

Court Access for Incarcerated Parents

June 26, 2017
SeaTac, WA
8:30am – 3:00pm

PURPOSE

There are many barriers that incarcerated parents face in trying to participate in their family law and/or dependency cases. There is no uniform, statewide procedure that courts use when an incarcerated parent wants to remotely participate in a hearing, trial, or other court proceeding. The purpose of this convening was to find solutions that will facilitate participation, and will help keep families together.

OBJECTIVE

To remove barriers that exist institutionally within the courts and prison systems, and to create a statewide procedure for incarcerated parents to remotely participate in their family law and dependency cases.

EVENT REPORT

Welcoming Remarks

Justice Gordon McCloud, Chair, Gender and Justice Commission

Justice Gordon McCloud welcomed the gathered group of stakeholders and thanked them for taking the time to develop solutions to the barriers incarcerated parents face when trying to participate in their family law and dependency cases. She reviewed statistics on incarceration, to bring attendees onto the same page about who is impacted by these barriers. Justice Gordon McCloud emphasized the importance of involvement from state agencies that have the ability to make policy and practice changes that will improve access for incarcerated parents, through partnership with advocacy groups.

Introductions and Format/Framing for the Day

Gail Stone, Chair, Incarcerated Women and Girls Committee

Ms. Stone oriented everyone to the purpose and objectives for the day. The focus is on developing solutions to identified barriers. During the registration process, individuals were asked to share why they were interested in participating in the event. Ms. Stone read aloud several responses anonymously, to highlight the fact that individuals from divergent perspectives – corrections, courts, attorneys, and parents themselves – were all invested in the same goal of improving access for incarcerated parents.

Panel Discussion: Navigating the System

Jeannie Macnab, Facilitator

Panelists

- *Elizabeth Hendren, Family Law Attorney, Northwest Justice Project*
- *D'Adre Cunningham, Incarcerated Parents Project Attorney, Washington Defender Association*
- *Commissioner Jennie Laird, Pierce County Superior Court*
- *Susie Leavell, Parenting Sentencing Alternatives Administrator, WA DOC*
- *Alise Hegle, Children's Home Society, and formerly incarcerated parent*
- *Cheryl Strong, formerly incarcerated parent*
- *Tanya Quinata, currently incarcerated parent (via phone)*

The purpose of this panel was to hear perspectives from attorneys who represent or assist incarcerated clients, a judicial officer who hears these cases, the Department of Corrections, and current and formerly incarcerated parents who were directly affected by this issue.

Ms. Hendren, Ms. Cunningham, and Commissioner Laird presented a short summary of the legal and policy framework that currently governs court access for incarcerated parents in family law and dependency cases.

The panel then discussed their own observations and/or experiences related to the following barriers to court access.

Previously-Identified Barriers to Court Access for Incarcerated Parents

Original list prepared by Elizabeth Hendren, Northwest Justice Project

- **Court-appointed attorney:** Attorneys are appointed for dependency cases, but not family for law cases. Additionally, federal funding for legal aid prohibits representation in court of incarcerated individuals, so indigent parents with family law cases seldom have an attorney.
- **Access to a law library:** Minimum-security prisons and most county jails do not have a law library. DOC will not usually transport parents from minimum-security prisons to a prison with a law library for a family law issue. 65.22% of judges and commissioners surveyed in 2016 thought incarcerated parents have access to legal research.
- **Mandatory court forms:** Family law cases require pleadings to be filed on mandatory forms, however these forms are not available in minimum-security prisons and jails. 46.38% of judges and commissioners surveyed in 2016 thought incarcerated parents have access to these forms.
- **Transportation:** DOC does not provide transportation to family law hearings/trials.
- **Internet access:** Incarcerated parents have no internet access, however 21.74% of judges and commissioners surveyed in 2016 thought they do.

- **Email access:** Incarcerated parents do not have regular email access. They can only send electronic messages through JPay, however most courts do not have JPay accounts.
- **Legal mail:** Sometimes important, time-sensitive legal mail is not clearly identified as such and is processed by the prison as regular mail, which can be very slow.
- **Telephonic appearances:** Currently each county has a different local rule for requesting a telephonic appearance, and not all the rules are possible to complete without internet access, email, or money for multiple phone calls. When telephonic appearances are arranged, some counties give a multi-hour window to expect the call from the court, which is burdensome to DOC staff who are expected to work with multiple people.
- **Access to court-ordered services:** Sometimes the court orders parents to complete services or treatment that is not available to them at their facility, and sometimes the parents' lack of compliance with the court ordered services is used against them.
- **Eligibility for parenting sentencing alternatives:** if a parent may lose their child in a dependency case, this is a significant barrier to overcome to get into these programs.
- **Phone calls with attorneys:** There is not usually a way for court-appointed attorneys to call into a prison to speak with their client for an urgent issue. Additionally, calls out are expensive; not all incarcerated parents can afford to pay to call out and not all law offices accept collect calls. Some DOC counselors will facilitate calls between incarcerated parents and their attorneys, but others refuse, saying that it is against DOC policy for them to do so.
- **Phone calls and mail to DSHS Social Workers, CASAs, and GALs:** Similar to calls with attorneys, sometimes parents need to communicate with social workers or evaluators working on their cases and can't due to the high cost of prison phone calls. Additionally, parents can't send free legal mail to social workers and evaluators as they can to attorneys.
- **Child visitation:** At the 2014 Stakeholders' meeting, attorneys reported some courts seeming unaware of visitation options through DOC or being unwilling to allow incarcerated parents to have court-ordered visitation with their children. This was echoed in the 2016 court survey, where 16.87% of judges and commissioners surveyed answered "no" the question "Do you believe visits with a parent in jail or prison can be in the best interests of the child?"
- **Lack of information:** Parents don't know what is happening in their family law/dependency case.

