

## OREGON

### Topics:

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§419B.500; 419B.502; 419B.504; 419B.506; 419B.508

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, child's best interest, felony assault of child or sibling, murder/manslaughter of sibling child, single or recurrent incident of extreme conduct toward the child, criminal conduct of parent, identity or location of parent(s) unknown, exposure to methamphetamines.

### 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. O.R.S. § 110.345 (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 attempt to 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>1</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 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.

<sup>1</sup> <http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf>



There is a significant risk that custody will be taken away if the foster teen has the baby while in foster care. There are two outcomes: One, she might become the custodial parent of the baby, and the baby will stay with her in her current placement. Two, her caseworker files a petition to have the baby become a dependent of the court. If this happens, the baby may stay with the foster teen in her placement (under the official care of her foster parents) or it may be put in a completely separate placement. If the teen's baby is placed separately from her, she will only have 12 short months to do what is required to get the baby back, or risk having the baby placed for adoption. If DHS files a petition, she'll be able to get an attorney to represent her as the parent. The teen mom does not need her foster parent's consent to put the baby up for adoption, and voluntary adoption requires the consent of both parents of the new baby.<sup>2</sup>

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/Julie%20teenrights%20book.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**

Some teen moms are able to retain counsel and have a termination order vacated. The standard of proof is by clear and convincing evidence. *State ex rel. Dept. of Human Services v. Lee*, 96 P.3d 823 (Or.App. 2004) Clear and convincing evidence did not show that mother's parental rights should be terminated for her unfitness; home where mother and children stayed was adequate and mother was eligible for subsidized housing and had taken steps to obtain it, mother was eligible for government assistance and was expected to begin job program, although mother was often late for or missed appointments she demonstrated parenting and housekeeping skills, experts believed behavioral therapy might be helpful for mother's diagnosed personality disorder, and there was no evidence of abuse or neglect. West's Or.Rev. Stat. Ann. §§ 419B.500, 419B.504. Courts apply a two-part test for determining whether to terminate parental rights on the ground of unfitness: first, state must prove by clear and convincing evidence that parent is presently unfit by reason of conduct or condition seriously detrimental to child and that integration of child into parent's home is improbable within a reasonable time, and if so, second question is whether termination is in child's best interest. West's Or.Rev. Stat. Ann. §§ 419B.500, 419B.504. The Department of Human Services (DHS) petitioned to terminate mother's parental rights to two of her children on ground that mother was unfit. The Circuit Court denied petitions. DHS appealed. The Court of Appeals held that clear and convincing evidence did not show that mother was unfit. The unfitness standard was applied in *State ex rel. State Office for Services to Children and Families v. Stillman*, 1 P.3d 500 (Or.App. 2000) where the court points out that the statute authorizing termination of parental rights based on parental unfitness requires trial court to determine whether that parent is presently unfit by reason of conduct or condition that is seriously detrimental to the child, and whether that conduct or condition makes it improbable that the child can be integrated into the parent's home within a reasonable time; if the parent is presently unfit and integration is not probable within a reasonable time, the final question is whether termination is in the child's best interests. ORS 419B.504. State Office of Services to Children and Families (SCF) petitioned to terminate the father's parental rights. The Circuit Court granted the petition. The father appealed. The Court of Appeals held that neither the father's incarceration nor the possibility of the father's relapse into drug abuse provided clear and convincing evidence that the father was presently unfit to parent children. *Matter of Wyatt* 34 Or.App. 793 (Or.App. 1978). Mother appealed from order of the Circuit Court, Multnomah County, Harlow F. Lenon, J., terminating her parental rights in her daughter. The Court of Appeals, Gillette, J., held that evidence that mother had an "antisocial personality" and was more likely than the average person to be abusive to her child some day could not serve as basis for terminating parental rights.

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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.

## RESOURCES

### Dept of Health & Human Services

500 Summer St. NE E62 Salem, OR 97301-1067

503-945-5651

<http://www.oregon.gov/DHS/children/fostercare/>

### Legal Aid Services of Oregon

921 SW Washington, Suite 570, Portland, OR 97205

503-224-4094

[www.lasoregon.org](http://www.lasoregon.org)

**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 Living or Independent Living Programs**

<http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf> Detailed Guide to Aging out of Foster Care in Oregon

[http://www.oregon.gov/DHS/children/contact\\_us.shtml](http://www.oregon.gov/DHS/children/contact_us.shtml)

DHS offers four programs for helping youth achieve independence. They are the *Independent Living Program (ILP)*, the *Independent Living Subsidy Program (ILSP)*, the *Chafee Housing Program* and the *Education and Training Voucher Program (ETV)*.

[http://www.oregon.gov/DHS/children/fostercare/ind\\_living/ilp.shtml#services](http://www.oregon.gov/DHS/children/fostercare/ind_living/ilp.shtml#services)

The ILP provides training and classes to prepare youth to live independently.

