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FREE LABOR IN DISGUISE?: NAVIGATING STUDENT INTERNSHIPS

Michael P. Maslanka

Forward planning high school and college students are continually seeking building blocks for their resumes, job and higher education applications, and overall skill set enhancement. Enter the internship.

The National Association of Colleges and Employers (NACE) reports from 2014 to 2018, between 53% and 60% of college seniors completed an internship during their four years at college. NACE also reports that a whopping 92% of employers have some type of formal internship program. But there is a catch: NACE states that a mere 60% of these programs are paid internships. One study as of 2011 also indicates that 75% of the 9,500,000 college/university students undertake at least one internship during their college/university tenure, with a substantial number being unpaid.¹

Yes, that's right, the result is that the programs require work from students without any payment to them other than the experience gained, the resume enhanced, and the networking accomplished. To be sure, these advantages are very real, as a recent research paper confirms: “[internships provide] students with valuable professional experience and networks, giving employers a steady stream of new talent with fresh ideas from academia; internships enable educators to create venues for students to translate academic knowledge to real-world situations.”²

But isn't work without pay, like taxation without representation, against the law? Yes, but not always. Courts decide legality by asking one question: who is the primary beneficiary of the work being performed—the employer or the intern? If it is the employer, then the failure to pay minimum wage and overtime violates the Fair Labor Standards Act (FLSA); if it is the employee, there is no legally mandated wage obligation.

¹ National Association of Colleges and Employers, <https://www.nacweb.org/> (last visited November 29, 2022).

² Matthew T. Hora et al., *Problematizing College Internships: Exploring Issues with Access, Program Design, and Developmental Outcomes in Three U.S. Colleges* (Wisconsin Center for Education Research 2019); See also James J. Brudney, *Square Pegs and Round Holes: Shrinking Protections For Unpaid Interns under the Fair Labor Standards Act*, in *Internships, Employability and the Search for Decent Work Experience* 163 (Andrew Stewart, et al. eds., 2021).

The dictionary definition of primary is “of chief importance; principal.” So far, so good. What factors go into deciding “principal” in this legal context? A leading case³ sets them out for us. [This article](#) provides some commentary after each as to why the element is being considered by the court.⁴

Factor No. 1: The extent to which the intern and the employer clearly understand that there is no expectation of compensation.

Any promise of compensation, express or implied, suggests that the intern is an employee who should be paid. Translation: It is more likely that the student is an employee deserving of wages if the student is being treated as an employee. Here, the setting of wages is an indicator of true employee status (that is, how an actual employee is treated) and further suggests that the employer knows that it will be asking the students to perform tasks warranting a wage. Moreover, understand that this factor is less important because the unequal bargaining power of students and the employer makes such an “understanding” and its “consent” of questionable persuasive value in the overall analysis.

Factor No. 2: The extent to which the internship provides training that would be similar to that which would be given in an educational environment, including the clinical and hands-on training provided by educational institutions.

Translation: The goal is for the student to learn but merely in a different environment (real world) than in the more artificial one of the classrooms. Note, however, that this factor does not preclude the assignment of routine tasks such as making copies or taking notes at a meeting. The value of an internship can also be found in simply being present at a workplace in which the students will absorb the vibe of the type of place where they aspire to someday be employed. And, finally, note that, in all of these elements, the phrase “the extent” means that the factors are not all or nothing propositions.

Factor No. 3: The extent to which the internship is tied to the intern’s formal education program by integrated coursework or by the receipt of academic credit.

³ Glatt et al v. Fox Searchlight Pictures, Inc., 811 F.3d 528 (3d Cir. 2015).

⁴ Nick Martiniano, *Intern’s Lament: Distinguishing an Employee and an Intern Under the Fair Labor Standards Act* 126 PENN. ST. L. REV. 307 (2021).

Translation: This factor cuts in favor of non-employee status. Why? Because there is a third party at the table, ensuring that time is devoted to education, which benefits the student rather than the employer.

Factor No. 4: The extent to which the internship accommodates the intern's academic commitments by corresponding to the academic calendar.

Translation: This factor shows that the employer understands that its needs come in second to the student's. Thus, an employer cannot insist that the students work during Fall or Spring break or at other times when school is not in session.

Factor No. 5: The extent to which the internship's duration is limited to the period in which the internship provides the intern with beneficial learning.

Translation: A student learns something once, and repeats the task a second time in order to solidify the knowledge gained. But if the task is performed multiple times, over a period of time, that implies that the student is really functioning as an employee to the benefit of the employer.

Factor No. 6: The extent to which the intern's work complements, rather than displaces, the work of paid employees while providing significant educational benefits to the intern.

Translation: While the cases say that all seven factors are equally important and should be considered as a whole, it is hard to dispute that this is the most important factor. An intern who replaces a regular worker is essentially doing that person's work and doing it for free. Permitting an internship to be used in this fashion almost entirely benefits the employer and is of little benefit to the students who are now laboring in both school and at a regular job.

Factor No. 7: The extent to which the intern and the employer understand that the internship is conducted without entitlement to a paid job at the conclusion of the internship.

Translation: This factor seeks to prohibit an employer from trying to incentivize the student to work for free, performing tasks normally performed by a regular worker by dangling out the hope of a paid,

full-time job at the conclusion of the internship. This is antithetical to the spirit of an internship being for educational purposes.

One twist on the internship scenario is when a student pays tuition to a trade school, such as one teaching cosmetology, and the education includes the requirement that the student perform work on paying customers, through tasks such as styling their hair or applying their makeup. Courts reason that the hands-on training that the students receive make them the primary beneficiaries of the relationship. This is especially so, given that the hours worked can count toward hours required to become licensed by the state as a cosmetologist.

What should a student do if unsure of whether they are being offered a true internship or a job in the guise of an unpaid internship? Now that the student knows the factors considered in distinguishing between the two, the student or their advisor(s) can ask the right questions to see if the offer is a sincere offer of a true internship or an insincere offer of free work with only some or no benefit to the student. If the student finds herself or himself in the second scenario, the student can always go to the United States Department of Labor's Wage and Hour Division to file a complaint. Regional offices are located in major cities such as Dallas.

A final point. The most valuable asset each of us possesses is our time. We get just so much of it. So be sure to insist upon your legal rights, be sure to understand what those rights are, but—most importantly—be sure not to squander your time on fake internships. They are just not worth it.

WHEN CAN A JUVENILE BE CERTIFIED AS AN ADULT FOR A SERIOUS
CRIMINAL OFFENSE?

Elisa Reiter & Daniel Pollack

When a minor commits a serious offense, the prosecutor may have discretion to petition the juvenile court to waive its jurisdiction. If the petition is successful, in lieu of the case being heard in juvenile court and the child being tried as a juvenile, the case will instead be heard in an adult criminal court. The child is certified as an adult, and tried as an adult.

The U.S. Constitutional prohibition against being placed twice in jeopardy for the same offense applies to juvenile court proceedings as well as adult proceedings.¹ Therefore, in every case, jurisdiction must be established. In cases involving minors, juvenile courts have exclusive jurisdiction² regarding cases involving children aged 10–17 who stand accused of committing criminal offenses. However, there is an exception. A juvenile court judge may waive jurisdiction and choose to transfer a juvenile to be tried as an adult in an (adult) district court.³ The process associated with this transfer is referred to as certifying a juvenile as an adult. Chapter 54 of the Texas Family Code⁴ establishes procedures by which a juvenile may be certified as an adult.

