restatement of Torts recognizes that a parent can be expected to exercise some control over his

⁶⁹ DOBBS ET AL., *HORNBOOK ON TORTS* 243 (2d ed. 2016).

⁷⁰ RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 14 (AM. L. INST. 2010).

⁷¹ See, e.g., *Hanson v. Great Am. Indem.*, 33 So. 2d 549, 552 (La. Ct. App. 1947).

⁷² DOBBS ET AL., *supra* note 69, at 653.

⁷³ John Hoft, *Three States of Mind: Liability for Negligent Entrustment of Motor Vehicles*, ALLIED ACAD. INT’L CONF. 17, 18 (2007).

⁷⁴ *Carbon v. Allstate Ins. Co.*, 701 So.2d 462, 471 (La. Ct. App. 1997).

or her minor children.⁷⁵ Yet, courts have been reluctant to impose liability upon parents for the torts of their children, even when parents knew their child was dangerous and could have taken steps to prevent harm.⁷⁶ Given parental knowledge of a specific propensity and imminent danger, parents may be liable for negligence when they fail to either control the child's behavior or warn the victims.⁷⁷ The typical case of negligent entrustment involves an automobile loan to a person whom the defendant knows or should have known is apt to use the vehicle in a dangerous way because of age, inexperience, character, or intoxication.⁷⁸

To establish a case of negligent entrustment, each state may require different elements to be met. For example, Arizona's case law describes the six elements as follows:

- (1) foster parent owns or controls the vehicle;
- (2) foster parent must have given youth permission to operate vehicle;
- (3) foster youth must be incompetent to operate vehicle;
- (4) foster parent knew or should have known foster youth was incompetent to operate vehicle;
- (5) foster youth and / or foster parent's negligence must be proximate cause of accident; and
- (6) accident must have caused damage.⁷⁹

Negligent entrustment is widely recognized but may vary slightly by jurisdiction.⁸⁰ Below are descriptions of some common elements of a negligent entrustment claim.

⁷⁵ RESTATEMENT (SECOND) OF TORTS § 316 (AM. L. INST. 1965).

⁷⁶ See Hoft, *supra* note 73.

⁷⁷ Wood v. Groh, 7 P.3d 1163, 1172 (Kan. 2000).

⁷⁸ RESTATEMENT (SECOND) OF TORTS § 390 (AM. L. INST. 1965); *see generally* Keller v. Kiedinger, 389 So.2d 129 (Ala. 1980); Arkansas Bank & Tr. Co. v. Erwin, 781 S.W.2d 21 (Ark. 1989).

⁷⁹ Acuna v. Kroack, 128 P.3d 221, 227 (Ariz. Ct. App. 2006).

⁸⁰ *See generally* BARRY A. LINDAHL, MODERN TORT LAW: LIABILITY AND LITIGATION § 32:1 (2d ed. 2020).

3. Negligent Entrustment Factor: Incompetent to Operate Vehicle

Jurisdictions may also vary on what constitutes incompetence to operate a vehicle. A driver's young age and inexperience with driving would presumably establish incompetence.⁸¹ However, no case law was found that established the incompetence factor for a negligent entrustment action based solely on age and inexperience. Most jurisdictions require that the driver's past driving record demonstrates the driver to be reckless.⁸² Any parent, including foster parents, should ensure young drivers follow the state's graduated driver's license (GDL) program. If a foster youth adheres to the GDL program and has no previous driving violations or accidents, a negligent entrustment claim should fail on this element.

4. Negligent Entrustment Factor: Knowledge of Incompetence

To satisfy this element, foster parents would have to know of the youth's prior driving record or should have known of the youth's prior record. Should foster parents become aware of a youth's prior driving record, before the youth comes under their care and control? Generally, under federal law 18 U.S.C. § 2721, a state department of motor vehicles shall not knowingly disclose personal information in connection with an individual's driving record. However, pursuant to 18 U.S.C. § 2721(b)(1), personal information can be disclosed to any government agency, including any court or law enforcement agency, in carrying out its functions on behalf of a Federal, State, or local agency.⁸³ This theory raises the question of whether

⁸¹ *Thomason v. Harper*, 289 S.E.2d 773, 779 (1982) (listing the three categories for incompetence, including the demonstration of recklessness); *McCart v. Muir*, 641 P.2d 384, 387 (1982) (explaining the need for establishing recklessness and the entrustor's knowledge of history).

⁸² *Allen v. Toledo*, 167 Cal. Rptr. 270 (Cal. Ct. App. 1980); *Giers v. Anten*, 386 N.E.2d 82 (Ill. App. Ct. 1978); RESTATEMENT (SECOND) OF TORTS § 390 cmt. *b* (AM. L. INST. 1965).

