



## DELAWARE

### Topics:

How the State Can Remove Custody  
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### HOW THE STATE CAN REMOVE CUSTODY

Statute: tit. 13 §1103<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, felony conviction/incarceration, failure of reasonable efforts, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, failure to establish paternity, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, voluntary relinquishment.

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

It appears pursuant to state law that upon the birth of her child, the foster teen possesses legal custody to the extent she has the right to bring legal proceedings on her newborn's behalf. 13 Del.C. § 6-302 (Proceeding by minor parent) thus sets forth that a minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. In Delaware, when a minor in substitute care gives birth, the baby may remain with the minor parent in substitute care under one of the following conditions:

- Emergency petition for custody
- Remaining in the minor mother's custody with special arrangements made for payment;
- Through application for TANF for the baby (if the minor mother is not receiving IVE foster care benefits).\*

In cases where DFS has legal custody of both a minor mother and her child and they are not placed together in the same out-of-home setting, DFS will open up a second treatment case under the minor mother's name and assign a separate worker to the child to ensure that the minor mother's child is appropriately cared for and has adequate protection.<sup>2</sup>

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

<sup>2</sup> [http://kids.delaware.gov/pdfs/pol\\_fs\\_policymanual\\_2002.pdf](http://kids.delaware.gov/pdfs/pol_fs_policymanual_2002.pdf)



Foster teen moms often may need a chance to “catch their breath” after their baby’s birth. The alternative of temporary foster care is available through the state and services like Deaconess Children’s Services. These services have the foster teen sign a voluntary agreement to hand over custody for a limited period. When the separation is over and the foster teen is ready to resume responsibility for childcare, the infant is returned to her pursuant to the terms of the temporary foster care contract she signed. The foster teen should obtain legal counsel to assist and advise as to the temporary foster care alternative. Respite care is temporary or short-term home care of a child provided for pay or on a voluntary basis by adults other than the parents (birth, foster, or adoptive parents).

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.<sup>3</sup> 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 the population’s needs.<sup>4</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

<sup>3</sup> “The Legal Status of Pregnant and Parenting Youth in Foster Care” (See article @ [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))

<sup>4</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.

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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>5</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.

### APPLICABLE STATE LAW

Parental rights are arguably fundamental liberty interests which can be terminated only for the most compelling reasons. 13 Del.C. §§ 722(a), 1103, 1103(5), par. b 2. Once statutory requirements for termination of parental rights are met, court must determine whether termination serves best interests of child. 13 Del.C. §§ 722(a), 1103, 1103(5), par. b 2. *Black v. Gray* 540 A.2d 431 (Del. 1988). Termination can be reversed on procedural as well as substantive grounds. For example in *Matter of Carolyn S. S.* 498 A.2d 1095 (Del. 1984) the court concluded that the phrase "due process of law" in the Federal Constitution and phrase "law of the land" in Delaware Constitution have substantially same meaning. Del.C. Ann. Const. Art. 1, §§ 7, 9; U.S.C.A. Const. Amend. 14 and in proceedings pursuant to a petition to terminate parental rights, the lower court had mistakenly terminated parental rights without making any inquiry into the mother's ability to pay for an attorney and having made no findings as to her indigency. Thus on appeal the Supreme Court held that the trial judge, in exercising his sound discretion, was obliged to decide in the first instance whether due process required appointment of counsel for the indigent parent, subject to review on appeal. The case was reversed and remanded with instructions. The teen mom should most of all be aware that the court's standard at termination hearings will be to impose a "clear and convincing" burden of proof on the court. This evidentiary standard must be applied to any state-initiated termination of parental rights.

Basing the termination order on any other standard, i.e. on a "preponderance of the evidence" standard, would make the termination reversible and the case would be remanded for application of the correct "clear and convincing" standard of proof. 13 Del.C. § 1103(5). *Patricia A.F. v. James R.F.* 451 A.2d 830 (Del. 1982).

