

## MAINE

### Topics:

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

### HOW THE STATE CAN REMOVE CUSTODY

Statute: tit. 22 §§4002; 4055; 4022(1-B); 4041(A-2)<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, 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, custody removed from the parent, voluntary relinquishment, aggravated circumstances, heinous or abhorrent behavior.

Exceptions: State may elect not to file petition if: 1) state has not provided services that state determines are necessary for safe return of child; 2) child being cared for by relative; 3) state has documented to court a compelling reason why TPR is not in child's best interest.

### 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. 19-A M.R.S.A. § 3002 (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 also 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.<sup>2</sup> 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

<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>

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.<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 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.

<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 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

### APPLICABLE STATE LAW

Improprieties in how the termination proceeding was conducted can form a basis for requesting that a court-issued termination order be vacated. For example, pursuant to statute, if the trial court finds that Human Services has not met its burden of demonstrating the lack of parental capacity, it should not even reach the best interest analysis at all in the termination of parental rights case; only where the court has concluded that the Department has already proved one or more of the statutory parental unfitness factors should it ever reach the best interest determination. [22 M.R.S.A. § 4055](#) In termination of parental rights proceedings, trial court's focus must be on the Department of Human Services' allegations of parental unfitness, and only if the court is convinced that the Department has proven one or more of the factors demonstrating that the parents cannot safely provide care for their children does the court consider the children's best interests, and the result is that, although the best interest factor alone may prevent the termination of parental rights, it will never, standing alone, be a basis for a termination. *In re Scott S.* 775 A.2d 1144 (Me. 2001)

Also, unless the Department of Human Services has been excused from reunification efforts, the rehabilitation and reunification plan is the centerpiece of child protective proceedings following a jeopardy determination, and the plan provides a roadmap by which the Department and a parent are expected to cooperatively seek to rehabilitate the conditions that resulted in jeopardy to the child, and to reunify the family if reunification can be achieved within a time period that will meet the child's needs. 22 M.R.S.A. § 4041. *In re Thomas D.*, 2004 ME 104 (Me.,2004) In the absence of extraordinary circumstances, the better practice in cases in which rehabilitation and reunification efforts are required is for the Department of Human Services and parents to not proceed to a hearing on a petition to terminate parental rights without first having finalized the rehabilitation and reunification plans required by Child and Family Services and Child Protection Act. 22 M.R.S.A. §§ 4001 to 4099-C. Evidence of past jeopardy is relevant to the future, and in the case of a custodial parent it is highly probative, but the question before the court is necessarily whether there is prospective jeopardy.

### RESOURCES

#### **Dept of Health and Human Services, Office of Child and Family Services, Child Welfare**

221 State St. Augusta, ME 04333

Phone: (207) 287-5060

<http://www.maine.gov/dhhs/ocfs/cw/index.shtml>

**MAINE 3**  
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### **Pine Tree Legal Assistance Inc.**

88 Federal St. P.O. Box 547 Portland, ME 04112-0547

Phone: (207) 774-8211

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

### **Maine Volunteer Lawyers Project**

Primary Address: PO Box 547 Portland, ME 04112

General Phone: 207-774-4518

Fax: 207-828-2300

Intake Phone: 207-774-4348

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

**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 or Independent Living Programs**

### **Saint Andre Home**

283 Elm Street, Biddeford, Maine 04005

Phone: (207) 282-3351

Their residential care facilities provide a safe, supportive family environment for mother and child while helping her make decisions that lead to healthy parenting skills. Outreach counseling provides on site counseling with caring professionals. Our counselors have the experience and knowledge to assist you in making decisions that benefit both you and your child. Their adoption programs have helped more than 1,600 women find families that have met their expectations and provided safe and loving homes for their babies.

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

### **Bureau of Children & Family**

Maine Department of Human Services  
SHS #11 - 221 State Street Augusta, ME 04333  
Phone: (207) 287-6259  
Fax: (207) 287-5282  
[www.ylat.usm.maine.edu](http://www.ylat.usm.maine.edu)

### **Teen Parent Program of Knox County**

11 Union St. Rockport, ME 04856  
Phone: (207) 594-1980  
231 Park Rockland ME 04841  
Phone: (207) 594-0975

### **Abba A Women's Resource Center**

470 Forest Ave. Suite 211 Portland, ME 04101  
Phone: (207) 253-5555

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

#### **Hope House Single Moms Support Center**

133 Elm St. Mechanic Falls, ME 04256  
RR 2 Box 1  
Phone: (207) 345-3027

#### **St. Andre's Group Home**

283 Elm St. Biddeford, ME 04005  
Phone: (207) 282-3351

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

#### **PYT, an initiative of SAMHSA (the Federal Substance Abuse and Mental Health Services Administration)**

Focuses on developing transition service systems for youth with behavioral or emotional difficulties (2002-2006) PYT projects are in ME, PA, MN, UT, and WA. The National Technical Assistance Center for Youth Transition at the University of South Florida coordinates PYT Project activities and evaluation.

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On this web site, learn more about the PYT initiative and individual projects and access an extensive collection of web links, e-newsletters, and other publications [ntacyt.fmhi.usf.edu](http://ntacyt.fmhi.usf.edu)

### **Childcare Assistance**

#### **Androscoggin Head Start & Child Care**

Coburn School, Lewiston  
Phone: (207) 795-4040

#### **Little Feathers Head Start**

Aroostook Band of Micmacs, Presque Isle  
Phone: (207) 768-3217

#### **Southern Kennebec Child Development**

Corporation (SKCDC)  
Augusta; Serving Southern Kennebec  
County  
Phone: (207) 626-3410 ext.362

#### **Coastal Economic Development Corp.**

Bath; Serving Sagadahoc, Lincoln, and  
North Eastern Cumberland counties  
Phone: (800) 221-2221/ 442-7963

#### **Child and Family Opportunities, Inc.**

Ellsworth; Serving Washington and  
Hancock Counties  
Phone: (207) 667-2995/ 1-800-834-4378

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

To see if you qualify for temporary help for children and their parents while the family works toward becoming self-supporting. Contact Information: (207)287-6897 (Maine Office of Integrated Access and Support (OIAS) TANF director) or Division Director, Office of Integrated Access & Support, Maine Department of Health & Human Services, 11 State House Station

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Whitten Road, Augusta, ME 04333 / (207) 287-3104

FAX: (207) 287-5096

Along with TANF, cash assistance, Maine's TANF program is known as *ASPIRE* (Additional Support for People in Retraining and Employment), TANF work program.

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/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.<sup>7</sup>

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

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