

ILLINOIS

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: 750 ICS 50/1; 705 ICS 405/1-2; 705 ICS 405/2-13¹

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, failure to provide support, failure to establish paternity, 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, adultery or fornication, depravity, murder of child's parent, aggravated circumstances.

Exceptions: State may elect not to file petition if: 1) child being cared for by relative; 2) case plan documents compelling reason why TPR is not in best interest of child; 3) court has found within the preceding 12 months that the state has failed to make reasonable efforts to reunify the child and family.

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. 750 ILCS 22 (Proceeding by minor parent) § 302 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 emancipation ² 750 ILCS 45 § 3.1. Formerly cited as IL ST CH 40 ¶ 2503.1 (Minor parent

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

² <http://www.jrplaw.org/Documents>



obligation) also sets forth that a child's mother or a person found to be the father of a child under this Act, is not relieved of support and maintenance obligations to the child because he or she is a minor.

In *Hill v. Erickson*, the plaintiffs alleged that DCFS, along with the Illinois Department of Mental Health and Developmental Disabilities (DMHDD), inappropriately placed them in shelters, mental health facilities, and other temporary settings, separating them from their children. The plaintiffs further alleged that DCFS failed to provide them with appropriate treatment and services for adolescent or expectant parents. The plaintiffs claimed that these policies and practices violated their federal and state statutory and constitutional rights. The suit was settled by the entry of a Consent Decree in 1994, which remains in effect. Under the Decree, wards in Illinois have the right to assume and retain custody of their children. Parenting wards must be placed with their children unless separate placement is necessary for the safety of the child, and separation is permissible only with prior or subsequent court approval.³

Also see SB 1178, Teen Parents in Foster Care Act. Requires child welfare agencies to place dependent children who are parents in placements where they can be treated as a unit with their children whenever possible to maintain the minor-parent child relationship, and to be provided services to support and preserve that relationship.

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 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.

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.⁴ 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

[/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf](#)

³ 17 U. Fla. J.L. & Pub. Pol'y 1, Stotland, University of Florida Journal of Law and Public Policy, April, 2006, The Legal Status of Pregnant and Parenting Youth in Foster Care

⁴ “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](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)

[.doc+%22TEEN+mother%22+%22joint+placement%22+%22foster+CARE%22&hl=en&ct=clnk&cd=5&gl=us\)](#)

the population's needs.⁵ 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.⁶ 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

The court may exercise its authority to appoint a guardian ad litem for the teen mom during a termination of parental rights hearing. *In re Mark W.* 228 Ill.2d 365, --- N.E.2d ----, 2008 WL 879037 (Ill. 2008). *In re Katrina R.* 364 Ill.App.3d 834 (Ill.App. 1 Dist. 2006)

⁵ 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.

⁶ 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

If the foster teen has become subject to termination of her parental rights in her newborn and is now choosing (with her attorney's guidance) to exercise her right appeal the termination order, she or her counsel should be aware that in a termination action, a trial court's determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make, and therefore, the appellate court defers to the trial court's factual findings and will not reverse the trial court unless the factual findings are "against the manifest weight of the evidence." *In re S.J.*, 364 Ill.App.3d 432 (Ill.App. 4 Dist. 2006). It is well settled that a parent has superior rights to the care and custody of a child, unless the child is placed elsewhere due to an adjudicated finding that the parent abused or neglected the child. *In Re Alicia Z.*, 336 Ill.App.3d 476, 498 (2002), citing *In re J.J.*, 327 Ill.App.3d 70, (2001); *In re S.S.*, 313 Ill.App.3d 121, 132 (2000).

While a natural parent has a superior right to the custody of her child, "that right is not absolute and must yield to the best interests of the child." *In re J.K.F.*, 174 Ill.App.3d 732, 733 (1988). The presumption that the "right or interest of a natural parent in the care, custody[,] and control of a child is superior to the claim of a third person" is only one of several factors used by the court to determine the best interest of the child. *In re Custody of Townsend*, 86 Ill.2d 502, 508 (1981). A court need not find that the natural parent is unfit or has forfeited his custodial rights before awarding custody to another person if the best interests of the child will be served. *Townsend*, 86 Ill.2d at 508. The best interest of the child is the paramount consideration in all custody and guardianship cases and takes precedence over a natural parent's superior right to custody. *In re Violetta B.*, 210 Ill.App.3d 521, 533 (1991). While a trial court may determine that it is in a minor's best interest to place custody of that minor with someone other than a "fit" biological parent, the court must comply with section 2-28 of the Juvenile Act. 705 ILCS 405/2-28 (West 2004). Section 2-28 of the Juvenile Act provides for court review of the proceedings of abused, neglected, and dependent minors. 705 ILCS 405/2-28 (West 2004).

