

HOMELESS, HOPELESS, AND HELPLESS: HOW ATTORNEYS *AD LITEM* CAN HELP FOSTER YOUTH AGING OUT OF THE SYSTEM

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ABSTRACT

When children in the foster care system “age out,” or reach the age of eighteen to twenty-one and exit foster care, they are often left without legal representation, a safe home, or outside support. During their time in foster care, Texas law requires that every child in the foster care system be appointed an attorney ad litem. That attorney ad litem should treat the child as the attorney would any client, with the goal of advocating for what the client—the child—wants. Currently, however, an attorney ad litem has very few, if any, affirmative duties to ensure the success of children who age out of the foster care system. This Comment proposes a legislative addition to the role of an attorney ad litem, assigning responsibilities and duties owed to foster youth who age out of the system. Because the attorney ad litem is one of the only figures required by law in the foster child’s life, the role should be amended to ensure that foster children are set up for success after aging out of the system. This Comment argues that by amending the role of an attorney ad litem and informing foster youth of the role of an attorney ad litem, foster youth will be better positioned for success and self-sufficiency as they age out of the foster care system.

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I. INTRODUCTION

“Every child deserves a champion—an adult who will never give up on them, who understands the power of connection and insists that they become the best they can possibly be.” – Rita F. Pierson¹

1. Lloyd Nelson, *Foster Care Quotes*, EMBRELLA (Feb. 16, 2018), <http://foster-adoptive-kinship-family-services-nj.org/foster-care-quotes/> [https://perma.cc/V3UH-N4CW].

The foster care system endures a steady influx of children removed from their homes due to abuse, neglect, lack of medical services or other care, or abandonment or refusal to care.² Unfortunately, Texas has the second highest number of children in the foster care system in the country.³ Many foster youth in Texas are underrepresented and left behind with unmet and ignored needs.⁴ Once a child turns eighteen, the state legally considers them an adult, and the child exits the foster care system or ages out unless the child elects to stay in the foster care system until age twenty-one.⁵

When foster care children age out of the system—anywhere between ages eighteen and twenty-one—the children are often left with little to no resources, no legal representation, and a lack of knowledge on how to collect or use available resources.⁶ Attorneys *ad litem* can help minimize the negative impact of aging out; attorneys *ad litem* can walk alongside foster kids, providing legal representation and care to them by ensuring a consistent presence and guiding voice in their lives, educating them on their resources, and providing them with adequate representation and advocacy.⁷ Because attorneys *ad litem* are one of the few roles foster children are guaranteed by law, attorneys *ad litem* should educate foster children on the resources available and ensure they age out with the knowledge and skillset to succeed on their own.⁸

This Comment addresses problems youth face when aging out of the foster care system and offers a solution to amend the attorney *ad litem* role, increasing the child's access to an advocate to transition from the foster care system more successfully.⁹

Part I introduces foster care and the general issue of aging out.¹⁰ Part I also introduces the solution of the increased role and presence of an attorney *ad litem*.¹¹

Part II addresses an overview of the foster care system and the Texas foster care system as a whole.¹² To illustrate this, Part II compares Virgil and

2. *Alarming Foster Care Statistics That Cannot Be Ignored*, FUNCTIONAL FAM. THERAPY (Aug. 4, 2022), [https://www.fftlc.com/blog/alarming-foster-care-statistics#:~:text=According%20to%20KIDS%20COUNT%20Data,welfare%20system%20due%20to%20maltreatment.&text=Neglect%20is%20the%20most%20common,and%20sexual%20abuse%20\(9%25\)](https://www.fftlc.com/blog/alarming-foster-care-statistics#:~:text=According%20to%20KIDS%20COUNT%20Data,welfare%20system%20due%20to%20maltreatment.&text=Neglect%20is%20the%20most%20common,and%20sexual%20abuse%20(9%25)) [https://perma.cc/V29V-S9GN].

3. *Number of child abuse victims who received foster care in the United States in 2020, by state*, STATISTA RSCH. DEP'T (Jan. 27, 2022), <https://www.statista.com/statistics/255125/number-of-child-abuse-victims-who-received-foster-care-in-the-us-by-state/> [https://perma.cc/9VZ5-VJWB].

4. *Id.*

5. See Dan Lips, *A New Approach to Help Youth Aging Out of Foster Care*, FOUND. FOR RSCH. ON EQUAL OPPORTUNITY (June 2, 2021), <https://freopp.org/fostering-independence-accounts-a-new-approach-to-help-youth-aging-out-of-foster-care-40bd063ee595> [https://perma.cc/FM55-V2QK].

6. See *id.*

7. Author's original thought.

8. *Id.*

9. See *infra* Part V.

10. See *infra* Part I.

11. See *id.*

12. See *infra* Part II.

Logan's stories.¹³ Virgil's story, unfortunately, is not rare: a foster youth aging out of the system left with few to no resources or representation, ending up homeless, hopeless, and jobless.¹⁴ Texas is a leading state in the number of children in the foster care system.¹⁵ Like Virgil, once children exit foster care, they are thrown into the world with little to no knowledge of how to take care of themselves, get a job, or pay rent.¹⁶ Logan, however, had a different story: he had a team.¹⁷ Logan had an attorney *ad litem* advocating for his permanency, which made all the difference.¹⁸

Part III outlines the long-term consequences of youth aging out of the foster care system.¹⁹ Former foster children are overwhelmingly left homeless, unemployed, and uneducated and often have high delinquency and incarceration rates.²⁰ Additionally, Part III describes these issues and the dire need for representation and advocacy to decrease these statistics.²¹

Part IV details the existing resources foster youth have.²² While there are resources available to the foster child, the availability of these resources is undermined by a lack of knowledge and guidance on what they are, how to use them, and how to maintain them.²³ This part details the existing resources foster youth have, specifically outlining the role of an attorney *ad litem* and the Foster Care Handbook a child is given to explain the available resources.²⁴

Part V proposes a solution for the attorney *ad litem* role to better advocate and be a part of foster children's lives.²⁵ Through this proposed role, the attorney *ad litem* will be more involved and aware of the child's needs and be in a stronger position to champion and ensure those needs are met.²⁶ Additionally, Part V proposes a change to the Foster Care Handbook so that foster youth will be aware of the role of their attorney *ad litem* as an advocate and helper.²⁷ Through these proposed changes, foster youth will better understand the resources they have, and further, have support in their corner.²⁸

13. See *infra* Section II.A.

14. See *id.*

15. See *infra* Part II.

16. See *id.*

17. See *infra* Section II.A.

18. See *id.*

19. See *infra* Part III.

20. See *id.*

21. See *id.*

22. See *infra* Part IV.

23. See *id.*

24. See *infra* Sections IV.A, IV.D.

25. See *infra* Part V.

26. See *id.*

27. See *infra* Section V.C.

28. See *infra* Part V.

Part VI addresses the reasons behind amending the role of an attorney *ad litem* and counters the belief that the current resources are enough.²⁹ Without the role of a mentor or confidante, these resources are wasted.³⁰ Therefore, this role must be amended to provide a counselor and advocate for the foster youth.³¹

Part VII concludes with the stories of Virgil and Logan and the difference the presence of an adult mentor or attorney made in their lives.³² This Comment concludes by proposing that every foster child and former foster child aging out of the system need an advisor.³³ Like Virgil and Logan, lives are transformed with the presence of a mentor and advocate.³⁴ Here, the proposed addition to the role of an attorney *ad litem* ensures the foster child has that guide and confidante fighting for their needs.³⁵

II. BACKGROUND ON THE TEXAS FOSTER CARE SYSTEM

A. Contrasting Virgil and Logan's Stories

Virgil had waited her whole life to turn twelve.³⁶ At twelve, she would get to learn how to make a homemade meringue pie.³⁷ It was the tradition she eagerly yearned for.³⁸ However, when she got home from buying the ingredients at the store, police surrounded her family's trailer, ready to put her and her siblings into the system.³⁹ Virgil and her sister were sexually and physically abused by their stepdad for years.⁴⁰ Finally, Virgil's older sister—not her mother, a teacher, or other responsible adult—reported the abuse.⁴¹ Virgil recounts the times her stepfather would “beat [her and her siblings] with a belt and then ask [them] if [they] were bleeding yet.”⁴² Virgil faced every kind of abuse imaginable: “verbal, sexual, emotional, physical, you name it, [their stepdad] was doing it.”⁴³ However, when taken away, the only

29. *See infra* Part VI.

30. *See id.*

31. *See id.*

32. *See infra* Part VII.

33. *See id.*

34. *See id.*

35. *See id.*

36. Roxanna Asgarian, *What Happens After a Life Spent in the Texas Foster Care System?*, HOUSTONIA MAG. (Jan. 23, 2017), <https://www.houstoniamag.com/news-and-city-life/2017/01/foster-care-system-harris-county-texas> [<https://perma.cc/52DQ-D8PS>].

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

thing she longed for were those pies, “as if the key to the happy childhood she never had was wrapped up in that moment missed.”⁴⁴

For the next six years, Virgil went through approximately ten different homes with ten separate caseworkers rotating through her case.⁴⁵ In those homes, she faced both physical and sexual abuse.⁴⁶ Virgil never permanently settled with a family or had any form of consistency in her life.⁴⁷ In 2008, Virgil aged out of the state’s care at age nineteen.⁴⁸ She had no place to live, no job, and no idea how to drive or cook.⁴⁹ She was like most foster youth aging out of the system: hopeless, homeless, traumatized, and unrepresented.⁵⁰

Similarly, Logan was thrust through a system that did not know how to care for its children.⁵¹ Logan entered the foster care system at age nine after his father’s suicide and his mother’s drug addiction.⁵² Logan entered foster care after years of both physical and verbal abuse from his mother.⁵³ Within the first year of being in foster care, he and his brother were moved through four different foster homes.⁵⁴ Two young boys without a place to call home, no family besides each other, and moving around every three months to a new place.⁵⁵ Like the average foster child, they endured constant uprooting, a lack of consistency, and a longing for stability.⁵⁶

But Logan’s story quickly differed from the average foster child’s: he found permanency—a forever home.⁵⁷ Unlike most foster youth, Logan “had a team; an attorney who was in good relationship with [him] that affected [his] entire life for the better.”⁵⁸ At age ten, Logan entered his forever home.⁵⁹ He was finally placed into a home where stability could be ensured.⁶⁰ For the next two years, his foster mom, Nancy, and an entire team fought for his permanency.⁶¹ Before his thirteenth birthday, Logan and his brother were adopted—an end to four years of instability and hopelessness.⁶² So, what was

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.*

51. Interview with Logan Martini, Student, Tex. Tech Univ., in Lubbock, Tex. (Jan. 16, 2023).

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. *See id.*

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

the difference?⁶³ How did Logan get permanency and Virgil end up homeless?⁶⁴

When asked what made the difference, Logan paused, then quickly concluded: “There’s really not a complicated solution. It was all about a great team. Teamwork and communication between my attorney, caseworker, and foster parent.”⁶⁵ Logan’s attorney *ad litem*, Amy, was present.⁶⁶ She knew what was going on, checked in, communicated with him, and intentionally sat down at least once a month one-on-one to ascertain not only what he needed but what he wanted.⁶⁷ To Logan, “that made all the difference.”⁶⁸ Between Logan’s four different foster homes, he witnessed foster kid after foster kid looked over.⁶⁹ When asked why he was adopted, he accredited his team.⁷⁰ “I just never had the bad caseworker or bad attorney. But I saw it so much, that’s all I saw in fact. I was just one of the lucky ones. I had an attorney, caseworker, and CASA worker who actually cared, and who communicated with each other.”⁷¹ Logan testified that many of his “foster siblings” had attorneys who did not even know their names, much less show up to the house and ask what they needed or wanted.⁷² Those attorneys merely appeared in court and checked off what was required by law.⁷³ Amy, Logan’s attorney *ad litem*, however, was different.⁷⁴ She showed up and did more than what was merely required, which made all the difference.⁷⁵ The presence of a team is what separates Virgil and Logan and ensures foster youth have permanency rather than homelessness.⁷⁶

Every year, thousands of kids like Virgil and Logan are placed into the Texas Department of Family and Protective Services (DFPS), which attempts to find relatives or family friends that the children can live with while separated from their parents.⁷⁷ However, if a relative or family friend cannot be a placement option, the court gives temporary legal custody to Child Protective Services (CPS), which then places the children into foster care.⁷⁸ A typical foster care placement is in a foster family home.⁷⁹ However, other

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *About State Care*, TEX. DEP’T OF FAM. & PROTECTIVE SERVS., https://www.dfps.texas.gov/Child_Protection/State_Care/default.asp (last visited Dec. 16, 2022) [<https://perma.cc/M99D-7XEZ>].

