TEXAS FOSTER YOUTH JUSTICE PROJECT

Legal Help for New Beginnings

WHEN MINORS LIVE APART FROM THEIR PARENTS

LEGAL OPTIONS AND CAREGIVING ALTERNATIVES

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THE TEXAS FOSTER YOUTH JUSTICE PROJECT

The Texas Foster Youth Justice Project provides free legal help to people who have experience in foster care or young people who are homeless or do not have any family support. We help people understand their rights, access benefits, and overcome certain barriers that may keep them from supporting themselves. We provide legal information, guidance, referrals, and representation to remove barriers to living independently. We also educate the general public about the legal needs and concerns of foster and homeless youth. Texas RioGrande Legal Aid created the Texas Foster Youth Justice Project in 2007 with the support of the Travis County Women Lawyers Foundation and the Texas Supreme Court's Permanent Judicial Commission for Children, Youth & Families with additional funding provided by the Texas Access to Justice Foundation.

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REMOVAL OF DISABILITIES OF MINORITY (EMANCIPATION)

WHEN MINORS LIVE APART FROM THEIR PARENTS

REMOVAL OF DISABILITIES OF MINORITY (EMANCIPATION)

What is removal of disabilities of minority?

"Disabilities of minority" refers to restrictions placed on a minor's rights and responsibilities, or their capacity, intended to protect the minor. This is often referred to as emancipation. A minor is a person who is under the age of 18 and not married. Removal of these restrictions allows a minor to have the capacity of an adult.[1]

Who is eligible?

Minors who are eligible to remove disabilities of minority must be Texas residents. They also have to either be 17 years old and self-supporting while managing their own finances; or be 16 years old, not living with their parents, and self-supporting while managing their own finances.[2]

How do you remove the disabilities of minority?

A formal written request, a petition, must be submitted to, or filed, with the court in the county the minor lives in by the minor seeking to remove disabilities of minority.[3] A parent of the minor, or an attorney appointed by the court to represent the minor's interests, must swear under oath that the information in the petition is correct.[4]

What can a minor do after emancipation that could not be done before?

- Enter into contracts (such as an apartment lease);
- Consent to medical treatments;
- Make educational decisions;
- Litigate without a next friend or guardian;
- Manage their income and estate; and
- Make all other legal decisions that would have had to be made by a parent, guardian, or managing conservator.

What information is needed to file a petition?

- The name, age, and place of residence of the minor;
- The name and residence for each living parent;
- The name and residence of the guardian of any estate or of any managing conservator;
- Reasons why removal would be in the best interest of the minor; and
- The purposes removal is being requested for.[5]

Is this the right fit?

- If the minor is any younger than 16 years old, they will not qualify for this option.
- When filing the petition, the minor will need to have a job and be able to prove they are managing their own financial affairs. Where is their money kept? How many hours a week do they work? At what rate? How are they spending their money?
- The addresses of any living parents need to be known in order to file the petition. The minor's parents must be personally served with the petition and have the opportunity to appear in court to oppose it.
- The address listed for the minor will be included in the copy of the petition the minor's parents must receive—does the minor feel safe with this information being known to them? You may also consider only including the county of residence.
- The court process is not quick and can take several months.

[1] Texas Family Code § 31.006.
[2] Tex. Fam. Code § 31.001(a).
[3] Tex. Fam. Code §§ 31.001(b), 31.003.
[4] Tex. Fam. Code § 31.002(b).
[5] Tex. Fam. Code § 21.002(a).

AUTHORIZATION AGREEMENT FOR VOLUNTARY ADULT CAREGIVER

WHEN MINORS LIVE APART FROM THEIR PARENTS

AUTHORIZATION AGREEMENT FOR VOLUNTARY ADULT CAREGIVER

What is an Authorization Agreement for Voluntary Adult Caregiver?

It is a form that a parent or parents can sign authorizing an adult to provide temporary care for a minor and make decisions on their behalf. The form is signed by the parent(s) and the adult agreeing to care for the minor.[6]

Who is authorized to act?

Any adult person who the parent has authorized to provide temporary care for a minor, can be authorized by this agreement. The person authorized to care for the minor also must sign the form.[7]

What does an Authorization Agreement for Voluntary Adult Caregiver do?

The Authorization Agreement addresses eight actions the adult caregiver can do:

(1) Consent to medical treatment for the minor;
(2) Get insurance for the minor;
(3) Enroll the minor in school/daycare;
(4) Consent to extracurricular activities;
(5) Consent to the minor getting a driver's license;
(6) Consent to the minor getting a job;
(7) Apply for and receive public benefits on behalf of the minor; and
(8) Obtain state or federal personal identification documents for the minor.[8]

What does an authorized agreement *not do?*

This agreement does not limit or terminate the parents' rights to the child.[9] This agreement also does not address anything beyond the eight actions listed above.

Additionally, the adult caregiver cannot consent to abortions, emergency contraception, or immunizations if the parent specifically said no, and caregivers cannot apply for a passport on behalf of the minor.[10]

What information is needed?

The name, address, and telephone number of both parents and the adult caregiver are needed.[11] Only one parent is required to sign, but if only one parent signs the agreement, the signing parent must send a copy of the signed agreement to the non-signing parent within 10 days after the agreement was signed. The agreement must be sent by certified mail, return receipt requested, AND by regular first class mail. There are some exceptions to the mailing requirement that can be discussed with an attorney. [12]

How long does an Authorization Agreement last?

