

Representing Older Youth in Care

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Review of Ethical Duties to Children

- All children in the temporary or permanent managing conservatorship of DFPS are appointed an attorney ad litem and a guardian ad litem
- Obligation of an attorney ad litem under [Section 107.004\(a\)\(2\)](#), Tex. Fam. Code: “**represent the child's expressed objectives** of representation and **follow the child's expressed objectives** of representation during the course of litigation if the attorney ad litem determines that the child is competent to understand the nature of an attorney-client relationship and has formed that relationship with the attorney ad litem”
- Obligation of a guardian ad litem under [Section 107.011](#), Tex. Fam. Code: “represent the **best interests of the child**”

Review of Ethical Duties to Children

- Beware of dual role appointments (performing role of AAL and GAL for the same child) when representing older youth
- Conflicts between the “child’s expressed objectives” and the “best interests of the child” are likely as a child gets older
- Tex. Fam. Code [Section 107.0125\(c\)](#): “An attorney appointed to serve in the dual role may request the court to appoint another person to serve as guardian ad litem for the child. If the court grants the attorney's request, the attorney shall serve only as the attorney ad litem for the child.”
- As the child’s attorney, your ethical duty is to advocate for what your child client wants, not what you think is best. (See TDRPC Rule 1.02)

Identification Documents

- All adults must have correct and official identification to function
- CPS must provide the following to foster youth by age 16:
 - Original or certified copy of birth certificate
 - Texas ID or driver's license
 - Social security card
 - Original immigration documents, if any

Resources

- DFPS [Personal Documents for Youth Resource Guide](#) (June 2022)
- DFPS [Driver Licenses and State Identification Cards for Youth in Conservatorship Resource Guide](#) (June 2022)

Identification Documents

Barriers to obtaining identification documents may include

- Birth never registered (requires applying for [delayed birth certificate](#))
- Incorrect name on birth certificate – need to jump through Vital Statistics' hoops to correct it (may require a court order)
- Failure to update documents in adopted name
- Multiple names or variations of name used through child's life
- Birth outside the U.S.

Easier to address problems before age 18 – youth in foster care can notify their attorney ad litem, judge, or ombudsman of the problem

Foster Care Ombudsman 1-844-286-0769

Identification Documents

Who is responsible for obtaining the birth certificate?

- Children born in or outside Texas: the caseworker is responsible for completing and submitting the [Form 1745 Birth Certificate Request for Children in DFPS Conservatorship](#) to the foster care eligibility specialist, who orders the birth certificate and sends to the caseworker (see CPS Handbook Section [1521.1](#), [1521.3](#))
- Children born outside the U.S.: DFPS border liaisons can assist with a request for a birth certificate from Mexico; otherwise, caseworker must contact a DFPS immigration specialist for assistance (see CPS Handbook Section [1521.4](#))

Identification Documents

Who is responsible for obtaining the social security card?

- The caseworker is responsible for filling out an Application for a Social Security Card [Form SS-5](#) and working with the regional SSI coordinator and other regional staff to process the request for an original (if no SSN was ever issued) or replacement social security card.
- Need to make sure child's name on SS-5 exactly matches the child's name on the birth certificate!

Identification Documents

Who is responsible for obtaining the Texas ID or driver license?

- The caseworker is responsible to complete the [Form 2042 DFPS Youth or Young Adult in Foster Care Residency Verification for a Driver License or State Identification Card Fee Waiver](#)
- Either the caseworker or caregiver (or any other adult supporter) can accompany the youth to DPS to obtain the ID or DL, but must make sure all other requirements are met
- See DPS fact sheets for [identification card](#) and [driver license](#) requirements for current and extended care foster youth
- See [detailed steps](#) from the Texas Foster Youth Justice Project

Identification Documents

Options and Resources for Attorneys

- Ensure caseworker and/or other DPFS staff request the birth certificate and social security card by the youth's 15th birthday
 - Obtaining these documents early will allow the state identification to be obtained by the youth's 16th birthday
- Ask youth or caseworker to bring documents with them to every hearing; make sure copies of all documents are in the file
- Coordinate with PAL to host an “ID day” to efficiently and quickly process identification documents for older youth

Judicial Perspective

- What role do attorneys have?
- How can attorneys assist youth in being provided these documents?
- What can attorneys do if youth are not provided their documents?

