

NEBRASKA

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HOW THE STATE CAN REMOVE CUSTODY

Statute: §§43-283.01(4); 43-292; 43-292.02¹

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, 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, aggravated circumstances, lewd and lascivious behavior.

Exceptions: State may elect not to file petition if: 1) child being cared for by relative; 2) agency has documented in case plan a compelling reason against TPR; 3) family has not had a reasonable opportunity to avail themselves of services deemed necessary; 4) state shall not file a petition solely on grounds of: a) financial inability to provide health care for child, or b) parent is incarcerated. Court to hold hearing within 30 days after end of 15-month foster care period to determine whether any exceptions to TPR filing requirement apply. Agency must submit to court and county attorney names of children in foster care for 15 of most recent 22 months. Adopts ASFA definition of when child enters foster care.

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. Neb.Rev.St. § 42-715 (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

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



her baby after emancipation² 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. 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

The State cannot prove that termination of parental rights is in a child's best interests by implementing an unreasonable rehabilitative plan. Neb.Rev.St. § 43-292. *In re Interest of Aaron D.*, 691 N.W.2d 164 (Neb. 2005) The law does not require perfection of a parent in proceedings to terminate parental rights; instead courts should look for the parent's continued improvement in parenting skills and a beneficial relationship between parent and child. Neb.Rev.St. § 43-292. *In re Interest of Aaron D.*, 691 N.W.2d 164 (Neb. 2005) Termination should be used only as a last resort. Neb.Rev.St. § 43-292. *In re Anthony V.*, 680 N.W.2d 221 (Neb.App. 2004) In *In re Shelby L.* 270 Neb. 150 (Neb. 2005) the evidence was sufficient to support termination of a mother's parental rights upon grounds that the child had been out of the home for 15 of last 22 months, but the evidence was not sufficient to support termination upon grounds that reasonable efforts to preserve and reunify the family failed to correct conditions that led to adjudication of child as coming within jurisdiction of juvenile court; and the evidence did not support a finding that it was in the child's best interests to terminate mother's parental rights. Ultimately, although Shelby was in out-of-home placement for all that time, the court concludes that the State failed to prove by clear and convincing evidence that termination of Shawna's parental rights is in Shelby's best interests.

Termination based on the ground that a child has been in out-of-home placement for too long is not in a child's best interests when the record demonstrates that a parent is making efforts toward reunification and has not been given a sufficient opportunity for compliance with a re-unification plan. Neb.Rev.St. § 43-292(7). Evidence rather indicated that during the time child was in foster care, mother, on her own initiative, paid to take three parenting courses to improve her parenting skills, child's caseworker admitted that mother had followed through with therapy required by Dept of Health and Human Services (DHHS) and had been released from treatment, and evidence was un-controverted that mother and child were bonded and had positive interactions. *Id* Under the principle of parental preference, a court may not properly deprive a biological or adoptive parent of the custody of the minor child unless it is affirmatively shown that such parent is unfit to perform the duties imposed by the relationship or has forfeited that right. Neb.Rev.St. § 30-2608. *In re Guardianship of Brenda B.* 13 Neb.App. 618 (Neb.App. 2005) The mom filed application seeking to terminate a co-guardians' guardianship of her three biological children. The court of appeals held that denial of mother's application to terminate guardianship was not supported by clear and convincing evidence. *Id*. A guardianship is no more than a temporary custody arrangement established for the well-being of a child. *Id*. Appointment of a guardian is not a de facto termination (which results in a final and complete severance of the child from the parent and removes the entire bundle of parental rights). *In re Interest of Aaron D.*, 691 N.W.2d 164 (Neb. 2005)

RESOURCES

Department of Health & Human Services

P.O. Box 95026 Lincoln, NE 68509

402-471-9272

<http://www.hhs.state.ne.us/jus/jusindex.htm>

Legal Aid of Nebraska

1904 Farnam St., Suite 500 Omaha, NE 68102

877-250-2016; 402-348-1060

Nebraska State Bar Association Volunteer Lawyers Project

PO Box 81809 Lincoln, NE 68501-1809

General Phone: 402-475-7091

Fax: 402-475-7095

Intake Phone: 800-742-3005

Counties Served: Statewide

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

Nebraska Department of Health and Human Services

Division of Protection and Safety

301 Centennial Mall South

Lincoln, NE 68509-5044

Phone: (402)472-9211

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

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.



Christian Heritage Children's Homes

P.O. Box 245, Walton, Nebraska 68461

Phone: (402) 421-5437

Fax: (402) 421-5438

www.chchildrenshomes.org

CHCH is multi-service agency providing residential treatment for boys and girls ranging in age from 12 to 18. In addition, the agency provides Independent Living services for older teens and also foster care services. CHCH is licensed by the state of Nebraska and has locations in Lincoln, Kearney, Hickman, and Omaha.

Blue Valley Community Action Partnership

Serves families and communities in southeast Nebraska and north central Kansas by offering health, education, nutrition, and housing programs.

Central Nebraska Community Services

A non-profit organization that provides early childhood programs, health and nutrition services, and housing programs.

Community Action Partnership of Mid-Nebraska

Provides educational, employment, health, and housing programs for low income families.

Mother-baby Residential Facilities

Birthright of Broken Bow

741 South D - P.O. Box 13 Broken Bow, NE 68822

Phone: (308) 872-365

Toll Free: (800) 550-4900

AAA Crisis Pregnancy Center

9006 Ohio Omaha, NE 68134

Phone: (402) 390-9700

Substance Abuse Health & Treatment Resources

Nebraska Council to Prevent Alcohol and Drug Abuse

650 J Street, Suite 215 Lincoln, NE 68508
402-474-0930
<http://www.hhs.state.ne.us/>
<http://www.necouncil.org>
Contact: nebraskacouncil@navix.net

Nebraska State Asset Building Coalition

308-237-5113 ext. 224
<http://www.nebraskaassets.com>
Information and technical assistance through prevention centers throughout the state of Nebraska.

Childcare Assistance

Columbus Area Childcare Association

2459 E 12th Avenue Columbus, NE 68601
Phone: (402) 564-1527

Star Quality Child Care Association

3471 36th Avenue Columbus, NE 68601
Service Region: Columbus Area
Phone: (402) 563-0699
Email Address: itsdrozd@frontiernet.net
Eligibility Requirements: Licensed Providers
Purpose: A team of enthusiastic providers that love what we do & want the best for the children in our care. We will strive to give them the best home away from home.

TANF (Temporary Aid to Needy Families) Funds

Nebraska's TANF is called *Employment First*

Nebraska Department of Health & Human Services

PO Box 95044
Lincoln, NE 68509

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Phone: (402) 471-9241
FAX: (402) 471-9597

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>

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