

MISSISSIPPI

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HOW THE STATE CAN REMOVE CUSTODY

Statute: §§43-21-603(c); 93-15-103¹

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, child judged in need of services/dependent, child's best interest, felony assault of child or sibling, murder/manslaughter of sibling child, deep-seated antipathy by child, voluntary relinquishment, 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.

Miss. Code Ann. § 93-25-29(Action 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 emancipation² 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.

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>



In Olivia Y. ex rel. Johnson v. Barbour 351 F.Supp.2d 543 (S.D.Miss.2004) a suit was brought on behalf of the state's abused and neglected children against the governor, the state Department of Human Services (DHS) and Division of Family and Children's Services (FCS), seeking to compel adherence to commitments made in order to receive federal funding. As set out in the complaint, the state's alleged failures included the practice of separating teenage mothers in foster care from their own children. The Court held that: (1) the alleged deficiencies of the state did not violate the procedural due process rights of the children still in a family setting; (2) there was no equal protection violation; (3) there was no violation of the children's substantive due process rights; (4) a claim was stated that the substantive due process rights of children in custody of state were violated; (5) there was no private right of action for alleged violations of the Adoption Assistance and Child Welfare Act (AACWA); and (6) the court was not required to decline jurisdiction over the case under the Younger abstention doctrine.

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 breast feeding 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.⁵ Finally, in negotiating with state or local

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.

⁵ 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-

Mississippi Volunteer Lawyers Project

PO Box 2168 Jackson, MS 39225-2168

General Phone: 601-960-9577

Fax: 601-355-8635

Intake Phone: 800-682-0047

Web Site: <http://www.mvlp.net>

Organization Email: mvlp@msbar.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.⁶

Transitional or Independent Living Program

Pearl Holloway, IL Coordinator

Mississippi Department of Human Resources

750 N. State St. Jackson, MS 39205

Phone: (601) 359-4982

Fax: (601) 359-2525

Email: pholloway@mdhs.state.ms.us

South East Mississippi Regional Education Cooperative - Teen Parent Program

923 Sawmill Road, Laurel, MS 39440

Phone: (601) 649-4142

Natchez Children's Home Services

Address: 806 North Union Street, POB 2028, Natchez, MS 39120

Phone: (601) 442-6858

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

Fax: (601) 442-7722
E-mail: info@ntzchs.org
Web Site: natchezchildrenshome.org

Children's Home Services

Founded in 1816 as the Female Charitable Society for orphans in the Mississippi Territory, today's Natchez Children's Home Services offers a Christian home to sibling groups and children who have been adjudicated abused, abandoned, neglected or in need of supervision by the state. The agency offers community based services to children and youth of all ages. Children participate in school, church and community activities while efforts are concurrently made to reunite children with biological family or provide foster and foster-to-adopt families.

Palmer Home for Children

Address: P. O. Box 746, Columbus, MS 39703
Phone: (662) 328-5704
Fax: (662) 328-5250
E-Mail: ewaldron@palmerhome.org
Website: www.palmerhome.org

The mission of Palmer Home for Children is to present the hope of Christ to children, who, through lack of an adequate family structure, are in need of a permanent, long-term Christ-centered home. To that end, Palmer Home, as it has since 1895, remains committed to privately-funded, non-governmental child care which keeps siblings together, mends emotional scars and restores for each child the full opportunity to reach his or her God-given potential.

Tupelo Children's Mansion

Tupelo, MS
Phone: (662)842-6982
www.tcmm.org

Substance Abuse Health & Treatment Resources

The Baddour Center

3297 Highway 51 South
P.O. Box 69 Senatobia, MS 38668
Phone: (662) 562-9666
Fax: (662) 562-6979

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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.

Email: info@baddour.org
Connectional Unit: Mississippi Conference.

Childcare Assistance

Southeastern Network of Youth and Family Services

Phone: (239) 949-4414
senetwork.org

Methodist Children's Home

7578 Old Canton Road
PO Box 2589
Madison, MS 39130-2589
Toll free: 800-513-7363
Phone: (601) 853-5000
Fax: (601) 853-5010
Email: mchms@mchms.org

TANF (Temporary Aid to Needy Families) Funds

Division Director
Division of Economic Assistance
Mississippi Department of Human Services
P.O. Box 352
Jackson, MS 39205
Phone: (601) 359-4835
FAX: (601) 359-4871

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.

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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.⁷

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