

A black silhouette of a pregnant woman in profile, facing left. Her hair is pulled back, and her belly is prominent. The background is white at the top and transitions to a dark green gradient at the bottom.

**“WHEN YOU DECIDE...”**

**A Judge’s Guide to  
Pregnancy Prevention  
Among Foster Youth**



NATIONAL COUNCIL OF  
JUVENILE AND FAMILY COURT JUDGES

*est. 1937*



The National Campaign  
to Prevent Teen and Unplanned Pregnancy

The National Council of Juvenile and Family Court Judges®, headquartered on the University of Nevada campus in Reno since 1969, provides cutting-edge training, wide-ranging technical assistance, and research to help the nation’s juvenile and family courts, judges, and staff in their important work. Since its founding in 1937 by a group of judges dedicated to improving the effectiveness of the nation’s juvenile courts, the National Council of Juvenile and Family Court Judges has pursued a mission to improve courts and system practice and to raise awareness of the core issues that touch the lives of many of our nation’s children and families.

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The National Campaign to Prevent Teen and Unplanned Pregnancy seeks to improve the lives and future prospects of children and families and, in particular, to help ensure that children are born into stable, two-parent families who are committed to and ready for the demanding task of raising the next generation. Our specific strategy is to prevent teen pregnancy and unplanned pregnancy among single, young adults. It support a combination of responsible values and behavior by both men and women and responsible policies in both the public and private sectors.

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## “WHEN YOU DECIDE...”

### A Judge’s Guide to Pregnancy Prevention Among Foster Youth

Teen pregnancy has significant consequences – often negative – for both the young parents and the baby. This is especially true for teens in foster care. Removed from their families and facing an uncertain future, adolescents in foster care are less prepared to make informed, responsible decisions about sex and family formation and more likely than their non-foster peers to engage in sexual activity at an earlier age and become pregnant or cause a pregnancy.

Judges in dependency proceedings are in a unique position to alter this trajectory. Judges have the authority and the responsibility to ensure that the case plans for these youth include measures aimed at helping them make informed and responsible decisions to delay sexual activity and postpone pregnancy.

By asking the right questions early and often during the dependency case, the judge can ensure that each participant in the case fulfills his or her responsibility to take those steps most likely to support the youth in making responsible decisions about sexual activity and pregnancy.

### SPECIFIC ELEMENTS OF AN EFFECTIVE TEEN PREGNANCY PREVENTION CASE PLAN

- Participation by the youth and those adults important to the youth in case planning and review hearings
- Strategies to facilitate and strengthen the relationship between the youth and at least one caring adult, preferably a relative, who is willing and able to serve as a mentor and confidant to the youth
- Training for kin placement, foster parents or other caring adults about working with the youth to make good decisions regarding sexual relationships and pregnancy
- Specific referral to the youth’s physician for examination and age-appropriate information on reproductive health and pregnancy prevention
- Participation in an evidence-based sexual education program that provides complete and accurate information about reproduction, sexually transmitted diseases (STDs), abstinence and contraception
- Participation in an evidence-based program on healthy relationships that includes skill building on communication and decision making
- Ready access to family planning services for youth who are or may soon become sexually active
- Placement and educational stability
- Support for youth’s participation in extra-curricular activities he or she identifies as important
- Assisting the youth in developing and implementing a plan for transition to independent living and adulthood, including access to reproductive health and family planning services

## TEEN PREGNANCY IN AMERICA: A CAUSE FOR CONCERN

The U.S. teen pregnancy rate is one of the highest among industrialized countries. Most teen pregnancies are unplanned, with significant negative consequences to both the teen mother and the child.

- **More than 750,000 girls under age 20 become pregnant each year.**
- **More than 80% of these pregnancies are unintended.<sup>1</sup>**
- **About half pregnancies in America are unplanned; 76% of these unplanned pregnancies occur to women in their teens and twenties.<sup>2</sup>**

In 2009, the birth rate for teenagers in the United States declined to the lowest level ever recorded in nearly seven decades of data tracking. From a relatively recent high of 61.8 births per 1,000 in 1991, the rate declined to 39.1 per 1,000.<sup>3</sup> The teen pregnancy rate declined by 39% between 1990 and 2006, and the teen abortion rate declined 56% between 1988 and 2006.<sup>4</sup> While all this is good news, reflecting concerted national efforts to reduce teen pregnancy, the United States continues to have the highest teen pregnancy rate among industrialized countries, almost double the rate in Great Britain and eight times as high as in Japan.<sup>5</sup>

The experience and circumstances of conceiving, bearing and raising a child can have a profound impact on both the parents (especially the mother) and the child. Women experiencing an unplanned pregnancy\* are less likely to obtain prenatal care, and their babies are at increased risk of both low birth weight and premature birth. Their babies are less likely to be breastfed and, over time, report poorer physical and mental health. They also have significantly lower cognitive test scores.<sup>6</sup>

A majority of babies of unplanned pregnancies are born to unmarried women, including teen mothers.<sup>7</sup> Compared to children in two-parent married households, children living with a single parent:

- **Are five times more likely to grow up in poverty;**
- **Have poorer school attendance;**
- **Have lower grade averages, and are twice as likely to drop out of high school;**
- **Are 2.5 times as likely to become teen mothers themselves; and**
- **Have higher rates of divorce.<sup>8</sup>**

Moreover, an Illinois study showed that mothers under 18 were 2.2 times more likely to have a young child placed in foster care than mothers whose first birth occurred at 20 or 21. Almost one in ten children of teen mothers were reported as victims of abuse or neglect.<sup>9</sup> Children of teen mothers are more likely to drop out of high school.<sup>10</sup> Sons of teen mothers are 2.2 times more likely to be incarcerated than sons born to women in their early twenties.<sup>11</sup> And the cycle repeats itself: nearly one third of the daughters of teen mothers also become teen mothers.<sup>12</sup>

Early pregnancy has a negative impact on a teen mother's future as well.

- **Only 40% of teen mothers graduate from high school (as compared with 75% of women who become mothers in their early twenties).**
- **Only 5% complete two years of college by their late twenties and 2% graduate from college.<sup>13</sup>**

Engaging in sexual activity can have other health consequences for youth beyond pregnancy. While young people age 15 to 24 comprise one-quarter of the sexually active population in the United States, they account for nearly half of all new cases of sexually transmitted diseases (STDs).<sup>14</sup>

\*The phrase "unplanned pregnancy" refers to what women report about their intentions at the time they became pregnant, as captured in the periodic federal survey entitled "The National Survey of Family Growth." About 85% of all pregnancies among teens 15-19 years of age are reported by teen girls themselves as being unplanned at the time of conception. Similarly high percentages are also reported among single women in their early 20s. The consequences of teen pregnancy and of unplanned pregnancy among single young women in their 20s are similar.

## SEX, PREGNANCY AND BIRTH: YOUTH IN FOSTER CARE

Youth in foster care face more challenging circumstances and experience poorer outcomes with respect to sex and pregnancy than youth in the general population. Although there is no comprehensive national research on pregnancy among youth in foster care, studies indicate that, as compared with their peers outside the foster care system, foster youth begin having sexual intercourse at a younger age, are more likely to become pregnant or father a child and are more likely to carry a pregnancy to term.<sup>15</sup>

A Midwestern study of former foster youth showed that one-third of the girls became pregnant before age 17, and nearly half by age 19, or 2.5 times the rate for their non-foster peers.<sup>16</sup> By nineteen, youth in foster care were more than twice as likely as all youth to have given birth to a child.<sup>17</sup> And 46% of youth in foster care who have been pregnant once have had a subsequent pregnancy while still a teen, as compared to 29% of their non-foster peers.<sup>18</sup> Foster youth also report having intercourse with a partner who has an STI at three times the rate of non-foster youth.<sup>19</sup>

Pregnancy has even more profound consequences for teens growing up in foster care than for their non-foster peers. As Miami Judge Jeri Cohen put it, “[w]hen the girls get pregnant they are unable to effectively utilize all the other services that we offer them.”<sup>20</sup>

These results should not come as a surprise, particularly when considering the factors that influence teen decision-making as they play out in the lives of foster youth.

