

## TENNESSEE

### Topics:

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§36-1-113(g)-(h); 37-1-166(g)(4)<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, felony conviction/incarceration, failure of reasonable efforts, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, failure to establish paternity, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, risk of substantial harm, aggravated circumstances.

Exceptions: State may elect not to file petition if: 1) child is being cared for by relative; 2) agency has documented compelling reason that filing would not be in best interests of child; 3) agency has not made reasonable efforts to provide family services deemed necessary for safe return of child.

### 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 exercise control over her newborn's physical custody, care and maintenance. However, T. C. A. § 34-6-216 § 34-6-216. (Consent for medical treatment; minor parents) sets forth that if the provisions of a valid durable power of attorney for health care, executed pursuant to this part, designates a person other than a child's parent to consent to treatments or procedures, the provisions of the power of attorney shall control. It also 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. T. C. A. § 36-5-2302 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.

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



Also, attorneys and judges can help ensure that teen parents are not forced to sign what is called 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> 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

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

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

Note that in *D.M.*, infra (see response to 4d below) the teen mom's second infant roomed with her in the maternity home and was later placed in a Clarksville foster home with her first foster-born child. In July of 2000, DCS was able to place the teen mom in the same foster home with both boys.

In *In re D.M.* Not Reported in S.W.3d, 2003 WL 367240 (Tenn.Ct.App. 2003) the Juvenile Court had terminated the parental rights of the mother of two small children but the Court of Appeals for Tennessee reversed, because it do not believe the State had adequately proven the grounds for termination by clear and convincing evidence or that it was in the children's best interest to have their mother's rights terminated. The teen mom was only fifteen years old when she gave birth to her oldest son, *D.M.*, shortly after which she was adjudged a delinquent. The next year she tested positive for marijuana use in aftercare, and was re-adjudged a delinquent and placed in the custody of the Department of Children's Services (DCS). The Juvenile Court found the son to be a dependent and neglected child due to his mother's adjudication, and placed him in DCS custody as well. The teen mom was two months pregnant at the time. Her second son, was born on April 18, 2000 in a Memphis maternity home. Note that in *Tennessee Dept. of Children's Services v. C.M.S.* Not Reported in S.W.3d, 2002 WL 31126645 (Tenn.Ct.App. 2002) Based on a drug screen, DCS placed Mother in a mental health facility for the last four months of her pregnancy. Her second child, *L.M.S.*, a daughter, was born on January 7, 1999. Mother signed the documents required to surrender *L.M.S.* for adoption, but revoked the surrender before it was final. *L.M.S.* was placed in temporary custody of the State on March 1, 1999, as a result of the Department having custody of Mother and because Mother had no visible means of support. Factors that courts use to determine reasonableness of efforts of Department of Children's Services (DCS) to reunify parents and their children include: (1) the reasons for separating the parents from their children; (2) the parents' physical and mental abilities; (3) the resources available to the parents; (4) the parents' efforts to remedy the conditions that required the removal of the children; (5) the resources available to the DCS; (6) the duration and extent of the parents' efforts to address the problems that caused the children's removal; and (7) the closeness of the fit between the conditions that led to the initial removal of the children, the requirements of the permanency plan, and the efforts of DCS. West's T.C.A. § 37-1-166. *In re Tiffany B.*, 228 S.W.3d 148 (Tenn.App. 2007)

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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

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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.