1. Track One: Accused is Still a Juvenile
2. Track Two: Cold Cases: Accused was a Juvenile at the time of the Offense, but reaches adulthood prior to trial (“Post-18 Certification”)
3. Track Three: Mandatory Transfers

What factors must be established in order for a juvenile to be certified as an adult?

Texas Family Code Section 54.02(a) mandates that a juvenile court judge must find that the following factors exist in order to certify a juvenile as an adult for the purposes of criminal prosecution:

1. The child must stand accused of an offense that is a felony;

¹ Breed v. Jones, 421 U.S. 519 (1975).

² Tex. Fam. Code Ann. § 51.02.

³ *Id.*

⁴ Tex. Fam. Code Ann. § 54.02.

2. The welfare of the community at large would be served by the certification either because of the heinousness of the offense or the history of the child;
 - a. In assessing the seriousness of the offense, the juvenile court judge must consider:
 - i. Whether the crime was committed against a person or property;
 - ii. The maturity of the child;
 - iii. The child's record and prior history (in other words, is this child a habitual offender?);
 - iv. Whether the public will be protected by the certification;
 - v. Whether the child may be rehabilitated relying only on the juvenile system's resources.

The accused juvenile is not entitled to a jury trial as to the issue of certification. It is the duty of the prosecuting attorney to raise and try the issue of certification to the juvenile court. In the event the juvenile court seeks to proceed with the certification, the prosecuting attorney must seek an indictment from the grand jury in order to complete the process.

Age 14 is the minimum age at which a child may be certified as an adult. Certification as an adult is limited to prosecution for specified violent crimes. Certification is possible for a juvenile defendant if that child is fourteen or older at the time of the alleged offense, and the offense is:

1. a capital felony,
2. an aggravated controlled substance felony that carries a higher minimum term or fine than a first degree felony,
3. a first degree felony.⁵

In a situation dealing with a cold case, or post-18 certification, the process is outlined in Texas Family Code Section 54.02(j)⁶. The factors enumerated above still come into play. However, additional factors must be addressed, and the juvenile court must enter one of two alternative findings:

1. Due to factors beyond the control of the State of Texas, the case could not proceed to trial prior to the accused attaining majority;
OR

⁵ Tex. Fam. Code Ann. § 54.02(a)(2)(A).

⁶ Tex. Fam. Code Ann. § 54.02(j).

2. Due to factors beyond the control of the State of Texas, the case could not proceed to trial prior to the accused attaining majority AND the State lacked probable cause AND the State found new evidence against the accused prior to the defendant attaining the age of 18.

How can defense counsel try to attack certification of a juvenile as an adult?

- a. Look to factors that impact on the maturity and sophistication of the child.
- b. Consider positive factors in the child's history (helping with younger children in the household, school activities, extracurricular activities, religious activities).
- c. Intellectual development and/or cognitive or physical impairment, such as a low I.Q., mental health history, whether the child historically received treatment or aid for those conditions, or lack of treatment for such issues. Defense counsel should focus not only on such factors, but on how resources and systems available in the juvenile court system can best address those conditions.
- d. As set out in Chapter 54, before the commencement of the certification hearing, "the juvenile court shall order and obtain a complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense."⁷

What happens if the juvenile court decides to waive its jurisdiction over the minor, certifies the child as an adult, and transfers the child's case to an (adult) district court?

As noted above, the prosecuting attorney must present the case to the grand jury and procure an indictment against the "certified adult" offender.⁸ Once certified and indicted, the "certified adult offender" is subject to adult punishment ranges. In the event the juvenile court refuses to certify the accused as an adult, and the accused is under 18 years old, the juvenile defendant may nonetheless be tried in the juvenile court. What happens if the accused is over the age of 18 and the juvenile court refuses to certify the defendant? The juvenile court loses jurisdiction. If there is a loss of jurisdiction in a regard to a Post-18 accused, the defendant is released.

⁷ Tex. Fam. Code Ann. § 54.02(d).

⁸ Tex. Code Crim. Proc. Ann. Art. 21.

In the event the juvenile defendant is 14 years old or less and stands accused of committing a second degree, third degree or state jail felony, such a defendant cannot be subjected to certification as an adult.

What if the juvenile defendant is over 14?

In the event a juvenile is fifteen years of age or older and that juvenile defendant is accused of committing any felony, including second or third degree, or a state jail felony, that juvenile defendant (fifteen or older, not yet aged eighteen) is eligible for certification and transfer of their case to adult criminal court.⁹ Said differently, juveniles have some protection against being prosecuted or convicted of a crime committed before they reach the age of 18 in (adult) criminal court unless the juvenile court waives its jurisdiction and certifies the juvenile to be transferred to adult court for criminal prosecution.¹⁰

If a juvenile defendant is transferred and jurisdiction waived, the criminal court may not remand the case back to the juvenile court.¹¹ When certified, the juvenile no longer has the right to any additional protections that the juvenile system provides other than with regard to the place of pre-trial confinement. There is legislation that allows the juvenile judge to order that the “certified adult defendant” be incarcerated in a juvenile detention facility pending the criminal trial in the event bond is not made.¹² The juvenile offender retains the right to appeal the conviction or deferred adjudication for the transferred conduct.¹³

Are juveniles guaranteed constitutional protection?

A juvenile offender is not guaranteed the constitutional right to have their case tried in juvenile court.¹⁴ A leading case regarding the rights of a juvenile defendant is *Kent v. United States*.¹⁵ *Kent* involved a juvenile who was on probation and who was arrested for rape and robbery. The trial court waived its jurisdiction and summarily transferred the case to adult court without giving the juvenile defendant the benefit of a hearing, investigating the child or the facts underlying the case, or providing rulings on any of the defense counsel’s motions. The certified adult’s conviction was affirmed by the

⁹ Tex. Fam. Code Ann. § 54.02(a)(2)(B).

¹⁰ Tex. Penal Code Ann. § 8.07(b).

¹¹ Tex. Fam. Code Ann. § 54.02(i).

¹² Tex. Fam. Code Ann. § 54.02(p).

¹³ *Rodriguez v. State*, 191 S.W.3d 909, 910 (Tex. App.—Dallas 2006, no pet.).

¹⁴ *In Matter of P.B.C.*, 538 S.W.2d 448 (Tex. Civ. App. – El Paso 1976)

¹⁵ *Kent v. United States*, 383 U.S. 541 (U.S. 1966).

court of appeals. The United States Supreme Court reversed and remanded the trial court's decision, holding that a juvenile defendant has due process rights that attach when a juvenile court hears a request for certification of the defendant as an adult. Kent stands for the proposition that a hearing must be held as a condition precedent prior to the juvenile court waiving jurisdiction, and transferring the subject juvenile case to an adult court. Why? The United States Supreme Court held that waiver of jurisdiction is of vital importance in assuring the statutory rights of the juvenile defendant.¹⁶

What are the due process guarantees granted to a juvenile for whom a prosecuting attorney seeks certification as an adult?