**Youth in foster care initiate sexual activity at an earlier age and are 2.5 times as likely to become pregnant as their non-foster peers. They are also more likely to give birth, have subsequent pregnancies and engage in sex with a partner who has an STI.**

## KEY TO PREVENTION: HELPING YOUTH LEARN TO MAKE GOOD DECISIONS

It should be clear that preventing teen pregnancy involves many issues. For example, before a youth becomes pregnant or causes a pregnancy, he or she engages in sexual activity, which may or may not include sexual intercourse. Pregnancy (and possibly an STD) is the end result of a larger, more complicated process, involving numerous decisions along the way, each of which provides an opportunity for intervention:

- **Initiation of sexual activity**
- **Whether and when to have intercourse**
- **Frequency of sexual intercourse**
- **Number of partners**
- **Choice of partners and quality of relationships**
- **Whether and how to take action to prevent pregnancy and STDs**

**Teen pregnancy is the culmination of a series of decisions regarding sexual activity, providing numerous opportunities to intervene with positive prevention measures.**

From a prevention perspective, the importance of focusing on the entire spectrum of decision points is reinforced by research indicating that the recent decline in teen pregnancy rates has resulted, in part, from behavioral changes in two distinct areas: delayed initiation of sexual intercourse and improved contraceptive practice.<sup>21</sup>

Adults can't prevent a youth from becoming pregnant or causing a pregnancy. But they can create an environment that communicates the importance of not having a baby before the youth is ready, provides the youth with complete and accurate information, and helps the youth to take responsibility for each of the decisions that may lead to pregnancy. Three factors play a critical role in the development of good decision-making skills that will help youth to postpone sex and pregnancy until they're ready: relationships, knowledge and motivation.

### **Prevention Factor #1: Relationships**

Many years of research have confirmed that two primary influences on a teen's sex-related decisions are the parent/child relationship and parental behavior.<sup>22</sup> A strong parent/child relationship affects decisions all along the spectrum described above. Teens who are close to their parents are more likely to remain abstinent, to postpone intercourse, to have fewer sexual partners, and to use contraception consistently.<sup>23</sup>

It is also critical to teens that parents communicate their values about sexual relationships and pregnancy. Eighty-seven percent of teens think it is important that they be given a strong message that they should not have sex until they are at least out of high school; 60% believe this message is "very important."<sup>24</sup> And while research results are mixed, recent studies indicate that parental sexual values, combined with positive parent/child communication have an important interactive effect on whether and how often adolescents have sexual intercourse. Studies have consistently shown that parents' values influence whether teens have sexual intercourse, the timing of their initial

### **PARENTS COUNT!**

**Repeated surveys of teens indicate that 46% report that parents have the greatest influence on their decisions about sex, as compared to friends (20%), religious leaders (7%), siblings (5%), teachers and sex educators (4%), or the media (4%).**

sexual activity, the number of their sexual partners, their use of contraception, and whether or not they become pregnant.<sup>25</sup>

Parental monitoring and supervision are also related to reducing teen pregnancy, primarily by decreasing (the opportunity for) sexual activity.<sup>26</sup> This is especially important in helping youth delay sexual activity – an important goal given that youth who have sex in their early teens have more sexual partners, are less likely to use contraception, and are more likely to become pregnant.<sup>27</sup> Parental supervision can include restrictions on age differences in teen relationships, which in turn affects sexual activity. Same-age young teens are far less likely to have sexual intercourse than a young teen with a partner two or more years older.<sup>28</sup>

Family structure, conditions and functioning can also have a negative influence. Living with a single parent increases the probability of an adolescent having sexual intercourse at a younger age.<sup>29</sup> Teens with older siblings who are sexually active and/or have had a pregnancy are at higher risk of pregnancy, as are those growing up in families that are violent and abusive.<sup>30</sup> Sexually abused teens have a higher frequency of sexual intercourse, more sexual partners, and a higher risk of pregnancy than their peers in general.<sup>31</sup> And teens from poorer families are more likely to initiate sexual intercourse at a younger age and less likely to use contraception.<sup>32</sup>

**The single most important factor in preventing teen pregnancy is a supportive relationship between the youth and a caring adult (preferably – but not necessarily – a parent) who can effectively communicate strong values about delaying sexual activity, having healthy relationships and using effective contraceptive methods and measures.**

Teens are affected in their decision-making by other factors than just their parents and siblings, however.

- **On the positive side--Adolescents who are connected to their extended families, school and/or neighborhoods are less likely to become involved in risky or problematic behavior.<sup>33</sup>**
- **On the negative side--Teens who live in neighborhoods with high levels of poverty, unemployment, crime and residential turnover – neighborhoods that are perceived by residents as dangerous – tend to begin sexual intercourse earlier, without consistent use of contraception, and experience higher levels of pregnancy.<sup>34</sup>**
- **Teens are also influenced by the negative messages they receive and by unhealthy relationships (i.e., teens report that boys often get the message that they are expected to have sex, while girls receive the message that attracting boys and looking sexy is one of the most important things they can do).<sup>35</sup>**
- **Twenty percent of girls in a serious relationship report physical violence by their partner, and one in four girls reports that she has been pressured to go further sexually than she wanted to.<sup>36</sup>**

It often is the case that risky teen behavior, including drug, alcohol, and tobacco use, delinquency, and sexual activity, occur among the same groups of teens. Teens who drink or use drugs often are more sexually active and less likely to use contraception when they have sex than teens who take fewer risks. They also tend to have more sexual partners, and often start having sex at younger ages.

The critical role that a positive parent/child relationship plays in teen pregnancy prevention speaks to the greater challenges facing foster youth and those who work with them. According to the most recent federal data, only 24% of youth who entered foster care in 2009 were placed with relatives.<sup>37</sup> While many youth report good relationships with their foster parents, even the best cannot substitute for a healthy parent-child relationship, and many foster parents are not well-equipped or are unwilling to deal with issues of teen sexuality on top of the others challenges these youth face. Suffice it to say, such a relationship is not likely to be available when a youth is placed in a group home or institution – which makes the stakeholders' work to promote positive relationships with caring adults all the more important.

When a youth lives in a non-relative foster placement, he is separated not only from his parents but also frequently from his extended family as well as school friends, peers, and mentors. The foster care system is typically not designed to support or facilitate a youth's relationship with caring relatives and adults who, although not able to provide a home for the youth, may nonetheless serve as a mentor or confidant. The youth often must change schools and churches, cutting off contact with teachers, coaches or pastors who may have played a supportive role in his or her life. Foster youth are the first to point out the obvious absence of strong relationships with caring, supportive adults as a major factor affecting their ability to make good decisions about sexuality and pregnancy.<sup>38</sup>

Many adults assume responsibility for the well-being of a youth placed in foster care. For example:

- **Child welfare staff must develop a case plan to meet the youth's need for safety, health, education and permanency.**
- **A lawyer or guardian *ad litem* will advocate for the youth in court.**
- **Foster parents or group home staff will provide a safe, nurturing environment.**
- **The behavioral health service provider will address the youth's mental health needs.**
- **The Court Appointed Special Advocate will advocate for the youth's best interests in court.**
- **The judge will ensure that the stakeholders make reasonable and timely efforts to provide the youth with necessary and appropriate services to achieve the permanent case plan goal.**

Yet no one individual is charged with filling the role that a parent would ordinarily be expected to play by developing a relationship based on trust and confidence that guides the youth as he makes major life decisions.

