

REPRESENTING THE “AGING OUT” FOSTER YOUTH

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REVISED SEPTEMBER 2013

Original Paper prepared for

State Bar of Texas

37TH ANNUAL ADVANCED FAMILY LAW COURSE

August 1 - 4, 2011

San Antonio, Texas

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I. Introduction

Youth who “age out” of the foster care system need significant legal assistance in the process. Attorney Ad Litem should play a central role in the process to ensure legal issues are resolved, that CPS and others fulfill their obligations and that the voice of the youth is heard.

The Texas Foster Youth Justice Project (the Project), a special project of Texas RioGrande Legal Aid, provides statewide, **free** legal advice, assistance, guidance and representation in enforcing foster youth rights for current and former foster youth throughout Texas. Besides providing representation to former and current foster youth, the Project serves as a free resource to the youth and those who assist them, including Attorney Ad Litem, CASAs, case workers and caring adults. The Project conducts training and outreach and maintains a web page with numerous resources, texasfosteryouth.org. The Project can be contacted toll-free at 877-313-3688 or by emailing info@texasfosteryouth.org.

This paper discusses an overview of some of the most frequent and most important transitional issues, but, due to a limit on length, not all relevant aging out matters can be addressed. Numerous supplemental materials can be found and accessed for free at the Texas Foster Youth Justice Project web site: texasfosteryouth.org. *A Guide for Those Aging Out of Foster Care*, a 100 page free publication, produced by the Texas Foster Youth Justice Project, is available to download for free on the website. A highly popular book (over 6000 bound copies have been distributed since 2008 to foster youth), the newly published 3rd edition contains extensive additional information that is useful for both youth and those that work with them, including Attorney Ad Litem. Another resource is the Texas Foster Youth Handbook, available at www.dfps.state.tx.us/Documents/Child_Protection/pdf/foster-care-handbook.pdf. DFPS also has resources for older and aged-out foster youth at Texas Youth Connection www.dfps.state.tx.us/txyouth/. The CPS handbook also contains many policies and procedures, although some are out of date and you should check the date right below the policy section number to ensure the provision is current; the handbook can be found at www.dfps.state.tx.us/handbooks/CPS/. The Project has also prepared a court checklist for youth aging out of foster care, which can be found in Appendix A.

II. Identification Documents

No foster youth should leave care, or even turn 18, without having all of their identification documents and all of their documents in the same name and the name that the youth uses. While it sounds simple enough, too many youth have left care without identification documents or with documents that are not in the correct name. In our post 9/11 society, someone without necessary documents or with documents in the incorrect name simply cannot function. They cannot be legally hired for a job because an employer must complete an I-9 form before they start work which requires several pieces of identification. They cannot rent an apartment, take a GED exam, replace their Medicaid card, fly on an airplane or even take a bus. And by the very fact that they were in foster care, they won’t have the necessary family support available to assist them in obtaining missing documents. Many of the problems and issues encountered can be much more easily addressed while the youth is under 18 and still under the jurisdiction of a court. Court orders, particularly name changes, are much simpler to obtain for a minor.

Identification document issues are one of the most common problems aged-out youth contact the Project about. Most problems should have been resolved well before the youth left care and are much more difficult to address once the youth is out of care and no longer subject to the court’s jurisdiction. Unfortunately, foster youth have a high incidence of incomplete and inconsistent identity records, probably due to the problematic home environments from which they entered foster care. Advocates should ensure that the youth don’t leave foster care with these same identity concerns. The Project is available for guidance and assistance to youth, caseworkers and Attorney Ad Litem in resolving identification documents issues.

A. What Documents are Needed?

- Birth Certificate;
- Social Security card;
- Texas Identification card or Driver’s License; and
- Immigration Documentation when the youth was not born in the United States.

The youth’s attorney should personally review the documents to make sure they are the original, certified copies, and **that they are all in the same name and that it is the name the youth uses**. Often case workers and others are satisfied that photo copies are sufficient, but copies are generally not accepted by government units and others requiring proof of identity.

B. Documents by the Age of 16

Since the documents are required to be given to a youth under TEX. FAM. CODE §264.121(e) by the time they turn 16, the documents should be in the possession of the youth by the time they are 16. In possession means stored in a safe place at their foster home, with the youth in possession of only the Texas ID card or Driver’s License. Reviewing the documents with your client provides an opportunity to discuss why all but the ID card/license should be stored in a safe place, such as a plastic binder with other important documents and taken out of the home only when the youth is required to show them to an employer, etc. Aged-out youth often lose their documents. Review with your client how to safeguard them, and the necessity of prioritizing getting them above anything else in the event of fire, natural disaster or the friend kicking them out of the apartment where they have been couch surfing. Educate them about the headaches, costs and difficulties of replacing documents. Should your client change placements, verify these documents go with your client or are returned to them.

A birth certificate should not be in the name of “Infant Smith.” If the child’s parent never modified the birth record, appropriate steps must be taken to amend the birth certificate with the name of the child. If the birth certificate is in the last name of the mother and the child uses the last name of the alleged father, birth records must be updated either with an order finding paternity and ordering the name change of the child, or a court order changing the last name of the child must be obtained. It can take time to track down whether there was a paternity finding in a SAPCR case – you will actually have to obtain the order that shows paternity was found and the name was changed. See the birth certificate sub-section of this article for additional information on birth certificate issues.

If a child was adopted at some point and then came back into foster care, you need to verify what name is on their birth certificate. Theoretically birth records should have been updated when the adoption was completed. Sometimes the adoptive parents did not update the Social Security records as well. It is then necessary to get the adoption order that shows the name change so a certified copy can be shown to the Social Security office to update the Social Security card. But adoption records are often sealed and the CPS caseworker may have difficulty getting the certified order. At that point, call the CPS Regional Attorney office and tell them whoever handles the local county CPS cases in the adoption county needs to get the records unsealed and obtain the necessary order

that shows the name change. It may be necessary to file a motion in the CPS court to obtain CPS action. The Project can provide assistance or guidance, including tracking down contact information for the regional attorney.

C. What is CPS Supposed to Do?

TEX. FAM. CODE §264.121(e) requires that the Department provide a youth a birth certificate, a Social Security card or replacement Social Security card, and a Texas ID card by the date they turn 16. TEX. FAM. CODE §264.014 requires CPS to give the youth the child’s birth certificate, immunization records, the information contained in the child’s health passport, Texas ID card, Social Security card and proof of Medicaid enrollment within 30 days of discharge when the youth is at least 18 or has had disabilities of minority removed. For foster youth fortunate enough to have received driver’s education, there is a letter that they must obtain from their DFPS caseworker in order to obtain their license and have the fee waived. (More information can be found at texasfosteryouth.org in the Legal Resources Identification Documents/Getting a Driver’s License section.)

Unfortunately, CPS often does not meet these requirements. CPS case workers are either unaware of the requirements, have not prioritized obtaining the documents or encountered problems and barriers, preventing completion of the requirements. Provisions can be found in the CPS Handbook §§10130-10133.4. If your client’s caseworker has not obtained the documents for your client by the day they turn 16, notify the case worker, their supervisor and the CPS attorney on the case that they are in violation of the law and require that they obtain the immediate assistance of the regional Preparation for Adult Living (PAL) staff. As a practice tip, discuss this requirement with the caseworker when the youth turns 15 and stress the need to get it done soon. If the identification documents are not promptly obtained, file a motion with the court. The regional Preparation for Adult Living staff has been designated to assist youth and caseworkers in obtaining the required identification documents when the caseworker cannot obtain them. A listing of the staff can be found at:

www.dfps.state.tx.us/Child_Protection/Youth_and_Young_Adults/Preparation_For_Adult_Living/PAL_coordinators.asp

or search the Internet for Texas Department of Family and Protective Services Preparation for Adult Living. Their email and phone number are listed; don’t hesitate to get them involved. If your client is living in a

placement outside of the region of their caseworker, it may be necessary to obtain assistance of the PAL staff in the region where they live. If you are not getting appropriate responses from the regional PAL staff, contact the PAL State office. CPS Handbook provisions §10261 and §10263 also addresses regional PAL staff responsibilities.

Don’t accept excuses such that the foster parent won’t do it, the youth has problematic behavior, that the state birth certificate unit or the Social Security office won’t provide the documents, that somehow no birth certificate was ever filed, that the order changing the name as part of an adoption was sealed, or that it is acceptable that the documents are in different names. Caseworkers, PAL staff and DFPS attorney staff must take the necessary steps to overcome those hurdles and they should be resolved well before the youth leaves care. If the documents cannot be obtained while the youth is in state custody, imagine the problems a youth will encounter in resolving the problems once they are an independent adult, without family support. If necessary, file motions for court hearings to ensure the process moves forward. The Project can be consulted for guidance and assistance.

D. Name Changes - Do Before 18th Birthday

TEX. FAM. CODE§45.001-005 addresses name changes of a child. The procedure is simple when the managing conservator is involved. §45.101-106 addresses adult name changes. The requirements are more stringent and include disclosing any criminal charges above a class C misdemeanor, provision of fingerprints, and a prohibition of a name change for convicted felons. If someone has a birth certificate in the name of Infant Smith, and has not obtained state issued photo identification, they won’t be able to readily obtain their fingerprints. And a youth with a felony conviction, sadly not unheard of in young adult foster youth, has to overcome the prohibition of a name change even when their conviction is in the name they have always used and not Infant Smith. Obviously the barriers are many and without the CPS court to turn to for the name change, the youth very likely won’t be able to complete the process.

In the event that a youth has turned 18 and needs the legal name change to obtain the identification documents CPS was required to provide, an Attorney Ad Litem should seek extended court jurisdiction if it has not already been obtained to address the issue and they can request to continue as their Attorney Ad Litem. See TEX. FAM. CODE§263.602 and §263.605.

E. Name Changes at Request of Youth

Some foster youth want a name change. This can be due to a failed adoption that has left them with the name of a family that rejected them, a desire to separate themselves further from the biological family that traumatized them, a wish for a new beginning, to take the name of someone of importance to them or other important reasons. Not all name changes are necessarily the best idea and some desires may be transitory in nature. Nevertheless, the attorney should give serious concern to any requested name change and discuss its pros and cons, including how the court will have to make a best interest determination. Of course it is important to stress how name changes are final and once it is granted and documents are issued under the new name, further changes will not likely be granted. But for the youth approaching their 16th birthday a name change may be of significant emotional benefit and obtaining the name change as identification documents are being procured may be an ideal way to help the youth accomplish an important personal transitional step. An Attorney Ad Litem should discuss with their teen client how they will be obtaining identification documents and determining if they have any concerns about their legal name.