The juvenile defendant is entitled to due process via proper notice in regard to any petition filed by the State in regard to Juvenile Court Waiver Of Jurisdiction And Discretionary Transfer To Criminal Court. The juvenile defendant is also entitled to right to counsel, right of confrontation, and retains the right to assert their privilege against self-incrimination. The notice provision is an important element. After the State files its petition to transfer the juvenile to adult criminal court, the law mandates that the juvenile court set a date for the hearing within ten days of the petition's filing.¹⁷ The child is entitled to service of the summons, as are the child's parent(s), the child's guardian ad litem, as is any other person who appears to be a proper party to the proceeding.¹⁸ It is mandatory that the summons be served at least two days prior to the certification hearing.¹⁹ In regard to notice, if the person is in Texas, but the process server cannot find them, the summons may be mailed to them by registered or certified mail at least five days before the hearing.²⁰

In the event a person entitled to notice of the certification hearing is outside Texas, following due diligence, the summons may be sent to such an individual via certified mail at least five days before the hearing.²¹ In the event the prosecuting attorney fails to adhere to the notice requirements mandated by statute, the juvenile court loses its ability to consider the transfer.²²

¹⁶ *Id.*, at 556.

¹⁷ Tex. Fam. Code Ann. § 53.05.

¹⁸ Tex. Fam. Code Ann. § 53.06.

¹⁹ Tex. Fam. Code Ann. § 53.07 (a).

²⁰ *Id.*

²¹ *Id.*

²² *Johnson v. State*, 594 S.W. 2d 83, 84 (Tex. Crim. App. 1980)

How does the prosecuting attorney establish requisite notice to the juvenile defendant and the other individuals entitled to notice of the certification hearing?

The following elements must be included in the petition filed by the A.D.A.:

1. The time, place, and manner of the alleged acts,
2. The penal code provision or other provision allegedly violated due to the child's actions or omissions,
3. The name, age, and residence address, if known, of the child who is the subject of the petition,
4. Identifying information, including name and residence address, if known, of the child's parent, guardian, or custodian, and/or identifying information for any known adult relatives who do live in Texas;
5. The name and address of the child's spouse, if any;
6. Whether the child is accused of engaging in habitual felony conduct;
7. The purpose of the hearing; and
8. If the child is under 18, that hearing is for the purpose of considering the court's right to make a discretionary transfer of the case to criminal court; and
9. If the child is over 18, that the hearing is for the purpose of the juvenile court waiving its right to assert jurisdiction and transfer the case to criminal court.²³

If no answer is filed, the juvenile court is to presume that the child generally denies the allegations set out in the State's petition for certification.²⁴ In the event the juvenile defendant is certified to adult court, the Texas Family Code requirements no longer apply.

The third type of certification/transfer focuses on mandatory transfers. Mandatory transfers focus on cases where the juvenile court must waive its jurisdiction, and transfer the juvenile to the appropriate adult criminal court for criminal proceedings if and when the juvenile was previously transferred to adult criminal court through certification, and further, the juvenile is accused of committing a felony. There are exceptions to this mandatory transfer:

1. The grand jury failed to indict the juvenile;
2. a not guilty verdict was entered in regard to the charges against the juvenile in the prior felony cases;

²³ Tex. Fam. Code Ann. § 53.04(d).

²⁴ Tex. Fam. Code Ann. § 53.04(e).

3. the prior case transferred to criminal court was subsequently dismissed with prejudice; or,
4. while the juvenile defendant was certified as an adult, the case was transferred, the certified adult was convicted, but the conviction was later overturned on appeal.²⁵

In contrast to the other tracks, a juvenile defendant who is the subject of a mandatory transfer proceeding need not have the diagnostic study, investigation, or social evaluation of the juvenile as a condition precedent to the hearing.²⁶

Since 1996, there is no right to an appeal of a certification ruling. Appeal about the legality of a certification and transfer proceeding may be pursued following conviction or deferred adjudication in adult criminal court of those acts or omissions underlying the transfer.²⁷

Determinate sentences are given to juveniles with more frequency than cases involving certification of juveniles as adults. Texas law provides mandatory requirements for certification proceedings involving juvenile defendants. Section 54.02 of the Texas Family Code establishes the policies and requirements for a juvenile court to conduct a certification hearing. Due process guarantees must be satisfied, even in juvenile certification proceedings.

Many youth charged with committing serious offenses, if given the chance, may still have the ability to be rehabilitated. These are not easy calls for courts to make.

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²⁵ Tex. Fam. Code Ann. § 54.02(m).

²⁶ Tex. Fam. Code Ann. § 54.02(n).

²⁷ *Rodriguez v. State*, *supra*. Tex. Code Crim. Proc. Ann. Art. 44.57.

WHEN A CHILD IS AN ADULT: THE TEXAS CERTIFICATION PROCESS

Edward A. Sandoval & Gus Grajales

In Texas, if a child¹ is arrested and/or cited for a criminal offense, they are not treated as adults. Children, typically, have their criminal cases handled by the Juvenile Justice System.² However, there are times, when a child's circumstance warrants their case to be sent to adult criminal court, i.e. for the child to be tried as an adult.

A child may only be tried in adult court after they are “certified” as an adult. There are three different types of certifications:

1. Type A Certifications³
2. Type J Certifications⁴
3. Type M Certification⁵

Each type of certification requires different conclusions to be reached—such as satisfaction of eligibility requirements, completion of investigations and studies, and findings made by the court in a hearing—before a juvenile court judge may certify the child as an adult.

Type A Certifications require a “complete diagnostic study, social evaluation, and full investigation of the child, his circumstances, and the circumstances of the alleged offense.”⁶ These studies and investigations are submitted to the juvenile court judge to assist the judge in determining the appropriateness of certification. Neither the Legislature nor the courts have defined the term “complete diagnostic study,”⁷ so extensiveness of the study may vary depending on the area of the state a case is considered. Typically, the certification report

¹ For this purposes of the juvenile justice system and this article a child is a person that is ten years of age or older and under 17 years of age; or seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age. Tex. Fam. Code Ann. § 51.02(2).

² *Joiner v. State*, 494 S.W.2d 598, 599 (Tex. Civ. App.—Waco 1973, no writ) (stating the purpose of the Texas Juvenile Justice System is to “secure for each child under its jurisdiction such care, guidance and control as will serve the child's welfare and best interest”).

³ Tex. Fam. Code § 54.02(a) (West 2022).

⁴ *Id.* § 54.02(j) (West 2022).

⁵ Tex. Fam. Code § 54.02(m) (West 2022).

⁶ Tex. Fam. Code § 54.02(d) (West 2022).

