



## COLORADO

### Topics:

How the State Can Remove Custody  
What the Law Says About Separating A Mother From Her Baby  
Applicable State Law  
Resources

### HOW THE STATE CAN REMOVE CUSTODY

Statute: §19-3-604 <sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, child judged in need of services/dependent, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, identity of parent(s) unknown, history of violent behavior.

Exceptions: Exceptions to criteria for TPR when child in foster care for 15 of most recent 22 months: 1) child placed with relative; 2) agency has documented that filing TPR is not in child's best interest; 3) services not provided; 4) length of time in foster care is due to circumstances beyond the control of parent, such as incarceration for reasonable time, court delays.

### WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FROM HER BABY

When it comes to infant children in county custody placed with the same Out of Home Care Provider as their teen mom, if the teen mom is in the custody of the Department of Youth Corrections (DYC) and is in a placement with the infant child, the child will at that point be in the custody of a county department. The infant child's review will be done in the county department that has been assigned custody. The mother's review will be held in DYC.<sup>2</sup> As to Mutual Care Placement, the state will not review the infant child if custody of the infant child is with the teen parent. (See Child Welfare Policy Manual 8.3A.6) Infant

<sup>1</sup> National Center for State Courts' Knowledge and Information Services.

<sup>2</sup> <http://www.cdhs.state.co.us/ard/Documents/ReviewUniverse.doc>

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child status is reviewed during the teen mother's review. No instrument is completed for the infant child when the teen parent has custody. Id.

**Custody** is the care, control, and maintenance of a child which can be legally awarded by the court to an agency (in abuse and neglect cases) or to parents (in divorce, separation, or adoption proceedings) Child welfare departments retain legal custody and control of major decisions for a child in foster care; foster parents do not have legal custody of the children they care for. A person or an agency to whom legal custody of the child has been transferred by a Court, but not including a person who has merely physical custody of the child. Foster parents are not the legal custodians of the foster child. Either the agency or the parent is the legal custodian. The three levels of custody are guardianship, legal custody, and physical custody. A foster parent is delegated only physical custody of a child. Legal custody is either retained by the parents or transferred by the Court to the County Department of Human Services. In most foster care cases, the parents retain guardianship.<sup>3</sup>

Legal custody is similar to guardianship, but is usually granted by a different court that has different procedures. Probate courts usually grant guardianships; family courts grant legal custody. Also, the status of "guardian" often facilitates access to more services and rights than legal custodian.<sup>4</sup> Guardianship includes legal custody, unless legal custody is reserved or transferred by the Court. Temporary legal custody of a child as granted by a court to the Department of Human Services does not necessarily involve placement in a foster home, although it often does.

See also article at <http://www.cdhs.state.co.us/ard/Documents/ReviewUniverse.doc>

"The Legal Status of Pregnant and Parenting Youth in Foster Care" (See [http://64.233.167.104/search?q=cache:GDLcDv7\\_FaUJ:www.kidscounsel.org/Legal%2520Status%2520Preg-Parent%2520Youth%2520Foster%2520Care.doc+%22TEEN+mother%22+%22joint+placement%22+%22foster+CARE%22&hl=en&ct=clnk&cd=5&gl=US](http://64.233.167.104/search?q=cache:GDLcDv7_FaUJ:www.kidscounsel.org/Legal%2520Status%2520Preg-Parent%2520Youth%2520Foster%2520Care.doc+%22TEEN+mother%22+%22joint+placement%22+%22foster+CARE%22&hl=en&ct=clnk&cd=5&gl=US)):

If young parents are to assume daily responsibility for the care of their children after discharge, they must be allowed to practice that responsibility while in foster care. Ensuring that the young mother and her child are placed together is a primary responsibility of the ward's attorney. Reports and anecdotal evidence suggest that local child welfare systems do not have enough mother/child placements to meet

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<sup>3</sup> <http://www.co.rock.wi.us/Dept/HumanSvc/documents/Foster%20Care%20Handbook.pdf>

<sup>4</sup> <http://www.nacac.org/adoptalk/kinship.html>

the population's needs.<sup>5</sup> The separation of mother and infant is damaging to both. The baby is left alone in the hospital for the entire night and portions of the day, precluding breastfeeding and crucial bonding with the mother. The state, in turn, pays an enormous price to keep a healthy child in the hospital. Such separations are counterproductive and inhumane. They are also illegal. Attorneys for parenting wards can address this problem from several angles. First, in some cases, steps may be taken while the ward is pregnant to ensure that the relevant agency is making appropriate plans for the client's post-pregnancy placement.