⁸³ An example from Pennsylvania is this form which requires an individual to authorize release of records. *Request for Driver Information*, PA. DEP'T OF TRANSP., <http://www.dot.state.pa.us/Public/DVSPubsForms/BDL/BDL%20Form/DL-503.pdf>

child welfare agencies could or should obtain information about the youth's driving record and then provide that record to the foster parent. This approach implicates concerns about a child or young adult's right to privacy.

5. Negligent Entrustment Factor: Negligence

To meet the negligent entrustment factor, a claimant must prove the youth's negligence.⁸⁴ To prove negligence, a claim must contain the following elements:

- (1) the defendant owed the plaintiff a duty to exercise some degree of care for plaintiff's safety; (2) defendant breached duty by unreasonable conduct; (3) defendant's conduct in fact caused harm to plaintiff; and (4) the existence and amount of damages based on actual harm such as physical injury to person or property.⁸⁵

To illustrate this concept, if an accident involving a foster youth was caused by a different driver proceeding through a red light, the claim would fail on this element because it was not the fault of the foster youth. To avoid liability under this factor, a foster youth should be properly educated before inappropriately accepting fault at the scene of an accident. A foster parent would carry no liability under this hypothetical situation as the fault would lie with the driver who went through a red light.

6. Vicarious Liability Theory

Vicarious liability is described as the "liability for the tort of another person. Such liability is an important exception to the usual rule that people are accountable for their own legal fault. The most common kind of

[<https://perma.cc/HD6L-VY6D>]. However, Pennsylvania law 42 Pa.C.S. § 6308 allows inspection of records when a child is charged with delinquency. In that scenario, the court orders, in the interest of the child, that the records which are not open to the public be disclosed to the public under certain circumstances. PA. CONS. STAT. 42 § 6308 (2014).

⁸⁴ RESTATEMENT (SECOND) OF TORTS § 316 (AM. L. INST. 1965).

⁸⁵ DOBBS ET AL., *supra* note 69, at 198.

vicarious liability is based upon the principle of respondeat superior.”⁸⁶ Under the respondeat superior theory, employers and tortfeasor-employees are generally jointly and severally liable for the employee’s torts if they were committed within the scope of employment.⁸⁷ The respondeat superior claim is commonly used in employer–employee relationships, and less commonly but occasionally used in parent–child relationships.

Most states rely on common law negligent entrustment for vehicle ownership liability.⁸⁸ For example, Montana law makes clear that negligent entrustment is the “stand alone” method of imputing negligence from a child to a parent. For liability to be imposed, the following factors must be met: (1) the parent must know that he or she can control the child; (2) the parent understands the necessity for doing so; and (3) the parent’s failure to exercise reasonable care under these circumstances creates an unreasonable risk of harm to a third person.⁸⁹ Negligent entrustment requires more than simply allowing a young person to operate a vehicle.⁹⁰

7. Governmental Immunity

The general rule is that under the due process clause of the Fourteenth Amendment of the U.S. Constitution, state and local governments are not liable for harm caused by private actors.⁹¹ Specifically, “Qualified immunity protects governmental officials ‘from liability for civil damages

⁸⁶ *Id.* at 743.

⁸⁷ *Id.* at 753.

⁸⁸ RESTATEMENT (SECOND) OF TORTS § 390 (AM. L. INST. 1965) lists states using negligent entrustment doctrine as including: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Washington D.C., Wisconsin, Wyoming.

⁸⁹ *Styren Farms, Inc. v. Roos*, 265 P.3d 1230 (Mont. 2011).

⁹⁰ *Id.* at 1233–1234.

⁹¹ *DeShaney v. Winnebago Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 189–190 (1989).

insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”⁹² To establish liability, the law must be so clear that it would put every reasonable official on notice that certain conduct violates a constitutional right.⁹³

However,

[w]hen a state fails to protect a foster child from harm, the foster child can sue the state under the special-relationship doctrine. The special-relationship doctrine provides an exception to the general rule that states aren’t liable for harm caused by private actors . . . Under this doctrine, a state or its agents can be liable under 42 U.S.C. § 1983 for failing to protect people from harm if they have deprived those people of liberty and made them completely dependent on the state for their basic needs. But the special-relationship doctrine has limits—for instance, it requires plaintiffs to show that the state assumed control over them, thus triggering a duty to protect them.⁹⁴

From multiple federal cases, the law indicates that claims built on the special relationship doctrine have four elements. First, the plaintiff must demonstrate the existence of a special relationship, meaning the plaintiff completely depended on the state to satisfy basic human needs.⁹⁵ Second, the plaintiff must show that the defendant knew that the plaintiff was in danger or failed to exercise professional judgment regarding that danger.⁹⁶ Third, the plaintiff must show that the defendant’s conduct caused the plaintiff’s injuries.⁹⁷ Finally, the defendant’s actions must shock the conscience.⁹⁸ The existence of the special relationship is the pivotal issue; if

⁹² *Schwartz v. Booker*, 702 F.3d 573, 579 (10th Cir. 2012).