⁷ *In re B.T.*, 323 S.W.3d 158, 161 (Tex. 2010).

includes a psychiatric report, a psychological report, and a report by a probation department caseworker.⁸ However, nothing absolutely requires that “a psychological or psychiatric evaluation to render a diagnostic study complete.”⁹

J & M Certifications do not require a diagnostic study, social evaluation, or full investigation of the child, their circumstances, or the circumstances of the alleged offense that are required for A Certifications.¹⁰ Nevertheless, the court is still free to consider them at the certification hearing.¹¹

ELIGIBILITY

Each type of certification has different eligibility conditions. These include the following:

Table 1: Eligibility conditions of certification types

CERTIFICATION TYPE	DISCRETIONARY/MANDATORY	AGE AT TIME OF CERTIFICATION	MINIMUM AGE AT THE TIME OFFENSE ALLEGED TO HAVE OCCURRED	TYPE OF OFFENSE ¹² ALLEGED TO HAVE COMMITTED
Type A ¹³	Discretionary	Younger than 18	14	<ul style="list-style-type: none"> • Capital Felony¹⁴ • Aggravated C.S. Felony¹⁵ • First Degree Felony¹⁶
Type A	Discretionary	Younger than 18	15	<ul style="list-style-type: none"> • Any Other Felony
Type J	Discretionary	18 or older	10	<ul style="list-style-type: none"> • Capital Felony • Murder
Type J	Discretionary	18 or older	14	<ul style="list-style-type: none"> • Aggravated CS Felony • First Degree Felony other than Murder
Type J	Discretionary	18 or older	15	<ul style="list-style-type: none"> • Any other felony
Type M	Mandatory	10 or older	10	<ul style="list-style-type: none"> • Any felony with and child has a previous adult final conviction¹⁷

⁸ *Matter of J.S.C.*, 875 S.W.2d 325, 326–27 (Tex. App.—Corpus Christi 1994, writ dismissed by agr.), writ dismissed by agreement (Sept. 1, 1994).

⁹ *Pipkin v. State*, 329 S.W.3d 65, 70 (Tex. App.—Houston [14th Dist.] 2010, pet. ref’d).

¹⁰ Tex. Fam. Code § 54.02 (l)&(n) (West 2022).

¹¹ *Id.*

¹² Be aware, a child may be subjected to criminal prosecution for a homicide offense (irrespective if it under Ch. 19 of the Penal Code or Tex. Penal Code § 49.08 (Intoxication Manslaughter) if

- the offense arises out of a criminal transaction for which the juvenile court retained jurisdiction over other offenses relating to the criminal transaction; and
- on or before the date the juvenile court retained jurisdiction, one or more of the homicide offenses had not occurred.

Tex. Fam. Code § 54.02(g-1) (West 2022).

¹³ See Tex. Fam. Code § 54.02(a)(1)&(2) (West 2022).

¹⁴ A capital felony may be punished by death or life in prison (without parole if the offender is an adult and with chance of parole if the offender is younger than 18). Tex. Penal Code § 12.31 (West 2022). There are only two capital felonies in Texas: Capital Murder (Tex. Penal Code § 19.01), and Aggravated Sexual Assault of a Young Child with Previous Conviction (Tex. Penal Code § 22.021(f) & 12.42(c)(3) (West 2022)).

¹⁵ An Aggravated Controlled Substance Felony is an offense under Subchapter D, Chapter 481, Health and Safety Code that is punishable by a minimum term of confinement that is longer than that of a first-degree felony. Tex. Fam. Code § 51.02(1) (West 2022). For example, possession over 400 grams of fentanyl is punished by a period of imprisonment between 10 and 99 years. Tex. Health & Safety Code § 481.115(f) (West 2022). As the minimum term of prison time is greater than that of the first degree felony (5 years), possession of 400 grams or more of fentanyl would be considered an Aggravated Controlled Substance Felony. *Infra* Fn. 9.

¹⁶ Felonies explained:

Type	Fine (Max)	Incarceration	Fine & Prison	Penal Code Re:	Example
State Jail Felony	\$10,000	180 days to 2 years in State Jail	Possible	§§ 12.04(5) & 12.35	Possession of 1 Gram of Cocaine Tex. H. & Safety Code § 481.115(b)
Third Degree Felony	\$10,000	2 Years to 10 Years in Prison	Possible	§§ 12.04(4) & 12.34	Evading arrest in a motor vehicle. Tex. Penal Code § 38.04(b)(1)
Second Degree Felony	\$10,000	2 years to 20 Years in Prison	Possible	§§ 12.04(3) & 12.33	Aggravated assault with a deadly weapon. Tex. Penal Code § 22.02(b)

NOTICE

A child is entitled to notice and a summons informing them of the petition and potential transfer of their case to adult court.¹⁸ While the notice requirements of the juvenile justice code are still required for J Certifications, the parent or legal guardian of the juvenile in J Certifications are not entitled to notice.¹⁹ The summons and notice requirements for A or J Certifications are not required for Type M Certifications.²⁰ All that is required is for Type M are for summons to provide fair notice that the purpose of the hearing is to consider mandatory transfer to criminal court.²¹

HEARING DETERMINATION

All certification hearings are tried before a judge, which is called a bench trial. Children do not have a right to a jury trial for a certification hearing.²² “At the transfer hearing the [juvenile] court may consider written reports from probation officers, professional court employees, guardians ad litem..., or professional consultants in addition to the testimony of witnesses.”²³ “At least five days prior to the transfer hearing, the court shall provide the attorney for the child and the prosecuting attorney with access to all written matter to be considered by the court in making the transfer decision.”²⁴ If requested by the attorney for the person at least 10 days before the transfer hearing, the juvenile court shall order that the juvenile be subjected to a mental health examination²⁵ and that the results of the examination be provided to the attorney for the person and the

First Degree Felony	\$10,000	5 years to 99 years in Prison	Possible	§§ 12.04(2) & 12.32	Murder (Tex. Penal Code § 19.02) or Aggravated Robbery (Tex. Penal Code § 29.03)
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¹⁷ See Tex. Fam. Code § 54.02(m) (West 2022).

¹⁸ Tex. Fam. Code § 54.02(b) (West 2022).

¹⁹ *Id.* at (i).

²⁰ *Id.*

²¹ *Id.*

²² Tex. Fam. Code § 54.02(c) & (l) (West 2022).

²³ Tex. Fam. Code § 54.02(e) (West 2022).

²⁴ *Id.* at (e).

²⁵ This is provided for by section 51.20 of the Texas Family Code.

attorney for the state at least five days before the transfer hearing.²⁶ “The court may order counsel not to reveal items to the child or the child’s parent, guardian, or guardian ad litem if such disclosure would materially harm the treatment and rehabilitation of the child or would substantially decrease the likelihood of receiving information from the same or similar sources in the future.”²⁷

WHAT THE COURT NEEDS TO FIND AND CONSIDER BEFORE CERTIFYING

Type A Certification: If the court is considering a Type A Certification, then it must take the following into consideration:

- whether the alleged offense was against person or property,²⁸
- the sophistication and maturity of the child;
- the record and previous history of the child; and
- the prospects of adequate protection of the public and the likelihood of the rehabilitation of the child by use of procedures, services, and facilities currently available to the juvenile court.²⁹

The juvenile court judge may only enter the order of certification and transfer the child to the adult court if, after considering these above identified issues, the court finds there is probable cause³⁰ to believe that the child in question:

- committed the offense alleged; and
- the welfare of the community requires adult proceedings because of either (1) the seriousness of the offense alleged, or (2) the background of the child.³¹

Type J Certification: If the juvenile court judge is considering a Type J Certification, then it must find by preponderance of the evidence³² that:

²⁶ *Id.* at (l)

²⁷ *Id.* at (e).