Subsection 2 of section 2-28 of the Juvenile Act describes the trial court's role at a permanency hearing. 705 ILCS 405/2-28(2) (West 2004). At a permanency hearing, the court must determine the future status of the child and select one of eight enumerated permanency goals. 705 ILCS 405/2-28(2) (West 2004). At the conclusion of the hearing, the court must enter a written order setting forth that goal. 705 ILCS 405/2-28(3) (West 2004).

RESOURCES

CHILD WELFARE AGENCY: **Dept of Children & Family Services**

100 West Randolph St 6-200 Chicago, IL 60601

Phone: (312) 814-6800

<http://www.state.il.us/dcfs/index.shtml>

Legal Services

Legal Assistance Foundation of Metropolitan Chicago

111 W. Jackson Blvd. 3rd Floor Chicago, IL 60604

Phone: (312) 341-1070

www.lafchicago.org

Land of Lincoln Legal Assistance Foundation

8787 State St., Suite 201 East St. Louis, IL 62203

Phone: (618) 398-0574

www.lollaf.org

Prairie State Legal Services Inc.

975 North Main Street Rockford, IL 61103

Phone: (815) 965-2134

www.pslegal.org

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.⁷

Transitional or Independent Living Programs

Aunt Martha's

233 West Joe Orr Road, Chicago Heights, IL 60411

Phone: (708) 754-1044

Program Serves Former Foster Youth, HIV Positive Youth, Pregnant Parent Teens, Bisexual Youth, Runaway/Homeless Youth They have an on-site community tech center (CTC).

⁷ <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>



Mother-baby Residential Facilities

Northwest Memorial Center

2501 East Huron St. Chicago, IL 60611
Phone: (312) 926-2000

Guardian Angel Home

2900 W. Heading Ave. Peoria, IL 61604
(309) 671-5760

Substance Abuse Health & Treatment Resources

Project OZ

502 South Morris Avenue Bloomington IL 61701
Phone: (309) 827-0377

Call for Help, Inc.

Pandora Harris, TLP Contact
9400 Lebanon Road Edgemont IL 62203
Phone: (618) 397-3076

PSI Family Services

1845 Michigan Avenue, #1505 Chicago, Illinois 60616
Phone: (888) 950-0774
psiillinois@psifamilyservices.com

Childcare Assistance

Illinois, like California, explicitly provides childcare for all parenting wards. In Illinois, see Ill. Admin. Code tit. 8, § 302 app. J (1996)

Crittenton Centers

442 West John Gwynn Ave. Peoria, IL 61605
Phone: (309) 674-0105
www.crittentoncenters.org

ILLINOIS 6
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.



Children's Home + Aid

They have a contract with the IDHS Child Care program which serves low-income working families and families on Temporary Assistance for Needy Families (TANF) who participate in education, training or other work-related activities approved by their caseworker. IDHS Child Care Program also assists teen parents in high school or GED programs and clients who are not receiving TANF cash assistance. Clients in a college degree program must work at least 10 hours per week. Clients who are enrolled in an occupational or vocational training program do not have a work requirement for the first two years. Clients attending high school, GED, ABE, ESL and other post-secondary education do not have a work requirement.

Contact: 1-800-847-6770, ext. 360

<http://www.childrenshomeandaid.org/NETCOMMUNITY/Page.aspx?pid=317&srcid=180>

Rockford Meld, Inc.

Serving former foster youth, pregnant parent teens, runaway/homeless youth

428 North First Street Rockford, IL 61107

Phone: (815) 965-8336

Fax: (815) 965-9207

Gads Hill Center

A family resource center established in 1998 which partners with the community to develop the assets of children, youth, adults, and families. In collaboration with the community and other organizations, Gads Hill develops programs that support and empower economically and educationally disadvantaged residents of the Pilsen, Little Village, and North Lawndale communities in Chicago. With the opening of a Child Development Center in 2002, Gads Hill is now a two-site family resource center serving nearly 6,000 people each year. Gads Hill programs support and empower community residents in three priority areas: Children's Services – its center-based and home-based early childhood education programs (ages 0-5) serve 175 children and their families annually, including Early Head Start Enhanced Day Care Homes; Youth Services – these services range from an after-school educational support program to a college preparatory program and an environmental science program, serving 230 students; Community & Family Services – these services include adult literacy programs, free Internet access to local low-income families, and a health and nutrition program, in partnership with Kraft Foods, to help combat childhood obesity.

