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HOW THE STATE CAN REMOVE CUSTODY

Statute: Soc. Serv. Law §§384-b; 358-a(3)(b)

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, 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, both parents dead and guardian not appointed, aggravated circumstances.

Exceptions: State may elect not to file petition if: 1) child being cared for by relative; 2) agency has documented in the most recent case plan, a copy of which has been made available to the court, a compelling reason for determining that the filing of a petition would not be in the best interest of the child – such compelling reasons include, but are not limited to: a) the child was placed into foster care pursuant to Article Three (Juvenile Delinquency) or Article Seven (Persons in Need of Supervision) of the Family Court Act and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is either (1) return to his or her parent or guardian or (2) discharge to independent living; b) the child has a permanency goal other than adoption; c) the child is fourteen years of age or older and will not consent to his or her adoption; d) there are insufficient grounds for filing a petition to TPR, and e) the child is the subject of a pending disposition under Article 10 (Child Protective Proceedings) of the Family Court Act, except where such child is already in custody of the commissioner of social services as a result of a proceeding other than the pending Article 10 proceeding, and a review of the specific facts and circumstances of the child's placement demonstrate that the appropriate permanency goal for the child is discharge to his or her parent or guardian; 3) agency has not provided to the parent services as it deems necessary for safe return of child to the parents, unless such services are not legally required.

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WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FROM HER BABY

Legal custody of the foster teen's child and the right to mother-child placement are often adjudicated together as issues affecting the minor parent and her natural offspring: In NY a foster teen mother automatically has custody of her child when the baby is born. The fact that the mother is a minor (under 18 years old) does not take away her right to custody. The fact that the mother herself is in foster care does not take away her right to custody. She need not sign custody of the child over to ACS in order for the child to be placed together with her in foster care. Even where she chooses to sign a voluntary placement agreement transferring custody to ACS, she may later revoke her consent under certain circumstances. However nothing in the Family Court Act or the Social Services Law lessens, increases, or otherwise changes the responsibilities of either ACS or its contract agencies when faced with caring for the offspring of a foster child In re Ta Fon Edward J.B. 6 A.D.3d 611 (N.Y.A.D. 2 Dept. 2004) and ACS is not precluded from prosecuting a permanent neglect proceeding against a parent who was in foster care under its jurisdiction. For decades, mothers who were in foster care were required to give up legal custody of their babies, but in 1993 a change in state policy ended that practice. With a child born to a foster teen before 1993, the teenage natural mother would have been required to transfer custody to the state child-welfare agency in order to stay in the foster system herself. The reason was as much financial as anything else: for the child to get Federal foster-care funds, the child had to be in the government's custody. The federal government changed its requirements in 1988, and the state followed suit five years later. Some child advocates praised the change as progress for mother and children. Under the new NY rule patterned after the new federal rule, a single caseworker is assigned to cover mother and child. While that may be effective in most cases, it can cause problems when the best interests of the child collide with the wishes of the mother- for example if a mother leaves a foster placement in which the baby is thriving to live with an unstable boyfriend. The following caselaw, while not definitive on the above issues, is on point precedent in New York.

Attorneys and judges should attempt to 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 emancipation¹ Some 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 have the foster teen sign a voluntary agreement to hand over custody for a limited time only. 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.

¹ <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

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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.⁴ 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

