

SHB 1284 GUIDE

PREVENTING TERMINATION OF PARENTAL RIGHTS FOR INCARCERATED PARENTS

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Overview

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- About the Incarcerated Parents Project
- Policy Goals of SHB 1284
- Components of SHB 1284 and Practice Tips
- Other issues: open adoption, gender, addiction.



The Incarcerated Parents Project (IPP)

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- Project developed by WDA and SU School of Law in conjunction with OPD and UW School of Law
- Temporarily funded through award of cy pres funds from *Judd v. AT&T*

Two Key Components to IPP

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- Incarcerated Parents Advocacy Clinic (IPAC) at Seattle University School of Law

- Incarcerated Parents Project at WDA



IPAC at SU Law School

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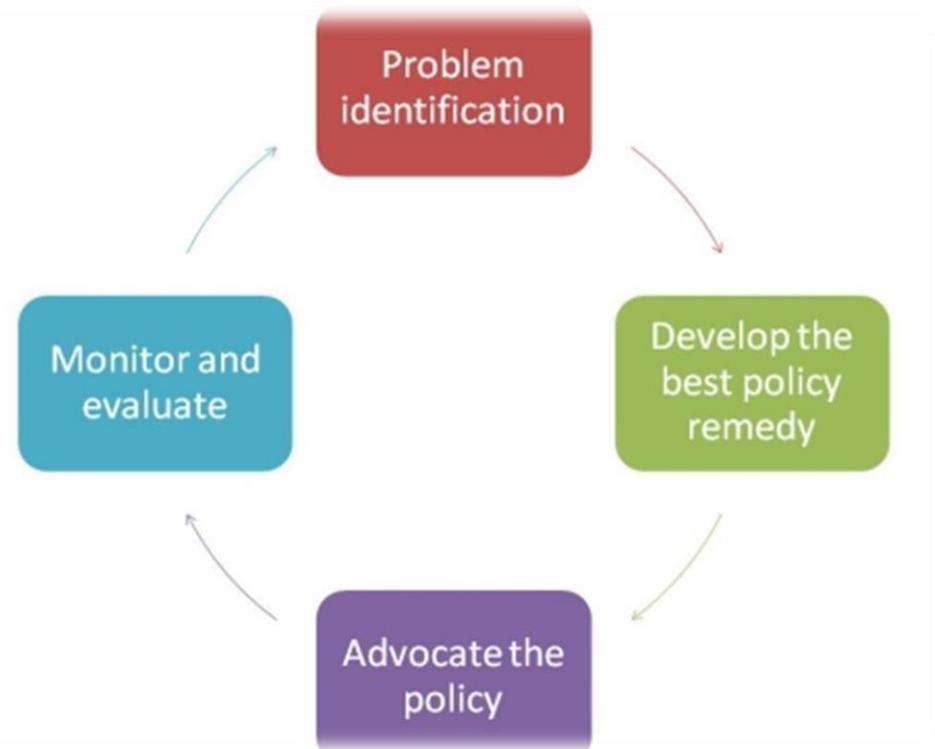


- Law School clinic providing client-centered, holistic representation
- Develop best practices
- Write motions & briefs for outside practitioners
- Help clients develop self-advocacy skills

IPP at WDA

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- Provide Trainings-
lawyers, judges, etc.
- Develop and Share
IPAC materials w
practitioners
- Provide individual case
assistance
- Engage in Legislative
and Policy Advocacy



SHB 1284 “Children of Incarcerated Parents Bill”

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- Effective July 28, 2013 related to the rights of parents who are incarcerated or experienced incarceration during their dependency case
- ▣ Amended RWCs 13.34.067, 13.34.136, and 13.34.145 and 13.34.180.[1]

Policy Goals

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- Prevent unnecessarily separating families as it is devastating to children in foster care
- Support family reunification which is linked to reduced recidivism for parents, greater family stability, and improved emotional response for children.[2]