The absence of that clear assignment of responsibility and the impact on pregnancy prevention is not lost on child welfare professionals. A 2005 survey of these professionals indicated that a majority did not have a specific plan to prevent teen pregnancy.<sup>39</sup> They believed in the importance of open, honest conversations with youth but recognized that such conversations had to be built on a relationship of trust – and a majority said that had not received sufficient training to work with teens or their caregivers on preventing pregnancy. They also recognized that a one-dimensional strategy wouldn't work. What was needed was a combination of:

- **Communication in a trusting relationship**
- **Education on sex, contraception, health and healthy relationships**
- **Focus on the youth's future goals and how to achieve them**
- **Access to contraception**

## **Prevention Factor # 2: Knowledge**

As in any other important area of life, youth need accurate and comprehensive information about sex and reproduction if they are to make intelligent, responsible decisions. The National Center for Health Statistics reports that virtually all adolescents receive some formal sex education before they are 18.<sup>40</sup> Yet it is unclear just how comprehensive or effective

**Youth need – but aren't always getting – comprehensive, accurate information from reliable sources about sex, reproductive health, pregnancy and contraception in order to make good decisions about sexual activity and preventing pregnancy.**

that education is. In that same survey, one-third of adolescents report that they were not taught anything about methods of birth control,<sup>41</sup> even though most teens believe they should be getting information about both abstinence



and contraception, or contraception alone.<sup>42</sup> In another survey, one in five older teens reported having no formal sex education.<sup>43</sup>

### **So where are they getting their information? And how good is it?**

Although 59% of older teens believe that doctors are their most trusted source of information about contraception, almost half rely on less trusted sources for their knowledge: the media and their friends. It is not surprising, then, that a significant minority reports little or no knowledge about common methods of contraception.<sup>44</sup> More broadly, these teens appear to have a limited and sometimes incorrect understanding of basic concepts of sexual reproduction. For example:

- **Most older teens know that a woman is more fertile at certain times of the month, BUT less than one-third correctly identified when that time is.**
- **16% erroneously believe that it is quite or extremely likely that they are infertile.**
- **Close to half of teens surveyed wrongly believe that there is a 50% chance of getting pregnant even when correctly using the birth control pill.<sup>45</sup>**
- **Half of older teens<sup>46</sup> and one third of all teens<sup>47</sup> agree with the statement: “It doesn’t matter whether you use birth control or not; when it is your time to get pregnant, it will happen.”**
- **Three quarters of this same group also report that “I have all the information I need to avoid an unplanned pregnancy.”**

More broadly, there seems to be a disconnect between young people’s perceptions and beliefs, on the one hand, and reality on the other.

- **Nine out of ten young adults (18-29) believe strongly that pregnancies should be planned BUT – 19% use no contraception at all, and 24% use contraception inconsistently.<sup>48</sup>**
- **Nine out of ten teens (12-19) believe that teen pregnancy is a “very important” problem in the United States, and that it is important for them right now to avoid getting pregnant or causing a pregnancy BUT – 43% of the same group says that the main reason why so many teens have unprotected sex is that they are willing to take the risk because they don’t think anything will happen to them.<sup>49</sup>**

Not all teens seem to appreciate the consequences of pregnancy. Surveys indicate that most adolescents agree that it is okay for a single female to have a baby.<sup>50</sup> In 2007, almost half of teens surveyed reported that they had never really thought about what their life would be like if they got pregnant or got someone pregnant as a teen.<sup>51</sup> Three years later, seven in ten recognized that pregnancy “would be a real challenge and I’m not sure how I would manage.” Nonetheless, nearly a quarter felt “[i]t would make my life a little more challenging but I could manage.”<sup>52</sup>

### **Prevention Factor # 3: Motivation**

Knowledge alone is not enough to prevent pregnancy. Each teen must be motivated to avoid pregnancy. For those who choose to engage in sexual intercourse, “there must be some compelling reason for them to master contraceptive information and go to the trouble it takes to use birth control carefully and consistently.”<sup>53</sup>

**A youth who has a real vision for the future and is motivated to forego short-term opportunities in order to achieve long-term goals is much more likely to make responsible decisions regarding sexual activity and pregnancy.**

The issues that emerge with sexual maturation arise at a time when adolescents are making life-altering decisions in other major areas of their lives, such as:

- **What are my life goals?**
- **What kind of career do I want?**
- **Will I continue my education, and in what form?**
- **Who will my friends be?**
- **Will I use alcohol or drugs, or engage in other risky behaviors?**

Research tells us that many youth are not well equipped to make these decisions. Their brains have not yet fully developed particularly in the areas relating to higher judgment and impulse control. They may also lack the necessary knowledge and life experience that should inform these decisions. Youth articulate strong values and commendable goals, yet often act in a manner that undermines both. Contrast young adults' strong belief that pregnancies should be planned with their failure to utilize protection methods consistently or at all.

Motivation to make careful decisions is tied to the ability to envision a future, recognition of how today's decisions might affect that future, and the maturity to choose long-term goals over short-term opportunities. Youth growing up in adverse circumstances may not see a positive future worth building towards – or, even if they do, may not have the support they need to achieve that future. Teens who engage in risky sexual behavior commonly engage in other risky behaviors as well, such as alcohol and drug use or criminal activity. It follows that programs aimed at preventing teen pregnancy are more likely to succeed if they help youth more broadly in developing the skills they will need to become successful adults. “By engaging teens in meaningful activities, making them feel competent, and helping them develop valued skills, youth development groups give kids a sense of hope in their future – the greatest incentive to remain pregnancy-free.”<sup>54</sup> Helping teens to develop better decision-making, communication and relationship skills fosters positive outcomes in many domains, not just preventing pregnancy.

Most foster youth have begun life in an environment that is not conducive to good decision-making about major life issues. These youth commonly have witnessed or have experienced domestic violence and physical, sexual and emotional abuse. Many were born to parents who have been unable to appropriately parent their children in a safe and nurturing environment. Facing the same pressures to engage in sexual activity, and with the same cognitive maturational issues as their non-foster peers, it is even more difficult for foster youth to envision a bright future, establish long-term goals, and make good short-term decisions toward achieving those goals. Perhaps this accounts for the fact that, according to one study, even though foster youth receive family planning services at twice the rate of youth in the general population, they are no more likely to use birth control.<sup>55</sup>

## THE ROLE OF THE JUDGE IN PREGNANCY PREVENTION: THE LEGAL CONTEXT FOR JUDICIAL CASE MANAGEMENT

The issues presented by teen sexuality and pregnancy would appear to lie principally in the area of social work. But a judge's authority and responsibility derive not from principals of sociology and case management but rather from applicable federal and state law. The judge's job is to apply the law and determine whether the conditions of the law have been met based on the facts of a particular case. Before discussing how law and social work intersect in the courtroom, it's important to review the legal context of the judge's role in dependency cases.

As a result of three decades of changes to federal child welfare laws, the role of the judge in a dependency case has changed dramatically. In addition to determining basic questions pertaining to the legal status of a child, the judge is also charged with ensuring that the child welfare agency meets its responsibility to achieve timely permanency for youth in a safe, nurturing home. As has been amply demonstrated elsewhere,<sup>56</sup> in order to fulfill this expanded role, a judge must be knowledgeable about the child welfare agency, available community services, and the underlying issues such as child abuse and neglect, substance abuse, mental illness, domestic violence. As the case proceeds, the judge cannot simply monitor progress but must also take affirmative steps to ensure that the goals of the law are met. This includes clarifying roles and responsibilities, setting expectations, establishing timeframes for action, evaluating results, and holding parties accountable.

Federal law requires the dependency judge to approve the case plan for a youth in foster care, review the plan periodically and determine whether the child welfare agency is making reasonable efforts to achieve the case plan.

**Recent changes in federal law require that the youth be given an opportunity to be heard, and that specialized transition case plans be developed for older youth, which should include reproductive health care, education and services aimed at pregnancy prevention.**

Before the adoption of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), the role of the judge was similar to that of a judge in other types of cases - simply to determine whether a youth had been abused or neglected and if yes, whether the youth needed to be removed from her parents' custody and placed under the supervision of the court or a child welfare agency. As in other civil or criminal proceedings, the judge's involvement with the case ended once a judgment was rendered. With the enactment of P.L. 96-272 and subsequent legislation, the judge's role has changed dramatically to include active oversight of each case. In order to accomplish the law's goal of safety, permanency and well-being for youth in foster care, the judge has been given a broader and continuing responsibility to oversee the work of the child welfare agency and monitor progress in the case until it terminates, sometimes after many years.

