

## LOUISIANA

### 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: Ch. Code ann. Art. 1015<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, failure to maintain contact, failure to provide support, child judged in need of services/dependent, 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, location of parent(s) unknown, felony rape by natural parent results in conception of a child.

### 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 that she has the right to bring legal proceedings on her newborn's behalf. LSA-Ch.C. Art. 1303.2 (Action by minor parent) thus sets forth that a minor parent or a tutor or other legal representative of a minor parent may maintain a proceeding on behalf of or for the benefit of the minor's child.

It also appears that the minor parent starts out with legal custody of her child and may voluntarily surrender same according to LSA-Ch.C. Art. 1113 (Minor parents), which sets forth that:

Except as otherwise provided herein, if a parent executing a surrender in a private adoption is a minor, *the parents or tutor of the minor must join in the surrender unless the minor parent has been judicially emancipated* under Civil Code Article 385 or emancipated by marriage under Civil Code Articles 379 through 384.

When the parents of the minor are separated or divorced, *only the parent who has legal custody of the minor must join in the surrender.*

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



When the minor's parents or tutor refuse to join in the act or cannot be located, the court may authorize the minor to surrender without the required consent *if it finds that the minor is sufficiently mature and well-informed to surrender his child for adoption or that the surrender is otherwise in the child's best interest.*

In an intrafamily adoption, the parents or tutor of the minor parent must join in the minor's consent to his child's adoption unless the court finds that the minor is sufficiently mature and well-informed to surrender his child for adoption or that the surrender is otherwise in the child's best interest.

If it is not the foster teen's intention to give up legal custody to the child, attorneys and judges can also help to ensure that she is 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> Nonetheless, foster teen moms may sometimes 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

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

[/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf](http://www.jrplaw.org/Documents/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](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://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-



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 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.

## RESOURCES

### CHILD WELFARE AGENCY: **Department of Social Services – Child Welfare Services**

627 N. Fourth St., Baton Rouge, LA 70802

Phone: (225) 342-0286

Local Parish contact information: [http://www.dss.state.la.us/departments/ocs/OCS\\_Parish\\_Directory.html](http://www.dss.state.la.us/departments/ocs/OCS_Parish_Directory.html)

## Legal Services

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.

<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

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### **Capital Area Legal Services Corporation**

200 Third Street P.O. Box 3273 Baton Rouge, LA 70801

Phone: (800) 256-1900

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

### **Legal Services of North Louisiana, Inc.**

720 Travis Street Shreveport, LA 71101

Phone: (800) 826-9265

[www.cp-tel.net/klsc](http://www.cp-tel.net/klsc)

### **Acadiana Legal Service Corporation**

1020 Surrey Street P.O. Box 4823 Lafayette, LA 70502-4823

Phone: (800) 256-1175

[www.la-law.org](http://www.la-law.org)

### **Southeast Louisiana Legal Services Corporation**

1200 Derek Drive Suite 100 P.O. Drawer 2867 Hammond, LA 70404-2867

Phone: (800) 349-0886

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

### **The Pro Bono Project**

615 Baronne Street Ste 201 New Orleans, LA 70113

Phone: (504) 581-4043

Fax: (504) 566-5618

Intake Phone: (504) 581-4043

Web Site: <http://www.probono-no.org>

Organization Email: [probono@probono-no.org](mailto:probono@probono-no.org)

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>

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



### **Transitional or Independent Living Program**

Louisiana Office of Community Services/Division of Social Services  
P.O. Box 57149  
New Orleans, LA 70157-7149  
Phone: (504) 568-8003  
Fax: (504) 599-0936

### **Hope Youth Ranch**

114 Hope Ranch Road, Minden, LA 71055  
Phone: (318) 371-0047  
Fax: (318) 371-0047  
E-Mail: [hopeyouthranch@earthlink.net](mailto:hopeyouthranch@earthlink.net)  
Web Site: [www.hopeyouthranch.com](http://www.hopeyouthranch.com)

Hope Youth Ranch is a non-profit organization and the fulfillment of a vision. Our mission is to provide a safe, loving, structured, farm environment to troubled teens. We offer troubled youth an opportunity to mature spiritually, educationally, emotionally and physically. Residents are ages 8-17 from all ethnic and economic backgrounds.

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

#### **Mercy Ministries**

P.O. Box 3028 Monroe, LA 71211  
Phone: (318) 388-2040

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

#### **Grace Christian Home**

P.O. Box 44171, Shreveport, LA 71107  
Phone: (318) 425-8336  
Fax: (318) 865-7755  
[www.girlshome.org](http://www.girlshome.org)

A residential program for girls, ages 13–17, who are experiencing severe behavioral problems and/or family conflicts. Family therapy, individual and group counseling are provided. Girls attend our on-site, state accredited school. Activities include fitness center workouts, church and youth group participation, group studies in substance abuse, relationships with family and friends, self-esteem enhancement, health, social behavior, and biblical studies.

### **Childcare Assistance**

Kentucky Office of Inspector General Cabinet for Health and Family Services  
Division of Regulated Child Care  
275 East Main Street 6E-B Frankfort, KY 40621  
Phone: 502-564-7962  
Fax: 502-564-9350  
Web Site: <http://chfs.ky.gov/oig/drcc.htm>

Kentucky targets eligible children who:

- Have special needs;
- Receive, or need to receive, protective or preventive services;
- Are children of teen parents;
- Are children of parents who participate in the federally mandated welfare reform program (K-TAP); and
- Are children of low-income parents who work and/or attend an education or training program leading to self-sufficiency.

KCHIP (Kentucky Child Health Insurance Program: <http://chfs.ky.gov/dms/KCHIP.htm>) Their mission is to provide health insurance coverage to low income, uninsured children in Kentucky. Immunizations, well child checkups and other preventive services provided through KCHIP help children get healthy and stay healthy.

### **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.

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

The Division of Child Care provides program coordination for subsidy payments, coordination of Professional Development and training, as well as administering STARS for KIDS NOW and the Kentucky Partnership for Early Childhood Services (Child Care Resource and Referral Agencies – CCR&Rs)

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

FITAP (Family Independence Temporary Assistance Program),  
(STEP) Strategies to Empower People  
Louisiana's TANF Director  
Division Director  
Louisiana Department of Social Services  
Office of Family Support  
PO Box 94065 Baton Rouge, LA 70804-9065  
Phone: (225) 342-9391  
FAX: (225) 342-6812

<http://www.noappp.org/downloads/capd12.pdf>

Discussion of the concept of offering TANF services to all pregnant teens, regardless of their welfare status. Those who aren't applicable for it now, and thus don't receive the services, will most likely drop out of school and qualify for TANF as a result of their inability to support themselves. Solutions and policy recommendations to remedy the situation are given.

### **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

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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>

[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).

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

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

<sup>8</sup> (Levin-Epstein, J. (1999) Frequently Asked Questions: Tapping TANF for Reproductive Health or Teen Parent Initiatives. Center for Law and Social Policy).