78. *Id.*

79. *Id.*

options for placement include foster family group homes, residential group care facilities, and facilities overseen by other state agencies, such as a residential treatment center or an emergency shelter.⁸⁰ Foster care is designed to be a temporary placement while a permanent home can be found for the child.⁸¹ However, in 2020, the national average length of time in foster care was twenty-one months.⁸² Additionally, 6% of the children in the national foster care system spent more than five years in the system.⁸³ For kids like Virgil, foster care placement is not always temporary, and transitioning out can be tremendously difficult for children who spend extended periods of time in the system.⁸⁴

B. The System Overhaul that Neglected Aging Out Foster Youth: M.D. v. Abbott

Once Virgil aged out of the foster care system, she spent the next four years bouncing from home to home; she tried to move back home, but her parents kicked her out, then she lost her job and found herself living at a Salvation Army.⁸⁵ While transitional services were offered to her, she never received the stipend promised, and her room and board allowance went to a friend's parent she was staying with.⁸⁶ At twenty-three years old, however, Virgil met Sandra Carpenter.⁸⁷ Sandra was an adult who mentored Virgil and sought to get her the help and representation she lacked.⁸⁸ Sandra was different: she connected with Virgil.⁸⁹ Sandra focused on permanence for Virgil—things like a driver's license, bank account, and somewhere to live.⁹⁰

In 2014, nearly two years after being in and out of Carpenter's assistance, a foster advocacy group, Children's Rights, approached Virgil.⁹¹ They urged Virgil to testify in a class-action lawsuit on behalf of Texas foster children.⁹² This suit resulted in *M.D. v. Abbott* in the Southern District of Texas in 2015, which radically changed the Texas foster care system.⁹³ *M.D. v. Abbott* was filed on behalf of the 12,000 Texas children in "Permanent

80. *Id.*

81. Ramesh Kasarabada, *Fostering the Human Rights of Youth in Foster Care: Defining Reasonable Efforts to Improve Consequences of Aging Out*, 17 CUNY L. REV. 145, 147–48 (2013).

82. See Sarah Catherine Williams et al., *State-level Data for Understanding Child Welfare in the United States*, CHILD TRENDS (Apr. 27, 2023), <https://www.childtrends.org/publications/state-level-data-for-understanding-child-welfare-in-the-united-states> [<https://perma.cc/53E3-T6DB>].

83. *Id.*

84. Asgarian, *supra* note 36.

85. See *id.*

86. See *id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. *M.D. v. Abbott*, 152 F. Supp. 3d 684, 684 (S.D. Tex. 2015).

Managing Conservatorship,” i.e., those who have been in the state’s custody for longer than a year.⁹⁴ Here, these children sued on the claim that their due process rights under the Fourteenth Amendment had been violated.⁹⁵ They alleged that the State and its officials managing the Texas DFPS failed to keep them reasonably safe from harm while in their care.⁹⁶ Additionally, they alleged that the State failed in its duty to provide the appropriate care, treatment, and services owed.⁹⁷ Virgil, in addition to many other foster youth, testified to the years of abuse and trauma she endured while in the Texas foster care system.⁹⁸ She testified that she was a victim of abuse at the shelter, and was sexually abused by her foster father at her group home.⁹⁹

After hearing extensive testimony of abuse and trauma, the court found that the State of Texas violated the long-term foster children’s constitutional rights, stating that foster children who aged out often had more trauma than when they entered.¹⁰⁰ The court ultimately held that the Texas DFPS was deliberately indifferent to its excessive caseloads, its faculty abuse and neglect investigations, its sufficient placement array, and the safety of children placed in foster group homes.¹⁰¹ The court concluded by affirming the brokenness of Texas’s foster care system and that DFPS has ignored twenty years of reports outlining problems and recommending solutions, all while children in Texas’s foster care system have been shuttled through a system where rape, abuse, psychotropic medication, and instability are the norm.¹⁰²

A primary motive for bringing this suit was the large amount of overburdened caseworkers.¹⁰³ One of the largest issues, the court noted, was that the constant rotation of overburdened caseworkers greatly affected foster youth aging out of the system.¹⁰⁴ Due to the commonality of heavy caseloads across scarce workers, foster youth feel a lack of consistency, and they age out of the system with few life skills and little, if any, support.¹⁰⁵ Amongst those aging out in this suit, the court found that not one of them had sufficient adaptive living skills that were necessary for even a minimally reasonable chance at a decent life.¹⁰⁶ Not only did this case recognize that the State of Texas breached its duty of care owed to children in the foster care system,

94. *Id.* at 690–91.

95. *Id.* at 688.

96. *Id.*

97. *Id.*

98. Asgarian, *supra* note 36.

99. *Id.*

100. *M.D.*, 152 F. Supp. 3d at 823.

101. *Id.* at 684.

102. *Id.* at 828.

103. *Id.* at 789.

104. *Id.*

105. *Id.*

106. *Id.*

but also that the State detrimentally and permanently affected those aging out of the system.¹⁰⁷

In finding the State of Texas at fault, the court's primary injunctive relief was the appointment of a Special Master, whose primary goal was to implement the objectives of this decision on behalf of the State.¹⁰⁸ The majority of the State's goals addressed abuse and mismanagement.¹⁰⁹ Few, if any, substantive goals and measures addressed foster youth aging out of the system.¹¹⁰ The main, and only, goal outlined to address the aging out population was that the "DFPS shall improve its programs and outreach for children who will age out of foster care so that more children take advantage of these programs."¹¹¹ This goal, however, merely noted a broad objective without providing a substantive or implementable goal.¹¹² Although this case massively restructured the Texas foster care system, the remedies provided focused little on substantive and practical help or necessary attention for youth aging out of the foster care system.¹¹³

However, perhaps one of the most impactful holdings was that this case secured the right to an attorney *ad litem* for every foster child in a Permanent Managing Conservatorship or a child who has remained in the foster care system for at least twelve to eighteen months.¹¹⁴ This revolutionized the representation of foster children.¹¹⁵ Previously, not every foster child was granted an attorney *ad litem*.¹¹⁶ However, following this decision, an attorney *ad litem* is now required under state law, and a foster child in a Permanent Managing Conservatorship will be granted advocacy and representation.¹¹⁷

C. State Requirement of an Attorney Ad Litem

Following *M.D. v. Abbott*, the Texas Legislature proposed Texas S.B. 480, amending the services and requirements to provide for foster children transitioning to independent living.¹¹⁸ This proposed law would require the Texas DFPS to identify each child in the foster care system who has not been assigned an attorney *ad litem* and request the court to appoint one for them.¹¹⁹

When a child enters the foster care system, an attorney *ad litem* must be appointed to represent the child's interests and ensure adequate

107. *Id.*

108. *Id.* at 823.

109. *Id.* at 824–26.

110. *Id.* at 825–26.

111. *Id.* at 825.

112. *See id.*

113. *See id.* at 789.

114. *See id.* at 826–29.

115. *See id.*

116. *See id.*

117. *See id.*

118. *See* Tex. S.B. 480, 86th Leg., R.S. (2019).

119. *Id.*

representation of the child.¹²⁰ The attorney *ad litem* for the child shall have the powers and duties of an attorney *ad litem* for a child under Chapter 107 of the Texas Family Code.¹²¹ An attorney *ad litem* shall represent the child as they would any client—owing the same “duties of undivided loyalty, confidentiality, and competent representation.”¹²²

Under the Texas Family Code, for a child four years of age or older, the attorney *ad litem* shall interview the child, the parties to the suit, and any relevant party who may have significant knowledge of the child, seeking ultimately to elicit the child’s expressed objectives of representation.¹²³ The attorney *ad litem* shall participate in the conduct of the litigation to the same extent as an attorney for a party would, as follows: (1) considering the impact on the child, (2) investigating the facts of the case, (3) obtaining records relating to the child, (4) taking any action consistent with the child’s interests, (5) reviewing any order affecting the child, and (6) encouraging settlement.¹²⁴ The attorney *ad litem* is the child’s ultimate resource to defend what the child wants.¹²⁵ An attorney *ad litem* is the child’s attorney: they are delegated to expressly advocate for the child’s wishes and interests.¹²⁶

While multiple legislative efforts have been made, the number of children entering the foster care system in Texas is not decreasing.¹²⁷ In 2020, approximately 424,000 children were in the nationwide foster care system.¹²⁸ In 2020, 29,991 children were placed in the foster care system in Texas.¹²⁹ During the first three months of 2022, 5,634 children were placed into the Texas foster care system.¹³⁰ If this rate remained the same, 22,527 children

120. TEX. FAM. CODE ANN. § 264.203(g).

121. *Id.*

122. *Id.* § 107.001(2).

123. *Id.* § 107.003(a)(1)(A)–(C).

124. *Id.* § 107.003(a)(1)(B), (F), (G).

125. See *Guardians ad Litem Play a Vital Role*, FOSTERING PERSP. (Nov. 2012), <https://fosteringperspectives.org/fpv17n1/GALs.htm> [<https://perma.cc/B4JV-RPML>].

126. *Id.*

127. Williams et al., *supra* note 82.

128. 6 *Quick Statistics On The Current State of Foster Care*, iFOSTER (Nov. 9, 2020), <https://www.ifoster.org/blogs/6-quick-statistics-on-the-current-state-of-foster-care/> [<https://perma.cc/8AEQ-6PU6>] (noting children go into foster care for a variety of reasons: neglect, abuse, lack of services/other, or refusal/abandonment); see *DFPS Follow Up: Requested at House Human Services Hearing*, TEX. DEP’T OF FAM. & PROTECTIVE SERVS. 1, 20 (Mar. 21, 2022), https://static.texastribune.org/media/files/6c571f4e482b6210e1f4f0da418593a6/DFPS%20Follow%20Up%20Requested%20Information%203.21.22.pdf?_ga=2.20064506.312947888.1649094855-766640201.1609874359) [<https://perma.cc/AVV5-YYHJ>].

129. Williams et al., *supra* note 82 (stating of that number, 15,426 kids were placed into foster care because of neglect, such as neglectful supervision, medical neglect, or physical neglect; 3,520 kids were placed into foster care because of abuse, such as sexual abuse, emotional abuse, or labor and sex trafficking; 1,376 kids were placed into foster care because of lack of services, such as lack of mental health or intellectual and developmental disability services, lack of medical services, solely to obtain mental health services, lack of juvenile justice services, or refusal to accept parental responsibility; and 475 kids were placed into foster care because of refusal or abandonment).