The agreement is valid for six-month terms that automatically renew, unless the agreement provides a specific expiration date before the six-month term is up or it is terminated before the term expires.[13] Termination occurs though written revocation of the agreement or if the court enters an order concerning the minor.[14]

Do I need to go to court?

Unless there is a court order or pending case involving custody, possession, visitation, child support, or placement involving the child, this is a document that can be signed outside of court between the parent and the adult caregiver.[15] If there has been a court order or pending case involving the child, the court with jurisdiction must give written approval. The signed agreement must be notarized.[16]

[6] Tex. Fam. Code § 34.002
[7] Tex. Fam. Code § 31.0015
[8] Tex. Fam. Code § 34.002(a).
[9] Tex. Fam. Code § 34.007(b)
[10] Tex. Fam. Code § 34.002(c).
[11] Tex. Fam. Code § 34.003(a)
[12] Tex. Fam. Code § 34.005(a)
[13] Tex. Fam. Code § 34.0075.
[14] Tex. Fam. Code § 34.008.
[15] Tex. Fam. Code § 34.0021
[16] Tex. Fam. Code §34.004

SPECIAL POWER OF ATTORNEY FOR A NONPARENT CAREGIVER (SPOA)

WHEN MINORS LIVE APART FROM THEIR PARENTS

SPECIAL POWER OF ATTORNEY FOR A NONPARENT CAREGIVER (SPOA)

What is a power of attorney?

A power of attorney is a written document allowing someone else to make decisions or take actions on another's behalf. A sample SPOA is included in Appendix E.

What is a special power of attorney for a nonparent caregiver?

A special power of attorney is created for a specific purpose, so the SPOA for a nonparent caregiver is created for the caregiving of a child. This is a private agreement between the parent(s) of a minor and a nonparent caregiver, giving the nonparent authorization to make decisions for the minor. While both parents can sign the SPOA, it is only necessary for one sign if the other is not readily available.

What can be addressed in an SPOA?

Any right that a parent has regarding their children can be given through an SPOA, making this option more expansive than an authorization agreement, which specifies eight acts that a nonparent caregiver can perform on behalf of a minor.

Is an SPOA a custody document?

An SPOA is not a custody document or order. Parents and nonparents cannot establish custody through a power of attorney. Parental rights and duties are also not impacted by an SPOA.

How long does an SPOA last?

SPOAs are valid until they are revoked or expire based on the contents of the agreement. They also expire upon the death of the parent giving the powers or if those powers are removed or changed by a court order.

[17] Tex. Fam. Code § 34.0015-34.009

Do I need to go court?

No, this document can be signed outside of court between the parent and the adult caregiver. It can be signed even if there is a court order regarding custody, possession, visitation, child support, or placement of the child. The SPOA must be notarized.

SPOA vs. Authorization Agreement for Voluntary Adult Caregiver

Because there is a Texas law[17] providing for the Authorization Agreement for Voluntary Adult Caregiver, third parties, such as schools and medical providers, are more likely to accept it as proof of authority to make decisions and act on behalf of a child. An SPOA is a valid document but is sometimes rejected because there is not a specific law authorizing it.

If there is a court order addressing custody, possession, visitation, child support, or placement involving the child, or a pending court case addressing those issues, an SPOA is likely the better option because you do not have to go to court to get approval of the Authorization Agreement for Voluntary Adult Caregiver.

An SPOA is an easier option if only one parent is signing because the Authorization Agreement for Voluntary Adult Caregiver has complicated requirements for mailing the other parent copies of the notice.

Both SPOAs and Authorization Agreements for Voluntary Adult Caregiver may be rejected arbitrarily because they were signed a long time ago, so it is best to maintain contact with the parent so new documents can be signed as needed.

SPECIAL POWER OF ATTORNEY FOR A NONPARENT CAREGIVER (SPOA)

Is this the right fit?

- Do the actions laid out in an authorization agreement address what is needed? If not, an SPOA may be a better option.
- An SPOA requires the consent of the parents, as it is between the parents of the minor and the adult caregiver. If a parent will not consent, an SPOA will not be an option.
- This is a longer-term option, but it is not a permanent option because there is no defined expiration date and it can be revoked at any time by the minor's parents.

TEMPORARY AUTHORIZATION FOR CARE OF A MINOR CHILD (TEMPORARY AUTHORIZATION ORDER)

WHEN MINORS LIVE APART FROM THEIR PARENTS

TEMPORARY AUTHORIZATION FOR CARE OF A MINOR CHILD (TEMPORARY AUTHORIZATION ORDER)

What is Temporary Authorization for Care of a Minor Child?

If a parent is unable or unwilling to sign an authorization agreement or SPOA, the court may grant an adult caregiver the temporary authority to care for a child with a time-limited court order.

Who can seek a Temporary Authorization Order?

A minor's grandparent, adult sibling, adult aunt or uncle, or an adult with a written authorization to seek medical care for the minor from the minor's parent or conservator can seek court authorization for the care of the minor. The minor must have lived with the adult caregiver seeking the authorization for at least 30 days before filing. If the caregiver has an Authorization Agreement for Voluntary Adult Caregiver or other signed document from the parent, such as an SPOA, that enables the caregiver to take care of the child, they generally cannot get a temporary authorization order. But there may be circumstances, such as major surgery, where the medical provider is unwilling to proceed without consent by a parent or someone with authority granted under a court order. [18]
If a parent of the minor objects to the authorization being granted, the court must dismiss the case. [19]

How do you get a Temporary Authorization Order?

