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SUPREME COURT OF THE STATE OF WASHINGTON

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IN RE THE DEPENDENCY OF D.L.B.,

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND  
HEALTH SERVICES,

Respondent,

v.

EDELYN SAINT-LOUIS,

Appellant.

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STATE'S RESPONSE TO SUPPLEMENTAL BRIEF OF *AMICI*  
*CURIAE* WASHINGTON DEFENDER ASSOCIATION,  
INCARCERATED PARENTS ADVOCACY CLINIC, LEGAL  
VOICE, ACLU OF WASHINGTON, WASHINGTON STATE  
COALITION AGAINST DOMESTIC VIOLENCE, AND  
INCARCERATED MOTHERS ADVOCACY PROJECT

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## I. INTRODUCTION

There is a disconnect between the issues raised in the amicus brief and the issues presented in this case. Amici contend that unless the plain language of RCW 13.34.180(1)(f) is changed to require consideration of both current and prior incarceration, the recent amendments to RCW 13.34 will not be given effect. Amici Br. at 11-12. In reality, RCW 13.34 requires consideration of both current and prior incarceration at various stages throughout the dependency and when determining whether filing a termination petition is necessary. *See, e.g.*, RCW 13.34.067(3), .136(2), .145(4). The legislature's decision to address only current incarceration in RCW 13.34.180(1)(f) does not negate the responsibility to consider both current and prior incarceration at other stages of the case. Because RCW 13.34.180(1)(f) is focused on the impact of the current parent child relationship on the child's prospects of integrating into a stable home, it is logical for the statute to examine only whether the current incarceration is impeding the relationship.

Amici also disengage from the facts of this case in contending that it was unconstitutional to terminate Saint-Louis's parental rights because she was a victim of domestic violence. Amici Br. at 16. In so doing, they completely ignore the fact that Saint-Louis's parental rights were terminated because she neglected her three-year-old son, leaving him

home without care for hours at a time; failed to attend the court-ordered parenting classes; failed to complete 90-days of clean drug tests; and had not resolved her mental health issues. *In re Dep. of D.L.B.*, 188 Wn. App. 905, 922-23, 355 P.3d 345 (2015). Although the Court of Appeals' opinion states that she had unresolved domestic violence issues, it certainly does not establish precedent for finding a parent unfit solely because she is a domestic violence survivor.

**A. SHB 1284 Ensures that Incarceration Is Considered at Every Stage, Not Just During the Termination Trial**

Amici suggest that if the Court applies the plain language of RCW 13.34.180(1)(f), it will undermine the protections provided by Substitute House Bill 1284. Amici Br. at 1. This argument ignores SHB 1284's comprehensive changes to RCW 13.34, requiring consideration of incarceration throughout the dependency and termination. Considering incarceration at each stage gives families the best chance of safely reunifying, by enabling incarcerated parents to participate in proceedings, maintain contact with the child, and when possible, receive treatment options that reflect the resources available where the parent is confined. If the parent is not incarcerated until the time of the termination hearing, RCW 13.34.180(1)(f) provides an opportunity for the trial court

to consider the impact of the current incarceration on the present parent-child relationship.

Consideration of incarceration begins with the case conference, which is held shortly after the child is taken into custody. During the case conference, a written agreement is developed, expressing the expectations of the parent and the Department regarding voluntary services for the parent. RCW 13.34.067(1). If incarceration prevents a parent from participating in person, the amended law requires the option of participating by teleconference or videoconference. RCW 13.34.067(3).

Incarceration also must be considered in the permanency plan. The amended law requires that the permanency plan “include treatment that reflects the resources available at the facility where the parent is confined.” RCW 13.34.136(2)(b)(i)(A). When a permanency plan hearing is held, and the child has been out of the home for fifteen of the last twenty-two months, the trial court may order the Department to file a petition to terminate parental rights unless the court finds a good cause exception for not filing a petition to terminate. RCW 13.34.145(5). The amended law adds a good cause exception for incarceration. RCW 13.34.145(5)(a)(iv). If the parent “*is* incarcerated, or the parent’s *prior* incarceration is a significant factor in why the child has been in foster care,” the parent maintains a meaningful role in the child’s life, and

the Department has not documented another reason why termination would be appropriate, the court may find that filing a petition for termination is not appropriate. RCW 13.34.145(5)(a)(iv) (emphasis added). When aggravated circumstances have been alleged, the court may also consider whether “current or prior” incarceration creates barriers to the parent’s access to court-mandated services. RCW 13.34.145(5)(c).

