

IDAHO

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: §§ 16-2005; 16-1608(e)¹

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, child's best interest, felony assault of child or sibling, murder/manslaughter of sibling child, father not the natural parent, murder of child's parent, conception result of rape, voluntary relinquishment, aggravated circumstances.

Exceptions: Presumption may be rebutted by a finding of the court that: 1) filing not in best interest of child; 2) reunification services have not been provided; 3) child is placed permanently with relative.

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. I.C. § 7-1017 (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. Attorneys and judges can ensure that teen parents are not forced to sign a voluntary placement agreement. The agreement can have dire consequences for a young mom in care who wishes to keep her baby after emancipation²

¹ National Center for State Courts' Knowledge and Information Services.

² <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

IDAHO 1
NOTE: The information contained in this website is for general information purposes only, and should not be interpreted as legal advice. Each person's legal situation is unique and has its own set of facts and circumstances. You should always talk with a lawyer to get advice about your specific situation. This website provides you with contact information for various organizations and resources. The National Crittenton Foundation has no control over the nature, content and availability of resources or information offered by those organizations. The inclusion of contact information does not necessarily imply a recommendation or endorsement of the views expressed by those organizations.

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 that have the foster teen sign a voluntary agreement to hand over custody for a limited time. When the separation is over and the foster teen is ready to resume responsibility for child care, 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.

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.³ 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.⁴ 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

³ “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)

⁴ 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.

NOTE: The information contained in this website is for general information purposes only, and should not be interpreted as legal advice. Each person’s legal situation is unique and has its own set of facts and circumstances. You should always talk with a lawyer to get advice about your specific situation. This website provides you with contact information for various organizations and resources. The National Crittenton Foundation has no control over the nature, content and availability of resources or information offered by those organizations. The inclusion of contact information does not necessarily imply a recommendation or endorsement of the views expressed by those organizations.

as those discussed above, to argue that the ward has a right to placement with her child.⁵ 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

Parents should not be permanently deprived of the custody of their children and right to act as their legal guardians, though custody must for good reasons be temporarily surrendered, except in strict accordance with law. *Ex parte Martin*, 161 P. 573 (Idaho 1916) However a court may grant a termination of parental rights order if there exists one or more of the conditions under which the parent-child relationship may be terminated. *State Dept. of Health and Welfare v. Doe*, 160 P.3d 751 (Idaho 2007) Consideration of the child's best interests in a parental termination proceeding can only occur if a statutory ground for termination exists. I.C. §§ 16-2005, 16-2005, subs. a-e. *Hofmeister v. Bauer*, 719 P.2d 1220 (Idaho App. 1986) It is only when a parent is found to be unfit, i.e., when the particular statutory ground for termination has already been established, that a court will consider whether a child would be comparatively better off if the parental relationship were terminated. I.C. §§ 16-2005, 16-2005, subs. a-e.

RESOURCES

CHILD WELFARE AGENCY: **Department of Health and Welfare**
450 W. State Street, 10th Floor, Boise ID 83702
Phone: (800) 926-2588
<http://www.healthandwelfare.idaho.gov/Default.aspx>

⁵ For example, California attorneys can now argue that the court or 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 can also argue that separating the ward from her child is clearly contrary to the ward's best interest

Legal Services

Idaho Legal Aid Services Inc.

310 North Fifth Street P.O. Box 913 Boise, ID 83701

Phone (208) 345-0106

www.idaholegalaid.org

Idaho Law Foundation Volunteer Lawyers Program

PO Box 895 Boise, ID 83701-0895

Phone: (208) 334-4510

Fax: 208-334-4515

Intake Phone: 800-221-3295

Web Site: http://www2.state.id.us/isb/pub_info/ivlp.htm

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.⁶

Transitional or Independent Living Programs

Idaho Department of Health and Welfare

P.O. Box 83720

Boise, ID 83720-0036

Phone: (208) 334-5695

Fax: (208) 334-6664

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



Mother-baby Residential Facilities

Wood River Pregnancy Center

P.O. Box 441 Hailey, ID 83333 or 17 E. Bullion
Phone: (208) 788-2429

The Pregnancy Center

1448 'G' St., Ste. B Lewiston, ID 83501
Phone: (208) 746-9704

Substance Abuse Health & Treatment Resources

Center for Substance Abuse Prevention (CSAP)

Washington D.C.

