

MONTANA

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HOW THE STATE CAN REMOVE CUSTODY

Statute: §§41-3-609; 41-3-423(2)-(3)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, failure to establish paternity, child judged in need of services/dependent, child's best interest, felony assault of child or sibling, murder/manslaughter of sibling child, voluntary relinquishment, conception result of rape, aggravated circumstances, a history of violent behavior by the parent.

Exceptions: Exceptions are as follows: 1) child being cared for by relative; 2) the department has not provided the services considered necessary for the safe return of the child to the child's home, or 3) the department has documented a compelling reason, available for court review, for determining that filing a petition to TPR would not be in the best interests of the child. Compelling reasons for not filing include but are not limited to: a) there are insufficient grounds for filing a petition; b) there is adequate documentation that TPR is not the appropriate plan and not in the best interests of the 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. Montana Code Annotated Section 40-5-159 (Action by a minor parent) thus sets forth that a minor parent or the 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

¹ National Center for State Courts' Knowledge and Information Services.

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 limited time only. 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.³ 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.⁴ 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.⁵ Finally, in negotiating with state or local bureaucrats, advocates should point out that as long as the parenting ward retains legal custody of the

² <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

³ *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)

⁴ 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.

⁵ 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

Montana law recognizes that parents facing termination of their parental rights must not be placed at an unfair disadvantage at any stage of a termination proceeding. *Matter of A.S.A.* (1993), 258 Mont. 194, 198, 852 P.2d 127, 129. This guarantee of fundamental fairness derives from Article II, § 17, of the Montana Constitution which guarantees that “[n]o person shall be deprived of life, liberty, or property without due process of law.” We must remember, however, that in proceedings where a youth is in danger of being neglected or abused, § 41-3-101(4), MCA, mandates that the health and safety of an infant be given paramount consideration. 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 re B.N.Y.* 317 Mont. 291, 77 P.3d 189 (Mont. 2003) Juvenile court did not make all required findings in parental rights termination case; court failed to make findings with respect to terms of social service plan entered into by parent and Division of Family Services (DFS) and extent to which parties had made progress in complying with those terms, and with respect to success or failure of efforts of juvenile officer, DFS or other agency to aid parent on continuing basis in adjusting his circumstances or conduct to provide proper home for child. § 211.447, subd. 2(3)(a, b) *Matter of Fisher*, 545 P.2d 654 Formerly 211k16.3 (Mont. 1976) Adversity, with regard to a parent's failure to obtain suitable housing and a decent job is not a basis on which a court may dissolve the family, absent a concrete showing that it is in best interest of children involved. R.C.M.1947, §§ 10-1300, 10-1301.

The party seeking to terminate parental rights must prove by clear and convincing evidence that the statutory criteria for termination have been met. MCA 41-3-609 In order to satisfy the statutory requirements for a termination of parental rights, a district court must make specific factual findings. MCA 41-3-609 In *In re D.B.*339 Mont. 240 (Mont. 2007) (1) mother was not required to rebut statutory presumption that termination of her parental rights were in the best interests of her children, though her children had been in foster care for 15 of the previous 22 months, and (2) district court abused its discretion by terminating mother's parental rights without addressing in its factual findings grounds required by statute for termination. District court abused its discretion by terminating parental rights of mother, who had mild to moderate cerebral dysfunction and whose treatment plan had been approved by district court less than six months prior to State filing petition to terminate her parental rights, without addressing in its factual findings, as required by statute, whether mother's treatment plan was appropriate and whether mother's condition was unlikely to change within a reasonable time. MCA 41-3-609(1f)

