



## NORTH DAKOTA

### Topics:

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§27-20-02(3); 27-20-20.1(2)-(4); 27-20-44(1)<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, 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, aggravated circumstances, voluntary relinquishment.

Exceptions: A petition for TPR need not be filed if: 1) the child is being cared for by a relative approved by the department; 2) the department has documented in the case plan a compelling reason for determining that filing such a petition would not be in the child's best interests and has notified the court that the documentation is available for review. (compelling reason means a recorded statement that reflects consideration of a) the child's age; b) the portion of the child's life spent living in the house hold of a parent of the child; c) the availability of an adoptive home suitable to the child's needs; d) whether the child has special needs; and e) the expressed wishes of a child age ten or older); 3) the department has determined: a) reasonable efforts to preserve and reunify the family are required; b) the case plan provides such services are necessary for the safe return of the child; c) such services have not been provided consistent with the time periods described in the case plan.

### 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 Dakota Century Code Section 14-12.2-14 (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 ensure that teen parents are not forced to sign

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



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.

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

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

<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

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 court cannot irrevocably sever parent's relationship with biological child without first granting parent certain procedural protections afforded by due process. U.S.C.A. Const.Amend. 14. Mother's nonappearance at trial did not entitle trial court to treat proceeding to terminate mother's parental rights as default and to terminate parental rights without any evidentiary support in record; mother had appeared in proceeding, counsel had been appointed to represent mother, procedural requirements for taking judicial notice of prior proceedings had not been met, and due process required clear and convincing evidence before parental rights could be terminated. *In re J.C.* 736 N.W.2d 451 (N.D. 2007) Absent a showing that causes and conditions of deprivation were likely to continue, termination was improper. *In Interest of R. H.* 262 N.W.2d 719 (N.D. 1978) Before parental rights may be terminated, three separate and distinct findings must be made: (1) that the child is deprived; (2) that the causes and conditions of deprivation are likely to continue or will not be remedied and (3) that by reason thereof the child is suffering or will probably suffer serious physical, mental, moral or emotional harm; each of such fact-findings must be supported by clear and convincing evidence NDCC 27-20-02, subd. 5, par. a, 27-20-44, subd. 1, par. b To comply with due process and statutory requirements, a petition seeking the termination of parental rights must do more than merely state the statutory language justifying termination of parental rights or the definition of a deprived child; rather, the petitioner must provide specific facts the petitioner will rely on to terminate the parental rights so that the respondent parent has notice and is able to meaningfully prepare a defense against the petition. U.S.C.A. Const. Amend. 14; NDCC 27-20-02(8), 27-20-21, 27-20-44 A deprived child is one who "is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, or morals, and the deprivation is not due primarily to the lack of financial means of his parents, guardian, or other custodian." Section 27-20-02(5)(a), NDCC. On appeals from orders of the juvenile court we give appreciable weight to the findings of the juvenile court but we also make a broad review from "the files, records, and minutes or transcript of the evidence." Section 27-20-56, NDCC

## RESOURCES

### **Department of Human Services**

600 East Boulevard Ave., Dept 325 Bismark, ND 58505  
701-328-3480  
<http://www.nd.gov/dhs/>

### **Legal Services of North Dakota, Inc.**

1025 Third Street North P.O. Box 1893 Bismark, ND 58502  
800-634-5263  
[www.legalassist.org/tree/land\\_tree.asp](http://www.legalassist.org/tree/land_tree.asp)

**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>

## Transitional or Independent Living Programs

### **PATHinc.org**

Headquarters: 9766 Fallon Ave., Suite 104, Monticello, MN 55362  
Phone: (763) 271-1670  
Fax: 763-271-1677

### **North Dakota Department of Human Services**

Children and Family Services Division  
600 E. Boulevard Avenue 3rd Floor - Judicial Wing Bismarck, ND 58505  
Phone: (701) 328-4934  
Fax: (701) 328-3538

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



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

#### **Women's Pregnancy Center**

11 S. 4th #210 Grand Forks, ND 58201  
(701) 746-8866

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

#### **Center for the Application of Prevention Technologies**

Central Region  
Minnesota Institute of Public Health  
2720 Highway 10 Mounds View, MN 55112  
Phone: (800) 782-1878  
[www.ccapt.org](http://www.ccapt.org)

### **Childcare Assistance**

#### **National Infant & Toddler Child Care Initiative**

##### **ZERO TO THREE**

2000 M Street, N.W. Suite 200 Washington, D.C. 20036-3307  
Phone: (202) 857-2673  
Fax: (202) 638-0851  
Email: [itcc@zerotothree.org](mailto:itcc@zerotothree.org)  
Web: <http://nccic.org/itcc>

North Dakota uses four Infant/Toddler Specialists and four Child Care Health Consultants/Nurses in each of the CCR&Rs. They provide training, technical assistance and consultation for centers and family child care homes. The specialists use environment rating scale assessments in child care programs.

#### **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.  
[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 Dakota's TANF is known as TEEM (Training, Employment, Education Management)

Director, Public Assistance  
North Dakota Department of Human Services  
State Capitol - Judicial Wing  
600 East Boulevard Ave.  
Bismarck, ND 58505-0250  
Phone: (701) 328-1715  
FAX: (701) 328-1060

### 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>

As of October of 1999, at least seven states (Arkansas, California, Delaware, North Dakota, Ohio, Utah, and Vermont) were providing some type of monetary bonus as an incentive for teen parents to attend school, progress to the next grade, and/or graduate. This is in line with TANF's new school/training requirement. TANF's other new requirement is the living arrangement requirement.

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