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HOW THE STATE CAN REMOVE CUSTODY

Statute: §§211.183(6)-(7); 211.447(2)-(7)¹

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's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, substantial risk of harm to the child, conception result of rape.

Exceptions: Agency or juvenile officer may, but are not required to, file a petition if: 1) child being cared for by relative; 2) there exists a compelling reason why TPR is not in best interest of child, as documented in permanency plan; 3) family has not been provided services.

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. Vernon's Annotated Missouri Statutes Section 454.882 (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 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" 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

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>



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.⁶ 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

Juvenile court is without the authority to sever parental rights when there is insufficient evidence to clearly, cogently, and convincingly establish compliance with statutory standards for termination of parental rights. V.A.M.S. § 211.447, subd. 2 *In Interest of M.H.*, 859 S.W.2d 888 (Mo.App.S.Dist. 1993) Court may reach issue of best interests of children only after one or more statutory grounds for parental rights termination have been determined to exist. V.A.M.S. § 211.447, subd. 2 *In Interest of T.S.* 925 S.W.2d 486 (Mo.App. E.D. 1996) In the first step of a proceeding to terminate parental rights, the court must consider whether the statutory termination grounds have been proven by clear, cogent, and convincing evidence V.A.M.S. § 211.447 *In re S.J.H.* 124 S.W.3d 63 (Mo.App. W.D. 2004) Order terminating parental rights was not supported by clear, cogent, and convincing evidence that conditions of potentially harmful nature continued to exist and that there was little likelihood that conditions would be remedied at early date so that children could be returned to her, despite evidence that mother did not complete all reunification service agreements; mother made significant progress in maintaining stable home and had refrained from engaging in criminal activity, she maintained substantial visitation with children and displayed loving relationship with children, she provided them with gifts for birthdays and Christmas, she was current on child support, she and was making effort to obtain GED in order to improve employment opportunities. V.A.M.S. § 211.447, subd. 4(3) Parental rights could not be terminated on the basis of abandonment where abandonment was not alleged in the petition nor included in the findings of the court *In Interest of W.F.J.* 648 S.W.2d 210 (Mo.App. W.D. 1983)

⁶ 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

The presumption of unfitness, which occurs when the parent's rights as to another child or other children have been involuntarily terminated, is rebuttable and can be overcome by evidence that the circumstances that led to the termination of the parent's parental rights in the other child no longer exist or that the parent is no longer unfit V.A.M.S. § 211.447, subd. 4(6) In reviewing termination of parental rights, Court of Appeals considers evidence and all reasonable inferences that may be drawn from it in light most favorable to judgment, and gives due regard for opportunity of juvenile court to judge credibility of witnesses. V.A.M.S. § 211.447, subd. 2 Juvenile court may terminate parental rights only if it finds that termination is in best interests of child and when it finds by clear, cogent and convincing evidence one or more statutory grounds for termination; evidence is "clear, cogent and convincing" when it instantly tilts scales in affirmative when weighed against evidence in opposition and fact finder's mind is left with abiding conviction that evidence is true. V.A.M.S. § 211.447, subd. 2

RESOURCES

Department of Social Services

221 West High Street, P.O. Box 1527 Jefferson City, MO 65102

573-751-4815

http://www.dss.mo.gov/pr_cs.htm

Division of Legal Services

Broadway State Office Building P.O. Box 1527 Jefferson City, MO 65102

573-751-3229

www.dss.mo.gov/dls/

Legal Services

Legal Services of Eastern Missouri Inc.

4232 Forest Park Avenue St. Louis, MO 63108

(800) 444-0514

www.lsem.org

Legal Services of Southern Missouri

2872 South Meadowbrook Springfield, MO 65807

(800) 444-4863

Legal Aid of Western Missouri

1125 Grand Avenue, 19th Floor Kansas City, MO 64106

(816) 474-6750

www.lawmo.org

Phone: (417) 673-5967
Carthage Head Start 1810 Baker Blvd. Carthage, MO
Phone: (417) 358-5598 or (417) 359-9168
Granby Head Start 550 Fortune Teller Road Granby, MO
Phone: (417) 472-7118
Noel Head Start 628 Johnson Drive Noel, MO
Phone: (417) 475-6450
Anderson Head Start 712 South 59 Hwy. Anderson, MO
Phone: (417)845-6644 or (417)845-8218

Child Care and Development Fund (CCDF)

The primary Federal program specifically devoted to child care 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 child care quality and availability.

http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06_07desc.doc

TANF (Temporary Aid to Needy Families) Funds

Missouri's TANF is called *Beyond Welfare*
Missouri Department of Social Services
PO Box 88
Jefferson City, MO 65103
Phone: (573) 751-3124
FAX: (573) 526-4837

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.⁸

⁸ <http://www.spdp.org/reprexpl.htm#mla>