

## WASHINGTON

### 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: §§13.34.180; 13.34.190; 13.34.132<sup>1</sup>

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, child judged in need of services/dependent, child's best interest, felony assault of child or sibling, murder/manslaughter of sibling child, identity or location of parent unknown, parent is a sexually violent predator, aggravated circumstances.

### 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. The Revised Code of Washington 26.21A.205 (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>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>



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 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.

Temporary or short-term home care of a child provided for pay or on a voluntary basis by adults other than the parents (birth, foster, or adoptive parents).

In *Welfare of R.L.F.* 86 Wash.App. 1123, Not Reported in P.2d, 1997 WL 431088 (Wash.App. Div. 2 1997), Nissa Fleming was a minor and the subject of a dependency when R.F. was born. Before the birth of R.F., Fleming was a foster child. Fleming became pregnant while she was at Woodlawn Street Group

<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

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Home. While pregnant, Fleming was placed at Daybreak in Spokane, a substance abuse facility for teenagers. After the birth, R.F. lived with Fleming at Woodlawn Street Group Home from September 18, 1993, to January 20, 1994. Eventually, Fleming left Woodlawn with her baby who was sick at the time. A social worker found Fleming and R.F. living in an unsuitable home. Consequently, the State filed a dependency petition for R.F. on December 23, 1993. By August 1995, Fleming and R.F. were residing in a foster home. When the State suggests remedial services to a parent, it has a statutory obligation to, at a minimum, provide the parent with a referral list of agencies or organizations that provide the services. Hall, 99 Wash.2d at 849, 664 P.2d 1245. A parent's unwillingness or inability to make use of the services provided excuses the State from offering extra services that might have been helpful. *In re Dependency of Ramquist*, 52 Wash.App. 854, 861 (1988). To comply with the statutory requirement of RCW 13.34.180(4), the State was required to show either that: "(1) it offered Appellant the required remedial services and Appellant failed to avail himself of those services; or (2) Appellant, by words, conduct or both, waived his right to such services." *In re Welfare of S.V.B.*, 75 Wash.App. 762, 770 (1994). In conclusion, the State met its burden of proving by clear, cogent and convincing evidence the elements of RCW 13.34.180 to terminate Fleming's parental rights. A trial court may order termination of parental rights if the State proves the six required statutory factors by clear, cogent, and convincing evidence, and the trial court finds that termination is in the best interests of the child. RCWA 13.34.180(1), 13.34.190. Where court is faced with petitions for both termination of parental rights, and a dependency guardianship, inquiry is whether statutory requirements have been met; standards of proof are different, and it may be the case that neither statute is satisfied. RCWA 13.34.180, 13.34.190, 13.34.231, 13.34.232.

In *In re Dependency of H.W.* 92 Wash.App. 420, 961 P.2d 963 (Wash.App. Div. 1 1998) the Court of Appeals held that DSHS failed to make requisite showing by clear, cogent, and convincing evidence that it had offered mother all reasonably available services capable of correcting her parental deficiencies. Substantial evidence did not support trial court's finding that there was little likelihood that mother's parental deficiencies could be remedied in near future, as would support termination of parental rights; mother overcame rebuttable presumption that she could not improve her parental deficiencies by completing chemical dependency program and having recent positive visitation with her children, and without evidence indicating how long it would take mother to improve, state failed to meet its burden to show that it was highly probable that there was little likelihood that conditions would be remedied so that children could be returned to mother in near future. RCWA 13.34.180(1)(e).

*In re Welfare of C.B.* 134 Wash.App. 942 (Wash.App. Div. 2 2006) Where a parent produces evidence that she has been improving over time after the state files a termination petition, but before the termination hearing, the state may not rely solely on past performance to prove that it is highly probable that there is little likelihood that the parent will be reunited with her children in the near future. RCWA 13.34.180(1). Id. Court may find developmentally disabled child dependent, without finding of parental

unfitness; statutory definition of “dependent child” has number of components, including statutory definition of developmentally disabled child, level of services required for child's care, whether those services can be provided for in-home, and parent's assent that services appropriate to child's needs cannot be provided in-home. RCWA 13.34.030(2)(d), 13.34.030 note.