Specifically, after a youth has been found to be dependent, the judge must:

- **Hold disposition, review and permanency hearings within federally specified timeframes;**
- **Determine the appropriate placement for the youth;**
- **Approve a permanent case plan goal for the youth;**
- **Review the written agency case plan and determine whether the proposed services are necessary and appropriate to achieve the case plan goal; and**
- **Review the progress in the case within specified timeframes and determine whether the agency is making reasonable efforts to achieve the case plan goals.**

Additional and more stringent requirements may be imposed on the judge by state law. The written case plan that the judge is required to review and approve must discuss, at a minimum, the following issues with respect to the youth:

- **Safety and appropriateness of the placement;**
- **Safe and proper care and services;**
- **Health and education records of the youth; and**
- **Documentation of the steps taken by the agency to achieve the permanent plan for the youth.**

The Foster Care Independence Act and the Fostering Connections to Success and Increasing Adoption Act have added requirements focused on older youth.<sup>57</sup> Where appropriate, there must be “a written description of the programs and services which will help such child prepare for the transition from foster care to independent living” for youth age 16 or older. Within 90 days before the youth turns 18, the case manager must also “provide the child with assistance and support in developing a transition plan that is personalized at the direction of the child” that addresses at a minimum housing, health insurance, education, support services and employment services.<sup>58</sup>

**The judge should ensure that the case plan for older youth specifically addresses the three primary pregnancy prevention factors:**

**Relationships  
Knowledge  
Motivation**

The child welfare agency is required to promote educational stability by coordinating with local schools to ensure that youth remain in the school where they were enrolled prior to the dependency unless to do so would be contrary to the youth’s best interest. The agency is also required to coordinate with the state Medicaid agency and other medical providers to develop a plan for ongoing oversight and coordination of health care services for youth in foster care, including initial and follow-up health screenings and continuity of care. While these matters are not specifically required to be a part of the individual written case plan, they are appropriate areas of inquiry for the judge and should inform any decision regarding “reasonable efforts.”<sup>59</sup>

The Children’s Bureau of the Administration of Children and Families, part of the United States Department of Health and Human Services administers the implementation of federal child welfare legislation. The Bureau’s Program

#### **A WORD ABOUT GENDER:**

For ease of reading, the following discussion casts the youth as a female. In general, the principles discussed and the questions to be asked pertain equally to both genders. However, the judge should be aware that differences in gender can affect the proceedings.

Although the youth discussed here is a girl, and girls who become pregnant experience different consequences than boys who cause a pregnancy, it is vital that the judge place equal emphasis on the importance of these issues for both girls and boys. Boys should receive the same medical screening and comprehensive sex education as girls. They should have ready access to contraception and understand that prevention of pregnancy and STDs is equally their responsibility. They should also fully understand their responsibilities to any child they may father, both personal and legal. Finally, this is an area where mentoring and role modeling can be particularly important. The judge should be knowledgeable about male mentoring programs in the community, and encourage their use and expansion.

Instruction makes clear its expectation that the child welfare agency begin working on transition planning well before the 90-day deadline. The Bureau's Program Instruction expressly encourages case managers to "include information in the plan relating to sexual health, services, and resources to ensure the youth is informed and prepared to make healthy decisions about their lives." The Children's Bureau also notes that "[t]he courts can play an important role in monitoring the development of the transition plan."<sup>60</sup>

The case plan creates the roadmap for the case by setting out the case plan goal, identifying the specific services needed to achieve the goal, assigning responsibilities for providing those services, and creating a timeframe for completion. The core elements of the case plan should create the foundation of safety, stability and nurturing upon which positive preventive factors can be built to reduce teen and unplanned pregnancy. The ensuing discussion will assume that the case plan includes, at a minimum:

- **Stable placement in the least restrictive, most family-like setting, with appropriate support to prevent disruption and multiple moves;**
- **Educational stability in the youth's home school with any necessary support and/or special education services;**
- **Regular health screenings and referrals for needed services; and**
- **Behavioral health assessment and referrals for needed services.**

When the judge reviews the case plan at disposition and in subsequent hearings to determine if the agency is making "reasonable efforts" to achieve the case plan goal, he or she should ensure that these fundamental tasks and services are tailored to the needs of an adolescent and that additional elements are included to promote the youth's successful transition to adulthood, including specific provisions related to pregnancy prevention. These elements should address the three primary factors related to pregnancy prevention that underpin any plan for preparing youth for adulthood:

- **Relationships**
- **Knowledge**
- **Motivation**

Additionally, if the plan is to be successful, the youth must be involved from the beginning in its development, implementation, and review.

#### **A WORD ABOUT COMFORT LEVELS:**

Some judges may not be comfortable talking about issues of sex and pregnancy in the courtroom with any youth, or may be comfortable only with youth of same gender, or youth of a particular age or developmental stage. With this self-awareness, the judge can determine what steps to take or what adjustments can be made to ensure that he or she has the information needed to make required decisions and to obtain the desired results. This may include broader questioning of agency staff, or more specific orders regarding the content of the case report submitted to the court. The judge may also develop modifications to questions depending on whether the youth is a girl or a boy. Judges may also look their opposite gender colleagues for advice and support.

Judges should not be shy about discussing sex and pregnancy prevention issues with case stakeholders, either directly or with the assistance of support staff. The judge has an obligation to address this effectively as an issue of the child's safety, well-being, and permanency in the best interests of the child.

To see how other judges have approached this issue in their court rooms, see "Critical Judgment: how Juvenile and Family Court Judges Can Help Prevent Teen and Unplanned Pregnancy," a publication of the National Campaign to Prevent Teen and Unplanned Pregnancy and the National Council of Juvenile and Family Court Judges. [www.thenationalcampaign.org/resources/pdf/pubs/critical\\_judgment.pdf](http://www.thenationalcampaign.org/resources/pdf/pubs/critical_judgment.pdf)

## THE JUDGE'S ROLE IN PREGNANCY PREVENTION: RELATIONSHIPS

Healthy long-term relationships with parents or other caring, supportive adults play a vital role for youth in learning to make good decisions and navigating a successful transition to adulthood.

In order for youth to become stable and self-sufficient by their mid-twenties, they must acquire not only sufficient education and employment skills, but also the ability to establish healthy relationships – with family, friends, coworkers and romantic partners. This in turn requires that they develop a healthy support network of adults and peers. The importance of the family connection cannot be overstated. “Decades of research – not to mention cultural history and experience – point to one incontrovertible fact: there is no substitute for a family in the preparation of children and youth for adulthood, including through extended adolescence. Inherent in that statement is the value of consistency and stability that a family provides, in a relationship that has no expiration date, a permanent relationship.”<sup>61</sup>

Yet in most instances, the very first step in a dependency case is the separation of the youth from her family. While necessary for the youth's safety, removal is nonetheless traumatic and disruptive to her development. Older youth, in particular, experience anxiety and depression worrying about the fate of a parent who abuses drugs or is a frequent victim of domestic violence, or of younger siblings whom they may have protected from parental abuse and neglect. A common collateral consequence of the removal is also separation from the youth's extended family. Less than a quarter of youth in foster care are placed with relatives.<sup>62</sup> Given the importance of relationships not just to pregnancy prevention but also to a child's entire developmental process, building healthy, long-term relationships with supporting adults must be a key element in the case plan.

Stakeholders in the case should be encouraged to think about this issue broadly. Often, maternal relatives are considered only to the extent that they may serve as a possible placement for the youth, and little effort is made to locate paternal relatives. Little or no consideration is given to relative involvement in the case in other ways. Yet relatives and other caring adults can provide positive support to the youth in a variety of areas. They may be able to facilitate visitation between the youth and her parents or siblings, may be able to host the youth for visiting during holidays or share a weekly meal, attend athletic events or school functions, serve as a mentor to the youth, support the youth in case planning meetings and hearings, or just visit on a regular basis.

Moreover, circumstances often change during the life of a case and stakeholders need to continually ask relatives if things have changed such that they may be available to support the youth. A grandmother who was unable to care for a youth initially due to illness may be healthy enough six months later to serve as a placement and support. A youth whose behavior was too difficult for an uncle to manage initially may have improved and stabilized to the point where placement and support is possible with supportive services. Relatives who were initially reluctant to become involved may change their minds. The youth and parents may be more open to identifying relatives and support persons.

