

### NEVADA

#### Topics:

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§128.105; 128.106; 128.107; 128.109; 432B.393(3)<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, failure to establish paternity, 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, token efforts by parent(s), failure of parental adjustment, risk of harm if returned home.

### 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.

N.R.S. 130.302 (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 help to 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<sup>2</sup> 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.

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

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



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 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 Dissent in *Cooley v. Division of Child and Family Services of Nevada State* 113 Nev. 1191 (Nev. 1997) represents a scathing admonishment of certain termination decisions by the Nevada family courts :

<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

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I have had occasion to file dissents in termination of parental rights cases five times in the past fourteen months. In these dissents I have noted what appears to be a new public policy instituted by the State in these matters. The State's policy appears to have led to an escalating number of termination cases brought by the State, particularly with respect to parents who are poor or disabled. What strikes me as being most troublesome about the State's new policy is that termination of parental rights in each of the five mentioned cases in which I have dissented has been unnecessary and contrary to the best interest of the children as well as the parents. It is one thing to remove a child, in the child's best interest, from the home of poor or mentally disabled parents; it is quite another thing to sever the natural parents' rights just because the children have been placed in what state welfare officials see as a "better" home. In none of the five cases in which I have dissented has the court made a specific finding in accordance with *Champagne v. Welfare Division*, 100 Nev. 640, 652, 691 P.2d 849, 858 (1984), that "under no reasonable circumstances [can] the child's best interest be served by sustaining the parental tie." What the State seems to be doing, time after time, is simply weighing the new foster home against the home of the poverty-stricken or handicapped natural parents and pleading to the court that it is in the best interest of the child that the child be given some new parents. In at least some among the rash of recent termination cases I have been satisfied that the welfare of the children would probably be best served by permitting the children to remain for the time in the foster home, but this fact certainly does not justify severing all parental ties with the natural parents, forever. The present case presents perhaps the most pernicious example of the consequences of the State's new parental termination policy.

In this case, with no conceivable benefit to the mother or child, the State terminated the mother's parental rights. The consequence of the termination was that the child had a father but no mother. As in all of the other mentioned cases in which I have dissented, I find no advantage to the child that can result from the elimination of one of its parents. Permanently dissolving the mother-child relationship in this case because the mother was immature just happens to be the most horrible example of the excesses being engaged in by the State in the name of the "best interests" of children. Ms. Cooley, the former mother of the now-motherless child in this case, is not a vampire, she is just an immature teenager. We have here an unmarried teenage mother who loves her child but who was forced to give up custody of her child while she was struggling for existence in the grossly inadequate home of her mother. As I see it, we are witness in this case to the development of a new "virtual" ground for termination of parental rights. Added to the customary grounds of poverty and disability we now have the new judicially-created ground for termination, "immaturity." This mother was only fifteen when she gave birth to her daughter Christina; and, rather than give this teenage mother a chance to grow into a state in which she could have responsibly assumed the duties of motherhood, the State rushed to take her \*1202 motherhood away from her and, with the help of this court, has vested exclusive parenthood in the mother's teenage boyfriend, the father of the child.

The actual, stated grounds employed in this case and in the other poverty/disability cases that are of concern to me are not, of course, poverty and disability but, rather, euphemisms for poverty and disability, words like “abandonment,” “neglect,” and failure to provide “token efforts to support.” In her opening brief, this mother describes the grounds for termination used by the State against her as “boiler plate,” and I agree. In all of these cases the State contrives some kind of “abandonment” as a grounds for termination and attempts to show that the mother has failed to support her child and that, therefore, the parental relationship should be severed. I find it interesting that all of the legal grounds for termination pleaded by the State in this case are incidents of this mother's immaturity or her abject poverty; e.g., that she has not “even provided any token efforts to support Christina,” that she “has not provided emotional support for Christina,” that she “has not nurtured Christina,” and, most significantly, that she is “unable or unwilling to provide for Christina's proper physical ... development.” (State's Answering Brief at 8; my emphasis.) As is shown in the text, during most of the time after the birth of her child this mother was forced to live in squalid conditions of ground-down poverty. It is true that for a period of time neither Ms. Cooley nor her mother (with whom she and the child lived) were financially able to provide for the child, physically or otherwise. What I find to be wrong about this case is that the trial court adjudicated this mother to be permanently immature and poor, groundlessly predicting and ruling that she “will continue in the future to neglect Christina.” ( *Id.*) With particular reference to immaturity as a “ground” for termination, I note that the trial court made a specific “conclusion of law” that this mother caused “distress” to her child by reason of the mother's “immaturity, selfishness and indifference.” One of the principal witnesses for the State, Susan Hutchinson, Visiting Homemaker III, answered in the affirmative when she was asked if it was “[f]air to say that what you were dealing with was-well, immaturity, to a large extent?” Perhaps the majority is not, as it claims, “affirming termination ... based on [the mother's] immaturity”; still, it is clear to me that the trial court based its conclusion of law on “immaturity, to a large extent.”