²⁸ Greater weight is given in favor of transfer for offenses against a person.

²⁹ Tex. Fam. Code § 54.02(f) (West 2022).

³⁰ Probable cause exists where the facts and circumstances within the... [magistrate’s] knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that a particular person has committed or is committing an offense. *Amores v. State*, 816 S.W.2d 407, 413 (Tex. Crim. App. 1991)

³¹ Tex. Family Code § 54.02(a)(2) (West 2022).

³² Preponderance of the evidence means the facts are more likely than not to be true. See *In re Lipsky*, 460 S.W.3d 579, 589 (Tex. 2015)

- for a reason beyond the control of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person; or
- after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because: (1) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; (2) the person could not be found; or (3) a previous transfer order was reversed by an appellate court or set aside by a district court.

The juvenile court judge may enter the order of certification and transfer the child to the adult court if the court makes these findings, and finds probable cause to believe that the juvenile committed the offense alleged.

Type M Certification: If the court is considering a Type M certification, then the court shall transfer the child to adult court if:

- the child is alleged to have violated a penal law of the grade of felony; and,
- the child has previously been transferred to a district court or criminal district court for criminal proceedings under this section, unless: (1) the child was not indicted in the matter transferred by the grand jury; (2) the child was found not guilty in the matter transferred; (3) the matter transferred was dismissed with prejudice; or (4) the child was convicted in the matter transferred, the conviction was reversed on appeal, and the appeal is final.

THE COMPLETION OF THE TRANSFER

If a transfer to the adult court is approved, then the juvenile court judge must issue an order detailing the reasons for the decision.³³ “On transfer of the person for criminal proceedings, the [juvenile offender] shall be dealt with as an adult and in accordance with the Code of Criminal Procedure, except for the issue of detention.”³⁴ This means that the case will be evaluated by a local prosecutor, if warranted submitted to the grand jury for review, and if true billed, prosecuted like any other adult case prosecuted by the State of Texas.

³³ Tex. Fam. Code § 54.02(h) (West 2022).

³⁴ *Id.*

WHEN TEENS ARE STUCK IN THE MIDDLE: CUSTODY BATTLES
EXPLAINED

Gabriela Sotelo

If you are a teen stuck in the middle of a custody battle, you may be feeling overwhelmed and confused. At times, you might see people you love argue and put each other down. Other times you might feel like your voice is not being heard. You may experience changes in your living arrangements or your visitation schedule. You might also have strangers visit with you and ask you how you feel or be asked to start attend counseling. This article will tell you what you can expect and what you might want to know when about the legal process behind custody battles.

A child's parents, certain caregivers, and courts have the ability to make decisions that affect the child. Although you may not think of yourself as a child, in Texas, persons under the age of 18 are considered children. In the most common situations, it is parents who have rights to make decisions over their kids, but sometimes there are unique circumstances when a grandparent or other loved one might be the person making decisions. This may include situations where parents are absent, have died, or left their kids in the care of someone other than a parent. It also includes situations when a government agency, commonly known as Child Protective Services (CPS), steps in because kids are not being properly cared for. In Texas, the Courts and judges that run the Courts can make decisions that impact children's lives when their parents or caregivers cannot agree on what is best for the child. These decisions can range from who you are going to live with, what doctors you see, and where you will go to school.

When parents or caregivers cannot agree on what is best for you they can request, or petition, the court to decide for them. The judge will have a hearing or a trial where they receive documents and listen to witnesses. This proceeding is very similar to the court proceedings you see in the movies or TV shows. The witnesses are usually other adults who know you and your situation. Documents and witness testimony are called evidence. At the hearing, the judge reviews the evidence presented to the court and determines what is best for you. At the close of the hearing or trial, the judge will make a decision. That decision is then written down on paper and turned into a court order that sets out how your caregivers will make decisions about you in the future, should they not be able to come to an agreement. The decisions that judges make in these situations generally fall into the following categories:

- Conservatorship
- Visitation
- Child Support, Medical Support and Dental Support
- Family Violence, Abuse, and Neglect Findings
- Injunctions and Standing Orders
- Temporary Orders

Conservatorship

Conservatorship involves your parent’s or caregiver’s rights to make decisions that affect you. These rights include where you live, what school you attend, and what kind of medical treatments you receive. In most cases, one parent is given the right to determine where you live. This is the parent you live with the majority of the time. Parents or caregivers share other decision-making powers unless your other parent has been absent or has done something violent or dangerous. In those instances, only one parent or caregiver will have the right to make decisions about you. When you and your parents or caregivers live in the same city, the court might also add a restriction to keep them from moving you away to another city or state without the other parent or caregiver’s permission. Conservatorship also dictates what rights parents and caregivers have to receive information about you, like your school or medical records.

Visitation

Visitation involves when and how often you will see your parent’s or caregivers. In Texas, when caregivers don’t agree on a visitation schedule, courts usually order what is known as a “Standard Possession Order.” Under the standard order, you visit with your parent from the first, third, and fifth Friday of each month to the following Sunday. This means that when you look at a month on the calendar, your visits will start on the first, the third, and the fifth Friday of that month. An example is set out below

April 2022						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 1st	2
3	4	5	6	7	8 2nd	9
10	11	12	13	14	15 3rd	16
17	18	19	20	21	22 4th	23
24	25	26	27	28	29 5th	30
May 2022						
1						

In the month of April 2022 your visits would be from April 1 to April 3, from April 15 to April 17, and from April 29 to May 1.

Under the standard schedule, you would also see your non-custodial parent every Thursday from 6pm to 8pm. For the holidays, your parents would rotate. One parent gets Thanksgiving and the other Christmas one year, then they switch the next year. During the summer, you visit with the other parent for one month. It is usually the month of July but this can change depending on your parent or caregiver's plans. Parents and caregivers sometimes use a different schedule from the one set out above. This may occur when parents or caregivers have come to an agreement or when the circumstances of your family are so unique that a tailored schedule is best for you.

Child Support

In Texas, the parent you do not live with will likely be ordered to pay money to the parent or caregiver that you live with to help cover expenses. This is called child support. They may also be required to pay additional amounts to cover medical and dental expenses. The amount that the parent has to pay is based on how much money they make and is calculated using a set mathematical formula. This formula was decided by our lawmakers, who determined it to be a fair amount for Texas families. The amount of child support is payable to the parent who cares for you. This money is owed to them as reimbursement for your expenses. There are sometimes misunderstandings about what the money can be used for and whether it belongs to the kids. In Texas, the money belongs to the parent or caregiver that the child lives with and they may spend it freely. They are not required to spend it on the kids or to give it to you.

Family Violence, Abuse, and Neglect Findings

Courts taken family violence into account when deciding what to do. This may include drug use, abandonment, criminal activity, and violent behavior. The Court will want to know and will make an indication whether or not any violence, abuse, or neglect has occurred in your case. Neglect can include behavior that puts you or other members of your family in harm's way. It can also happen when a parent or caregiver does not meet their responsibilities towards you.