**Having the support of at least one caring appropriate adult in a healthy, long-term relationship with the youth is a primary factor in preventing teen pregnancy. Beginning at the first hearing, the judge can promote the development of such a relationship by ensuring that:**

- **The agency staff and all participants focus on identifying the important and appropriate adults in the youth's life and promoting and strengthening those relationships.**
- **Everyone working with the youth, including the agency staff, is trained to understand pregnancy-related issues, be supportive of the youth and communicate effectively and in a developmentally appropriate way.**



The judge should raise the issue of building and strengthening relationships as early as possible in the case, preferably at the first court hearing. He or she should address the youth and the parents directly and ask them to identify relatives and other persons who can play a supportive role. The judge should encourage stakeholders to be as diligent and creative as possible both in identifying relatives or other support persons and in incorporating them into the youth's life in a positive manner. At every subsequent hearing, the judge should be alert to any potential barriers and hold stakeholders accountable for making reasonable efforts to eliminate them.

The importance of early action is reflected in the provision of the Fostering Connections to Success and Increasing Adoptions Act which requires the child welfare agency to exercise due diligence to identify and provide notice to all adult relatives within 30 days after removal.<sup>63</sup> Often there will be many relatives and friends at the preliminary protective hearing, but when the children are not returned to the parents or placed with one of them immediately, they tend to fade out of the picture. The judge can play a positive role in fostering relative engagement by explaining the process to them, encouraging them to identify ways in which can assist the family even if they cannot be a placement, and asking them to provide contact information to the agency staff.

The judge should ensure that this is a key element of the case plan and receive evidence as to the progress made in identifying relatives and support persons and incorporating them into the youth's life. One component of the case plan should be to provide information and training for relative placements and other significant adults – especially foster parents – on how to responsibly and effectively communicate with the youth about decision-making in general, and sexuality, pregnancy prevention, and relationships in particular. The judge should be alert to whether the agency staff and the youth's placement have a good working relationship, and that both are setting appropriate boundaries and expectations for the youth and monitoring her activities and friendships.

**The issue of building and strengthening healthy, long-term relationships should also be addressed at every subsequent hearing.**

At the appropriate point, the judge should also ensure that the tasks and services in the case plan address the youth's relationship with her parents. This is obviously important where the goal is family reunification. But even in cases where reunification is not possible, the relationship still exists and can be of value to the youth's best interests. It is common for youth to reconnect with their parents, even the most abusive, once they are no longer in the custody of the agency. In these circumstances, the agency's responsibility is to help the youth learn how to protect themselves, to set appropriate boundaries, and to have a healthy relationship with an unhealthy person.

Sadly, in too many cases, the only constant person in a foster youth's life will be the agency staff person. Particularly in these circumstances, it is important that the agency staff have the training and skills to be able to communicate effectively with the youth and develop a relationship of mutual trust.

**PRACTICE TIP:**

The National Campaign to Prevent Teen and Unplanned Pregnancy has developed a series of pamphlets for parents and foster parents to let them know what teens are thinking about sex and pregnancy and assist them in developing a trusting relationship, communicating effectively and helping them to support youth in making good decisions:

- “Talking Back: What Teens Want Adults to Know About Teen Pregnancy”
- “Ten Tips for Parents to Help Their Children Avoid Teen Pregnancy”
- “10 Tips for Foster Parents to Help Their Foster Youth Avoid Teen Pregnancy”

The judge should consider having these available in the courtroom to give to parents and foster parents as a way to bring these issues into the forefront of case planning. [http://www.thenationalcampaign.org/resources/foster\\_care.aspx](http://www.thenationalcampaign.org/resources/foster_care.aspx)

## ASKING THE RIGHT QUESTIONS: RELATIONSHIPS

The judge should support the process of identifying relatives and support persons through questions asked at the first hearing and come back to this issue at every subsequent hearing. As the case progresses, the judge should receive the answers to the following questions, either from reports submitted to the court or through questioning during the hearings:

- **Have the parents identified all extended family members and other support persons?**
- **Has the youth identified family and support persons, and specifically, adults with whom the youth may be able to communicate effectively about intimate topics such as sex, love and relationships?**
- **What other action has been taken to identify and engage family and support persons, by whom, and when?**
- **Are there family and support persons willing to serve as a placement? Assist with visitation? Provide transportation for the youth or parent? Visit youth and/or participate in the youth's activities? What resources and support services are available to the family or support person to help them with this responsibility?**
- **Has the agency staff completed required assessments of family and support persons who wish to participate in the case as a placement or support person for the youth? What barriers are there to participation, and what is being done to overcome those barriers?**
- **Are the important adults in the youth's life, including foster parents and the agency staff, youth's attorney and CASA, receiving information and training on how best to communicate with the youth about decision-making in general and sexuality and relationships in particular?**
- **Are the important adults working closely together, coordinating their support of the youth, and monitoring the youth's activities and friendships?**
- **What services are being provided to help the youth develop a healthy relationship with the parents?**
- **Is the youth visiting with his or her siblings? What are the barriers to visitation and what is being done to overcome those barriers?**



## THE JUDGE'S ROLE IN PREGNANCY PREVENTION: KNOWLEDGE

Responsible parents don't wait until their child's first date to begin a conversation about sex and pregnancy. Foster youth report that they have some access to information on these issues but some report that it is too little and too late.<sup>64</sup>

Discussion, planning, and taking action to support the reproductive health of youth in foster care should begin early, before the youth enters high school if possible. On average, youth aged 15 to 17 enter the foster care system in their early teens,<sup>65</sup> so in many cases, the work should begin by the first court hearing.

Like all teens, youth in foster care need comprehensive, accurate information – more than just “the facts of life” – if they are to make good decisions about sex and pregnancy prevention. And the information should come first from a source which teens themselves say that they trust: a doctor. All foster youth are entitled to receive regular health screenings. The agency staff should ensure that, as the youth enters puberty, those screenings include an examination and age-appropriate reproductive health and pregnancy prevention information, including information about and ready access to contraception. The judge should specifically order that this task be included in the youth's case plan, and ask the youth if she has a good relationship with her doctor.

Additional information should come from a variety of sources, including an evidence-based sexual education program. Such programs are often provided in schools, and the agency staff should review the curriculum to ensure that the program is comprehensive and provides accurate information in a manner that is easily understood. The program should teach the youth about the value of postponing sex, both in terms of a reduced risk of pregnancy and STIs, and the benefits of an increased sense of self-worth and the enhanced ability to achieve larger life goals. The curriculum should also teach the youth about healthy relationships and good communication, to enhance her ability to refrain from sexual activity before she is ready to make a responsible choice. Equally important, the youth must also be taught, in an age- and developmentally-appropriate manner and sequence, the fundamentals of reproduction, and contraception including which methods are most effective and appropriate for him or her. If the school program is inadequate, the agency staff must identify other community organizations offering such programs, make a referral and facilitate the youth's participation.

Agency staff, the youth's attorney, and CASA must also be alert to the youth's incipient involvement in sexual activity as, for example, when a youth begins dating or reports that she is involved in a romantic relationship. At this juncture, the agency staff and other supportive adults must work with the youth to help the youth follow-up on the reproductive health information she has received, and the access to reproductive health care she has had to take effective measures to prevent pregnancy and STDs. This includes not only a referral for family planning services but also monitoring to

**Timely, comprehensive and accurate information about sex, reproductive health, pregnancy and contraception is a critical factor in both delaying the initiation of sexual activity and preventing pregnancy among those youth who decide to engage in sexual intercourse. The judge should reinforce this prevention factor by ensuring that the case plan provides for:**

- **Appropriate reproductive medical screening and services**
- **Evidence-based education that promotes informed decision-making about sex, delaying sexual intercourse, and effective use of contraception**
- **Ready and easy access to appropriate means of contraception for sexually active youth**

**A word about contraception: Although condoms and birth control pills are the most widely used contraceptive methods in the United States, they are not necessarily the most effective in preventing pregnancy among adolescents (although condoms are essential for reducing the transmission of sexually transmitted diseases). Both methods require great care and compliance—pills must be taken every day at more or less the same time, and condoms are used “in the heat of the moment,” which is difficult at all ages. In response, professionals increasingly recommend that adolescents be encouraged to rely on long-acting reversible contraception (“LARCs”) such as intrauterine devices and implants. New varieties of both types of LARCs have recently become available and should be seriously considered and discussed with the youth when the goal is to help adolescents postpone pregnancy.**

ensure that the youth has ongoing ready access to contraception and the ability to use it effectively. The latter point is critical, as a birth control method that is not used consistently and properly will provide little or no protection. Foster parents can play an important role in this regard, and agency staff should make certain that they are supportive of the youth even though her decision to use contraception may not be consistent with their personal beliefs.