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<sup>5</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 interest



## RESOURCES

### CHILD WELFARE AGENCY: **The Department of Services for Children, Youth, and Their Families**

1825 Faulkland Rd, Wilmington, DE 19805

Phone: (302) 633-2650

<http://kids.delaware.gov/>

### **Legal Services Corporation of Delaware Inc.**

100 West 10<sup>th</sup> Street Suite 203, Wilmington, DE 19801

Phone: (302) 575-0408

[www.lscd.com](http://www.lscd.com)

### **Office Of The Child Advocate**

900 King Street 210 Wilimington, DE 19801-3341

Phone: 302-577-6830

Fax: 302-577-6831

Intake Phone: 302-577-6830

Web Site: <http://courts.state.de.us/childadvocate>

The **Teen Parents and the Law** (TPAL) program is based on a national teen court curriculum and serves to teach teen parents life skills through the prism of civic education. The intensive program takes place over a number of weeks and covers topics such as landlord-tenant law, consumer protection, child custody, child abuse and neglect, domestic violence, voter registration, and state mandatory education requirements. The program is designed to teach teen parents the skills to be effective parents and self-advocates. In April 2005, the Administrative Office of the Courts held a 'train the trainers' program on the TPAL curriculum for Family Court staff members. Ten Family Courts were supplied curriculum materials and are either implementing the program or are in the planning stages of implementation.<sup>6</sup>

## Transitional Living or Independent Living Program

### **Delaware Futures, Inc.**

Wilmington: (302) 652-8619

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<sup>6</sup> <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>

Delaware Futures provides educational, social, and motivational support to high school students with unrealized potential to become successful college applicants.

<http://www.delawarefutures.org>

### **Delaware Parents Association, Inc.**

Dover: (302) 678-9288

To provide a safe place for parents, youth, and caregivers to obtain information on parenting skills, youth development, substance abuse prevention, effective communication and advocacy skills through the Family Resource Center, training / workshops and a number of comprehensive programs that promote and to encourage economic, emotional, and social empowerment.

<http://www.delparents.org>

Dover: (302) 678-9400

To provide opportunities for safe, decent, affordable housing, and to improve conditions of low and moderate-income people primarily in rural areas.

<http://www.ncall.org>

### **The Mid-Atlantic Network of Youth & Family Services**

A non-profit membership association of youth service organizations in Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia.

135 Cumberland Road Suite 201 Pittsburgh PA 15237

Phone: (412) 366-6562

Fax: (412) 366-5407

Email: [many@manynet.org](mailto:many@manynet.org)

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

### **Open Door, Inc.**

Newark: (302) 731-1504

To provide comprehensive mental health and substance abuse treatment to children, adolescents, adults, older adults and their families.

### **A Door of Hope**

Wilmington: (302) 998-9000

A Door of Hope is a life-affirming non-profit ministry that promotes making healthy life choices.

<http://www.adoorofhope.org>



### **AIDS Delaware**

Wilmington: (302) 652-6776

To provide comprehensive social and support services to clients and their families, advocacy for compassionate public policy, prevention and education programs addressing unsafe sexual and drug use behaviors in order to halt the spread of HIV & AIDS.

<http://www.aidsdelaware.org>

### **Delaware Association for Children of Alcoholics**

Wilmington: (302) 656-5554

Promote public awareness of the special needs of members of alcoholic families; to provide information and training to professionals; to advocate for prevention and treatment for children of alcoholics of all ages...especially those too young to speak for themselves. National and statewide phone lines for information, self help meeting lists and clinical referrals.

<http://www.dacoa.org>

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

604-875-3756

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

## **Childcare Assistance**

### **Mom's House®**

Dover: (302) 678-8688

Mom's House provides free daycare and other support services to low-income single parents who are full-time students. Mom's House enables single parents to become self-sufficient.

### **Read Aloud Delaware**

Wilmington: (302) 656-5256

To ensure that each preschool child in Delaware is regularly read to one-on-one.