The adult caregiver with actual possession, care, and control of the minor for at least 30 days can file a petition asking the court to grant them temporary authority to care for the minor.

What information is needed to file?

The list of information needed to petition for a temporary authorization order is found in the Texas Family Code in Chapter 35, Section 35.003. The petition must include:

(1) The names, dates of birth, and addresses of the minor and the adult caregiver;
(2) The name(s), and, if known, current address of the minor's parent(s);
(3) The dates in the last 12 months that the child has resided with the adult caregiver;
(4) A statement addressing why a signed, written document cannot be obtained from the parent(s);
(5) Information about any court proceeding involving the child; and
(6) Why the authorization is needed.

What is the effect of a Temporary Authorization Order?

The order can authorize the adult caregiver to consent to medical treatment on behalf of the minor, authorize the release of information on behalf of the minor, obtain and maintain any public benefit for the child, enroll the minor in school, authorize the minor to participate in extracurricular activities, and authorize any other care for the minor essential to their welfare.[20]

How long does a Temporary Authorization Order last?

A temporary authorization order expires on the designated date in the court order, but will expire no later than one year after the date the order was signed.[21] The order can be renewed by the court for one year if the adult caregiver can show a continuing need. The court can also terminate the order on a finding that there is no longer a need.[22]

[18] Tex. Fam. Code § 35.002.
[19] Tex. Fam. Code § 35.005.
[20] Tex. Fam. Code § 35.005(d).
[21] Tex. Fam Code § 35.005(d)
[22] Tex. Fam. Code § 35.006.

TEMPORARY AUTHORIZATION FOR CARE OF A MINOR CHILD (TEMPORARY AUTHORIZATION ORDER)

Is this the right fit?

- Has the minor been living with the adult caregiver for at least 30 days before filing the petition? This is a requirement to apply.
- Is the adult caregiver a grandparent, adult sibling, adult aunt or uncle, or an adult with a written authorization to seek medical care for the minor from the minor's parent or conservator? This relationship is also required to apply.
- A temporary authorization order does not terminate or alter a parent's rights, which means they can object to this order at any time. If a parent objects, the court must either dismiss the case or terminate the order.
- A parent can take the child back into their possession at any time.
- This is a short-term option, and the ability to renew depends on the court finding that there is still a need. Caregivers can obtain a temporary authorization order to take care of the minor's short-term needs while they pursue a Suit Affecting the Parent-Child Relationship (SAPCR) or other long term options.

SUIT AFFECTING THE PARENT–CHILD RELATIONSHIP (SAPCR)

WHEN MINORS LIVE APART FROM THEIR PARENTS

SUIT AFFECTING THE PARENT–CHILD RELATIONSHIP (SAPCR)

What is a Suit Affecting the Parent-Child Relationship?

A Suit Affecting the Parent-Child Relationship, or SAPCR, is a court case in which someone requests court orders generally regarding three issues:

- Conservatorship: who has specific rights and duties as a parent or caregiver;
- Access and visitation: who gets to have access to the child and how often they get to visit with them;
- Child support: who is required to make payments for the child's financial support.[23]

Original Suit:

An original SAPCR involves a child that has not been the subject of an existing court case or order involving custody, visitation, or child support. If the child has been or is a part of a suit involving these issues, an original suit cannot be filed.

Modification Suit:

A modification to a SAPCR order is the filing of a request to change an existing order that involves custody of a child, access and visitation, or child support. If the child has been or is involved in a court case addressing these issues, a modification suit needs to be filed.

When can a nonparent file this kind of suit?

There are multiple ways a nonparent can have standing, or the ability to file this kind of court case.[24] One way a nonparent can file an original SAPCR or a modification is if they have actual possession and care for the child for at least 6 months, as long as possession hasn't ended for more than 90 days before the case is filed and they are not a foster parent.[25] For a modification suit, a nonparent can also file if they are listed as a party on the current SAPCR order.

Certain types of family relationships, such as grandparents, have additional ways to have standing to file an original or modification suit.

What does a SAPCR involve?

Filing a SAPCR petition, original or for modification, can create different scenarios. If the minor's parents and the nonparents agree about custody, visitation, child support, and medical/dental support, or if the parents are absent and it is known they will not challenge a SAPCR, this is an uncontested case. Though it will take time and steps to have an order entered through the court, this is a much simpler process than if the SAPCR is challenged. If the minor's parents are not in agreement and are present, this would be a contested case, which will likely lead to a full trial process for the nonparent to gain custody of the minor. If a SAPCR order had already been entered, any future requests involving the child must be made in the same court that entered the final SAPCR order.

What is the effect of a SAPCR order?

This fully depends on what is being asked of the court. Some SAPCRs establish joint conservatorship for adult caregivers (including parents) regarding the minor, while others establish a sole managing conservator with visitation for the other interested parties. The effect of a SAPCR depends on the facts in each case, but will ultimately include orders appointing conservators, stating who is entitled to visit with the child, and determining whether and how much child support will be paid and by whom.

[23] Tex. Fam. Code § 101.032
[24] Tex. Fam. Code § 102.003
[25] Tex. Fam. Code § 102.003(a)(9)

SUIT AFFECTING THE PARENT–CHILD RELATIONSHIP (SAPCR)

Is this the right fit?