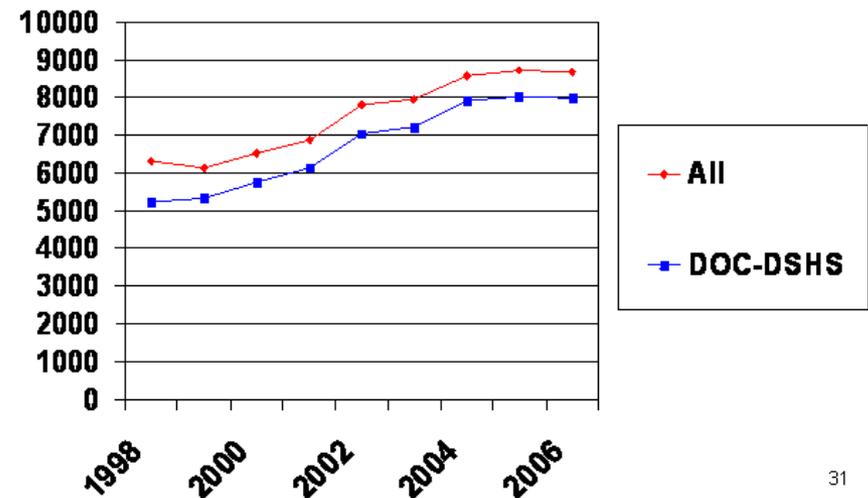


Why more support for incarcerated parents?

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- More parents in prison = more DSHS involvement
- Rising prison population and child welfare timeline changes = incarcerated parents are 2x more likely to have parental rights terminated than parents outside the criminal justice system [3]

DOC – DSHS Overlap:
Admissions (1998 – 2006)



It takes more time to navigate multiple systems

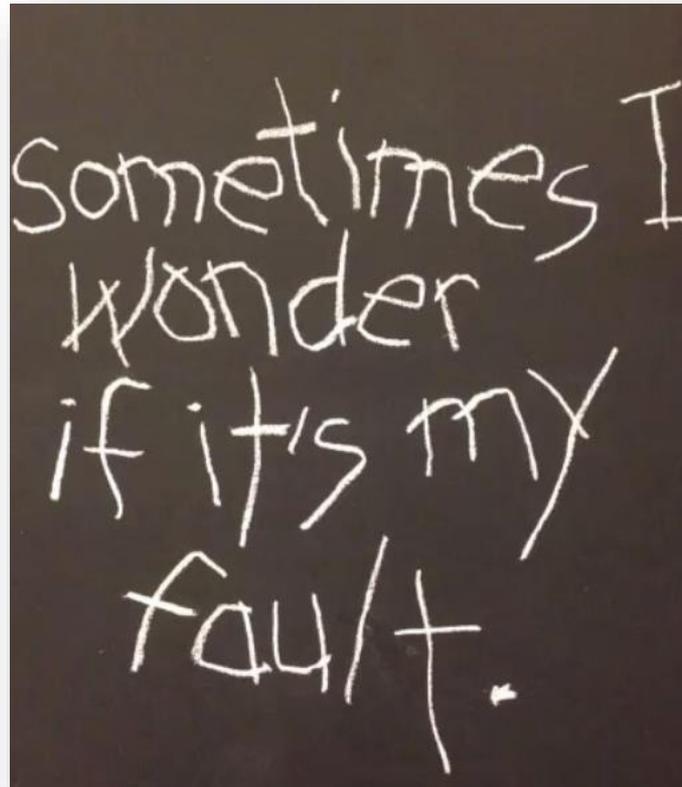
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- Legislature Responded as Incarcerated parents' cases have unique circumstances:
 - permanency challenges-barriers to family support systems, therapeutic services and visiting opportunities
 - difficult timeframes (sentences are often longer than 15/22 months), and
 - are frequently more labor intensive and time consuming[4]



Better Outcomes for Kids

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Sometimes I wonder if it's my fault.

