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### **NEW HAMPSHIRE**

### Topics:

How the State Can Remove Custody
What the Law Says About Separating A Mother From Her Baby
Applicable State Law
Resources

#### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§170-C: 5; 169-C:24-a1

<u>Grounds</u>: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, 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, 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.H. Rev. Stat. § 546-B:13 (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 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> 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.

 $\underline{/Teens\%20Aging\%20Out\%20of\%20Foster\%20Care\%20in\%20Oregon.pdf}$ 

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

<sup>&</sup>lt;sup>2</sup> http://www.jrplaw.org/Documents



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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. 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**

Even if their parenting skills are less than ideal, biological and adoptive parents are presumed to be fit parents as to child custody determination until they are found to be unfit pursuant to statutes governing

<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)

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<sup>&</sup>lt;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>&</sup>lt;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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abuse and neglect proceedings or termination of parental rights. RSA 169-C:1 et seg., 170-C:1 et seg., In re Jeffrey G. 153 N.H. 200 (N.H. 2006). Because parental rights are fundamental under the state constitution, the party seeking to terminate parental rights must prove the statutory ground for termination beyond a reasonable doubt. Const. Pt. 1, Art. 2; ?RSA 170-C:5. Before a court may order the termination of a parent's rights, the petitioning party must prove a statutory ground for termination beyond a reasonable doubt. RSA 170-C:5. In re William A., 705 A.2d 1196 (N.H. 1998) To terminate the relationship between a parent and child, a petitioner must not only prove a statutory ground for termination beyond a reasonable doubt, but also prove that termination is in best interests of child. RSA 170-C:5. The evidence did not support a determination that termination of the mother's parental rights would be in the child's best interest, in light of testimony by the guardian ad litem and other evidence that visitation with the mother was consistent with the child's best interests, that the stepmother supported visitation, that the mother had enhanced her ability to have a positive and supportive relationship with the child by enrolling in parenting class and furthering her education in other areas, that the mother was raising the child's half-brother, which would improve the mother's parenting skills, that the child was already living with the father and stepmother in a stable environment, and that the loss of contact with the natural mother could cause harm to child in the long term. RSA 170-C:4, subd. 1, 170-C:5, subds. 1, 2. ld.

In contrast, the foster teen mom trying to have a termination order vacated should distinguish her case from cases like *In re Jessica B.* 121 N.H. 291, 429 A.2d 320 (N.H. 1981). Although the court found that the rights of parents over their children are natural, essential, and inherent rights within the meaning of the State Constitution (const. Pt. 1, Art. 2) they held in favor of termination, and ruled that although the requirement that the court find specific harm to a child from association between parent and child is appropriate in termination proceedings based on neglect (where there is a serious danger of intervention to "save" children of low-income parents or minority cultures notwithstanding love and devotion of parents) such a finding of specific harm to child is not required prior to termination of parental rights based on abandonment. RSA 170-C:5, subds. 1-3. Here the young mom/natural mother made no attempt to communicate with her daughter for over two years, despite the fact that for much of the time mother lived within 30 miles of the home of the child and the child's guardians, the mother's abandonment of the child was established beyond a reasonable doubt even though the mother offered various reasons and excuses for the lack of communication. RSA 170-C:5, subd. 1. Id.



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### **RESOURCES**

CHILD WELFARE AGENCY: Dept of Health and Human Services, Division for Children, Youth & Families (DCYF)

Youth Services Center 1056 N River Road Manchester, NH 03104 (603)625-5471; (800)735-2964

## **Legal Services**

Legal Advice & Referral Center, Inc.

48 South Main St. Concord, NH 03301 (800)639-5290 www.larcnh.org

#### New Hampshire Pro Bono Referral Program

Primary Address: 112 Pleasant Street Concord NH 03301

General Phone: 603-224-6942

Fax: 603-224-2910

Intake Phone: 800-639-5290 Web Site: http://www.nhbar.org

Also, 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>

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



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## **Transitional or Independent Living Programs**

Department of Health and Human Services 129 Pleasant Street Concord, NH 03301-3857 Phone: (603) /271-4706

Fax: (603) 271-4729

#### YWCA Northern Rhode Island

514 Blackstone Street, Woonsocket, RI 02895 401-769-7450 www.ywcaofnri.org

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

## **Woman to Woman Support Network**

164 Broadway Newport, RI 02840 Phone: (401) 841-9211

### New Generation, Inc.

568 Portsmouth Ave. Greenland, NH 03840

Phone: (603) 436-4989

Email: newgen4989@newgenerationinc.org

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

#### **Phoenix Houses of New England**

Originally called Marathon House - was founded in 1967 by a coalition of social service professionals, clergy, business, and political leaders in Providence, Rhode Island. Today, some 2,500 adults and teenagers receive treatment each day through 30 programs in Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Go to http://www.phoenixhouse.org/NewEngland/ for latest event calendar and overview of services

#### Office of Alcoholism and Drug Abuse Prevention

State Office Park, South 105 Pleasant Street Concord, NH 603-271-6100 http://www.state.nh.us/dhhs/ofs/ofscstlc.htm

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#### **Childcare Assistance**

#### YWCA Northern Rhode Island

514 Blackstone Street, Woonsocket, RI 02895

Phone: (401) 769-7450 www.ywcaofnri.org

## TANF (Temporary Aid to Needy Families) funds

New Hampshire's TANF programs are known as FAP (Family Assistance Program)

### NHEP (New Hampshire Employment Program)

Division of Family Assistance New Hampshire Dept of Health & Human Services 129 Pleasant St. Concord, NH 03301-3857

Phone: (603) 271-4414 FAX: (603) 271-4637

### 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

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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

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