130. *Id.*

would be placed into the foster care system in Texas in the year 2022.¹³¹ These numbers are not decreasing in the long term but are drastically increasing, and it is estimated that more children are expected to be placed in the foster care system in Texas this year than in years past.¹³² As the Texas foster care system expands, the problems facing youth aging out will also be further-reaching.¹³³

When the foster youth reaches age eighteen, the attorney *ad litem* transitions out of representing the child as the child transitions out of care.¹³⁴ Even if the foster child elects to remain in the state's care until age twenty-one, the duties are cast upon the caseworker or another government worker.¹³⁵ Therefore, the attorney *ad litem* may minimally help those two individuals if they ask for the attorney's assistance, but the court presence and advocacy is no longer the job of the attorney *ad litem*.¹³⁶

III. AGING OUT OF THE FOSTER CARE SYSTEM

The main goal of any CPS case is permanency: ensuring the child has a permanent plan for residency.¹³⁷ For foster children, permanency is a form of consistency and stability: a place in the child's life that provides safety and comfort.¹³⁸ Whether through family reunification or adoption, permanency is the goal of any CPS case, as it ensures the child has a fixed place and family to call home.¹³⁹ If permanency cannot be found in that child's placement or in another home, the state aims to prepare the child to be self-sufficient when they "age out" of the foster care system.¹⁴⁰

Each year, thousands of children leave the foster care system when they age out.¹⁴¹ In 2020, 1,230 youth aged out of the foster care system in Texas.¹⁴² Of that number, 21% had been in the foster care system in Texas since at least

131. *See id.*

132. *See id.* (noting that the decrease from 2020 to 2022 was the result of COVID-19 and that the statistics of children being admitted to foster care is on the rise).

133. Kasarabada, *supra* note 81, at 156.

134. *Aging Out of Foster Care*, TEX. FOSTER YOUTH JUST. PROJECT, <https://texasfosteryouth.org/legal-resources/legal-resources-for-youth/aging-out-of-foster-care/> (last visited Aug. 22, 2023) [<https://perma.cc/68Z9-LKB6>].

135. *See Child Protective Services Handbook*, TEX. DEP'T OF FAM. & PROTECTIVE SERVS. (Mar. 2018), https://www.dfps.state.tx.us/handbooks/cps/files/CPS_pg_5200.asp [<https://perma.cc/3LTQ-DSYS>].

136. *See id.*

137. *See An Overview of the Texas Foster Care System*, L. OFF. OF BRYAN FAGAN (July 2019), <https://www.bryanfagan.com/family-law-blog/2019/july/an-overview-of-the-texas-foster-care-system/> [<https://perma.cc/MNY5-T9JX>].

138. Kasarabada, *supra* note 81, at 156.

139. *An Overview of the Texas Foster Care System*, *supra* note 137.

140. Kasarabada, *supra* note 81, at 156.

141. *Id.*

142. Williams et al., *supra* note 82 (comparing to the national total of 20,010 youth aging out of the foster care system).

age thirteen.¹⁴³ These children age out after the system has failed to reunify them with their parents or find another legal, permanent family.¹⁴⁴ Due to the lack of permanency, foster youth age out with little to no support or consistency, ultimately leading to no knowledge of how to adequately take care of or provide for themselves.¹⁴⁵

A. Foster Youth are Unemployed and Uneducated

Not only do a large number of youth age out each year, but these youth are often left with few to no resources, no knowledge of basic life skills, and no community support.¹⁴⁶ In Texas, foster youth aging out of the system have significantly worse outcomes compared to their peers in Texas's general population.¹⁴⁷ Consequently, youth aging out face lower levels of educational attainment and higher levels of unemployment and underemployment.¹⁴⁸ In Texas, only 48% of foster youth have full- or part-time employment.¹⁴⁹ Foster youth are typically forced to accept low-income employment due to a lack of education; less than 3% of former foster youth graduate with bachelor's degrees.¹⁵⁰ Even so, those employed have a mean income of \$12,064.¹⁵¹ Additionally, nearly 25% of youth formerly in foster care lack a high school diploma or GED.¹⁵²

Foster youth experience some of the lowest employment and education rates compared to peers their age.¹⁵³ Regardless of whether a youth aging out of the foster care system can get a job, their ability to keep and maintain a job is even worse.¹⁵⁴ Foster youth do not have the same support system as their

143. *Id.*

144. Rachel Rosenberg et al., *Transition to Adulthood: What We Know (and What We Don't) about Young People with Foster Care Experience from the National Youth in Transition Database (NYTD)*, CHILD TRENDS (Aug. 20, 2020), <https://www.childtrends.org/publications/transition-to-adulthood-what-we-know-and-what-we-dont-about-young-people-with-foster-care-experience-from-the-national-youth-in-transition-database-nytd> [https://perma.cc/7M5S-YFQD].

145. *See id.*

146. *See* Kate Murphy, *TX Tribune Highlights Youth Aging Out of Foster Care*, TEX. CARE FOR CHILD. (Apr. 28, 2020), <https://txchildren.org/posts/2020/4/28/tx-tribune-highlights-youth-aging-out-of-foster-care> [https://perma.cc/87LZ-JXQW].

147. *See id.*

148. Rosenberg, *supra* note 144.

149. *2018 Texas Profile Transition-Age Youth In Foster Care*, KIDS COUNT DATA CTR. 1, 4, <https://assets.aecf.org/m/resourcedoc/texas-fosteringyouthtransitions-2018.pdf> (last visited Dec. 14, 2022) [https://perma.cc/9878-JY6T].

150. Ashley Miznazi, *Watch: Foster kids who age out of the system in Texas face new challenges as young adults*, TEX. TRIB. (Aug. 12, 2022), <https://www.texastribune.org/2022/08/12/foster-kids-age-out/#:~:text=Every%20year%20in%20Texas%2C%20more,care%20system%20without%20being%20adopted> [https://perma.cc/7NXY-24VT].

151. Kasarabada, *supra* note 81, at 155.

152. *Id.* at 154.

153. *See id.* at 154–55.

154. *See id.*

peers, so access to positive motivation or reinforcement is scarce.¹⁵⁵ There is no permanency in a foster youth's life due to either failing to reunite with their family or bouncing from home to home.¹⁵⁶ The lack of permanency ultimately creates a lack of consistency and leaves the foster youth with no support or knowledge of how to get or maintain employment.¹⁵⁷ Imagine a youth not in the foster care system going off to college: they are anxious about the changes to come, dependent on their parents' financial support, and unsure how to provide for themselves.¹⁵⁸ They are likely relying on their school's meal plan, career advisors, and dormitory services—all of which their parents may financially support.¹⁵⁹ Ultimately, the youth who are not in the system have the grace to mess up, margins for errors, and a safety net to catch them when they fall.¹⁶⁰ However, this cannot be said for foster youth aging out of the system.¹⁶¹ They have no such support, resources, or safety net.¹⁶² If they fall, they end up homeless, in jail, or dead.¹⁶³

B. Foster Youth are Homeless

Because the state has removed them from their homes, when foster youth age out, they have no place to live.¹⁶⁴ The homelessness rates for foster youth aging out are concerning high.¹⁶⁵ Within four years of leaving foster care, one in every four foster youth nationwide ends up homeless.¹⁶⁶ By age twenty-four, approximately 40% of adults formerly in foster care are on the streets or without a stable place to live.¹⁶⁷ Foster youth who have aged out are often left homeless, bouncing from home to home, or in shelters.¹⁶⁸ They have little to no support and no real tools to aid in finding and maintaining stable housing.¹⁶⁹ The homelessness rate continues to increase amongst foster youth while little attention is given to foster youth aging out of the system.¹⁷⁰ Not only does this homelessness rate pose daunting consequences for former

155. Miznazi, *supra* note 150.

156. *See supra* Part III.

157. *See* Miznazi, *supra* note 150.

158. *See id.*

159. *See id.*

160. *See* Brittany Bartkowiak, *The safety net for young people aging out of foster care is a fantasy*, MICH. RADIO (Oct. 28, 2014 2:28 PM), <https://stateofopportunity.michiganradio.org/families-community/2014-10-28/the-safety-net-for-young-people-aging-out-of-foster-care-is-a-fantasy> [<https://perma.cc/Y9D7-VJ4S>].

161. *See* Miznazi, *supra* note 150.

162. *See* Bartkowiak, *supra* note 160.

163. *See* Miznazi, *supra* note 150.

164. *See supra* Part III.

165. *See* Miznazi, *supra* note 150.

166. *Id.*

167. Kasarabada, *supra* note 81, at 156.

168. *See id.* at 155–56.

169. *Id.*

170. *Id.*

foster children, but it also adds to the nationwide and statewide problem of homelessness.¹⁷¹ By fighting this problem before it occurs—ensuring foster youth understand how to care and provide for themselves upon aging out—the aging out problem is not only combatted, but homelessness as well.¹⁷²

The lack of permanency and consistency experienced by children undercuts their understanding of how to provide for themselves.¹⁷³ Studies have demonstrated that youth who have a close relationship with an adult are half as likely to be homeless as those without such support.¹⁷⁴ Studies have also shown that foster youth “who report having a permanent adult in their life are more likely to do better across outcome areas, particularly related to housing, health insurance coverage, and personal and community engagement.”¹⁷⁵ Foster youth without a close adult or mentor are much less successful in finding employment or providing for themselves independently.¹⁷⁶ The State no longer supports them, and they are left alone to find some way to make a living and keep providing for themselves.¹⁷⁷

C. Foster Youth Have High Incarceration and Delinquency Rates

Not only do foster youth aging out face high homelessness rates, a lack of education, and high unemployment and underemployment rates, but the rates of incarceration and death for foster youth are concerningly high.¹⁷⁸ These numbers are grim and show the increasingly problematic statistics that foster youth aging out of the system face.¹⁷⁹ In a study conducted on foster care youth, the likelihood of violent activity is dangerously high.¹⁸⁰ More than 60% of the male foster youth population have been arrested and over 40% have spent one night or more in a jail, prison, juvenile hall, or another correctional facility.¹⁸¹ This study overwhelmingly concluded that one in four foster youth will be incarcerated within two years of leaving the system.¹⁸²

171. See Miznazi, *supra* note 150.

172. Author’s original thought.

173. See *supra* Part III.

174. Kasarabada, *supra* note 81, at 156.

175. *The Opportunity Passport: Building Assets for Youth Aging Out of Foster Care*, THE JIM CASEY YOUTH INITIATIVE 1, 7 (June 2009), <https://assets.aecf.org/m/resourcedoc/JCYOI-TheOpportunityPassport-2009.pdf> [<https://perma.cc/64UJ-TKBA>].

176. See *supra* Part III.

177. See *id.*

178. See Miznazi, *supra* note 150.

179. *Id.*

180. Mark Courtney et al., *Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 21*, CHAPIN HALL AT THE UNIV. OF CHI. 1, 64 (Dec. 2007), <https://www.chapinhall.org/wp-content/uploads/Midwest-Eval-Outcomes-at-Age-21.pdf> [<https://perma.cc/G4RG-NYBR>].

181. *Id.*

182. See Madelyn Freundlich et al., *Time for Reform: Aging Out and On Their Own*, THE PEW CHARITABLE TRS. 1, 1 (2007), https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/foster_care_reform/kidsarewaitingtimeforreform0307pdf.pdf [<https://perma.cc/8N8B-SNU3>].