F. Birth Certificates

The Texas Department of State Health Services – Texas Vital Statistics www.dshs.state.tx.us/vs is the starting point for any issues or concerns about birth certificate. After reviewing the information about the issue on the web page, well-phrased questions sent to registrar@dshs.state.tx.us often receive helpful guidance.

1. Delayed Birth Certificates

If there is no official birth record of a youth, either because the youth was not born in a hospital or similar facility and their parent failed to register the birth or because somehow the paperwork never was submitted to the proper authorities, a major effort is needed to register the delayed birth. (But before you begin the odyssey, make sure the issue is not that the child was born in another state!) Much required documentation is required from family members, to whom the foster youth and CPS might not have ready access. The process is simpler when the youth is a younger child. When a youth is older, more documentation is required and it is more difficult to obtain it, so Attorney Ad Litem should be alert to birth certificate issues for even their younger foster children. The Project is

available for guidance and assistance on delayed birth certificate matters.

2. Amended Birth Certificates

Many birth certificate issues can be addressed by amending the birth certificate. Generally a court order with appropriate language to address the issue is required. Fortunately, when a child is under the court jurisdiction, obtaining the necessary orders can be a simple process. Once the youth is 18, either extended court jurisdiction must be sought in place or they need to file a separate court action. Contact the Project for assistance with pleadings to address issues before the youth turns 18.

G. Immigration/Citizenship

If the youth does not have a birth certificate from a U.S. state, you should demand documentation of the youth’s immigration status or that the youth is a U.S. citizen. Once you obtain this documentation, have an attorney with immigration experience or an “Accredited Representative” verify that it allows the youth to remain in the United States indefinitely. If it is not provided, you should assume that the youth does not have legal immigrant status in the United States. Not having legal immigrant status, being undocumented, means the youth cannot legally work, cannot access transitional Medicaid or obtain SSI or other public benefits, and could be deported from the United States to their home county, which they may very well not remember.

Most undocumented youth in foster care qualify for Special Immigration Juvenile Status (SIJS) which is a way to become a Lawful Permanent Resident (LPR). A separate presentation on Undocumented and Abused Children at 37th State Bar of Texas Annual Advanced Family Law Course (2011) Chapter 51 covers this topic in more details. Another good resource is the Center for Public Policy Priorities article: *Undocumented and Abused: A Texas Case Study of Children in the Child Protective Services System*, which can be found at: library.cppp.org/index.php in the Research section under Child Protection.

A few important things to keep in mind about non-citizen foster youth:

1. Contact the Project When a Youth is 16 and no Meaningful Progress has Been Made in Pursuing SIJS or Other Immigration Relief.

Each CPS region has at least one attorney to handle SIJS applications. If the process seems to have not started or is not moving forward, demand to see documentation including a filed application, response and appointment letters from U.S. Citizenship and Immigration Services. You can also contact the Project so inquiries can be made and appropriate action can begin. The Project, unfortunately, has had several aged out youth clients for who CPS simply failed to pursue SIJS status. These clients have been left scrambling to try to seek other possible immigration relief. Sadly, sometimes there may not be any alternate relief.

2. Youth Who are not Citizens can be Subject to Deportation.

Those who are lawful permanent residents or undocumented can be deported for a wide range of crimes – drug related convictions, DWIs, theft, other crimes of moral turpitude, aggravated felonies, and more can be grounds for deportation. Youth who have LPR status must understand that there can be serious consequences beyond the juvenile or criminal court proceeding and they can eventually end up back in their country of origin. They should be advised that they may want to apply for citizenship and that if they have any sort of criminal record, they should consult a non-profit immigration assistance organization, an attorney with immigration experience or an “Accredited Representative” before doing so. Undocumented youth may not be able to obtain an LPR card through the SIJS process if they have a criminal record; even youth with a juvenile history of something as minor as shoplifting have encountered barriers.

3. SIJS Must Be Started While You Are Still Under 18 and In Foster Care

While the SIJS law has recently changed and eased the limitations somewhat, it is imperative that the SIJS process begin before the youth is 18 and is still under the jurisdiction of the court. It is also necessary that the youth stay in foster care. There is also no way the SIJS process can be started for an aged-out former CPS foster youth. The SIJS process should begin before the youth is 16 to ensure it can be completed on a timely basis well before the age and jurisdiction can become issues.

4. Attorney Ad Litem Should Obtain Necessary Court Finding ASAP!

To support CPS in filing for SIJS the Attorney Ad Litem must be sure to obtain the necessary court findings to apply for SIJS. There must be court findings that reunification with one or both parents is not viable due to abuse, neglect, abandonment or similar basis found under state law and that a return to the child’s country of origin would not be in the child’s best interest. The Attorney Ad Litem should file the necessary motion and proposed orders to obtain these findings.

5. There are Other Possible Forms of Immigration Relief for Foster Youth

When SIJS is not possible, there are possible forms in immigration relief that some in foster care and aged out of foster care may qualify for including victims of crime (U-Visa), human trafficking (T-Visa), and Domestic Violence (VAWA). Consult with an immigration expert or the Project about these options. Deferred Action for Childhood Arrivals (DACA) is a last resort as it is only a temporary status.

6. Foreign Born Adopted Youth Need Documents That Show Their Immigration Status

While it is possible for some foreign born youth adopted in the U.S. or abroad to become a citizen upon their adoption by U.S. citizen parents, it is critical that the necessary forms are filed with the United States Citizenship and Immigration Services to establish their citizenship. If citizenship was not obtained, the youth needs the legal document that shows their immigration status. A birth certificate, even if issued by a U.S. state that shows a foreign place of birth, is not sufficient to establish citizenship or legal presence in the U.S. Do not let a foster youth turn 18 without formal documentation; efforts to obtain documentation should begin as soon as you determine the youth was born in a foreign county as it can be a lengthy process to sort out their status and take the necessary steps to obtain documentation. Contact the Project for guidance and assistance.

III. Foster Youth Attending Court Hearings

Many current and aged-out foster youth express concern and frustration that they are not allowed to participate in their CPS court hearings. Not only is the law on their side about their right to attend and

participate in their hearings, court hearings for the older youth are an important time to oversee their transition planning.

A. The Law on Attending Court Hearings

The Texas Family Code provides that children shall attend permanency and placement review hearings. For placement review hearings the law states that:

The child shall attend each placement review hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a placement review hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency or transition plan, if the child is four years of age or older. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

TEX. FAM. CODE § 263.501 (f) (2009).

For permanency hearings the law provides that:

The child shall attend each permanency hearing unless the court specifically excuses the child's attendance. A child committed to the Texas Youth Commission may attend a permanency hearing in person, by telephone, or by videoconference. The court shall consult with the child in a developmentally appropriate manner regarding the child's permanency plan, if the child is four years of age or older and if the court determines it is in the best interest of the child. Failure by the child to attend a hearing does not affect the validity of an order rendered at the hearing.

TEX. FAM. CODE§ 263.302 (2009).

In 2007, the Texas Legislature removed language in these statutes that stated “that the court may dispense with the requirement that the child attend a placement review hearing.” Act of June 15, 2007, 80th Leg. Reg. Sess. (2007), S.B. 759 eff. immediately (amending Tex. Fam. Code § 263.302 and § 263.501 (f)). As one commentator notes:

The child is after all, the focus of these permanency plans and hearings. Although the court controls the extent of the child's participation, his or her presence puts a human face on what might otherwise appear bureaucratic or perfunctory. While the child's absence won't invalidate the results of the hearing, the sense of the statute is that ordinarily the child should attend.

Sampson & Tindall's TEX. FAM. CODE§ 263.302 (2009).

A child or youth 10 or older must be provided with notice of permanency and placement review hearings. Sampson & Tindall's TEX. FAM. CODE § 263.301(b) (2013) and Sampson & Tindall's TEX. FAM. CODE § 263.501(d) (2013).

Family Code provisions related to medical care of foster children support youth attending their hearings. A provision titled: Judicial Review of Medical Care requires that "[a]t each hearing under Chapter 263, the foster child shall be provided the opportunity to express to the court the child's views on the medical care being provided to the child." TEX. FAM. CODE § 266.007 (c) (2009).

Furthermore, a court may authorize foster youth who are 16 years old to consent to the provision of medical care if the court determines that the child has the capacity to consent to medical care. TEX. FAM. CODE §266.010 (a) (2009). "The court can make the determination of capacity during the course of a hearing under Chapter or may hold a hearing to make the determination on its own motion." TEX. FAM. CODE§ 266.010 (b) (2009).

In addition, a foster child who is at least 16 years of age, or the foster child's Attorney Ad Litem, may file a petition with the court for a hearing. If the court determines that the foster child lacks the capacity to consent to medical care, the court may consider whether the foster child has acquired the capacity to consent to medical care at subsequent hearings under Section 263.503.TEX. FAM. CODE§ 266.010 (b) (2009).

The law also mandates that CPS educate foster youth about their right to request to be authorized to make their own health care decisions before they turn 16. TEX. FAM. CODE§ 266.010 (l) (2009). Clearly, these statutes contemplate older foster youth attending court hearings and judges developing familiarity with their capacity to make health care decisions as they prepare to age out of the foster care system.

CPS is responsible for preparing older foster youth to transition from foster care to independent

living. Numerous sections of the Family Code discuss this responsibility. The Preparation for Adult Living Program was established to "address the unique challenges facing foster children in the conservatorship of the department who must transition to independent living" TEX. FAM. CODE§264.121 (2009).

For every placement review hearing, CPS is charged with preparing a placement review plan for youth 16 and older, that:

Contain[s] a discharge plan for a child who is at least 16 years of age that identifies the services and specific tasks that are needed to assist the child in making the transition from substitute care to adult living and describes the services that are available through the Preparation for Adult Living Program operated by the department.

TEX. FAM. CODE§ 263.502 (c)(3). And "[a]t each placement review hearing, the court shall determine whether: the services that are needed to assist a child who is at least 16 years of age in making the transition from substitute care to independent living are available in the community." TEX. FAM. CODE§ 263.503 (3) (2009). A similar provision is found in Permanency Hearings. TEX. FAM. CODE §263.306 (10) (2009).

It is illogical to think that a youth who will be transitioning out of care in just two years or less would not be permitted to attend the court hearings where these important determinations are being made by those responsible for assisting the youth in the transition. Non-foster youth of this age making decisions about college and careers are at the center of the decision process, and are not barred from the room as their parents and other adults make all the decisions in their absence.

Numerous provisions in the Texas Administrative Code and CPS Handbook relate to preparing youth to transition out. All too frequently, youth do not receive adequate services before they age out, often due to CPS caseworker turnover and large caseloads. Common problems include: a lack of necessary identification documents, their immigration status has not been addressed, they don't have realistic plans for housing and education, they have not received assistance in obtaining SSI benefits, they have not had required/appropriate training, they are not prepared to live on their own, and important planning meetings have not been held.