- This is a more complex process that can permanently change who cares for and interacts with the child.
- Is there already a child custody order in place? If so, any request for modification must be filed in the same court that entered the prior SAPCR order.
- Are the parents of the minor in agreement, or will this be a contested case? The possibility of the parent being ordered to pay child support can lead to disagreements. If there is a possibility of the parents challenging the request made to the court, speaking with an attorney about the specific facts of the case is an important thing to consider before filing a SAPCR petition.
- Caregivers can seek assistance from the **Texas Office of Attorney General Child Support Division**. If child support is ordered, orders for conservatorship and possession and access are also issued as part of that process.

ADOPTION

WHEN MINORS LIVE APART FROM THEIR PARENTS

ADOPTION

What is adoption?

Adoption is a way to legally establish a parent-child relationship between a nonparent caregiver and a minor.[26]

Who can adopt, and who can be adopted?

A child can be adopted if:

(1) The parent-child relationship with each living parent has been terminated;
(2) The parent whose rights have not been terminated is the spouse of the nonparent looking to adopt (a stepparent);
(3) The child is at least two years old, the parent-child relationship has been terminated with respect to one parent, the non-parent has had actual care and possession of the minor for six months before the adoption, and the non-terminated parent consents to the adoption; or
(4) The child is at least two years old, the parent-child relationship has been terminated with respect to one parent, and the nonparent has had actual care and possession of the minor for one year.[27] In any circumstance, the court cannot grant an adoption until the child has resided with the nonparents for at least six months.[28]

If a nonparent hoping to adopt is married, both spouses must petition the court for adoption—it cannot only be one.[29]

What does adoption involve?

When the nonparent is ready to adopt, they must submit a petition to adopt with the court. An adoption evaluation must also be conducted to provide a report to the court about the parties requesting adoption.[30]

If a child is 12 years or older, they must consent to the adoption in writing or in court.[31] If all requirements are met and it is found that adoption is in the best interest of the child, the court will grant the adoption.[32]

How is adoption different from a SAPCR?

A SAPCR giving conservatorship to someone who is not a biological parent establishes the rights to raise a child, but these rights are limited to what the court specifies in the order. Adoption gives the adoptive parent all parental rights. It also allows the child to inherit from their adoptive parents. Once an adoption is finalized, the court no longer has jurisdiction over the child.

Is this the right fit?

- Have the minor's parents' rights been terminated? Are the parents in agreement with their rights being terminated? Parents can both involuntarily and voluntarily have their rights terminated.
- Are the nonparents wanting to adopt okay with going through reports and studies to show the adoption is in the best interest of the minor? These would potentially include personal interviews, home evaluations, and assessments of the minor's relationships with involved adults. The adoption evaluation is also fairly expensive and is rarely waived by the court (except in the case of a step-parent adoption).

[26] Tex. Fam. Code § 162.017.
[27] Tex. Fam. Code § 162.001.
[28] Tex. Fam. Code. § 162.009(a).
[29] Tex. Fam. Code § 162.002(a).
[30] Tex. Fam. Code §§ 107.151(a), 162.003.
[31] Tex. Fam. Code § 162.010(c).
[32] Tex. Fam. Code § 162.016(b).

OPTIONS AND ALTERNATIVES AT A GLANCE

	AGE OF THE MINOR	PARENTAL AGREEMENT	COURT REQUIRED	REVOKABLE	DURATION	EFFECT ON BIOLOGICAL PARENT RIGHTS
REMOVAL OF DISABILITIES OF MINORITY (EMANCIPATION)	16 OR 17 YEARS OLD	NOT REQUIRED [33]	REQUIRED	NONREVOKABLE	PERMANENT	LIMITS [34]
AUTHORIZATION AGREEMENT FOR NONPARENT ADULT CAREGIVER (AUTHORIZATION AGREEMENT)	ANY AGE	REQUIRED	NOT REQUIRED–NOTARIZATION REQUIRED	REVOKABLE	SIX-MONTHS TERMS, AUTOMATICALLY RENEWABLE	NO EFFECT
SPECIAL POWER OF ATTORNEY (SPOA)	ANY AGE	REQUIRED	NOT REQUIRED–NOTARIZATION REQUIRED	REVOKABLE	AGREED UPON IN THE SPOA	NO EFFECT
TEMPORARY AUTHORIZATION FOR CARE OF MINOR CHILD (TEMPORARY AUTHORIZATION ORDER)	ANY AGE	NOT REQUIRED, BUT PARENT CANNOT OBJECT	REQUIRED	REVOKABLE	ORDERED BY THE COURT; TWO YEARS MAXIMUM [35]	NO EFFECT
SUIT AFFECTING THE PARENT–CHILD RELATIONSHIP (SAPCR)	ANY AGE	NOT REQUIRED	REQUIRED	NONREVOKABLE	PERMANENT [36]	DEFINES AND MAY LIMIT
ADOPTION	ANY AGE [37]	NOT REQUIRED	REQUIRED	NONREVOKABLE	PERMANENT	TERMINATES

[33] Either parent or attorney ad litem needs to verify the petition.
[34] Not a traditional limitation nor termination of parental rights, but the minor is granted capacity to act how parents would on their behalf.
[35] Order granting temporary authorization expires one year after the order date, if the order does not specify a termination date, and may be renewed by the court for up to one additional year.

[[36] May be able to modify by returning to court.
[37] There is no age restriction – even adults can be adopted by a nonparent. There are some circumstances when the child must be at least 2 years old.

ADDITIONAL INFORMATION AND RESOURCES

WHEN MINORS LIVE APART FROM THEIR PARENTS

ADDITIONAL INFORMATION AND RESOURCES

A. McKinney-Vento Rights

The McKinney-Vento Homeless Assistance Act is a federal law providing important educational rights and services to homeless minors.

