

## ARIZONA

### Topics:

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

### HOW THE STATE CAN REMOVE CUSTODY

Statute: § 8-533; §8-846(B)<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 establish paternity, 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, parental identity unknown, child returned home and removed again, voluntary relinquishment.

Arizona's Department of Economic Security (ADES) may file a petition for termination of parental rights under Arizona's statute governing termination of the parent-child relationship or, alternatively, may file a motion for termination under the statute governing permanency determinations for dependent children when ordered to do so by juvenile court at a permanency hearing in the course of a dependency matter, and neither statute purports to be the exclusive procedure for ADES to seek termination of parental rights.

There is nothing in the statute governing permanency determinations for dependent children which precludes ADES from filing a termination petition under the statute governing termination of parent-child relationship. [A.R.S. §§ 8-533\(A\), 8-862\(D\)\(1\)](#). **The central issue when determining the best interests of a child in such a termination of parental rights action is whether the child would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship**, and therefore, the best interests inquiry focuses primarily upon the interests of the child, as distinct from those of the parent. *Kimu P. v. ADES*, 178 P.3d 511 (Ariz.App.Div.1 2008). To prove that the termination of parental rights would be in a child's best interests, ADES must present credible evidence demonstrating how the child would benefit from a severance or be harmed by the continuation of the

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

relationship. [A.R.S. § 8-533\(B\)](#) ADES may satisfy the best interest requirement in proceeding to terminate parental rights if it presents credible evidence that the child is adoptable, but a determination that the child is adoptable alone does not require the fact finder to conclude that severance is in the child's best interests. [A.R.S. § 8-533\(B\)](#) Lawrence R. v. ADES, 177 P.3d 327 (Ariz.App.Div.1 2008)

### APPLICABLE STATE LAW

It appears the teen mom, as the natural birth mother, has legal custody of her newborn but the state can institute a temporary/short-term separation her infant as a procedural prelude to a termination hearing that may make that separation permanent/long-term.

According to the court in [Lashonda M. v. Arizona Dept. of Economic Sec.](#) 210 Ariz. 77 (Ariz App Div. 2 2005) placing a teenage mother and her son in a group home for teenage mothers rather than a foster home was not an inappropriate placement prior to terminating mother's parental rights; the case manager testified that the group home placement was the best available option for keeping mother and son together, and substantial evidence supported the jury's finding that the social services agency made a diligent effort to provide appropriate services to reunite the mother and child.

Parents possess a fundamental liberty interest in the care, custody, and management of their children, but parental rights are not absolute; a court may order severance of parental rights under certain circumstances, so long as the parents whose rights are to be severed are provided with fundamentally fair procedures that satisfy due process requirements. U.S.C.A. Const Amend 14; A.R.S. §§ 8-533 subd B, 8-537 subd B. [Kent K. v. Bobby M.](#), 110 P.3d 1013 (Ariz. 2005)

To justify permanent termination of the parent-child relationship, the trial court must find, by clear and convincing evidence, at least one of the statutory grounds supporting termination, plus that termination is in the best interest of the child. A.R.S. § 8-533. [Linda V. v. ADES](#), 117 P.3d 795 (Ariz.App.Div.1 2005); [Mary Lou C. v. ADES](#), 83 P.3d 43 (Ariz.App.Div.1 2004); If this was not the case the teen mom should promptly exercise her right to appeal the termination order.

As an element of termination of parental rights doctrine, the State is required to demonstrate that it has made a reasonable effort to preserve the family. A.R.S. § 8-533(B3) [Vanessa H. v. ADES](#), 159 P.3d 562 (Ariz.App.Div.1 2007) More specifically, If the State is obligated to undertake rehabilitative measures as a prerequisite for seeking to terminate parental rights, it must undertake measures with a reasonable prospect of success. A.R.S. § 8-533(B) Id Also, if the state fails to supply proof meeting the proper evidentiary standard (clear and convincing), the mother's appeal may succeed and the termination will be vacated. As a prerequisite to the termination of parental rights, the State must prove by clear and

ARIZONA 2

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convincing evidence that it has made a reasonable effort to provide the parent with rehabilitative services or that such an effort would be futile. A.R.S. § 8-533(B) Reasonable accommodations for a parent's disability are viewed as a major component of the State's duty to make reasonable efforts to reunify the family, as a prerequisite to terminating parental rights. A.R.S. § 8-533(B)

In applying the best interest standard to decide the issue of termination a court will require ADES to show that the children would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship. ADES v. Oscar O., 100 P.3d 943 (Ariz.App.Div.2 2004)