Below is a list of some of parent and caregiver's responsibilities towards you:

- (1) Provide you with a safe, healthy, and comfortable home in which you are treated with respect;
- (2) Make sure you are free from physical, sexual, emotional, and other abuse;
- (3) Keep from using any form of discipline that humiliates or demeans you;
- (4) Provide you with adequate and healthy food;
- (5) Give you access to a quality education; and
- (6) Get you the medical, dental, vision, and mental health services you need.

If you or someone in your family is experiencing neglect, violence, or abuse please let an adult who will support you and make sure you are safe know. You can tell your principal, teacher, or school counselor. If you are unsure of who to confide in, a list of safe places where you can find help is available using this link:

<https://www.nationalsafeplace.org/find-a-safe-place>

You can also report abuse and neglect by calling 1-800-252-5400 or by following this link:

<https://www.txabusehotline.org/Login/Default.aspx>

If you are in immediate risk of harm or in an emergency call 911.

Injunctions and Standing Orders

In order to keep you safe, the judge might ask parents or caregivers not to engage in activities that might harm you. Some examples of these orders include orders to make sure parents or caregivers to not withdraw you from your school, to not speak poorly about each other in front of you, to not smoke around you, to not interfere with your visits, to not call at inappropriate times, and to not let someone dangerous around you. In most cases, parents and caregivers are asked by the court not to talk about the legal case with you. Do not worry or get upset because your parents or caregivers do not share the details of a case. The courts want you to focus on being a teen and deal with the all of the challenges and joys of growing up. You should not worry about what is going on in court but instead let the adults handle the legal stuff.

Temporary Orders

Sometimes, judges make temporary decisions. Legal cases can take a long time to resolve, and you may find that the court will order one

thing and later change it. This is not unusual in custody cases. Temporary orders may include changes to your visits, where you live, where you go to school, or other decisions impacting your life. Judges may require your caregivers to attend parenting classes and they may also require you or other members of your family to participate in therapy or counseling. Through these orders, the judge is trying to make sure you and your family are prepared to handle the challenges it has ahead. It is important for everyone to follow the decisions of the Judge and do as the judge requests in order to give the Judge a clear understanding of how your family works. These decisions are made at temporary hearings and may continue until a case is finalized. The last stage of a case is the final trial. At the trial, the judge will make the final decisions and sign what is called a final order that sets out what is expected from each of your caregivers in the future. Once a final order is signed things should settle down. The final order will be in place and can only be changed by another court order. To make changes, caregivers or parents would need to go back to court or have an agreement.

Additional Considerations

The laws in Texas require courts and judges to consider what is best for each child when making decisions that impact children's lives. Judges are looking out for what is referred to as the best interest of the child. Some of the things Judges think about when deciding what is in your best interest are: (1) your wishes, (2) your age, (3) your emotional and physical needs now and in the future, (4) things that can cause you emotional and physical danger, (5) the parenting abilities and plans of your parents or caregivers, (6) the stability in each parent or caregiver's home, and (7) how your parents or caregivers act towards you and others. Judges will look at evidence that can give them information about one or more of the considerations listed above. Judges give high priority the evidence that shows what is in your best interest.

When the Judge wants to hear from you

As stated previously it is the courts priority to free you from the stress and pressures of the legal system. Kids don't usually get involved in these kinds of proceedings. Judges prefer to let the grownups make the decisions and not burden kids like you with grown up questions. The Court will take into consideration what is best for you but will very rarely involve you personally. Every so often Judges decide or are

asked to hear your opinion. When this happens, Judges use a variety of tools to let your voice be heard. Among those tools are:

- Guardian Ad Litem
- Attorney Ad Litem
- Amicus Attorney
- Child Custody Evaluation
- Interview in Chambers

Guardian Ad Litem

Judges may decide that they need help from other people who are not involved in the case. This is to get an opinion that is disinterested and not influenced by your parents or caregivers. The Judge may bring in a person to get to know you. This person will provide a report and recommendation to the court and let the court know what you want. This person will likely visit you on several occasions and talk to you about your experiences. They may ask you how you are doing in school and in your extracurricular activities. They will want to know about your health and your habits. They will likely ask you about your feelings and your preferences regarding your caregivers, your parents, and where you want to live. They want to make sure that you are happy, healthy, and safe. It is very important that you tell this person the truth and that you be open and honest about your feelings. They may ask personal questions and you may feel that they are being nosy, but it is important that you answer their questions truthfully and that you give them the information they are requesting. If you are in danger, are being abused, are having problems or mental health issues, or you have experienced harm please let them know. They may also interview other people in your life, including teachers, doctors, counselor's, mental health providers, family members, and friends.

Attorney Ad Litem

Sometimes the Guardian Ad Litem is also an attorney, in those instances they are referred to as an Attorney Ad Litem. The Attorney Ad Litem may fulfill the same role as the Guardian with the added responsibility of being your attorney. This means they will go to court and represent you and what you want, in the courtroom, without the need to have you attend. It is important that the Attorney Ad Litem know what you want and have all the information they need to support your wishes. They are required by law to meet with you before every court hearing. It is also required that they meet with you in a place where you can talk privately and give you a space to talk freely outside the presence of others. If there is something you want to say but are worried about others knowing, you can let your attorney know

and they will keep the information you provided confidential. However, if you are being harmed or abused, the attorney is required to report it to keep you safe. If you have concerns about someone knowing what you said, talk to the attorney, they will act to try to keep you safe from harm.

Amicus Attorney

The Amicus Attorney is very similar to the Attorney Ad Litem, but this attorney is more like the eyes and ears of the Judge. In these cases, the attorney does not go to court to fight for what you want, but instead reports to the court your desires and makes a recommendation about what they think is best for you. The Amicus Attorney is also required to meet with you in a place where you can talk privately and outside the presence of others. The Amicus is allowed to tell the court what you said, if they think it is necessary. If you have something you want to say but are worried about others finding out, talk to the attorney and let them know your desires.

Child Custody Evaluation

The Judge might have a set of people investigate and issue a report related to your case and your wellbeing. This report is called a child custody evaluation. When an evaluation is used in your case you will have people visiting your home and asking questions. Their questions will be similar to those the Guardian, Attorney Ad Litem, and Amicus Attorneys ask. They will interview your parents, caregivers, and anyone else they think knows you or your situation well. They will create a report that is given to the Judge to read. Their report will have recommendations about what they think is best for you. It is important that you answer their questions truthfully and that you give them the information they are requesting as they only want to make sure you are safe and figure out what is best for you.

Interviews in Chambers

There are instances when the judge will want to meet you personally. In these cases the Judge will ask that you be brought in to meet with them. If you are brought in to talk to the Judge, it is important that you be truthful and that you provide the information they are requesting. If there is something you want to tell the Judge that want to keep confidential you will need to let the Judge know.

No person should tell you what to tell your Guardian, Attorney Ad Litem, Amicus Attorney, Child Custody Evaluator, or the Judge. They want to know what you have to say and not what others want you to say. If anyone you know is trying to influence what you say, please let

them know. Being dishonest about how you feel or making them think that you want something you do not, can result in you being placed in an environment that is unsafe for you and can hurt your opportunities to be happy and healthy. It may be easier to say what you have been told to say then to speak to your own feelings, but sometimes doing the best thing isn't always the easiest. Resist telling them what you think they want to hear or what others have told you to say. Be honest and speak from your heart because your feelings and opinions are what matter the most.

