

ARKANSAS

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HOW THE STATE CAN REMOVE CUSTODY

Statute: § 9-27-341(a)-(c) ¹

Standard: Child out of parent's custody 12 months (Ark. Code Ann. 9-27-341(b)(2)(A), Michie Supp. 1995). [1998]

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, 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, presumptive legal father not the biological father, voluntary relinquishment, aggravated circumstances.

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 she has the right to bring legal proceedings on her newborn's behalf. Arkansas Code § 9-17-302 (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 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 her baby after emancipation ² Some foster teen moms may need a chance to "catch their breath"

¹ National Center for State Courts' Knowledge and Information Services.

² <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

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.³ 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.⁴ 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 breastfeeding 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

³ "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)

⁴ 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.

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that the ward has a right to placement with her child.⁵ 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.

Termination of parental rights cases are reviewed on appeal *de novo*. *Lindemood v. Arkansas Dept. of Health and Human Services* Not Reported in S.W.3d, 2008 WL 442604 (Ark.App. 2008) Termination of parental rights is an extreme remedy and in derogation of the natural rights of parents. *Kight v. Arkansas Dept. of Human Services*, 189 S.W.3d 498 (Ark.App. 2004). In *Kight*, the trial court's decision terminating mother's parental rights was clearly erroneous; mother completed six months of residential drug counseling, she was drug free throughout the entire program even though she was given unsupervised weekend passes, there was testimony child was stable with his mother and that she was his primary caregiver, mother had maintained full time employment, and trial court's belief that mother would be involved with man who abused drugs was entirely speculative. *Id.*

In *Minton v. Arkansas Dept. of Human Services* 72 Ark.App. 290 (Ark.App. 2000) a ruling of the trial court in favor of termination of parental rights in response to a petition by the Arkansas Department of Human Services (DHS)'s was reversed where : (1) the evidence was insufficient to terminate parental rights on the ground that the parent failed to materially support the child and (2) the finding that the child was unlikely to bond with the terminated parent was deemed not to have been supported by the evidence. The mere existence of potential grounds for termination does not require actual termination. The decision must be guided by a determination of whether reunification can be accomplished within a reasonable time so as to provide permanency and stability in a child's life. *Id.* Before parental rights may be terminated, there must also be clear and convincing evidence that it is in the best interest of the juvenile pursuant to subsections (b)(3)(A)(i) and (ii). *Conn v. Arkansas Dept. of Human Services* 79 Ark.App. 195 (Ark.App. 2002). Although the trial court's order recites that it is contrary to Christina's interests to return to the custody of her parents, and that termination is in her best interests, there was no evidence presented to the trial court that would support such a finding.

⁵ 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 interests.



RESOURCES

CHILD WELFARE AGENCY: **Department of Human Services**

Arkansas Department of Human Services
P.O. Box 1437 S201, Little Rock, AR 72203
Phone: 501-682-1001; 800-235-0002
<http://www.state.ar.us/dhs/homepage.html>

Legal Aid of Arkansas, Inc.

714 South Main Street, Jonesboro, AR 72401
Phone: 800-952-9243
Center for Arkansas Legal Services
303 West Capitol Avenue, Suite 200, Little Rock, AR 72201
800-950-5817

Transitional or Independent Living Programs

There is a new law allowing youth that age out to reenter court's jurisdiction. Previously, at age 18, if the youth wanted to, the court would allow them to stay in care until 21. With the new law, the idea is that if the youth doesn't choose to stay, she can return to ask for services. By some reports, this new law has not changed practice, nor does it entitle youth to any new services.

Good Neighbor Next Door Program

New Housing Assistance programs means being a good neighbor can result in HUGE savings when purchasing a home. Through the 'Good Neighbor Next Door' program, law enforcement officers, teachers, firefighters, and other 'good' citizens can become homeowners for a fraction of the normal cost. Depending on your occupation, HUD offers a substantial incentive of 50% off from the list price of a home to those people who qualify. Search the HAN website to see if you "qualify for a savings of 50%" or more on your home purchase.

Public Housing Program

Do you need help making rent payments? Public Housing was established to provide decent and safe rental housing for eligible low and moderate-income families. Over 1.3 Million Americans have received help with their housing through the Public Housing Program, and most people qualify for some sort of rent assistance. Find out more about Public Housing and other related programs by accessing the Housing Assistance Network Database.



Arkansas Children's Trust Fund

<http://www.arctf.org/search/index.html>

This site provides access to the Parenting Education Programs Directory, which provides information about existing parenting education programs in the state of Arkansas. Also, included on this site is information about the Arkansas Parenting Education Network and its activities/events.

Mother-baby Residential Facilities

The Abba House

1014 S. Oak St. Little Rock, AR 72204
(501) 663-9229

Living Alternatives/New Beginnings Home

P.O. Box 7 Elm Springs, AR 72728-0007
(501) 248-7516

To look up special pregnancy risks in the case of teen parents, go to:

http://www.arkansasparenting.com/content/index.php?option=com_wrapper&Itemid=34

Substance Abuse Health & Treatment Resources

Addictions Training Network (MSATN)

The MidSOUTH Addictions Training Network is a workforce development program with a primary focus on the competencies required of substance abuse treatment counselors. MSATN provides trainings for people seeking to become Certified Alcohol Drug Counselors (CADCs) and people seeking recertification as CADCs. MSATN also serves other professionals in need of substance abuse treatment training to fulfill their certification/licensure requirements and members of the general public with an interest in substance abuse treatment.

