

### SOUTH CAROLINA

**Topics:**

How the State Can Remove Custody  
What the Law Says About Separating A Mother From Her Baby  
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#### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§20-7-1572; 20-7-763(c)(F)<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, 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, presumptive father not the biological father, aggravated circumstances, conviction for domestic violence.

Exceptions: State may elect not to file petition if: 1) when court finds that initiation of TPR is not in best interest of child after applying statutory criteria for selection of a permanent plan for child and that this finding and the permanent plan constitute a compelling reason for not filing for TPR; 2) when court finds that agency has not afforded services to parents required by the service plan or that court hearings have been delayed so as to interfere with services, but only if: a) parent did not delay hearings without cause or delay or refuse services; b) successful completion of services may allow child to return home within the extension period, and c) court has not made a "no reasonable efforts" determination.

#### WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FROM HER BABY

It appears the minor parent in foster care has parental rights over her newborn to the extent that Code 1976 § 20-7-300 sets forth that a minor parent may consent to health services for the child: "Any minor who has been married or has borne a child may consent to health services for the child." Attorneys and judges can help 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 custody of her

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



baby after emancipation.<sup>2</sup> 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 that 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 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.

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 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.<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

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

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

<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

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

Before parental rights can be forever terminated, the alleged grounds for the termination must be proven by clear and convincing evidence. *Charleston County Dept. of Social Services v. Jackson* 368 S.C. 87 (S.C.App. 2006) Natural parents are entitled to fundamentally fair procedures when the State seeks to sever the relationship they have with their child. U.S.C.A. Const.Amend. 14. When reviewing a family court's decision to terminate parental rights, the Supreme Court may make its own conclusion as to whether DSS proved by clear and convincing evidence that parental rights should be terminated. *South Carolina Dept. of Social Services v. Cochran* 356 S.C. 413 (S.C., 2003) Party seeking to terminate parental rights must show conditions warranting such action by clear and convincing evidence. Code 1976, § 20-7-1572. *Shake v. Darlington County Dept. of Social Services* 306 S.C. 216 (S.C. 1991) (Evidence did not clearly and convincingly establish that mother's emotional instability and possible personality disorder made it unlikely she could provide minimally acceptable care for child, and therefore trial court properly refused to terminate mother's parental rights; no expert testified about mother's emotional condition. Code 1976, § 20-7-1572(6).) A finding of willful failure to support a child will not be predicated upon parental conduct that can be reasonably explained. *Hardy v. Gunter* 353 S.C. 128 (S.C.App. 2003) If the order terminating the foster teen's parental rights is reversed and her attorney successfully gets the case remanded to Family Court, the issue of termination may be reconsidered de novo. *South Carolina Dept. of Social Services v. Smith* 311 S.C. 426 (S.C. 1993)

### RESOURCES

#### **Department of Social Services**

P.O. Box 1520 Columbia, SC 29202

803-898-7318

<http://www.state.sc.us/dss/cps/index.html>

#### **Legal Resources**

#### **South Carolina Legal Services**

701 South Main Street, Greenville, SC 29601

864-679-3240

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

### **South Carolina Centers For Equal Justice**

701 South Main Street Greenville, SC 29601

General Phone: 864-679-3232

Fax: 864-467-3260

Web Site: <http://www.sccej.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**

#### **South Carolina Department of Social Services**

P.O. Box 1520 1535 Confederate Avenue Columbia, SC 29202-1520

Phone: (803) 898-7159

Fax: (803) 898-7792

#### **Greenville County of School District - Teen Parent Program**

205 Anderson Street, Greenville, SC 29601

Phone: (864) 241-3303

#### **Collins Home and Family Ministries**

P.O. Box 745, Seneca, SC 29672

Phone: (864) 882-0893

Fax: (864) 882-0452

Web Site: [www.collinschildrenshome.org](http://www.collinschildrenshome.org)

The Collins Home is a nondenominational ministry dedicated to rescuing children from painful, and sometimes dangerous, family situations and providing them with a safe, loving, nurturing environment where they can grow and thrive as part of an extended family in a community that cares for and supports them. The children learn to live and work with others as a mutually supportive family unit. At the same

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



time, the staff works with parents and children to teach important life skills, self-sufficiency, Judeo-Christian values, and a strong work ethic.

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

#### **Butterfly House Maternity Home**

P.O. Box 13 Blackville, SC 29817

Phone: (803) 284-5042

#### **Florence Crittenton Programs of South Carolina**

19 Saint Margaret St. Charleston, SC 29403

Phone: (843) 577-0770

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

#### **Partnership for Youth Transition (PYT)**

[www.ntacyt.fmhi.usf.edu](http://www.ntacyt.fmhi.usf.edu)

PYT is an initiative of SAMHSA (the Federal Substance Abuse and Mental Health Services Administration) focusing on developing transition service systems for youth with behavioral or emotional difficulties.

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

Phone: (239) 949-4414

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

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.

#### **Greenville Family Partnership**

200 Mills Ave. Greenville, SC 29605

Phone: (864) 467-4099

<http://www.gfpdrugfree.org/>

### Childcare Assistance

#### **FAAP (District 4)**

1905 Rolling Pines Dr. Columbia, SC 29206-1469

Phone: (803) 434-7020

Fax: (803) 434-3855

The liaison between the National American Academy of Pediatrics and all State Early Education and Child Care activities.

#### **Children's Place**

310 Barnwell Ave NE, Aiken, SC 29801

Phone: (803) 641-4144

Fax: (803) 641-4147

<http://www.childrensplaceinc.org>

A child and family development center that serves at-risk children ages 6 to 13 years of age. Many of the children are court placed because of abuse. The Center implemented a new after school program called, "Gotcha" in 1997, a collaborative effort with Aiken County Public Schools. This program helps at-risk students "catch up" with their classmates. Foster Grandparents mentored/tutored 47 students with their homework, reading assignments, and additional practice work assigned by their school teacher. Reading and math skills improved and failure rates subsided. Success was measured in reading levels and grade improvements by teacher and parent surveys.

Foundation info: <http://www.childrensplacefoundation.org/History.html>

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

South Carolina's TANF is known as the *Family Independence Program*

Division of Family Assistance

South Carolina Department of Social Services

PO Box 1520

Columbia, SC 29202

Phone: (803) 898-7474

FAX: (803) 898-7793



### 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.<sup>7</sup>

See also SC Code 1976 § 43-5-1220 (Minor mother must live with minor's parents to receive welfare; exceptions.)

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