



## KENTUCKY

### 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: §§600.020(2); 610.127; 625.090<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, failure to provide support, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, aggravated circumstances.

### 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 that she has the right to bring legal proceedings on her newborn's behalf. KRS § 407.5302 (Action by minor parent) 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 in care who wishes to keep her baby after emancipation<sup>2</sup> Foster teen moms 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 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.

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

<sup>2</sup> <http://www.jrplaw.org/Documents>

</Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

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.

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 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

<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.

<sup>5</sup> For example, attorneys in California can now argue that the court or the agency has failed to

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

Operational Family Courts are a source of innovation in court practice in Kentucky.<sup>6</sup> The Department for Human Resources must show more than existence of poverty in order to terminate parental rights. [KRS 199.011](#), [199.600](#), [199.600\(1\)](#) *Department for Human Resources v. Moore* 552 S.W.2d 672 (Ky.App. 1977) The failure of the trial court in *L.B.A. v. H.A.*, 731 S.W.2d 834 (Ky.App. 1987) to consider any less drastic measures than termination of mother's parental rights to child and involuntary adoption of child violated mother's due process right to raise her own child and statutory requirement of considering alternatives and services to promote reunification of parent and child, where infant was removed from custody of mother at birth and testimony indicated that mother was capable of adequate parental functioning if provided proper support. [U.S.C.A. Const.Amend. 14](#); KRS 199.603, 199.603(1, 3), (3)(d, h). In *M.E.C. v. Com.*, 2008 WL 2065890 (Ky.App. 2008) the court points out that "Although termination of parental rights is not a criminal matter, it encroaches on the parent's constitutional right to parent his or her child and, therefore, is a procedure that should only be employed when the statutory mandates are clearly met; while the state has a compelling interest to protect its youngest citizens, state intervention into the family with the result of permanently severing the relationship between parent and child must be done with utmost caution."

The Cabinet for Health and Family Services failed to provide reasonable services to reunite mother with her children, as necessary prerequisite to termination of mother's parental rights; family goal was changed from reunification to termination after only eight months time, during portion of which time mother was either incarcerated or hospitalized, Cabinet never changed its plan for reunification to accommodate mother during such time period, and Cabinet never provided any rationale for changing goal from reunification to termination. Cabinet failed to establish by clear and convincing evidence, in child protection proceedings, that children were abused and neglected and that termination of mother's parental rights was in children's best interest; Cabinet's own witnesses testified that mother was nurturing

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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

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

and that children were well cared-for by her, mother's involvement in drive-by shooting, which precipitated children's removal, was not proved by clear and convincing evidence, Cabinet failed to provide mother with reasonable services to enable reunification, and Cabinet's evidence pertained primarily to mother's past behavior rather than her current parenting capacity. [KRS 600.020\(1\)](#), [625.090](#).

Cabinet for Health and Family Services failed to establish by substantial evidence, in child protection proceedings, that there was no reasonable expectation of improvement in mother's situation, as necessary prerequisite to termination of parental rights; by conclusion of trial, mother was in substance abuse treatment center, had full-time job, acquired parenting classes for herself, and had resolved most of her legal issues, as called for in her parenting plan. KRS 625.090(2)(e). Com., *Cabinet for Health and Family Services v. D.C.W.R.Z.*, 2008 WL 682905 (Ky.App. 2008) Substantial evidence supported trial court's finding that there was not clear and convincing evidence to show absence of reasonable expectation of significantly improved parental conduct by mother, and thus termination of mother's parental rights was unwarranted; mother, who had used drugs during her pregnancy and had been imprisoned at time of child's birth, was employed and substance-free at time of hearing, two of mother's children had been permitted to return to her home, and mother had complied with requirements of treatment plan. KRS 625.090(2)(e, g). *Allen v. Department for Human Resources*, 540 S.W.2d 597 (Ky. 1976). As the record showed that mother and her oldest child, a ten-year-old boy, had established a loving relationship under difficult circumstances, it could not be said that the trial judge erred when he concluded that termination of parental rights, relative to that child, would be seriously detrimental to the child due to the strength of the parent-child relationship.

## RESOURCES

### CHILD WELFARE AGENCY: **Cabinet for Health and Family Services**

275 East Main Street, Frankfort, KY 40621

Phone: (800) 372-2973

<http://chfs.ky.gov/>

### Legal Services

#### **Legal Aid of the Bluegrass**

302 Greenup Street, Covington, KY 41011-1740

Phone: (606) 431-8200

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

### **Legal Aid Society**

416 West Muhammad Ali Blvd., Louisville, KY 40202-2353

Phone: (800) 292-1862

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

### **Appalachian Research and Defense Fund of Kentucky**

120 North Front Avenue, Prestonsburg, KY 41653-1221

Phone: (800) 556-3876

### **Kentucky Legal Aid**

520 East Main Street P.O. Box 1776 Bowling Green, KY 42102-1776

Phone: (866) 452-9243

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

### **Lawyers Care Volunteer Attorney Program**

1700 Destiny Lane, Bowling Green, KY 42104

Phone: (270) 782-1924

Fax: (270) 782-1993

Intake Phone: (866) 452-9243

Web Site: <http://www.KLAid.org>

Organization Email: [lawyerscare@klaid.org](mailto:lawyerscare@klaid.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.

### **Transitional or Independent Living Programs**

#### **Brian Station High School – Teen Parent Program**

1866 Edgeworth Dr. Lexington, KY 40505

Phone: (859) 381-3322

#### **Kentucky Department for Community Based Services/Division of Protection and Permanency**

275 E. Main Street Mail Stop 3C-E Frankfort, KY 40621

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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.



Phone: (502) 564-2147  
Fax: (502) 564-5995

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

#### **Florence Crittenton Home and Services, Inc.**

519 West Fourth Street Lexington, KY 40508

Phone: (859) 252-8636

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

#### **A Compassionate Pregnancy Care, Inc.**

3722 Decoursey Ave. Latonia, Kentucky 41015

Phone: (859) 431-0011

#### **A Compassionate Pregnancy Care Inc.**

3037 Dixie Hwy, Bldg A, Ste, 214 Edgewood, KY 41017

Phone: (859) 341-0766

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

#### **Youth First, Inc.**

3420 E. Morgan Avenue Evansville, IN 47715

PO Box 3897 Evansville, IN 47737-3897

Youth First's mission is to reduce substance abuse by providing research proven prevention and early intervention programs for youth and their families. All of Youth First's programs are recognized by the U.S. Health Department's Substance Abuse and Mental Health Services Administration (SAMHSA) as model programs or are based on research proven principles which SAMHSA considers effective for preventing substance abuse.

#### **The Ft. Knox Army Base Substance Abuse Prevention Program**

Co-sponsor with Ft. Knox School Age Services of a 10-week series of workshops for girls. The girls participate in skits, role-playing exercises, and discussions about issues such as self-esteem, healthy choices, and body image. The program also brings in guest speakers to address topics related to girls' health. Many of the activities are derived from the Girl Power! activity books and components of the Girl Power! Web site.

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### Childcare Assistance

#### **Southeastern Network of Youth and Family Services**

A private, non-profit membership organization of youth service agencies in the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Phone: (239) 949-4414

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

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

Kentucky's TANF is known as *K-TAP (Kentucky Transitional Assistance Program)*

Director

Division of Policy Development

3 W-B

Kentucky Cabinet for Health & Family Service

275 East Main Street Frankfort, KY 40621

Phone: (502) 564-7536

FAX: (502) 564-0328

#### **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

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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>

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

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