The failure of the foster care system in Texas has left those aging out at a significant disadvantage to any other peer group their age.¹⁸³ Foster youth aging out are left with no knowledge on how to access or use the resources available to them and no life skills to keep or maintain these resources.¹⁸⁴ To successfully age out would mean to receive job training, get and keep a job, earn a high school diploma or GED, or have the life skills necessary to live on their own.¹⁸⁵ However, the state fails to provide foster youth with actual access to the existing necessary resources, critical support, or information needed.¹⁸⁶ Foster youth have no one to fall back on once they have aged out; they are alone, worried, and struggling to provide.¹⁸⁷

D. Foster Youth Have No Ability to Collect Assets or Inheritance

An extreme consequence of little or no education and lack of support for foster youth is the inability to collect assets, collect an inheritance, or make their own will.¹⁸⁸ They do not have the financial resources or support to access any form of estate planning assistance or counsel.¹⁸⁹ Additionally, they do not have the ability to collect any assets.¹⁹⁰ Without education or assistance, their ability to collect and maintain any assets is essentially futile.¹⁹¹ Studies have shown that when resources that assisted individuals in collecting assets were provided, individuals with no permanent adult connection, or those who have been homeless utilized the program more.¹⁹² This trend continues to show that when resources that provide knowledge and assistance are available, those who have faced hardships, such as foster youth, utilize them.¹⁹³ Foster youth age out of the system with little to no education, and if they are able to collect assets or an inheritance, they do not know how to collect them or how to obtain the correct assistance to counsel them in this.¹⁹⁴

Upon aging out of the foster care system, foster youth often have incomplete identifying documents.¹⁹⁵ These documents may not have all the

183. Kasarabada, *supra* note 81, at 156.

184. *See id.*

185. *Id.*

186. *See id.*

187. Freundlich et al., *supra* note 182, at 9.

188. *The Opportunity Passport: Building Assets for Youth Aging Out of Foster Care*, *supra* note 175.

189. *Id.* at 2.

190. *Id.* at 4.

191. *Id.* at 5.

192. *Id.* at 6.

193. *Id.*

194. *Id.* at 2.

195. *See* Mary Christine Reed, *Representing The "Aging Out" Foster Youth*, TEX. RIOGRANDE LEGAL AID, INC. 1, 2, (Apr. 2013) https://texasfosteryouth.org/downloads/representing_the_aging_out_foster_youth.pdf [<https://perma.cc/UG57-54NN>].

correct information or various important documents might be missing.¹⁹⁶ This is extremely detrimental to obtaining any form of employment, education, or housing.¹⁹⁷ Without a complete birth certificate, social security card, or driver's license, a person is extremely limited in any form of opportunity requiring identifying information.¹⁹⁸ Additionally, the ability to collect assets would be void, as there would be no way to properly identify that individual.¹⁹⁹ While a foster youth usually does not have many assets or an inheritance, without these documents, the foster youth misses out on anything they might obtain from relatives or important adults.²⁰⁰

When increased opportunities for economic success, partnerships, resources, and engagement with the youth are provided, the foster youth has increased chances of permanency, better personal and community engagement, and overall better physical and mental health.²⁰¹ However, foster youth are aging out without these resources and partnerships and are left to figure out how to provide for themselves and collect and maintain assets on their own.²⁰²

IV. WHAT RESOURCES DO YOUTH AGING OUT OF THE FOSTER CARE SYSTEM HAVE?

A. Attorneys Ad Litem

As previously mentioned, an attorney *ad litem* shall represent the child as they would any client, owing the same duties and advocacy as they would another client.²⁰³ Under Chapter 107 of the Texas Family Code, for a child at least sixteen years old, an attorney *ad litem* shall:

[A]dvise the child of the child's right to request the court to authorize the child to consent to the child's own medical care[,] . . . and ascertain whether the child has received the following documents: a certified copy of the child's birth certificate; a social security card or a replacement social security card; a driver's license or personal identification certificate . . . ; [and] any other personal document the Department of Family and Protective Services determines appropriate[.]²⁰⁴

196. *See id.* at 1.

197. *See id.*

198. *See id.*

199. *See The Opportunity Passport: Building Assets for Youth Aging Out of Foster Care*, *supra* note 175, at 5.

200. *See id.* at 4.

201. *Id.* at 9.

202. Kasarabada, *supra* note 81, at 156.

203. *See supra* Section II.C.

204. TEX. FAM. CODE ANN. § 107.003(b)(3)(A), (3)(B)(i)–(iv).

Additionally, the Texas Legislature attempted to ensure that the *ad litem* would consult with the youth's caseworker to seal or expunge any of the youth's criminal or juvenile records received while the youth was in foster care.²⁰⁵

While an attorney *ad litem* is also required to receive a variety of abuse- and trauma-based training, there is no training required on youth aging out of the system or the effects the system has on youth transitioning into adulthood.²⁰⁶ Therefore, attorney *ad litem* training is vastly insufficient in educating on the consequences and effects of the foster youth aging out of the system, nor does the state ensure the attorney *ad litem* understands the dire need for the youth to get these resources.²⁰⁷ Additionally, other than ensuring the youth receives various records, the attorney *ad litem* has no duty to ensure or help with the transition to adulthood.²⁰⁸ The attorney *ad litem* essentially must show up to litigation-related matters, but they have no duty to mitigate the lifelong circumstances the child is thrust into.²⁰⁹ This, however, is not analogous to a normal attorney-client relationship.²¹⁰ No reasonable and adversarial attorney in their regular course of business would merely help with a few documents and show up to litigation-related matters, conducting no prior research nor assessing the client's best interests.²¹¹ While an attorney *ad litem* is meant to treat the child like a normal client, the child rarely reaps the benefits of such a relationship and is often negatively affected by the attorney *ad litem*'s omission with no legal recourse that a normal client would have.²¹²

However, when attorneys *ad litem* do come prepared, children move through the foster care system faster.²¹³ An attorney *ad litem* who is educated on the effects of foster care, as well as the resources available to a foster youth beginning to age out, can achieve astronomical results.²¹⁴ Multiple states have started to increase the role of attorneys for foster kids, which has led to a decrease in the number of children in the foster care system and children finding permanent homes at about twice the rate of unrepresented children.²¹⁵ Good attorneys *ad litem* ensure success; they overwhelmingly increase the rate of children finding homes and provide advocacy and a

205. Tex. S.B. 480, 86th Leg., R.S. (2019).

206. See TEX. FAM. CODE ANN. § 107.003(b)(3)(A), (3)(B)(i)–(iv).

207. See *id.*; author's original thought.

208. See TEX. FAM. CODE ANN. § 107.003(b)(3)(A), (3)(B)(i)–(iv).

209. See *id.*

210. See MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS'N 2022).

211. See *id.*; Author's original proposal.

212. See TEX. FAM. CODE ANN. § 107.003(b)(3)(A), (3)(B)(i)–(iv); author's original thought.

213. Kelli Kennedy, *Advocates: States should give foster kids lawyers*, ST. AUGUSTINE REC. (Mar. 12, 2012), <https://www.staugustine.com/story/news/2012/03/12/advocates-states-should-give-foster-kids-lawyers/16180874007/> [<https://perma.cc/PU32-6G2U>].

214. See *id.*

215. See *id.*

voice.²¹⁶ They provide more information and understanding to the child, granting the child the ability to make more informed decisions for their future.²¹⁷ The more represented a child is, the better chance they have at ensuring permanency and aging out more successfully.²¹⁸

B. Guardians Ad Litem

In many ways, the role of a guardian ad litem is different than an attorney ad litem.²¹⁹ The most important distinction is that while an attorney *ad litem* is the child's attorney, advocating for what the child wants, the guardian *ad litem* advocates for the best interests of the child.²²⁰ A guardian *ad litem* is not the child's attorney, and therefore, is not required to advocate for what a child may want.²²¹ On the contrary, they assess the overall circumstances and advocate for what they believe the child needs, even if contradictory to what the child wants.²²² Ultimately, a guardian *ad litem* is intended to represent the best interests of the child since the child cannot speak for themselves.²²³

When DFPS seeks to terminate parental rights or obtain custody of a child, both an attorney *ad litem* and a guardian *ad litem* must be appointed.²²⁴ Sometimes, this could be the same person.²²⁵ The guardian *ad litem*, however, is a neutral representative of the court tasked with determining the best course of action, even if it conflicts with what the child wants.²²⁶ The guardian *ad litem* can often be a resource in ensuring permanency or long-term success for the child.²²⁷ Under the Texas Family Code, a guardian *ad litem* has an overall duty to investigate the child's well-being and current state.²²⁸ Those duties include interviewing the child, observing the child at their home, interviewing parents or other family members, interviewing other people in the child's life, such as teachers, preachers, coaches, and friends, obtaining medical and educational records, and seeking to elicit the child's expressed objectives.²²⁹

216. Author's original proposal.

217. *Id.*

218. See Kennedy, *supra* note 213.

219. See *What is a guardian ad litem under the Texas Family Code?*, TEX. L. GUIDE, <https://kielichlawfirm.com/what-is-a-guardian-ad-litem/> (last visited Dec. 10, 2022) [<https://perma.cc/C535-TM33>].

220. *See id.*

221. *See id.*

222. *See id.*

223. *See id.*

224. *Child Protective Services Handbook*, *supra* note 135.

225. *Id.*

226. *See What is a guardian ad litem under the Texas Family Code?*, *supra* note 219.

227. *See id.*

228. *See id.*

229. TEX. FAM. CODE ANN. § 107.002(a)–(b).

A guardian *ad litem* is often more involved than an attorney *ad litem* and has an increased role in assessing what is ultimately best for the child.²³⁰ Under that assessment, they often take a heavier role and evaluation in the child's life, assuring the best possible outcome for the child's long-term situation.²³¹ An attorney *ad litem*, in contrast, is not tasked with these important goals and usually serves a lesser role in the child's life.²³² Therefore, an attorney *ad litem*'s roles and duties should mirror that of a guardian *ad litem*: assessing the totality of the circumstances to advocate not only for what the child wants but what the child needs.²³³ The guardian *ad litem* typically takes on a more hands-on approach and inquires more of what the child wants and needs.²³⁴

Similarly, a guardian may be appointed for a child if the child's parents passed away or were incapable of serving in that capacity.²³⁵ While the preference is given to relatives, a guardian will be appointed by the court if no one is available or applies.²³⁶ A guardian assists the orphan child in managing and acting as guardian over the minor child's person or estate.²³⁷ If the minor is at least twelve years of age, however, the minor may select the guardian "if the court finds that the selection is in the minor's best interest and approves the selection."²³⁸ Comparable to the role of a guardian *ad litem*, a guardian is appointed for the best interests of the child.²³⁹

For a child in the foster care system, kinship guardianship can be a permanency option when permanency through adoption or reunification with the child's parents is not an option.²⁴⁰ This kind of guardianship, such as between a foster parent and a foster child, creates a permanent family for the child without the necessity of terminating parental rights.²⁴¹

C. Foster Care Transition Plan

Perhaps the most important resource that has been put into place for the foster youth aging out is the Foster Care Transition Plan.²⁴² In Texas, once a

230. See *Guardians ad Litem Play a Vital Role*, *supra* note 125.

231. *Id.*

232. See *id.*

233. Author's original thought.

234. See *What is a guardian ad litem under the Texas Family Code?*, *supra* note 219.

235. See TEX. EST. CODE ANN. § 1104.052.

236. *Id.* § 1104.052(4).

237. *Id.* § 1104.052.

238. *Id.* § 1104.054(a).

239. Compare EST. § 1104.051 (providing the statute for guardian selection), with TEX. FAM. CODE ANN. § 107.002(a)–(b) (providing responsibilities for guardians *ad litem*).