Judges need to take an active role in reviewing transition plans and ensuring that CPS is taking care of

what they are required to do and, if necessary, resetting hearings so CPS can take care of the outstanding issues. The presence of the youth at court hearings is an opportunity for the court to receive input from the youth about planning for the transition process and to alert the court to the problems before the youth ages out and the court no longer has the power to remedy CPS oversights.

Finally, the Texas Department of Family and Protective Services and the Texas legislature have established rights for children and youth in foster care, available at

www.dfps.state.tx.us/Adoption_and_Foster_Care/About_Foster_Care/rights.asp (last visited September 23, 2013) and TEX. FAM. CODE §263.008. Included in these rights are the right to attend court hearings and the right to speak to the judge. Given that the Department has established these rights for the youth in their care, courts should help the Department make sure these rights are honored.

Youth who are 7 years old or older should also be included in the permanency planning meetings held during the Temporary Managing Conservatorship stages of their case. Sampson & Tindall's TEX. FAM. CODE §263.009(d) (2013).

B. What if the Youth Does Not Want to Attend Court Hearings?

The Project has extensive information for youth about participating at court hearings at www.texasfosteryouth.org/attending_court_hearings.html. You can email the link to the youth to review or easily print it out and discuss it with them. The manner in which the opportunity to go to the hearing is presented might also impact the youth's feelings – if you leave the youth with the impression that nothing of importance happens or that they are not given a meaningful chance to talk to the judge, they may very well decide to skip it. Scheduling hearings to minimize missing school – such as on school holidays or during summer vacation or later in the day – can also help.

Youth who live a long distance from court should have the option to participate by phone, or by video conference, if possible. Of course this will require some advance coordination with the court and the school or foster parent so the youth can be available at the appropriate time. Youth could also prepare a report, or an attorney could use the report as a discussion tool to prepare a report to the court. A sample court report developed by the Project and Texas CASA is in Appendix B.

IV. Attorney Ad Litem Client Communications

Many current and former foster youth report that their Attorney Ad Litem either does not discuss their case with them or does not follow their directives. It is not uncommon for a youth to report to the Project that they never knew they had an attorney or do not know who their attorney is. This concern is also documented in the Supreme Court of Texas Permanent Judicial Commission For Children, Youth and Families report *Legal Representation Study Assessment of Appointed Representation in Texas Child Protection Proceedings January 2011*, which can be found at texaschildrenscommission.gov in the Resources and Reports section.

An Attorney Ad Litem has many duties, including finding out the client's objectives (goals) of representation, investigate the facts of the case, participate in litigation, and take actions consistent with the child's interests. TEX. FAM. CODE §107.003. TEX. FAM. CODE §107.004 has additional duties. The Attorney Ad Litem must advise their client appropriately. For example, this may involve the attorney advising their foster youth client what is likely to occur, or what a likely outcome of a hearing will be. The Attorney Ad Litem must follow the child's instructions in expressing the child's wishes to the court. The Attorney Ad Litem must also meet with the youth before each court hearing. Tex. Fam. Code §107.004 (d). The meeting with the child must occur well before the hearing, to give them time to prepare for the hearing, and they should meet in a private setting for confidential communications. Tex. Fam. Code §107.004 (d-1). The Attorney Ad Litem must file a statement with the court that that they met with their client before the hearing if the child is not present at the hearing. Tex. Fam. Code §107.004 (d).

Other Attorney Ad Litem duties include reviewing the medical care of the child/youth, seeking the client's opinion on their medical care and advice youth 16 and older of their right to request the court authorize the youth to consent to their own medical care. Tex. Fam. Code §107.003 (d). Before each scheduled placement review hearing, the attorney ad litem must determine whether the child's educational needs and goals have been identified and addressed. Tex. Fam. Code §107.003 (d-2) For CASAs/ Guardian Ad Litem Tex. Fam. Code §107.002 (b)(1) has the

same duties for medical care and Tex. Fam. Code §107.002 (i) for education.

These rules apply, with the exception of the child’s educational needs and goal determination, whether the youth is in the temporary or permanent managing conservatorship. Even though a determination may have been made that a youth is not being returned to their parents, there are many important matters to be considered about the youth concerning their placement, possible adoptions or kinship placements, their preparations for transitioning to independence, their education, health care, sibling access, whether their foster youth rights are being met and more. An attorney needs ongoing communications with their client so they can find out what the client needs and wants and how concerns should be addressed with CPS and the court.

Because foster youth have so many people involved in overseeing their care – from their CPS caseworker, their CASA, all the respective supervisors, placement agency personnel, various medical providers and more – it can be difficult to keep track of who all these people are and their respective roles. An Attorney Ad Litem should not expect a youth to initiate contacts or even keep up with their phone number. While it is not necessary to have weekly calls with a client unless there are issues that need to be discussed or addressed, an attorney should check in with clients, especially after they move placements or significant events occur. When placements change, besides a phone call, it is a good idea to follow up with a letter to the client reminding them what your role is and giving them your phone number and possibly email address. That information should be provided to the youth’s foster parent as well and it should be made clear you welcome contact by your client and want to be notified of concerns. Clients should be contacted well before a hearing so there will be time to make follow-up inquiries about concerns.

A. What if the Youth Does not have Realistic Expectations?

Youth, like many other clients, may not have realistic expectations about what can be accomplished. It is important to discuss with your client the possible outcomes and discuss what alternatives might work. But the attorney must ultimately follow the directives of the youth, even if you know the judge will not rule as desired. It is important that your youth have the opportunity to attend court so they can see you advocate on their behalf. Supply them with copies of

your motions and keep them posted on your efforts to resolve their concerns.

B. What if Your Client Can’t be Easily Visited? What if CPS is not Giving You Necessary Information?

If a foster youth is in a residential treatment center or in a Texas Youth Commission facility, they have a right to meet with their attorney. Youth placed outside the county of their CPS case have a similar right. CPS has a responsibility to update Attorneys Ad Litem whenever placement changes are made and provide the attorney with the address and phone number of the new placement and information about who the foster parent is or the contact person for the facility. If there are barriers to access, the Attorney Ad Litem should notify the caseworker and the attorney for the Department, then file a motion with the court if the situation is not remedied. If the caseworker is not supplying necessary information, or you cannot even find out who the new caseworker is, contact the attorney for the Department and tell them they must notify a higher level regional CPS official and obtain the necessary information for you and follow-up with a motion with the Court if necessary. Texas Lawyers for Children also has a service that helps attorneys ad litem locate a possible local pro bono attorney to visit out of county foster youth in person; see

www.texaslawyersforchildren.org. Court pleadings, letters and case notes regarding your contacts and efforts to contact are important for establishing that you performed your duties. “An attorney ad litem who fails to perform the duties required” is subject to disciplinary action. TEX. FAM. CODE §107.0045.

TEX. FAM. CODE §107.004(e) provides that an Attorney Ad Litem can obtain a court finding that it was not feasible to meet with the client or authorize conferring with the client by telephone or video conference before hearings. Bear in mind that those children who are placed far from their original home or in the most restrictive settings are probably the ones most in need of personal contact and every effort should be made for in-person visits or frequent, private phone calls. There should be very few situations, other than a youth on runaway status, that merit no meeting and no phone calls or video conference calls.

C. “Cross-Over” Youth

“Cross-Over” youth, foster youth who are in the Texas Juvenile Justice Department (formerly called Texas Youth Commission) facilities or involved in the

juvenile justice system, are particularly vulnerable to poor transition planning and lack of access to transitional living services. Disability Rights Texas, at 800-252-9108, provides legal representation and co-counseling to cross-over youth, including those no longer confined. Chapter 48 of the 37th State Bar of Texas Annual Advanced Family Law Course (2011) covers this topic in more detail.

D. Review and Repeat

Keep in mind that you should review information with your client at various points during your representation. Often months will have passed and your client may not remember exactly what you told them or may have a different perspective due to age and circumstances. The legal process is complicated and often seems disconnected from what they are experiencing in their daily lives. Let them know they can follow up with you if they have questions. Many youth report that they remember receiving some information about particular issues or concerns, but did not understand it or do not remember what they were told.

V. Preparations for Aging Out

Preparing to age out of foster care is a long term process. Whether a youth is in the Temporary or Permanent Managing Conservatorship, whether there are plans underway for adoption or a kinship care placement, the process should be underway to ensure the youth will have the skills to transition to independent living, no matter what happens. CPS Handbook §10210. Indeed much of what is happening is similar to what happens for teens that are not in foster care. In May 2011, significant changes were made to the CPS Handbook §§10100 – 10399 regarding preparing youth for transitioning to independence, www.dfps.state.tx.us/handbooks/CPS. These provisions help DFPS comply with state and federal law and are a good source of information about the program and services.

A. Experiential Living Skills

CPS requires foster care providers of youth 14 or older to:

provide experiential life-skills training to improve their transition to independent living. Experiential life-skills training must be tailored to a youth's skills and abilities and may include training in practical

activities that include grocery shopping, meal preparation and cooking, using public transportation, performing basic household tasks, and financial literacy.

TEX. FAM. CODE §264.121(a-1), TEX. FAM. CODE §264.121(a-2). You should discuss with your client what sort of training they are receiving and if there are limits or barriers to developing important self-care skills. Discuss concerns with their caseworker and report to CPS licensing and the court if matters are not resolved.

B. Preparation for Adult Living Class

The phrase Preparation for Adult Living (PAL) is used to refer to a couple of different things by CPS, which creates some confusion. There is the PAL class (formally called Independent Living Skills Training) that every foster youth who is 16 is required to take. TEX. FAM. CODE §264.121(a)(1). There is also the overall PAL program, also called Transitional Living Services, that provides transitional living services to current and aged out foster youth from the ages of 16-21 (and in some cases 14-15 when funding is available).

The PAL class curriculum includes six topics:

- Health and Safety,
- Housing and Transportation,
- Job Readiness,
- Financial Management,
- Life Decisions/Responsibility, and
- Personal/Social Relationships.

TEX. FAM. CODE §264.121(b)(2). DFPS generally contracts with outside agencies to provide the PAL classes. Besides the important skills being taught in the class, completion of the class is required to receive the Transitional Living Allowance.

An initial part of the class is Ansell-Casey Life Skills Assessment which is completed by the youth and adult, generally their foster parent. If the adult does not know the youth well or does not complete the assessment, the report is not very helpful. A report helps the youth and the caregiver determine what strengths the youth has and what living skills are needed. You can learn more about the assessment or complete it with a youth at

http://lifeskills.casey.org/clsa_learn_youth.

