

## MASSACHUSETTS

### Topics:

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What the Law Says About Separating A Mother From Her Baby  
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### HOW THE STATE CAN REMOVE CUSTODY

Statute: Ch. 119, §26(4); Ch. 210, §3(c)<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, child has formed strong, positive bond with substitute caretaker.

Exceptions: The department need not file such a motion or petition if: 1) the child is being cared for by relative; 2) The department has documented in the case plan a compelling reason for determining that such a petition would not be in the best interests of the child; or 3) the family of the child has not been provided consistent services with the time period in the case plan, such services as the department deems necessary for safe return of the child to the child's home if reasonable efforts are required to be made.

### 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.

M.G.L.A. 209D § 3-302 (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 also 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

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



who wishes to keep her baby after emancipation<sup>2</sup> 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 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.<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 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

<sup>2</sup> <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.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.

<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

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

The unfitness standard must be applied whenever the state seeks to terminate parents' rights to custody of their minor children, whether state proceeds under care and protection statute, guardianship statute, or adoption statute. M.G.L.A. c. 119, §§ 23-29, c. 201, § 5, c. 210, § 3 *Petition of Department of Public Welfare to Dispense with Consent to Adoption*, 421 N.E.2d 28 (Mass. 1981) Disposing of the teen's consent to adoption may involve having the foster teen declared unfit. *Adoption of Mario*, 686 N.E.2d 1061 (Mass.App. 1997) (Dept of Social Services was obligated to use reasonable efforts to preserve the biological ties between mother and child; however, that duty was contingent on the mother's fulfillment of her own parental responsibilities [Mass.Reg. Code title 110, § 1.02](#)) "Best interests of the child" standard has occasionally been applied divorced from the unfitness test in adjudicating issues of custody. *Petition of New England Home for Little Wanderers* 367 Mass. 631 (Mass. 1975) Normally, however, the parent's right to custody may not be terminated under care and protection statute or adoption statute without clear and convincing evidence that parent is currently unfit to further child's best interests.

In weighing the question of whether parental rights are to be irrevocably terminated, a judge may appropriately consider whether, on the basis of credible evidence, there is a reasonable likelihood that the parent's unfitness at the time of trial may be only be temporary. [M.G.L.A. c. 119, §§ 21-39](#); c. 210, § 3 *Adoption of Carlos* 413 Mass. 339, 596 N.E.2d 1383 (Mass. 1992) In weighing the question of whether parental rights are to be irrevocably terminated, a judge may properly be guided by evidence demonstrating a reason to believe that the parent will correct the condition or weakness that currently disables the parent from serving in the child's best interest [M.G.L.A. c. 210, § 3](#) Id. A judgment terminating parent's right to custody of child must analyze parent's character, temperament, capacity and conduct in relation to child's needs, age, affections and environment. M.G.L.A. c. 119, §§ 21-39; c. 210, § 3 The finding of parental unfitness, by clear and convincing evidence, is the critical inquiry during the termination of parental rights case; after ascertaining unfitness the judge must determine whether the parent's unfitness is such that it would be in the child's best interests to end all legal relations between parent and child. *In re Adoption of Nancy* 443 Mass. 512 (Mass. 2005)

## RESOURCES

### **Office of Health and Human Services**

One Ashburton Place 11<sup>th</sup> Floor Boston, MA 02108

Phone: 617-573-1600

[http://www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Government&L2=Departments+and+Divisions&L3=Department+of+Social+Services&L4=Contact+Us&sid=Eeohhs2&b=terminalcontent&f=dss\\_g\\_dss\\_offices&csid=Eeohhs2](http://www.mass.gov/?pageID=eohhs2terminal&L=5&L0=Home&L1=Government&L2=Departments+and+Divisions&L3=Department+of+Social+Services&L4=Contact+Us&sid=Eeohhs2&b=terminalcontent&f=dss_g_dss_offices&csid=Eeohhs2)

### **Legal Services**

#### **Volunteer Lawyers Project of the Boston Bar Association**

99 Chauncy St, Suite 400 Boston, MA 02111

Phone: 617-423-0648

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

#### **New Center for Legal Advocacy, Inc.**

257 Union St. New Bedford, MA 02740

Phone: 800-244-9023

[www.ncla.net](http://www.ncla.net)

#### **Merrimack Valley Legal Services Inc.**

35 John St. Suite 302 Lowell, MA 01852

Phone: 978-458-1465

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

Massachusetts Justice Project

57 Suffolk St. Suite 401 Holyoke, MA 01040800-639-1209

#### **Children's Law Center of Massachusetts, Inc. Pro Bono Project**

Primary Address: 156 Broad St. Lynn, MA 01901-1603

General Phone: 781-581-1977

Fax: 781-598-9364

Intake Phone: 781-581-1977

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

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>

### **Teen Parents and TAFDC: 20 Questions & Answers**

These questions and answers on the Massachusetts Legal Services web site include information about DTA teen parent child care rules. Go to [http://www.masslegalservices.org/docs/teenq\\_a2002.pdf](http://www.masslegalservices.org/docs/teenq_a2002.pdf)

## **Transitional or Independent Living Programs**

### **Cambridge Street Teen Living**

414 Cambridge Street

Worcester, MA 01610

Telephone: 508-756-2396

Eligibility: Homeless single teen mothers (ages 16 to 20) and their children. DTA referral is required.

