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# Verdict

December 13, 2011  
[Joanna L. Grossman](#)

## Everything I Need to Know About Family Law I Learned from *Teen Mom*: Part Two in a Two-Part Series



The lives of teen parents are often complicated, as we see depicted over and over again in the MTV reality show *Teen Mom*. Although this show is not about law (*Law and Order: Teen Mom* might be an interesting new spin-off, however), the teen mothers find themselves in a variety of family law controversies in the natural course of things. In this column, I'll consider just a sampling of the legal issues raised on the show, including those related to legal fatherhood, parental rights, child custody, domestic violence, and open adoption.

### Who's Your Daddy? And Why Does It Matter?

For the teen moms on this show, there seems to be no question as to who fathered their children. But under parentage law in most states, unwed biological fathers are not necessarily legal fathers—unless and until steps have been taken to perfect their rights. Biological mothers, outside an enforceable surrogacy arrangement, are automatically legal mothers upon birth of a child.

Fathers, however, have to establish paternity and grasp the opportunity to act as a parent in order to have parental rights that entitle them to participate in the rearing of their children. Legal parent status comes with obligations as well; whether or not a father seeks to exercise any parental rights, he can still be ordered to pay child support once paternity has been established.

Although state law varies, most states recognize legal father-child relationships based on an acknowledgment or adjudication of paternity, marriage to the mother, or a father's openly and notoriously holding out a child as his own.

Does legal fatherhood matter? For the teen dads on this show, it comes up in several contexts. To take just three examples:

- Chelsea refuses to allow Adam to see their daughter, Aubree, or take her for overnight visits. Adam is a drop-in dad at best; he goes long periods of time without seeing Aubree or paying child support. Chelsea explains her refusal to Adam: "I don't know where you live or who's going to be around her. . . . I don't think you should see her until you pay support. You had your chance, why would I trust you now?"

Legally speaking, visitation should not be conditioned on payment of support. But Adam does not have a formal visitation order he can draw on and may or may not have satisfied the law's criteria for legal fatherhood. Until he does, Chelsea has the power to withhold visitation.

- Maci and Ryan, as discussed below, share custody of son, Bentley. Although they don't have a formal custody order, Ryan is subject to a formal child support order. He clearly is the legal father of Bentley, which means he has an obligation to pay support. When Maci realizes that he is behind on payments, she asks him to pay up. He claims his paycheck is being garnished, but she claims the checks are not coming. She seeks help from the child support enforcement office, an agency that exists in every state (by federal law mandate) to help collect on existing child support orders.
- Derek, the father of Farrah's daughter, Sophia, died in a car accident while Farrah was pregnant. When Sophia was about a year old, Farrah filed an application for child survivor benefits through Social Security. Eligibility for such benefits, which are available when a parent-earner dies, turns on the existence of a legal parent-child relationship. Proof of that relationship was complicated, however, by the fact that Derek died before Sophia's birth. He had not had the opportunity to meet the criteria for legal fatherhood. Thus, even though his sister provided a DNA sample, which was sufficient to show scientifically that he was the biological father, the Social Security Administration refused to recognize him as the legal father of Sophia and thus refused to grant her petition for benefits. The show was a little murky on the legal details, but Derek's mother seemed to hurt the case by testifying that Derek did not acknowledge the in utero fetus as his, a decision she may have come to regret when she unsuccessfully tried to force Farrah to grant her visitation rights (but more on that later).

### **Best Interests of the Child: Disagreements Over Child Custody and Visitation**

Child custody, although often hotly contested, revolves around a few basic principles. Custody decisions must be based on the best interests of the child. When decided by a judge, custody can turn on almost any factor that relates to the child's well-being, including many different aspects of parental behavior and competence. Custody can be lodged entirely in one parent, with visitation for the other parent; or it can be "joint," so that both parents have residential time with the child. Custody orders are not final and can be modified in appropriate circumstances throughout a child's minority. Only legal, fit parents have the right to custody of children. Third parties cannot seek custody of other people's children, unless there is no fit legal parent in the picture. Custody, however, can be temporarily or indefinitely relinquished to a third party. Some third parties, like grandparents, can seek visitation over the objection of a child's parent, but it cannot be granted unless there is sufficient justification for overriding the parent's wishes, since a parent is constitutionally presumed to act in the best interests of her child.

