

PENNSYLVANIA

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: 25 Pa. §§2501(a); 2511(a), (b); 42 Pa. §6302 ¹

Grounds: Abuse/neglect, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, failure to establish paternity, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, conception result of rape, voluntary relinquishment, identity or location of parent unknown, presumptive father not the natural father, aggravated circumstances.

WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FROM HER BABY

In proceedings to involuntarily terminate parental rights, the burden of proof is upon the party seeking termination to establish by clear and convincing evidence existence of grounds for doing so. *In re E.M.*, 620 A.2d 481 Pa.,1993 Although there was evidence that mother had been unable to provide proper care for her children, her parental rights could not be involuntarily terminated without consideration of emotional bond she had with children. *Id. In Interest of C. M. E.*, 448 A.2d 59 (Pa.Super. 1982)(Evidence of parent's limited intellectual ability and of half-hearted attempt to remedy her parenting deficiencies was insufficient to terminate her parental rights. 23 P.S. § 2511(a)(2)) *In re T.F.*, 847 A.2d 738 (Pa.Super. 2004)(Trial court failed to adequately address the effect that termination of mother's parental rights would have on the emotional needs and welfare of the children, and thus evidence did not support termination of mother's parental rights; there was no discussion of a bond, or lack thereof, between mother and the children, and there was no evidence regarding the effect that termination would have on each individual child, the health of the children, their schooling, or whether the children were content in their surroundings. 23 Pa.C.S.A. § 2511(a)(1, 2, 5, 8), (b)). *Matter of Adoption of K.S.C.* 309 (Pa.Super. 550 (Pa.Super. 1983) (Parent appealed from final order of the Common Pleas Court involuntarily terminating her parental rights. The Superior Court held that: (1) there was insufficient evidence to support termination on basis that condition which led to removal of child continued to exist and parent could not

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

or would not remedy condition, and (2) trial court should have used clear and convincing evidence standard of proof in determining termination of parental rights necessitating remand.) *In re C.P.*, 901 A.2d 516 (Pa.Super. 2006)(Evidence did not support finding that termination of mother's parental rights would promote needs and welfare of child; neither licensed psychologist or social worker adequately examined the strength of bond between mother and child and the effect that termination of that bond would have had on child. 23 Pa.C.S.A. § 2511(b)) *J.H. v. E.D.W.*, 452 A.2d 725 (Pa.Super. 1982)(Record, which consistently revealed two seemingly unrelated accounts of parents' relationship with their child, contained insufficient evidence to justify termination of parental rights under Adoption Act. 23 Pa.C.S.A. § 2101 et seq.)

As long as the birth mother takes care of the child, she has full parental rights as the birth mother. *The infant cannot be placed in foster care just because the teen mom herself is in foster care.* All parents, including teen parents, have the right to seek custody or visitation of their children. In Pennsylvania, however, a minor cannot *file* for custody on his or her own. To file for custody a minor parent must file through an adult guardian.² The guardian must be over the age of 18, must accompany the minor party to all court proceedings, and must sign all court documents along with the minor parent. Even though the guardian files the custody petition it is still the minor who is seeking custody. The guardian does not have to be a caretaker to or have legal rights as a parent or guardian to the minor parent filing for custody. The guardian can be a family friend or social worker. The cost to file a custody petition is \$57, and filing an emergency petition is an additional \$30. If you cannot afford the filing fee, you may ask for a fee waiver by filing a petition to proceed In Forma Pauperis (IFP). If you ask to waive the fee, you must show proof of income. If the teen mom remains in foster care or is receiving welfare or SSI, she must bring proof of this.

It further appears that 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. Interstate Family Support: 23 Pa.C.S.A. § 7302 (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. Intrastate Family Support; See Also Intrastate Family Support: 23 Pa.C.S.A. § 8302 (Action by minor parent).

Legal custody is most often defined as the power to make legal decisions regarding the care and maintenance for the child, and 35 P.S. § 10102 (Consent for children with minor parents) sets forth that any minor who has been married or has borne a child may give effective consent to medical, dental and health services for his or her child.

² <http://www.clsphila.org/files/Teen%20Parents%20CustodyFactSheet.pdf>

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.

RESOURCES

Department of Public Welfare

717-787-4592

<http://www.dpw.state.pa.us/About/ContactDPW/>

Legal Resources

Philadelphia Legal Assistance Center

42 South 15th Street Suite 500 Philadelphia, PA 19102

(215) 981-3800

www.philalegal.org

MidPenn Legal Services

213-A North Front Street Harrisburg, PA 17101

(717) 232-0581

www.midpenn.org

Neighborhood Legal Services Association

928 Penn Avenue Pittsburgh, PA 15222-3799

(412) 255-6700

www.nlsa.us

North Penn Legal Services

65 Elizabeth Avenue Suite 800 Bethlehem, PA 18018

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

(800) 982-4387

www.northpennlegal.org

Southwestern Pennsylvania Legal Services Inc.

10 West Cherry Avenue Washington, PA 15301

(800) 846-0871

www.swplsconsortium.org

Northwestern Legal Services

Renaissance Centre, Suite 1200 1001 State Street Erie, PA 16501-1833

(800) 665-6957

www.nwls.org

Legal Aid of Southeastern Pennsylvania

625-627 Swede Street Norristown, PA 19401

(610) 275-5400

www.lasp.org

Laurel Legal Services Inc.