Recent caselaw illustrates the teen mom's rights vis-à-vis her newborn. In *re Lawrence Children* 1 Misc.3d 156, 768 N.Y.S.2d 83 (N.Y.Fam.Ct. 2003). When a minor parent in foster care gives birth, she retains legal custody of her child. The applicable regulations make clear that even though the minor parent and child may be living together in the same foster home, the newborn is not in the legal charge of ACS. [FN9](#) See, e.g., [18 N.Y.C.R.R. 430.12\(e\)](#) ("if a minor parent is in foster care and has residing with him or her his or her child or children and such child or children are not in the care and custody and guardianship of the local commissioner of social services..."); [18 N.Y.C.R.R. 423.2\(c\)\(1\)\(iv\)](#) ("Family is defined ... as ... a minor parent in foster care whose child or children are residing with him or her in a foster family home or residential facility."). Accordingly, when a minor parent cannot take care of a child it may be necessary for ACS to take steps to assert control over that child. While one may question the legislature's wisdom in permitting minor parents to be subjected to the process, an Article 10 proceeding may provide a means to that end. This structure is consistent with the view that a minor parent maintains custody of his her own child, even though the parent remains in the custody of her parent or guardian. One writer has argued persuasively that the failure to restrict a minor parent's custodial rights is unfortunate. Among other things, a minor parent has deficient decision-making skills because of age, which might serve to put the newborn at risk. In addition, it undermines the relationship between the minor parent and his or her own parent. And, it has the potentially bizarre consequence of permitting a minor parent to make medical decisions on the newborn's behalf even though the parent cannot make them on his or her own. Buss, *The Parental Rights of Minors*, 48 *Buff. L.Rev.* 785 (Fall 2000). Facts in the *Lawrence* case: Mothers who were minors and in foster care under the jurisdiction of the Administration for Children's Services (ACS) moved for an order preventing ACS from prosecuting child neglect proceedings, claiming ACS had a conflict of interest in prosecuting cases which sought a finding of neglect against persons for whom it served as *parens patriae*. The Family Court held that: (1) ACS was not precluded from prosecuting mothers in neglect proceeding by fact that the mothers were in foster

⁴ 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

care under the jurisdiction of ACS, and (2) ACS could exercise power, under the Social Services Law granting it powers and duties to assume charge of and provide support for any destitute child who could not be properly care for in his home, to achieve the goal of assuming the care of the mothers' children. Matter of Tyriek W. 85 N.Y.2d 774 (N.Y.1995) In 1993, the State Social Services Commissioner promulgated new regulations to reflect changes in the Federal reimbursement scheme. Under these new regulations, when a child is born to a minor in foster care, the Commissioner of Social Services is authorized and, in fact, encouraged, to place the minor parent and child in the same foster care facility (see, [18 NYCRR 430.10\[b\]\[4\], \[5\]](#)). A transfer of custody is no longer necessary and the Commissioner may make foster care payments on behalf of both the minor parent and the child, even though the child has remained in the legal custody of its parent ([18 NYCRR 426.2\[c\]](#); [426.3\[i\]](#)). Shaina B. and Stephanie C., the two children who are the subjects of the present appeal, were born to minor children in foster care at a time when the pre-1993 regulations were in effect. Pursuant to the requirements of those regulations, petitioners, the minor parents of these two children had voluntarily surrendered custody to the New York City Commissioner of Social Services so that the children could be “placed” in foster care and the family units could be maintained intact in the same foster care setting. When the regulations governing the children's placements changed in 1993, the Commissioner and minor parents agreed that the existing custodial arrangements would be terminated and that legal custody would revert to the parents. The children's current living arrangements remained the same, and they continued to receive financial support through the foster care program.

In re Damien A., [760 N.Y.S.2d 825](#) (N.Y.Fam. 2003) Family Court had jurisdiction to direct that mother of neglected child, herself a foster child, be placed by the Commissioner of Department of Social Services (DSS) in a particular foster home; both statutory scheme for permanency hearings and orders, and policy of State, gave Family Court broad authority and wide discretion in directing the provision of services to the child and his parent. McKinney's Family Court Act §§ 1015-a, 1055(b)(iv)(A)?2, (c). (Section 1015 is below; Section 1055 is attached as downloaded file) Infant who had been removed from mother shortly after birth, and who remained in foster care after being adjudicated neglected, would remain in same foster home, and his mother would be placed there as well, despite opposition of Department of Social Services (DSS); absence of appropriate or adequate housing for mother was standing in the way of her reunification with child, which was in child's best interests. Matter of C 160 Misc.2d 151 (N.Y.Fam.Ct. 1994) New York City department of social services was entitled to withdraw its petition to approve foster care for babies born to minors who resided in foster care to conform with recent regulation amendments providing that such babies are no longer considered in foster care; change permits baby to be supported by Commissioner so long as baby remains with baby's mother. McKinney's Social Services Law § 358-a. New York City department of social services moved to withdraw petition to approve foster care and mothers moved to dismiss. The Family Court, City and County of New York held that recent regulations permitted baby born to minor in foster care to be supported by Commissioner so long as that baby remains with baby's mother. In re W.W. Children 190 Misc.2d 258 (N.Y.Fam.Ct. 2001) In fact neglectful

