

NORTH CAROLINA

Topics:

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

HOW THE STATE CAN REMOVE CUSTODY

Statute: §§7B-101(2); 7B-1111¹

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, failure of reasonable efforts, abuse/neglect or loss of rights of another child, 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, child willfully left in foster care, aggravated circumstances.

Exceptions: State may elect not to file petition if: 1) the permanent plan for the juvenile is guardianship or custody with a relative or some other suitable person; 2) court makes specific findings why TPR not in best interests of child; 3) the department has not provided services deemed necessary for the safe return 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. North Carolina General Statutes § 52C-3-302 (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.

Some DSS attorneys and staff in North Carolina report that their agency always asks the court for custody of both children, on the theory that the younger child is dependent because her custodial parent is. Foster parents may be more comfortable caring for mother and child if DSS has custody of both and the availability of some resources may depend on who has custody.

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

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.⁶ 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.

To qualify for federal help with foster care and adoption expenses, every state must agree to make "reasonable efforts to preserve and reunify families." 42 U.S.C. § 671(a)(15)(B)(2001 Supp.). Thus, North Carolina provides that to justify DSS custody a court must find that it is not in the child's best interest to be with a parent. The statute refers to the child's "own home." For a child whose parent is in DSS custody this would mean in the same foster care placement as the parent. G.S. 7B-507. Placing a child and parent separately would seem to violate this requirement. DSS must try to keep a child with a parent unless a parent has subjected a child to "abandonment, torture, chronic abuse . . . sexual abuse" or similar aggravated circumstances or committed serious crimes against others. 42 U.S.C. § 671(a)(15)(D)(2001 Supp.). Moreover, the federal government clearly expects some minor parents in foster care to have their children with them since it is willing to compensate states for the additional expense of the younger child—whether or not DSS has custody of the younger child. "In cases where (i) a child placed in a foster family home or child-care institution is the parent of a son or daughter who is in the same home or institution, and (ii) payments . . . are being made under this part with respect to such child, the foster care maintenance payments made with respect to such child . . . shall also include such amounts as may be necessary to cover the cost of the items . . . with respect to such son or daughter." 42 U.S.C. § 675(4)(B)(2001 Supp.). See also 45 C.F.R. 1356.21(j).⁷

⁶ 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
⁷ <http://www.sog.unc.edu/programs/app/pdf/appbook2.pdf>

RESOURCES

Department of Health & Human Services

2401 Mail Service Center, Raleigh, NC 27699; Albermarle Building, 325 N. Salisbury St., Raleigh, NC 27699

Phone: (919) 733-3055

<http://www.ncdhhs.gov/>

Legal Services

Legal Aid of North Carolina Inc.

224 South Dawson Street P.O. Box 26087 Raleigh, NC 27611

919-856-2564

www.legalaidnc.org

Wake County Volunteer Lawyers Program Legal Aid Of North Carolina

Primary Address: PO Box 1731 Raleigh, NC 27602-1731

General Phone: 919-828-4647 ext. 222

Fax: 919-838-8370

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

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.⁸

⁸ <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>