One problem that frequently arises with the PAL class are youths not being enrolled in the class or not attending the class. Generally, this comes about because the youth is changing placements and the PAL program and the provider are not receiving current

information to make arrangements with the placement. Another problem is foster care placements failing to transport the youth to the class or determining that the youth should not attend for disciplinary or other reason. Other problems include schedule conflicts and difficulties in rescheduling for a different class. With the many parties that end up being involved in enrolling the youth in the class, it can be difficult to sort out what the problem is. In short, the PAL class is not a privilege; youth should attend and the foster care placement is obligated to transport them. Report concerns to the regional PAL office, the caseworker and licensing if the placement refuses to take the youth to the class. If your client reaches their 17th birthday without attending the PAL class, you should contact the regional Lead for the Preparation for Adult Living Staff

www.dfps.state.tx.us/Child_Protection/Youth_and_Young_Adults/Preparation_For_Adult_Living/PAL_coordinators.asp and insist that arrangements be finalized for the youth and notify the court of the issue. For youth that live in a different region than their CPS case, start with the Region where they are living, but it may become necessary to contact the lead for their court’s Region and the State PAL office. If necessary, subpoena CPS PAL staff to attend placement review hearings.

Independent Study is available for the PAL program but there are some limitations. The program requires significant adult involvement to oversee progress and assist with activities. Many of the Internet links no longer work. With a committed adult or teacher it can be a good learning experience, but without proper oversight the youth is unlikely to learn many of the important skills taught in the course. CPS Handbook §10223 addresses independent study.

C. Transition Planning

All foster youth who are 16 and older must have a youth driven transition plan. CPS Handbook §10121. Transition plans are created either in a circle of support or a transition plan meeting. It is a lengthy form that is designed to help the youth plan out their future. You can access Form 2500 at www.dfps.state.tx.us/site_map/forms.asp.

A circle of support is a meeting driven by the youth and is the preferred method of transition planning. State law *encourages* CPS to use it. TEX. FAM. CODE §264.121(a). It is based on CPS process Family Group Decision Making. The youth invites foster care providers, teachers, parents, siblings, relatives, church members, mentors, etc., attorneys,

CASAs and friends. A CPS Family Conference facilitator helps lead the group to help the youth develop a transition plan. Meeting topics include the youth’s hopes and dreams, goals, strengths, concerns and needs for education, employment, health/mental health, housing, personal and community.

Circles of support require that the youth participate in the planning. They also require that they be planned well in advance so that the youth is given time to think about who they want to be invited and informed of the wide range of persons that might be acceptable to invite. The youth also has a right to exclude someone from participating, including their attorney. The youth should also know in advance the topics of conversation so they have time to give these matters thought. Unfortunately, circles of support sometimes are not planned well in advance. Problems include invitations issued at the last minute, giving the youth little advanced notice or given an option of inviting the people they possibly are planning to turn to when they leave foster care – their biological family. There is also often little follow-up from the circle of support. Frequently tasks are assigned but no follow-up meetings are scheduled to assess progress and there is no enforcement of accountability. Attorney Ad Litem should insist that the circles of support not be a last minute affair and that staff make it a meaningful meeting for the youth and that follow-up is done, particularly of tasks assigned to DFPS staff.

Transition plan meetings are much smaller and may be facilitated by a CPS Supervisor or their designee, which could be the youth’s caseworker. Others may attend, but it is likely to mainly be DFPS personnel. An Attorney Ad Litem should insist upon circle of support unless the youth refuses that model and should participate in the meeting and make sure it stays youth-driven and does not become solely an exercise in completing the transition plan form.

A transition plan can be reviewed and updated at any time, but the caseworker is required to review it every six months as part of the development of the child’s service plan; within 90 days before the youth turns age 18; and within 90 days before the date that the youth leaves extended foster care. CPS Handbook §10122.2. The youth should participate in any and all of these reviews. Ideally a facilitator should participate as well.

An important issue to be discussed as part of transition planning is any plan to reunite with the biological family. For many youths this is a significant part of the plan for their future. While there might be some cases of severe physical abuse that warrant CPS

not facilitating contact, in other situations serious consideration should be given to the youth’s requests. Having the family participate and giving the youth exposure to the realities of their biological family may help them develop other plans while they still have the stability and safety of foster care. In some cases, a family may have changed, or an older youth is better equipped to cope with the family’s limitations. There are courts and CPS staff around Texas working with older foster youth in exploring family reunification plans upon aging out.

Another family issue that should be addressed in transition planning is discussion of siblings. Whether the siblings are also in foster care, have aged out or were adopted, the youth should be asked if they want to discuss their siblings. If they want to discuss them they should be provided with information about the siblings and CPS staff should be required to do any necessary follow-up to obtain information. It is possible aged-out siblings can be contacted through the PAL program. If siblings are still in care and the youth is not having visits with them, visits should start up regardless of the distance between the youth unless the other sibling is refusing contact or there are serious, documented reasons that the contact is harmful. If a sibling was adopted and the adoptive family terminated contact, the youth should be told that. If contact has simply been lost with the adoptive family, CPS staff should be assigned to attempt to locate the family and see if contact and visitation can be arranged.

Any youth who takes prescription medication must have provisions in their transition plan regarding managing the use of the medication and managing the youth’s long-term physical and mental health needs after leaving foster care. Provisions should include details about the right of youth 16 or older to request that the court give them the authority to consent to medical care pursuant to Sampson & Tindall's TEX. FAM. CODE §266.010. TEX. FAM. CODE §264.121(g) (2013)..

The Transition Planning Process is a critical stage for youth with disabilities. Insist that a Disability Determination Specialist participate in the circle of support and that issues regarding long term care, SSI application, DADS referral for guardianship, and DARS services and special education services be discussed at the meeting and responsibilities be assigned. It is also critical that the process begin as soon as your client turns 16.

VI. Transitional Benefits

There are many benefits available for transitioning foster youth.

A. Transitional Living Allowance

The Transitional Living Allowance provides \$1,000 in benefits, with a maximum of \$500 per month. This is money foster youth use when they leave care to transition to living on their own, although they do not necessarily have to use it immediately when they leave care.

To qualify for a transitional living allowance a youth must:

- have been in DFPS-paid or Medicaid-paid substitute care at some time within the 24 months before initiating the allowance;
- be a U.S. citizen or have permanent resident or other qualified alien status;
- have moved or be in the process of moving into an independent living arrangement or a supervised or semi-supervised setting;
- not be incarcerated;
- be employed or actively seeking employment (for those youth who are able to work), be enrolled and attending school or college, or be receiving pre-vocational or vocational training services;
- not be living with a designated perpetrator who committed abuse or neglect on the youth, unless DFPS determines the perpetrator does not pose a threat to the health and safety of the youth;
- provide all verification information required by regional PAL staff, which may include a rental agreement or work or pay stubs; and
- have completed at least five hours of training in five of the six core areas of the Preparation for Adult Living classes.

CPS Handbook §10241.

Youth who enter the Jobs Corps or a branch of the United States armed forces can only receive \$500. Youth who move to a supervised or semi-supervised living arrangement in which room and board expenses are funded from another source, such as Medicaid or SSI also can only receive \$500 and the funds may be used for independent living needs or adaptive equipment or devices as needed. CPS Handbook §10242. Arguably a youth who enters one of these living arrangements who leaves that situation within the 24 months period initialization period could then apply for the remaining \$500.

B. Aftercare Room and Board

Aftercare Room and Board assistance is not an automatic benefit, but should be provided to any eligible youth who shows a need for emergency or stabilizing assistance in the transition from foster care to adulthood. The maximum amount of benefits is \$3000 and no more than \$500 is available per month. A youth is required to work with an aftercare case manager or PAL staff to develop plans for self-sufficiency while they obtain the funds. CPS Handbook §10250.

Some regions more strictly enforce the requirement that the money be for an emergency or stabilizing; some allow recently aged-out youth to use the money for an ongoing monthly expense, such as rent, until it is used up. While that may help the youth in the short term, some tend to not develop the necessary long term plans to cover living expense.

The CPS Handbook lists both qualifications and eligibility rules for Aftercare Room and Board Services. Qualifications include:

- age 18-21;
- aging out of foster care at age 18 or older;
- U.S. citizen or have permanent residency or other qualified alien status;
- not be living with a designated perpetrator unless DFPS determines the perpetrator does not pose a threat to the health and safety of the youth;
- prove financial need; and
- be in an educational program, employed or actively seeking employment (for those who are able to work), or is receiving pre-vocational or vocational training services. Homeless youth or those with a special medical condition, on a case-by-case basis, may receive assistance for up to two months without meeting this requirement.

CPS Handbook §10251.

Eligibility for Aftercare Room and Board is defined as:

For the purpose of eligibility for PAL Aftercare Room and Board services, the following criteria must be met:

- The youth must have been in CPS conservatorship at age 18.
- The youth must have aged out of foster care. The definition of foster care can include any of the following as long as DFPS had conservatorship the day before the youth’s 18th birthday:
 - Living in a licensed placement

- Living in a court-ordered unlicensed placement
- Living with relatives or kinship placement
- Participating in an unauthorized absence (such as running away), as long as CPS still has custody of the youth at age 18
- Living with a parents for six months or less
- Being incarcerated for six months or less
- Living in a pre-consummated adoptive placement.

CPS Handbook §10252.

Aftercare Room and Board can cover expenses including rent deposits and payment, rent payments, utility deposits and payments, food, residential housing deposits or payments at college, financial compensation up to \$350 per month to host homes. CPS Handbook §10254. The money is paid directly to the third party – either in the form a check or in the form of a gift card to a store for food.

The possibility of moving into a host home is a good option to keep in mind for the transitioning youth. A host home:

is a time-limited setting in which a youth rents a room in a family or single adult’s home, sharing basic facilities and agreeing on basic rules while taking on more responsibility for his or her life. The host home adult/family serves as life coach and mentor for a youth. The host home and youth mutually agree upon rules and expectations while the youth is living in the home. Examples of host homes could include a former foster parent, a former teacher, a church member, or a relative. The term host home does not include the youth’s parent’s home.

CPS Handbook §10256.

C. Medicaid

Aged-out foster youth can qualify to receive transitional Medicaid. Youth who stay in foster care after turning 18 continue to be covered by the regular foster youth Medicaid, Star Health. Once they leave care they can qualify to receive the same Star Health Medicaid, but CPS refers to it as Medicaid for

Transitioning Foster Care Youth (MTFCY). Medicaid is actually administered by a different state agency, the Texas Health and Human Services Commission (HHSC). It is necessary for DFPS to certify the youth for MTFCY. This process frequently does not go smoothly, particularly if a youth abruptly leaves care without advance planning and notice.

