

# Texas Foster Youth Justice Project

www.texasfosteryouth.org

(877) 313-3688

## Who Makes My Healthcare Decisions?

- If you are under 16:
  - the judge in your case has control over your medical care.
  - the judge or CPS gives power to someone to consent to medical care for you.
  - the judge or CPS can change who is in charge of your medical care- talk to your caseworker or caregivers or lawyer if you have a problem with your treatment.
- If you are over 16:
  - You can petition for removal of disability to be allowed to make own medical decisions.
  - Emancipation is discussed in more detail in another section.

Under 16- TX Fam Code 266.004; over 16 cited in emancipation section

## Can I get Birth Control?

- If you are under 17, sexual intercourse with anyone who is more than 3 years older than you is considered a crime
  - For example, if you are 15, having sex with a 19 year old person is a crime
- You may request and receive any contraceptive service except sterilization without consent of your parents or guardian
- If you wish to be sterilized, DFPS will have to get court approval

TX Penal Code 22.011, 40 TAC 700.1350, 42 DFR 441.251 and 441.253

## Pregnancy

- If you choose to have an abortion and you are not emancipated, you may want or need to get one without your foster parents or guardian knowing.
- Texas law requires a parent or guardian be notified about an abortion.
- You can get a judicial bypass, where you go before a judge to get permission not to tell your parents (discussed in detail later).
- If you choose to raise the infant yourself and you remain in foster care, the caseworker may include your infant in the plan of service.
- It may be hard to find a placement for you and your baby, but don't feel pressured to put your baby up for adoption unless that is what you really want to do.
- If you raise the child and it is appropriate to involve the father, your caseworker might encourage the father to participate in child care and will go after him for child support.

CPS Handbook 6252  
Chapter 33 TX Fam Code

# Judicial Bypass for a Minor in Foster Care

## Seeking an Abortion

- You will be appointed a GAL and an attorney if you don't already have one
- The court has to tell you yes or no by 5:00 pm on the second business day after you file your application, unless you consent to a delay
- If the court does not rule in time, it is treated the same as the court saying yes
- If the court says no, you can appeal
- Your information will be kept anonymous and private, except for people who need to know such as the judge, your attorney, and similar people.
  - \*The exception to this is that if the pregnancy is a result of a sexual assault, sexual abuse, aggravated sexual assault, or incest, in which case the judge will order a police report be made.

TX Fam Code 33.003, TX Fam Code 33.004, TX Fam Code 33.010  
Exceptions: TX Fam Code 21.02, 22.011, 22.021, 25.02

- If you are having a medical emergency, a physician can perform an abortion without a judicial bypass.
- A DFPS staff member may be appointed as your GAL
- The GAL helps the judge decide if you are mature enough to make the decision to have an abortion without telling a parent or guardian, whether telling someone would not be in your best interest, or whether telling someone might lead to abuse
- If your GAL is a DFPS staff member, they cannot tell anyone besides the people in the hearing that you are or have been pregnant or that you want or have had an abortion, but there are exceptions to this

CPS handbook 5500 et seq

- Exceptions to GAL confidentiality:
  1. If a report of abuse or neglect is made, the minor's identity, pregnancy, and abortion or desire for an abortion may be revealed to DFPS staff who have a need to know (including the intake worker).
  2. If the GAL learns of allegations of abuse or neglect involving the minor or other youth in the minor's family or home during the time of the GAL appointment, the DFPS GAL must:
    - report the allegations to DFPS through statewide intake
    - provide all information pertinent to the situation, including the GAL's role, the judicial proceedings, the minor's name, and the facts regarding the minor's pregnancy and/or abortion

CPS Handbook 6252

- If you have an abortion, information such as the fact you were pregnant, when the abortion took place, and other related information will be in your case record unless your judicial bypass specifically prohibits DFPS from disclosing the abortion-related information to a parent, caretaker, or prospective adoptive parent.
- There are exceptions even when the court orders the information not to be disclosed.

CPS Handbook 6252

- Exceptions to confidentiality of abortion –related information
  1. The Person Already Knows
    - either you told the person about the abortion or the physician provided them with legal notice of the abortion
  2. You consent to disclosing the information
    - you have consented in writing to DFPS telling one or more specific people or entities
  3. Serious Sexual Abuse Allegations or Conduct Exist
    - the information is needed to investigate an allegation of sexual abuse, sexual assault, or prohibited sexual conduct
  4. You are Under DFPS Conservatorship
    - if you may be a victim of abuse or neglect, investigation staff may disclose the information your parents or guardian while investigating them
  5. Disclosure Is Necessary for the Safety of the Minor and Other Youth in the Home
    - If DFPS thinks a guardian or person responsible for safety of other youth in the home need to know to keep the other youth safe and a court order doesn't prohibit disclosure of the information
  6. Judicial Bypass Proceedings Require Disclosure to the Court
    - If the court asks, CPS must disclose case-related information, which may include abortion-related information

CPS Handbook 6252

## What happens if I have children of my own?

- If you are a parent, you have the responsibility to provide support for your children until they are adults, and to keep them free from abuse and neglect.
- If there are any questions about whether a certain man is the father of a child, then the court can order medical tests to determine the fatherhood.
- A court may terminate a parent's rights for a variety of reasons, including abandonment, failure to support, endangerment of the physical or emotional well being of the child and other serious grounds.

TX Fam Code 151.001, 160.502, 161.001

## Emancipation: pros and cons

- Pros
  - Emancipation takes you out of the foster care system
  - You can make your own healthcare, educational, and other decisions
  - You can live where you want- on your own or with others
- Cons
  - You are on your own for money and a place to live
  - You will lose your Medicaid coverage when you turn 18
  - You will lose your college tuition assistance and aftercare room and board assistance

College tuition assistance loss- TX EDU Code 54.211  
 Medicaid loss- 42 USC 677

## What if someone is trying to make me emancipate?

- If someone is trying to force you to emancipate, do not go through with the process until you have thought it through very carefully and seriously
  - do not rush into emancipation- you cannot undo this decision
- If you emancipate, you will lose your Medicaid from 18-21, college assistance, and your aftercare room and board assistance
- These are helpful and valuable programs- do not waive your right to them without serious thought
- Talk to your appointed attorney and tell the judge if you do not want to emancipate- no one can force you to do it
- It might be tempting to want to get out of the foster care system, but you will lose valuable and important assistance

Loss of ETV covered under TX Fam Code 700.613  
Medicaid & Aftercare- Chafee program- 42 USC 677

## Running Away: pros and cons

- Aged 17-18
  - If you are 17 and you are not under a court order for being declared a “Child in Need of Supervision,” the police do not have the authority to return you to your placement
  - This may seem like an easy way out, but if you don’t have a place to stay and a plan to finish school, it may be harder than you think
  - If you don’t emancipate, it will be hard for you to do some things on your own
- Aged under 17
  - CPS will contact the police, the court, and your parents if their rights have not been terminated
  - If law enforcement finds you, you will be returned to CPS care

17-18: TX Fam Code 51.03 (child in need of supervision), TX Fam Code 52.01(a)(3)  
Under 17: TX Code of Crim Pro 63.009(g)