Read as a whole, RCW 13.34 requires significant consideration of incarceration during the dependency, when the court is best able to make adjustments and ensure that incarceration does not become an unnecessary barrier to reunification. In contrast, RCW 13.34.180(1)(f) concerns the findings required during the termination hearing, after the parent has had time to correct parental deficiencies. Contrary to the arguments of amici, holding that the plain language of RCW 13.34.180(1)(f) applies only if the parent “is” incarcerated will have no impact on the trial court’s consideration of incarceration during the phases of the dependency proceedings.

**B. The Plain Language of RCW 13.34.180(1)(f) Requires the Court to Consider Whether the Parent Is Incarcerated, Not Whether She Was Incarcerated in the Past**

While the legislature required the trial court to consider both current and prior incarceration during the dependency, it chose to use different language in RCW 13.34.180(1)(f). Written in the present tense,

RCW 13.34.180(1)(f) requires additional considerations “if the parent *is* incarcerated.” (Emphasis added). There is no ambiguity. The statute plainly requires that the additional factors be considered only if the parent is currently incarcerated, not if the parent was previously incarcerated.

In contending that RCW 13.34.180(1)(f) must be rewritten to include prior incarceration, amici lose sight of the fact that this factor requires the trial court to examine the present relationship between the parent and child. For example, when the child has no prospect for placement in a stable, permanent home, the trial court considers whether continuation of the present relationship creates “feelings of insecurity and instability in the child.” *In re Dep. of K.D.S.*, 176 Wn.2d 644, 658, 294 P.3d 695 (2013). If the parent is currently imprisoned, the trial court may not automatically assume that termination is appropriate. Instead, it must weigh the impact of incarceration on the parent and child relationship, by determining whether the parent is making efforts to maintain a role in the child’s life, whether the Department has made reasonable efforts, and whether the incarceration has been a barrier to visitation or contact. RCW 13.34.180(1)(f), .145(5)(b). It would be irrational for the legislature to require the trial court to determine how a prior incarceration *is* impacting the present relationship between the parent and child, and *is*

impacting the child's current prospects for integration into a stable and permanent home.

Read as a whole, RCW 13.34 logically ensures that the trial court will consider the impacts of incarceration during the dependency, as well as the impacts on the parent child relationship at the time of the termination hearing. There is no justification for straying from the plain language of the law. Contrary to amici's concerns, applying the plain language of RCW 13.34.180(1)(f) will not negate the protections enacted by SHB 1284. Amici Br. at 12-13.

**C. The Court of Appeals Did Not Condone a Finding of Parental Unfitness Based on a Parent's Status as a Domestic Violence Victim**

Amici contend that the Court of Appeals "blamed the victim of domestic violence" and based its decision on "myths about abuse survivors." Amici Br. at 14. In so doing, amici turn a completely blind eye to every finding made by the trial court regarding Saint-Louis's abuse and neglect of her child, unresolved mental health issues, substance abuse, repeated refusal to submit to urinalysis, and failure to complete an intensive parenting course. Like the trial court, the Court of Appeals held that the record established that Saint-Louis could not safely parent D.L.B. and had made little progress to correct her parental deficiencies during the two-year dependency. *In re Dep. of D.L.B.*, 188 Wn. App. at 922-23.

Surely, amici are not asking for a new standard, shielding a parent from termination if she has experienced domestic violence, regardless of whether she has neglected or abused her child, or failed to correct serious parental deficiencies.

**1. Saint-Louis's parental rights were not terminated because she was a domestic violence victim**

Amici contend that it would be unconstitutional to remove children from a parent solely because the parent is a domestic violence victim. Amici at Br. 16. But there is no wrong to be righted here. This case is consistent with the State's written policy of holding abusers accountable and working with victims. Anne Ganley, PhD and Margaret Hobart, PhD, *Social Worker's Practice Guide to Domestic Violence*, Children's Administration, Washington State DSHS (revised Jan. 2016).<sup>1</sup> The State's policy is not to remove a child from a parent solely because the parent is a victim of domestic violence. *Id.* at 9. But when domestic violence "is a co-occurring issue along with other child maltreatment concerns," such as the domestic violence victim's abuse of the child, the child's safety requires State intervention. *Id.*

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<sup>1</sup> Available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjC1qiM2MPMAhUX4WMKHWRvAflQFggcMAA&url=https%3A%2F%2Fwww.dshs.wa.gov%2Fsites%2Fdefault%2Ffiles%2FSESA%2Fpublications%2Fdocuments%2F22-1314.pdf&usg=AFQjCNEV3pqIWtJs8mhHRNDIni4g99u1Sg&bvm=bv.121421273,d.cGc>.