Next, when a client is illegally separated from her child, attorneys have several options. In most states, the parent may file a writ of habeas corpus against the child welfare or foster care agency, demanding that the child be returned to the mother. In some circumstances, an attorney's threat to initiate such action will be sufficient to motivate the agency to reunite mother and child in an appropriate placement. Another option is to seek relief from a court with jurisdiction over the teen's foster care placement. The attorney should avail herself of state policies, such as those discussed above, to argue that the ward has a right to placement with her child.<sup>6</sup> Finally, in negotiating with state or local bureaucrats, advocates should point out that as long as the parenting ward retains legal custody of the infant, failure to place the mother and child together will compromise the state's ability to receive federal reimbursement for the infant's care.

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<sup>5</sup> In Illinois, the lack of appropriate placements too often results in postnatal stays in temporary shelters. In California, the legislature has officially acknowledged that the dearth of placements results in temporary separations of parenting wards and their children. In New York, the scarcity of mother/child beds often results in the mother and infant remaining in the hospital long after they are medically ready for discharge. In other instances, the mother is discharged to her prior placement while her baby remains in the hospital nursery. In New York City, as in other locales, this is difficult at best because mother/child placements are awarded on a first-come, first-served basis. Additionally, due to the higher demand for beds and the high cost of leaving beds vacant, programs are unable to reserve beds for pregnant teens. Nevertheless, advocates can seek court orders directing the ward's agency to make appropriate plans for the teen's placement following delivery.

<sup>6</sup> For example, attorneys in California can now argue that the court or the agency has failed to make diligent and active efforts to place "the minor parent and the child together in as family-like a setting as possible" as mandated by state statute. In all jurisdictions, the attorney should also argue that separating the ward from her child is clearly contrary to the ward's best interests.

### APPLICABLE STATE LAW

Pursuant to recent case law in the state of Colorado, the termination of parental rights is a decision of “paramount gravity” affecting a parent’s fundamental interest in the care, custody, and management of his or her child; therefore, the state must exercise “extreme caution” in terminating such rights, and strict compliance by the trial court with the appropriate standards for termination of a parent-child relationship is an “absolute necessity”. U.S.C.A. Const.Amend. 14. K.D. v. People, 139 P.3d 695 (Colo. 2006) Pursuant to Colorado’s statutory provisions governing termination, the trial court must consider and carefully eliminate less drastic alternatives before entering a termination order. C.R.S.A. § 19-3-604(1)(c). People ex rel. D.P., 181 P.3d 403 (Colo.App. 2008)

Implicit in the statutory scheme for termination of parental rights, is this requirement that the trial court consider and eliminate less drastic alternatives before entering an order of termination; in so doing, the trial court must give primary consideration to the physical, mental, and emotional conditions and needs of the child. C.R.S.A. § 19-3-604(1)(c). People ex rel. Z.P., 167 P.3d 211 (Colo.App. 2007); see also People ex rel. J.L.M., 143 P.3d 1125 (Colo.App. 2006). Determining whether to order permanent placement as an alternative to parental rights termination depends on the foster teen’s child’s best interests; long-term or permanent placement may not be appropriate when it does not provide adequate permanence or otherwise meet the child’s needs. People ex rel. D.P., 160 P.3d 351 (Colo.App. 2007) In order to permanently end the parent-child legal relationship, clear and convincing evidence must establish that an appropriate treatment plan, approved by the trial court, has not been complied with by the parent or has not been successful in rehabilitating the parent. C.R.S.A. § 19-3-604(1)(c) People ex rel. A.J., 143 P.3d 1143 (Colo.App. 2006) If the teen mom in question chooses the route of seeking an appeal of a court termination order, it is important to keep in mind that an “unfit parent,” for purposes of terminating adult parent-child relationships is legally defined as “one whose conduct or condition renders him or her unable to give a child reasonable parental care.” C.R.S.A. § 19-3-604(1)(c). A.J., supra. 143 P.3d 1143 (Colo.App.2006) It may also help to look at what happens normally to adult parents in Colorado’s termination process.

Normally, when the parent is an adult facing termination of its parental rights - in determining the adult parent’s unfitness, the trial court may consider whether reasonable efforts by childcare agencies have been unable to rehabilitate the adult parent. C.R.S.A. § 19-3-604(1)(c)(II). People ex rel. D.Y., 176 P.3d 874 (Colo.App. 2007). IN may also be helpful to note that in the adult case, to fully support an order of termination, clear and convincing evidence must establish that the child has been adjudicated dependent or neglected, that an appropriate treatment plan, approved by the trial court, has not been complied with by the parent or has not been successful in rehabilitating the parent, that the parent is unfit, and that the parent’s conduct or condition is unlikely to change within a reasonable time. C.R.S.A. § 19-3-604(1)(c).