Subsequent courts apparently agreed with at least some of this criticism of the Nevada family court; See for example, *In re Termination of Parental Rights as to N.J.* 116 Nev. 790 (Nev. 2000) A best interests/parental fault standard applies to termination of parental rights, under which the district court must always consider the best interests of the child in conjunction with a finding of parental fault; see also *In re Parental Rights as to D.R.H.* 120 Nev. 422, 92 P.3d 1230 (Nev. 2004), also overruling the majority opinion that terminated the parental rights in *Cooley*. Although the primary consideration in the decision to terminate parental rights is now the best interests of the child, the district court must also find at least one of the statutorily-enumerated factors for parental fault, which include abandonment of the child and unfitness of the parent. NRS 128.105. Termination of the parent-child relationship implicates fundamental liberty interests that are protected by the United States Constitution. Nevada's statutory termination scheme does not support termination of parental rights based solely on the duration of incarceration. NRS 128.106, subd. 6. In order to terminate parental rights, a petitioner must prove by clear and convincing evidence that termination is in the best interests of the child and must also establish parental fault. NRS 128.105. *In re Parental Rights as to C.J.M.*, 58 P.3d 188 (Nev. 2002)

## RESOURCES

### **Department of Health and Human Services**

4126 Technology Way, 3<sup>rd</sup> Floor Carson City, NV 89706

775-684-4400

<http://dcfs.state.nv.us/>

### **Nevada Legal Services**

530 South 6<sup>th</sup> Street Las Vegas, NV 89101

866-432-0404

### **Washoe Legal Services**

650 Tahoe Street Reno, NV 89509-1725

General Phone: 775-329-2727

Fax: 775-324-5509

Intake Phone: 775-329-2727

<http://www.washoelegalservices.org>

### **Volunteer Attorneys For Rural Nevadans (VARN)**

904 N. Nevada Street Suite B Carson City NV 89703

General Phone: 775-883-8278

Fax: 775-883-7211

Intake Phone: 775-883-8278

<http://www.varn.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.<sup>6</sup>

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

### Transitional or Independent Living Programs

#### **Nevada Division of Child & Family Services**

711 East Fifth Street Carson City, NV 89701-5092

Phone: (775) 684-4450

Fax: (775) 684-4457

Office: (775) 787-0402

Mobile: (775) 813-7424

561 Keystone Ave P.M.B 296 Reno, Nevada 89503-4331

info@24-7tlc.org

[www.24-7tlc.org](http://www.24-7tlc.org)

Founded in 1969, the Nevada Association of Latin Americans, Inc. (NALA) is the oldest multipurpose service agency primarily serving Hispanics in southern Nevada. Its mission is to foster assistance and concern in the Latin American community as well as on behalf of other disadvantaged people. It accomplishes this through programs that focus on day care preschool, teen substance abuse prevention, HIV/AIDS prevention, as well as Senior Center nutrition and transportation, job and food referrals, and English-as-a-Second-Language classes.

### Mother-baby Residential Facilities

#### **City of Refuge**

40 Miles South of Reno and just below Lake Tahoe Gardnerville, NV

Phone: (775) 782-2034

#### **Life Line Pregnancy Assistance Center**

3111 S. Valley View Blvd. E-120 Gardnerville, NV 89102

Phone: (702) 871-9803

### Substance Abuse Health & Treatment Resources

#### **Rural Health Outreach Grant Program**

Project Director

West Wendover City

P.O. Box 2530 West Wendover, NV 89883

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Phone: (775) 664-2081  
Fax: (775) 664-2244

### **Western Regional Center for Application of Prevention Technologies (CAPT)**

University of Nevada, Reno  
Mail Stop 279 Reno, NV 89557  
Phone: (775) 852-1281  
<http://www.westcapt.org>

### **State of Nevada - Department of Human Resources - Health Division - Bureau of Alcohol and Drug Abuse**

505 East King Street, Room 500 Carson City, NV 89710  
Phone: (775) 684-4190  
<http://www.health2k.state.nv.us/bada>

## **Childcare Assistance**

### **Children's Cabinet**

1090 S. Rock Blvd. Reno  
Phone: 856-6200  
Program helps pay for costs of childcare.

### **Early Head Start**

401 W. 2nd St. Reno  
Phone: 327-5100  
Services include home visits, screenings, support & referral, and childcare.

### **Washoe County School District Hug Early Learning Center**

2880 Sutro St; Reno  
Phone: 327-5631  
Childcare, parenting classes and support.

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

Eligibility & Payments  
Nevada State Welfare Division

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1470 East College Pkwy Carson City, NV 89706-7924  
Phone: (775) 684-0618  
FAX: (775) 684-0617

### **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.<sup>7</sup>

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