and permanently neglectful parents are provided continuing supports after the return of their children as a matter of course, i.e., continuing drug rehabilitation; continuing psychotropic medication and counseling; maternity shelter; foster care with their children for teenage mothers; respite care for non-neglecting parents of children at risk of neglect; home health aides for the physically disabled; and recurring stints in parenting skills training for all of the above. Adoptive parents are provided continuing assistance in the form of adoption subsidies which are unavailable to natural parents. In re Guardianship of Alexander 127 A.D.2d 517 (N.Y.A.D. 1 Dept.,1987) (cites to NY Social Services Law § 384-b and agency duty to promote mother-child relationship) The Agency even referred the mother and Milton for placement in mother-child foster care, but this idea was vetoed by Social Services because of its justifiable fear, supported by her past history, that the mother would abscond with Milton.

NY Family Court Act § 1015-a

“In any proceeding under this article, the court may order a social services official to provide or arrange for the provision of services or assistance to the child and his or her family to facilitate the protection of the child, the rehabilitation of the family and, as appropriate, the discharge of the child from foster care. Such order shall not include the provision of any service or assistance to the child and his or her family which is not authorized or required to be made available pursuant to the comprehensive annual services program plan then in effect. In any order issued pursuant to this section the court may require a social services official to make periodic progress reports to the court on the implementation of such order. Nothing in such order shall preclude any party from exercising its rights under this article or any other provision of law relating to the return of the care and custody of the child by a social services official to the parent, parents or guardian. Violation of such order shall be subject to punishment pursuant to [section seven hundred fifty-three of the judiciary law.](#)”

Go to http://www.nyclu.org/files/rpp_rights_pregnant_parenting_teens_book_2006.pdf for greater in-depth coverage of the rights of pregnant and parenting teens under New York law.

RESOURCES

Office of Children and Family Services

Capital View Office Park 52 Washington St. Rensselaer, New York 12144

Phone: (518) 473-7793

<http://www.ocfs.state.ny.us/main/>

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Legal Services

Legal Aid Society of Northeastern New York

55 Colvin Avenue Albany, NY 12206

(800) 462-2922

www.lasnny.org

Neighborhood Legal Services Inc.

Main Seneca Building 237 Main Street 4th Floor Buffalo, NY 14203

(716) 847-0650

www.nls.org

Nassau/Suffolk Law Services Committee Inc.

One Helen Keller Way 5th Floor Hempstead, NY 11550

(516) 292-8100

www.nslawservices.org

Legal Services NYC

350 Broadway 6th Floor New York, NY 10013-9998

(212) 431-7200

www.legalservicesnyc.org

Legal Assistance of Western New York

80 St. Paul Street Suite 700 Rochester, NY 14604-1350

(716) 325-2520

www.lawny.org

Legal Aid Society of Mid-New York Inc.

255 Genesee Street , 2nd Floor Utica, NY 13501-3405

(315) 732-2131

www.lasmny.org

Legal Services of the Hudson Valley

4 Cromwell Place White Plains, NY 10601

(914) 949-1305

www.lshv.org

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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.⁵

Family Court Act § 580-302 (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.

When a teen gives birth while in the foster care system, she has no idea where she will be going with her child. CWA does find a placement until after she gives birth. She will then generally go to the first available placement, which is not necessarily an appropriate placement nor one that will be permanent. A teen who gives birth while in the foster care system risks being separated from her newborn--from a few days to months or longer. When a youth in foster care gives birth she retains both custody and guardianship of the child, although the teen parent herself is in the custody of the state. In 1993 New York state amended its social services regulations³⁰ to conform with federal law with regard to the placement of teen parents currently in foster care and their children. The amended regulation states that a minor who gives birth while in foster care is allowed to retain custody and guardianship of her child, even if the minor parent herself remains in foster care and is placed in a mother/child setting with her baby. CWA can take custody of the child only in situations of suspected neglect or abuse, as with families where the parent is not a minor in foster care. Teen mothers and others believe this is a positive change for them and their children.⁶

Custody insofar as it refers to the right to make health care and maintenance decisions for her newborn is as follows:

