

## INDIANA

### Topics:

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§31-35-2-4.5; 31-35-3-4; 31-35-3-8<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, 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.

Exceptions: A party must file motion to dismiss TPR petition, and court shall dismiss petition, if preponderance of evidence establishes: 1) child being cared for by a parent, stepparent, grandparent, sibling, aunt, uncle or relative who is child's guardian; 2) case plan documents compelling reason why TPR is not in best interest of child; 3) early TPR provisions not applicable and a) services not provided and time period for completion of services has not expired, or b) such services not provided and such services are substantial and material.

### 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. IC 31-18-3-2 (Action by minor parent) Sec. 2 thus sets forth that a parent who is less than eighteen (18) years of age or a guardian or other legal representative of the minor parent may maintain a proceeding: (1) on behalf of; or (2) for the benefit of; the minor parent'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> IC 31-35-1-9 (Consent by

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

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



incompetent or minor parent) Sec. 9. (a) sets forth that “Except as provided in subsection (b), a parent who is incompetent may give consent to termination only with the approval of the court or of the parent's guardian. (b) A person who is less than eighteen (18) years of age and who is a parent may give the person's consent without the approval of the court or of the parent's guardian if the person is competent except for the person's age.

Foster teen moms often 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. 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.

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

[/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.

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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.

### APPLICABLE STATE LAW

Although parental rights are protected under the Fourteenth Amendment, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. U.S.C.A. Const.Amend. 14) *In re L.S.*, 717 N.E.2d 204 (Ind.App. 1999). A teen mom has the right to appeal a termination order. Unfortunately, when reviewing a termination of parental rights, an appellate court normally refuses to re-weigh all evidence or judge the credibility of the witnesses; instead, the appellate court considers only the evidence and reasonable inferences that are most favorable to the judgment. *In re Termination of Parent-Child Relationship of A.B.* --- N.E.2d ----, 2008 WL 2250537 (Ind.App. 2008)

#### Last Resort Rule:

At the time it decided on termination, the court should have taken into account that although a juvenile court need not wait until a child is irreversibly influenced by a deficient lifestyle such that her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship, the involuntary termination of parental rights is still considered an extreme measure that terminates all rights of the parent to his or her child and is therefore designed to be used only as a last resort when all other reasonable efforts have failed. *In re Termination of Parent-Child Relationship of A.B.*, 2008 WL 2250537 (Ind.App. 2008); see also *In re A.P.*, 2008 WL 732759 (Ind.App. 2008)(Involuntary termination of parental

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<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

rights is the most extreme sanction that a court can impose on a parent, as termination severs all rights of a parent to his or her children; therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed; *M.H.C. v. Hill*, 2001 WL 721747 (Ind.App.,2001)(Involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed); *In re S.L.H.S.*, 2008 WL 1892687 (Ind.App. 2008); see “last resort” dicta in *In re A.P.*, 2008 WL 732759 (Ind.App. 2008)

### Satisfactory Plan Rule:

In order for the trial court to terminate the parent-child relationship, the court must find that there is a satisfactory plan for the care and treatment of the child. *In re Termination of Parent-Child Relationship of S.F.*, 2008 WL 867729 (Ind.App. 2008)

### Changed Conditions Rule:

Also, when assessing a parent's fitness to care for a child in a termination of parental rights proceeding, the trial court should view the parent as of the time of the termination hearing and take into account any evidence of changed conditions; however, the trial court should also take into account the parent's habitual patterns of conduct as a means of determining the probability of future detrimental behavior, as well as the services offered to the parent and the parent's response to those services. *In re S.L.H.S.*, 2008 WL 1892687 (Ind.App. 2008); *In re B.J.*, 2008 WL 131205 (Ind.App. 2008) citing A.I.C. 31-35-2-4(b)(2); See *In re Termination of Parent-Child Relationship of S.F.*, 2008 WL 867729 (Ind.App. 2008); *A.J. v. Marion County Office of Family and Children*, 881 N.E.2d 706 (Ind.App. 2008) (When determining whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will not be remedied, the juvenile court must judge a parent's fitness to care for his or her children at the time of the termination hearing, taking into consideration evidence of changed conditions. A.I.C. 31-35-2- 4(b)(2))