240. See *Kinship Care*, N.J. FAM. L. ANN. D. CH.12 I.

241. See *id.*

242. See *Texas Foster Care Handbook For Children, Youth & Young Adults*, TEX. HEALTH & HUM. SERVS. 1, 9 (Apr. 2017), https://www.dfps.texas.gov/Child_Protection/Youth_and_Young_Adults/Transitional_Living/documents/foster-care-handbook.pdf [<https://perma.cc/WCJ8-6UXD>].

foster youth is fourteen, they are required to receive and make a plan outlining transition activities that plans for their life as an adult, including a career, college, or a plan for helping the youth enroll in an educational or vocational job training program.²⁴³ This plan should be put into place by age fourteen.²⁴⁴ This plan covers the youth's hopes, dreams, strengths, and goals for their education, health, permanency, housing, transportation, and career aspirations.²⁴⁵ This meeting is held with the foster youth, CPS worker, and any adult the youth deems important in their life.²⁴⁶ It is important to note, however, that unless the youth explicitly requests it, the attorney *ad litem* is not a part of this meeting.²⁴⁷

During this Transition Plan Meeting, the only legal consideration given is whether the foster youth has attended or participated in their CPS court hearing, and whether they have either a guardian or attorney *ad litem*.²⁴⁸ This is to ensure that while various court hearings have occurred or are occurring, the foster youth is an active participant in the conclusions being made.²⁴⁹ Additionally, the foster youth should have an attorney *ad litem*; a guardian *ad litem* may also be appointed either in addition to, or replacement of, the attorney *ad litem*.²⁵⁰ The youth will be asked to identify who their CPS regional attorney, attorney *ad litem*, guardian *ad litem*, or Legal Aid is and determine what judicial and legal involvement steps need to be taken.²⁵¹ An attorney, however, is not required to be at this meeting and is more than likely not present.²⁵² Therefore, the youth completes this section either on their own or with the help of another non-legally-educated adult.²⁵³

One of the primary goals of this meeting is to give the foster youth a group of caring adults to be a part of their support system.²⁵⁴ DFPS recognizes that the more support a foster youth has, the higher their chances of success are.²⁵⁵ At these meetings, a foster youth is also told about the array of state programs available to them—assisting their education, medical welfare, and living accommodations.²⁵⁶ However, this youth's age can range anywhere from fourteen to sixteen years old, and they have an overwhelming amount

243. *Id.*

244. *Id.*

245. *TRANSITION PLAN – Your Life, Your Dreams, Your Future. . . , Form K-908-2500*, TEX. DEP'T OF FAM. & PROTECTIVE SERVS. (DFPS) 1, 1 (Mar. 2018).

246. *See id.*

247. *See id.*

248. *See id.* at 10.

249. *See id.*

250. *See supra* Section IV.A.

251. *See TRANSITION PLAN – Your Life, Your Dreams, Your Future. . . , Form K-908-2500*, *supra* note 245, at 10–11.

252. Reed, *supra* note 195, at 8–9.

253. *See id.*

254. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 9.

255. *Id.*

256. *Id.*

of complex information thrust upon them.²⁵⁷ They are then simultaneously expected to articulate their goals and aspirations for the next five to ten years.²⁵⁸ Most teenagers would be unable to comprehend or utilize these resources at this age, much less youth in the foster care system who are additionally experiencing separation, trauma, and often abuse.²⁵⁹

Another one of the primary goals for transition is ensuring the child is a part of the Preparation for Adult Living (PAL) classes.²⁶⁰ These classes are traditionally presented at the child's Transition Planning Meeting, another important component of these meetings.²⁶¹ PAL classes are a part of the Texas DFPS as part of a program to help transition youth out of the foster care system.²⁶² This program consists of important life-skills training, educational and vocational services, supportive services, transitional living allowances, room and board assistance, and case management to help the foster youth transition out.²⁶³ One of the largest problems for youth aging out of the foster care system is the lack of basic life skills.²⁶⁴ This program, however, teaches foster children important and necessary skills such as personal hygiene, grocery and personal shopping, cooking and nutrition, job readiness, how to obtain housing, financial management, use of transportation, home safety, and communication skills.²⁶⁵ The importance of the class is crucial, and the foster youth should be involved in this program.²⁶⁶ However, foster children are often unaware of this class.²⁶⁷ It is common for their caseworker to be overloaded and forget to enroll the child in, or even offer, this class up for the child.²⁶⁸ While this class is not mandatory, and the child has the option to decline, the awareness of what this class is and the benefits it entails is crucial information the child should have access to.²⁶⁹

At age sixteen, another Transition Planning Meeting is held, where one of the main priorities is for the foster youth to receive their personal documents, such as a copy of their birth certificate, social security card, and personal identification card.²⁷⁰ When a foster youth reaches the age of sixteen, this plan helps them discuss future living accommodations and information on the cost of housing, access to education, and an understanding

257. See Asgarian, *supra* note 36.

258. See *id.*

259. See *id.*

260. See *TRANSITION PLAN – Your Life, Your Dreams, Your Future. . .*, Form K-908-2500, *supra* note 245, at 14.

261. *Id.*

262. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 19.

263. *Id.*

264. See Asgarian, *supra* note 36.

265. See *TRANSITION PLAN – Your Life, Your Dreams, Your Future. . .*, *supra* note 245, at 14.

266. See *id.*

267. See Reed, *supra* note 195, at 2.

268. See *id.*

269. See *id.*

270. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 18.

of their medical options.²⁷¹ However, youth in foster care have not had the same opportunities as other youth to develop lasting and supportive relationships.²⁷² Therefore, when they do age out, they are left with personal documents and a lot of information but very little knowledge on what to do and how to utilize these resources.²⁷³ These documents are extremely important in ensuring the foster youth has proper identifying paperwork, without which they could not apply for or obtain any employment or educational opportunities.²⁷⁴ Though these meetings are extremely helpful and proactive, they are futile if the foster youth does not have any lasting support to implement these goals.²⁷⁵ The foster youth must be aware of not only what these resources are but how to implement and keep them.²⁷⁶ Without lasting support and intentional guidance, this is near impossible.²⁷⁷

D. Foster Care Handbook

When a child gets placed into the foster care system, they are given a handbook outlining their rights and what resources they have access to.²⁷⁸ This handbook is primarily for children and youth in foster care, as well as the relevant adults in foster youth's life, such as their foster parents, biological parents, and caseworkers.²⁷⁹ This handbook is one of the prime tools that inform foster children of their rights in the foster system.²⁸⁰ It acts as a guide and informant, detailing the rights that the child has and is entitled to.²⁸¹ Once the child nears age fourteen, this handbook becomes a guide for planning for their future, such as understanding what the Transition Planning Meeting is, understanding their medical consent, having rights to their documents, and learning about the programs they have access to.²⁸² This handbook also specifies who the relevant adults are in the foster child's life and what resources and support these individuals are required by law to provide.²⁸³

271. *Id.*

272. *See Helping Youth Transition to Adulthood: Guidance for Foster Parents*, CHILD WELFARE INFO. GATEWAY 1, 6 (Nov. 2018), https://www.childwelfare.gov/pubpdfs/youth_transition.pdf [<https://perma.cc/5MFT-PBJT>].

273. *See id.*

274. *Id.*

275. Author's original thought.

276. *Id.*

277. *Id.*

278. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 1.

279. *See id.*

280. *See id.*

281. *See id.*

282. *Id.*

283. *Id.* at 14–15.

This handbook specifically includes the duties and roles required of caregivers and caseworkers.²⁸⁴ However, this handbook does not give any information or guidance on the child's right to an attorney *ad litem*, nor what the attorney *ad litem*'s primary role and purpose is.²⁸⁵ With regard to the child's legal and court rights, this handbook merely identifies that the child has the right to contact and speak privately to their caseworker, attorney *ad litem*, probation officer, court-appointed special advocate (CASA), or Disability Rights of Texas; go to court hearings and speak to the judge; and inform the judge about where they are living and what they would like to happen to them and their family.²⁸⁶ However, the foster youth has no knowledge of what the role of an attorney *ad litem* is or what their rights to an attorney *ad litem* are.²⁸⁷ Foster children have no understanding of the attorney *ad litem* as a resource and as an advocate and are missing out on the invaluable benefit of an advocate.²⁸⁸ Regardless of these resources, the daunting statistics remain: foster youth are more likely than not left homeless, hopeless, and without help upon aging out of the foster care system.²⁸⁹ As a long-time group home foster parent attested,

[J]ust like any young person who is told something at 15 or 16 but never gets to practice it or actually do it, [foster youth] forget a lot . . . [t]hat's why a lot of them, they're just not prepared when they leave foster care. Which, none of us were prepared. But the big difference is that you and I had a family there to support us and pick us up. These kids do not have that. . . .²⁹⁰

These resources are futile without the presence of a helper and advocate.²⁹¹ While these resources exist, the foster youth have no idea how to utilize them or even keep them.²⁹² Foster youth must be provided with a primary voice: someone to ensure the access, obtainment, and implementation of these resources, someone to ensure that the foster youth is being looked out for and who understands that child's specific needs.²⁹³

284. *Id.*

285. *See id.*

286. *Id.* at 10.

287. *Id.*

288. *Id.*

289. Asgarian, *supra* note 36.

290. *Id.*

291. Author's original thought.

292. *See* Asgarian, *supra* note 36.

293. Author's original thought.

V. THE SOLUTION: ATTORNEY *AD LITEM*

Only one thing can currently be guaranteed for all foster children: inconsistency.²⁹⁴ An attorney *ad litem* is one of the only roles required by law.²⁹⁵ But while a foster child is required to have an attorney *ad litem*, their duties and representation are minimal.²⁹⁶ Therefore, by amending and adding to the role of an attorney *ad litem* to provide more for foster youth aging out of the system, foster youth's transition to adulthood will be more successful.²⁹⁷ With the increased presence and advocacy of the attorney *ad litem*, the foster youth will better understand how to access, obtain, and maintain what is available to them and will age out more successfully.²⁹⁸ The attorney *ad litem* should serve as a consistent adult—a mentor to provide for the foster child's needs and desires.²⁹⁹

Not only does the role of an attorney *ad litem* need to be amended, but the foster youth need to be aware of their rights to an attorney *ad litem* and the attorney *ad litem*'s role.³⁰⁰ Therefore, both the foster care handbook and transition plan should be amended to reflect the role and presence of an attorney *ad litem* and detail what the duties of the attorney *ad litem* are for the foster youth to understand.³⁰¹ By providing better information and knowledge of the attorney *ad litem* to the foster youth, the attorney *ad litem* and foster youth will be able to work together to better accomplish and meet the child's needs.³⁰²

A. The Foster Youth's Need for an Advocate

When foster youth age out of the system, they have little to no one looking out for them.³⁰³ At age eighteen, they are expected to understand how to sign lease agreements, pay rent, find a job, apply for health insurance, or purchase a car.³⁰⁴ There is no safety net, no person to model what to do or help them along the way, and no room for error.³⁰⁵ Foster youth need a

294. See Kasarabada, *supra* note 81, at 156; see also *How Lawyers Are Changing the Lives of Foster Kids—and Creating a Model for Change*, GOOP, <https://goop.com/wellness/environmental-health-civics/how-lawyers-are-changing-the-lives-of-foster-kids-and-creating-a-model-for-change/> (last visited Dec. 19, 2022) [<https://perma.cc/M8WG-QTAJ>].

295. TEX. FAM. CODE ANN. §264.203(g).

296. See *id.* at § 107.003(b)(3)(A), (3)(B)(i)–(iv).

297. Author's original thought.

298. *Id.*

299. *Id.*

300. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 10.

301. Author's original thought.

302. *Id.*

303. See Kasarabada, *supra* note 81, at 156.

304. See Reed, *supra* note 195, at 8–9.

305. See Bartkowiak, *supra* note 160.

mentor—an adult looking out for them.³⁰⁶ Not only do they need a mentor, but foster youth also need an adversarial mentor: one educated in the legal consequences of their actions and able to judicially advocate for the foster child's needs.³⁰⁷

Therefore, by delegating and assigning additional representation roles to an attorney *ad litem*, foster youth are ensured they are being looked out and advocated for.³⁰⁸ Much more than their needs being voiced, they will also have a consistent presence acting as more than just an attorney.³⁰⁹ They will inadvertently and overtly serve as a mentor: an adult looking out for the foster youth, showing them the way, and giving them hope.³¹⁰

Though foster youth have access to state and federal resources and opportunities upon aging out, they are in desperate need of representation and advocacy.³¹¹ Mentorship, advocacy, or guidance-based relationships that communicate with the foster youth regarding their progress increase foster youths' drive to access support programs and services upon aging out.³¹² Having an advocacy-based adult or mentor presence increases foster youths' ability to access these resources and succeed upon aging out of the foster care system.³¹³

B. Proposed Legislative Addition to the Roles and Duties of an Attorney Ad Litem

As previously discussed, Chapter 107 of the Texas Family Code outlines the roles and duties of the attorney *ad litem*.³¹⁴ This role in Texas must be amended to better enhance the attorney's *ad litem* role of assisting youth aging out of the foster care system.³¹⁵ Foster youth need an individual advocating for them and ensuring that these resources and services promised to them are received.³¹⁶ By providing an educated attorney who has the knowledge and capabilities to champion and educate the youth, the transition out of the foster care system can occur with more knowledge and resources.³¹⁷ Thus, the youth, through an attorney *ad litem*, should better understand what their resources are, what is available to them, and how to

306. *See id.*

307. Author's original thought.

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. See Amy Armstrong-Heimsoth et al., *Former Foster System Youth: Perspectives on Transitional Support and Programs*, PUBMED CENT. (Apr. 25, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7518090/> [https://perma.cc/H3Z8-2JQZ].

