

### VIRGINIA

#### Topics:

How the State Can Remove Custody  
What the Law Says About Separating A Mother From Her Baby  
Resources

### HOW THE STATE CAN REMOVE CUSTODY

Statute: §16.2-283(A), (B)-(E), (G)<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, sexual abuse, 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, voluntary relinquishment, identity or location of parent unknown, aggravated circumstances.

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

Va. Code Ann. § 20-88.45 (Action by minor parent) permits a minor parent, or a guardian or other legal representative of a minor parent, to maintain a legal proceeding on behalf of or for the benefit of the minor's child. Attorneys and judges can 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> Attorneys and judges can help 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>3</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

<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>

<sup>3</sup> <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

foster care alternative. The agency should be experienced in dealing with minor parents in foster care themselves. Mom can try:

**Children's Home Society**

1620 5th Street, SW Roanoke, Virginia 24016

540-344-9281

Toll-free: 800-247-2888

E-mail: [info@chsva.org](mailto:info@chsva.org)

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

In determining whether termination of parental rights is in the best interests of the children, the trial judge must consider several factors including the following: the age and physical and mental condition of the children; the age and physical and mental condition of the parents; the relationship existing between each parent and each child; the needs of the children; the role which each parent has played, and will play in the future, in the upbringing and care of the children; and other factors. V.C.A. § 16.1- 283. *Crawley, infra*. The teen mom's counsel should definitely be aware of negative rulings such as *Lecky v. Reed*, 456 S.E.2d 538 (Va.App. 1995) where the foster parents filed a petition for termination of a teenaged mother's residual parental rights and the Virginia Beach Juvenile and Domestic Relations District Court decided in favor of terminating. On the teen mom's appeal, the Circuit Court of the City of Virginia Beach denied the foster parents' petition, however the foster parents then also appealed and the Court of Appeal held that: (1) the teen mother's age did not alone constitute good cause to excuse her failure to resolve the conditions which prompted the child's foster care, and (2) the record provided the requisite clear and convincing evidence that termination of the teen mother's residual parental rights was the appropriate statutory remedy. In that case the teen mother pursued an unstable and irresponsible life-style, incompatible with the child's needs and reflective of an indifference to his interests. Code 1950, § 16.1-283, subd. C. The mother in the *Reed* case was fourteen years of age when she gave birth to her son and was voluntarily placed by her estranged mother with another family, the Clearys. Thereafter, the minor mother was transferred to the Department of Social Services, while her son remained a short time longer with the Clearys. Within a month, the son was placed with the mother in a "therapeutic foster home." Shortly thereafter, the mother ran away, and the son was transferred to a regular foster care home, where he remained for approximately two years before his mother's parental rights were terminated. Prior to termination the Department initiated a plan with treatment goals with the intent that ultimately the mother would be able to parent her son in the future. Despite the support system put in place, the mother continuously disrupted it by running away. As a result of the mother's behavior spanning from September 1991 into early 1992, the Department moved for custody of the son and petitioned (ultimately successfully) to terminate the mother's parental rights. An more positive holding in an out-of-state case which cites to *Reed* is *T.N.H. v. J.L.H.* --- S.W.3d ----, 2007 WL 2460645 (Ky.App. 2007) where the evidence was insufficient to establish that the mother, who was only fourteen years old when she had given birth and who had been voluntarily committed to custody of Cabinet for Health and



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>6</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.

## RESOURCES

### **Department of Social Services**

7 N. Eighth Street Richmond, VA 23219

804-726-7000; 800-552-3431

<http://www.dss.state.va.us/>

### **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>7</sup>

### **Client Centered Legal Services of Southwest Virginia**

PO Box 829 Norton, VA 24273

Phone: (540) 762-5501

Fax: (540) 762-7129

### **Potomac Legal Aid Society, Inc.**

6400 Arlington Blvd. Suite 600 Falls Church, VA 22042

Phone: (866) 534-5243

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<sup>6</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