This case provides an excellent example of the State's practice of holding the domestic violence perpetrator accountable and supporting the domestic violence victim. In 2009, Saint-Louis was abused by D.L.B.'s father, Kendrick Bryant. Bryant picked up the infant D.L.B. and threw him at Saint-Louis, then punched her in the face. RP at 32, 177; Ex. 13, Ex. 17 at 2. When Bryant was arrested and convicted, Saint-Louis was granted a permanent protective order. RP at 32. There was no attempt to blame Saint-Louis for the violence or remove D.L.B. from her care, even though he was physically involved in the abuse. Later, Saint-Louis moved to Chicago to live with Bryant's sister. Bryant repeatedly went to the home, where D.L.B. witnessed his ongoing abuse of Saint-Louis. RP at 494-97, RP at 502, RP at 51. Bryant was arrested three times while Saint-Louis lived in Chicago, but no one blamed her for the violence or attempted to remove D.L.B. from her care. RP at 496-97. In 2012, after returning to Seattle, Saint-Louis entered a volatile relationship with Martell Thomas. Although reports of domestic violence were investigated, no action was taken to remove D.L.B. from Saint-Louis's care. CP at 349.

**2. Saint-Louis's parental rights were terminated because she victimized her three-year-old son and failed to correct her parental deficiencies**

Saint-Louis lost her right to parent D.L.B. because she abused and neglected him, and refused or was unable to complete the services offered

to help her safely parent D.L.B. *In re Dep. of D.L.B.*, 188 Wn. App. at 922-23. D.L.B. suffers from post-traumatic stress disorder and has serious behavioral issues as a result of Saint-Louis's treatment of him. RP at 208. Throughout her Seattle housing complex, Saint-Louis was frequently overheard screaming vulgar language at her three-year-old son. Ex. 1 at 2. Loud slaps were heard, followed by a child screaming "No Mommy! Don't!" *Id.* After the screams, more slapping sounds rang out. *Id.* Saint-Louis was ultimately arrested for leaving the toddler home alone for several hours. Ex. 1. She admitted she had left him home alone without care multiple times. *Id.*

Amici contend that "blaming victim parents serves no compelling interest," and therefore violates the parent's substantive due process rights. Amici Br. at 17. If a case ever arises where a child is removed solely because of domestic violence, the Court will have an opportunity to determine if the facts of that case created a compelling State interest in protecting the child. That is not the case here. There is no question that when a three-year-old boy is repeatedly left alone, the State has a compelling interest in securing his safety and his statutory right to a safe and stable home. RCW 13.34.020.

In addition to ignoring the reasons D.L.B. had to be placed in foster care, amici ignore Saint-Louis's parental deficiencies and the trial

court's years of effort to reunite the family by providing corrective services. She received a psychological evaluation, mental health counseling, random urinalysis (UAs), referrals to domestic violence advocacy groups, referrals to an intensive parenting course, and bus passes to enable her to get to these services. CP at 352-54. As the trial court stated in its oral ruling, there was "plenty of evidence . . . that the State went out of its way" to provide the required services. RP at 603.

Saint-Louis's choices caused her parental rights to be terminated. She was given repeated chances to complete the court-ordered parenting program, but was dropped from the program after missing four weeks of class. *Id.*; RP at 71. Given the chance to reenroll while on work release, she rejected the opportunity and voluntarily returned to jail. RP at 436-37. She also chose not to complete 90 days of clean UAs. CP at 353. She tested positive for marijuana and alcohol. *Id.* In addition, although she knew that a missed UA is considered positive, she repeatedly refused to provide urine samples. RP at 425. Although she did seek some mental health treatment, she did not consistently engage in therapy. CP at 355. The trial court found that "there is [no] evidence that she has made progress in correcting this deficiency that directly impacts her ability to parent" her son. *Id.*