Potential Solutions Identified

- The Department of Corrections could amend its policy to include family law as a type of legal matter requiring access to a law library.
- Incarcerated parents should be able to access technology to participate in video visits with their children.
- Family impact statements are very helpful and should be used.

- Develop a statewide unified rule for telephone appearance.
- Create a guide for DOC counselors of available resources to help incarcerated parents with these issues. Have a resource “navigator” for parents in each facility.
- Install kiosks with access to pre-approved legal resources in minimum security prisons.
- Implement advanced planning with attorneys for incarcerated parents’ telephone appearances. Courts may sign an order requiring appearance by telephone or otherwise. Courts should have all the information/evidence necessary to make decisions in these matters.
- Increased funding.
- Legal mail is a helpful tool. It is defined by policy, and could be amended to include other entities that can send confidential mail to incarcerated people.

Successful practices that could be institutionalized

- When incarcerated parents file a pro se notice of appearance, this puts court on notice that they want to participate even if they haven’t figured out how to file a response yet. It has been observed to have an impact on whether the court would conduct hearings without them.
 - Court must be aware that this has been filed, so would need to be noted in system.
 - Some court are more particular about how notice of appearance is written.
- Plain language forms may be helpful for improving access. It will be helpful to revisit this later when they have been in use for a while.
- DOC asks at intake if the individual is a parent. Other facilities, including juvenile facilities, could implement this, and provide appropriate resources.
- Law school clinics and pro bono attorneys are really helpful, but more are needed. Legal aid providers operate with restricted funding that does not allow them to represent incarcerated individuals.

Prepare for Afternoon Session

Jeannie Macnab, Facilitator

- A list of the identified barriers was posted on the wall. Each participant was given sticky dots to place next to the barriers they were most interested in working in depth on solutions for in the afternoon.
- The barriers that participants chose were:
 1. Access to legal resources
 2. Telephonic appearances
 3. Phone calls and mail to DSHS Social Workers, CASAs, GALs
 4. Rules and procedures vary by county
 5. Lack of information – parents don’t know what is happening with their family law/dependency case

6. Parents don't have money for stamps, phone calls, email and they do not have the ability to incur debt

Small Group Work

Jeannie Macnab, Facilitator

- Participants broke out into five small groups to identifying a practical solutions to a specific barrier. Barriers three and five were combined into one group.
- Participants chose a group based on their interest or ability to make change in that area. The facilitator helped with ensuring all perspectives were represented in each group for the most effective results.
- Each group worked to identify potential solutions, choose the most effective solution, and then develop a work plan for achieving it, including identifying other partners needed.

Small Group Share Back

Barrier #1 Access to Legal Resources

Solution: Remove barriers to law library/ legal research access by providing multiple avenues to legal research.

Next steps: Provide mobile library. Install kiosks. Improve coordination/communication with outside research services such as the state law library. Create guides or other resources to maximize time allowed for legal research. Change DOC policy about access to include pending dependency/family law cases after impact review (i.e. allow access to law library without changing custody classification).

Barrier #2 Telephonic appearances.

Solution: Propose statewide general rule governing telephonic appearances.

Next steps: draft rule, and aim is to have draft by Sept 1. DOC draft policy by July 31st and look into video capabilities. All provided to stakeholders in September for review and to prepare for submitting rule. Propose general rule winter 2017/18. If rule is implemented, cross training will be necessary to ensure all agencies are aware of the policy and process changes.

Barriers #3 and #5 Parents don't know what is happening in their family law/dependency case and don't have telephone or email access to social workers, CASAs, GALs, and others involved in the case.

Solution: Create a plain language guidebook about family law and dependency processes and where to seek additional information. This will help the incarcerated parent navigate the system.

Next steps: Individuals in this group divided up sections to draft. Those involved in advocacy groups with parents offered to reach out to the parents and seek their input on the guide. Ms. Hendren from NJP will provide list of links included on the kiosks for inclusion.

Barrier #4 –Rules, policies, and procedures vary by county

Solution: Change them or create statewide rule or law to include mandatory appointment of counsel for incarcerated parents in dependency actions, without requiring affirmative request or pre-screening for indigence

Next steps: Collect data from OPD. Draft rule or legislation to propose. Obtain legislative buy-in.

Barrier #6 - Parents do not have money for stamps, phone calls, email and they do not have the ability to incur debt

Solution: Change DOC policy 590.500 to include all legal issues as priority for access. Alternatively, clarify the definition of civil rights issue to include additional case types.

Next steps: Request that DOC review the policy. Obtain feedback from other stakeholders. DOC also noted that it will seek an AG opinion about the definition of civil rights issues in the policy.

Thank You and Adjournment

Rita Bender, Member, Incarcerated Women and Girls Committee

Ms. Macnab closed the facilitated discussion and thanked everyone for their participation. On behalf of the Incarcerated Women and Girls Committee of the Gender and Justice Commission, Ms. Bender thanked participants for their time and commitment to making change.

Mary Helen Roberts invites anyone who is interested in continuing to work on these issues to also attend the Children of Incarcerated Parents Workgroup, which meets on the first Wednesday of every month at the AOC SeaTac Office.