- Maintaining contact helps children:
 - ▣ Allows them to express emotional reactions to separation
 - ▣ Promotes a more realistic understanding
 - ▣ Reduces child anxiety by knowing their parent is safe[5]

Components of the Bill

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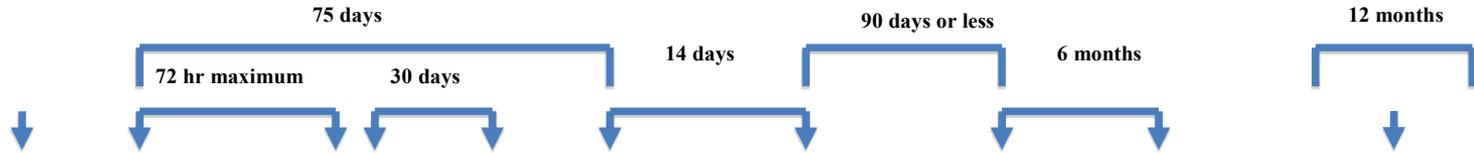
- Access to
 - ▣ Case conference meetings
 - ▣ Responsive Permanency planning
 - ▣ Visitation
- Extending Child Welfare Timelines
 - ▣ Good Cause Exception
- Guardianship and Open Adoption
 - ▣ Parents in long-term incarceration
- Rights at Termination
- Setting up Cases for Appeal



Dependency Timeline-Know Your Rights

Tool to Explain Process to Client

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CPS Referrals	Child picked up...	Shelter Care Hearing	Continued Shelter Care Order for Shelter Care	Fact Finding within 75 days of filing of the petition	Disposition	First Dependency Review Hearing	Dependency Review at Least every 6 months	Permanency Planning Hearing
From citizens, police, professionals CPS assesses risk factors and decides whether to file dependency petition and/or placement	By CPS require a court order By police upon probable cause By hospital administrator or licensed physician, if they deem child in imminent danger Or Volunteer Placement Agreement (VPA)	Within 72 hours of placement Services offered to eliminate need for removal (Except in emergency situations) (1) (2)	Beyond 30 days Continued Shelter Care Order for shelter care beyond 30 days A second shelter care hearing can be called by any party at any time or set by the court (1) (2)	Determine facts as alleged in petition. Parent choices: Agree/cooperate Compromise/Negotiate Disagree/go to trial (1) (2) Disposition may follow immediately after fact finding	May be continued for up to 14 days after dependency ordered Requires Individual Service and Safety Plan (ISSP) to the court and parties 10 working days prior to hearing (1) (2)	90 days from disposition or six months after original placement date (OPD) whichever is first MUST BE IN COURT Return home if reason for removal no longer exists Court will review compliance and progress of dispositional order Services may be modified and/or additional services ordered. NOTE: This can be Permanency Planning Hearing if necessary.	Dependency Review at least every 6 months May have interim reviews on motion by a party or set by a court (1) Begin talking to attorney and social worker regarding (3) and (4)	Hearing every 12 months starting with OPD Plan could be: ❖ Return home ❖ Adoption ❖ Guardianship ❖ Permanent legal custody ❖ Long term foster/relative care agreement ❖ Independent Living (16yr+) <u>Child out of home 15 to 22 months must file termination petition unless SHB 1284 applies. You should be in</u>

AT SHELTER CARE AND EARLY STAGES OF THE CASE

Access to hearings and Case Planning

RCW 13.34.067(3): Participation via Phone or Videoconference

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- A parent who cannot participate in a case conference because of incarceration must be given the option to participate via phone conference or videoconference. RCW 13.34.067(3).
 - ▣ Note a case conference can be called at any stage
- **TIP:** Consider a court order that states that DSHS should work with prison/jail counselors to facilitate communication and participation in case planning meetings (via teleconference or video conference). RCW 13.34.067(3).
- **Parent for Parent Peer Support Program**-find out if your county has a program.
 - ▣ **King County:**
http://arcwa.org/getsupport/parent_to_parent_p2p_programs/coordinators/



RCW 13.34.136 (2)(b)(i): Creates Requirements for Service Plan

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- The Service Plan must address the needs of an incarcerated parent including the ability to participate in meetings, the treatment available in the facility where confined, and it must provide for visitation, unless not in the best interest of the child. **RCW 13.34.136 (2)(b)(i).**

RCW 13.34.136 (2)(b)(i) Tip #1: Beat the Bureaucracy!