"Homeless youth" are minors who lack a fixed, regular, and adequate nighttime residence, including those who are sharing housing due to economic hardship, living in motels/shelters/cars or other inadequate settings, and minors not in the physical custody of their parents/guardians ("unaccompanied youth").[38]

This Act allows for homeless youth to immediately enroll in school even without required documents such as a birth certificate or vaccine records.[39] It also requires schools to provide transportation for the youth, equal access to meals, tutoring, special education, and extracurricular activities.[40] Each local education agency must have a McKinney-Vento liaison for students experiencing homelessness to access the services they are entitled to.[41] See Appendix A for additional information. To find your school district's McKinney-Vento Liaison visit: **https://tehcy.tea.texas.gov/mckinney-vento-liaisons.**

B. Guardianship of a Minor

Guardianship of minors in Texas is a legal arrangement established by a court to protect the interests of minors regarding education, healthcare, and, potentially, living arrangements. Guardianship over a minor may be needed if there is no parent available to care for them, or guardianship over a minor's estate may be needed if they inherited assets that need protecting until they are adults.

While guardianship does not terminate parental rights, it is not easy to revoke or change as it can only be terminated through another court proceeding. Additionally, this is a long-term arrangement, making it less suitable for short-term or emergency situations.

Temporary guardianship of a minor is a restricted form of guardianship that can be used in emergency situations, as the temporary guardian shall only be assigned powers and duties that are necessary to protect the minor against shown imminent danger.[42] Most temporary guardianship arrangements may not remain in effect for more than 60 days.[43]

C. Minor Consent Chart

See Appendix B for an additional informational chart that covers who is able to consent to a minor's medical and behavioral healthcare, a minor's emergency shelter and transitional living needs, various forms of advocacy for the minor, and a minor's sexual activity and contraception use.

D. Consent by Minor to Healthcare Form

Appendix C contains a form that can be utilized by minors to be able to invoke their right to consent to medical, dental, psychological, or surgical care. In certain instances, a minor can consent on their own for these services. The form documents when the minor can consent under Texas law.[44]

[38] 42 U.S.C. §11434(a).
[39] 42 U.S.C. §11432(g)(3)(C).
[40] 42 U.S.C. §11432(g).
[41] 42 U.S.C. §11432(g)(1)(J)(ii)
[42] Tex. Estates Code § 1251.010(b).
[43] Tex. Estates Code § 1251.151.
[44] Tex. Fam. Code § 32.003(f).

ADDITIONAL INFORMATION AND RESOURCES

E. Caregiver Affidavit

A caregiver affidavit is a form the caregiver can prepare and sign before a notary if a school or some other entity is wanting assurances that the caregiver is accepting responsibility for the care of a minor. The caregiver should not need a caregiver affidavit if there is a court order or a document signed by the parent, such as an Authorization Agreement for Voluntary Adult Caregiver. But one might be requested with an SPOA because the caregiver usually does not sign the SPOA. A sample caregiver affidavit can be found in Appendix D.

The caregiver can list the circumstances of how the child came into their care and the barriers to obtaining signed consent from the parents. This can help establish eligibility under the McKinney-Vento Act and other educational rights including school enrollment.

McKinney-Vento Act: Quick Reference

The McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431 et seq.) is a federal law that provides important educational rights and services to PreK-12 children and youth experiencing homelessness. The U.S. Department of Education has published guidance to help state and local educational agencies implement the law. This document summarizes the McKinney-Vento Act's key provisions and provides corresponding legal citations.

Eligibility

- "Homeless children and youth" means children and youth who lack a fixed, regular, and adequate nighttime residence, including those who are sharing the housing of others due to loss of housing, economic hardship, or a similar reason; staying in motels, trailer parks, or camp grounds due to the lack of an adequate alternative; staying in shelters or transitional housing; or sleeping in cars, parks, abandoned buildings, substandard housing, or similar settings. 42 U.S.C. §11434a(2).
- "Unaccompanied youth" includes homeless children and youth who are not in the physical custody of a parent or guardian. 42 U.S.C. 11434a(6).

Office of the State Coordinator for the Education of Homeless Children and Youth

Every state educational agency (SEA) must designate an Office of State Coordinator that can sufficiently carry out duties in the Act. 42 U.S.C. §11434a(2). Some key duties include:

- Responding to inquiries from homeless parents and unaccompanied youth. 42 U.S.C. §11432(f)(7).
- Providing professional development programs for liaisons and others. 42 U.S.C. §11432(f)(6).
- Conducting monitoring of local educational agencies to enforce compliance. 42 U.S.C. §11432(f)(5).

Local Educational Agency Homeless Liaisons

Every local education agency (LEA) must designate a liaison for students experiencing homelessness who is able to carry out the duties described in the law. 42 U.S.C. §11432(g)(1)(J)(ii). Some key duties include:

- Ensuring that homeless children and youth are identified and enrolled in school, and have a full and equal opportunity to succeed in school. 42 U.S.C. §§11432(g)(6)(A)(i)-(ii).
- Participating in professional development and other technical assistance offered by the state. 42 U.S.C. §11432(g)(1)(J)(iv).