Housing and Education Opportunities

Housing Opportunities

- “Supervised” Independent Living (SIL): must be eligible for extended foster care, must apply through caseworker (contact Alina Jones: alina.jones@dfps.texas.gov or (832) 360-6923)
- Section 811 (TDHCA): for young adults with disabilities receiving SSI, must apply through DFPS regional housing liaison; must verify disability; long-term option for those who can live independently
- FYI and FUP housing vouchers (local public housing): available to young adults age 18-24 for up to 36 months of assistance; must apply through DFPS regional housing liaison; available to young adults who were in conservatorship as briefly as one day, including adopted children

Housing and Education Opportunities

Barriers to Housing Opportunities

- Extended foster care not available to young adults for whom a placement can not (or will not) be found
- Supervised independent living (SIL) is not available if a contractor does not accept the young adult's application (most common – history of psychiatric admissions, juvenile or criminal history, behavior “problems” in previous placements)
- Section 811, FYI/FUP voucher programs have long waiting lists in certain areas of the state
- Transitional living centers are not always safe
- Many youth end up in shelters, homeless, or in unsafe conditions

Housing and Education Opportunities

Education Opportunities

- [Tuition waiver](#): must enroll in one class before age 25; only accepted at state-supported colleges; no age limit for adopted children
- [ETV](#) (Education and Training Voucher): up to \$5,000/year for education-related expenses (including housing), but cannot exceed the cost of attendance after other financial aid is applied
- [Post Secondary Foster care liaisons](#): see full list with contact info [here](#) (excel sheet)
- [SIL](#) at college campuses: see all contracted providers [here](#)
- [TWC \(Texas Workforce Commission\) programs](#): usually delivered via transition centers; vocational rehabilitation services available by referral to [Laura Villarreal](#)

Judicial Perspective

- What questions should attorneys be asking to help youth access available housing and education opportunities?
- Have you seen attorneys creatively address barriers to housing opportunities?

Benefits for Youth Under Age 18

- Medicaid and related benefits (Superior Health Plan)
 - Covered services and medications
 - Telehealth options available
 - Transportation to non-emergency medical appointments
- Preparation for Adult Living (PAL): various programs for transitioning youth, including a life skills class which, if completed, allows youth to receive Transitional Living Allowance (TLA) when they leave care if otherwise eligible (also aging out seminars, college tours, camps, etc.)
- Coming soon! Free driver education program will be administered by Texas Workforce Commission (created by SB 2054 in 2021, spending mechanism approved in 2023)

Benefits for Young Adults

- Extended foster care/SIL: must be in conservatorship on 18th birthday and sign extended foster care agreement – dependent on whether a licensed placement or program is available and will accept the young adult
 - DFPS Reentry Liaisons for Extended Foster Care
 - Can remain in extended care until age 21 (or 22 if still finishing high school)
- Transition and financial support services: ongoing case management from local service providers to help identify options for housing, employment, education, and benefits
 - Can receive services until age 21

Benefits for Young Adults

- Transitional Living Allowance (TLA): if PAL class was completed and young adult is living independently, they can request up to \$1000 (max \$500/month); must be working or going to school to qualify; see CPS Handbook [Section 10241](#)
 - Can receive benefit until age 21; request from PAL
- Aftercare Room and Board (ACRB): if young adult has a “need for emergency or stabilizing assistance” they can request up to \$3,000 (max \$500/month) to pay rent, pay bills, or buy groceries; see CPS Handbook [Section 10251](#)
 - Can receive benefit until age 21; request from PAL or transition services

Benefits for Young Adults

- College Tuition and Fee Waiver: tuition and fees waived for any public Texas college, university, or training program (expanded eligibility)
 - Former foster youth must enroll in one class before age 25*
 - Request from PAL; student submits to the school (need to be aware of deadlines)
- Education and Training Voucher (ETV): young adults who were in foster care (or adopted or subject of a Permanency Care Assistance agreement) at age 16 or older can apply for up to \$5,000/year for help pay for education-related expenses, including housing
 - Can receive benefits until age 23; apply through BCFS
 - Benefit cannot exceed the cost of attendance after other financial aid is applied

Benefits for Young Adults

Medicaid Benefits

- Former Foster Care Child (FFCC) Medicaid: automatically available for Medicaid until age 26 if in conservatorship AND receiving Medicaid on 18th birthday
 - **ADVISORY:** Medicaid benefits are ended the day a child is incarcerated in a juvenile or adult facility; if a youth is incarcerated on their 18th birthday, they will NOT be eligible for FFCC Medicaid
- Medicaid for Transitioning Foster Care Youth (MTFCY)
 - May be available for young adults who do not qualify for FFCC
 - Coverage until age 21; must be below under 400% poverty line

Benefits for Young Adults

Medicaid Benefits

- Non-citizen young adults lose FFCC benefits by age 21
- Most youth will transition to FFCC Medicaid at age 18 automatically
- All young adults on FFCC or MTFCY must renew coverage annually* (very important to keep address updated and check Your Texas Benefits account)
- [My Health Pays](#) program (Superior): provides financial incentives (up to \$125/year for completing healthy activities, such as preventative care checkups and flu vaccines)

Judicial Perspective

- What role do attorneys play after a youth turns 18?
- How can attorneys best support youth to ensure they are aware of all their eligible benefits and can access them?
- What kind of judicial relief is available to young adults after they leave care or while in extended care?

