

### 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-1111<sup>1</sup>

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.

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



For these or other reasons, DSS custody of the younger child may be justified, but it does add a significant complication for the mother. When leaving foster care herself, she must leave the child behind until DSS is satisfied that she can provide an acceptable level of care.<sup>2</sup>

North Carolina law apparently does not resolve the issue definitively and practice within the state varies. However, most DSS agencies place mother and child together in foster care if the young parent wants it, seems to be a fit parent, and if DSS can find an appropriate home that will accept both children. This would seem to be the practice most consistent with state and federal law.

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 her baby after emancipation<sup>3</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 childcare, 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.<sup>4</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>5</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

<sup>2</sup> <http://www.sog.unc.edu/programs/app/pdf/appbook2.pdf>

<sup>3</sup> <http://www.irplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>

<sup>4</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>5</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.

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>6</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.

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).<sup>7</sup>

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<sup>6</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  
<sup>7</sup> <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](http://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.<sup>8</sup>

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

### Transitional or Independent Living Programs

#### **North Carolina Division of Social Services**

MSC 2408  
 325 N. Salisbury Street  
 Raleigh, NC 27699-2408  
 Phone: (919) 733-4622  
 Fax: (919) 715-6714

#### **Grace Haven Ministries**

Graham, NC  
 Phone: (919) 663-1515  
 E-Mail: [info@gracehavenministries.org](mailto:info@gracehavenministries.org)  
 Web Site: [www.gracehavenministries.org](http://www.gracehavenministries.org)

Grace Haven Academy is a Christian boarding school located in rural, central North Carolina on a 50 acre campus. GHA serves homeless and at-risk youth as well as pregnant teens. Alpha/Omega Christian School Curriculum, a programmed academic course is used in the educational program. L.I.F.E. Curriculum is used in group devotions and Bible study.

#### **Residential & Support Services Inc.**

4425 Randolph Road  
 Suite 400 Charlotte, NC 28211  
 Phone: (704) 536-6661  
 Fax: (704) 536-0074

### Mother-baby Residential Facilities

#### **Boone Crisis Pregnancy Center**

P.O. Box 3316 Boone, NC 27216  
 Phone: (910) 584-4444

#### **Birthright of Hendersonville**

317 N. Washington St  
 P.O. Box 1686 Hendersonville, NC  
 Phone: (800) 550-4900  
 Fax: (704) 692-7935

### **Florence Crittenton Services**

P.O. Box 36392 Charlotte NC 28236  
Phone: (800) 448-0024

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

#### **Residential & Support Services Inc.**

4425 Randolph Road Suite 400 Charlotte, NC 28211  
Phone: (704) 536-6661  
Fax: (704) 536-0074

#### **Childcare Assistance**

Liaisons between the National American Academy of Pediatrics and all State Early Education and Child Care activities are listed below. For more information contact [childcare@aap.org](mailto:childcare@aap.org) or:

FAAP (CCCC-Alternate)  
8800 Hometown Dr  
Raleigh, NC 27615-3141  
Phone: 919-872-0250  
Fax: 919-876-2378

FAAP (CCCC-Alternate)  
2322 Byrd St  
Raleigh, NC 27608-1412  
Phone: 919/510-8463

#### **Residential & Support Services Inc.**

4425 Randolph Road  
Suite 400  
Charlotte, NC 28211  
Phone: (704) 536-6661  
Fax: (704) 536-0074

#### **Child Care and Development Fund (CCDF)**

The primary Federal program specifically devoted to child care services and quality. It enables low-income parents and parents receiving Temporary Assistance for Needy Families (TANF) to work or to

participate in the educational or training programs they need in order to work. Funds may also be used to serve children in protective services.

[http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06\\_07desc.doc](http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06_07desc.doc)

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

North Carolina's TANF is known as Work First  
TANF Director  
North Carolina Department of Health & Human Services  
2401 Mail Service Center  
Raleigh, NC 27699-2401  
Phone: (919) 733-3055  
FAX: (919) 733-9386

### **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>9</sup>

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<sup>9</sup> <http://www.spdp.org/reprexpl.htm#mla>