- Ensuring school personnel receive professional development and other support. 42 U.S.C. §11432(g)(6)(A)(ix).
- Ensuring that unaccompanied homeless youth are informed, and receive verification, of their status as independent students for college financial aid. 42 U.S.C. §11432(g)(6)(A)(x)(III).
- Ensuring that homeless children, youth, and families receive referrals to health, dental, mental health, housing, substance abuse, and other appropriate services. 42 U.S.C. §11432(g)(6)(A)(iv).
- Disseminating public notice of McKinney-Vento rights in locations frequented by parents and youth, in a manner and form understandable to them. 42 U.S.C. §11432(g)(6)(A)(iii).

School Stability

- Children and youth experiencing homelessness can remain in their school of origin for the duration of homelessness and until the end of an academic year in which they obtain permanent housing, if it is in their best interest. 42 U.S.C. §11432(g)(3)(A).
- LEAs must make best interest determinations that presume that staying in the school of origin is in the best interest of the child or youth; consider specific student-centered factors; prioritize the wishes of the parent, guardian, or unaccompanied youth; and include a written explanation and right to appeal if the LEA determines that school stability is not in the best interest of the child or youth. 42 U.S.C. §11432(g)(3)(B).
- The definition of school of origin includes both the designated receiving school at the next grade level (if there is a feeder school pattern), and preschools. 42 U.S.C. §11432(g)(3)(I).
- Transportation to the school of origin is required, including until the end of the academic year when a student obtains permanent housing. 42 U.S.C. §11432(g)(1)(J)(iii).

School Enrollment and Participation

- Homeless children and youth must be enrolled in school immediately, even if they lack documents or have missed application or enrollment deadlines during any period of homelessness. 42 U.S.C. §11432(g)(3)(C).
- “Enrollment” is defined as attending classes and participating fully in school activities. 42 U.S.C. §11434A(1).
- SEAs and LEAs must develop, review, and revise policies to remove barriers to the identification, enrollment, and retention of homeless students in school, including barriers due to fees, fines, and absences. 42 U.S.C. §11432(g)(1)(I).
- States must have procedures to ensure that homeless children and youth do not face barriers to accessing academic and extracurricular activities. 42 U.S.C. §11432(g)(1)(F)(iii).

Disputes

- If a dispute arises over eligibility, school selection or enrollment, the child or youth must be immediately enrolled in the school in which the parent, guardian or unaccompanied youth seeks enrollment, pending resolution of the dispute, including all available appeals. 42 U.S.C. §11432(g)(3)(E)(i).

Preschool Children

- The definition of school of origin includes preschools. 42 U.S.C. §11432(g)(3)(I).
- Liaisons must ensure homeless families and children can access Head Start, Early Head Start, LEA-administered pre-school programs and early intervention services under IDEA Part C, if eligible. 42 U.S.C. §11432(g)(3)(C).

Financial Aid, Credit Accrual, and College Readiness

- Liaisons must ensure that unaccompanied homeless youth are informed, and receive verification, of their status as independent students for college financial aid. 42 U.S.C. §11432(g)(6)(A)(x)(III).
- States must have procedures to identify and remove barriers that prevent students from receiving appropriate credit for full or partial coursework satisfactorily completed while attending a prior school. 42 U.S.C. §11432(g)(1)(F)(ii). Liaisons must implement those policies. 42 U.S.C. §11432(g)(6)(A)(x)(II).
- State plans must describe how homeless youth will receive assistance from school counselors to advise, prepare, and improve their readiness for college. 42 U.S.C. §11432(g)(1)(K).

Reserving Funds from Title I, Part A to Serve Students Experiencing Homelessness

- All LEAs that receive Title I Part A funds must reserve funds to support homeless students. 20 U.S.C. §6313(c)(3)(A).
- Reserved funds may be used for services not ordinarily provided by Title I, including local liaisons and transportation to the school of origin. 20 U.S.C. §6313(c)(3)(C)(ii).
- State report cards must include disaggregated information on the graduation rates and academic achievement of homeless children and youth. 20 U.S.C. §§6311(h)(1)(C)(ii) and (iii).

Who May Consent?

	Parent/ Guardian	Other	Child, Any Age	Child, Age 14+	Child, Age 16+	Child, Age 17+	Age 18+ or Emancipated
MEDICAL AND BEHAVIORAL HEALTH CARE							
Medical, dental, psychological, and surgical treatment[1] Tex. Fam. Code § 32.003(a) *(may consent at any age if on active duty with U.S. armed services or in adult prison – § 32.003(a)(1), (a)(7))*	X				May consent if residing apart from parents and managing own finances[2]		X
Pregnancy-related care (not abortion) Tex. Fam. Code § 32.003(a)(4)	X		X	X	X	X	X
Abortion[3] Tex. Fam. Code § 33.002-33.004, Tex. Occ. Code § 164.052(a)(19)	X	Court order	May consent if a medical emergency exists				X
Examination and treatment related to drug or chemical addiction, dependency, or use Tex. Fam. Code §§ 32.003(a)(5)	X		X	X	X	X	X
Counseling for suicide prevention; chemical addiction or dependency; or sexual, physical, or emotional abuse[4] Tex. Fam. Code § 32.004	X		X	X	X	X	X
EMERGENCY SHELTER AND TRANSITIONAL LIVING							
Emergency Shelter or Care (no more than 15 days) Tex. Fam. Code § 32.201; 15 Tex. Admin. Code § 379.610	X		X	X	X	X	X
Emergency Shelter or Care (more than 15 days) Tex. Fam. Code § 32.202; 15 Tex. Admin. Code § 379.610	X				May consent if residing apart from parents and managing own finances, or pregnant or parenting		X
Transitional Living Program Tex. Fam. Code § 32.203	X				May consent if residing apart from parents and managing own finances, or pregnant or parenting		X

Updated 08/04/2023

[1] The parent may have access to information about treatment given to or needed by the child. Tex. Fam. Code § 32.003(d).