## RESOURCES

### **CHILD WELFARE AGENCY: Department of Economic Security**

1717 W. Jefferson, 050Z-1 Room 119, Phoenix, AZ 85007

602-542-4791

<https://www.azdes.gov/ASPNew/default.asp>

### **Legal Services**

#### **Community Legal Services, Inc.**

305 South 2<sup>nd</sup> Ave. P.O. Box 21538, Phoenix, AZ 85036

800-852-9075

#### **Southern Arizona Legal Aid, Inc.**

64 East Broadway Blvd., Tucson, AZ 85701

520-623-9461

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

#### **DNA-People's Legal Services Inc.**

Route 12 Hwy 264, P.O. Box 306, Window Rock, AZ 86515

800-789-7287

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

ARIZONA 3

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### **Transitional Living or Independent Living Programs**

#### **General Information**

<https://egov.azdes.gov/CMSInternet/main.aspx?menu=150&id=1944>

#### **Crisis Pregnancy Centers of Tucson**

Free pregnancy testing and live-in accommodations for expectant parents  
Central: 622- 5774. Eastside: 327-0701. Northwest: 293-8336.

#### **The Teenage Mother Mentor Program**

Phone: (520) 795-0300

#### **Teenage Parent Programs**

Tucson Unified School District 1 Teen Age Parent Program  
102 North Plumer Avenue, Tucson, AZ 85719  
Phone: (520) 225-3250

#### **State Criteria for Independent Living Programs**

ARS 8-521-01

<http://www.azleg.gov/FormatDocument.asp?inDoc=/ars/8/00521-01.htm&Title=8&DocType=ARS>

A.R.S. § 8-521 (Independent living program; conditions; eligibility; rules; case management unit; reports) states:

The department or a licensed child welfare agency may establish an independent living program for youths who are the subject of a dependency petition or who are adjudicated dependent and are all of the following:

In the custody of the department, a licensed child welfare agency or a tribal child welfare agency. The participant must be at least seventeen years of age and employed or a full-time student.

The independent living program may consist of a residential program of less than twenty-four hours' a day supervision for youths under the supervision of the department through a licensed child welfare agency or a foster home under contract with the department. Under the independent living program the youth is not required to reside at a licensed child welfare agency or foster home.

The director or the director's designee shall review and approve any recommendation to the court that a youth in the custody of the department be ordered to an independent living program.



For a youth to participate in an independent living program, the court must order such a disposition pursuant to § 8-845.

The department, a licensed child welfare agency or a tribal child welfare agency having custody of the youth shall provide the cost of care as required by § 46-134 for each child placed in an independent living program pursuant to this section, except that the monthly amount provided shall not exceed the average monthly cost of purchased services for the child in the three months immediately preceding placement in an independent living program.

The department shall adopt rules pursuant to title 41, chapter 6 [FN1] to carry out this section.

The department shall provide quarterly progress reports to the court and to local foster care review boards for each youth participating in the independent living program.

The local foster care review boards shall review at least once every six months the case of each youth participating in the independent living program.

The department shall establish an educational case management unit within the division consisting of two case managers to develop and coordinate educational case management plans for youths participating in the independent living program and to assist youths in the program to do the following:

- Graduate from high school.
- Pass the Arizona instrument to measure standards test.
- Apply for postsecondary financial assistance.
- Apply for postsecondary education.

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

#### **Florence Crittenton Services of Arizona**

715 W. Mariposa Phoenix, AZ 85013  
Phone: (602) 274-7549  
[www.flocrit.org](http://www.flocrit.org)

#### **Catholic Social Services**

Supplies living quarters for expectant mothers plus counseling on sliding-scale fees  
623- 0344 or 1-800-234-0344

**ARIZONA 5**  
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### **Substance Abuse Health & Treatment Resources**

#### **Hope Women's Center**

Free Pregnancy Testing, Ultra Sounds, Prenatal and Birthing Classes, Parenting Classes, maternity and baby clothing, Teenage Mother Mentor Program, GED Preparation, Adoption Support Services, Post Abortive Support Services, Drug and Alcohol Recovery Program

252 N Ironwood, Apache Junction, AZ 85220 480.983.HOPE [4673]

#### **Teen Wellness Center**

Mariposa: 281-1550.

Nogales High School, ask for health services: 287- 0900

Termination of parental rights on the ground of chronic substance abuse requires proof not only that the parent was unable to discharge her parental responsibilities because of a history of chronic abuse of dangerous drugs, controlled substances, or alcohol, and that there were reasonable grounds to believe that the condition would continue for a prolonged indeterminate period, but also that the Arizona Department of Economic Security (ADES) had made reasonable efforts to reunify the family or that such efforts would have been futile. A.R.S. § 8-533(B3). Jennifer G. v. ADES, 123 P.3d 186 (Ariz.App.Div.2 2005)

### **Childcare Assistance**

#### **Baby Arizona**

Pregnant women who can't afford prenatal care.