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- Attorneys/Social workers should contact the facility to determine the best way to reach client
- Consider court order for counselor-facilitated visitation
- Know obstacles regarding clearance and ensure Department acts quickly
- Know available programs and get documentation of availability

RCW 13.34.136 (2)(b)(i)

Tip #2

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- Attorney and DSHS should work together to create a plan for their client
- According to the law, a service plan must reflect services available where the parent is incarcerated. RCW 13.34.136(2)(b)(i).
- The parent's attorney should engage the department in a cooperative manner early on and throughout the case.



RCW 13.34.136 (2)(b)(i)

Tip #3

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- Challenge any plans created by the state that do not make sense, ask the state to include how it will address waitlists, unavailability, or funding problems for services. Ask whether the plan will amount to reasonable efforts in the future.
 - State must provide services for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding. RCW 13.34.025.
 - The Department shall coordinate within the administrations of the department and with contracted service providers, in order to provide any services ordered by the correct for purpose of correcting parental deficiencies...RCW 13.34.025(2)(a-d).
 - Not providing funding for services can delay permanency, which can cost more in the long term.

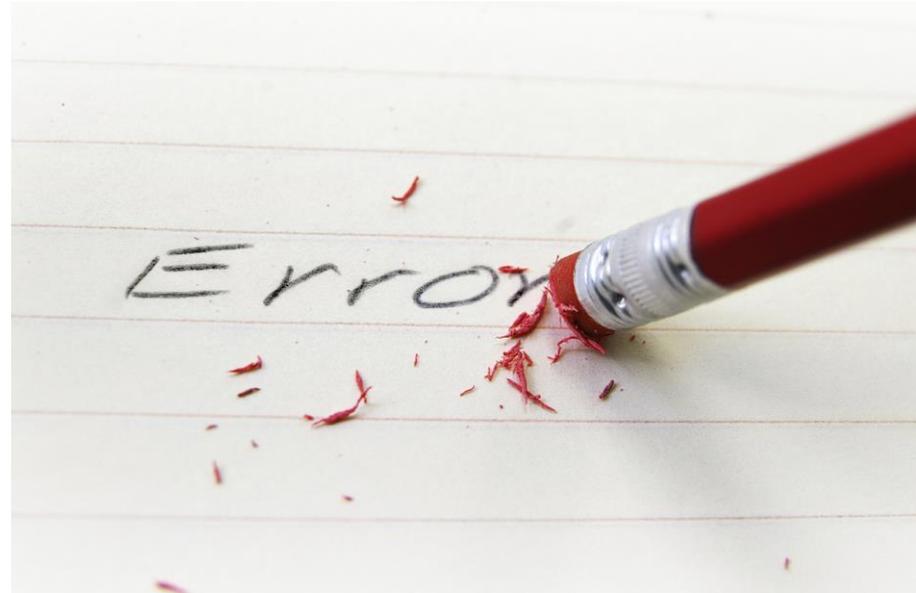


RCW 13.34.136 (2)(b)(i)