313. *See id.*

314. TEX. FAM. CODE ANN. § 107.003(b)(3)(A), (3)(B)(i)–(iv).

315. Author's original thought.

316. *Id.*

317. *Id.*

acquire the resources available to them.³¹⁸ They will then have more knowledge and capability to get a job, obtain an education, and be able to provide for themselves in a sustainable manner.³¹⁹ With this knowledge and increased access to opportunities, their odds of ending up homeless or unemployed will be substantially decreased.³²⁰

I. Proposed Addition to the Texas Family Code

Chapter 107, Section 107.003 of the Texas Family Code should be amended to add the following:

Sec. 107.003(a)(1):

(J) for a child 14 years of age, the attorney *ad litem* shall:

(i) ascertain whether the child has had or will have their first permanency transition planning meeting;

(A) Permanency transition planning meeting is defined as a meeting with the foster child's CPS worker, and any other adult the child wants, to cover the child's goals for education, health, permanency, housing, and transportation;

(B) If the child has not had a permanency transition planning meeting, the attorney *ad litem* shall ensure one is had before the child's next birthday;

(ii) attend the permanency transition planning meeting and advocate for the child's best long-term interests;

(iii) ascertain whether the child is informed about the relevant services, programs, and benefits available to them when they leave care;

(iv) ascertain whether the child is able to understand and comprehend these relevant services available to them;

(v) at this meeting, ascertain whether the child has had or will have a credit report run annually;

(vi) seek to develop the child's expressed objectives in regard to leaving care;

(vii) ascertain whether the child is provided with experiential life-skills training and what barriers there are to developing important skills; and

(viii) seek out any additional programs or resources to assist the child in leaving care, and advocate for the child's access to or placement in these programs or resources;

318. *Id.*

319. *Id.*

320. *Id.*

- (K) for a child at least 16 years of age,
 - (i) ascertain whether the child has had or will have their first permanency transition planning meeting;
 - (ii) attend the permanency transition planning meeting and advocate for the child's best long-term interests, unless the child insists you do not attend;
 - (iii) advocate that the child be offered a circle of support meeting;
 - (iv) attend the circle of support meeting, with the child's consent;
 - (v) advocate for the child's expressed interests at the circle of support meeting;
 - (vi) ascertain whether the child has received all documents required by Subsection (b)(B)(i)-(iii);
 - (vii) review the documents to make sure they are all under the correct name;
 - (viii) ensure the child understands what these documents are and how to safekeep them;
 - (ix) ascertain whether the child is being offered Preparation for Adult Living (PAL) classes and if they are attending
- (L) before a child is 18 years of age,
 - (i) ensure they have all documents required by Subsection (b)(B)(i)-(iii);
 - (ii) ascertain whether the child knows of, and is able to comprehend, all resources available to them once they leave care, such as, but not limited to:
 - (A) Transitional Living Allowance
 - (B) Room and Board Assistance
 - (C) Education and Training Voucher
 - (D) College Tuition and Fee Waiver
 - (E) Medicaid
 - (F) Extended Foster Care
 - (G) Extended Court Jurisdiction
 - (iii) ensure the child has received information of or access to all relevant programs and resources available to them upon leaving care; and
 - (iv) ensure the child has full knowledge and comprehension of how to access these programs, and keep them.³²¹

321. Author's original proposal.

2. Adding Duties for Representing a Foster Youth at Age Fourteen

Upon age fourteen, a child is supposed to be scheduled to receive a Permanency or Transition Plan Meeting.³²² While this is typically the responsibility of a caseworker or foster parent, it can often be overlooked as caseworkers are overloaded, and foster parents are not always informed on how or what to do when it comes to transition services.³²³ An attorney *ad litem* is trained in the field of law and is required to receive training in child-related services.³²⁴ Therefore, an attorney *ad litem*, as a representative of the child, should be required by state law to ensure the Transition Plan Meeting will occur.³²⁵

Likewise, an attorney, in their regular course of business, would attend meetings their client was present at, inform their client of their rights and options, and seek to support their needs and interests.³²⁶ That is the sole role of an attorney: to be a zealous advocate for their client.³²⁷ Therefore, an attorney *ad litem*'s role should not be any different.³²⁸ While attorneys do not always deal with minors as clients, these minors are thrust into difficult life situations with consequences that can be detrimental to their future.³²⁹ Foster youth are a very vulnerable population, and attorneys *ad litem* should take this into account when representing them as clients.³³⁰ Additionally, these legal decisions regarding the child's future can be costly and must be handled with the highest sensitivity and care.³³¹ Hence, an attorney *ad litem* should be required by state law to not only be present at these meetings but to be an advocate for the child—standing up for their interests and informing them of their rights and options during these meetings.³³²

As the attorney *ad litem*'s role stands in its current form, a young child is expected to speak up for themselves at these meetings to try and formulate their own goals and interests.³³³ An attorney *ad litem* should not only be present, but they should help the child formulate these goals and effective ways to achieve and maintain them.³³⁴ Showing up at meetings the attorney's

322. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 9.

323. See Cayla Harris, *Flood of 2,300 departing workers leaves Texas child welfare agency scrambling: 'Absolutely a crisis'*, HOUS. CHRON. (Aug. 18, 2022, 2:52 PM), <https://www.houstonchronicle.com/news/legislature/article/Flood-of-2-300-departing-workers-leaves-Texas-17382455.php> [<https://perma.cc/25AF-FK7T>].

324. TEX. FAM. CODE ANN. § 264.015(a).

325. Author's original thought.

326. MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS'N 2022).

327. *Id.*

328. TEX. FAM. CODE ANN. § 107.003(a)(2)

329. Author's original thought.

330. *Id.*

331. *Id.*

332. *Id.*

333. *Id.*

334. *Id.*

client would be expected to attend should be the bare minimum.³³⁵ Not only that, but advocating for their client's legal and financial needs would also be a bare minimum expectation of an attorney.³³⁶ Here, the role and expectation for an attorney *ad litem* should be no different.³³⁷

During the Transition Plan Meeting, this child is younger than eighteen.³³⁸ Therefore, their ability to comprehend all that is being asked of them and offered to them is limited.³³⁹ An attorney *ad litem* needs to be there to be able to explain each and every step and articulate the short- and long-term consequences of these resources.³⁴⁰ A client would never be expected to understand all the legal terms and consequences of a decision on their own; the attorney would be present and responsible for explaining the consequences and objectives to their client.³⁴¹ An attorney, in their regular course of business, has a duty to communicate and explain a matter to their client to the extent reasonably necessary for the client to make informed decisions regarding the representation.³⁴² Even more, this child is in a vulnerable population, and comprehension is almost essential to their success upon exiting the foster care system.³⁴³ Here, the relationship between the attorney *ad litem* and the foster youth should be treated similarly.³⁴⁴ One of the existing duties of an attorney *ad litem* is to ascertain the child's expressed interests.³⁴⁵ By being present at these meetings, the attorney *ad litem* can best assess the child's interests and communicate those to the court.³⁴⁶

The attorney *ad litem* should also reasonably explain each resource available to the foster youth, such as state-funded housing opportunities, educational benefits, and Medicaid coverage, so they will be able to make informed decisions regarding their goals and future.³⁴⁷ Communicating with the child's caseworker is essential here, as the caseworker will have an understanding and knowledge of what these resources are.³⁴⁸ The attorney *ad litem*, though, should ensure the access and implementation of these programs for their client, the foster youth.³⁴⁹ While the attorney *ad litem* might not be aware of each and every resource available, simply ensuring

335. *Id.*; see MODEL RULES OF PRO. CONDUCT r. 1.3 (AM. BAR ASS'N 2022).

336. Author's original thought.

337. *Id.*

338. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 9.

339. See Reed, *supra* note 195, at 9–10.

340. Author's original proposal.

341. See MODEL RULES OF PRO. CONDUCT r. 1.4(b) (AM. BAR ASS'N 2022); author's original thought.

342. MODEL RULES OF PRO. CONDUCT r. 1.4(b).

343. Author's original thought.

344. See MODEL RULES OF PRO. CONDUCT r. 1.4(b); author's original thought.

345. TEX. FAM. CODE ANN. § 107.003(1)(B).

346. Author's original thought.

347. *Id.*

348. *Id.*; see *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 18.

349. Author's original thought.

some knowledge of and access to these resources is exponentially more than the child currently receives and expedites their chances of success upon exiting the foster care system.³⁵⁰

Therefore, the attorney *ad litem* should go through the Foster Care Handbook with the child and communicate to the foster youth the legal consequences and effects of these resources.³⁵¹ This handbook should not merely be handed to the child amongst a plethora of resources thrown at them, but it should be specifically walked through and explained by the attorney *ad litem*.³⁵² These resources are some of the foster youth's only opportunities for survival and advancement.³⁵³ The chances of a foster parent or caseworker fully explaining these to the foster youth at their level of comprehension are unknown.³⁵⁴ Most likely, these individuals are overloaded with multiple children and are often unable to keep up with each child's individual goals and progress.³⁵⁵ The attorney *ad litem*, however, may only have that child as a client; the attorney *ad litem*, consequently, should be the individual ascertaining the child's understanding of this handbook and the resources listed within.³⁵⁶ Therefore, by requiring the attorney *ad litem* to ascertain whether the foster youth understands what these resources are, how to access them, and how to use them, the foster youth will be guaranteed to have a better likelihood of success upon aging out.³⁵⁷

Additionally, an attorney *ad litem* should ascertain whether or not the foster youth is receiving the necessary life- skills training required by law.³⁵⁸ These necessary life skills include, but are not limited to, driving a car, applying for a job, grocery shopping, and budgeting.³⁵⁹ The attorney *ad litem* is one of the foster youth's main voices.³⁶⁰ Therefore, they should play one of the largest roles in guaranteeing the foster youth is being afforded what is required by law and assisting them early on in the aging out process.³⁶¹ Next, the attorney *ad litem* should assess whether the foster child is being offered the PAL classes.³⁶²

The attorney *ad litem* should communicate with the caseworker or foster parent about the foster child attending these classes and ensure these classes

350. *Id.*

351. *Id.*; see *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 18.