While every foster youth is covered by Foster Youth Medicaid, the eligibility for MTFCY is more limited:

- is available for youth between ages 18 to 21;
- who are U.S. citizens or qualified aliens;
- who aged out of DFPS custody at age 18;
- who do not have other health insurance coverage;
- who meet income guidelines (400% of federal poverty guidelines, which is \$43,560 annual income for a family of 1 as of May 21011);
- Must meet asset guidelines (less than \$10,000 in assets in cash like assets) and if own two or more vehicles, their total value cannot exceed \$10,000.

Texas Works Handbook M-110 Medicaid for Transitioning Foster Care Youth (MTFCY) Revision 10-2; Effective April 1, 2010 Medicaid for Transitioning Foster Care Youth (MTFCY) <http://www.dads.state.tx.us/handbooks/texasworks/M/100/100.htm> The Project has a fact sheet called *Health Insurance for Aged Out Foster Youth* in the legal resources section with more information. If an aged-out foster youth has a trust fund controlled by someone else (e.g. a court) and if there are limitations on payments such that the trust won't end in the one-year certification period, it should not count against the youth, but instead be reported to Medicaid. See Texas Works Handbook A-1237 Trust Funds, www.dads.state.tx.us/handbooks/texasworks/A/1200/1200.htm#secA-1237.

Transitional Medicaid recipients are required to report any change of address. Should their mail be returned, their coverage will be suspended. The technically savvy can change their address online at www.YourTexasBenefits.com if they have the necessary information to set up online access. Calling 211 is another option. Step-by-step instructions can be found at texasfosteryouth.org/resources.html in the Medical Issues and Health Insurance section under *Medicaid Address Update*. Recipients are also required to complete a form every year to re-certify;

failure to complete the form will result in coverage ending and it will take time to re-qualify.

Unfortunately, because there are two different state agencies involved in the eligibility determination, there are frequent problems. If coverage is suspended and ended or never starts, or there are other problems, you can submit an *Application for Transitional Medicaid*, which can be found at: texasfosteryouth.org/resources.html in the Medical Issues and Health Insurance section. You can also find *Health Insurance for Foster Youth*, a detailed information sheet prepared by the Texas Foster Youth Justice Project. After submitting the application, follow up a week after faxing it in by calling 512-908-9612 or emailing cbs_ffche-mtfcy@hhsc.state.tx.us. Once a youth is actually on Transitional Medicaid, if they need help locating providers, they can contact the actual insurance company, Star Health, at 866-912-6283. *Health Insurance for Foster Youth* has more helpful tips.

D. Health Care Benefits Post Age 21

Note: Health insurance is dramatically changing due to the federal Affordable Care Act. Under the Act, former foster youth should have Medicaid health insurance coverage available until they turn 26. It is the Project's understanding that Texas is implementing coverage for former foster youth ages 21-25 January 1, 2014. However, no formal details are available yet, other than youth who are on the Transitional Medicaid will be notified 3 months before they turn 21 that they will be transitioned to the STAR plan, and will be provided a choice of managed care plans. The Texas Foster Youth Justice Project will seek additional information and post updates at texasfosteryouth.org/resources.html in the Medical Issues and Health Insurance section.

In the meantime, former foster youth who are 21 and 22 years old and are enrolled in higher education may qualify for the Former Foster Care in Higher Education health insurance. This health insurance is similar in coverage to the Star Health coverage for current and aged-out foster youth.

To qualify a young adult must:

- be enrolled in a public Texas college, certain private colleges in Texas, public medical school, public dental school, or public technical institute in Texas;
- be making satisfactory academic progress as determined by the institution they are attending;

- have been in a foster care placement that was not with a parent or guardian on their 18th birthday;
- be at least 21 years of age or older but have not have reached their 23rd birthday;
- not be receiving adequate health coverage as defined by HHSC;
- meet income limits; and
- have countable resources of less than or equal to \$10,000.

Texas Works Handbook F-111 Type of Assistance (TA) 77 – Health Care –FFCHE Revision 10-2; Effective April 1, 2010

www.dads.state.tx.us/handbooks/texasworks/F/100/100.htm.

An application must be filed to apply for this health insurance. An application can be found at texasfosteryouth.org/resources.html in the Medical Issues and Health Insurance section. Or you can call 512-908-9612 or contact the regional Preparation for Adult Living Office which can be found at: www.dfps.state.tx.us/Child Protection/Youth and Young Adults/Preparation For Adult Living/PAL coordinators.asp.

E. After Care Case Management and Transition Centers

Aged-out foster youth up to age 21 qualify for aftercare case management. CPS Handbook §10210, §10250, and § 10255. This can be a vital resource for transitioning youth. Aftercare case management is generally handled by a contracted provider, although in some Regions the regional PAL staff provides it or is involved. Services must include: housing services, job training and employment services, college preparation services, GED services and obtaining a checking or savings account if the youth has income. TEX. FAM. CODE §264.120(f). If an aged-out youth is not receiving aftercare case management or other services, contact the regional Preparation for Adult Living staff and include the State staff on your initial communications to gets the process quickly going. (If you are having trouble ascertaining if your client has accessed after care services ask them if they have received PAL money and who they worked with to get the money.)

Transition centers are located in some parts of the state. These centers assist youth age 15½ to 25 who are aging out or have aged out of foster care. The centers serve as central locations for services such as Preparation for Adult Living services, employment readiness, job search classes, assistance in applying for

college and other educational programs, applying for financial aid and mentoring. Some centers provide many other services such as substance abuse, mental health counseling, housing assistance, and leadership training. A list of transition centers can be found on the Texas Youth Connection website at www.dfps.state.tx.us/txyouth/ in the Resources section. If there is a transition center near your client, make sure your client visits it while still in foster care.

F. Tuition Waiver

Foster youth are eligible to have college tuition and fees waived at Texas state-supported colleges or universities, public medical schools, public dental schools, public junior college, and public technical institutes. The waiver does not cover books and living expenses. TEX. EDUC. CODE §54.211 (2009). The requirements are that they:

- were in the conservatorship of DFPS the day before their 18th birthday;
- were in the conservatorship of DFPS on the day they graduated from high school or received their GED;
- are in conservatorship of DFPS and in high school and who take a dual credit course or other course for which a high school student may earn joint high school and college credit;
- were in the conservatorship of DFPS on or after their 14th birthday, if the youth was also eligible for adoption on or after that day;
- were in the conservatorship of DFPS the day before they were adopted, if the adoption occurred on or after September 1, 2009;
- were in the conservatorship of DFPS the day before Permanent Managing Conservatorship was given to a relative who is not the child’s parent, if Permanent Managing Conservatorship (PMC) was given to the relative on or after September 1, 2009; or
- have an adoption assistance agreement with DFPS that provided both monthly payments and medical assistance.

A youth or child must have been in conservatorship before an adoption or Permanent Managing Conservatorship was granted to be eligible for the college tuition and fee waiver. TEX. EDUC. CODE §54.211 (2009) and CPS Handbook §10312. Conservatorship is not defined, so youth who meet the other criteria and were in either Permanent or Temporary Managing Conservatorship should qualify. To receive the lifetime benefit of tuition waiver, the youth “must enroll in an institution of higher education

as an undergraduate student not later than the student's 25th birthday.” TEX. EDUC. CODE §54.211 (a)(2) (2009). The law does not mention that they must complete or pass the course, although it is recommended that they do so. For the youth who might not be ready for college until later in their life suggest they enroll in a class that they should be able to pass, perhaps something of a practical skill nature of short duration (1 credit hour is sufficient), so they can establish the necessary record. Youth who qualify based on having been adopted with an adoption assistance agreement do not have to enroll by a certain age. TEX. EDUC. CODE §54.2111 (2009) and CPS Handbook §10312.

At this time, the waiver is valid indefinitely, although laws could be enacted that change that. However Texas public higher education institutions will not waive tuition and fees if the student’s grade point average is below that required by the institution for continued eligibility for financial aid or the student has excessive credit hours beyond what is required by their degree plan. Texas Education TEX. EDUC. CODE §54.2001 (2013). The statute contains provisions for exceptions.

To obtain the letter certifying their eligibility for the tuition waiver or documentation that they were in foster care, the youth should contact their regional Preparation for Adult Living office.

[www.dfps.state.tx.us/Child Protection/Youth and Young Adults/Preparation For Adult Living/PAL coordinators.asp](http://www.dfps.state.tx.us/Child%20Protection/Youth%20and%20Young%20Adults/Preparation%20For%20Adult%20Living/PAL%20coordinators.asp).

G. Education and Training Voucher (ETV)

Additional financial assistance is available to foster youth who enroll in college or training programs through the Education and Training Voucher. The youth can receive up to \$5000 a year for help with housing, food, books, child care, computer equipment and other expenses for college or a training program. 40 Tex. Admin. Code §700.1617 and §700.1619 (2005) (Texas Department of Family and Protective Services). If the youth is attending a college or training program that is not covered by the tuition waiver, such as a private school or certain technical/vocational programs, the money can still be used to pay tuition and fees. 40 Tex. Admin. Code §700.1619 (2005) (Texas Department of Family and Protective Services). The youth must begin accessing the funds before they turn 21. If they accessed funds before they turn 21, they may continue to receive funds until they turn 23. 40 Tex. Admin. Code §700.1613

(2010) (Texas Department of Family and Protective Services). Youth meet ETV eligibility criteria if they:

- are at least age 16 and likely to remain in DFPS foster care until age 18; or
- have aged out of DFPS foster care and have not turned age 21; or
- were adopted from DFPS foster care after turning age 16 and have not turned age 21; or
- entered Permanency Care Assistance (PCA) after age 16 and have not turned age 21.

40 Tex. Admin. Code §700.1613 (2010) (Texas Department of Family and Protective Services). The process for disbursing ETV funds is complex. For students in the first and second year of receiving ETV funds, basic living expenses are paid directly to the vendors and landlords, before the remainder can be disbursed to the student. CPS Handbook §10323. After the second year, students may be able to have all the funds directly paid to them. CPS Handbook §10323. These ETV provisions were developed to protect youth from spending the money on non-education related expenses or otherwise mismanaging the money. Unfortunately, at times it creates cumbersome procedures and delays in processing payments. It can create a complicated legal issue when the vendor does not provide the funded services. There are issues at times of lost applications and difficulties in obtaining the required documentation. To contact the administrator of ETV, Baptist Children and Family Services, visit their website, discoverbcfs.net/texasetyv, or call 1-877-268-4063, 210-208-5605. The regional liaison is listed in the Contact Us section.

Other provisions related to ETV funds can be found at CPS Handbook §§10320-10327.2.