[2] Under the same section, a minor who is a parent and has custody of their child may consent to care for the child. Tex. Fam. Code § 32.003(a)(6).

[3] **Texas has banned abortions at all stages of pregnancy** unless the pregnant person has a life-threatening medical emergency. Tex. Health & Safety Code §§ 171.204, 171.205.

[4] The parent may have access to information about treatment given or needed by the child. Tex. Fam. Code § 32.004(b)(2).

Who May Consent?

	Parent/ Guardian	Other	Child, Any Age	Child, Age 14+	Child, Age 16+	Child, Age 17+	Age 18+ or Emancipated
SELF-ADVOCACY							
Make a police report Tex. Code Crim. Proc. Art. 2.13	X	X	X	X	X	X	X
Forensic medical examination for sexual assault by a health care provider, regardless of when they arrive at the provider[5] Tex. Code Crim. Proc. Art. 56A.303(a)(1)	X	X	X	X	X	X	X
Refuse an examination by a physician, dentist, or psychologist based on belief of abuse or neglect (including sexual assault) Tex. Fam. Code § 32.005					X	X	X
Advocacy from a sexual assault program Tex. Code Crim. Proc. Art. 56A.351			X	X	X	X	X
Release of evidence collection kit to police Tex. Gov. Code § 420.0735(a)				X	X	X	X
Release of confidential info from sexual assault program[5] Tex. Gov. Code § 420.073, 34 U.S.C.A. § 12291(b)(2)(B)(ii)			*Under VAWA, if a minor is permitted by law to receive services without a parent's consent, the minor may release info without additional consent.*				X
Application for a protective order for family violence, sexual assault or abuse, dating violence, stalking, trafficking, or compelling prostitution[6] Tex. Fam. Code § 82.002, Tex. Code Crim. Proc. Art. 7B.001	X	Prosecuting Attorney, DFPS	X	X	X	X	X
SEXUAL ACTIVITY AND CONTRACEPTION							
Sexual activity[7] Tex. Pen. Code § 22.011(c)						X	X
Prescription contraceptives Tex. Fam. Code § 32.003, 42 CFR § 59.5(a)(4)	X	TDFPS[8]	May consent at any age if received from a Title X funded clinic		May consent if living on own and managing own finances		X
Nonprescription contraceptives (e.g., condoms)			X	X	X	X	X

Updated 08/04/2023

[5] Professionals are required to report ANY suspected abuse or neglect of a child within 48 hours. Tex. Fam. Code § 261.101.

[6] A person under 18 years old cannot refuse the filing of a PO application when filed by a prosecuting attorney. Tex. Code Crim. Proc. Art. 7B.001(a-2).

[7] Exception: the younger person is at least 14 years old, the older person is not more than three years older, and the younger person gave consent; older person cannot be a registered sex offender or have a sexual assault conviction (Tex. Pen. Code § 22.011(e)(2))

[8] The Texas Department of Family Protective Services may not attempt to prohibit a youth from seeking contraception services; the decision to provide a minor with contraception and to obtain the appropriate consent is the healthcare provider's responsibility. CPS Handbook Section 11221.

CONSENT BY MINOR TO MEDICAL, DENTAL, PSYCHOLOGICAL, OR SURGICAL CARE

This consent form constitutes a written statement under Section 32.003(f) of the Texas Family Code. A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment. The consent by a child to medical, dental, psychological, and surgical treatment is not subject to disaffirmance because of the child's minority. Tex. Fam. Code § 32.003(b).

I, [name of minor] _____, am currently [number of years] ____ years of age. My date of birth is _____.

My father's name (if known) is _____. My mother's name (if known) is _____. IF APPLICABLE: The name of my managing conservator or legal guardian is _____.

I, [name of minor] _____, give consent for my own medical treatment.

The nature of the medical treatment to be given to me is as follows:

☐ Medical: _____ ☐ Psychological: _____

☐ Dental: _____ ☐ Surgical: _____

The treatment is to begin on [start date for treatment]: _____

I have legal authority to consent to the treatment described above under Tex. Fam. Code § 32.003 because I (check one or more):

☐ am on active duty with the armed forces of the United States of America
☐ am 16 years of age or older and reside separate and apart from my parents, managing conservator, or guardian, and manage my own financial affairs
☐ consent to the diagnosis and treatment of an infectious, contagious, or communicable disease as required by law or rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of State Health Services and including all diseases within the scope of Tex. Health & Safety Code Ann.§ 81.041
☐ am unmarried and pregnant and consent to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy
☐ am consenting to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition related to drug or chemical use
☐ am unmarried, am the parent of a child, have actual custody of my child, and consents to medical, dental, psychological, or surgical treatment for the child

I certify that I have read and fully understand the above consent; that the facts indicated above are true; and that all blanks or statements requiring insertion or completion were filled in before I signed.

Minor Name (Printed) Minor Signature Date of Consent

Under Chapter 33 of the Texas Family Code, an unemancipated minor cannot consent to an abortion.

CONSENT BY MINOR TO MEDICAL, DENTAL, PSYCHOLOGICAL, OR SURGICAL CARE

This consent form constitutes a written statement under Section 32.003(f) of the Texas Family Code. A physician, dentist, psychologist, hospital, or medical facility may rely on the written statement of the child containing the grounds on which the child has capacity to consent to the child's medical treatment. The consent by a child to medical, dental, psychological, and surgical treatment is not subject to disaffirmance because of the child's minority. Tex. Fam. Code § 32.003(b).