Although domestic violence was not the reason for the termination, Saint-Louis's choices did raise questions about her ability to give D.L.B. a safe home. At the time of trial, Saint-Louis was living with a man who had four domestic violence related convictions, and a protection order prohibiting contact with his former spouse. CP at 353; Ex. 26-29. Even if Saint-Louis had corrected her parental deficiencies, this living arrangement would have created additional barriers to reunification. Saint-Louis testified that she planned to involve her boyfriend in parenting D.L.B. RP 176. When there is an additional person living in the home, the Department is required to complete a background check. RCW 13.34.138(2)(b)(i). Placement may be delayed while the individual engages in any necessary services, such as domestic violence batterer's treatment. RCW 13.34.138(2)(b)(ii). This exacerbated Saint-Louis's inability to reunify with D.L.B. in the near future. *See In re Dep. of D.L.B.*, 188 Wn. App. at 922-23.

There is overwhelming evidence of Saint-Louis's parental deficiencies and her unwillingness or inability to correct these problems. The Court should decline to consider the hypothetical issue of whether domestic violence, standing alone, could ever justify termination of parental rights.

**3. The Court of Appeals properly considered all of the evidence in the record rather than jumping to a conclusion based on domestic violence**

Contrary to the assertion made by amici, the Court of Appeals did not “center its discussion” on the fact that Saint-Louis was previously abused. Amicus Br. at 14. In reality, the Court properly considered whether the trial court order was supported by the evidence in the record regarding Saint-Louis’s neglect of D.L.B. and the continuing threat she posed to the child’s safety and well-being.

In finding that the Department met its burden under RCW 13.34.180, the Court of Appeals began by holding that the Department made reasonable efforts to offer services. *In re Dep. of D.L.B.*, 188 Wn. App. at 919 (citing RCW 13.34.180(1)(d)). The Court listed all of the services Saint-Louis was offered, including parenting education, UA testing, and mental health counseling. *Id.* at 920. It concluded that the trial court’s finding was supported by substantial evidence that Saint-Louis “never followed through” on these services, “[d]espite her receipt of referrals to services and encouragement by the Department” to engage in the services. *Id.* at 921.

In examining the trial court’s finding of current unfitness and little likelihood that conditions would be remedied in the near future, the Court of Appeals held that the Department met its burden of proving by clear,

cogent, and convincing evidence that Saint-Louis's deficiencies prevent her from providing D.L.B. with basic nurture, health, or safety. *Id.* at 921. Although the Court of Appeals referred to Saint-Louis's decision to live with a man who had at least three domestic violence assault incidents, it did not state or imply that this was sufficient to find that the Department had met its burden. Instead, the Court of Appeals determined that Saint-Louis's failure to complete 90-days of clean UA tests, missed parenting education classes and resulting discharge from the program, and her uncorrected parenting deficiencies made her "a serious risk to D.L.B. and prevented her from being able to provide D.L.B. with his basic needs." *In re Dep. of D.L.B.*, 188 Wn. App. at 922.

Finally, the Court of Appeals upheld the trial court determination that there was little likelihood of Saint-Louis correcting her deficiencies within the foreseeable future. *Id.* at 922-23. In so holding, the Court of Appeals made no mention of domestic violence. Instead, the Court relied on the testimony of Saint-Louis's social worker that Saint-Louis would have to consistently engage in services for a minimum of six months before a transition plan could be considered. *Id.* at 923. The Court of Appeals also considered the Court Appointed Special Advocate's testimony that "waiting that long would be harmful to D.L.B." *Id.* After a long dependency, there was no justification for making D.L.B. wait any

longer for a permanent home. Although Saint-Louis had recently reenrolled in services, she “had no history that would suggest that she would continue to engage in those services and make progress.” *Id.* at 922.

Given the extensive findings of the trial court following a five-day trial, and analysis of the facts by the Court of Appeals, there is simply no basis for the contention that the Court of Appeals opinion relied on “myths” rather than reality. Amici Br. at 14.

## II. CONCLUSION

The Department respectfully requests that the termination order be upheld.

RESPECTFULLY SUBMITTED this 9th day of May, 2016.

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Dear Clerk and Counsel:

Attached for filing in the above-noted matter, please find the State's Response to Supplemental Brief of *Amici Curiae*.

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