

### WISCONSIN

**Topics:**

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### HOW THE STATE CAN REMOVE CUSTODY

Statute: §§49-6-5(a1), (b)<sup>1</sup>

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, child's best interest, child in care 15 of 22 months (or less), felony assault of child or sibling, murder/manslaughter of sibling child, refusal to cooperate in a reasonable family case plan.

Exceptions: State may elect not to file petition if: 1) child being placed with relative; 2) state has documented in case plan a compelling reason, including child's age and preference regarding TPR or the child's placement based on juvenile proceedings, that filing would not be in child's best interest; 3) state has not provided services to family that state deems necessary for safe return of child.

### 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.

Wisconsin Statutes 769.302 (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. Notwithstanding s. 767.407(1) or 803.01(3), the court may appoint a guardian ad litem for the minor's child, but the court need not appoint a guardian ad litem for a minor parent who maintains such a proceeding unless the proceeding is one for the determination of parentage, in which case the court or a circuit court commissioner shall appoint a guardian ad litem for a minor parent within this state

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

who maintains such a proceeding or for a minor within this state who is alleged to be a parent, as provided in s. 767.82(1).

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.<sup>2</sup> Some foster teen moms 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 child care, 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.<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

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2 <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%2520Parent%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%2520Parent%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.

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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.

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.

## APPLICABLE STATE LAW

In *In re Termination of Parental Rights to Christopher M.* 288 Wis.2d 659 (Wis.App. 2005) Nicole and Otis T. were the biological parents of Christopher, Joseph and Ariana; Nicole was fifteen when she became pregnant with Christopher, and at the time was in foster care herself, having been removed from her home under a CHIPS petition. Nicole M. appealed from orders terminating her parental rights to Christopher M., Joseph T. and Ariana M., unpersuasively arguing that the orders should be reversed because: (1) when she stipulated to the ground for termination, the trial court failed to take testimony in support of the ground; and (2) that there was insufficient evidence to support a finding that she failed to assume parental responsibility for the children. See Wis. Stat. § 48.415(6) (2003-04). When faced with inadequate findings, an appellate court may: (1) look to an available memorandum for findings and conclusions; (2) review the record anew and affirm if a preponderance of evidence clearly supports the judgment; (3) reverse if the judgment is not so supported; or (4) remand for further findings and conclusions. See *In re Termination of Parental Rights to Darryl T.-H.* 234 Wis.2d 606, 610 N.W.2d 475 (Wis. 2000) Because termination of parental rights interferes with a fundamental liberty interest, a court reviewing a termination statute applies strict scrutiny and requires the state to show that the statute is narrowly tailored to serve a compelling state interest; this due process standard is satisfied by the requirement that the state establish a parent's unfitness in order to justify termination of parental rights.

<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

U.S.C.A. Const.Amend. 14. In *In re Termination of Parental Rights to Zachary B.* 263 Wis.2d 413 (Wis.App. 2003) the Court of Appeals held that: (1) the mother had fundamental liberty interest in parenting children (2) mother was not an unfit parent; (3) trial court's discretion at disposition stage to decide not to terminate parental rights did not satisfy requirements of substantive due process; and (4) application of statute providing for termination of parental rights on the specific ground of incestuous parenthood violated the mother's right to substantive due process.

## RESOURCES

### **Department of Health & Family Services**

1 W. Wilson Street Madison, WI 53703

Phone: (608) 266-1865

<http://www.dhfs.state.wi.us/>

### **Legal Services**

#### **Legal Action of Wisconsin, Inc.**

230 West Wells Street Room 800 Milwaukee, WI 53203

Phone: (414) 278-7722

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

#### **Wisconsin Judicare Inc.**

300 Third Street Suite 210 P.O. Box 6100 Wausau, WI 54402

Phone: (800) 472-1638

[www.judicare.org](http://www.judicare.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>

### **Transitional or Independent Living Programs**

<http://dpi.state.wi.us/sspw/teenpar.html>

#### **PATH**

9766 Fallon Ave., Suite 104, Monticello, MN 55362

Phone: (763) 271-1670

Fax: (763) 271-1677

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

PATH (Professional Association of Treatment Homes), a nonprofit organization, was founded in Minneapolis in 1972 by a group of innovative foster parents and social workers who shared a vision about a new, more personalized approach to foster care for children and youth with special emotional, behavioral and medical needs. They believed these children and youth could be better served in family-based settings, rather than in more restrictive institutional placements such as hospitals, group homes, and residential treatment centers. They believed, "there must be a better way." Their vision for PATH has now grown into 28 offices throughout Minnesota, North Dakota, Wisconsin and Denver, Colorado. PATH trains and retains extremely talented and committed foster parents. It has developed a highly educated and experienced social work staff, and continually receives high praise from its Council of Accreditation reviewers about the quality and innovation of its programs and service delivery models. Celebrating over 30 years of service, PATH has provided personalized care to over 20,000 children since 1972. This past year, PATH served 2,200 children in its licensed foster care homes in addition to providing individualized community based supports to families.