### Totality of the Facts Rule:

In determining what is in the best interests of the child vis-à-vis a termination ruling, the court is required to look beyond the factors identified by the Department of Child Services and look to the “totality” of the evidence. *In re B.J.*, 2008 WL 131205 (Ind.App. 2008)

## RESOURCES

### CHILD WELFARE AGENCY: Family and Social Services Administration

<http://www.state.in.us/fssa/>

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### **Indiana Legal Services Inc.**

Market Square Center Suite 1640 Indianapolis, IN 46204  
Phone: (800) 869-0212  
www.indianajustice.org

### **Legal Services Organization of Indiana, Inc.**

242 W 7th St. Bloomington, IN 47404-3932  
Phone: (812) 339-7668  
Fax: (812) 339-2081  
Intake Phone: (800) 822-4774

The **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 or Independent Living Programs**

### **White's Residential and Family Services, Inc.**

5233 S. 50 East, Wabash IN 46992  
Phone: (260)563-1158  
Fax: (260)563-8975  
Web Site: www.whiteskids.org

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



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

#### **St. Elizabeth Home**

2500 Churchman Ave. Indianapolis, IN 46203

Phone: (317) 787-3412

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

#### **Family Service of Central Indiana, Inc.**

An organization in Indianapolis, Indiana that provides counseling and services on relationships, children, domestic violence, substance abuse, and elderly and senior issues. Family Service of Central Indiana, Inc. - 615 N. Alabama St., Suite 320; Indianapolis, IN 46204

Phone: (317) 634-6341

Fax: (317) 464-9575

#### **Youth First, Inc.**

3420 E. Morgan Avenue Evansville, IN 47715

Mailing: PO Box 3897 Evansville, IN 47737-3897

Youth First's mission is to reduce substance abuse by providing research proven prevention and early intervention programs for youth and their families. All of Youth First's programs are recognized by the U.S. Health Department's Substance Abuse and Mental Health Services Administration (SAMHSA) as model programs or are based on research proven principles which SAMHSA considers effective for preventing substance abuse. Youth First, Inc. is a 501(c)3 organization based in Evansville, Indiana and serves Southwest Indiana and Henderson, Kentucky. Youth First is governed by a Board of Directors and funded by charitable donations, grants, and fees for services.

#### **The Children's Campus, Inc.**

1411 Lincoln Way West, Mishawaka, IN 46544

Phone: (574) 855-5890

A designated Psychiatric Residential Treatment Facility (PRTF) as defined by the Indiana Social Services Administration (FSSA) and the Indiana Health Coverage Programs (IHCP). Under this designation, The Children's Campus is able to accept youth into its secure residential treatment programs for both male and female adolescents. These youth must meet specific criteria, including being Medicaid recipients, set by the state and federal governments, in order for the services to be paid for by Medicaid. PRTF youth referred to The Children's Campus must exhibit behaviors that are determined by a doctor to require residential treatment in a secure environment. A parent/legal guardian, social service agency, court

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agency, medical facility or a doctor can refer youth. It is preferred that referrals be made to The Children's Campus while the youth is in inpatient care or out of home placement.

### Childcare Assistance

#### **PSI Family Services**

8120 Georgia Street Merrillville, Indiana 46410

Phone: (888) 950-0774

Fax: (219) 756-8203

[psiindiana@psifamilyservices.com](mailto:psiindiana@psifamilyservices.com)

#### **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).

[http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06\\_07desc.doc](http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06_07desc.doc)

[http://www.clasp.org/publications/faq\\_tanf\\_repro\\_health.pdf](http://www.clasp.org/publications/faq_tanf_repro_health.pdf)

Provides answers to frequently asked questions about how to use TANF funds for pregnancy prevention and teen parent services. The paper addresses the purposes for which TANF can be used, what TANF cannot pay for, the population that can be served, and numerous other TANF issues that pertain to teen parents. (Levin-Epstein, J. (1999) Frequently Asked Questions: Tapping TANF for Reproductive Health or Teen Parent Initiatives. Center for Law and Social Policy).

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

In Indiana TANF is known as TANF, cash assistance

IMPACT (Indiana Manpower Placement and Comprehensive Training), TANF work program

Manager, TANF Policy

Bureau of Family Resources

Indiana Family & Social Services Administration

402 West Washington Street Indianapolis, IN 46204

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Phone: (317) 232-4908  
FAX: (317) 233-0828

### **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>