306 South Pennsylvania Avenue Greensburg, PA 15601-3066

(800) 253-9558

<http://wpalaw.org/>

Transitional Living or Independent Living Program

Department of Public Welfare

Office of Children, Youth and Families

P.O. Box 2675

Harrisburg, PA 17105-2675

Phone: (717) 705-2911

Fax: (717) 703-0364

ARIN Pregnant & Parenting Teen Program

Indiana, PA 15701

(724) 463-5300

Greater Johnstown Career and Technology Center - Teen Parenting Program

Johnstown, PA 15901

(814) 266-6073

New Beginnings Teen Pregnancy and Parenting Program

Langhorne, PA 19047

(215) 750-2800

Teen Parenting Program - Greater Johnstown School District

Johnstown, PA 15901

(814) 533-5538

Teen Pregnancy & Parenting Program

Mount Union, PA 17066

(814) 542-2501

WASHINGTON COUNTY

150 West Beau Street Suite 304, Washington, PA 15301

(724) 225-9550

GREENE COUNTY

58 East Greene Street Waynesburg, PA 15370

(724) 852-2893

Mother-baby Residential Facilities

Alpha Pregnancy Services

1417 Spruce St. Philadelphia, PA 19102

(215) 545- HOPE

(215) 735-6028

Crossroads Problem Pregnancy Services

109 E. 3rd St. Lewistown, PA 17044

Phone: (717) 242-0301

Youth Service, Inc. (A member of the Crittenton Family of Agencies)

6325 Burbridge Philadelphia, PA 19144

Phone: (215) 222-3262

Substance Abuse Health & Treatment Resources

PYT is an initiative of SAMHSA (the Federal Substance Abuse and Mental Health Services Administration) focusing on developing transition service systems for youth with behavioral or emotional difficulties (2002-2006). PYT projects are in ME, PA, MN, UT, and WA. The National Technical Assistance Center for Youth Transition at the University of South Florida coordinates PYT Project activities and evaluation. On this web site, learn more about the PYT initiative and individual projects and access an extensive collection of web links, e-newsletters, and other publications ntacyt.fmhi.usf.edu

The Mid-Atlantic Network of Youth & Family Services

A non-profit membership association of youth service organizations in Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia.
135 Cumberland Road Suite 201 Pittsburgh PA 15237
Ph: 412.366.6562
Fax: 412.366.5407
Email: many@manynet.org

Childcare Assistance

The following childcare assistance programs have been recognized as exhibiting best practices by The Pregnant and Parenting Teen Initiative (Go to <http://www.center-school.org/education/ppt/pptchild.htm#childcare>)

Gettysburg Area School District

Phone: (717) 334-6254

On-site childcare is provided for teen parents pursuing a high school diploma. The childcare facility offers pregnant and parenting teens an opportunity to practice basic parenting skills under the supervision of trained personnel. It is also used as a School-to-Work initiative, giving internships to students pursuing childcare certification.

McKeesport Area High School and Vocational-Technical School

Phone: (412) 664-3714

On-site childcare is used as a lab site for parent training. To expedite a teen's return to school, staff accept children from age three weeks and encourage the parenting student to spend free periods, including lunch, in the center. Transportation is provided for the teen and infant from home to the child care facility and back home.

Pittsburgh Public Schools

Phone: (412) 488-2524

The Foster Grandparent Program and the Pittsburgh Public Schools have collaborated to bring grandparents into the district's childcare centers to work with teen parents and their children. They are used as assistants to the child care staff and mentors to teen parents.

Berwick Area School District

Phone: (570) 759-6400

Berwick Area Child Care Lab is a licensed on-site day care for pregnant and parenting teens enrolled in the Berwick Area School District. Transportation to and from school is available for mother and child. The childcare lab serves as the classroom for the hands-on experience required in the open-end credit, independent study course available to the teen parents through the Family and Consumer Science Department. The lab serves as a job placement site for the Area Agency on Aging's Green Thumb Program as well as a JTPA in-school job site for a Berwick student. Enrollment in the childcare lab is also open to the children of school staff.

The Delaware County, PA Child Care Information Services (CCIS)

Provides child care subsidies to eligible families. The Federal and State funding for this program is provided through a contract with the Department of Public Welfare. The CCIS serves children from birth to 13 years of age whose parents are employed and meet the eligibility guidelines set forth by the Commonwealth. Also, funding is available for teen parents to complete their high school education. Fees are based on family size and income. This is a parent choice system. Parents may choose any licensed, registered or relative/neighbor who signs an agreement for funding through this agency and complies with State laws and regulations. The CCIS may not make recommendations regarding selection of a childcare provider.

<http://www.co.delaware.pa.us/depts/WomensresourceguideWW1.pdf>

http://www.thecenterfoundation.org/pdf/wom_res_guide_2006.pdf

Friendship/Shadyside

336 South Aiken Avenue Pittsburgh, PA 15232

Phone: (412) 345-0008

Fax: (412) 345-0024

Clairton

501 Mitchell Avenue Clairton, PA 15025

Phone: (412) 233-8686

Fax: (412) 233-4791



TANF (Temporary Aid to Needy Families) Funds

Office of Income Maintenance
Pennsylvania Department of Public Welfare
Health & Welfare Bldg., RM 432 Harrisburg, PA 17105-2675
Phone: (717) 783-3063
FAX: (717) 787-6765

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

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