#### **ASK Second Chance Home, Inc.**

Milwaukee, Wisconsin

Phone: (414) 760-6268

#### **YWCA - Teen Parenting Program Early Childhood Center**

1925 Summit Avenue, Racine, WI 53404

Phone: (262) 637-9090

3015 Pritchard Drive, Racine, WI 53406

Phone: (262) 598-5452

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

### **UP Connection Inc**

434 Madison St. Waukesha, WI 53188

262-524-4120 - office

1-877-748-2229 - Pregnancy Resource Line - 24 our referral and information line

[upconnection@upwi.org](mailto:upconnection@upwi.org) [www.upwi.org](http://www.upwi.org)

The UP Connection, Inc. is a nonprofit organization that was established in 1985 to provide teen pregnancy prevention programs as well as education, information, referral and support services to those who are impacted by a pregnancy. The UP Connection serves pregnant, young women in Waukesha and Milwaukee Counties.

### **CAP Services Inc.**

A non-profit organization based in Wisconsin that provides housing, employment, and preschool services to families with limited income.

## **Mother-baby Residential Facilities**

### **Friends for Life, Inc. Pregnancy Counseling Center**

410 Hawthorne Dr. West Bend, WI 53095

Phone: (262) 338-3288

Fax: (262) 338-2213

### **The Hannah Center**

212 E. Third St. Marshfield, WI 54449

Phone: (715) 387-6300

Toll Free: (888) 442-6624

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

### **Wisconsin Clearinghouse for Prevention Resources**

1552 University Avenue Madison, WI 53705-4085

Phone: (608) 262-9157

Fax: (608) 262-6346

<http://www.uhs.wisc.edu/wch/>

The Wisconsin Clearinghouse for Prevention Resources provides educational materials, prevention services, and information to help promote resiliency and to build healthy individuals, families, and communities.



### **Family Resource Centers**

There are over 90 family resource centers in 46 counties in Wisconsin. Information about locations and specific services offered can be obtained by contacting the Children's Trust Fund at (608) 266-6871 or on-line at <http://wctf.state.wi.us>.

The teen mom can also contact the local Department of Human Services or Department of Community Programs and ask for a clinical or mental health supervisor. For free information about mental health issues related to substance abuse- including publications, references, and referrals to local and national resources – she can directly call the Federal Center for Mental Health Services at (800) 789-2647.

### **Childcare Assistance**

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

#### **FAAP** (District 5)

1006 Tramore Trail Madison, WI 53717

Phone: (608) 836-9893

#### **La Causa**

Since 1972, it has been an anchor of Milwaukee's near south side. It provides almost 400 jobs to residents of the Milwaukee area. La Causa has been an innovator in services to families with its strong orientation to prevention of abuse and neglect and family strengthening services. La Causa operates a Family Resource Center, a shelter for children, a foster care program, and ancillary services that promote reunification for over 1,700 children. Its three child care facilities serve over 1,200 children each year, and its new facility also provides grade school classes from K to 4; upper elementary grades started in the fall of 2002. La Causa also recruits foster care homes, provides case management for hard-to-serve clients of welfare reform, and provides social services that include Wraparound, Treatment Foster Care, and Safety Services for Children. The P.E.A.C.E. Training Academy provides training to child care staff, as well as training in nurturing peace, diversity, and anger management. La Causa also provides training to other child care centers on accreditation and working with children with special needs. La Causa also provides downpayment assistance to staff who are first-time homeowners and is in the process of developing a housing rehab program. La Causa Imports is a social enterprise featuring artwork from Mexico with profits going to support La Causa's programs.