VII. Extended Foster Care and Return to Foster Care

The laws and rules regarding Extended Foster Care and Return to Foster Care changed dramatically in 2011. Lurking in the background are federal rules and regulations that govern when the federal government will pay for foster care for young adults over 18; however, whether there will be reimbursement or not does not impact whether an individual young adult can access extended foster care. The Extended Jurisdiction Matrix, Appendix C, is a helpful tool to review along with the rules regarding Extended Foster Care in CPS Handbook §§10400-10500.

Young adults may extend their stay in foster care beyond their 18th birthday and up to their 21st birthday by signing a voluntary extended foster care agreement

before they turn 18. To stay in care the young adult must:

- be attending high school or a GED program (can stay in foster care up until the last day of the month they turn 22);
- be attending college or other post-secondary educational or vocational activities;
- obtain employment or enhance work related skills and knowledge through employment readiness activities; or
- be incapable of performing the activities described above due to a documented medical condition.

TEX. FAM. CODE §264.101(a-1) and CPS Handbook §10410. Employment readiness activities include resume preparing, job search coaching, unpaid internships and more.

Attorney Ad Litem should encourage their clients to stay in foster care after their 18th birthday, especially if they have a stable placement. There is a shortage of placements for young adults trying to return to foster care, particularly placements for those with more difficult histories, placements that are appealing to young adults or in a locations where there are sufficient work and educational opportunities; hopefully innovation will lead to more options in the future. You should be sure your client understands that once they turn 18, while CPS has to try to find them a placement if they want to stay in extended foster care after losing a placement, there is no guarantee that CPS will find them a placement and this makes it critical that they not jeopardize their current placement.

Once a young adult has left foster care (or extended foster care), they can return if they are between the ages of 18-20, were in DFPS conservatorship the day before turning 18, if they meet one of the education/work/documented medical condition requirements for extended foster care, are willing to sign an extended foster care agreement, and undergo a criminal background and Abuse/Neglect Registry check. While no specific background will disqualify them, a “record” may make finding a placement difficult. When a young adult makes a request to return to extended foster care, the request should be forwarded to the Regional PAL office who is responsible for processing it. CPS Handbook §10532. (If a young adult’s request is going nowhere, the PAL staff needs to attend the court hearing you set about returning to foster care.) While there is no limit on the number of times a young adult can leave and then return to foster care, limited placement options and long possible delays in locating placements mean a

young adult should exercise care when deciding to leave a foster care placement.

While in extended foster care, a young adult who is on vacation/breaks between regular school semesters and who has plans to return to school, does not need to engage in one of the other activities, although it is obviously a good time to gain work experience and develop skills. If a young adult is transitioning to another activity, such as they completed a GED and are going to begin work activities, they have 30 days to begin the new activity. And young adults who have left foster care and who are on vacation/breaks of school program that are 1 to 4 months long can return to extended foster care during their breaks, provided a placement is available. College students who will need housing during the winter and summer breaks should discuss their need with college housing staff and regional PAL staff well in advance of the break. Many Texas public colleges are developing programs and services to assist foster youth with a variety of matters, including housing; PAL staff should help youth identify the contact at their college.

VIII. Extended Court Jurisdiction

A court that has continuous, exclusive jurisdiction over a young adult on the day before the young adult’s 18th birthday continues that jurisdiction and retains the case on the docket for various periods of time depending on the circumstances of the young adult. Specific provisions can be found at TEX. FAM. CODE §263.601-608 and CPS Handbook § 5363. The Extended Jurisdiction Matrix, Appendix C, is also a helpful resource for understanding the terms of jurisdiction. Even when jurisdiction is extended, the young adult has the same rights as any other adult of the **same age and they** are no longer in the conservatorship of CPS. Courts with extended jurisdiction can continue or appoint Attorney Ad Litem, Guardian Ad Litem and CASAs. TEX. FAM. CODE §263.609.

A. Court Jurisdiction While Young Adult in Extended Foster Care

The court retains jurisdiction over any young adult who remains in extended foster care after they turn 18. The court is required to hold foster care review hearings every 6 months for the purpose of addressing progress in extended foster care, transitioning to independence, and provision and use of transitional living services. Notice must be given to

the young adult along with the foster parent/caregiver, parents and others.

B. Court Jurisdiction During Trial Independence

The court also retains jurisdiction over any young adult who has left foster care and is in Trial Independence. Trial independence is the period of time immediately following a young adult’s departure from foster care. Trial Independence is for 6 months, and can be extended by the court to be up to 12 months. DFPS policy is to request extension to 12 months, which will allow DFPS to seek federal funding for foster care payment should the young adult return to foster care during Trial Independence. While in Trial Independence, the young adult can access PAL transitional services. The young adult’s caseworker (CVS Worker) from when they were still in foster care is the CPS staff assigned to the case; their role is limited although they can still be called upon for assistance with immigration SIJS processing, referral to the Regional PAL office for return to foster care or other after care services, Transitional Medicaid, or other matters that need to be completed, such as obtaining a birth certificate. Hearings are not generally held during Trial Independence however, should a young adult request one or the court orders one held, the CVS Worker is responsible for preparing court reports and attending hearings as the representative of DFPS and should coordinate with PAL staff. If a young adult is encountering barriers to accessing transitional services or has issues regarding unresolved matters with the CVS Worker, a hearing should be requested.

C. Court Jurisdiction Young Adult Voluntarily Extends

Once Trial Independence ends, a court loses jurisdiction unless the young adult requests that the court extend jurisdiction. TEX. FAM. CODE §263.6021. The court must find that the young adult receives transitional living services from the department. If the court extends jurisdiction, the young adult can request hearings to review the services the young adult is receiving. DFPS, via regional PAL staff, must file a report with the court summarizing the transitional living services plan and the young adult’s progress in achieving independence. After reviewing the report and any testimony and evidence, the court can determine that the young adult is entitled to additional services and may order the department to take appropriate action. Voluntary extended jurisdiction

ends when the young adult turns 21 or the young adult withdraws consent to the jurisdiction. Voluntary Extended Jurisdiction can be particularly useful when a young adult has not been able to obtain all their identification documents, has unresolved name/identity issues, or is being denied transitional benefits or is being referred endlessly around CPS without meaningful progress to resolve problems. Ideally, the request should be made before the case goes into Trial Independence and the young adult still has an Attorney Ad Litem to file the request on their behalf. If your client has unresolved issues but is leaving foster care, advise them of their right to extend jurisdiction and recommend that they seek extended jurisdiction to protect their right to return to court as needed; once jurisdiction has ended, a court may determine that there is not a legal basis to resume jurisdiction once it has ended.

D. Court Extends Jurisdiction on Own Motion for Guardianship

If the court believes the young adult is incapacitated on the court’s own motion, jurisdiction can be extended to allow DFPS to refer the young adult the Department of Aging and Disability Services (DADS) for guardianship service. TEX. FAM. CODE §263.603. The process for the DADS referral is outlined in CPS Handbook §§10330-10335 and should begin when the youth turns 16. Ideally, the guardianship referral process should have been completed by the time the youth turns 18 but if it is not, jurisdiction can be extended.

Extension for a guardianship referral terminates when:

- DADS determines a guardianship is not appropriate;
- a Probate jurisdiction court denies the application to appoint a Guardian; or
- a Guardian is appointed by the Probate Court.

Once the guardian is appointed, that guardian can request that the court extend jurisdiction over the young adult; the court may not issue any orders that conflict with an order entered by the probate court. TEX. FAM. CODE §263.604. Generally, jurisdiction would be sought to seek the oversight of any necessary transitional services for the incapacitated young adult.

IX. Youth with Disabilities

Besides the need to consider guardianship services for youth with capacity issues, youth with disabilities

need other services and assistance when aging out. Unfortunately, to give the topic appropriate treatment, an entirely separate paper and presentation is warranted. Just a few important pointers can be included in this paper.

A. SSI (and RSDI)

Any youth with significant disabilities that will limit their ability to obtain and maintain employment should be assigned to a CPS SSI Specialist. The specialist should first determine whether the youth already receives SSI and if the youth does not, an Attorney Ad Litem should insist that CPS apply for SSI benefits on behalf of the youth. Obtaining accurate information about the youth’s SSI status and the assistance of the SSI specialist are not necessarily easily accomplished. Require a written notice of SSI eligibility to verify the youth truly has been found eligible. The SSI Specialist’s assistance in preparing the SSI application is limited and the majority of the work may be placed on the caseworker. If necessary, involve higher level CPS supervisors to ensure that the necessary support is provided and the application is timely filed. Unfortunately, you may find yourself emailing and phoning many people many times to get the process completed.

Many youth who are eligible for SSI are not on SSI due to the structure of federal funding for foster care. It is critical that youth with disabilities have an application filed many months before their 18th birthday so there is plenty of time to gather supporting documentation and process the application.

The SSI application process can take years and requires extensive documentation and navigation; vulnerable foster youth who leave care without SSI will have significant barriers to accessing it when out of care.

A source of confusion is that many foster youth receive Retirement, Survivors and Disability Insurance (RSDI). This is based on one of their parents being deceased, disabled or retired. (Even if a parent’s rights have been terminated, their child is still entitled to RSDI benefits based on the parent’s Social Security credits and status. RSDI will end when the youth turns 18 unless they are still in high school and then it will end once they turn 19, graduate or leave school, whichever comes first. If the youth is disabled CPS must apply for SSI (and for continued RSDI) for them. RSDI can be continued for a disabled youth who establishes disability with the Social Security Administration, but this does not just automatically happen. It is not uncommon for some to think a

disabled youth has SSI because they are receiving RSDI benefit; so written confirmation of benefits from the Social Security Administration is required. Your client also may assume that they will receive all the money that has been paid on their behalf by Social Security once they leave foster care. However, unless the amount of RSDI benefits exceeded the monthly foster care payment, there is not likely to be any funds in trust for them. Many youth have difficulty understanding what happened to the money that was paid on their behalf since the foster care provider did not spend it directly on them or give it them, so the sooner you can clarify with CPS, again in writing, whether there are any trust funds and the level of benefits, the sooner you can begin discussions with your client about the topic.

B. Disability Determination Specialist

For a youth with long term care concerns it is critical that a Disability Determination Specialist be assigned to the youth when they are 16 and that you be in contact with the person to monitor progress of the case.

C. Referral to Department of Assistive and Rehabilitative Services (DARS)

Before a youth turns 18, make sure CPS has referred the youth to the Texas Department of Assistive & Rehabilitative Services which has Vocational Rehabilitative Programs, Transition Planning, Supported Employment, and Independent Living Services. The referral should include the youth having their initial interview and follow-up assessments with CPS staff or foster placements taking youth to the necessary appointments and providing necessary support and assistance.