During and following the provision of any of these services, the agency staff and/or other supportive adults should discuss them with the youth and assess whether the youth has accurate and complete information as a result.

## **ASKING THE RIGHT QUESTIONS: HEALTH CARE, INFORMATION, EDUCATION AND CONTRACEPTION**

As the case plan is approved at the disposition hearing and progress assessed at subsequent review hearings, the judge should have the answers to the following questions, either from reports timely and appropriately submitted to the court or through questioning during the hearing:

- **Does the case plan specifically address pregnancy prevention, including reproductive health services and education on reproduction, delaying sexual activity, pregnancy prevention, STDI prevention and healthy relationships?**
- **Has the youth been referred to a physician for a sexual health screening and age- and developmentally appropriate reproductive health and pregnancy prevention?**
- **Has the youth completed an evidence-based sexual education program, including complete and accurate information about reproduction, STDs, abstinence and contraception?**
- **Is the youth dating or in a romantic relationship? If so, has the youth been given access to family planning services? Does the youth have ongoing and ready access to contraception? Does the youth know how to use it effectively and consistently?**
- **Has the agency staff assessed whether, as a result of these services, the youth has a full and accurate understanding of sex, pregnancy prevention and reproductive health?**

## THE JUDGE'S ROLE IN PREGNANCY PREVENTION: MOTIVATION

The issues surrounding teen pregnancy prevention should not be dealt with in isolation, but rather as part of a larger strategy to assist the youth in developing the broad spectrum of knowledge, skills, and competencies she will need to successfully transition into adulthood. While the knowledge base may differ, many of the personal skills and competencies required to delay sexual activity, prevent pregnancy, and maintain sexual health – such as goal setting, communication, decision making, establishing healthy relationships – are transferrable to other domains. The judge should ensure that case planning for foster youth includes a discussion of life goals, identification of the steps needed to achieve those goals, and an understanding of how short-term decisions (including the decision to engage in sexual intercourse without protection and become pregnant) can affect long-term aspirations.

**A youth who can envision a bright, positive future for herself will be more motivated to make good short-term decisions (such as delaying sexual intercourse and preventing pregnancy) to help her achieve her long-term goals. In accordance with federal law, the judge should ensure that the child welfare agency works with the youth to develop comprehensive independent living and transition plans (as appropriate) for older youth in foster care and provide services that are necessary and appropriate to achieve that plan. The judge can also serve as a pro-active supporter of the youth's goals, affirmatively asking the youth about progress towards the goals, celebrating successes with the youth, and problem-solving barriers.**

This prevention factor presents the greatest challenge for those working with youth in foster care. They must help the youth to overcome the potential consequences and disadvantages from growing up in an abusive or neglectful environment. Planning for the future is not something a foster youth may be interested in or able to do until her life has stabilized and the case has a clearer direction. But that doesn't mean that this element of the case plan should be put off - achieving stability is a goal concurrent with planning for the youth's future.

First and foremost, the youth must have a stable placement in a safe, nurturing environment, preferably with a relative or other caring adult, and preferably with siblings. If a full and complete effort is not put into finding a placement that is appropriate for the youth initially, the placement is likely to disrupt, and every disruption delays and impedes the development and implementation of an effective plan for the youth's future. The agency staff should identify and put in place the assistance needed to support and maintain the placement, which may include assistance payments, extra furniture, and parent aide services.

Another priority is educational stability. The importance of the judge's role in ensuring that the educational needs of youth in foster care are met has been well documented.<sup>66</sup> Every youth must be enrolled in and attending an educational or vocational program, and to the extent possible and in her best interest, the youth should remain in the familiar environment of her home school. Every change in school can set back the youth's educational progress, sometimes by many months. The agency staff, youth's attorney, CASA should regularly review the youth's educational records and report to the judge how the youth is performing in school. Many youth will not have attended school on a regular basis, may have fallen behind, and may require tutoring or other support to catch up. The case plan should include any necessary remediation services. The youth may also have special education needs. The agency staff must determine whether the youth has been properly assessed, whether an appropriate individual educational plan (IEP) has been developed and whether the school is providing necessary accommodations. Here the judge can also celebrate the youth's achievements in school and problem-solve barriers and challenges.

Equally important are the youth's extra-curricular activities, such as involvement with a church youth group, participation on an athletic team, or singing in the school choir. Continuing and supporting these activities will enable the youth to live as normal a life as possible thereby supporting the youth's short- and long-term goals and motivation.

Services supporting each of these issues should be included in the case plan and should be reviewed at every case staffing and review hearing, with input from the youth and the caring adults with whom the youth is placed.

Once the youth's day-to-day life has stabilized, the agency staff and other supportive adults involved in her life can focus the conversation on her future. The adults can help her to identify her interests and think about what she might like to do as an adult. They can give her opportunities to explore those interests and help her to understand what she needs to do to get where she wants to go, including continuing her education. They can also encourage her to participate in youth development or service learning programs that allow her to associate with peers in a positive environment, develop critical thinking skills and experience the reward of contributing to the well-being of others. Whatever the chosen modality, the case plan should include assistance for the youth in planning and preparing for her future.

**At each hearing, the judge should review the transition plan with the youth in court. This provides an opportunity not only to ensure that the youth has the information and support that she needs but also to support the value of delaying sexual activity and unplanned pregnancy and reinforce the impact that good decision making in this area will have on her ability to achieve her goals.**

As the youth matures – but well before she approaches emancipation – the case manager and other adults identified by the youth should assist her in developing a detailed plan for transitioning to independent living and ultimately into adulthood. The plan should address the major life domains: housing, employment, education and health – in particular, reproductive health. It should also identify a network of people and services the youth can turn to for support. The responsible adults should assure themselves that the youth has a short- and long-term plan, she understands how an unplanned pregnancy might prevent her from achieving those plans, she has the knowledge to prevent an unplanned pregnancy, and she has ready access to family planning services.

## ASKING THE RIGHT QUESTIONS: ENVISIONING A FUTURE AND PLANNING FOR TRANSITION

When the judge conducts regular reviews of the case, the judge should have the answers to the following questions, either from reports submitted to the courts or through questioning during the hearing:

- Is the youth placed with a relative or other caring adult who has a supportive relationship with the youth? If not, what efforts are being made to identify an appropriate relative or caring adult placement? Have reasonable efforts been made to place siblings together?
- What, if any, support is needed to maintain the youth in a stable placement? Who is responsible for providing this support? By when?
- Where is the youth enrolled in school? If the youth was moved from his or her home school, why is that in the youth's best interest? What has been done to ensure the continuity of education credits, extra-curricular activities, etc.?
- Have agency staff reviewed the youth's educational records, assessed the youth's performance and ensured that the youth is receiving any necessary remedial or educational support services?
- Have agency staff determined whether the youth has special education needs and, if so, whether a current and appropriate IEP has been implemented? Who is serving as the youth's educational advocate? Is there a liaison from the school located at the court who can help problem-solve?
- What is being done to identify the youth's interests and support his or her involvement in extracurricular activities?
- Is the youth involved in any youth development or service-learning program? Is the youth participating in any programs or activities that will assist the youth in developing critical thinking skills or promote community involvement?
- Have agency staff begun working with the youth to develop a plan for transition from foster care to adulthood? Who else is involved in the process? Is the plan thorough and realistic? Does it identify people and services to support the youth in the transition to adulthood? Does it address reproductive health? Who are identified as caring adults in a long-term relationship with the youth who can support the youth in achieving his or her goals?

### A WORD ABOUT TEEN PARENTS:

In spite of the best efforts at prevention, some foster youth will become pregnant and give birth – intentionally or unintentionally. Some will already be parents when they enter foster care. This does not mean that pregnancy prevention measures are no longer relevant – indeed, they are more important than ever, as foster teen parents are almost twice as likely to have another pregnancy while still a teen as their non-foster peers. More than ever, a young parent needs the support of a caring adult, stability in her placement and education, and a renewed emphasis on planning for the future – for herself and for her baby.

