Parens Patriae Encyclopedia Article

Parens Patriae

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Parens Patriae

Legal term describing the state's power to act on behalf of certain individuals.

This term, which in Latin literally means "parent of the state," refers to a rule, derived from the English common law, empowering the monarch to act as guardian and protector of persons—e.g., children and mentally incompetent individuals—under what is known as "legal disability." In the United States, where the states hold parens patriae authority, state attorney generals in certain cases act on behalf of state residents in need of legal protection. Typically, parens patriae power is used to protect a child who has no legal **guardian.** However, since a significant 1839 Pennsylvania court ruling which upheld a mother's decision to have her daughter committed, despite the father's petition for her release, parens patriae power has been invoked, unjustly, according to some writers, to over-rule a parent's custodial rights.

For Further Study

Books

Chesler, Phyllis. *Mothers on Trial: The Battle for Children and Custody.* New York: McGraw-Hill, 1986.