Since its inception in 1995, MSATN has provided both basic and advanced educational opportunities for hundreds of professionals, including social workers, school counselors, psychologists, adolescent service providers, criminal justice providers, and other multi-disciplinary professionals with an interest in substance abuse related issues.

Earle Girls in Action

A year-round program serving approximately 150 girls in the Earle School District. The girls attend semimonthly workshops on building self-respect, developing positive relationships, and avoiding alcohol, tobacco, and illicit drugs. They also hold fundraisers for social activities throughout the year.

Crossroad House

#99 Cypress Creek Drive Cabot, Arkansas 72026.
Phone: (501) 941-1310

Methodist Family Health

1600 Aldersgate Road PO Box 56050 Little Rock, AR 72215- 6050

Phone: (501) 661-0720

Fax: (501) 664-3702

Email: info@methodistfamily.org

Community Based Teaching-Family Group Homes; Psychiatric Residential Treatment Centers; Family Preservation In-Home Counseling; Foster Care; Parenting Workshops.

Childcare Assistance

Conway Cradle Care

Their mission is to help adolescent parents stay in school. The daycare for children of students is located at First Presbyterian Church, just west of Conway High School-West. Executive Director Diana Byrd and mentor Kim Barton. Conway Cradle Care started in 1995 as a mission of First Presbyterian Church. It has expanded to serve children ages six weeks to age 3. This bridges the gap between Cradle Care and Head Start so that even the youngest parents will have access to daycare and can complete school, according to information from Cradle Care.

Child Care and Development Fund (CCDF)

The primary Federal program specifically devoted to childcare services and quality. It enables low-income parents and parents receiving Temporary Assistance for Needy Families (TANF) to work or to participate in the educational or training programs they need in order to work. Funds may also be used to serve children in protective services. In addition, a portion of CCDF funds must be used to enhance childcare quality and availability. The component funds of the CCDF were provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). As of October 1, 1996, PRWORA repealed the old welfare-related childcare programs provided under the Social Security Act (AFDC/JOBS Child Care, Transitional Child Care, and At-Risk Child Care). The repealed programs were

replaced by Mandatory and Matching Funds appropriated for fiscal years (FYs) 1997 through 2002 under a new section (418) of the Social Security Act.

The Administration for Children and Families (ACF) re-named the block grant funds provided under the Child Care and Development Block Grant (CCDBG) Act of 1990, as amended, the Discretionary Fund, to signify that it must be appropriated annually. PRWORA required that the new Mandatory and Matching Funds be transferred to a State's Lead Agency for the CCDBG and be administered by that agency, using the provisions of the CCDBG Act, as amended by PRWORA. Although the Discretionary Fund was authorized at \$1 Billion (B) a year through FY 2002, Congress has routinely appropriated amounts in excess of \$1 B for each fiscal year through FY 2006 and has proposed appropriations in excess of \$2 B for the CCDBG in FY 2007. In 2006, Congress passed legislation appropriating \$2.9 B in Mandatory and Matching Funds for each of FYs 2006 through 2010.

TANF (Temporary Aid to Needy Families) Funds

TEA (Transitional Employment Assistance)

Division of County Operations

Arkansas Department of Human Services

Donaghey Plaza S. 700 South Main Street PO Box 1437, Mail S301 Little Rock, AR 72203-1437

Phone: (501) 682-8375

FAX: (501) 682-8367

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.

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. These states have adopted TANF's new school/training requirement.

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Youth are available at age 18 for up to \$2000 of assistance to find a place to live, etc. Educational Training Vouchers are administered by the orphan foundation. Eligibility Criteria are:

Foster care youth between the ages of sixteen and twenty-one participating in high school, secondary school, or an equivalent technical program.

Former foster care youth up to the age of twenty-one are eligible for post-discharge services (after-care) if the youth was in foster care on his or her eighteenth birthday. Post-discharge services may include additional life-skills training. Also job search assistance, housing search assistance, community involvement, and board assistance may be provided, as funds are available.

Foster teens, ages fourteen to fifteen are provided appropriate life skills training and other services based on evaluations and assessments.⁶

Young moms on the verge of leaving the foster care system are available at age 18 for up to \$2000 of assistance to find a place to live, etc.

Educational Training Vouchers are also administered by the orphan foundation.

Eligibility Criteria:

Foster care youth between the ages of sixteen and twenty-one participating in high school, secondary school, or an equivalent technical program.

Former foster care youth up to the age of twenty-one are eligible for post-discharge services (after-care) if the youth was in foster care on his or her eighteenth birthday. Post-discharge services may include additional life-skills training. Also job search assistance, housing search assistance, community involvement, and board assistance may be provided, as funds are available.

Foster teens, ages fourteen to fifteen are provided appropriate life skills training and other services based on evaluations and assessments.

⁶ <http://fostercaretoadulthood.wikispaces.com/Arkansas#Top>