I, [name of minor] Jane Doe, am currently [number of years] 16 years of age. My date of birth is 01/01/2003.

My father's name (if known) is David Doe. My mother's name (if known) is Donna Doe. IF APPLICABLE: The name of my managing conservator or legal guardian is none.

I, [name of minor] Jane Doe, give consent for my own medical treatment.

The nature of the medical treatment to be given to me is as follows:

- ☒ Medical: physical and x-ray
- ☐ Psychological: _____
- ☐ Dental: _____
- ☐ Surgical: _____

The treatment is to begin on [start date for treatment]: 12/15/2019

I have legal authority to consent to the treatment described above under Tex. Fam. Code § 32.003 because I (check one or more):

- ☐ am on active duty with the armed forces of the United States of America
- ☒ am 16 years of age or older and reside separate and apart from my parents, managing conservator, or guardian, and manage my own financial affairs
- ☐ consent to the diagnosis and treatment of an infectious, contagious, or communicable disease as required by law or rule to be reported by the licensed physician or dentist to a local health officer or the Texas Department of State Health Services and including all diseases within the scope of Tex. Health & Safety Code Ann.§ 81.041
- ☐ am unmarried and pregnant and consent to hospital, medical, or surgical treatment, other than abortion, related to the pregnancy
- ☐ am consenting to examination and treatment for drug or chemical addiction, drug or chemical dependency, or any other condition related to drug or chemical use
- ☐ am unmarried, am the parent of a child, have actual custody of my child, and consents to medical, dental, psychological, or surgical treatment for the child

I certify that I have read and fully understand the above consent; that the facts indicated above are true; and that all blanks or statements requiring insertion or completion were filled in before I signed.

Jane Doe	Jane Doe	12/15/2019
Minor Name (Printed)	Minor Signature	Date of Consent

Under Chapter 33 of the Texas Family Code, an unemancipated minor cannot consent to an abortion.

SAMPLE

STATE OF TEXAS

COUNTY OF _____

CAREGIVER AFFIDAIVT

_____ appeared in person before me today and stated under oath:

"My name is _____. I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

"I am a resident of the _____ School District. My address is: ___ _____. _____, d/o/b _____, has lived with me since approximately _____. _____ is the mother of _____. H__ father is unknown.

[Circumstances of how child was left in the care of the caregiver, whereabouts of parent(s), and efforts to contact parents.]

I accept full responsibility to provide care for and support _____, and to make all decisions regarding h___ education, medical needs, and any other decision needed to serve h____ best interest.

_____
Signature of Caregiver

_____
Name of Caregiver

SIGNED under oath before me on _____.

_____
NOTARY PUBLIC, STATE OF TEXAS

SPECIAL POWER OF ATTORNEY

THE STATE OF TEXAS §
§
§ KNOW BY ALL THESE PRESENTS:
§
COUNTY OF _____ §

THAT I, _____, am a resident of _____ County and parent of _____. I have made, constituted, and appointed, and by these presents do make, constitute, and appoint _____, whose address is _____, my true and lawful attorney, for me and in my name, place, and stead to do the following acts:

(1) To maintain physical possession of _____, whose date of birth is _____, and whose Social Security number is _____, hereinafter referred to as "the child";

(2) To provide care, control, possession, protection, moral, and religious training, and reasonable discipline to the child;

(3) To consent to medical, psychiatric, and surgical treatment of the child, including but not limited to emergency and invasive procedures;

(4) To have access to medical, dental, and educational records of the child; and

(5) To register the child for school and to authorize participation in school activities and placement in special educational programs.

I give and grant unto said attorney full power and authority to do and perform every act necessary and proper to be done in the exercise of any of the foregoing powers as fully as I might or could do if personally present. I hereby ratify and confirm all my attorney shall lawfully do or cause to be done by virtue of this power of attorney.

Nothing in this document can or should be construed as in any way limiting my own powers as the parent of the child. In executing this document, I do not relinquish conservatorship of the child. This document is not to be interpreted as granting or an agreement to grant conservatorship rights to anyone else.

I hereby specially retain the following rights:

(1) To be notified within 8 hours of any medical condition of the child requiring surgical intervention and/or hospitalization and within 24 hours of any medical treatment; and

(2) To communicate and visit with the child at any reasonable time as long as it does not interfere with their school or their schoolwork.

This Special Power of Attorney will expire on _____, and may be voluntarily revoked by me by execution of a written revocation at any time before that date.

IN WITNESS THEREOF, I have hereby set my hand this the _____ day of _____, 20___.

Signature of Parent: _____

Printed Name of Parent: _____

Witness

Signature: _____

Printed Name: _____

Printed Address: _____

Witness

Signature: _____

Printed Name: _____

Printed Address: _____

STATE OF TEXAS

COUNTY OF _____

This document was acknowledged before me on the _____ day of the month of _____ in the year 20___.

Seal of Notary:

Printed Name of Notary: _____

My commission expires: _____

TFYJP can provide information, advice, or referrals, but cannot always offer legal representation.

To learn more about us visit:

www.TexasFosterYouth.org

The Texas Foster Youth Justice Project is a program of

TRLA
Texas RioGrande Legal Aid

Main 956.996.8752 *Toll Free* 833.329.8752

www.TRLA.org