Tip #3

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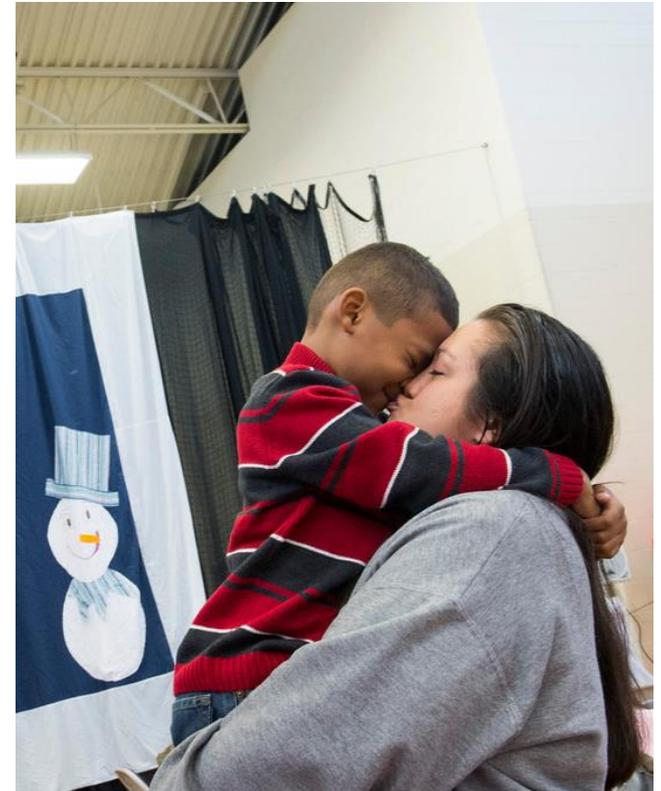
- ❑ Where mistakes in the ISSP exist, parent's attorneys should notify the court in the report before the review hearing
- ❑ We have seen success where clients write a letter to the social worker requesting such changes be made and updating on the services and programs they are completing.
- ❑ Parent's attorneys may as a last resort file a motion to Correct or Redact your client's ISSP as soon as possible under RCW13.50.010(6)



Tip #4: When Visits aren't Occurring

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- Consider motions for visitation (or other services that need to be modified or provided) with
 - ▣ Importance of visitation for maintaining family ties
 - Legal and Legislative Support
 - Social science support
 - DOC policy supporting visitation
 - Impact on children-reduces anxiety etc.
 - ▣ Reasonable efforts-state must be able to prove at termination along with meaningful role standard. RCW 13.34.180 (1)(f). (see later slides)



Benefits of Prison Visits on Children's Well-Being

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- Provides assurance
- Reduces separation anxiety
- Can reduce the child's incidence of problematic behavior and improve outcomes
- Provides stabilization
- Maintains parent-child attachment [2]



AROUND PERMANENCY PLANNING STAGE

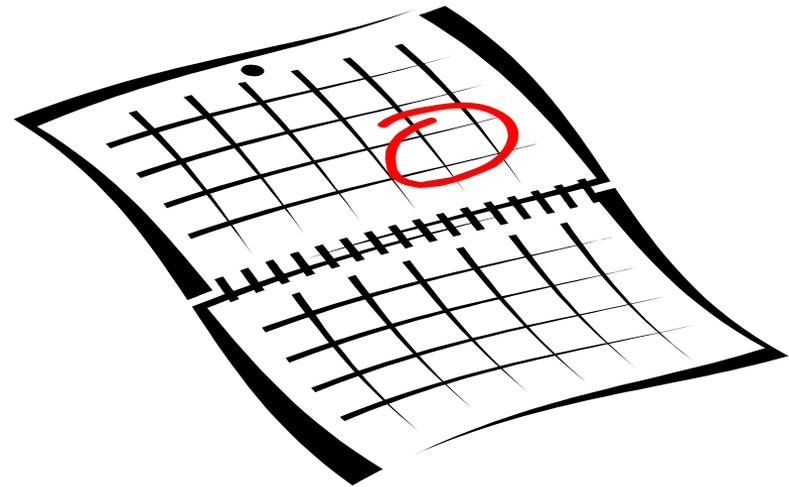
File Motions for Change in Permanency Plan, Good Cause Exception, Meaningful Role Standard

RCW 13.34.145 (5)(a)(iv): Creates a Good Cause Exception to Delay Filing

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More time!

- SHB 1284 Created an additional “Good Cause” exception where a parent is incarcerated or the parent’s prior incarceration is a significant factor as to why the child has been in foster care for 15 of the last 22 months, as long as the parent has maintained a “**meaningful role**” in the child’s life. RCW 13.34.145 (5)(a)(iv).



