

## KANSAS

### Topics:

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§13-1563(h); 38-1583; 38-1585<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, murder of child's other parent, aggravated circumstances, identity and location of parent(s) unknown.

Exceptions: Court shall consider whether: 1) child in stable placement with relative; 2) services in case plan not made available to parent; 3) compelling reason documented in case plan against adoption or guardianship.

### 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. K.S.A. § 23-9,302 (Action by minor parent.) 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 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> Foster teen moms may need a chance to "catch their breath" after their baby's birth. The alternative of

<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](#)

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 period. 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 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

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<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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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

It is presumed that the best interests of the child are served by the retention of the child's custody in the natural parents. *In re Armentrout* 207 Kan. 366 (Kan. 1971) Under the common law in Kansas, it may be argued by the teen mom that a fundamental principle in the termination of parental rights, whether vis-a-vis a child in need of care or through adoption proceedings, is the natural parent's right to be a parent. See dicta in *In re C.L.A.* 31 Kan.App.2d 536 (Kan.App. 2003). The right to be the legal parent of a child is a right that cannot be abrogated except under compelling circumstances. *Id.* Protections incorporated into the statute governing the termination of parental rights protect a parent's constitutional rights, preempting the parental preference doctrine; consequently, adoption statutes are to be strictly construed in favor of maintaining the rights of the natural parent. K.S.A. 59-2136. *Id.*

When reviewing a trial court's decision to terminate parental rights, an appellate court must determine whether the trial court's findings are supported by substantial competent evidence. [K.S.A. 59-2136\(h\)](#). *Id.* Thus the *C.L.A.* court held that insufficient evidence supported trial court's finding that father was unfit parent and had abandoned child. *Id.* Indeed, a natural parent's right to the custody of his or her child is a fundamental right protected by the Fourteenth Amendment to the United States Constitution. [In re Guardianship of Williams, 254 Kan. 814, 869 P.2d 661 \(1994\)](#). In addition, K.S.A.2005 Supp. 38-1505(b) allows a parent to be represented by counsel in termination proceedings. The statute requires that the trial court appoint counsel for the parent if, at any stage of the proceedings, the parent is unable to employ an attorney. In *Bandel v. Bandel* 211 Kan. 672 (Kan. 1973) the natural mother of two minor children petitioned for return of custody after the court had found both mother and father unfit parents and awarded permanent custody of children to the husband's relatives; concurrently, the relatives petitioned for court's consent to their adoption of children. The court denied the mother's motion for custody and granted the third parties' request to adopt the children, and the mother appealed. The Supreme Court held that the trial court erred in construing its own order in the original custody

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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

proceeding to work a termination of the natural parents' parental rights, that the trial court retained jurisdiction to change custody of the children whenever it would work to their best interests, and that the evidence in the hearing on change of custody should not have been restricted to whether the couple with present custody had become unfit to care for the children, further the natural mother should have been allowed to show that her circumstances had changed and that she had become rehabilitated. Id.

### RESOURCES

CHILD WELFARE AGENCY: **Dept of Social and Rehabilitation Services**

915 SW Harrison St. Topeka, KS 66612

Phone: 785-296-3959

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

**Kansas Legal Services Inc.**

712 South Kansas Ave. Suite 200 Topeka, KS 66603

Phone: 800-723-6953

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

**Mid-America Arts Resources Legal Information Project**

PO Box 363 Lindsborg, KS 67456

Phone: 785-227-2321

Fax: 785-227-3471

Intake Phone: 785-227-2321

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<sup>6</sup>

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

### Transitional or Independent Living Programs

#### **Kansas Children and Family Services Commission**

Independent Living Program Manager  
Docking State Office Building, 5th Floor SW  
915 Southwest Harrison Topeka, KS 66606-1570  
Phone: (785) 368-8192  
Fax: (785) 368-8159

[Blue Valley Community Action Partnership](#) - Serves families and communities in southeast Nebraska and north central Kansas by offering health, education, nutrition, and housing programs.

#### **Wichita Children's Home**

Sarah Robinson Executive Director  
810 N. Holyoke Wichita, KS 67208  
Phone (316) 684-6581

### Substance Abuse Health & Treatment Resources

#### **Florence Crittenton Services of Topeka, Inc.**

2649 Arrowhead Rd. Topeka, KS 66614  
Phone: (785) 233-0516  
[www.flocritkansas.org](http://www.flocritkansas.org)

#### **TLC for Children and Families**

480 South Rogers Road | Olathe, KS 66062 USA  
Phone: (913) 764-2887

Providing opportunities that encourage positive growth and change for children, youth and families while ensuring a safe environment.



### Childcare Assistance

#### **AAP Chapter Child Care Contact**

There is a Chapter Child Care Contact in each Chapter (State). This Chapter Contact is a liaison between the National AAP and State Early Education and Child Care activities. For more information contact [childcare@aap.org](mailto:childcare@aap.org) or:

#### **FAAP (District 6)**

505 S. Plummer Chanute, KS 66720-0946

P.O. Box 946

Phone: 620-431-2500

Fax: 620-431-0914

<mailto:childcare@aap.org>

#### **Child Care Connection**

714 Ballinger Garden City, KS 67846

Kansas Association of Child Care Resource and Referral Agencies 1-866-550-1510

FAX: 620-275-4102/620-275-1510

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

TANF in Kansas is known as *Kansas Works*

Economic Development & Support Division

Kansas Department of Social and Rehabilitation Services

State Office Building 5th Floor 915 SW Harrison Topeka, KS 66612

Phone: (785) 296-6750

FAX: (785) 296-6960

### **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.

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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>

### **Women's Health Care Services, P.A.**

5107 East Kellogg Wichita, Kansas USA 67218  
Phone: 316-684-5108  
Phone: 800-882-0488 Toll Free in US  
Fax: 316-684-0052

### **Early Head Start Kansas**

Launched in 1998, this Kansas program constitutes the nation's first effort to merge TANF-funded childcare with the federal Head Start program. In addition to providing full-day, full-year childcare, the program also provides services including nutrition, health and social services, parent and community involvement, and self-sufficiency training for parents.

Kansas also provides the Foster Care Medical Card Extension Program to youth 18-21 years of age who were in custody of the Department of Social and Rehabilitation Services and eligible for out of home placement on their 18th birthday.<sup>8</sup>

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

<sup>8</sup> [http://www.nrcys.ou.edu/yd/state\\_pages/state.php?s=ks](http://www.nrcys.ou.edu/yd/state_pages/state.php?s=ks)