The ILSP & Chafee Housing programs can provide funds to assist youths with room and board expenses, if they qualify.

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

The ETV can provide funds to assist youth with post-secondary education or training. Services may vary depending on the resources available in your local area. Education and Training Voucher Program (ETV) checklist: Is the youth between the ages of 14 and 20? Currently in foster care or was in foster care for at least 180 days after the age of 14? For more information about Independent Living Programs contact:

### **Independent Living Programs**

500 Summer Street NE, E76  
Salem, OR 97301-1017  
503-945-6619

### **DHS - Independent Living Program, E76**

ILP Fiscal Coordinator  
500 Summer Street NE  
Salem, OR 97301-1069  
Phone: (503) 945-5688  
Fax: (503) 945-6969 [http://www.oregon.gov/DHS/children/fostercare/ind\\_living/ilp.shtml](http://www.oregon.gov/DHS/children/fostercare/ind_living/ilp.shtml)

### **Rural Health Outreach (Gold Beach, Oregon)**

Health promotion and disease prevention  
Youth Networking and collaboration

The project was established to ensure local health care coverage for residents of remote North Curry County. The project's overriding mission was to stabilize the local clinic while providing health promotion and prevention opportunities in the core areas of heart, breathing, cancer, and diabetes. Project partners included Curry General Hospital, North Curry Family Center, Curry Family Medical Clinic, Curry County Health Department, and Port Orford Community Ambulance Services. Services offered: The grant funded a variety of services to the community, which were predominantly prevention oriented. These included women and men's health screenings, diabetes screenings and education, a Youth Health Fair, school health screenings, blood pressure screenings, home visits to families with newborns, equipment for health care providers, subsidies for physician salaries, several "Walk On!" health promotion events, dances, and hikes.

## **Mother-baby Residential Facilities**

### **Birthright of Bend**

950 SE 3rd Bend, OR 97702  
(800) 550-4900  
(541) 382-5505

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### **Corvallis Pregnancy Care Center**

867 NW 23<sup>rd</sup> St. Corvallis, OR 97330  
Phone: (541) 757-9645

### **White Shield Center (A member of the Crittenton Family of Agencies)**

2640 NW Alexandra Ave. Portland, OR 97210  
Phone: (503) 239-1248

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

### **Oregon Partnership**

6443 SW Beaverton-Hillsdale Hwy Suite 200 Portland, OR 97221  
503-244-5211  
www.orpartnership.org  
The Oregon affiliate of National Family Partnership

### **Oregon Prevention Resource Center**

555 24th Place, NE Salem, OR 97310  
503-378-8000

### **Best Care Treatment Services**

461 NE Greenwood Street Suite A Bend, OR 97701

## **Childcare Assistance**

Here are the 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**

1675 SW Marlow Ave, Suite 204 Portland, OR 97225-5102  
Phone: 503-672-7857

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**

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.

For full explanation of benefits under Oregon's TANF, go to the DHS's Family Services Manual online:  
[http://www.dhs.state.or.us/policy/selfsufficiency/em\\_firstpage.htm](http://www.dhs.state.or.us/policy/selfsufficiency/em_firstpage.htm)

### **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.<sup>7</sup>

According to the Oregon Office of Rural Health there are 58 acute care hospitals in the state with 29 of these being identified as rural hospitals. Twenty-five of the rural hospitals are designated as Critical Access Hospitals. Also, there are 44 Rural Health Clinics in Oregon, and 21 Federally Qualified Health Centers provide services at 131 sites in the state.  
[http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06\\_07desc.doc](http://www.acf.hhs.gov/programs/ccb/ccdf/ccdf06_07desc.doc)

According to the Center for Law and Social Policy, Early Head Start programs can facilitate relationships in the medical community and help provide information to teen parents about the medical needs of their children with disabilities. Teen parents of children with disabilities are likely to experience the health care

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

system more acutely than other parents—they may be in more situations requiring parental decision making, and they may face specific issues around consent that adult parents do not encounter. The legal ambiguity resulting from a teen's age can be difficult. While teens may legally be empowered to make medical, educational, and mental health decisions (related to disability) for their children, they may not legally be able to do so for themselves. The same legal ambiguity can affect the teen's lack of knowledge about a child's disabilities in general. Teens' lack of knowledge is sometimes due to the fact that they are not the primary caregivers, at least not for the purposes of medical attention

The publication: [http://www.clasp.org/publications/faq\\_tanf\\_repro\\_health.pdf](http://www.clasp.org/publications/faq_tanf_repro_health.pdf) provides some answers to frequently asked questions about how to use TANF funds for pregnancy prevention and teen parent services. The paper addresses the purposes for which TANF can be used, what TANF cannot pay for, the population that can be served, and numerous other TANF issues that pertain to teen parents. (Levin-Epstein, J. (1999) Frequently Asked Questions: Tapping TANF for Reproductive Health or Teen Parent Initiatives. Center for Law and Social Policy).