RCW 13.34.145 (5)(a)(iv): Actions near Permanency Planning Stage

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- If return home is not possible due to incarceration, or previous incarceration, the court can find a good cause exception for the State not to file a petition to terminate parental rights. RCW 13.34.145 (5)(a)(iv).
 - ▣ Allows State to delay filing without violating federal timelines.
 - ▣ Court won't extend the case indefinitely, it's required under law that the good cause finding be evaluated at all subsequent hearings, establishing about a six-month period before the parent's progress will be reviewed in light of the best interest of the child. RCW 13.34.145.

RCW 13.34.145 (5)(a)(iv): Actions near Permanency Planning Stage Cont.

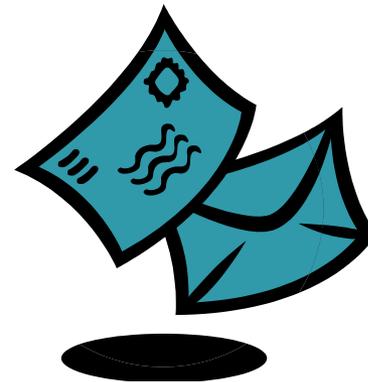
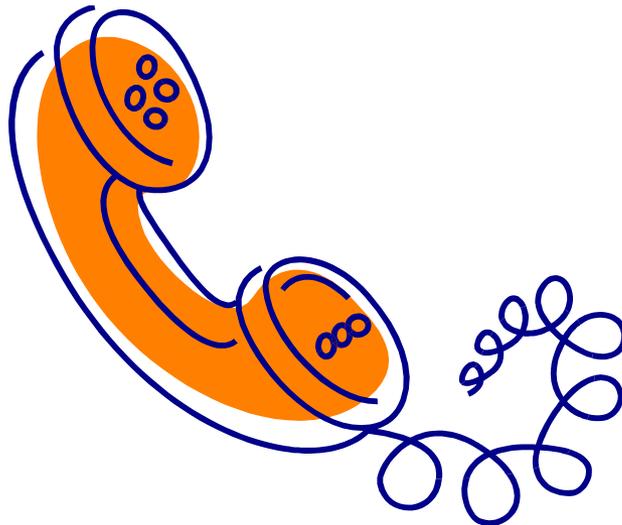
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- If DSHS opposed good cause exception the court can still assess and make a finding on the meaningful role standard
- Under the good cause exception in the space provided, the court can make finding that the incarcerated parent has maintained a meaningful role in their child's life.
 - Note-meaningful role assessment does not refer to the parental bond, as DSHS may be undermining the ability of that bond to be created. The lack of bond in and of itself is not representative of lack of meaningful role. Urge DSHS to provide the contact necessary to evaluate the bond and determine best interests of the child

RCW 13.34.145(5)(b): Guides Court on Meaningful Role Assessment

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- Supports and outlines what parenting from prison may look like: expressions of concern such as letters, phone calls, visits and other forms of communication. RCW 13.34.145(5)(b)(i).



Assessment of Meaningful Role should draw upon a wide range of people

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- Allows the court to use information provided by the parent and the parent's attorney and other individuals working closely with the parent, such as volunteers, program staff, and counselors, in order to make the assessment. RCW 13.34.145 (5)(b)(iv).



Overall Tip: Consider Parent's Positive Response to Reasonable Efforts

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- **Consider actions and record showing a positive response to reasonable efforts by the department and willingness to engage.** Where services are unavailable, has the parent shown they are willing to do services.
- Ask parents attorney and/or social worker to provide a declaration from parent re what they are doing to work towards reunification, classes, services etc. Get copies of class curriculum.
- Ask parents attorney to get letters or support from counselors.