## RESOURCES

### Department of Social Health Services

PO Box 45130 Olympia, WA 98504  
 Phone: (800) 737-0617  
<http://www1.dshs.wa.gov/>

### Legal Resources

#### TeamChild

1120 East Terrace 203 Seattle, WA 98122  
 Phone: (206) 322-2444  
 Fax: (206) 381-1742  
<http://www.teamchild.org>  
 Organization Email: [questions@teamchild.org](mailto:questions@teamchild.org)

**The 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>

#### **Northwest Justice Project**

401 Second Ave. South Suite 407 Seattle, WA 98104  
 Phone: (206) 464-1519 or (888) 201-1014  
[www.nwjustice.org](http://www.nwjustice.org)

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

### **Transitional or Independent Living Program**

#### **Child Youth Teens – Adolescent Pregnancy and Parenting Program**

Yakima, WA 98901

Phone: (509) 453-6681

#### **Schools Public - Teen Parent Program**

5th And Pioneer, Ridgefield, WA 98642

Phone: (360) 313-4446

#### **Institute for Family Development (formerly Behavioral Sciences Institute), developers of the HOMEBUILDERS Program**

34004 16th Ave South, Suite 200 Federal Way, WA 98003-8903

253-874-3630 Seattle

253-927-1550 Tacoma

253-838-1670 FAX

Provides a range of innovative and cost-effective in-home services to children and families, including HOMEBUILDERS® Intensive Family Preservation and Reunification Services (IFPS), Parent Child Interaction Training (PCIT), and Functional Family Therapy (FFT). The Institute's Intensive Family Preservation Services and Reunification Services, Parent Child Interaction Training, and Functional Family Therapy, are all demonstrated to effectively address the growing problems of family dissolution, child abuse and neglect, juvenile delinquency and family conflict.

#### **Washington State Children's Administration**

115 Washington Street PO Box 45710 Olympia, WA 98504-5710

Phone: (360) 902-8262

Fax: (360) 902-7903

#### **YMCA of Greater Seattle**

Independent Living Program (Region 4)

2100 24th Ave S. Suite 250 Seattle, WA 98144

Phone: (206) 749-7577

#### **Independent Living Program offered through Catholic Family & Child Service**

5301 Tieton Drive, Suite C Yakima, WA 98908

Phone: (509) 965-7100 or (800) 246-2962

### **Nurturing Network**

<http://nurturingnetwork.org/contact.html>

### **APPLE PARENTING /BUILDING YOUNG FAMILIES**

1102 J Street SE Auburn, WA 98002

Phone: (253) 939-0870

We cover topics like pregnancy and delivery, newborn care, child development, behavior management, life skills (budgeting, menus), health and safety and continuing education.

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

#### **Birthright of Longview, Inc.**

2551 Colorado St. Longview, WA 98632-1851

Phone: (360) 423-2900 or (800) 550-4900

#### **FRIDAY HARBOR**

##### **Inter-Island Crisis Pregnancy Center**

425 Argyle Way, Stes B & C Friday Harbor, WA 98250

Phone: (360) 378-4787

### **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](http://ntacyt.fmhi.usf.edu)

### **Friends of Youth**

Family Resource Center Campus

16225 NE 87th Street Suite A-6 Redmond, WA 98052

Phone: (425) 869-6490

Fax: (425) 869-6666



### **Childcare Assistance**

Liaison between the National American Academy of Pediatrics and all State Early Education and Child Care activities are listed below.

#### **FAAP** (District 8)

Mercer Island Pediatric Assoc P S

2553 76th Ave SE Mercer Island, WA 98040-2758

Phone: 206-275-2122 ex

Fax: 206-275-0860

E-mail: [dsg@mipakids.org](mailto:dsg@mipakids.org)

#### **Child Care and Development Fund (CCDF)**

The primary Federal program specifically devoted to childcare 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)

[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).

#### **Building Capacity Project Washington**

This project seeks to expand access to certain hard-to-find forms of child care (including infant care, middle-school child care, before- and after-school care, evening and weekend care, and care for children with disabilities) by providing training so that first-time care providers may gain licensing, and existing child care centers may expand their capacity.

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

Washington's TANF is known as WorkFirst

Assistant Secretary for Economic Services

Washington Department of Social & Health Services

PO Box 45070

Olympia, WA 98504-5070

Phone: (360) 902-7808

FAX: (360) 902-7848

Department of Social & Health Services  
PO Box 45070  
Olympia, WA 98504-5070

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>

### **Washington State's Building Capacity Project**

This TANF-funded project seeks to expand access to certain hard-to-find forms of child care (including infant care, middle-school child care, before- and after-school care, evening and weekend care, and care for children with disabilities) by providing training so that first-time care providers may gain licensing, and existing child care centers may expand their capacity.

According to the Center for Law and Social Policy ([http://www.clasp.org/publications/ehs\\_teens.pdf](http://www.clasp.org/publications/ehs_teens.pdf)), 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 system more acutely than other

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





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.