Help teens by giving them TIPS FOR TEENS: on Alcohol, Marijuana, Club Drugs, Meth, Hallucinogens, Inhalants, Steroids @ <http://ncadi.samhsa.gov/>

drugfreeidaho.org

6140 Corporal Lane Boise, Idaho 83704
Phone: (208) 373-5478

Idaho RADAR Network Center

Boise State University
1910 University Drive Boise, ID 83725-1860
Phone: (208) 426-3471 or 1-800-93RADAR
Fax: 208-426-3334
E-mail: RADAR@boisestate.edu
<http://hs.boisestate.edu/RADAR>
<http://hs.boisestate.edu/radar/whatsnew/spring06.pdf>



The Women's Addiction Foundation

Phone: (604) 875-3756

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 or:

2225 E Solitude Ct
Boise, ID 83712-7576

Phone: 208/342-8595

Fax: 208/342-8595

<mailto:childcare@aap.org>

Willson House Child Development Center

1625 Cedar St NE Salem, OR 97301

Phone: (503) 363-5812

Connectional Unit: Oregon-Idaho Conference.

Idaho Child Care Program

The Idaho Department of Health and Welfare provides childcare assistance to low-income, working families through the Idaho Child Care Program (ICCP). ICCP is based on family income, and subsidizes childcare payments on a sliding fee scale.

For eligibility rules go to

<http://www.healthandwelfare.idaho.gov/DesktopModules/ArticlesSortable/ArticlesSrtView.aspx?tabID=0&ItemID=87&mid=10274>

TANF (Temporary Aid to Needy Families) Funds

Idaho's TANF is known as *Temporary Assistance for Families in Idaho*

Division of Welfare

Idaho Department of Health & Welfare

PO Box 83720

450 West State Street, 2nd Floor

NOTE: The information contained in this website is for general information purposes only, and should not be interpreted as legal advice. Each person's legal situation is unique and has its own set of facts and circumstances. You should always talk with a lawyer to get advice about your specific situation. This website provides you with contact information for various organizations and resources. The National Crittenton Foundation has no control over the nature, content and availability of resources or information offered by those organizations. The inclusion of contact information does not necessarily imply a recommendation or endorsement of the views expressed by those organizations.

Boise, ID 83720-0036

FAX: (208) 334-5817

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, jobs, support services to help them become self-sufficient.

Document Link: http://www.clasp.org/publications/faq_tanf_repro_health.pdf.

Provides answers to frequently asked questions about how to use TANF funds for pregnancy prevention and teen parent services. The paper addresses the purposes for which TANF can be used, what TANF cannot pay for, the population that can be served, and numerous other TANF issues that pertain to teen parents.⁷

TANF/AFS (Adult and Family Services) or other

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.

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.⁸

As for non-TANF health coverage, the State of Idaho offers two premium assistance programs to support the purchase of private health insurance: Access to Health Insurance (AHI) and the Access Card.

The Access Card helps families buy health insurance for qualifying children. The Access Card is a premium assistance program administered in partnership with Idaho insurance carriers. An eligible child

⁷ (Levin-Epstein, J. (1999) Frequently Asked Questions: Tapping TANF for Reproductive Health or Teen Parent Initiatives. Center for Law and Social Policy).

