



Advocacy for Young or Expectant Parents in Foster Care

A recent study by Chapin Hall of over 4,500 expectant and young parents in foster care in Illinois found that:

- Although most females received some prenatal care, more than one in five pregnancies involved either no prenatal care, or care that began during the third trimester.
- Twenty-two percent of mothers were investigated for child maltreatment and 11% had one or more of their children placed in foster care.
- Only 44% of females and 27% of males had received a high school diploma or GED.
- 86% of the youth were African American.
- Almost 25% of teen mothers in the study had two or more children.¹

Understanding the legal rights of the youth you work with is one way to help address these challenges. Healthy Teen Network and the American Bar Association Center on Children and the Law collaborated² to provide answers to some common questions practitioners face when advocating for expectant and young parents. The answers can be helpful in your advocacy efforts.

1. What are the rights of youth³ who become parents while they are minors?

In a series of cases the United States Supreme Court has held that parents have a fundamental right to custody of their children and to direct their upbringing. This means that unless the state has a compelling reason to remove a child from his or her parent (such as abuse or neglect), the state may violate the constitutional rights of the parent if it takes his or her child into custody.⁴

Young Mothers and Fathers:⁵ Being a minor should not mean that a young parent has fewer constitutional rights to the custody and control of her child than an adult parent.⁶

Young Fathers: While young fathers should be treated the same as adult fathers, fathers of any age who were not married to the mother at the child's birth and do not live with the child may have to affirmatively establish legal rights to their child. Such fathers must establish or attempt to establish a relationship with their children; how this is done varies by state (e.g., placing his name on the child's birth certificate or on a paternity registry, paying child support, spending time with the child).⁷ When the child is conceived through unlawful sexual intercourse (e.g. incest, rape, statutory rape) then the father may have limited rights, if any, depending on state law.

2. Should children born to youth in foster care be taken into custody and formally placed in foster care simply because their parent is in care?

No. A state can only take custody of a child if the statutory definition of abuse or neglect is met.⁸ At least one state has passed laws providing additional protection and support for

youth who become parents while in care. California's law is based on the idea that children of young parents are better served when:

- they are supported and the birth family preserved through placement together in a family-like setting
- services are put into place that support maintaining and developing the parent-child bond and the parent's ability to provide a permanent home
- there is contact with both the custodial parent and the non-custodial parent
- the young parent attends school and completes homework as well as age and developmentally appropriate activities separate and apart from parenting.⁹

Unfortunately, the fact that a young person is in foster care means they are often subject to increased scrutiny and many more rules than other young parents. Advocates for young parents in foster care must ensure that they are not held to a higher standard than other young parents not living in foster care.

3. If a youth in foster care retains custody of his or her child, are the foster parents able to receive maintenance payments for the youth's child under federal law?

Yes. Title IV-E of the Social Security Act indicates that when a youth in foster care and his or her child are in the same foster home or institution, maintenance payments made to the foster parent or institution shall include amounts necessary for the care of the child.¹⁰

4. What expenses should maintenance payments made on behalf of the infant cover?

Foster care maintenance payments made on behalf of a child of a youth in foster care must cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, liability insurance with respect to the child and reasonable travel for the child's visitation with family or other caretakers.¹¹

5. What can I do to better serve youth in care who are parents or expectant parents?

Ensure that the youth has a lawyer who can protect his or her rights as a parent. Also, advocate for services for the youth:

- **Physical and mental health services**
 - Prenatal and postnatal care
 - Health screenings and services, such as through Medicaid's Early Periodic Screening Diagnosis and Treatment (EPSDT) Program
 - Nutrition and wellness (e.g., through WIC, TANF)
 - Access to a consistent healthcare provider through a medical home
 - Family planning counseling to discuss ways to prevent future pregnancies
 - Health Education such as through Healthy Start or Nurse Family Partnerships

- **Parenting Support**
 - Parenting classes
 - Support groups for pregnant youth or young parents
 - Connections to local resources
 - Role models or mentors

Help an unmarried young father establish his paternal rights as soon as possible to ensure he can continue his relationship with his child while the father is in foster care and after he transitions out of care. Establishing paternity varies by state and may require completing an affidavit, putting his name on the birth certificate, adding his name to a paternity registry, or other steps. If the youth is currently in foster care, his attorney or caseworker should help him do this as part of his case plan services, as well as help with custody or visitation issues.¹²

Keep records of all steps the youth has taken to be an appropriate parent, including certificates for completing service programs, and share these with the youth's attorney or the court. Also write letters outlining your positive observations of the client's parenting skills, or offer to testify in court.

References

1. Dworsky, A. & J. DeCoursey. *Pregnant and Parenting Foster Youth: Their Needs, Their Experiences*. Chicago: Chapin Hall at the University of Chicago, 2009.
2. This fact sheet is supported through the Partners in Program Planning for Adolescent Health (PIPPAH) grant from the U.S. Department of Health and Human Services, Health Resources and Services Administration, Maternal and Child Health Bureau. The ABA and HTN would like to thank former ABA intern Laura Austen for her assistance with the preparation of this fact sheet.
3. For purposes of this document the term youth or young person refers to an individual under the age of 18.
4. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Prince v. Massachusetts*, 321 U.S. 158 (1944).
5. Young Mothers and Fathers refers to a parent under the age of 18
6. The Supreme Court has repeatedly found that minors have constitutional rights, such as the right to due process or free speech, however sometimes those rights do not receive the same level of protection as for adults. In *re Gault*, 387 U.S. 1 (1967); *Tinker v Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969); *Bellotti v. Baird*, 443 U.S. 622 (1979); *Parham v. J.R.*, 442 U.S. 584 (1979). The Court has never addressed the rights of teen parents, in part because no state has passed a law restricting the parental rights of minors based solely on age. Buss, Emily, "The Parental Rights of Minors," 48 *Buffalo L. Rev.* 785 (2000).
7. *Stanley v. Illinois*, 405 U.S. 645 (1972); *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Caban v. Mohammed*, 441 U.S. 380 (1979); *Lehr v. Robertson*, 463 U.S. 248 (1983).
8. See, e.g., *In re Hall*, 703 A.2d 717 (1997).
9. California Welfare and Institutions Code 16004.5
10. 42 U.S.C.A. §675
11. CFR 1356.21; CFR 1355.20
12. For youth who have already exited care, many family courts have self-help centers that provide information, or you can help the father obtain free or low cost legal assistance (visit www.findlegalhelp.org or call your local bar association for guidance). See the HTN/ABA Fact Sheet on young fathers, available at www.healthyteennetwork.org for more on young fathers.

Portions of this fact sheet previously appeared in ABA *Child Law Practice*, www.abanet.org/child/clp/home.html

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