## YOUTH PARTICIPATION

One of the objectives of a youth's case plan should be the development of good decision-making skills, and what better way to begin that process than by promoting youth participation in the two arenas where many of the major decisions affecting the youth's life will be made: case planning and court hearings? The case plan should explicitly provide for youth participation, and the judge should require the agency to include adolescent foster youth in case plan staffings and interagency meetings where issues concerning the youth are discussed and decisions made. The youth should be allowed to bring support persons important to her and given the opportunity for input.

**Youth participation in hearings and case planning is essential for the judge to monitor and support the youth's progress, and to engaging her in developing the ability to assume responsibility for her future – including her decision to have sex or become a parent. The judge should promote self-efficacy for the youth by modeling the maxim: "Nothing about me without me."**

In most states, a foster youth is a party to the dependency proceeding and has the right to attend hearings, and the judge should encourage the youth to attend unless it is contrary to her interests. Such may be the case where a youth has been abused by a parent, but that should be the rare instance, particularly if parental rights have been terminated. Most youth know far more about their parents and what they experienced than the judge or agency staff does, and are unlikely to experience adverse consequences from anything they hear or see in court. The judge should make clear to all parties that he or she expects and encourages youth to attend all substantive hearings. Support of the youth's participation includes setting hearings at times when the youth is not in school or during scheduled extra-curricular activities. The judge should ask about who will transport the youth to and from the courthouse for hearings. The judge should also consider alternatives forms of participation, such as appearing telephonically or writing the judge a (non-*ex parte*) letter.

If the youth does not appear at a hearing, the judge should inquire as to the reason for her absence. He or she should also question counsel for the youth to determine that the latter has had contact with the youth and has sufficient information to be able to advocate the youth's position. The judge should advise the agency staff and counsel that he or she strongly encourages the youth to attend in person. Some judges give the youth, through counsel, a letter or "notice" in youth-friendly language that lets the youth know about the proceeding, the importance of the hearings, and the judge's wish to hear personally from the youth in court.

If the youth chooses to attend court hearings, she begins a relationship with another person who can be important and instrumental in achieving her long-term goals: the judge. The nature of that relationship is in large measure up to the judge. The youth has probably never been in court before, and it will no doubt seem strange and troubling that major decisions in her life are being made by a stranger. Even with the best attorney, she may not understand the court process, which can be intimidating, confusing, and frustrating. She is likely to feel helpless – and possibly hopeless. It is up to the judge to engage her, clarify the relationship and gain her trust.

There are probably as many views about how judges should relate to foster youth as there are judges. Some judges believe that their role should be no different than it is with any other party. Others believe that it is part of the judge's role in supporting the youth's safety, well-being, and permanency, to get to know each youth on their caseload, understand their individual needs and goals, and engage their active participation in the proceedings. Whatever the judge's comfort level in connecting with youth in the courtroom, he or she sets an important example by establishing a relationship that demonstrates respect for the youth, demands the same for him/herself, clarifies what the youth can expect the judge to do, and then follows through in meeting those expectations.



Additionally, the judge must be sensitive to the environment when discussing more personal topics. A youth may be entirely comfortable talking about her extra-curricular activities in open court before an audience, but less so when the conversation turns to sexuality and relationships. With input and agreement from the parties, the judge may consider speaking with the youth at the bench or in a closed courtroom. The conversation should be on the record, and the judge should explain why that is necessary.

At the first court hearing the youth attends, the judge should take the time to speak directly with the youth, explaining the purpose of the hearings and the role of each participant. Youth can feel uncomfortable hearing the judge and the parties engaging in a dialogue about her as if she weren't there, and the judge can ease this anxiety by explaining his or her responsibility to hear from agency staff what the agency is doing to meet its obligations under the law, as well as the child's attorney and CASA advocating for the youth, and for the youth's best interests. The judge should also let the youth know that she will have an opportunity to speak, and that the judge encourages her participation. A suggested introduction might begin as follows:

**I'm glad that you've chosen to attend this hearing, and I hope you will come to all of the hearings. I will try to set those hearings at a time when you can attend, so please let me or your lawyer or case worker know when you have conflicts.**

**My job is to make sure that your case worker and the other adults working with you place you in a safe, permanent home. Hopefully, that will be with one of your parents. If not, then we hope to place you with a member of your family or a close adult friend. It is also my job to ensure that you maintain your relationships with your brothers and sisters, and with family members whom you love and who are helpful and supportive of you. Finally, it is my responsibility to see that all the adults who are responsible for you make sure that you are in school and getting the support you need there, that your health needs are known and met, and that you receive any other services or support that you need.**

**This case is likely to last for a number of months. Today, and in the coming weeks and months, I will have to make a number of decisions that affect you. I will be reading reports and hearing from the agency staff about what the agency is doing to take care of you and what decisions they want me to make about you. It will help me to make better decisions if I know what you want and what you need. I hope you will feel comfortable telling me that yourself, but if not, tell your lawyer or your case worker and they will tell me. I cannot promise that I will always do what you want me to do. But I can promise that I will listen to your views and consider them very carefully in making my decisions. My priority is your best interest; my goals are to maintain your safety, promote your wellbeing and find you a permanent home.**

The judge should explain any decisions made at the hearing, and make sure the youth understands what will happen between hearings, at the next hearing, and when the next hearing will take place. The judge should also make clear that the agency staff will include the youth in all case planning activities, and affirm with the youth that she was included in case planning at subsequent hearings.

Engaging the youth more broadly at subsequent hearings is beneficial for both the judge and the youth. The more a judge knows about a youth, the better-informed decisions he or she can make for the youth's benefit. For example, the youth may not feel comfortable taking the initiative to request placement or contact with particular relatives – particularly if those relatives are at odds with her parents. But if the judge asks the youth to tell him or her about people who are



important in her life, the judge may unearth previously undisclosed information that can help agency staff to locate a relative placement or support person for the youth, which can lead to the long-term, healthy adult relationship the youth needs. A casual conversation about the youth's interests can prompt the judge to inquire of agency staff about what is being done to support those interests through extra-curricular activities.

The judge can also take this opportunity to focus positive attention on the youth. All too often, hearing time is spent on the negatives – placement disruptions, failing classes, fights with roommates. While those issues are important, the judge can also do much to encourage the youth through a strength-based approach by finding something to praise – consistent attendance at school, active participation in therapy, joining a school athletic team. When the judge demonstrates over time through both words and actions that he or she is truly concerned about the youth's well-being, the judge is more likely to gain her trust and her positive participation in the process.

The judge can also model the relationship that other stakeholders should develop with the youth: setting expectations, encouraging the youth to accept responsibility for making the important decisions in her life, giving her the tools to do so effectively, and holding themselves as well as her accountable for what they have agreed to do. The judge should review the various elements of the case plan with the youth and explain that he or she is ordering these services be provided so that the youth can develop the ability to succeed as an adult. By communicating the value that the judge and other participants place on the youth's future success, the judge also emphasizes the importance of making good short-term decisions with long-term goals in mind.

**With respect to sex and pregnancy, the judge should openly acknowledge that part of the maturation process includes developing sexuality and romantic relationships, and explain that part of the case plan is designed to give her the information and support she needs to make good decisions about sex, including delaying sexual activity and, if she engages in sexual intercourse, that she takes effective measures to prevent pregnancy and disease.**

**PRACTICE TIP:**

Practice Tip: Both the judge and the youth may be more comfortable if a discussion about sex and pregnancy is preceded by some homework. The National Campaign to Prevent Teen and Unplanned Pregnancy has developed a pamphlet for youth, "It's Your Call: Make the Right Decision for You," that encourages young people to start thinking about these issues in the larger context of the impact on their future, and also provides references to resources for additional information. The judge should consider having this or similar pamphlets available in the courtroom.

