

### SOUTH DAKOTA

#### 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: §§26-8A-21.1; 26-8A-26; 26-8A-26.1; 26-8A-27<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, 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, inability to protect the child from harm or substantial risk of harm.

#### 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. SDCL § 25-9B-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 help 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 custody 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 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.

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

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



termination of parental rights where there was no evidence dealing with the two and one-half years immediately prior to the court's decree as to the infant. In *Matter of N.S.*, 474 N.W.2d 96 (S.D. 1991) the court reaffirms the judicial standard that the trial court must find by clear and convincing evidence that termination is in the child's best interest, *and that the State must show that there is no narrower (less restrictive) means of providing for best interest and welfare of the child.* The foster teen should be aware that although the potential of the foster teen to eventually develop proper parenting skills in the future may be a welcome consideration, and it is true that current parenting issues may be deemed temporary by the child welfare agency, many family courts in the state are of the view that the child "should not be required to wait for his parents to acquire parenting skills that may never develop; [the child] is entitled to stable, healthy environment now. SDCL 26-8-36. In *Interest of A.D.* 416 N.W.2d 264 (S.D. 1987) Where there was noncompliance at the termination hearing, at which an order surrendering the child of an unwed mother was entered, with statutes requiring, inter alia, that a verbatim record be taken, that the child and his parents be informed of their legal and constitutional rights at their first appearance before the court and that the court inform both child and parents that they had the right to file a motion for a new trial and the right to appeal if they were not represented by counsel, the mother's fundamental rights were denied, and county court should have vacated its order when noncompliance was timely brought to the court's attention a little more than month after entry of the order. SDCL 1967, 26-8-1(1), 26-8-10, 26-8-22.1, 26-8-22.3, 26-8-22.5 to 26-8-22.11, 26-8-30, 26-8-32.4. In *re D. L. F---*, 176 N.W.2d 486 Formerly 211k230, 211k19.4 (S.D. 1970)

## RESOURCES

### **Department of Social Services**

700 Governors Drive Pierre, SD 57501  
605-773-3165  
<http://dss.sd.gov/>

### **Legal Services**

#### **East River Legal Services**

335 North Main Ave. Suite 300 Sioux Falls, SD 57104  
800-952-3015  
[www.erlservices.com](http://www.erlservices.com)

#### **Dakota Plains Legal Services Inc.**

160 Second Street P.O. Box 727 Mission, SD 57555  
800-658-2297

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

### **Dakota Plains Legal Services**

528 Kansas City Street, Po Box 1500 1 Rapid City, SD 57709

General Phone: 605-342-7171

Fax: 605-348-5874

Intake Phone: 605-342-7171

Web Site: <http://www.dpls.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 or Independent Living Programs**

#### **South Dakota Department of Social Services**

700 Governors Drive Pierre, SD 57501-2291

Phone: (605) 773-3227

Fax: (605) 773-6834

#### **Volunteers of America -- Turning Point**

1401 W. 51st Street, PO Box 89306 Sioux Falls, SD 57109

Phone: (605) 274-3617

Fax: (605) 274-0585

#### **Stepping Stones**

623 Quincy Rapid City, SD 57701

Phone: (605) 388-8195

Fax: (605) 342-4628

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

### **Capital Area Counseling**

800 E. Dakota Ave., PO Box 148 Pierre, SD 57501

Phone: (605) 224-5811

Fax: (605) 224-6921

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

#### **Northern Hills Crisis Pregnancy Center**

1231 Polley Dr. #9 Spearfish, SD 57783-0755

Phone: (605) 542-4140

Fax: (605) 642-1959

#### **Birthright of Yankton, Inc**

1017 W. 5th St. Yankton, SD 57078-0554

Phone: (605) 665-5580

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

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

Minnesota Institute of Public Health

2720 Highway 10 Mounds View, MN 55112

Phone: (800) 782-1878

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

#### **Keystone Treatment Center**

Acclaimed residential and outpatient alcohol, drug and gambling treatment facility for adults, young adults and adolescents. Nationally known for offering special treatment tracts for those afflicted with methamphetamine addiction and inhalant abuse, as well as services for dual diagnosis, gambling, cognitive disorders, and opioid dependence. Other specialties include Native American, Christian, Aftercare and Family programs. Eligible for South Dakota state funded patients, Title 19, Indian Health Service funds. Licensed by the State of South Dakota and accredited by CARF (Commission on Accreditation of Rehabilitation Facilities). They can be reached 24 hours a day, 7 days a week to provide assistance with an admission or a crisis situation. Call 877.762.3740 or complete the confidential online assessment.



### Childcare Assistance

#### **FAAP**

100 Mac Lane Pierre, SD 57501-3391

Phone: 605/224-5901

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

#### **Department of Social Services Division of Child Care Services**

Provides assistance to low income families who need help with child care costs while parents work or attend school. They also provide oversight, technical assistance and support in promoting safe, healthy and caring environments for children through licensing, registration and quality improvement activities. The availability of quality child care is not only important for maintaining a strong workforce; it is vital for the growth and development of healthy children. <http://dss.sd.gov/childcare/>

#### **Kids Kastle Little Miner's Clubhouse**

501 E Saint Joseph Street Rapid City, SD 57701-3995

Work Phone (605) 394-2586

<http://sdmines.sdsmt.edu/sdsmt/lmc>

The center serves children four weeks to ten years old and is licensed through the South Dakota Department of Social Services for 76 children.

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

TANF Work Program Administrator  
South Dakota Department of Social Services  
Kneip Building  
700 Governors Drive Pierre, SD 57501-2291  
Phone: (605) 773-4832  
FAX: (605) 773-7183

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.<sup>7</sup>

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