- Maci and Ryan share custody of their son, Bentley. He spends 3-4 days a week living with each of them. But their custody agreement was reached through a mediation process and was never approved by a court or issued as part of a formal court order. Thus, neither of them has any firm basis for objecting to the other's behavior, without filing a petition for a formal custody proceeding. This troubles Ryan, who worries that Maci might just take Bentley and move. And when she did move to a different town several hours away, he didn't have any clear legal recourse. He also had no recourse when her boyfriend moved in, although he threatened that she would lose Bentley because of it. Likewise, she has no recourse when he leaves Bentley with his parents during custodial visits and goes out partying with his friends. These issues—relocation, cohabitation with a nonmarital partner, and parental behavior—are all matters that would be typically be dealt with in a formal custody agreement that outlined the respective rights and obligations of the parents. Disputes could then be raised as needed with the court, or with a court-appointed parent coordinator or mediator. Without such an agreement, Maci and Ryan are in legal limbo on custody matters.
- Jenelle, perhaps the most troubled of the teen moms, relinquished custody of her son, Jace, to her mother, Barbara. Because Jenelle was staying out late and not tending to her parenting responsibilities, Barbara had been providing most of Jace's care. Jenelle and Barbara fought viciously on several different occasions, including one that landed Jenelle in jail. Barbara threw Jenelle out of the house repeatedly. At some point, Barbara filed suit for custody of Jace, a complaint she would have no chance of winning if Jenelle were a fit parent. But the odds were stacked against Jenelle given her brushes with the law, her involvement with drugs, and her repeated failure to tend to Jace's needs. Rather than contest her mother's

petition, with a lawyer she could not afford, Jenelle agreed to relinquish custody formally to Barbara. Papers were signed and approved by the court. There have been many occasions since when Jenelle has had screaming fits about being told she can't see "my own kid". But when Jenelle signed over custody, she lost the legal right to make decisions about Jace's care or to have him reside with her. Her only recourse now is to file a petition to have custody returned. But given her track record, and yet another bout in jail for drug possession and breaking and entering, she will have a hard time proving she is legally fit.

- Despite having fought her efforts to obtain Social Security benefits on Derek's account, Derek's mother filed a petition seeking visitation with Farrah's daughter, Sophia, over Farrah's objection. Every state has a grandparent visitation law, which allows grandparents to seek visitation over the objection of a child's parent. But, under the Supreme Court's ruling in *Troxel v. Granville*, a fit parent must be presumed to act in the best interests of her child, including when she denies visitation with the child's grandparent. A court can override her decision only if it accords special weight to her preferences and identifies a strong basis for rebutting this presumption. Farrah had a strong case against Derek's mother, who had not established any type of bond or relationship with Sophia by the time she filed the petition. It would be hard to argue that any harm would come to a toddler by not seeing a grandmother she didn't even know. And although the death of one parent is often a factor that weighs in favor of grandparent visitation on that side of the family, Sophia was regularly visited by Derek's father and stepmother, so she had some ties to her father's family despite his untimely death. For all of Farrah's somewhat questionable choices (from frequent nights out early on after Sophia's birth, to taking out a loan for breast augmentation), Sophia's needs seem always to be met by Farrah or her parents, who provide substantial help. She was thus able to fend off the suit by Derek's mother.

## Open Adoption

Among the many births on *16 and Pregnant*, only one of the children was placed for adoption. Catelynn and Tyler made an adoption plan for their daughter Carly. As is often the case today, the adoption was "open" on both the front and the back end. Catelynn and Tyler chose the people who would adopt their daughter, relying on the use of an adoption agent who advised them and facilitated the process. They interacted personally with Brandon and Theresa, the adoptive parents, during the pregnancy and in the first days after Carly's birth. They also made plans for post-adoption contact, which would allow them to follow Carly's development via pictures, letters, and at least occasional in-person visits. There seems to be at least some tension between the birth parents and the adoptive parents in this case as to the amount of appropriate contact. Catelynn and Tyler would like more regular visits; Brandon and Theresa seem to politely resist. At adoption retreats for birth mothers, which Catelynn has attended twice, there is much talk about the mothers' fear that adoptive parents will renege on promises to allow for post-adoption visitation.