Juvenile and Criminal Involvement

- Heightened risk of arrest for foster youth generally, but especially for those in CWOP, RTCs, and any other congregate care facility
- Serious consequences if youth is incarcerated on their 18th birthday (see slides on Medicaid benefits)
- Class C misdemeanors:
 - 16 years old and younger: may be resolved by juvenile court or by municipal or JP court (no policy for where the case goes); options to expunge certain conviction records (see [Art. 45.0216](#), Code Crim. Pro.)
 - 17-year-olds: must be handled in municipal or JP court; limited options to expunge records
 - Youth who receive Class C citations while in foster care or extended foster care cannot be charged a fine and must be offered community service (see [Art. 45.041\(b-6\)](#), Code Crim. Pro.)

Juvenile and Criminal Involvement

- Sealing juvenile records: should be done as quickly as possible to avoid losing eligibility to seal; should include DFPS, local CPS office, and all other organizations having record of the offense (RTCs, CPAs, schools, etc.)
- Expunging criminal records: available immediately if pretrial diversion is completed (see [Art. 55.01\(a\)\(2\)\(A\)\(ii\)\(c\)](#), Code Crim. Pro.); otherwise, check in with prosecutor's office for timeline*
- Orders of nondisclosure: if a case is not eligible for expunction, determine whether it may be eligible for sealing with an order of nondisclosure under Government Code [Ch 411, Subch E-1](#)

Juvenile and Criminal Involvement

- CPS investigation findings: if an RTB finding is made against a child in foster care, they will remain on the DFPS Central Registry for the rest of their life (99-year retention policy in conservatorship cases)
 - Can request an ARIF (administrative review of investigation findings) to challenge designation of perpetrator; typical deadlines do NOT apply if the person was a minor at the time of the disposition (see CPS Handbook Section 1261.1)
 - Can appeal an ARIF decision to the State Office of Administrative Hearings (SOAH)

Judicial Perspective

- What responsibilities or limitations do attorneys have when youth have juvenile or criminal involvement?

Considerations for Youth with Disabilities

Home and Community-Based Services (HCS)

- Youth with intellectual disabilities should receive a CPS “slot” to avoid public waiting list (10+ years long)
- [Determination of intellectual disability](#) (DID) assessment should be completed before age 16 by the Local Intellectual and Developmental Disability Authority (LIDDA)
- Much more difficult to determine whether the intellectual disability was present before age 18 if DID is completed after 18th birthday
- See DFPS [HCS Resource Guide](#)
- Intermediate Care Facility (ICF/IDD) placements as a backup option

Considerations for Youth with Disabilities

Guardianship and Alternatives

- Guardianship is a severely restrictive intervention that strips an “incapacitated person” of their rights
- Is the most restrictive option and should be the option of last resort
- Requires alternatives be explored and ruled out
- Determination of whether a guardianship is appropriate is not whether the person has full capacity, but whether the person has “sufficient capacity with supports and services” (Estates Code [§ 1202.001\(b\)\(2\)](#))

Considerations for Youth with Disabilities

Guardianship and Alternatives

- Alternatives may include supports and services such as:
 - HCS services
 - Supported decision-making agreement
 - Durable and medical powers of attorney
 - Declaration for mental health treatment
 - Representative payee for benefit payments
 - Authorized representative for public benefits
- Rights of a person under a guardianship can only be restored with a court order finding the person has “sufficient capacity”

Considerations for Youth with Disabilities

Guardianship and Alternatives

- When guardianship may be appropriate, DFPS should refer the case to HHSC Guardianship Services, which will conduct an assessment to determine capacity, before the youth's 17th birthday
- The court may extend jurisdiction on its own motion if it believes a young adult may be incapacitated to allow DFPS to refer the case to HHSC for a guardianship assessment, BUT the extended jurisdiction terminates if HHSC determines a guardianship is not appropriate, a court with probate jurisdiction denies a guardianship application, or a guardian is appointed (whichever is earlier); Family Code [§ 263.603](#)

Considerations for Youth with Disabilities

Supplemental Security Income (SSI)

- CPS Handbook [Section 10341](#) requires the caseworker to coordinate with the regional developmental disability specialist (DDS) to plan for long-term care for a youth with disabilities (including applying for SSI)
- CPS Handbook [Section 10341.2](#) requires the caseworker to notify the SSI coordinator when a youth turns 17 to apply for SSI if youth is not already receiving benefits, but this is likely too long to wait, especially if the application is initially denied
- SSI benefits are paid to DFPS while youth or young adult is in care

Judicial Perspective

- What role do attorneys have to ensure a smooth transition to adulthood for youth with disabilities?

Children's Commission Training

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Texas Foster Youth Justice Project

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