RCW 13.34.145(5)(b): Show Efforts to Communicate w/ Child(ren) & DSHS

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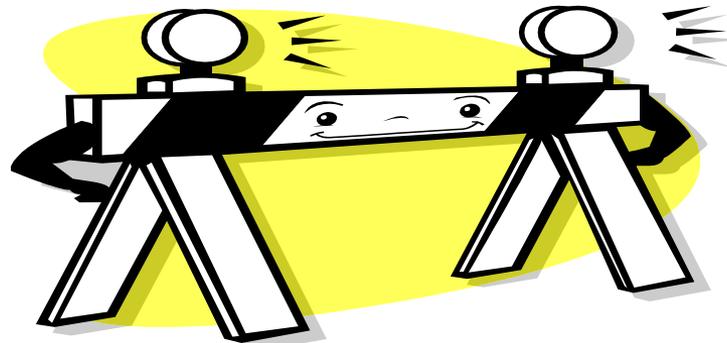


- **How do you evaluate efforts? Encourage parents attorneys and SW to submit a log documenting efforts they made to access family support systems, therapeutic services and visitation.** Parents can keep copies of postage slips of letters sent to kids, phone calls with kids, list of programs and certificates where possible, ask facility for a print out of log for phone calls made to child (or make their own).
- **What is a willingness to engage with DSHS?** May be shown by copies of letters, phone logs showing communication with social workers etc. about what progress they are making. Even if it is to say that they are on a wait-list, and need help getting access.
- **Look for support from Prison/Jail staff.** Consider support from individuals parents work closely with while in prison.

RCW 13.34.145(5)(b)(v): Documenting Barriers for Meaningful Role Determinations

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- Asks Court to Look at Barriers and Limitations imposed on their ability to maintain a meaningful role.
- A Parent may be able to receive a good cause exception if they maintained a meaningful role in their child's life, or if they can show they had barriers that made it difficult for them to maintain such a meaningful role. RCW 13.34.145 (5)(b)(v)
 - **TIP: Look at documentation of barriers faced and failed attempts to access family support programs, services, visiting opportunities, restrictions to mail and telephone services, and inability to participate in planning meetings. These will be useful at termination stage under 13.34.180(1)(f).**



Protections from previous termination for failure to complete services

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- SHB 1284 Gives Second Chance where Aggravated Circumstances for Failure to Complete Services is Due to Incarceration
 - Where constraints of a parent's current or prior incarceration and associated delays or barriers to accessing court-mandated services exist, this may be considered in rebuttal to a claim of aggravated circumstances under RCW 13.34.132(4)(h) for a parent's failure to complete available services. RCW 13.34.145(5)(c).

PROTECTIONS AT TERMINATION STAGE

Meaningful Role, Reasonable Efforts and Protections
for Long-Term Incarceration

RCW 13.34.180: Protections at the Termination Stage

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- Parents who have not received any support from DSHS will have a fighting chance at termination stage
- Recent published decision by the Court of Appeals for Division I, the Court made it clear that the requirements added by SHB 1284 to RCW 13.34.180(1)(f) must be considered by the court because they are part of the elements necessary to terminate the parental rights of an incarcerated parent.



See *In re Dependency of A.M.M.*, No. 70832-5-1, 2014 WL 3842977 (Wn. App. Aug. 4, 2014). [3] and followed by *In re Termination of M.J. and M.J.*, No. 32321-8-III, (Wn. App. April 28, 2015).

