

VIRGINIA

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HOW THE STATE CAN REMOVE CUSTODY

Statute: §16.2-283(A), (B)-(E), (G)¹

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, 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, voluntary relinquishment, identity or location of parent unknown, aggravated circumstances.

WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FROM HER BABY

Va. Code Ann. § 20-88.45 (Action by minor parent) permits a minor parent, or a guardian or other legal representative of a minor parent, to maintain a legal 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 a voluntary placement agreement. The agreement can have dire consequences for a young mom in care who wishes to keep her baby after emancipation ² 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 her baby after emancipation ³ 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

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

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

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

foster care alternative. The agency should be experienced in dealing with minor parents in foster care themselves. Mom can try:

Children's Home Society

1620 5th Street, SW Roanoke, Virginia 24016

540-344-9281

Toll-free: 800-247-2888

E-mail: info@chsva.org

Web Site: <http://www.chsva.org>

In determining whether termination of parental rights is in the best interests of the children, the trial judge must consider several factors including the following: the age and physical and mental condition of the children; the age and physical and mental condition of the parents; the relationship existing between each parent and each child; the needs of the children; the role which each parent has played, and will play in the future, in the upbringing and care of the children; and other factors. V.C.A. § 16.1- 283. *Crawley, infra*. The teen mom's counsel should definitely be aware of negative rulings such as *Lecky v. Reed*, 456 S.E.2d 538 (Va.App. 1995) where the foster parents filed a petition for termination of a teenaged mother's residual parental rights and the Virginia Beach Juvenile and Domestic Relations District Court decided in favor of terminating. On the teen mom's appeal, the Circuit Court of the City of Virginia Beach denied the foster parents' petition, however the foster parents then also appealed and the Court of Appeal held that: (1) the teen mother's age did not alone constitute good cause to excuse her failure to resolve the conditions which prompted the child's foster care, and (2) the record provided the requisite clear and convincing evidence that termination of the teen mother's residual parental rights was the appropriate statutory remedy. In that case the teen mother pursued an unstable and irresponsible life-style, incompatible with the child's needs and reflective of an indifference to his interests. Code 1950, § 16.1-283, subd. C. The mother in the *Reed* case was fourteen years of age when she gave birth to her son and was voluntarily placed by her estranged mother with another family, the Clearys. Thereafter, the minor mother was transferred to the Department of Social Services, while her son remained a short time longer with the Clearys. Within a month, the son was placed with the mother in a "therapeutic foster home." Shortly thereafter, the mother ran away, and the son was transferred to a regular foster care home, where he remained for approximately two years before his mother's parental rights were terminated. Prior to termination the Department initiated a plan with treatment goals with the intent that ultimately the mother would be able to parent her son in the future. Despite the support system put in place, the mother continuously disrupted it by running away. As a result of the mother's behavior spanning from September 1991 into early 1992, the Department moved for custody of the son and petitioned (ultimately successfully) to terminate the mother's parental rights. An more positive holding in an out-of-state case which cites to *Reed* is *T.N.H. v. J.L.H.* --- S.W.3d ----, 2007 WL 2460645 (Ky.App. 2007) where the evidence was insufficient to establish that the mother, who was only fourteen years old when she had given birth and who had been voluntarily committed to custody of Cabinet for Health and



Family Services (CHFS), along with her son, would not be able to parent her child in the future so as to support the termination of her parental rights, notwithstanding that her son had been in CHFS custody for approximately two-and-a-half years; the witness who testified on behalf of the Commonwealth did not testify in regard to any objective tests or assessments performed which indicated that the mother did not have the mental capacity to parent her child or as to when or if the mother was reasonably likely to be capable of parenting, and the witness testified that, in the past year, the mother had been progressing, she had not been absent without leave (AWOL) from the group home for awhile, she was employed, and she had completed eleventh grade and various programs offered by the Commonwealth. KRS 625.090. Within Virginia the *Reed* holding is distinguished by *Richmond Dept. of Social Services v. Crawley* 47 Va.App. 572 (Va.App. 2006) where the City department of social services petitioned to terminate the mother's residual parental rights to two children who had been placed in foster care, and to grant the department the authority to place the children for permanent adoption. The Court of Appeals held that the trial judge's determination (that termination of the mother's residual parental rights was not in the children's best interests) was not plainly wrong or without evidence to support it.

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.⁴ 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.⁵ 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

⁴ "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>)

⁵ 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. 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 Social Services

7 N. Eighth Street Richmond, VA 23219

804-726-7000; 800-552-3431

<http://www.dss.state.va.us/>

Legal Resources

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.⁷

Client Centered Legal Services of Southwest Virginia

PO Box 829 Norton, VA 24273

Phone: (540) 762-5501

Fax: (540) 762-7129

Potomac Legal Aid Society, Inc.

6400 Arlington Blvd. Suite 600 Falls Church, VA 22042

Phone: (866) 534-5243

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

⁷ <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>

www.potomaclegalaid.org

Southwest Virginia Legal Aid Society Inc.