## RESOURCES

### **Dept of Children's Services**

Cordell Hull Bldg, 7<sup>th</sup> Floor Nashville, TN 37243

Phone: (615) 741-9701

<http://www.state.tn.us/youth/>

### **Legal Services**

#### **Legal Aid of East Tennessee**

502 South Gay Street Suite 404 Knoxville, TN 37902-1502

Phone: (865) 637-0484

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

#### **Memphis Area Legal Services Inc.**

Claridge House, Suite 200, 109 North Main Street Memphis, TN 38103-5013

Phone: (901) 523-8822

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

#### **Legal Aid Society of Middle Tennessee and the Cumberland**

300 Deaderick Street Nashville, TN 37201-1103

Phone: (615) 244-6610

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

#### **West Tennessee Legal Services Inc.**

210 West Main Street P.O. Box 2066 Jackson, TN 38302-2066

Phone: (800) 372-8346

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

#### **Community Legal Center**

910 Vance Ave Memphis, TN 38126

Phone: (901) 543-3395

Fax: (901) 549-0907

Intake Phone: (901) 543-3395

### **West Tennessee Legal Services, Inc. -- Pro Bono Project**

PO Box 2066 Jackson, TN 38302-2066

Phone: (731) 423-0616

Fax: (731) 423-2600

Intake Phone: (731) 423-0616

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

Organization Email: [wtls@wtls.org](mailto:wtls@wtls.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 Living or Independent Living Program**

IL Coordinator

Tennessee Department of Children's Services

8th Floor, Cordell Hull Bldg. 436 6th Avenue North Nashville, TN 37243

### **Responsible Adolescent Parenting: Project R.A.P.**

Tennessee Department of Children's Services

170 N. Main Street Memphis, TN 38103

Phone: (901) 543-6852

[www.grass-roots.org/usa/projrap.shtml](http://www.grass-roots.org/usa/projrap.shtml)

Education, instruction, and self-esteem building for adolescent parents throughout Tennessee.

### **South Central Community Services Agency Independent Living Services**

1610 Hatcher Lane Columbia, TN 38401

Phone: (931) 375-5000 or 375-2000

Fax: (931) 375-5005 or 375-2011

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



### **East Tennessee Christian Home**

P.O. Box 1147, Elizabethton, TN 37644-1147

Phone: (423)542-4423

Fax: (423)542-6848

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

Located on 18 acres of hilltop overlooking Elizabethton, TN, ETCH serves 24-26 children in 3 cottages. Ages served range from 5 to 18 years old. Children attend public school and are encouraged to participate in community activities such as scouting, school sports, clubs, and special events in the community of Elizabethton. In addition, ETCH is a licensed foster care provider.

### **Bethel Bible Village**

P. O. Box 729, Hixson, TN 37343

Phone: (423) 842-5757

Fax: (423) 842-5785

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

A Christ-centered residential care agency whose purpose is to provide professional programs, support services and ministries to children and youth of families shattered by crime and troubled environments. Bethel Bible Village has nine cottages with houseparents, assistants and a maximum of eight people per cottage. Two of these cottages service unwed teenage mothers who choose to keep their babies.

Services Offered: Residential group home; 6 cottages with 6 residents per cottage; houseparent, family model. Three (3) primary services: regular residential for male and female ages 5-15; independent living for male and female ages 16-20; and mother/child program for teen moms ages 15-20 with one child.

Special Expertise/R: Bethel was founded as a prison ministry outreach as a temporary home for the children of incarcerated parent(s). While our services have expanded to serve other dependent/neglected/abandoned children, we continue to maintain contact with the criminal justice system. Mother/Child program - More than 11 years of interventions with teen moms providing parenting skills, education and life skills preparation.

### **University of Tennessee College of Social Work Office of Research and Public Service (SWORPS)**

193 F Polk Avenue Nashville, TN 37210

Phone: (615) 782-5121 or (800) 206-6390

Fax: (615) 726-1944

### **Wear's Valley Ranch**

Sevierville, TN

Phone: (865) 429-5437

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

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The Tennessee Statewide Clearinghouse is a private non-profit organization funded by the Tennessee Department of Health. The purpose of the Clearinghouse is to provide individuals, agencies, and organizations in Tennessee with resources relevant to alcohol, tobacco, and other drugs and general health related issues.

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

Tennessee TANF is called Families First  
Family Assistance Director  
Tennessee Department of Human Services  
400 Deaderick Street, 12th Floor  
Nashville, TN 37248  
Phone: (615) 313-4700  
FAX: (615) 313-6619

### **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>

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