RCW 13.34.180 (1)(f): Additional Requisites for Incarcerated Parents

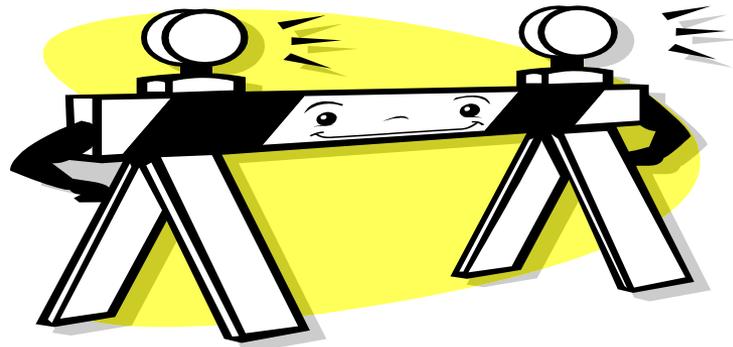
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- If the parent is incarcerated, in order for the state to prove that the parent child relationship clearly diminishes the child's prospects for early integration into a stable permanent home, the court shall consider:
 1. Whether a parent maintains a meaningful role in his or her child's life based on RCW 13.34.145(5)(b),
 2. Whether DSHS made reasonable efforts as established under RCW 13.34, and
 3. Whether particular barriers existed.

RCW 13.34.180(2): Provides Another Look at Barriers before Termination

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- Evidence that incarcerated parents did not receive services, experienced delays and barriers to visitation and other meaningful contact, or could not be found due to their imprisonment may be used to challenge termination (the court may consider such a showing as evidence of rebuttal to any presumption established pursuant to 13.34.180(1)(e)). RCW 13.34.180(2).
- Refer back to slides 29-31.



Reasonable Efforts-Incarcerated Parents

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- **At termination the court must consider “reasonable efforts”** only in those cases where a parent is incarcerated.
- For some incarcerated parents—particularly long-term incarcerated parents—it is not sufficient to support “reasonable efforts” solely for reunification
- “reasonable efforts” for incarcerated parents is focused on the ability to maintain contact throughout the dependency process AND at permanency

RCW 13.34.180(5):Parents in Long-Term Incarceration

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- Alternatives to Termination and Open Adoption
 - ▣ **For a parent in long-term incarceration** who is able to maintain a meaningful role in a child's life DSHS should seek a permanent placement (other than adoption), such as non-parental custody or guardianship, that would allow the parent to maintain the relationship.
 - ▣ Parents would show through visitation, phone calls, letters, or on the other hand, barriers to show they maintained a meaningful role.



Open Adoption Problem

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- ❑ Open Adoptions allow birth parents to make an agreement of the level of contact they will maintain with the adoptive parents.
- ❑ These contracts nearly impossible to enforce, were never contemplated in the dependency context.
- ❑ Parents are forced to relinquish rights and have an open adoption or they can go to trial and fight and possibly get custody.
- ❑ In many instances at termination trial, they can no longer have the open adoption option.

Open Adoption is not a Suitable Alternative to Guardianship

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- Guardianship is a form of permanency under the dependency statutes.
- It is a preferable alternative when a child needs permanency but maintaining contact with the parent is in the best interest of the child.
 - ▣ A guardianship under 13.36, has a clear mechanism for enforcement, for modification and termination, unlike open adoption agreements.
- It was meant to be used for incarcerated parents:
 - ▣ When the law passed, Rep. Mary Helen Roberts stated: “...a good step to better meet the need of children who have an incarcerated parents...” [4]

Bias: Addiction & Mothers

- Medical groups have long recognized “that addiction is not simply the product of a failure of individual willpower. Addiction has pronounced physiological factors that heavily influence the user’s behavior and affect his or her ability to cease use and seek treatment.
 - ▣ Indeed, drug dependence cannot often be overcome without treatment.
- The moral judgment surrounding women who go to prison extends to the perception of their capability as mothers: women prisoners and those who are drug dependent are seen as incapable of being good mothers.
 - ▣ Punishments of termination of parental rights and criminal sanctions based on prior drug dependence fail to serve any legitimate purpose, and undermine individuals’ health.

Bias: Non-Custodial Fathers

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- In spite of mounting evidence identifying how fathers contribute to the well being of their children, they are largely ignored in the child welfare intervention research (O'Donnell, 1999).
- Child welfare policies and practices related to involving fathers and/or their families in case planning and services are almost non-existent (English, 2009).
- Fathers are often not contacted by child welfare workers, in one study, 70% of caseworkers had no recent contact with fathers, and many had never attempted contact. (O' Donnell, 1999) [6]

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