D. Home and Community-Based Services (HCS) List Placement

When a child has mental retardation, have CPS refer the child to the local MHMR Center for placement on HCS waiting list. This can and should be done when the child is very young. Make sure the caseworker annually checks the child’s status on the HCS waiting list. If a child’s placement is changed, make sure the child is still on HCS waiting list. If the child does not get an HCS slot at 18 from Texas Department of Aging and Disability Services, seek one of the HCS slots CPS gets from the legislature. HCS placements are a much better long term option for the youth and give great flexibility in placements.

X. CPS Records

Many aged-out foster youth would like to obtain their CPS records. Not only do they contain details of their personal history that nobody else may be able to provide them, they may need them to help locate family, for medical history or to establish eligibility for SSI.

Young adult foster youth can have difficulties completing the record request application and providing the required documentation. The lengthy response time often means the mobile young adult foster youth’s address has changed once the records are located and redacted of confidential information and don’t actually receive the CD that contains their records.

The Project provides representation to youth who want their records. After filing the request, the Project makes follow-up inquiries and takes necessary steps when the records are not promptly supplied or incomplete. When there is an important need for the records to be received quickly, the Project notifies DFPS Records Management of the need to prioritize. The Project also maintains ongoing contact with the youth so once the records have arrived they can be sent to the youth. When records are received by the Project, delivery is coordinated and the Project will provide paper and/or electronic records. If the records are needed for information relevant to a legal issue the youth is seeking assistance with, the records are reviewed for that purpose.

To request records without the assistance of the Project, go to www.dfps.state.tx.us/policies/caserecord.asp and download the record request form – 4885G. Foster youth are entitled to records pursuant to TEX. FAM. CODE §261.201(d).

XI. Juvenile and Adult Criminal Records

While representing your foster youth client in juvenile or adult criminal proceedings is not part of your duties as an Attorney Ad Litem, it is important that you counsel your client regarding the long term consequences of their records.

A. Sealing Juvenile Records

Many think that juvenile justice system proceedings do not become public record. While a court clerk will not give public access to the court information, juvenile proceedings very frequently end up in a criminal records database. Foster youth learn

that others have access to the information when a potential employer runs a background check, when they apply for public housing or when they apply for licensing or a training program that requires a background check. One youth’s only criminal record was a shoplifting case from when she was 14, shortly before she entered foster care due to the problems at her home. She had successfully completed the probation and had forgotten about the incident until she was laid off from her job and she applied for a job with a day care center. Another youth was erroneously charged with assault when a youth in her foster home alleged she had cut her. When the alleged victim later admitted she had cut herself, the youth’s case was dropped, but the family violence assault charge showed up on a background check for her medical training program.

Youth should be counseled that if they were involved with the juvenile justice system, they should look into having their records sealed and that is not necessarily a quick or easy process. They should also be counseled that not everything can be sealed immediately and some crimes may never be sealed, especially if felonies are involved or if there is subsequent adult criminal activity.

The Project assists some foster youth with sealing records and has also published *Sealing Juvenile Court Records in Texas* available in the Legal Resources section of the Project’s web page, texasfosteryouth.org. The Texas State Bar Juvenile Law Section also has forms available for sealing records, www.juvenilelaw.org. Unfortunately, the process of sealing records is complex and in most cases requires the assistance of an attorney. You can check with the county’s Juvenile Probation Department to see if they have a form they provide for sealing records – if so, they may make the process accessible to non-lawyers, as Travis County does.

Beyond juvenile cases, youth might also have cases in the justice of the peace or municipal court, often for school infractions. The process for addressing these records is different and there are not any readily available resources for self-help.

B. Unadjudicated Children Turning 17

When a youth has failed to complete their “sentence” for a justice of the peace or municipal court, once they are 17, the Court can send them one last notice to their last known address to appear. If the youth does not appear, they can then be charged, as an adult, with failure to appear, a Class C misdemeanor under TEX. PENAL CODE § 38.10 and TEX. TRANSP.

CODE § 543.003, which can result in an arrest warrant being issued. CODE CRIM. PROC. Ann. Art. 45.060.

Many foster youth have long been gone from the address where the notice is sent, so they have no knowledge that the warrant has been issued. And they may have little memory of the court proceeding for which adjudication has not been completed. Sometimes it took place before they entered CPS care and was one of the indications that something was very wrong in their home life. Other times they were moved to a new placement before it could be addressed with the Court and their caseworker told them they would see about taking care of it. For these youth, the sudden arrest when the warrant catches up with them or the information that there is a warrant and huge fines waiting creates tremendous problems and anxieties. If your client had any court interactions and it is unclear whether the matter was successfully resolved, contact the court to determine the status and assist the youth in making arrangements to perform community service to resolve the matter before it becomes a warrant and an arrest.

C. Adult Criminal Record

While most youth seem to understand they will be charged as an adult once they are 17, many do not appreciate the long term consequences of an adult criminal record. Most adult records cannot be expunged, and while non-disclosure might be an option for some crimes where they complete deferred adjudication, significant time must pass and it is not available for many crimes, including family violence, which can include assaulting anyone in a foster home or facility. See TEX. GOV'T CODE § Sec. 411.081.

If your client has a history of outbursts, fighting, or lashing out, you should have ongoing discussions with them how that behavior will likely face more severe consequences once they are 17. Due to the trauma they have suffered, some foster youth have difficulty controlling themselves when emotions overwhelm them. Unfortunately they will not necessarily be tolerated once they reach a certain age. And even if their lawyer negotiates a plea for them and they complete the terms, it could very likely be on their record forever and will be an issue whenever they apply for a job.

XII. Credit Report

Many foster youth are victims of identity theft by family members, former foster care providers and others who have had access to Social Security

numbers, dates of birth and other important information. The Project has seen several cases where the foster youth's identity was used to establish utility and cable service. Beginning at the age of 16, DFPS is required to obtain a copy of a credit report annually for the foster youth. The report is to be reviewed with the youth and they should receive information about how to correct it and assistance in correcting it if necessary. TEX. FAM. CODE §264.016. Talk with your client about whether this is being done and insist that DFPS include a statement about whether the youth's credit report has been run and reviewed with your client in the court reports.

XIII. Conclusion

The transition process to independence for teen foster youth is daunting. Their lawyer must be familiar with the resources available to their client and advocate obtaining the full range of benefits and services available to aging out foster youth. In addition, the attorney should be alert to the many issues that can arise and how to address them before the youth leaves foster care.

Appendix A

Texas Foster Youth Justice Project

www.texasfosteryouth.org

(877) 313-3688

info@texasfosteryouth.org

COURT CHECKLIST FOR YOUTH AGING OUT OF FOSTER CARE

Before a youth's foster care case is closed, the Texas Department of Family and Protective Services caseworker assigned to the case should provide the youth with the following items.

General Information

- _____ Original birth certificate.
- _____ Original Social Security card.
- _____ Identification card or driver's license.
- _____ Immigration documents.
- _____ A copy of the final court order and case file.
- _____ A copy of the CPS file on a computer disk.
- _____ Any information relating to the youth's personal bank account or any trust funds established on behalf of the youth.
- _____ Any information regarding child support.
- _____ Information explaining how to obtain Section 8 or Subsidized Housing.

Education Information

- _____ Official school records from all schools attended.
- _____ Last report card.
- _____ Official high school transcript.

- _____ For special education students:
 - _____ The youth's most recent ARD report
 - _____ The youth's most recent evaluation.
 - _____ Information on how the youth can continue working towards graduation until the age of 21.
- _____ If a youth is not graduating from high school, information about getting a GED and Job Corps.
- _____ Verification from PAL coordinator or Aftercare Case Manager of eligibility for:
 - _____ Transitional Living Allowance
 - _____ Aftercare Room and Board Assistance
 - _____ Education and Training Voucher Program
 - _____ College Tuition and Fee Waiver
- _____ Detailed instructions on how to access the services including contact phone number, forms to be used, and where to find them on the internet.
- _____ Information on the appeal process if the youth does not receive the Transitional Living Allowance or another benefit.
- _____ Contact information of the youth's PAL coordinator and Aftercare Case Manager.

Medical Information

- _____ Complete medical and dental reports, exams, and logs.
- _____ Complete list of psychoactive medication prescribed and administered at any time in the child's history.
- _____ Information regarding Supplemental Security Insurance (SSI) or any other type of disability, such as Home and Community-Based Services (HCS) and other Medicaid waiver programs.
- _____ Original Medicaid card.

- _____ Record of immunizations.
- _____ Details on the follow-up medical, dental, psychiatric, and therapy appointments that are scheduled or need to be scheduled.
- _____ Adequate supply of medication including instructions on how to access refills, a copy of any paperwork that must be submitted, names of participating pharmacies or locations where medications can be obtained?
- _____ Psychological evaluations (if applicable).
- _____ Information on how to obtain affordable mental health and medical care.

Employment/Job Training

- _____ Information on enrolling in a job training program.
- _____ If the youth is disabled, information about applying for services from the Department of Assistive and Rehabilitative Services (DARS).

The DFPS caseworker should have also completed and filed the following:

- _____ Petition for Special Immigrant Juvenile Status, U.S. Citizenship and Immigration Services Form I-360
- _____ Transitional Medicaid application or other health insurance form
- _____ Supplemental Security Insurance (SSI) application
- _____ Department of Assistive and Rehabilitative Services application, if youth is disabled
- _____ Applications for public assistance such as food stamps
- _____ Application for services from the Department of Assistive and Rehabilitative Services (DARS), if the youth is disabled.