352. Author's original proposal.

353. See Armstrong-Heimsoth et al., *supra* note 312.

354. See Harris, *supra* note 323.

355. See *id.*

356. Author's original thought.

357. *Id.*

358. *Id.*

359. *Id.*

360. See Reed, *supra* note 195, at 8–9.

361. Author's original thought.

362. *Id.*

are being advocated for on behalf of the child.³⁶³ These classes are extremely beneficial for ensuring success in the basic life skills a person needs in order to survive.³⁶⁴ Therefore, the attorney *ad litem*, in their course of duty of ensuring the child knows basic life skills, should be strongly advocating for these classes to their caseworker or foster parent.³⁶⁵

The attorney *ad litem* should be one of the roles keeping the others accountable—ensuring the caseworker is completing their duties and ensuring the child is in a foster home that is teaching them the necessary life skills.³⁶⁶ The role of an attorney *ad litem* should not just be one of showing up but one of being a spokesperson—stepping in, assessing where the child is at, and determining what they need to best thrive.³⁶⁷

3. Adding Duties for Representing a Foster Youth at Age Sixteen

When a foster youth turns sixteen, an initial or additional Transition Planning Meeting should be held.³⁶⁸ At this meeting, a foster youth should receive their personal documents and begin to develop a plan for housing, access to education, and understanding their medical options.³⁶⁹ Depending on how long the child has been in foster care, they should have already had their first Transition Plan Meeting at, or around, age fourteen.³⁷⁰ Therefore, the attorney *ad litem* must first ascertain whether that Transition Plan Meeting has been held and if the goals from that meeting have been met or have progressed towards being met.³⁷¹ If that meeting has been held, the attorney *ad litem* should inquire about the goals determined at that meeting and check in on their progress or implementation.³⁷² If that meeting has not happened, the attorney *ad litem* should confirm that one is held immediately.³⁷³ Additionally, the attorney *ad litem* should ascertain whether the foster youth has been scheduled to have an additional Transition Plan Meeting upon, or around, the age of turning sixteen.³⁷⁴ If the foster youth entered the foster care system after age fourteen, or their caseworker was overburdened at times, this meeting might not have occurred.³⁷⁵ Therefore, it

363. *Id.*

364. *See supra* Section IV.D.

365. Author's original thought.

366. *Id.*

367. *Id.*

368. *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 18.

369. *Id.*

370. *Id.* at 9.

371. Author's original thought.

372. *Id.*

373. *Id.*

374. *Id.*

375. *See Harris*, *supra* note 323.

should be the job of the attorney *ad litem* to ensure this meeting has occurred, as it is essential to the foster youth's future.³⁷⁶

The attorney *ad litem* owes a duty to their client to advocate for them; here, that should look like being present at this Transition Plan Meeting and championing the child's interests and desires.³⁷⁷ Part of this duty encompasses continuing to check on the progress and implementation of this Transition Plan Meeting.³⁷⁸ Unless the child insists the attorney *ad litem* not be present, the attorney should be at the Transition Plan Meeting, advocating that the child gets offered a circle of support meeting, and attending the circle of support meeting while continuing to communicate the child's goals.³⁷⁹ However, the child's expressed interests are to always be honored; therefore, if the child asserts they do not want their attorney *ad litem* present, the attorney *ad litem* should not be there.³⁸⁰ However, the attorney *ad litem* has the unique opportunity of being the child's advocate by helping transition the foster youth out of the system with the most resources and knowledge possible.³⁸¹ Therefore, they should explain to the child why their presence is essential and helpful.³⁸²

Upon age sixteen, the attorney *ad litem* should be required to ascertain whether the child has received all documents required by subsection (b-1)(3) of the Texas Family Code, such as the child's birth certificate, a social security card or a replacement social security card, a driver's license or personal identification certificate, and any other personal document the DFPS determines appropriate.³⁸³ When aging out of the foster system, if the youth does not have these important documents, it is nearly impossible or difficult to find and apply for housing, go to school, get a job, or purchase a car.³⁸⁴ Additionally, if the foster youth wants to access any of these state or federal resources available to them, they must have proper identification.³⁸⁵ These identifying documents are pertinent to the foster youth applying for employment, education, or collecting and maintaining any assets.³⁸⁶ The attorney *ad litem* must ensure the foster youth has these documents to set the foster youth up for the best educational and financial success, as well as any form of long-term maintenance.³⁸⁷

376. Author's original thought.

377. *See supra* Section V.B.2.

378. Author's original thought.

379. *Id.*

380. *Id.*

381. *Id.*

382. *Id.*

383. TEX. FAM. CODE ANN. § 107.003(b)(3)(A), (3)(B)(i)-(iv).

384. *See Armstrong-Heimsoth et al., supra* note 312.

385. *See id.*

386. *Id.*

387. Author's original thought.

Equally as important, the attorney *ad litem* should be required to review these documents to make sure they are all under the correct name.³⁸⁸ The foster youth most likely will not know how to review documents and, therefore, they should have their attorney *ad litem* make sure these documents are correct, an original, not a copy, and under the correct name, thus enabling them to have the best possible success upon aging out.³⁸⁹ As an attorney would regularly review documents on behalf of their client, the attorney *ad litem* should ascertain whether these documents are readily available and accurate.³⁹⁰ While a caseworker or foster parent might be the ones who get these documents to the foster youth, they are not trained to ensure these documents are correct and accurate.³⁹¹ An attorney, however, reads and reviews identification documents in their ordinary course of business, and therefore, they should be the ones in charge of reviewing these documents.³⁹² If the foster youth is to receive any kind of economic support, or collect and maintain any kind of assets, these documents must be complete and in the correct condition.³⁹³

Next, the attorney *ad litem* should be responsible for explaining these documents to the foster youth so they understand what they are, how to use them, and how to best safe keep them.³⁹⁴ These documents are extremely important for basic life necessities, as well as ensuring any form of permanent housing, education, or career opportunities.³⁹⁵ Therefore, the attorney *ad litem* should be the one ensuring the foster youth understands the importance of these documents and the importance of protecting them.³⁹⁶ Financial literacy is extremely important to the foster youth's success, and the attorney *ad litem* should ensure the foster youth has the correct understanding of these documents and the resources and assets to be utilized with the proper maintenance of these documents.³⁹⁷

Lastly, at age sixteen, the attorney *ad litem* should ascertain first, whether the child is being offered PAL classes, and second, if the foster youth is attending.³⁹⁸ The attorney *ad litem* should be responsible for ensuring the child participates in this program as it is designed to help with the transition out of the foster care system.³⁹⁹ This program is crucial to the basic and

388. *Id.*

389. *See Reed, supra* note 195, at 1–2.

390. Author's original thought.

391. *See Reed, supra* note 195, at 1–2.

392. Author's original thought.

393. *See Reed, supra* note 195, at 1–2.

394. Author's original thought.

395. *See Reed, supra* note 195, at 1–2.

396. Author's original thought.

397. *See The Opportunity Passport: Building Assets for Youth Aging Out of Foster Care, supra* note 175, at 6; author's original thought.

398. Author's original thought.

399. *Id.*

necessary life skills a foster youth needs to survive aging out.⁴⁰⁰ Therefore, as the child's prime advocate, the attorney *ad litem* should be responsible for ensuring the child has the opportunity to be a recipient of this program.⁴⁰¹ While this program is not required, the attorney *ad litem* should strongly advocate for the child's attendance and explain the necessity of these basic life skills for the child's success upon aging out.⁴⁰² If the child chooses not to attend, however, the attorney *ad litem* should honor that child's decision.⁴⁰³ While the attorney *ad litem* would not be responsible for the logistics, such as transportation, actual attendance, or whether the child stays in the class or not, the attorney *ad litem* should be responsible for assessing these logistics with the foster child's caseworker or foster parent.⁴⁰⁴ The attorney *ad litem* should ensure the child is given the full opportunity to attend these classes if the child wishes.⁴⁰⁵ Additionally, the attorney *ad litem* should be required to inform the foster youth of this program and help them understand the value of this program as well as the services and benefits it provides.⁴⁰⁶

At age sixteen, the foster youth is getting prepared to leave the system in just two years.⁴⁰⁷ Therefore, the role and presence of an attorney *ad litem* at this age is critical.⁴⁰⁸ This child is not only looking to graduate high school but is having to prepare for their next step attending higher education, getting a job, or finding stable housing.⁴⁰⁹ Upon aging out, the foster child is, for the most part, on their own.⁴¹⁰ Therefore, the urgency in the next two to four years is crucial.⁴¹¹ The foster youth does not have that safety net to fall back onto, so the presence and role of an attorney *ad litem* over the next years is extremely determinant of the foster youth's chances of success.⁴¹² The foster youth needs a voice: an advocate who is more than just present, who shows up, defends, and goes above and beyond to patron the child's best needs—to give them a chance.⁴¹³

400. See *supra* Section IV.C.

401. Author's original thought.

402. *Id.*

403. *Id.*

404. *Id.*

405. *Id.*

406. *Id.*

407. See Reed, *supra* note 195, at 2.

408. See *id.*

409. See *supra* Section III.A.

410. See *id.*

411. Author's original thought.

412. *Id.*

413. *Id.*

4. Adding Duties for Representing a Foster Youth at Age Eighteen

By age eighteen, the attorney *ad litem* should be a known, present, and consistent person in the foster youth's life.⁴¹⁴ Unless the foster youth is new to the foster care system, the attorney *ad litem* should have already ensured that the foster youth has all documents required by Subsection (b)(1)-(3) of the Texas Family Code.⁴¹⁵ However, if the foster youth is new to the system or does not have these documents, the attorney *ad litem* should ensure the foster youth has these documents.⁴¹⁶ Especially at this age, these documents are the first essential step to ensuring the foster youth's success aging out of the system.⁴¹⁷ Without personal identification documents, the foster youth is severely limited in any kind of future traction.⁴¹⁸ Any chance of getting housing, attending higher education, or gaining permanent employment is void without proper and correct identifying documentation.⁴¹⁹

Because of the crucial and time-crunching nature of this age, it is essential that the foster youth knows of and comprehends all resources available to them once they leave care.⁴²⁰ At this age, the attorney *ad litem* should assess all previous duties owed to the foster youth and focus on implementing these duties.⁴²¹ The foster youth is either transitioning out of care at age eighteen or preparing for transition.⁴²² Therefore, this stage should be the most crucial stage for the attorney *ad litem* doing a final assessment of the foster youth's needs, ensuring all resources are made aware to the youth and that they are comprehending how to use and maintain these resources.⁴²³

If the foster youth chooses not to transition out of the foster care system at age eighteen, electing to remain in the state's care, the attorney *ad litem* should ascertain the youth's plans for transition and ensure they feel confident and prepared to leave when the time is right.⁴²⁴ A foster child has until age twenty-one to remain in the state's care, and the attorney *ad litem* should continue to remain with that child until they choose to leave the state's care.⁴²⁵ The attorney *ad litem* should continue to assist the child, ascertain what final steps are needed before their exit, and finalize all Transition Plan Meeting goals.⁴²⁶

414. *Id.*

415. *See supra* Section V.B.1.

416. Author's original thought.

417. *See Reed, supra* note 195, at 1.

418. *See id.*

419. *See id.*

420. Author's original thought; *see supra* Section V.B.1.

421. *See supra* Section IV.A.

422. *Texas Foster Care Handbook For Children, Youth & Young Adults, supra* note 242, at 9.

423. Author's original thought.

424. *Id.*

425. *See supra* Part I.