⁹³ *Anderson v. Creighton*, 483 U.S. 635, 640 (1987).

⁹⁴ *Dahn v. Amedei*, 867 F.3d 1178, 1180–81 (10th Cir. 2017).

⁹⁵ *Id.* at 1185.

⁹⁶ *Id.*

⁹⁷ *Id.* at 1185–86.

⁹⁸ *Id.* at 1186.

none exists, a state cannot be held liable for a person's injuries at the hands of a private third party as opposed to a state actor.⁹⁹ The state has a special custodial relationship only with individuals who depend completely on the state to satisfy their basic human needs.¹⁰⁰ As case law makes clear, a special relationship exists between the state and a foster child, which triggers an accompanying duty limited to only the specific officials who executed the placement of the child.¹⁰¹

For a governmental agency to be found vicariously liable for foster parent entrustment of a vehicle to a foster youth, many elements of liability must first be established.¹⁰² As previously described, first the foster youth must have been found negligent, or at fault in the accident.¹⁰³ Second, a court must find justification for imputing the foster youth's negligence onto the foster parent.¹⁰⁴ To impute negligence onto a foster parent, the claimant would argue theories of liability such as described above: negligent entrustment, respondeat superior, or negligence per se.¹⁰⁵ Third, after establishing justification to impute negligence on the foster parent, the claimant would have to prove there would be justification in imputing the foster parent's negligence onto an agency.¹⁰⁶ A court would likely determine that an agency does not have enough control over the foster parents' actions to warrant such a finding.¹⁰⁷ Additionally, state statutory provisions can protect an agency and limit agency civil liability.¹⁰⁸ Very generally, such

⁹⁹ Dahn v. Amedei, 867 F.3d 1178, 1186 (10th Cir. 2017).

¹⁰⁰ *Id.*

¹⁰¹ See generally *id.*

¹⁰² White v. City of Vassar, 403 N.W.2d 124, 126 (Mich. Ct. App. 1987).

¹⁰³ See Dahn, 867 F.3d at 1186.

¹⁰⁴ Valerie D. Barton, *Reconciling the Burden: Parental Liability for the Tortious Acts of Minors*, 51 EMORY L.J. 877 (2002).

¹⁰⁵ Dobbs et al., *supra* note 69, at 653.

¹⁰⁶ White v. City of Vassar, 403 N.W.2d 124, 126 (Mich. Ct. App. 1987).

¹⁰⁷ See generally Wood v. Strickland, 420 U.S. 308 (1975).

¹⁰⁸ See generally MICH. COMP. LAWS § 691.1635 (2013); WIS. STAT. § 895.485 (2016).

statutes would limit liability when an agency official is acting in their scope of care, in a reasonable manner.

8. Youth's Liability

Children can sue or be sued for tort actions; however, children cannot bring or defend legal actions in their own name.¹⁰⁹ Courts must appoint a representative to litigate on their behalf.¹¹⁰ The *Restatement of Torts* indicates that the “standard of conduct to which . . . [a child] must conform to avoid being negligent is that of a reasonable person of like age, intelligence, and experience under like circumstances.”¹¹¹ If a legal claim is brought against a foster youth who is a minor, the minor would need to obtain legal representation. Most states provide legal representation to youth throughout the dependency process;¹¹² however, that representation would not necessarily extend to non-dependency legal actions. Youth would then need to obtain legal representation in any claim against them, which involves another expense. Transportation costs can be prohibitive, and public transportation may be insufficient for an individual's needs based on where they live.

V. RECOMMENDED SOLUTIONS

There are multiple ways that states can create solutions to the complex problem of assisting foster youth with driving. For example, changes should be made related to budgets, statutes, regulations, and policies. Proposed federal legislation, such as the proposed Fostering Youth and Driving Act would go a long way to make legislative improvements. The Fostering

¹⁰⁹ Fed. R. Civ. P. 17(c)(2).

¹¹⁰ Thomas A. Jacobs, 2 CHILDREN AND THE LAW: RIGHTS AND OBLIGATIONS § 11:13: Capacity to sue and be sued (2020).

¹¹¹ RESTATEMENT (SECOND) OF TORTS § 283A (AM. L. INST. 1965).