People ex rel. N.A.T., 134 P.3d 535 (Colo.App. 2006) <sup>7</sup> In People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo.App. 2007), the available evidence was sufficient to establish that the mother a) did not reasonably comply with her treatment plan b) could not be effective as a parent because she constantly struggled to meet her child's most basic needs, c) could not manage time, d) could not maintain a stable income, e) lacked basic parenting skills, f) could not bond with child, g) refused to participate in therapy to address her own mental health issues, and h) refused to take advantage of offered department services. C.R.S.A. § 19-3-604(1c). Note that in making the termination determination as to adult moms, the state is obligated to make, at minimum, "reasonable efforts" to prevent the out-of-home placement of abused or neglected children and to reunite the family. C.R.S.A. §§ 19-1-103(89), 19-3-100.5. S.M.A.M.A., supra.

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<sup>7</sup> For purposes of determining whether to terminate the legal relationship between adult parent and child, it is the adult parent who is responsible for securing compliance with and success of any court-ordered drug or other treatment plan. C.R.S.A. § 19-3-604(1)(c)(l). People ex rel. J.A.S., 160 P.3d 257 (Colo.App. 2007) For purposes of deciding if termination is appropriate, it is again the parent's responsibility to secure compliance with and success of a treatment plan; although absolute compliance is not required, partial compliance, or even substantial compliance, may not be sufficient to correct or improve the parent's conduct or condition in the eyes of the family court. C.R.S.A. § 19-3-604(1)(c). A.J., supra. In determining if an adult parent's conduct or condition is "unlikely to change within a reasonable time" for the purposes of determining parental unfitness in a termination of parental rights proceeding, a reasonable time is not an indefinite time, and it must be computed by the court's considering the physical, mental, and emotional condition and needs of the child. C.R.S.A. § 19-3-604(3). A.J., supra. In deciding if the adult parent can become fit within a reasonable time so as to ultimately prevent termination, the court may consider whether any changes occurred during the dependency and neglect proceeding, the adult parent's social history, and the chronic or long-term nature of the parent's conduct or condition. D.P., supra. Unless the court determines that an appropriate treatment plan cannot be devised, once an appropriate treatment plan is approved by the court, the adult parent must be given a reasonable time to comply with its provisions. D.Y., supra. In A.J., supra, the evidence supported a trial court's conclusion that the adult mother did not resolve issues that led to the child's adjudication, so the adult mother was thus "unfit" as well as "unlikely to become fit within a reasonable time to meet the child's needs" A psychiatrist who performed a psychological evaluation of the adult mother concluded unfitness on the basis of mental health issues and lack of parenting skills, and the difficulty in providing an emotionally stable environment for her child; a caseworker testified that the conclusion of unfitness was based on the mere fact that the mother had not addressed the specific issues that led to child's removal from home in the first place. C.R.S.A. § 19-3-604(1c). A.J., supra.



## RESOURCES

### **CHILD WELFARE AGENCY: Office of Children, Youth and Family Services, Division of Child Welfare**

1575 Sherman Street Denver, CO 80203

Phone: 303-866-5932

<http://www.cdhs.state.co.us/childWelfare/>

### **Colorado Legal Services**

1905 Sherman Street Suite 400 Denver, CO 80203

Phone: 303-837-1321

[www.coloradolegalservices.org](http://www.coloradolegalservices.org)

### **Transitional or Independent Living Program**

#### **Parent Pathways, Florence Crittenton School/Human Services, Inc.**

6795 East Tennessee #600 Denver, CO 80204

(303) 321-6363

[www.parentpathways.org](http://www.parentpathways.org)

#### **Kidz Ark, Inc.**

Address: Sterling, Colorado

Phone: (970) 522-5775

E-Mail: [kidzark@kci.net](mailto:kidzark@kci.net)

Web Site: [www.kidzark.org](http://www.kidzark.org)

A residential treatment facility in northeastern Colorado, Kidz Ark provides a variety of services for both boys and girls. The agency uses the house parent model of supervision and has an on grounds school. The residents are involved in numerous ranching activities including working with horses and other animals.

#### **Warren Village**

1323 Gilpin Street Denver, CO 80218

Phone: (303) 321-2345

Fax: (303) 399-3722

Email: [wv@warrenvillage.org](mailto:wv@warrenvillage.org)

Warren Village, Inc. is a comprehensive self-sufficiency program for low-income single parents and their children. It provides housing, family services, and case management to 150 families each year. Licensed Early Childhood Education Learning Center for 135 children between the ages of 6 months to 12 years. Connectional Unit: Rocky Mountain Conference.