Jane Addams Hull House Association Headquarters

1030 W. Van Buren Chicago, IL 60607

Toll Free: 800-448-0083

Phone: 312-906-8600

Fax: 312-235-5287
Email: info@hullhouse.org
<http://www.urbanext.uiuc.edu/teencare/>

TANF (Temporary Aid to Needy Families) Funds

Illinois made a set of choices around minor parents that did not rubber-stamp the federal law. First, the state decided that it did not want the federal 60 month time limit to start ticking while a teen was a minor. Instead, the state structured its program so that state funds are tapped for minors, thus the federal time limit starts when teen parent heads of household turn 18. The state also focused on educational attainment; further, it recognized that there are varieties of health, safety, and other situations where minors should not be mandated to “live at home” or with a relative. (See Appendix 1 for Illinois’ detailed list of living arrangement exceptions.)

On participation in education, Illinois extends the requirement to teen parents through age 19, not just through age 17 as under federal law. Although education is generally required, 18 and 19 year olds may participate in alternate activities when appropriate as part of their self-sufficiency plan or when they have obtained a high school diploma or GED. The Illinois Department of Human Services funds a case management program called Teen Parent Services (TPS), which is designed to help teen parents participate in educational activities. It is mandatory for TANF teen parents and voluntary for other teen parents. TPS works with the teen parents until they have obtained their high school diploma or GED. TPS also has two broader but related goals—to help young parents avoid a subsequent teen pregnancy and support the parenting of their children. Despite having a reasonable set of state policies and even in the face of case management tailored to teen parents, there was reason to worry that local implementation was not on par with state expectations. Advocacy organizations and the Illinois Department of Human Services (DHS) began to work together as early as 1999 to increase the number of eligible teen parents successfully accessing TANF assistance and TPS. A great number of strategies have been tried, and cumulatively they have begun to have an impact. Illinois’ efforts have taken place on three levels: community outreach to individuals, administrative advocacy, and legislative advocacy.⁸

TANF Director

Illinois Department of Human Services
100 South Grand Avenue, East
Springfield, IL 62762
Phone: (217) 782-1239
FAX: (217) 557-5850

⁸ http://www.clasp.org/publications/needed_transition.pdf

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

<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).

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.

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.⁹

⁹ <http://www.spdp.org/reprexpl.htm#mla>



Illinois Public Aid Code §4-1.2c – Residence of Child who is Pregnant or a Parent.

Notwithstanding any other provision of this Code, a person under age 18 who has never married and who has a child or is pregnant must, within 3 months after beginning to receive aid under this Article, reside, unless that person resides with a parent, legal guardian, or other adult relative or in a foster home, maternity home, or other adult-supervised living arrangement.

Teen moms should be aware that state legislatures may allocate TANF block grant funds for Second Chance Homes. Like TANF, state maintenance-of-effort (MOE) funds and the Social Services Block Grant (SSBG) are flexible, and largely under states' discretion in terms of how they are spent. States and communities may also explore other sources of funding from HHS and HUD (see the attached chart). Additional state and private sources of funding are available to fill in funding gaps, help providers acquire or rehabilitate Second Chance Homes, or develop specialized Second Chance Homes for teen parents who are homeless or in foster care currently. ¹⁰

Healthy Families America

200 S. Michigan Avenue, Suite 1700 Chicago, IL 60604

Phone: (312) 663-3520

www.healthyfamiliesamerica.org

HFA is a national program model designed to help expectant and new parents get their children off to a healthy start. Families participate voluntarily and receive home visiting and referrals from trained staff. By providing services to overburdened families, HFA fits into the continuum of services provided to families in many communities.

The State Children's Health Insurance Program (SCHIP)

This is Title XXI of the Social Security Act and is jointly financed by the Federal and State governments and administered by the States. Within broad Federal guidelines, each State determines the design of its program, eligibility groups, benefit packages, payment levels for coverage, and administrative and operating procedures. SCHIP provides a capped amount of funds to States on a matching basis for Federal fiscal years (FY) 1998 through 2007. Federal payments under title XXI to States are based on State expenditures under approved plans effective on or after October 1, 1997.

Each State, Territory, and the District of Columbia has a coordinator for the SCHIP program who is responsible for the administration of the approved SCHIP state plan. Below is a download of an Adobe Acrobat (PDF) formatted document ("State SCHIP Directors") which lists all current SCHIP coordinators.

¹⁰ <http://www.hud.gov/offices/pih/other/sch/about.cfm>

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The State Children's Health Insurance Program (SCHIP) Waivers and Demonstrations. The Social Security Act authorizes multiple waiver and demonstration authorities to allow states flexibility in operating Medicaid programs and SCHIP programs. Each authority has a distinct purpose, and distinct requirements. Section 1115 Research & Demonstration Projects: This section provides the Secretary of Health and Human Services broad authority to approve projects that test policy innovations likely to further the objectives of the State Children's Health Insurance Program (SCHIP).