¹¹² See generally NOY DAVIS ET AL., A CHILD'S RIGHT TO COUNSEL: A NATIONAL REPORT CARD ON LEGAL REPRESENTATION FOR ABUSED AND NEGLECTED CHILDREN (3d ed. 2015).

Youth and Driving Act would amend Title IV of the Social Security Act to provide additional funding appropriations to help foster youth pay costs associated with becoming licensed drivers.¹¹³ Although this legislation was introduced and not passed, the identified focus was to “address transportation as a serious barrier that faces previous foster youths in transition to adulthood and employment needs, as . . . public transportation may be insufficient” based on geographic areas.¹¹⁴ Congress did provide temporary financial support through the passage of the Consolidated Appropriations Act of 2021, to address concerns related to COVID-19.¹¹⁵ In addition to legislative changes, judges should include targeted questions on the youth’s transition plans, focused on obtaining driver’s education and licensing. Court oversight helps ensure that child welfare agencies are assisting youth in meeting the driving milestone.

¹¹³ *HR 2512: Foster Youth and Driving Act*, PARTNERS FOR OUR CHILD. (Jan. 8, 2019), <https://partnersforourchildren.org/policy/bill-tracker/hr-2512-foster-youth-and-driving-act> [<https://perma.cc/JH7J-ZSSV>].

¹¹⁴ *Id.*

¹¹⁵ The 2021 Consolidated Appropriations Act is a \$2.3 trillion spending bill that combines \$900 billion in stimulus relief for the COVID-19 pandemic with a \$1.4 trillion omnibus spending bill for the 2021 federal fiscal year:

(4) **AUTHORITY TO PROVIDE DRIVING AND TRANSPORTATION ASSISTANCE.**—

(A) **USE OF FUNDS.**—Funds provided under section 477 of the Social Security Act may be used to provide driving and transportation assistance to youth described in paragraph (3)(B) who have attained 15 years of age with costs related to obtaining a driver’s license and driving lawfully in a State (such as vehicle insurance costs, driver’s education class and testing fees, practice lessons, practice hours, license fees, roadside assistance, deductible assistance, and assistance in purchasing an automobile).

(B) **MAXIMUM ALLOWANCE.**—The amount of the assistance provided for each eligible youth under subparagraph (A) shall not exceed \$4,000 per year, and any assistance so provided shall be disregarded for purposes of determining the recipient’s eligibility for, and the amount of, any other Federal or federally-supported assistance, except that the State agency shall take appropriate steps to prevent duplication of benefits under this and other Federal or federally-supported programs.

Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, 134 Stat. 1182 (2020).

Florida created an excellent way to assist in the funding of car insurance for foster youth. In 2014, the State of Florida passed the Keys to Independence Act, which focused on youth in licensed foster care between the ages of fifteen and twenty-one.¹¹⁶ The Act created a temporary pilot program to reimburse youth and caregivers for the costs associated with driver's education, driver's licenses, motor vehicle insurance, and other costs related to getting a driver's license.¹¹⁷ On May 1, 2017, the Governor made the program permanent.¹¹⁸ Florida's program has proven to be successful in assisting with foster youth being able to drive, and furthermore, has demonstrated that the foster youth population is not necessarily a high-risk group to insure.

VI. CONCLUSION

Recent changes to the law allow foster youth to remain within the child welfare system beyond age eighteen. Consequently, as older youth may choose to remain within the foster care system, more foster youth will be reaching the requisite age to obtain their driver's licenses. The ability to drive is critical for many young people as they develop independent living skills to pursue employment and often education, especially in rural areas of the country. Yet, too often, foster youth experience unnecessary complications and challenges to obtaining the privilege of driving. Many restrictions placed on foster youth driving are based on false beliefs and concerns related to liability. This article addresses various theories of liability, with the goal of debunking concerns about who would be liable for potential accidents of foster youth drivers. Finally, recommendations are

¹¹⁶Committee Substitute for S.B. 60, Leg. Gen. Assemb., Reg. Sess. (Fla. 2017), <http://laws.flrules.org/2017/8> [<https://perma.cc/CW6T-BV5G>].

¹¹⁷*Keys to Independence a Success in Helping Foster Kids Get Driver's Licenses*, EMBRACE FAMILIES, <https://embracefamilies.org/keys-to-independence-a-success-in-helping-foster-kids-get-drivers-licenses> [<https://perma.cc/B99Y-P3KY>].

¹¹⁸S.B. 60, 2017 Leg. Gen. Assemb., Reg. Sess. (Fla. 2017).

made on how to best address youth driving impediments on the statewide and national levels.