<http://www.thenationalcampaign.org/resources/pdf/pubs/itsyourcall.pdf>

## ASKING THE RIGHT QUESTIONS: YOUTH PARTICIPATION

At the conclusion of each hearing, the judge should have the answers to the following questions, either from reports submitted to the courts or through questioning during the hearing:

- **Has the youth’s attorney met in person with the youth sufficiently to be able to advocate the youth’s position? When did the meeting take place? For how long did the attorney meet with the youth?**
- **Was the youth aware of today’s hearing and encouraged to attend? Why is the youth not here? What are the barriers to attendance in person? How can they be eliminated?**
- **How would the youth prefer to participate in court hearings (e.g., in person, by telephone, by letter, through counsel)?**
- **Who will be responsible for assuring youth attendance at hearings or other participation (e.g., notification, encouragement, planning, and transportation)?**
- **Is the youth participating in case planning? How and to what extent? What has the youth requested be included or excluded? Who is responsible for ensuring youth participation?**
- **What long-term and short-term issues are important to the youth and who is responsible for addressing those issues?**

## CONCLUSION: HELPING A YOUTH TO BE READY

Engaging in sexual activity and having a baby are major milestones in anyone's life. For teens and young adults, the earlier these occur, the more negative the long-term consequences. Ultimately, adults cannot control a youth's sexual behavior. But they can have a powerful impact on their behavior by communicating the value of postponing sex and pregnancy, and by providing them with comprehensive, accurate information, health care, and ready access to contraception. More importantly, they can be good listeners, helping the youth to envision a bright future and supporting them as they struggle to make good decisions.

The juvenile judge plays an important role in this process for foster youth as part of his or her responsibility to ensure that the youth's case plan provides for the youth's safety, wellbeing and permanency. This includes having specific provisions addressing reproductive health and pregnancy prevention with the support of long-term relationships with caring adults, comprehensive sex education and reproductive health services, ready access to contraception and long-term planning for transition to adulthood. By including the youth in the planning and review process and asking the right questions at every hearing, the judge can make certain that all stakeholders are making reasonable efforts to support the youth in learning to make informed decisions about when he or she is ready for sexual activity and pregnancy.

### LIST OF CITED LINKS:

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- "Talking Back: What Teens Want Adults to Know About Teen Pregnancy" [www.thenationalcampaign.org/resources/pdf/pubs/talking\\_back.pdf](http://www.thenationalcampaign.org/resources/pdf/pubs/talking_back.pdf)
- "Ten Tips for Parents to Help Their Children Avoid Teen Pregnancy" [www.thenationalcampaign.org/resources/pdf/pubs/10Tips\\_final.pdf](http://www.thenationalcampaign.org/resources/pdf/pubs/10Tips_final.pdf)
- "10 Tips for Foster Parents to Help Their Foster Youth Avoid Teen Pregnancy" [www.thenationalcampaign.org/resources/pdf/pubs/10TipsFoster\\_FINAL.pdf](http://www.thenationalcampaign.org/resources/pdf/pubs/10TipsFoster_FINAL.pdf)
- "It's Your Call: Make the Right Decision for You," <http://www.thenationalcampaign.org/resources/pdf/pubs/it'syourcall.pdf>

## END NOTES

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<sup>66</sup>Asking the Right Questions II

## ASKING THE RIGHT QUESTIONS - RELATIONSHIPS

At the conclusion of each hearing, the judge should have the answers to the following questions, either from reports submitted to the courts or through questioning during the hearing:

### DOES THE YOUTH HAVE A SUPPORTIVE RELATIONSHIP WITH AT LEAST ONE CARING ADULT?

- Have the parents identified all extended family members and other support persons?
- Has the youth identified family and support persons, and specifically, adults with whom the youth may be able to communicate effectively about intimate topics such as sex, love and relationships?
- What other action has been taken to identify and engage family and support persons, by whom, and when?
- Are there family and support persons willing to serve as a placement? Assist with visitation? Provide transportation for the youth or parent? Visit youth and/or participate in the youth's activities? What resources and support services are available to the family or support person to help them with this responsibility?
- Has the agency staff completed required assessments of family and support persons who wish to participate in the case as a placement or support person for the youth? What barriers are there to participation, and what is being done to overcome those barriers?
- Are the important adults in the youth's life, including foster parents and the agency staff, youth's attorney and CASA, receiving information and training on how best to communicate with the youth about decision-making in general and sexuality and relationships in particular?
- Are the important adults working closely together, coordinating their support of the youth, and monitoring the youth's activities and friendships?
- What services are being provided to help the youth develop a healthy relationship with the parents?
- Is the youth visiting with his or her siblings? What are the barriers to visitation and what is being done to overcome those barriers?

## ASKING THE RIGHT QUESTIONS - KNOWLEDGE

At the conclusion of each hearing, the judge should have the answers to the following questions, either from reports submitted to the courts or through questioning during the hearing:

### **DOES THE CASE PLAN INCLUDE REPRODUCTIVE HEALTH CARE, SERVICES TO PROVIDE THE YOUTH WITH APPROPRIATE INFORMATION AND SEX EDUCATION, AND READY ACCESS TO CONTRACEPTION?**

- Does the case plan specifically address pregnancy prevention, including reproductive health services and education on reproduction, delaying sexual activity, pregnancy prevention, STI prevention and healthy relationships?
- Has the youth been referred to a physician for a sexual health screening and age- and “developmentally appropriate” reproductive health and pregnancy prevention information?
- Has the youth completed an evidence-based sexual education program, including complete and accurate information about reproduction, STIs, abstinence and contraception?
- Is the youth dating or engaged in a romantic relationship? If so, has the youth been given access to family planning services? Does the youth have ongoing and ready access to contraception? Does the youth know how to use it?
- Has the agency staff assessed whether, as a result of these services, the youth has a full and accurate understanding of sex, pregnancy prevention and reproductive health?



## ASKING THE RIGHT QUESTIONS - MOTIVATION

At the conclusion of each hearing, the judge should have the answers to the following questions, either from reports submitted to the courts or through questioning during the hearing:

### ARE THE PARTICIPANTS HELPING THE YOUTH TO ENVISION A FUTURE AND PLANNING FOR TRANSITION?

- Is the youth placed with a relative or other caring adult who has a supportive relationship with the youth? If not, what efforts are being made to identify an appropriate relative or caring adult placement? Have reasonable efforts been made to place siblings together?
- What, if any, support is needed to maintain the youth in a stable placement? Who is responsible for providing this support? By when?
- Where is the youth enrolled in school? If the youth was moved from his or her home school, why is that in the youth's best interest? What has been done to ensure the continuity of education credits, extra-curricular activities, etc.?
- Have agency staff reviewed the youth's educational records, assessed the youth's performance and ensured that the youth is receiving any necessary remedial or educational support services?
- Have agency staff determined whether the youth has special education needs and, if so, whether a current and appropriate IEP has been implemented? Who is serving as the youth's educational advocate? Is there a liaison from the school located at the court who can help problem-solve?
- What is being done to identify the youth's interests and support his or her involvement in extracurricular activities?
- Is the youth involved in any youth development or service-learning program? Is the youth participating in any programs or activities that will assist the youth in developing critical thinking skills or promote community involvement?
- Have agency staff begun working with the youth to develop a plan for transition from foster care to adulthood? Who else is involved in the process? Is the plan thorough and realistic? Does it identify people and services to support the youth in the transition to adulthood? Does it address reproductive health? Who are identified as caring adults in a long-term relationship with the youth who can support the youth in achieving his or her goals?

## ASKING THE RIGHT QUESTIONS - YOUTH PARTICIPATION

At the conclusion of each hearing, the judge should have the answers to the following questions, either from reports submitted to the courts or through questioning during the hearing:

### IS THE YOUTH ATTENDING HEARINGS AND PARTICIPATING IN CASE PLANNING?

- Has the youth's attorney met in person with the youth sufficiently to be able to advocate the youth's position? When did the meeting take place? For how long did the attorney meet with the youth?
- Was the youth aware of today's hearing and encouraged to attend? Why is the youth not here? What are the barriers to attendance in person? How can they be eliminated?
- How would the youth prefer to participate in court hearings (e.g., in person, by telephone, by letter, through counsel)?
- Who will be responsible for assuring youth attendance at hearings or other participation (e.g., notification, encouragement, planning, and transportation)?
- Is the youth participating in case planning? How and to what extent? What has the youth requested be included or excluded? Who is responsible for ensuring youth participation?
- What long-term and short-term issues are important to the youth and who is responsible for addressing those issues





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