RESOURCES

Department of Public Health & Human Services

111 N Sanders PO Box 4210, Helena, MT 59604

<http://www.dphhs.mt.gov/index.shtml>

Montana Legal Services Association Billings Office

2442 1st Ave N Billings MT 59101-2317

General Phone: 406-248-7113

Fax: 406-252-6055

Intake Phone: 800-999-4941

Web Site: <http://www.montanalawhelp.org>

Organization Email: mlsa@mtlsa.org

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.⁶

Transitional or Independent Living Programs

Montana Dept. of Public Health & Human Services

P.O. Box 8005

1400 Broadway, C118 Cogswell Bldg. Helena, MT 59604-8005

Phone: (406) 444-5921

Fax: (406) /444-2547

Tumbleweed Program

3311 Ave. North Billings, MT 59101

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

Tumbleweed - MISSOULA

C/O CFSD
2677 Palmer ST, Suite 300 - 59801
Phone 329-1568 Jennifer
329-1544 Serena & Amber
Fax 329-1547

MFCIP – BLACKFEET

PO Box 850
Browning, MT 59417
Phone 338-5171
Fax 338-5660

MFCIP – CSKT

PO Box 278
Pablo, MT 59855
Phone 675-2700
Fax 275-2883

MFCIP – NORTHERN CHEYENNE

PO Box 128 Lame Deer, MT 59043
Phone 477-8321
Fax 477-8333

MFCIP – CHIPPEWA CREE/FT. BELKNAP

Box 544 Box Elder, MT 59521
Phone 395-4885
Fax 395-4889

ETV – Student Assistance Foundation

2500 Broadway Helena, MT 59601
Phone 495-7750
Fax 495-7780

Mother-baby Residential Facilities

Florence Crittenton Home and Services

901 Harris St. Helena, MT 59601

Phone: (406) 442-6950

Pregnancy Support Center of Kalispell

14 - 3rd St. East #3 Kalispell, MT 59901

Phone: (406) 752-3544

Note: This is a crisis pregnancy center, not a residential facility

Substance Abuse Health & Treatment Resources

Addictive and Mental Health Disorders Division, DPHHS

PO Box 202951, 1400 Broadway Helena, MT 59620-2951

Phone: (406) 444-1202

Phone: (406) 444-4435

<http://www.dphhs.state.mt.us>

Western Montana Regional Mental Health

1325 Wyoming Street Missoula MT,

Phone: (406) 532-9800

Mountain Home Montana

Addiction Group & Counseling as well as a range of transitional services. Established by Laura Snyder, who brought together \$54,000 and our first board of directors on October 1, 1998, and served as president of the board until 2003. In 1999, Bonnie Hamilton donated her family home to the program, establishing a legacy reflected in a place teen moms can really call home.

<http://www.mountainhomemt.org/about-history.html>

Watson Children's Center

2901 Fort Missoula Road Missoula, Montana 59804

Phone: (406) 549-0058

Phone: (406) 549-1072

Founded in 1977, Watson Children's Shelter is the only emergency shelter available for young children in Missoula and the entire western Montana region. Janice Watson opened her home, then known as Watson's Receiving Home, when the police and state child protection services had nowhere else to turn.

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NOTE: The information contained in this website is for general information purposes only, and should not be interpreted as legal advice. Each person's legal situation is unique and has its own set of facts and circumstances. You should always talk with a lawyer to get advice about your specific situation. This website provides you with contact information for various organizations and resources. The National Crittenton Foundation has no control over the nature, content and availability of resources or information offered by those organizations. The inclusion of contact information does not necessarily imply a recommendation or endorsement of the views expressed by those organizations.



Childcare Assistance

The Montana Afterschool Network is coordinated by the Montana Child Care Resource & Referral Network

A statewide coalition working to increase the availability and quality of afterschool programming statewide. It includes licensed child care programs, school-based and school-linked programs, youth development programs, mentoring and crime/drug abuse prevention programs.

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

TANF (Temporary Aid to Needy Families) Funds

Montana's TANF is known as *FAIM (Families Achieving Independence in Montana)*

Human & Community Services Division

Montana Department of Public Health & Human Services

1400 Broadway

PO Box 202952

Helena, MT 59560-2952

Phone: (406) 444-5901

FAX: (406) 444-2547

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.⁷

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