426. Author's original thought.

Once a child leaves the foster care system, the attorney *ad litem*'s duties are released.⁴²⁷ However, upon this departure, it is imperative that the attorney *ad litem* ensures every goal or program elected at the Transition Plan Meeting is being met or has plans for implementation.⁴²⁸ The foster youth should fully comprehend and understand how to obtain and maintain these resources, giving the new young adult hope and a chance for a future.⁴²⁹

C. Proposed Addition to the Texas Foster Care Handbook

Amending the attorney *ad litem* goal is a large step in the right direction.⁴³⁰ However, if a foster child is unaware of who and what an attorney *ad litem* is, the amended role is futile.⁴³¹ Not only must the actual role of an attorney *ad litem* be amended to include more duties, but the foster child must be aware of this changed role and what an attorney *ad litem* is for them.⁴³² The idea of an attorney is daunting to a child and usually signifies that they are in trouble or serves as yet another intimidating or unapproachable adult.⁴³³ Therefore, the child must be aware that this attorney works for them; the child must know the attorney *ad litem* is to advocate for their expressed interests.⁴³⁴

One of the child's main informational resources they are given is the Texas Foster Care Handbook, which outlines all their available resources and sources to turn to.⁴³⁵ The foster child is given this handbook as a guide to inform them of their support systems and assistance available.⁴³⁶ However, this handbook mentions little to nothing of the role of an attorney *ad litem*, nor what they are truly meant to provide.⁴³⁷ While the handbook defines an attorney *ad litem*, it minimally details the child's right to court and attorney *ad litem* services.⁴³⁸ Consequently, the child barely knows what an attorney *ad litem* is and is missing this vital role of advocacy in their life and future plans.⁴³⁹ Therefore, this handbook should be amended to include the role of an attorney *ad litem* and provide definitions and descriptions of what an attorney *ad litem* does.⁴⁴⁰

427. See *supra* Section IV.A.

428. See *supra* Section IV.C.

429. See *id.*

430. Author's original thought.

431. *Id.*

432. *Id.*

433. See Kennedy, *supra* note 213.

434. See *id.*

435. See *supra* Section IV.D.

436. See *id.*

437. See *id.*

438. See *id.*

439. Author's original proposal.

440. *Id.*

Within the Texas Foster Care Handbook are the legal rights the foster child has.⁴⁴¹ This section is minimal when the foster child's knowledge of their judicial rights is extremely limited.⁴⁴² Therefore, the legal rights of a child in foster care should not be a small portion of the Texas Foster Care Handbook, but it should be expanded to provide children in the foster care system with the knowledge and understanding of what their rights are and who represents them.⁴⁴³ Though an attorney *ad litem* is briefly described in this handbook, a section should be explicitly added to include a portion on what attorneys *ad litem* are responsible for.⁴⁴⁴ The foster child must be explained what rights they have, as any client would be detailed on what their attorney does for them.⁴⁴⁵

Therefore, following the "Caseworkers Have the Responsibility to:" section on page 15, the Texas Foster Care Handbook should be amended to add the following:

Attorneys *Ad Litem* Have the Responsibility to:

- See you regularly and talk to you alone whenever you would like.
- Learn what you want in your placement and where you want to be.
- Make recommendations to the court that are what you want.
- Tell you about court hearings and major points in your case.
- Keep your family updated on what you want and how you are doing.
- Keep your caseworker or CASA updated on what you want and how you are doing.
- Help you transition out of foster care successfully.
- Make sure you have your personal documents (at age 16 and 18).
- Help you understand what services, supports, and benefits you get.
- Provide any additional legal help or information you might need.

Your attorney *ad litem* is here to provide for your needs, and to advocate for your interests.⁴⁴⁶

It is crucial that foster youth understand the resources they have.⁴⁴⁷ This handbook, as it stands, is extremely deficient in explaining to vulnerable youth the important role an attorney *ad litem* should be in their life.⁴⁴⁸ Therefore, this handbook must be updated to reflect the role of an attorney

441. See *supra* Section IV.D.

442. See *id.*

443. Author's original thought.

444. *Id.*; see *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 9.

445. Author's original proposal.

446. *Id.*; see *Texas Foster Care Handbook For Children, Youth & Young Adults*, *supra* note 242, at 15.

447. See *supra* Section V.B.1.

448. See *supra* Section IV.D.

ad litem so that the foster youth will know who their advocate is.⁴⁴⁹ This handbook is extremely important for foster youth and should be updated to reflect the vital legal resources in their life.⁴⁵⁰ These duties, additionally, should not be an exhaustive list.⁴⁵¹ The foster child should understand that the attorney *ad litem* represents their needs and interests, so they will be best equipped to ask for help and understanding of the resources outlined in this handbook available to them.⁴⁵²

By amending the role of an attorney *ad litem* and updating the Texas Foster Care Handbook to reflect that change, the foster youth will have a better understanding of who their advocate is, and the attorney *ad litem* will be an important person in the foster youth's life to back their needs.⁴⁵³ Therefore, the foster youth will be better equipped to age out of the foster care system, be given the resources they need, and have an understanding of how to access and maintain these resources.⁴⁵⁴

VI. WHAT'S THE INCENTIVE?

There are a multitude of resources available to the foster child, and the resources continue to grow.⁴⁵⁵ So, is it safe to conclude that is enough?⁴⁵⁶ Is an amended attorney *ad litem* really necessary with the plethora of resources available to foster children, both state and nationwide?⁴⁵⁷ It is important to note that these programs are futile if the foster youth have no one to assist them in benefitting from and utilizing these resources.⁴⁵⁸ That, therefore, is the sole role of an advocate—to help, to assist, and to speak up for someone who cannot speak for themselves.⁴⁵⁹ The attorney *ad litem* role must be amended for that purpose: to change the lives and futures of foster youth.⁴⁶⁰

Becoming an attorney *ad litem* grants a plethora of skills and experiences one might not have had before experiencing different neighborhoods, religions, ethnicities, or races than someone might not have encountered before.⁴⁶¹ It widens beliefs and challenges worldviews.⁴⁶² It is

449. Author's original thought.

450. *Id.*

451. *Id.*

452. *Id.*

453. *Id.*

454. *Id.*

455. *See supra* Part IV.

456. Author's original thought.

457. *Id.*

458. *Id.*

459. *See supra* Section IV.A.

460. Author's original thought.

461. *See* Betsy Purdum, *Being a Guardian ad Litem volunteer offers challenges and rewards*, TALLAHASSEE DEMOCRAT (Feb. 10, 2020, 3:59 PM), <https://www.tallahassee.com/story/life/causes/2020/02/10/being-guardian-ad-litem-volunteer-offers-challenges-and-rewards/4696611002/> [<https://perma.cc/EDB4-UC5N>].

462. *See id.*

different than an average pro bono or volunteer experience.⁴⁶³ It advocates for a vulnerable child; it allows children to begin to trust again, to be advocated and spoken up for.⁴⁶⁴ It changes a child's life.⁴⁶⁵

The various duties of an attorney are often hard to measure in a black-and-white manner.⁴⁶⁶ "Reasonable representation" can often be articulated to mean a multitude of things.⁴⁶⁷ That same logic should be true for the role of an attorney *ad litem*.⁴⁶⁸ While there is no clear line on what each and every duty of an *ad litem* should be, the proposed amended role expands the duties to account for those aging out of the system.⁴⁶⁹ The expressed duties might vary on a case-by-case basis, but the amended role accounts for more than the child has ever had, and an adversarial mentor grants the child an exponential chance of success upon aging out.⁴⁷⁰ By treating the foster child as a client, the attorney *ad litem*'s duties are elevated to fully advocate and represent the foster child's best interests and expressed needs.⁴⁷¹

VII. CONCLUSION: AN ADVOCATE CHANGED VIRGIL AND LOGAN'S STORY

Virgil was thrust out of the foster care system, facing many challenges most youth aging out do: little to no knowledge of the resources they have, how to access those resources, or how to take care of themselves.⁴⁷² There was, however, an important shift in Virgil's story.⁴⁷³ When Virgil was twenty-three years old, she met Sandra Carpenter, who got through to Virgil.⁴⁷⁴ Sandra Carpenter was a foster parent who founded the non-profit organization Angel Reach, which assisted in providing a transitional program to foster youth aging out of the system.⁴⁷⁵ Virgil was enrolled in a group home at Angel Reach, where she had to work towards a set of goals, such as finding a job, attending school, and saving for a car.⁴⁷⁶ She had a mentor who taught her important life skills that began to help her strive toward independence.⁴⁷⁷ Virgil speaks to how motivating this was for her, as she needed somebody

463. *See id.*

464. *See id.*

465. *See id.*

466. *See generally* MODEL RULES OF PRO. CONDUCT r. 1.2 (AM. BAR ASS'N 2022) (outlining the scope of an attorney's representation and the allocation of authority between an attorney and a client).

467. *See id.*

468. Author's original thought.

469. *Id.*

470. *Id.*

471. *Id.*

472. *See* Asgarian, *supra* note 36.

473. *See id.*

474. *Id.*

475. *Id.*

476. *Id.*

477. *See id.*

who could support her and help her get on her feet.⁴⁷⁸ While Virgil was in and out of this program for several years, having a mentor in Carpenter gave her a voice—someone advocating for her and her needs.⁴⁷⁹ Carpenter kept in check with Virgil, encouraging her to reapply anytime Virgil left Angel Reach’s care.⁴⁸⁰ Foster youth, like Virgil, have no one to teach them how to drive, get or keep a job, or manage their finances.⁴⁸¹ Having a mentor, whether it be a foster parent, attorney *ad litem*, or other adult, proves to not only help the foster youth mentally and emotionally but also gives them access to the resources they have and helps them stay on their feet.⁴⁸² A mentor changed Virgil as a mentor would for any foster youth facing years of trauma and inconsistency.⁴⁸³

Logan’s assurance of permanency led him to not only graduate high school but to graduate college in 2023.⁴⁸⁴ Following graduation, he is pursuing a Masters of Business Administration degree.⁴⁸⁵ A team “changed my life. I’m graduating college this semester because they did the grunt work when I was nine years old.”⁴⁸⁶ Logan begs attorneys *ad litem* to view foster youth as kids that actually have a future, to “fight with the mindset that this kid has a future and a chance one day. If that were the case, everything would change.”⁴⁸⁷

When a child enters into the state’s Permanent Managing Conservatorship, an attorney *ad litem* is required by law.⁴⁸⁸ Therefore, one of the only required positions by law should be the one best enabled and equipped to help a foster youth transition out of the system.⁴⁸⁹ By amending the role of an attorney *ad litem* and updating the Texas Foster Care Handbook to reflect such change, the child will be better fought for and have a fuller understanding of the resources available to equip them to succeed.⁴⁹⁰ The attorney *ad litem* cannot serve as merely another inconsistent and inaccessible person in the foster youth’s life.⁴⁹¹ This amended proposal is necessary to ensure the foster youth ages out with knowledge of life ahead of them and how to access and maintain the obtainable resources.⁴⁹² Additionally, if the role is amended, but foster youth have no idea who this

478. *Id.*

479. *See id.*

480. *Id.*

481. *See id.*

482. *See id.*

483. *See id.*; author’s original proposal.

484. Martini, *supra* note 51.

485. *Id.*

486. *Id.*

487. *Id.*

488. *See* TEX. FAM. CODE ANN. § 264.203(g).

489. Author’s original thought.

490. *Id.*

491. *Id.*

492. *Id.*

person is or how to adequately express their goals and desires, this amended role is thwarted.⁴⁹³ The Texas Foster Care Handbook, a resource vital and important to foster youth's understanding of their rights, must then be updated to reflect this change.⁴⁹⁴ Children must see attorneys as their advocates, not distant, unknown figures.⁴⁹⁵

Foster youth go through some of the hardest, most isolating, and difficult things anyone, much less a child, should have to go through.⁴⁹⁶ They are left with years of scars, inconsistency, and abuse.⁴⁹⁷ Their chances of success upon aging out are daunting.⁴⁹⁸ Therefore, they should have an advocate—a mentor trained and equipped to help them champion their best needs.⁴⁹⁹ This is what the role of an attorney *ad litem* should be, and therefore, the current standards must be amended to reflect the care and representation a foster child needs and deserves.⁵⁰⁰ As Logan saw the change because of his attorney, he begged others to do the same—“meet with your foster kid monthly. Ask them what they need, what resources they do not have, and how you can fight for them. That is my recommendation; that is what will make the difference.”⁵⁰¹

493. *Id.*

494. *Id.*

495. Martini, *supra* note 51.

496. See Kasarabada, *supra* note 81, at 156.

497. *See id.*

498. *See supra* Part III.

499. Author's original thought.

500. *Id.*

501. Martini, *supra* note 51.