<sup>7</sup> <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>

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

**Southwest Virginia Legal Aid Society Inc.**

227 West Cherry Street Marion, VA 24354

Phone: (800) 277-6754

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

**Central Virginia Legal Aid Society Inc.**

101 West Broad St., Suite 101 P.O. Box 12206 Richmond, VA 23241-2206

Phone: (800) 868-1012

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

**Legal Aid Society of Eastern Virginia**

125 St. Pauls Blvd. Suite 400 Norfolk, VA 23510

Phone: (800) 944-6624

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

**Virginia Legal Aid Society Inc.**

513 Church Street P.O. Box 6058 Lynchburg, VA 24505-6058

Phone: (888) 528-8527

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

**Blue Ridge Legal Services Inc.**

204 North High Street P.O. Box 551 Harrisonburg, VA 22803

Phone: (800) 237-0141

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

### Transitional or Independent Living Programs

**Total Action Against Poverty (TAP)**

145 Campbell Ave SW, Roanoke VA 24011

Phone: (540) 345-6781

A non-profit community action agency. For 40 years TAP has been helping the residents of 11 cities and counties in southwestern Virginia to escape poverty and become self-sufficient. Our mission is to encourage self-reliance and self-determination by strengthening and empowering individuals, families and communities and to mobilize the community's good will and resources, expand access to existing opportunities and create new opportunities.

**VIRGINIA 5**  
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.



### **ILP Coordinator**

Independent Living Program Coordinator  
Virginia Department of Social Services  
730 E. Broad Street, 2nd Floor  
Richmond, VA 23219  
Phone: (804) 692-1293  
Fax: (804) 692-1284

### **People Incorporated**

PI has four offices in Southwest Virginia.

#### **Central Office**

1173 West Main Street Abingdon, VA 24210  
(276) 623-9000  
(276) 466-6527  
Email: [info@peopleinc.net](mailto:info@peopleinc.net)

#### **Grundy Office**

20694 Riverside Drive Grundy, VA 24614  
(276) 935-4747

#### **Lebanon Office**

122 Price St. Lebanon, Va. 24266  
(276) 889-0999

#### **Clintwood Office**

P.O. BOX 1439  
Clintwood, Va. 24228  
(276) 926-5600

#### **Bristol Office**

800 Martin Luther King, Jr. Blvd. Bristol, VA 24201  
(276) 466-5587  
Email: [bristol@peopleinc.net](mailto:bristol@peopleinc.net)

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

#### **Reconciliation Community Center**

P.O. Box 2421 Woodbridge, VA 22193  
(703) 491-1178 or (800) 550-4900

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

#### **Al-Anon Family Group Headquarters, Inc.**

1600 Corporate Landing Parkway  
Virginia Beach, VA 23454-5617  
757-563-1600  
757-563-1655

<http://www.al-anon.alateen.org/>

Contact: [WSO@al-anon.org](mailto:WSO@al-anon.org)

Al-Anon's program of recovery is based on Twelve Steps, Twelve Traditions and Twelve Concepts of Service adapted from Alcoholics Anonymous (AA). Includes Al-anon Family and Alateen information.

#### **Community Anti-Drug Coalitions of America**

901 N. Pitt Street, Suite 300 Alexandria, VA 22314

#### **Jack and Jill of America, Inc.**

1101 Worthington Court  
Virginia Beach, VA 23464

### **Childcare Assistance**

#### **Healthy Families Fairfax**

Families who are referred to this program receive educational, therapeutic, and supportive services to help prevent child abuse and neglect and promote child health.

703-324-7706; TTY: 703-222-9452.

Mothers must be pregnant or the newborn baby must be younger than three months old

Families referred to the program voluntarily choose to participate

Services are provided until child reaches age 5

Read more about Healthy Families Fairfax

Call 703-324-7706; TTY: 703-222-9452.

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### **Parent Education Programs**

This program offers parenting classes that include the entire family – parents and their children.

Classes range from 12-21 weeks, depending on the ages of children in the family

Available in English or Spanish for most curriculums

Classes with an African American cultural focus are offered periodically

Offered in a variety of community settings

Classes are free, and include:

A light evening meal

Child care for children under 5 years of age

A structured program for children 5 years of age and older

General information, call 703-324-7691; TTY: 703-222-9452

About classes in English, call 703-324-7691; TTY: 703-222-9452

About classes with an African American cultural focus, call 703-324-7501; TTY: 703-222-9452

About classes in Spanish, call 703-324-7405; TTY: 703-222-9452

Check the Nurturing Parenting factsheet to read more about types of programs available and curriculum topics, or to download a Nurturing Parenting Enrollment form.

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

Virginia's TANF is called the *VIEW (Virginia Initiative for Employment, Not Welfare)*

Director

Division of Benefit Programs

Virginia Department of Social Services

7 N. Eighth Street

Richmond, VA 23219

Phone: (804) 726-7365

FAX: (804) 726-7357

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/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>8</sup>

See also Va. Code Ann. § 63.2-607 ( Eligibility for TANF; minor parent residency)

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

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