### **Massachusetts Department of Transitional Assistance (DTA)**

9 Walnut Street Worcester, MA 01608

Telephone: 1-800-249-2007

Current DTA clients: 508-767-3100

New clients: 1-800-249-2007

TTY: 508-792-7289

### **Teen Parenting Program**

70 East Street, Methuen, MA 01844

Phone: (978) 687-3981

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

### **Teen Living Program - YOU, Inc.**

Teen Living Programs are statewide Massachusetts programs to provide shelter and services for young mothers and their children. Their service population is pregnant or parenting teens who receive TANF. TANF and other state funds make up source funding for the program's activities.

321 Burncoat Street Worcester, MA 01606

Telephone: 508-853-2487

### **Teen Parent Apartment Program - YOU, Inc.**

23-33 Boylston Street Worcester, MA 01605

Telephone: 508-853-2487

Eligibility: Homeless pregnant teens or teen mothers (ages 16 to 20) and their children. DTA referral is required.

### **Florence House (Lutheran Social Services of New England)**

12 George Street Worcester, MA 01609

Telephone: 508-799-2499

Office hours: 24 hours a day, every day of the year.

Eligibility:

Low-income teenage mothers and their children

Maximum stay: 2 years

### **Jairus Agency**

Puts at-risk teens in Massachusetts with meaningful volunteer jobs and mentoring relationships.

17 Jericho Road Middleboro, MA 02346

Phone: (508) 947-9258

Fax: (508) 947-0356

Email: [info@jairus.org](mailto:info@jairus.org)

### **Amity Street, Transitional Housing for Parenting Teens Catholic Charities, North Region**

55 Lynn Shore Drive Lynn, MA 01902

Phone: (617) 593-2312

Amity Street consists of a nine-unit building that houses young single mothers ages 18-23 with one or two children under the age of five.

### **Massachusetts Department of Social Services**

24 Farnsworth Street Boston, MA 02210

Phone: (617) 748-2311

Fax: (617) 748-2311

### **Pregnant and Parenting Teen Program**

176 Main Street, Southbridge, MA 01550  
Phone: (508) 764-1193

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

#### **St. Margaret's Home for Women**

90 Cushing Ave Dorchester, MA 02125  
Phone: (617) 436-8600

#### **Crittenton Women's Union**

10 Perthshire Rd. Boston, MA 02135  
Phone: (617) 782-7600

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

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

Some of the transition and independent living programs listed above offer substance abuse treatment services. Check with each program individually.

### **Childcare Assistance**

#### **Teen Parent Child Care**

Child Care Resources  
90 Madison Street, Worcester, MA 01608  
Phone: 508-798-8112 or 1-800-952-9183

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

A program to help teen parents and pregnant teens finish their education and become good parents. The program offers childcare and many family support services to teens through age 19. TPCC is for teen parents and pregnant teens, age 19 or younger. Teens must be in high school or an approved education or work activity. Benefits include free childcare, transportation, referrals, counseling, and parenting education.

### **Center for Children & Families**

55 Chapel Street  
Newton, MA 02458  
Phone: (617) 969-7100

### **Teen Living Program**

Under this program, 21 homes across Massachusetts the state offer shelter and intensive support programs to 120 teen mothers under age 18 who cannot live with their parents. These programs not only assist with child care, education, and job training, but also help the young women develop concrete parenting skills and the ability to advocate for their own and their children's needs. According to a state report, teen mothers participating in the program showed significant improvement in parenting skills such as displaying positive, nurturing interactions with their children and keeping immunizations current, and also fared better than average in continuing education and training, even after leaving the homes.

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

TANF started out as federal welfare benefits to single parents with the passage of the 1996 welfare law. TANF is now 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.

Massachusetts TANF is known as TAFDC (Transitional Aid to Families with Dependent Children), cash assistance, ESP (Employment Services Program), TANF work program.

Commissioner  
Massachusetts Department of Transitional Assistance  
600 Washington Street  
Boston, MA 02111  
Phone: (617) 348-8410  
FAX: (617) 348-8575

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

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>

### **Massachusetts' Teen Living Program**

Under this program, 21 homes across the state offer shelter and intensive support programs to 120 teen mothers under age 18 who cannot live with their parents. These programs not only assist with child care, education, and job training, but also help the young women develop concrete parenting skills and the ability to advocate for their own and their children's needs. According to a state report, teen mothers participating in the program showed significant improvement in parenting skills such as displaying positive, nurturing interactions with their children and keeping immunizations current, and also fared better than average in continuing education and training, even after leaving the homes.

### **Healthy Start**

Healthy Start Eligibility Line: 1-888-665-9993

Applications: 1-800-841-2900

Customer Service: 1-888-488-9161

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

A free health insurance program for pregnant uninsured low-income women, to help them give their babies a healthy start in life. The program offers early, complete [prenatal](#) care to pregnant women and their unborn children, two months of [postpartum](#) care, family planning services, and counseling and referrals. MassHealth is in charge of this program in Massachusetts.

### **Teen Parents Welfare Questions**

(508) 886-0203 Rutland

(508) 860-7746 Worcester

(800) WIC- 1007

<http://www.youngfamilies.org/faq.htm>

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