Phone: 800-833-4642

#### **Center for Adolescent Parents**

Free on-site childcare, bus passes or gas allowances, also a young fathers program.

Phone: 881-8940.

#### **Tucson Association for Child Care Inc.**

For Adolescent Parents, also helps parents find childcare.

Phone: 881-8940.

**ARIZONA 6**  
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### **DES Child Care Administration (CCA)**

Helps eligible families pay a portion of child care costs when parents or caretakers participate in DES eligible activities, such as employment. Eligibility requirements are different for each Child Care program. CCA Certifies and contracts with small family child care homes, contracts with Department of Health Services (DHS) licensed childcare centers and group homes and non-certified relative providers to provide child care services for eligible families. CCA Provides funding to increase the availability and improve the quality of child care services and provides leadership for statewide coordination and collaboration of various childcare and early childhood development initiatives and programs.

### **Santa Cruz County Nogales Alternative High School**

It offers parenting classes and pre-school for students' children.

Phone: 287-0915

### **Cochise County Teen Prenatal Express**

Phone: 432-9465

### **Teen Prenatal Express**

Assists pregnant teens 17 or younger. Pays for prenatal care and delivery.

Phone: 793-3710

## **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.

For EMPOWER eligibility questions, call 602-542-3596

Arizona's TANF program is called EMPOWER (Employing and Moving People Off Welfare and Encouraging Responsibility)

Contact Arizona's TANF Policy Chief  
Arizona Department of Economic Security  
1717 W. Jefferson St. Phoenix, AZ 85007  
Phone: (602) 542-0212  
FAX: (602) 542-060

**ARIZONA 7**  
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### **TANF/AFS (Adult and Family Services) or other**

#### **Teen Parent Living Arrangement Waiver**

Arizona was on the front lines in decisively passing a waiver of new TANF living arrangement requirements for teen parents. From the beginning, soon after the TANF's new dual-requirement was passed nationally, Arizona became one of the few states to immediately seek to avoid the "provide or assist in locating" requirement altogether. In its current TANF Plan Arizona states that it intends to continue its teen parent living arrangement waiver; this waiver does not include a requirement to "provide or assist in locating." Here Arizona is asserting that the TANF requirement to provide assistance in locating an adult-supervised setting is inconsistent with the state's waiver and that the waiver supersedes the TANF provision.<sup>2</sup> So teen moms aging out of foster care will have an easier time obtaining benefits through TANF since they will have only the school/training requirement to comply with

#### **Second Chance Homes**

State legislatures may allocate TANF block grant funds for Second Chance Homes. Like TANF, state maintenance-of-effort (MOE) funds and the Social Services Block Grant (SSBG) are flexible, and largely under states' discretion in terms of how they are spent. States and communities may also explore other sources of funding from HHS and HUD. Additional state and private sources of funding are available to fill in funding gaps, help providers acquire or rehabilitate Second Chance Homes, or develop specialized Second Chance Homes for teen parents who are homeless or in foster care.

A.R.S. § 46-134

The state department shall:

2. Administer child welfare activities, including:

(e) Providing the cost of care of unwed mothers who are under the age of eighteen years during the period of their pregnancy and confinement in foster family homes or institutions and when determined by the department to be economically eligible. Costs of hospitalization and medical expenses attendant to the care of the mother and child shall be excluded from any payments made under this subdivision.

#### **A.R.S. § 8-512 (Comprehensive medical and dental care; guidelines)**

Department shall provide comprehensive medical and dental care, as prescribed by rules of the department, for each child:

- Placed in a foster home.
- In the custody of the department and placed with a relative.

<sup>2</sup> <http://www.clasp.org/publications/teen.pdf>

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- In the custody of the department and placed in a certified adoptive home before the entry of the final order of adoption.
- In the custody of the department and in an independent living program as provided in § 8-521.
- In the custody of a probation department and placed in foster care. The department shall not provide this care if the cost exceeds funds currently appropriated and available for that purpose.

B. The care may include, but is not limited to:

- A program of regular health exams/immunizations including minimum:
- Vaccinations to prevent mumps, rubella, smallpox and polio;
- Anemia, coccidioidomycosis and tuberculosis tests;
- Urinalysis, blood count and hemoglobin tests;
- Regular exams for general health hearing, vision, including providing corrective devices when needed;
- Inpatient and outpatient hospital care;
- Necessary services of physicians, surgeons, psychologists and psychiatrists;
- Dental care consisting of at least oral examinations including diagnostic radiographs, oral prophylaxis and topical fluoride applications, restoration of permanent and primary teeth, pulp therapy, extraction when necessary, fixed space maintainers where needed and other services for relief of pain and infection;
- Drug prescription service.