Don't be afraid if you are a teen stuck in the middle of a custody battle. The most important thing to everyone involved in this process is to find a resolution that is best for you. The priority is to ensure that you have a prosperous future and that you are given everything you need to be happy, healthy, and safe.

FINANCIAL INCLUSION AND PROTECTION FOR MINORS

Efrain Vera

What is the importance of opening a bank account for a minor? Are minors afforded the same protections as adults with respect to establishing and maintaining bank accounts? If so, what are those protections, and who enforces them?

Nearly seven million American households do not have access to bank accounts or banking resources.¹ Studies illustrate that low-income households with no access to bank accounts have a difficult time escaping poverty and achieving upward economic mobility.² When these households do not have access to traditional banking resources, they rely on alternative financing resources, such as high interest payday loans.³ Accordingly, it is important to ensure that minors, once they enter the work force, have access to bank accounts to address and deter the lack of economic mobility facilitated by the use alternative financing services, typically predatory in nature.⁴ In addition, although a consumer derives many benefits from having a bank account, minors in particular should be aware of the resources and protections available to maximize them as a tool for shaping their future.

What are the benefits of owning a bank account?

There are numerous benefits for minors of opening a bank account. First, establishing a bank account during high school is “associated with higher levels of financial knowledge, even after controlling for

¹ Mark Kutzbach et al., Ctr for Fin. Res., *How America Banks: Household Use of Banking and Financial Services*, 2019 FDIC Survey, FDIC, Oct. 2020, at 1, <https://www.fdic.gov/analysis/household-survey/2019execsum.pdf>.

² Marianne Bertrand et al., *A Behavioral-Economics View of Poverty*, 94 AM. ECON. REV. 419, May 2004, at 419, 423.

³ BERKELEY ECONOMIC REVIEW, *Banking and Poverty: Why the Poor Turn to Alternative Financial Services*, Apr. 15, 2019, <https://econreview.berkeley.edu/banking-and-poverty-why-the-poor-turn-to-alternative-financial-services/>.

⁴ Bureau of Labor Statistics, *Employment and Unemployment Among Youth—Summer 2021*, News Release (U.S. Dep’t of Labor), Aug. 18, 2021, at 1, <https://www.bls.gov/news.release/pdf/youth.pdf>; J. Michael Collins et al., *Banking on the Future: Minor-owned Accounts and Financial Inclusion*, EduFin Center for Financial Education and Capability, May 2, 2019, at 5, <https://www.bbvaedufin.com/wp-content/uploads/2019/11/Montana-State-University-EduFinGrants.pdf>.

factors such as race and parental education.”⁵ Obtaining and developing financial knowledge facilitates the development of credit and maintaining an improved credit score.⁶ Further, the Federal Deposit Insurance Corporation’s (the “FDIC”) 2019 National Survey of Banked and Unbanked Households found that people who maintain bank accounts build savings at a higher rate than those who did not.⁷

The FDIC encourages opening a bank account for the following reasons: (i) avoidance of check-cashing fees; (ii) it assists in obtaining access to other bank products, such as mortgages and car loans; (iii) it provides proof of payment for online purchases; and (iv) it facilitates online purchases, transfer and bill payments.⁸ More directly, benefits of opening bank accounts include (i) accounts are protected by FDIC insurance, (ii) accounts can earn interest, (iii) direct deposit of funds into the account, and (iv) the ability to track spending.⁹

What protections are in place for minors that own bank accounts?

While a banking consumer can raise questions or concerns with their banking service, a consumer can also address concerns to the Consumer Financial Protection Bureau (the “CFPB”), a government agency that assists consumers with being treated fairly and addressing discrimination associated with services and products obtained from financial institutions.¹⁰ As stated by the CFPB, its aims is to “make consumer financial markets work for consumers, responsible

⁵ J. Michael Collins et al., *Banking on the Future: Minor-owned Accounts and Financial Inclusion*, EduFin Center for Financial Education and Capability, May 2, 2019, at 2, <https://www.bbvaedufin.com/wp-content/uploads/2019/11/Montana-State-University-EduFinGrants.pdf>.

⁶ *Id.* at 4.

⁷ Mark Kutzbach et al., Ctr for Fin. Res., *How America Banks: Household Use of Banking and Financial Services*, 2019 FDIC Survey, FDIC, Oct. 2020, at 52, <https://www.fdic.gov/analysis/household-survey/2019execsum.pdf>.

⁸ FDIC, *Top Reasons to #GetBanked*, <https://www.fdic.gov/getbanked/pdf/top-reasons-to-open-a-bank-account.pdf>.

⁹ See e.g., CFE Fund, *Making the Case for Banking Access: Talking to Unbanked People about Bank Accounts*, BANKON, Oct. 2019, <https://cfefund.org/wp-content/uploads/2019/11/Making-the-Case-for-BankingAccess-Brief-Oct-2019.pdf>. See also *Checking accounts: advantages & disadvantages*, CapitalOne: Banking Basics (Mar. 16, 2022), <https://www.capitalone.com/bank/money-management/banking-basics/benefits-of-checking-accounts/>.

¹⁰ Patrice Alexander Ficklin, *You have the right to be treated fairly in the marketplace*, CFPB: INFO FOR CONSUMERS (Apr. 29, 2016), <https://www.consumerfinance.gov/about-us/blog/you-have-right-be-treated-fairly-financial-marketplace/>.

providers, and the economy as a whole.”¹¹ The CFPB accomplishes this by, in part, “[e]nforcing laws that outlaw discrimination in consumer finance.”¹² A consumer can assist the CFPB in accomplishing these efforts by submitting complaints related to financial services or products.¹³ A banking consumer may submit a complaint to the CFPB for a number of reasons, including when the banking consumer believes that there has been a violation of applicable financial rules and regulations.

The following are a few federal rules and regulations were implemented to protect banking consumers and also intend to protect minors: the Electronic Fund Transfer Act (Regulation E), the Truth in Savings Act (Regulation DD), and the Unfair, deceptive, or abusive Acts or Practices under the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”).

Electronic Fund Transfer Act (Regulation E)¹⁴

- Regulation E protects banking consumers that engage in electronic fund transfers and remittance transfers, which include: transfers through automated teller machines (ATMs); point-of-sale (POS) terminals; automated clearinghouse (ACH) systems; telephone bill-payment plans in which periodic or recurring transfers are contemplated; and remote banking programs.
- Regulation E prohibits institutions from charging overdraft fees for ATM and one-time debit card transactions, unless the consumer opts in or affirmatively consents to the institution’s overdraft services.
- Regulation E requires disclosures to be available in each foreign language that the remittance transfer provider uses to advertise, solicit, or market.
- Regulation E disclosures must be “clear and conspicuous.” Written disclosures are clear and conspicuous if they are readily understandable and readily noticeable to senders.

¹¹ Lissan Anfune, *Strengthening the financial future of America’s young workers*, CFPB: DATA, RESEARCH, AND REPORTS (Jun. 05, 2018), <https://www.consumerfinance.gov/about-us/blog/strengthening-financial-future-americas-young-workers/>.