<http://www.readalouddelaware.org>

For statewide stats and resources see data compiled @

<http://www.naccrra.org/randd/data/docs/DE.pdf>

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

Delaware's TANF is known as

### **ABC (A Better Chance)**

Delaware Health & Social Services  
Lewis Building  
1901 N. DuPont Highway New Castle, DE 19720  
Phone: (302) 255-9668  
FAX: (302) 255-4433

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

TANF is time-limited public assistance payments made to poor families, based on Title IV-A of the Social Security Act. The program provides parents with job preparation, work, and support services to help them become self-sufficient.

TANF legislation includes two rules specific to minor parents (parents under age 18). One rule requires that minor parents live in an approved arrangement, usually with their parents. The other rule requires that minor parents typically participate in education leading to a high school diploma or GED.

As of October of 1999, at least seven states (Arkansas, California, Delaware, North Dakota, Ohio, Utah, and Vermont) were providing some type of monetary bonus as an incentive for teen parents to attend school, progress to the next grade, and/or graduate. Other than TANF's new school/training prerequisite for receiving funds, the other new requirement is the living arrangements requirement.

The living arrangement requirement to receive TANF says that a state is prohibited from spending federal TANF funds on assistance to an unmarried, minor, custodial parent unless she lives with a parent, legal guardian or other adult relative or is approved for an exception. The law recognizes limited exceptions to this rule including situations in which a parent, legal guardian, or other adult relative is not available or when such a placement could result in harm to the minor parent and/or her child. When residing with a parent, legal guardian or other adult relative is inappropriate, the state must "provide, or assist the individual in locating, a second chance home, maternity home, or other appropriate adult-supervised setting." Alternatively, the state may determine that a teen parent's independent living arrangement is appropriate and that it is in the "best interest" of her child to make an exception to the general rule.<sup>7</sup>

<http://regulations.delaware.gov/register/january2005/proposed/8%20DE%20Reg%20978%2001-01-05.htm>

Child Care Subsidy Program, 31 Delaware Code, Section 512 (31 Del.C. Ch.5, §512) - In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the Delaware Code) and

<sup>7</sup> <http://www.spdp.org/reprexpl.htm#mla>



under the authority of Title 31 of the Delaware Code, Chapter 5, Section 512, Delaware Health and Social Services (DHSS) / Division of Social Services is proposing to amend the Division of Social Services Manual (DSSM) regarding the child care subsidy program as it relates to the determination of the child care parent fee and fee waiving situations.

### **Wilmington Head Start, Inc.**

Wilmington: (302) 421-3620

Wilmington Head Start, Inc. (WHS) is a non-profit organization dedicated to serving the needs of Wilmington's low-income children and their families. The overall goal of Head Start is to increase the school readiness of pre-school children of low income families. We are currently funded to serve 500 children ages 3 to 5 years old. WHS is a comprehensive program providing the following services: health and dental, nutrition, literacy and education, children with special needs, family services, and transportation. We have seven (7) educational centers throughout the City of Wilmington.

According to the Center for Law and Social Policy (C.L.A.S.P.) ([http://www.clasp.org/publications/ehs\\_teens.pdf](http://www.clasp.org/publications/ehs_teens.pdf)), Early Head Start programs can facilitate relationships in the medical community and help provide information to teen parents about the medical needs of their children with disabilities. While health care issues may exist for many parents, teen parents of children with disabilities are likely to experience the health care system more acutely than other parents—they may be in more situations requiring parental decision-making, and they may face specific issues around consent that adult parents do not encounter. The legal ambiguity resulting from a teen's age can be difficult. While teens may legally be empowered to make medical, educational, and mental health decisions (related to disability) for their children, they may not legally be able to do so for themselves. The same legal ambiguity can affect the teen's lack of knowledge about a child's disabilities in general. Teens' lack of knowledge is sometimes due to the fact that they are not the primary caregivers, at least not for the purposes of medical attention.