

## VERMONT

### 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: tit. 15A §3-504(a), (b), (d)<sup>1</sup>

Grounds: Felony conviction/incarceration, failure to maintain contact, failure to provide support, failure to establish paternity, child's best interest, relationship with another that affects the parent-child relationship, risk of substantial harm, identity or location of parent unknown, failure to assume parental responsibilities.

### 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.

15B V.S.A. § 302 (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 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 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 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.

<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>



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 infant, failure to place the mother and child together will compromise the state's ability to receive federal reimbursement for the infant's care. Respite care is temporary or short-term home care of a child provided for pay or on a voluntary basis by adults other than the parents (birth, foster, or adoptive parents).

<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

In *In re D.B.*, 833 A.2d 1246 (Vt. 2003) the trial court's clearly erroneous findings compelled reversal of an order terminating the young mother's parental rights; the record contained no evidence supporting findings that the mother faced criminal charges, was pregnant or manipulated drug screens. *Findings of an absence of a parent-child bond were contradicted by record evidence*, and the trial court's order reflected that its wholly unsupported findings played a large role in the ultimate conclusion that terminating parental rights was in child's best interests. While the State's burden in children in need of care and supervision (CHINS) proceedings is proof by preponderance of the evidence, this burden rises to "clear and convincing evidence" in proceedings to terminate the parental rights of a young parent. *In re J.T.*, 693 A.2d 283 (Vt. 1997) A *nonpermanent* deprivation of parental rights may be the ordered solution. *In re A.D.* 143 Vt. 432 (Vt. 1983) Denial of a petition to terminate parental rights to a medically-needy child by the Rutland Family Court, Department of Social and Rehabilitation Services (SRS) was appealed. The Supreme Court held that the record supported a finding that *the parents were entitled to more time to improve their parenting skills*. *In re D.A.* 172 Vt. 571 (Vt. 2001) Once the trial court concluded that SRS had not proven by clear and convincing evidence that termination of residual parental rights was in the best interest of the children, the court simply solidified the status quo, continuing foster care and allowing the parent appropriate visitation and any error was harmless; if the court had simply denied SRS's motion, or if the motion had never been made, there would have been no difference in the children's circumstances absent a decision by SRS to change their placement, *nor did the words "long-term" prejudice SRS's continuing efforts to terminate parental rights*. *In re M.M.* 159 Vt. 41 (Vt. 1992) ("We are simply unable to countenance a disposition order which transfers all residual parental rights under circumstances which have failed to afford a parent full due process of law.") *In re M. P.* 133 Vt. 144, 333 A.2d 116 (Vt. 1975) (Mother of two-year-old girl appealed from order of the District Court, which transferred legal custody, guardianship, and residual parental rights to Vermont catholic charities without limitation as to adoption. The Supreme Court held that in light of confusion as to the status of the child neglect proceedings and the uncertainty as to whether the trial court was using a hearsay psychiatric report in its determination of the merits of the neglect allegations or in its consideration of the issue of proper disposition, the absence of an objection to the report as hearsay was understandable and excusable and did not preclude the determination that the trial court's reliance on the hearsay report constituted prejudicial error.

## RESOURCES

### **Department for Children and Families**

103 South Main St. Waterbury, VT 05676-1201

Phone: (800) 241-2100

## LEGAL RESOURCES

**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>

### **Legal Services Law Line of Vermont Inc.**

30 Elmwood Ave. Burlington, VT 05401

Phone: (800) 639-8857

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

## Transitional or Independent Living Programs

### **The DREAM Program**

Builds mentoring partnerships between college students and children of low-income housing developments in Vermont. News, programs, and volunteer and donation opportunities.

### **Spectrum Youth and Family Services**

31 Elmwood Avenue Burlington VT 05401

Phone: (802) 864-7423

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

103 South Main Osgood Bldg.

Waterbury, VT 05676

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

Phone: (802) 241-2153  
Fax: (802) 241-2980

### **Teen Parent Ed Program**

162 North Main Street, Rutland, VT 05701  
(802) 786-4983

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

#### **First Step Pregnancy Center**

56 1/2 Gryphm Bldg., Ste 207 Rutland, VT 05701  
Phone: (802) 775-5611

#### **Tri-State Pregnancy Center**

205 Main St. Bennington, VT 05301-2867  
Phone: (802) 254-8866 or (802) 254-6734

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

#### **Youth Wellness Center**

Outreach Sourcebook, Vol. 4, 1994-1997, Office of Rural Health Policy  
Box 146 St. Johnsbury, VT 05819  
Phone: 802-748-1128

#### **Northern Counties Health Care, Inc.**

18 Western Avenue St. Johnsbury, VT 05819

Since its inception, the center has provided direct services to nearly 500 teens; many have experienced domestic violence, substance abuse, physical abuse, and sexual abuse. Some are living in foster care, in other substitute care, or living independently. The purpose of the Youth Wellness Center is to make existing mental health services more accessible to teens, and to augment these services when necessary. The project serves youth ages 13-21 living in Caledonia County and southern Essex County. The Center provides an array of mental health services, including individual and family counseling; support groups dealing with anger management, women's issues, and substance abuse; teen parenting services; counseling as an alternative to school suspension. It also provides a safe venue for supervised visitations.

Summaries of success stories are provided by RAC for your convenience.

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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.

### **Recovery House Inc, Grace House**

35 Washington Street Rutland, VT 05701

Phone: (802) 775-3476

Intake: (802) 446-2640

### **Phoenix Houses of New England Brattleboro/Rise Program**

435 Western Avenue Brattleboro, VT 05301

## **Childcare Assistance**

### **The Family Place**

319 US Rte 5 South Norwich, VT 05055

Call: (802) 649-3268 or

Toll Free: (800) 639-0039

Email: [info@the-family-place.org](mailto:info@the-family-place.org)

A center located in Vermont that offers playgroups, parent education and support groups, assistance with child care costs, lending library, and a Child Advocacy Center.

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

Vermont's TANF is called ANFC (Aid to Needy Families with Children), cash assistance

Vermont's other TANF program is Reach Up, TANF work program

Vermont Department for Children & Families

Agency of Human Services

Economic Services Division

103 S. Main Street

Waterbury, VT 05671-1201

Phone: (802) 241-2853

FAX: (802) 241-2830

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/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>

As of October of 1999, at least seven states (Arkansas, California, Delaware, North Dakota, Ohio, Utah, and Vermont) were providing some type of monetary bonus as an incentive for teen parents to attend school, progress to the next grade, and/or graduate. This is to help teens to satisfy TANF's new school/training requirement. The other TANF requirement now is the living arrangement requirement.

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

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