- If a teen parent is in foster care and has custody of her child who is not in foster care, the teen may give consent for health care for herself and her child.
- If the teen parent and her child are both in foster care together, the teen may give consent for health care for herself and her child.
- If the teen parent and her child are both in foster care, but the child lives elsewhere because of an Article 10 removal, the local social services commissioner can give consent if the teen parent refuses⁷

⁵ <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>

⁶ <http://www.youthadvocacycenter.org/pdf/CaringforOurChildren.pdf>

⁷ http://www.ocfs.state.ny.us/main/sppd/health_services/manual/06_chp06_healthservices2_17_04.pdf

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Transitional or Independent Living Programs

Homes for the Homeless

36 Cooper Square, 6th Floor New York, NY 10003

Phone: (212) 529-5252

For more information, contact: Director of Development and External Affairs

Founded in 1986, Homes for the Homeless is a comprehensive, residential nonprofit organization that has served 8,400 families including more than 18,300 children in New York City. Homes for the Homeless operates four "American Family Inns," which offer housing and comprehensive services to homeless mothers and their children. A needs assessment is developed for each family upon entry to the centers. Assistance is offered in the areas of health care, educational enhancement for both parents and children, employment training, foster care, independent living skills, substance abuse treatment, and follow-up services. Two innovative aspects of the program are a "safe nursery" for children at risk of abuse and an in-house apprenticeship program, where residents learn job skills by working within the organization.

TASA Teen Parent Program

91 Dubois Street, Newburgh, NY 12550

Phone: (845) 565-0227

Teen Parents Program

609 West Clinton Street, Ithaca, NY 14850

Phone: (607) 273-1055

New York Independent Living Program

<http://www.adopting.org/uni/frame.php?url=http://www.nrcys.ou.edu/yd/resources/ilcoords.php>

Office of Strategic Planning & Policy Development New York State Office of Children & Family Services
Capital View Office Park, Room 313 South 52 Washington Street Rensselaer, NY 12144

Phone: (518) 473-1776

Fax: (518) 473-2410

Good Shepherd Services

A social service and youth development agency serving vulnerable New York City children and families through a network of community-based programs and city-wide foster care services.

NY Foundling Bronx Teen Parenting Program

1029 East 163rd Street, Bronx, NY 10459

Phone: (718) 378-4857

Pregnancy Services - Ibero Teen Parenting Program

Rochester, NY 14603

Phone: (585) 256-8900

Mother-baby Residential Facilities

Inwood House

320 East 82nd St. New York, NY 10028

Phone: (212) 861-4325

Fax: (212) 861-3791

www.inwoodhouse.com

Substance Abuse Health & Treatment Resources

Addiction Detox & Rehab Center

Seabrook, New Jersey (NJ)

Phone: (800)761-7575

Seabrook House is a nationally recognized, private and exclusive, and CARF accredited inpatient drug rehab and alcoholism rehab treatment center. Our main facility is located in rural Bridgeton, New Jersey (NJ), convenient to New York (NY), Pennsylvania (PA), Maryland (MD), Delaware (DE), Virginia (VA), Connecticut (CT), Rhode Island (RI) and Massachusetts (MA). Our extended-care luxury transitional living facility is located in Tioga County, Pennsylvania (PA), within minutes of the New York state border.

Free To Grow

Mailman School of Public Health, Columbia University

722 West 168th Street, 8th Floor New York, NY 10032

Phone: 212-305-8120

Fax: 212-342-1963

info@freetogrow.org

Fax: (585) 473-1837

TANF (Temporary Aid to Needy Families) Funds

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. <http://www.ocfs.state.ny.us/main/bcm/tanf/apps/default.asp>

Part K-1 Performance and Outcome-Based Provisions for TANF-Funded Programs and TANF Program Area Adolescent Pregnancy Prevention and Services (APPS)

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

New York's Nurse-Family Partnership Under the Nurse-Family Partnership program, registered nurses work intensively with first-time mothers during pregnancy and afterward until the child reaches age two. The program builds confidence and skills in areas ranging from maternal and child physical health to care giving, building and maintaining support networks, and achieving economic self-sufficiency. Results show that children who participated in the program had 56% fewer visits to the emergency department during their second year of life compared to children in a control group. In the third and fourth years of life, participants had 40% fewer physician visits than the control group. This program has been replicated in 23 states (6 using TANF funds).

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