Appendix B

CAUSE NO. _____ Type of Hearing: _____ Date: _____

IN THE INTEREST OF § IN THE DISTRICT COURT
OF _____ COUNTY, TX

§

A CHILD/CHILDREN § _____ JUDICIAL DISTRICT

YOUTH REPORT TO THE COURT

Where I live now: _____

Total # of places I've lived since I've been in foster care: _____

Total # of School Changes I've had since my last hearing: _____

Who I currently stay in touch with:

Biological parents _____

Foster parents _____

Siblings _____

Relatives _____

Anyone else _____

MY HISTORY:

MY NEEDS:

MY WISHES:

MY TRANSITION PLAN:

THE COURT NEEDS TO KNOW:

MY RECOMMENDATIONS:

1. _____

2. _____

3. _____

4. _____

Youth report written by: _____ Date: _____
Youth Signature

Youth report submitted to the court by: _____
Signature and Title

Date submitted: _____

Appendix C

EXTENDED JURISDICTION MATRIX

Status of young adult who turned 18 in care	What criteria define this status?	Does the court have extended jurisdiction?	Is a court hearing required or optional during this status?*	Who is the CPS contact?	When does court's jurisdiction end?	Additional comments
EXAMPLE 1. YA turns 18 and elects to remain continuously in extended foster care (EFC) , with no interruption in care.	Per §263.601(1), to be considered in EFC, the YA <i>must</i> be in a residential facility licensed or approved by DFPS, and paid for by DFPS; including foster homes, foster group homes, RTCs, and "Supervised Independent Living" providers who have a contract with DFPS for EFC. This does not include YAs living in State Supported Living Centers, HCS homes, with relatives, in a juvenile justice placement, or other settings not subject to DFPS regulation or payment.	Yes. Court jurisdiction is <i>mandatory</i> per §263.602(a) for as long as the YA remains in EFC, up to the YA's 21 st birthday.	Yes. Mandatory EFC review hearings * must be held every six months while YA is in EFC, similar to the placement review hearings conducted prior to the YA's 18 th birthday. * See §263.602(b)-(e), and discussion below chart for <i>mandatory EFC review hearing/notice requirements</i> .	The CVS** worker who was assigned before the YA turned 18.	Jurisdiction ends on the YA's 21 st birthday. <i>But see</i> remaining examples for YAs who: <ul style="list-style-type: none"> • exit EFC before 21, with or without accessing transitional living services (TLS) (Examples 2 & 3); or • exit EFC and later return to EFC before turning 21 (Example 4). 	Extended jurisdiction and 6-month review hearings are required by Title IV-E of the Social Security Act for the state to receive federal reimbursement for the cost of EFC. To be <i>eligible</i> for EFC after age 18, the YA must meet eligibility criteria in 264.101 and related DFPS rules. YA can remain in EFC until last day of month YA turns 22 if still completing HS or GED; or until last day of month YA turns 21 under all other EFC eligibility criteria.
EXAMPLE 2. YA is in trial independence (TI) and not receiving either EFC or TLS services from DFPS.	When a YA exits foster care/EFC on <i>or after</i> turning 18, the YA is automatically deemed to be in a mandatory TI status for a minimum period of 6 months, per §263.6015(b). No court order is required for the mandatory 6-month TI. Per §263.6015(c), the court <i>may</i> , in its discretion, order a longer TI period of up to a maximum of 12 months.	Yes. The court has mandatory extended jurisdiction during TI per §263.602(a) & (f).	No. The court is not required to conduct any periodic hearings during TI, and may not compel the YA in TI status to attend a court hearing, per §263.602(g).	The CVS** worker who was assigned before the YA turned 18.	Jurisdiction ends at the end of the TI period unless, <i>prior to end of TI</i> , the YA accesses transitional living services (TLS) or returns to EFC, as described in EXAMPLES 3 & 4, below.	YA in TI status is not, by definition, receiving EFC services. YA in TI status may, or may not, be receiving TLS while in TI status. If YA in TI is receiving TLS, see EXAMPLE 3.
EXAMPLE 3. YA exits foster care on <i>or after</i> turning 18, but is receiving transitional living services (TLS).	On <i>or after</i> turning 18, a YA exits foster care/EFC, triggering the start of automatic TI status of 6 months (or a longer TI status of up to 12 months if the court orders a longer period of TI). Throughout TI, or at some point before the TI period ends, the YA accesses transitional living services (TLS) - either directly from the department or from a provider with whom DFPS contracts for TLS services. TLS services are defined in §264.121, and <i>includes</i> Preparation for Adult Living Services (PAL) and Education and Training Voucher (ETV) services.	Yes. The court has mandatory jurisdiction for as long as YA remains in TI status, per §263.602(a) & (f). Court <i>may</i> extend jurisdiction beyond end of TI <i>if YA requests voluntary extended jurisdiction</i> , per §263.6021(a).	No. The court is not required to conduct any periodic hearings during TI, and may not compel the YA in TI status to attend a court hearing, per §263.602(g). However, YA <i>may</i> request <i>ad hoc</i> hearing to review delivery of TLS services. §263.6021(c) & §263.602(g) See §263.6021(c)-(e) and discussion below chart for voluntary hearing requirements.*	Until TI ends, the CVS** worker has primary responsibility. After TI ends, YA will only have a PAL** worker assigned.	Jurisdiction ends <i>on the earlier of</i> the date: A. TI period ends if YA did not request voluntary jurisdiction under §263.6021; B. If YA has requested voluntary extended jurisdiction, the court's jurisdiction ends when the YA withdraws consent to voluntary extended jurisdiction, per §263.6021(b); OR C. the YA's 21 st birthday.	Extended jurisdiction beyond the TI period to review TLS services delivery, as provided under §263.6021, is entirely voluntary on the part of the YA and the court. When jurisdiction is extended <i>voluntarily</i> under §263.6021, there are no mandatory, periodic review hearings required, as there are when YA is in EFC. Rather, under voluntary jurisdiction, the YA <i>may request</i> a hearing <i>as needed</i> to review the provision of TLS services. Such hearings are described in §263.6021(c)-(e), and are further described below this chart.*

EXTENDED JURISDICTION MATRIX

Status of young adult who turned 18 in care	What criteria define this status?	Does the court have extended jurisdiction?	Is a court hearing required or optional during this status?*	Who is the CPS contact?	When does court's Jurisdiction end?	Additional comments
EXAMPLE 4. YA exits foster care on or after turning 18, and later returns to EFC.	A YA who was in DFPS conservatorship on the day before turning 18, may elect to leave foster care, but later elect to return to EFC before turning 21. A TI period of 6-12 months is triggered <i>each time a YA leaves foster care/EFC.</i> §263.6015(d) Accordingly, when a YA returns to EFC - after having previously exited foster care/EFC – the YA may return: A. during TI, while court still has <i>mandatory</i> extended jurisdiction under §263.602(a); B. after TI has ended, but while court still has <i>voluntary</i> extended jurisdiction under §263.6021 (See Example 3); or C. after both mandatory and voluntary jurisdiction (if any) have ended.	Yes , if YA returns to EFC before either mandatory jurisdiction (per §263.602) or voluntary jurisdiction (per §263.6021) ends, as described in the examples above. No , if YA returns to EFC care after mandatory or voluntary court jurisdiction ended.	Yes , if the court did not lose jurisdiction before the YA returned to EFC, a review hearing should be held as soon as the YA returns, and every 6 months thereafter while the YA remains in EFC, per §263.602(b)-(e), and discussion at end of chart. * No , if court had already lost jurisdiction before YA returned to care.	A new CVS** worker will be assigned in the area where the YA is residing in EFC.	Assuming jurisdiction had not been lost before the YA returned to EFC, jurisdiction ends <i>on the earlier of</i> : A. date of YA's 21 st birthday B. if the YA leaves EFC before turning 21 and does not request voluntary jurisdiction as described in Example 3, date the TI period ends; or C. if, after YA exits EFC, the TI period ends and the YA obtained voluntary jurisdiction, jurisdiction ends when YA withdraws consent to jurisdiction.	If YA leaves foster care on or after turning 18 and does not return to care before the court's jurisdiction ends under the provisions of Subchapter G, Ch. 263, there is no provision in Subchapter G for the court to regain jurisdiction. Each court will have to determine whether there is a legal basis for establishing jurisdiction for a YA who later returns to EFC or resumes receiving TLS services after jurisdiction has ended. All costs of EFC for a YA who returns to EFC after a TI period ends will be state-paid, with no federal reimbursement to the state.
EXAMPLE 5. YA is not in EFC, TI has ended, and YA has not requested voluntary jurisdiction to review TLS, but YA is pending a referral to DADS for guardianship services.	YA was in DFPS conservatorship on 18 th birthday, and DFPS has made a referral to DADS for possible guardianship services. For purposes of this example, YA is not in EFC or TI, and therefore not subject to mandatory jurisdiction under §263.602(a); nor has YA requested voluntary jurisdiction to review transitional living services, as provided under §263.6021(a). This scenario should very rarely occur, as most guardianship referrals will be resolved before EFC or TI status ends.	Perhaps. Court may, on its own motion, extend jurisdiction pending the outcome of the DADS guardianship referral, per §263.603.	No hearing is required pending outcome of DADS guardianship referral.	The YA's CVS worker remains responsible, pending the outcome of a referral to DADS.	Jurisdiction ends when: A. DADS or Probate Court denies guardianship; or B. Guardian is appointed, unless guardian should request voluntary jurisdiction to review TLS. See §263.603	DFPS does not consider a YA in guardianship to be in EFC, regardless of where placed, because DFPS no longer has "placement and care" responsibility over the YA. If a guardian is appointed before court loses jurisdiction, the guardian may request voluntary continuation of jurisdiction, as provided under §263.604, in conjunction with §263.6021, to review TLS provided to YA/ward.

* **What kinds of hearings are required after age 18?** There are two types of hearings per Subchapter G, Chapter 263, depending upon a YA's status at the time of the hearing:

- (1) If the YA is in EFC, and the court has not yet lost jurisdiction under any of the provisions of Subchapter G, the court **MUST** continue to conduct mandatory review hearings, at least every 6 months, and make findings similar to those required for children under 18. The YA's CVS worker will continue to file a "plan of service" and court report with the court for purposes of the EFC review hearing, and notice of the EFC review hearing must be provided to the YA, DFPS, the YA's placement provider, any parent of the YA still involved in the YA's life, and any *ad litem*/CASA still appointed to the case. See hearing requirements in §263.602 (b)-(e).
- (2) If the YA is no longer in EFC, but is accessing TLS services and the court has not lost jurisdiction under any of the provisions of Subchapter G, the court *may, at the YA's request*, schedule a hearing as needed to review the provision of TLS services to the YA. This type of voluntary hearing has no special notice requirements and is conducted only when the YA requests the hearing. There is no "plan of service" for a YA who is not in EFC, however, CPS will file a court report describing the TLS services the YA is receiving. See hearing requirements in §263.6021(c)-(e).

** **Who in CPS has primary responsibility for reporting to the court after age 18?** The CVS worker is the YA's conservatorship worker. This worker has primary responsibility for preparing court reports and attending court while a YA is receiving EFC services or in TI status. The CVS worker should coordinate with the YA's PAL worker to obtain additional information regarding TLS the YA may be accessing. The PAL worker has primary responsibility for reporting to the court for YAs who are no longer in EFC or TI, as there will no longer be a "conservatorship" worker assigned to such YA by DFPS. When unable to contact the YA's CVS or PAL worker, questions may be routed to the CPS CVS Program Administrator or to the Regional Attorney.

Can a young adult have more than one TI period? Yes – see §263.6015(d). A new TI period begins any time a YA exists foster care. For example, a YA may attend college and live in a dormitory during the school year, under a 12 month TI period. Prior to expiration of TI, the YA may return to EFC during the summer break, and again exit EFC to return to school. A YA may enter a new period of TI for up to 12 months, which preserves extended court jurisdiction and federal funding should the YA return to EFC the following summer – up to age 21.