227 West Cherry Street Marion, VA 24354

Phone: (800) 277-6754

www.svlas.org

Central Virginia Legal Aid Society Inc.

101 West Broad St., Suite 101 P.O. Box 12206 Richmond, VA 23241-2206

Phone: (800) 868-1012

www.cvlas.org

Legal Aid Society of Eastern Virginia

125 St. Pauls Blvd. Suite 400 Norfolk, VA 23510

Phone: (800) 944-6624

www.laseva.org

Virginia Legal Aid Society Inc.

513 Church Street P.O. Box 6058 Lynchburg, VA 24505-6058

Phone: (888) 528-8527

www.vlas.org

Blue Ridge Legal Services Inc.

204 North High Street P.O. Box 551 Harrisonburg, VA 22803

Phone: (800) 237-0141

<http://www.brls.org/>

Transitional or Independent Living Programs

Total Action Against Poverty (TAP)

145 Campbell Ave SW, Roanoke VA 24011

Phone: (540) 345-6781

A non-profit community action agency. For 40 years TAP has been helping the residents of 11 cities and counties in southwestern Virginia to escape poverty and become self-sufficient. Our mission is to encourage self-reliance and self-determination by strengthening and empowering individuals, families and communities and to mobilize the community's good will and resources, expand access to existing opportunities and create new opportunities.

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ILP Coordinator

Independent Living Program Coordinator
Virginia Department of Social Services
730 E. Broad Street, 2nd Floor
Richmond, VA 23219
Phone: (804) 692-1293
Fax: (804) 692-1284

People Incorporated

PI has four offices in Southwest Virginia.

Central Office

1173 West Main Street Abingdon, VA 24210
(276) 623-9000
(276) 466-6527
Email: info@peopleinc.net

Grundy Office

20694 Riverside Drive Grundy, VA 24614
(276) 935-4747

Lebanon Office

122 Price St. Lebanon, Va. 24266
(276) 889-0999

Clintwood Office

P.O. BOX 1439
Clintwood, Va. 24228
(276) 926-5600

Bristol Office

800 Martin Luther King, Jr. Blvd. Bristol, VA 24201
(276) 466-5587
Email: bristol@peopleinc.net

Mother-baby Residential Facilities

Reconciliation Community Center

P.O. Box 2421 Woodbridge, VA 22193
(703) 491-1178 or (800) 550-4900

Substance Abuse Health & Treatment Resources

Al-Anon Family Group Headquarters, Inc.

1600 Corporate Landing Parkway
Virginia Beach, VA 23454-5617
757-563-1600
757-563-1655

<http://www.al-anon.alateen.org/>

Contact: WSO@al-anon.org

Al-Anon's program of recovery is based on Twelve Steps, Twelve Traditions and Twelve Concepts of Service adapted from Alcoholics Anonymous (AA). Includes Al-anon Family and Alateen information.

Community Anti-Drug Coalitions of America

901 N. Pitt Street, Suite 300 Alexandria, VA 22314

Jack and Jill of America, Inc.

1101 Worthington Court
Virginia Beach, VA 23464

Childcare Assistance

Healthy Families Fairfax

Families who are referred to this program receive educational, therapeutic, and supportive services to help prevent child abuse and neglect and promote child health.

703-324-7706; TTY: 703-222-9452.

Mothers must be pregnant or the newborn baby must be younger than three months old

Families referred to the program voluntarily choose to participate

Services are provided until child reaches age 5

Read more about Healthy Families Fairfax

Call 703-324-7706; TTY: 703-222-9452.

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Parent Education Programs

This program offers parenting classes that include the entire family – parents and their children.

Classes range from 12-21 weeks, depending on the ages of children in the family

Available in English or Spanish for most curriculums

Classes with an African American cultural focus are offered periodically

Offered in a variety of community settings

Classes are free, and include:

A light evening meal

Child care for children under 5 years of age

A structured program for children 5 years of age and older

General information, call 703-324-7691; TTY: 703-222-9452

About classes in English, call 703-324-7691; TTY: 703-222-9452

About classes with an African American cultural focus, call 703-324-7501; TTY: 703-222-9452

About classes in Spanish, call 703-324-7405; TTY: 703-222-9452

Check the Nurturing Parenting factsheet to read more about types of programs available and curriculum topics, or to download a Nurturing Parenting Enrollment form.

TANF (Temporary Aid to Needy Families) Funds

Virginia's TANF is called the *VIEW (Virginia Initiative for Employment, Not Welfare)*

Director

Division of Benefit Programs

Virginia Department of Social Services

7 N. Eighth Street

Richmond, VA 23219

Phone: (804) 726-7365

FAX: (804) 726-7357

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.⁸

See also Va. Code Ann. § 63.2-607 (Eligibility for TANF; minor parent residency)

⁸ <http://www.spdp.org/reprexpl.htm#mla>