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

Wisconsin's TANF is called W-2 (Wisconsin Works)  
**Wisconsin Department of Workforce Development**  
201 E. Washington Ave. Room A-200 Madison, WI 53703  
Phone: (608) 266-6824  
FAX: (608) 261-6376

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 otherwise**

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>

Wisconsin allows a minor parent to share a TANF grant if she is part of a family that is legally responsible for her but she can never be eligible for a TANF grant otherwise.<sup>8</sup>

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

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

In the state of Wisconsin (according to information published information by the Wisconsin Department of Public Instruction's latest internet website:

[http://dpi.wi.gov/sspw/teenpar.html#wisconsin%20works%20\(w-2\)](http://dpi.wi.gov/sspw/teenpar.html#wisconsin%20works%20(w-2))

Any minor teen parent (under the age of 18 years, male or female) is eligible to at least meet with a W-2 Financial and Employment Planner (FEP) regardless of current living arrangements or household income. Services for teen parents are dependent on the age of the teenager. While minor teen parents may receive some or all of the above services, they are not independently eligible for W-2 cash assistance or an employment position. An 18- or 19-year old teen parent may be eligible to participate in a W-2 employment position and receive cash assistance. If they have not completed high school, these teen parents can use the hours they attend a high school, GED, or HSED program to meet some or all of their participation requirements under W-2. Parents aged 20 and older must participate in regular W-2 work activities to receive cash assistance.

W-2 agencies are co-located or electronically linked with a Job Center in every county. Individuals interested in applying for W-2 services may contact their Job Center for further information. A complete listing of W-2 agencies, phone numbers and addresses may also be found on the Internet at: [www.dwd.state.wi.us/desw2/ResourceGuide/#Agencies\\_Directory](http://www.dwd.state.wi.us/desw2/ResourceGuide/#Agencies_Directory). More information about the W-2 program is available on the following Internet web site: <http://www.dwd.state.wi.us/dws/w2/default.htm>.

For more eligibility rules to receive Wisconsin Medicaid as a pregnant teen go to:

<http://dpi.wi.gov/sspw/teenpar.html#wisconsin%20medicaid>

For Healthy Start requirements, go to

<http://dpi.wi.gov/sspw/teenpar.html#healthy%20start>

Wisconsin's early intervention program for infants and toddlers with developmental delays and disabilities and their families A federal law, the Individuals with Disabilities Education Act (IDEA), provides a framework for a comprehensive program and coordinates developmental, health and social services within the community. The Department of Health and Family Services oversees the Birth to 3 Program in Wisconsin and has developed rules (HFS 90) that specify the program requirements.

If the child is eligible for the program, the service coordinator works with the family to see that the family and their child receive the services and supports they need within the family's natural environment. The service coordinator and other early intervention staff meet with the family to discuss the child's developmental strengths and needs. This team, including the parents, determines what services and supports would enhance the child's development and prepares a plan to provide supports and services

within the family's typical routines and activities. The plan is called an Individualized Family Service Plan or IFSP.

The Birth to 3 Program is available in every county in Wisconsin. Each county has designated an agency that is responsible for the operation of the program in that county. The program may be called by a different name, but it is available to provide services to children with delays or disabilities. To find out how to contact the Birth to 3 Program in your county, call the statewide number for information and referral: Wisconsin First Step, (800) 642-STEP. For state level information, contact the Department of Health and Family Services at (608) 266-7851.

### **BadgerCare**

Interested families should contact their county/tribal human/social services department or their local W-2 agency directly to apply. A two-page mail-in application is available from county social services offices. A brochure on BadgerCare can be found at [www.dhfs.state.wi.us/badgercare/index.htm](http://www.dhfs.state.wi.us/badgercare/index.htm). More information, including whether or not a particular family may be eligible, can be obtained by calling (800) 362-3002

### **Regional Children with Special Health Care Needs (CSHCN) Centers**

The five Regional Children with Special Health Care Needs (CSHCN) Centers in Wisconsin are part of a statewide CSHCN Network that provides free and confidential assistance to parents of children with special health care needs. Services include information about specific disabilities (books and articles, audio-visuials, websites), parent connections and support (parent support groups, county parent liaison, parent training), and service coordination. The Wisconsin **First Step Hotline at (800) 642-7837** is another resource within the CSHCN Network. Parent specialists provide callers with information and referral on a full range of services and programs for children with special needs, from birth to age 21. Services are for children age birth to 21 years with a long-term (12 months to life-long), chronic physical, developmental, behavioral, or emotional illness or condition severe enough to restrict growth, development, or ability to engage in usual activities. Services are free and confidential. All five regional CSHCN Centers are open Mon thru Friday in regular business hours. Get info on locations at (800) 642-7837, which is available 24 hours/day, 365 days/year. Check out the information: <http://www.mch-hotlines.org/web/mch/home.nsf> or @ [www.dhfs.state.wi.us/programs.htm](http://www.dhfs.state.wi.us/programs.htm).