

NEW MEXICO

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HOW THE STATE CAN REMOVE CUSTODY

Statute: §§32A-4-28(B)-(E); 32A-4-2(C), (D); 32A-4-29(K)¹

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, child in placement for extended period, aggravated circumstances, child has developed relationship with substitute family, parent has caused death or injury to child's other parent, preference of 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.

N. M. S. A. 1978, § 40-6A-302 (Proceeding 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 ² Some foster teen moms 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 just 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.

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>



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 arguably 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 infant, failure to place the mother and child together will compromise the state's ability to receive federal reimbursement for the infant's care.

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

APPLICABLE STATE LAW

The foster teen should proceed with legal representation if she can. In theory, in New Mexico, terminating parental rights implicates rights of fundamental importance, and as such, the grounds for termination must be proved by clear and convincing evidence. For example, in *In State of N.M. ex rel CYFD v. Benjamin O.*, 160 P.3d 601 (N.M.App. 2007) before a court could terminate parental rights based on abuse or neglect, it had to find by clear and convincing evidence: (1) that the child was abused or neglected, (2) that the conditions and causes of the abuse and neglect were unlikely to change in the foreseeable future, and (3) that Children, Youth, and Families Department (CYFD) made reasonable efforts to assist the parent in adjusting the conditions which rendered the parent unable to properly care for the child. See *State ex rel. Children, Youth and Families Dept. v. Lilli L.*, 911 P.2d 884 (N.M.App. 1995) where a mother's parental rights could not be terminated on the basis of a finding of ongoing neglect; where the record failed to contain proof of ongoing child neglect because children had been in foster homes since they were removed from her and the Children, Youth and Families Department had concurred in the mother's request for admissions that children had not been neglected at any time subsequent to date on which trial on the merits began in proceeding to terminate parental rights. See also *Matter of Adoption of Doe*, 677 P.2d 1070 (N.M.App. 1984) Because of harshness of permanently terminating parental rights, there must be strict compliance with requirements of adoption statutes and proof of each element must be by clear and convincing evidence; moreover, parties seeking to perfect adoption must not have by their own conduct intentionally contributed to factors causing disintegration of parent-child relationship. NMSA 1978, § 40-7-4, subd. B.

RESOURCES

Children, Youth and Families Department

P.O. Drawer 5160 Santa Fe, NM 87502

Phone: (505) 827-7659

<http://www.cyfd.org/>

Legal Services

New Mexico Legal Aid

500 Copper NW, Suite 300 P.O. Box 25486 Albuquerque, NM 87125

Phone: (505) 243-7871

DNA-People's Legal Services, Inc.

709 N Butler Ave Farmington, NM 87401-6855

Phone: (505) 325-8886

Fax: (505) 327-9486

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.⁶

Transitional or Independent Living Program

Alamogordo United Futures

1815 N. Florida Avenue Alamogordo, NM 88310

Phone: (505) 430-8897

The Group Home serves both low-income elderly women capable of living independently and young women with their children.

New Mexico Children, Youth & Families Department

625 Silver Avenue SW, Suite 215 Albuquerque, NM 87102

Phone: (505) 841-4505

Fax: (505) 841-4520

The Teen Parent Residence

1750 Indian School Road, N.E. Apartment 109 Albuquerque, NM 87104

Phone: (505) 246-2497

The Teen Parent Residence is a referral-only home for 14 young mothers and their babies, aged 14-22. During the four and a half years the program has been running, 117 participants have gone through the program. Professionals provide counseling and training in health, nutrition, parenting skills, independent living, family planning, safety, child development, self-esteem building, and necessary life skills such as

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

budgeting and shopping. Each teen and her baby receive AFDC, Food Stamps, WIC, and Medicaid. Out of the AFDC money, the rent and utilities are paid as well as other basic requirements. Child care is provided by the Children, Youth, and Families Department during the day to allow the mothers to attend school. The program is maintained through state funding with community organizations providing furniture for the apartments and supplies for the project.

H.E.L.P. New Mexico

Exists to create self-sufficiency and provide economic opportunities to strengthen families throughout New Mexico. HELP-New Mexico (formerly the Home Education Livelihood Program, Inc) is a statewide community-based organization, a community action agency and a faith-based organization with over 42 years of experience providing community-based services. Headquartered in Albuquerque, HELP – New Mexico has over 200 staff in 35 offices and/or Head Start and Pre-Kindergarten Centers throughout New Mexico.

Mother-baby Residential Facilities

Chapparal Home & Adoption Center

1503 University Blvd. NE Albuquerque, NM 87111
Phone: (505) 243-2586

Mesilla Valley Pregnancy Center

845 Spruce La Cruces, NM 88001
Phone: (505) 523-9525

Substance Abuse Health & Treatment Resources

Substance Abuse Bureau, Behavioral Health Services Division

1190 St. Francis Drive, Harold Runnels Bldg., Room N3200 Santa Fe, NM 87502

Childcare Assistance

FAAP

1418 Luisa St, Suite 5 Santa Fe, NM 87505-4091
Phone: (505) 988-8024
Fax: 505-984-8967

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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.

Liaison between the National American Academy of Pediatrics and all State Early Education and Child Care activities

TANF (Temporary Aid to Needy Families) Funds

New Mexico's TANF is called NM Works
Director, Income Support Division
New Mexico Human Services Department
PO Box 2348 Santa Fe, NM 87504-2348
Phone: (505) 827-7245
FAX: (505) 827-7203

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/AFS (Adult and Family Services) or other

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

The Extended Medicaid Option is not available for foster youth who choose to remain in foster care till the age of 21.

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