### **Bridgeway**

85 S. Union Boulevard - Suite 204 Lakewood, CO 80228

Phone: (303) 969-0515

Founded in 1986, Bridgeway is a private, nonprofit organization that operates three homes and an education center for 16 pregnant teenagers and their babies. Parenting mothers can stay up to six months or more in a home supervised by live-in houseparents. Bridgeway has an annual budget of approximately \$235,000 and is funded by workplace campaigns and business and individual donations. Bridgeway provides counseling and classes in Lamaze childbirth, self-esteem, nutrition, parenting, adoption options, prenatal care, resume-writing, job skills, and drug abuse. Volunteers from the community serve as "Bridgers" who act as mentors.

### **Independent Living Program Coordinator**

Colorado State Department of Human Services

1575 Sherman Street, Second Floor Denver, CO 80203

Phone: (303) 866-4706

### **Alamosa County**

Host to Costilla, Conejos, Huerfano, Las Animas, Mineral, Rio Grande

P.O. Box 1310

Alamosa, CO 81101

Phone: (719) 589-2581

### **Arapahoe County**

Host to Elbert, Douglas

1690 W. Littleton Blvd. Littleton, CO 80120-2069

Phone: (303) 636-1807

Fax: (303) 636-1807

Contact: Melody Barnes

### **La Plata County**

Host to Archuleta, Dolores, Montezuma and San Juan

1060 East 2nd Ave. Durango, CO 81301

Phone: (970) 382-6171

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Fax: (970) 382-6171

### **Mother-baby Residential Facilities**

#### **Alternatives Pregnancy Center**

1860 Larimer # 200 Denver, CO 80202  
Phone: (303) 298-8815 or (303) 295 2288

#### **Colorado Springs Pregnancy Center**

3700 Galley Rd., # 150 Colorado Springs, CO 80909  
Phone: (719) 591-2609 or (719) 591-2724

### **Substance Abuse Health & Treatment Resources**

#### **Lost and Found**

6700 W. 44th Avenue, Wheat Ridge, CO 80033  
Phone: (303) 420-8080  
Fax: (303) 420-9299  
Web Site: [www.lostandfoundinc.org](http://www.lostandfoundinc.org)

Provides prevention, intervention and treatment for children, teens, adults and families struggling with chemical dependency, sexual victimization or perpetration, other mental, emotional or behavioral disorders. Our continuum of care offers residential, group and foster homes, intensive outpatient and independent living services from a Christian world-view.

#### **The Women's Addiction Foundation**

Phone: (604) 875-3756  
[www.womenfdn.org](http://www.womenfdn.org)



### Childcare Assistance

#### AAP Chapter Child Care Contact

There is a Chapter Child Care Contact in each Chapter (State). This Chapter Contact is a liaison between the National AAP and State Early Education and Child Care activities. For more information contact [childcare@aap.org](mailto:childcare@aap.org) or:

#### **FAAP**

9094 E Mineral Ave, Ste 120  
Englewood, CO 80112-7201  
Phone: 303-779-5437

#### **Colorado Department of Human Services, Office of Children, Youth, and Family Services**

1575 Sherman Street Denver, Colorado 80203-1714  
Phone: (303) 866-5958  
Web site: <http://www.cdhs.state.co.us>

### TANF (Temporary Aid to Needy Families) Funds

Colorado's TANF is called the *Colorado Works Program*

Division Director

Colorado Works

Colorado Department of Human Services

1575 Sherman Street  
Denver, CO 80203-1714  
Phone: (303) 866-2054  
FAX: (303) 866-5488

### TANF/AFS (Adult and Family Services) or other

For new teen mother eligibility requirements go to: <http://www.spdp.org/compstates/corepro.pdf>

### **Colorado's Kinship and Family Empowerment Services**

In El Paso County, Colorado, a special unit funded by TANF supports relatives, generally grandparents, who care for a child receiving TANF but who do not receive TANF for themselves. The goal of the program is to prevent foster care placements. Some caregivers receive supplemental payments or one-time emergency grants. Others receive help with services they may not have been aware of, such as childcare or health care. Still others seek emotional support. A key element is a bi-monthly support

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group, "Grandparents raising Grandchildren." Of the 450 kinship families identified, only two have had a child placed in foster care.

For teen's child's eligibility requirements go to: <http://www.spdp.org/compstates/corepro.pdf>

### **State Maternal and Child Health Contact**

Colorado Department of Public Health & Environment, Center for Women, Children, and Families,  
Prevention Services Division  
4300 Cherry Creek Drive South Denver, CO 80246-1530  
Phone: (303) 692-2481

### **Colorado Department of Public Health and Environment , Children and Youth with Special Health Care Needs Section**

4300 Cherry Creek Dr. South  
Denver, CO 80246  
Phone: (303) 692-2418

### **Child & Adult Care Food Program**

Colorado Department of Public Health & Environment, Prevention Services Division  
4300 Cherry Creek Dr. South  
Denver, CO 80246-1530  
Phone: (303) 692-2330  
Website: <http://www.cdphe.state.co.us/ps/pshom.asp>