Adoptions were once shrouded in secrecy—the birth parents and adoptive parents never met, nor learned one another's identity. The records were sealed from the public, and a new birth certificate was issued to conceal the fact of the adoption altogether. This has changed dramatically in the last twenty years or so. A decline in the social stigma of unwanted pregnancy and adoption and an increased appreciation for the role of genetics in medical history has fueled a movement towards more openness in adoption. This is reflected in the practice of adoption—more adoptions are done privately and without anonymity—and in the law of adoption, which does more to facilitate open adoptions. But even with this move towards openness, the law is not fully supportive of post-adoption contact agreements. In some states, they are not enforceable; in others, they can be enforced only if they call for conduct that is still in the best interests of the child. Often, post-adoption contact agreements are merely aspirational—setting forth the wishes of the parties at the time of the adoption, but binding no one in the future. And without an enforceable agreement, the adoptive parents have all the rights. Before the adoption could take place, the birth parents had to surrender their parental rights so that the court could vest parental rights in the adoptive parents. With those rights in tow, the adoptive parents have the same rights as any parents, which include the right to fend off interference from third parties in all but the most extreme cases.

## Family Violence

Many episodes of *Teen Mom* involve family violence—both between the teen moms and dads, and between the teen moms and their own parents.

- Farrah’s mother, for example, hits Farrah in one episode, hard enough to leave a substantial mark and to merit police involvement. Farrah’s mother is not allowed to see Farrah for a period of time and has to attend anger management classes.
- Jenelle hits her mother in one episode, one incident in an increasingly toxic relationship between the two women. Again, the police are called, and Jenelle ends up charged with assault.
- Amber hits Gary, the father of her daughter, Leah. She is arrested and charged with domestic violence, and the couple is under a no-contact order for months. And because adult violence can threaten the wellbeing of a child, the child welfare agency was called in as well.

The law of domestic violence was correctly applied in each of these incidents. Increasingly, state laws allow for little police discretion. When faced with evidence of violence in the home, police must take action. Many states follow “mandatory arrest” policies, which means a domestic violence incident must lead to someone’s arrest. The domestic violence system revolves around a combination of criminal penalties and civil protection orders that try to protect against future violence by eliminating contact between the parties. And when children are involved, or even just exposed to domestic violence, the child welfare agency steps in to protect them. While domestic violence is committed much more often by men than by women, women are subject to the same rules (so Amber is not immune, even when battering the much larger Gary). And the law protects all household members, not just spouses or intimate partners.

The domestic violence storylines on *Teen Mom* are pretty run-of-the-mill—violent behavior against family members led to involvement of police, courts, and child welfare agencies. It’s not pretty to watch, but this is just what should have happened.

## Conclusion

*Teen Mom* is a reminder that families can be complicated, especially so when they are created hastily and prematurely, before anyone is ready for the responsibilities of adult life, including economic self-sufficiency, marriage, and parenting.

Family law plays an important role in regulating all kinds of families, but especially those in turmoil. Intact, marital families have relatively little occasion to confront principles of family law. Only upon divorce or death, or perhaps an episode of violence or extreme bad parenting, will the law’s regulation of family come into play. But families anchored by teen parents are bound to learn of the law’s role in protecting the family—and its individual members—sooner.

*Teen Mom* can thus be a cautionary tale not just about the perils of unprotected sex, but also about the legal regulation of these fractured and troubled families. And the teen moms’ brushes with family law will undoubtedly continue as they continue to wade through parenting challenges with men with whom they are no longer involved. And if celebrity magazines are to be believed, we have Leah and Corey’s divorce—and its probable messy legal aftermath—to look forward to in a future episode.



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