



WEST VIRGINIA

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HOW THE STATE CAN REMOVE CUSTODY

Statute: §§13.34.180; 13.34.190; 13.34.132¹

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

In West Virginia, the termination of a mother’s parental rights was erroneous where she was denied a meaningful improvement period to demonstrate her ability to care for the child, no family case plan was prepared, and the evidence did not reach the clear and convincing standard as required for procedural due process. Code, 49-6-2, 49-6D-3; Const. Art. 3, § 10; U.S.C.A. Const.Amend. 14. IN West Virginia, the right of the natural parent to custody of his or her infant child is paramount to that of any other person; it is a fundamental personal liberty protected and guaranteed by due process clauses of West Virginia and United States Constitutions. Const. Art. 3, § 10; U.S.C.A. Const.Amend. 14. *State ex rel. W.Va. Dept. of Human Services v. Cheryl M.* 177 W.Va. 688 (W.Va. 1987) A prior termination of parental rights does not mean that the parent does not have the right to “another chance,” in the form of an improvement period or otherwise. West’s Ann.W.Va.Code, 49-6-5b(a)(3). *In re Rebecca K.C.*, 579 S.E.2d 718 W.Va.,2003 Although a parent has no absolute right to an improvement period before parental rights may be terminated, West Virginia law provides that an improvement period shall be allowed unless there are compelling reasons to justify the denial of an improvement period. Code, 49-6-2(b). *In re Lacey P.*, 433 S.E.2d 518 (W.Va. 1993) Termination of parental rights was erroneous where mother was denied meaningful improvement period to demonstrate her ability to care for child, no family

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

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.



case plan was prepared, and evidence did not reach clear and convincing standard as required for procedural due process. Code, 49-6-2, 49-6D-3; Const. Art. 3, § 10; U.S.C.A. Const.Amend. 14. *State ex rel. W.Va. Dept. of Human Services v. Cheryl M.*, 356 S.E.2d 181 (W.Va. 1987)

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. W. Va. Code, § 48-16-302(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.² 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.

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.³ 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.⁴ 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,

² [http://www.jrplaw.org/Documents](http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf)

[/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf](http://www.jrplaw.org/Documents/Teens%20Aging%20Out%20of%20Foster%20Care%20in%20Oregon.pdf)

³ 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)

⁴ 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.

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.⁵ 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 Health & Human Resources, Bureau for Children and Families

350 Capitol Street, Room 691 Charleston, WV 25301

Phone: (304) 558-7980

<http://www.wvdhhr.org/bcf/>

Legal Services

West Virginia Legal Services Plan, Inc.

922 Quarrier St Ste 550 Charleston, WV 25301-2649

Phone: (304) 342-6814

Fax: (304) 342-3011

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.⁶

⁵ 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
⁶ <http://www.abanet.org/abanet/child/statesum/allstate.cfm?y=2005>



Transitional or Independent Living Programs

Crittenton Services, Inc.

2606 National Road
Wheeling, WV 26003-5393
Phone: (304) 242-7060

Crittenton Services Inc. of West Virginia was created in 1895 as a residential home for young mothers. Today, pregnant teenagers are referred from the Department of Health and Human Resources, the judicial system, high school counselors, church leaders, and family members. Located in a residential neighborhood, the facility is equipped with an alternative on-site school, a day care center, a health clinic, and counseling and case management services. Crittenton's gender-responsive residential treatment program is available to young women ages 12-18 who are pregnant or parenting as well as those who are not. A treatment team of professionals work with the young women to develop a strength-based treatment program. Features include a cottage-type living environment with 24hour supervision, an on-site alternative school, an in-house day care for infants and toddlers, recreational and therapeutic interventions, group therapy sessions, addiction counseling, self-exploration and career clinics, life skills development and parenting education. Programs include Wellspring Family Services, offering a broad range of services from outpatient counseling to home-based services, Cradles to Crayons, an innovative "discovery skills" program which offers assessments of both infants' and toddlers' social, emotional, physical and cognitive development. Before and after care programs are also available.

Crittenton Services, Inc. is funded by foundations, corporations, private donations, client fees, and the WV Department of Health and Human Resources, Bureau of Children and Families.

West Virginia Department of Health and Human Resources Bureau for Children and Families

350 Capitol Street, Room 691
Charleston, WV 25301-3704
Phone: (304) 558-7980
Fax: (304) 558-4563

Mother-baby Residential Facilities

Crittenton Services, Inc.

2606 National Road
Wheeling, WV 26003-5393
Phone: (304) 242-7060

Labor of Love Ministries

New Beginnings Maternity Home & Choices for Life Pregnancy Center

980 Stewartstown Road Morgantown, WV 26505

Phone: (304) 599-0300

Brookside Family Life Center

P.O. Box 112, Charleston, WV 25321

Phone: (304) 925-9625

Substance Abuse Health & Treatment Resources

The Mid-Atlantic Network of Youth & Family Services

135 Cumberland Road Suite 201 Pittsburgh PA 15237

Phone: (412) 366-6562

Fax: 412.366.5407

Email: many@manynet.org

A non-profit membership association of youth service organizations in Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia.

Clarksburg Treatment Center

Clarksburg, WV

Phone: (304) 622-7511

City Hospital Inc Gateway Behavioral Health Services

Martinsburg, WV

Phone: (304) 264-1230x301

Childcare Assistance

Crittenton Services, Inc.

2606 National Road Wheeling, WV 26003-5393

Phone: (304) 242-7060

WV Child Care Resource and Referral

www.wvdhhr.org/bcf/ece/earlycare/rr.asp

TANF (Temporary Aid to Needy Families) Funds

West Virginia's TANF is called West Virginia Works
West Virginia Division of Family Assistance

Room B-18
350 Capital Street
Charleston, WV 25305-3705
Phone: (304) 558-3796
FAX: (304) 558-2059

TANF/AFS (Adult and Family Services) or other

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 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

According to the Center for Law and Social Policy (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

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



children with disabilities are likely to experience the health care 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.