⁸ <http://www.spdp.org/reprexpl.htm#mla>

ve Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe

qualifies for up to \$100 a month in premium assistance. Families with 3 or more eligible children may receive up to \$300 a month. Children in families whose income is between 133% and 185% of federal poverty guidelines may be eligible. Parents are responsible for premium payments, co-pays, and deductibles. For more information please contact: The Idaho Department of Health and Welfare, Family Medicaid Unit, toll-free at: 1-866-326-2485.

Access to Health Insurance (AHI) helps employees of small businesses and their families enroll in employer-sponsored insurance. Idaho Medicaid is working to make several improvements to the Access to Health Insurance program to make enrollment easier. One of these changes will be following carrier guidelines on employer contributions to employee premiums. For more information please contact: The Idaho Department of Health and Welfare, Family Medicaid Unit, toll-free at: 1-866-326-2485.

<http://www.noapp.org/downloads/capd12.pdf>.

Discussion of the concept of offering TANF services to all pregnant teens, regardless of their welfare status. Those who aren't applicable for it now, and thus don't receive the services, will most likely drop out of school and qualify for TANF as a result of their inability to support themselves. Solutions and policy recommendations to remedy the situation are given. (Center for Assessment and Policy Development, 1999).

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.⁹ 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

Idaho Health Plan Coverage: CHIP/Medicaid

The Idaho Health Plan Coverage: CHIP/Medicaid provides low-cost or no cost health care coverage to eligible children. The plan provides a full range of health services including regular checkups, immunizations, prescription drugs, lab tests, x-rays, hospital visits and more.

To qualify a child must live in Idaho and be:

- Under the age of 19

⁹ Center for Law and Social Policy (http://www.clasp.org/publications/ehs_teens.pdf)

ve Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe Achieve Empower Believe

- A U.S. citizen or legal resident
- Within family income guidelines

For more information or to request an application,

Call 2-1-1 Idaho CareLine or go to:

<http://www.healthandwelfare.idaho.gov/site/4299/default.aspx>

Child Care and Development Fund (CCDF)

The primary Federal program specifically devoted to childcare services and quality. It enables low-income parents and parents receiving Temporary Assistance for Needy Families (TANF) to work or to participate in the educational or training programs they need in order to work. Funds may also be used to serve children in protective services. In addition, a portion of CCDF funds must be used to enhance childcare quality and availability. The component funds of the CCDF were provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). As of October 1, 1996, PRWORA repealed the old welfare-related childcare programs provided under the Social Security Act (AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care). The repealed programs were replaced by Mandatory and Matching Funds appropriated for fiscal years (FYs) 1997 through 2002 under a new section (418) of the Social Security Act. The Administration for Children and Families (ACF) renamed the block grant funds provided under the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended, the Discretionary Fund, to signify that it must be appropriated annually. PRWORA required that the new Mandatory and Matching Funds be transferred to a State's Lead Agency for the CCDBG and be administered by that agency, using the provisions of the CCDBG Act, as amended by PRWORA. Although the Discretionary Fund was authorized at \$1 Billion (B) a year through FY 2002, Congress has routinely appropriated amounts in excess of \$1 B for each fiscal year through FY 2006 and has proposed appropriations in excess of \$2 B for the CCDBG in FY 2007. In 2006, Congress passed legislation appropriating \$2.9 B in Mandatory and Matching Funds for each of FYs 2006 through 2010.

http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06_07desc.doc

For newer options for covering the foster teen's newborn, go to:

<http://www.idahostars.org/dnn/FamilyResources/ResourceLinks/tabid/92/language/en-US/Default.aspx>

http://www.clasp.org/publications/faq_tanf_repro_health.pdf.

Provides some answers to frequently asked questions about how to use TANF funds for pregnancy prevention and teen parent services. The paper addresses the purposes for which TANF can be used, what TANF cannot pay for, the population that can be served, and numerous other TANF issues that pertain to teen parents.¹⁰

¹⁰ (Levin-Epstein, J. (1999) Frequently Asked Questions: Tapping TANF for Reproductive Health or Teen Parent Initiatives. Center for Law and Social Policy)