¹² *The Bureau*, CONSUMER FINANCIAL PROTECTION BUREAU, *About Us*, <https://www.consumerfinance.gov/about-us/the-bureau/>.

¹³ *Submit a Complaint*, CONSUMER FINANCIAL PROTECTION BUREAU, *Consumer Education*, <https://www.consumerfinance.gov/complaint/>.

¹⁴ Regulation E, 12 C.F.R. §§ 1005.1–1005.36 (2022).

Truth in Savings Act (Regulation DD)¹⁵

- Regulation DD requires that any bank or savings association inform consumers about fees and terms of deposit accounts so that they are enabled to make meaningful comparisons of different institutions.
- Regulation DD prohibits advertising about deposit contracts from being misleading or misrepresent the account as “free” or “no cost” if any maintenance or activity fee may be imposed on the account.

Unfair, Deceptive, or Abusive Acts or Practices (UDAAPs)¹⁶

- The Dodd-Frank Act prohibits acts or practices that are unfair, deceptive, and/or abusive.
- An unfair act or practice occurs when: (1) it causes or is likely to cause substantial injury to consumers; (2) the injury is not reasonably avoidable by consumers; and (3) the injury is not outweighed by countervailing benefits to consumers or to competition.¹⁷
- A deceptive representation, omission, or practice occurs when: (1) the representation, omission, act, or practice misleads or is likely to mislead the consumer; (2) the consumer’s interpretation of the representation, omission, act, or practice is reasonable under the circumstances; and (3) the misleading representation, omission, act, or practice is material or significant.
- Abusive acts or practices occur when: (1) acts materially interfere with the ability of a consumer to understand a term or condition of a consumer financial product or service or (2) takes unreasonable advantage of: (i) A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; (ii) the inability of the

¹⁵ Regulation DD, 12 C.F.R. §§ 1030.1–1030.11 (2022).

¹⁶ Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; PL 111-203 (July 21, 2010). Examples of unfair acts of practices enforcement actions include: “Refusing to release lien after consumer makes final payment on a mortgage,” “Dishonoring credit card convenience checks without notice,” “Processing payments for companies engaged in fraudulent activities.” See CFPB Consumer Laws and Regulations: UDAAP, *Manual V.3*, at 4 (Mar. 2022), https://files.consumerfinance.gov/f/documents/cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf. Additionally, examples of deceptive acts or practices include “inadequate disclosure of material lease terms in television advertising” and “misrepresentation about loan terms.” *Id.*

¹⁷ Countervailing benefits means that there are no benefits that offset the injury such as benefits to the consumer (e.g., lower prices) or to the competition (e.g., more availability of products). *Id.* at 3.

consumer to protect its interests in selecting or using a consumer financial product or service; (iii) or the reasonable reliance by the consumer on a covered person to act in the interests of the consumer.

Establishing and maintaining a bank account is associated with many economic benefits. For minors in particular, obtaining knowledge of available resources and protections is another step in ensuring that, as banking consumers, they can effectively use a bank account as a tool to access those benefits.

The following is a supplementary infographic for *Financial Inclusion And Protection For Minors* created to promote legal comprehension.

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A Guide to Financial Inclusion and Protection for Minors

What are the benefits of having a bank account?



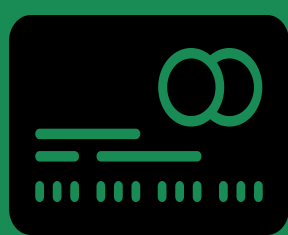
1. Financial Knowledge

- Establishing a bank account during high school is associated with higher levels of financial knowledge.¹
- Financial knowledge facilitates the development of good credit scores.²



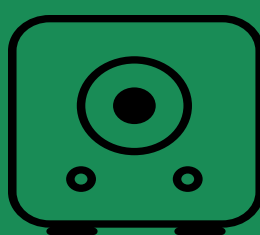
2. Savings

- People who maintain bank accounts build savings at a higher rate than those who do not.³



3. Access

- Households with no access to bank accounts have a difficult time escaping poverty and achieving upward economic mobility.⁴
- Bank accounts can help consumers access other bank products like mortgages or car loans.⁵



4. Protection

- Money is protected against error and fraud.
- Bank accounts provide records of financial transactions and proof of payment for online purchases.⁶
- Federal regulations protect consumers. (More below!)

What protections are in place for minors that own bank accounts?

REGULATION E: Electronic Fund Transfer Act



- Regulation E protects banking consumers that engage in electronic fund transfers, ATM transfers, point-of-sale terminals, automated clearinghouse (ACH) systems, telephone bill-payment plans, and remote banking programs.
- Regulation E prohibits institutions from charging overdraft fees for ATM transactions and one-time debit card transactions (unless the consumer opts in or consents).
- Regulation E requires disclosures to be available in each foreign language that the transfer provider principally uses to advertise, solicit, or market.
- Regulation E requires that disclosures are “clear and conspicuous.”⁷

REGULATION DD: Truth in Savings Act



- Regulation DD requires that institutions provide consumers with disclosures about fees and terms of deposit accounts so that consumers can make meaningful comparisons of different institutions and can make informed decisions.
- Regulation DD prohibits advertising about deposit contracts from being misleading or misrepresent the account as “free” or “no cost” if any maintenance or activity fee may be imposed on the account.⁸

The Dodd-Frank Act

- The Dodd-Frank Act prohibits acts or practices that are unfair, deceptive, and/or abusive.⁹



Source • Financial Inclusion And Protection For Minors by Efrain Vera. Infographic created by Karla Vera, Staff Editor (2021-2022).

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1 J. Michael Collins et al., *Banking on the Future: Minor-owned Accounts and Financial Inclusion*, EduFin Center for Financial Education and Capability, May 2, 2019, at 2, <https://www.bbvaedufin.com/wp-content/uploads/2019/11/Montana-State-University-EduFinGrants.pdf>.

2 *Id.* at 4.

3 Mark Kutzbach et al., Ctr for Fin. Res., *How America Banks: Household Use of Banking and Financial Services*, 2019 FDIC Survey, FDIC, Oct. 2020, at 52, <https://www.fdic.gov/analysis/household-survey/2019execsum.pdf>.

4 Bureau of Labor Statistics, *Employment and Unemployment Among Youth—Summer 2021*, News Release (U.S. Dep’t of Labor), Aug. 18, 2021, at 1, <https://www.bls.gov/news.release/pdf/youth.pdf>; J. Michael Collins et al., *Banking on the Future: Minor-owned Accounts and Financial Inclusion*, EduFin Center for Financial Education and Capability, May 2, 2019, at 5, <https://www.bbvaedufin.com/wp-content/uploads/2019/11/Montana-State-University-EduFinGrants.pdf>.

5 FDIC, *Top Reasons to #GetBanked*, <https://www.fdic.gov/getbanked/pdf/top-reasons-to-open-a-bank-account.pdf>.

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7 Regulation E, 12 C.F.R. §§ 1005.1-1005.36 (2022).

8 Regulation DD, 12 C.F.R. §§ 1030.1-1030.11 (2022).

9 Dodd-Frank Act, Title X, Subtitle C, Sec. 1036; PL 111-203 (July 21, 2010).

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