



Support for 13.36 Guardianship

13.36 Guardianships create a “Forever Home” for Children of Incarcerated Parents in Need of Permanency

The Washington Legislature has declared that it is the child’s right to have the family unit be nurtured and preserved.¹ However, within the child welfare system, incarcerated parents are almost twice as likely as other parents to lose their children.² This is largely due to significant barriers to accessing social services and visits with their children.³ This is troublesome when we know that a growing body of research demonstrates that it is generally in the best interests of the child to maintain contact with their incarcerated parent.⁴ To that end, the Washington Legislature has increasingly taken affirmative steps to protect parent-child relationships when a parent is incarcerated.⁵ Two important pieces of legislation under Title 13.34 and Title 13.36 support the establishment of a Guardianship as a means to permanency and an appropriate alternative to severing the parent-child relationship when a parent goes to prison.

Most recently, in the 2013 legislative session, the Washington Legislature passed near unanimously, SHB 1284, a bill that made substantial changes to Washington’s dependency and termination statutes under Title 13.34 with regard to incarcerated parents and including long-term incarcerated parents.⁶ Specifically, for parents in long-term incarceration who have been able to maintain a meaningful role in their child’s life (e.g. through visitation, phone calls, letters,

¹ RCW 13.34.020.

² Mimi Laver et. al., *The Impact of the Adoption and Safe Families Act on Children of Incarcerated Parents*, Child Welfare League of America, 8 (2005).

³ *Id.*

⁴ Creasie, Finney, Hairston, *Focus on Children with Incarcerated Parents: An Overview of the Research Literature*, Annie E. Casey Foundation (2007); see also Inger P. Davis, John Landsverk, Rae Newton, and Williams Ganger, *Parental Visiting and Foster Care Reunification*, Children and Youth Services Review, Vol. 18, Nos. 4/5, 363–382 (1996). See Judge Leonard P. Edwards, *Judicial Oversight of Parental Visitation in Family Reunification Cases*, Juvenile and Family Court Journal (Summer 2003).

⁵ *Id.*

⁶ See Substitute H.B. 1284, 63rd Leg., Reg. Sess. (Wash 2013) amending RCW 13.34.067, 13.34.136, and 13.34.145; and reenacting and amending RCW 13.34.180.

etc.), the law provides that the state should consider options other than adoption that would allow parents and their children to maintain their relationship through for example, non-parental custody or guardianship.⁷

Prior to this most recent change in the law, in 2010, the legislature passed unanimously SHB 2680 which modified the statutory scheme for guardianship proceedings that flow from dependency cases through the creation of Title 13.36 Guardianships.⁸ Title 13.36 was created in order to be in compliance with federal law established in 2008 and to allow for a means for permanency that does not require termination of the parent-child relationship.⁹ Although the bill was not labeled as an incarcerated parent's bill, creation of a 13.36 guardianship option as form of permanency was recognized by the legislature as "a step to better meet the needs of children who have an incarcerated parent."¹⁰

Guardianships were created in order to have a separate guardianship chapter to establish permanency for children in foster care through the appointment of a guardian and a dismissal of the dependency.¹¹ Guardianships allow parents who are in contact with their children, but who are unable to take on full parenting responsibilities, to continue to maintain meaningful contact with their children, avoid severing ties and allow for better child outcomes. According to Public Testimony from Denise Revels Robinson, Assistant Secretary for Children's Administration at the time of bill introduction, 13.36 Guardianships allow caregivers "to have a choice to not terminate parental rights" and create "viable option for permanency" a "value and benefit for the

⁷ RCW 13.34.180(5) and *see also* Public testimony at the Senate hearings on March 14 and April 8, 2013, available under "Available Videos" at: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1284&year=2013> (last visited 2/07/2015) [hereinafter "Public Testimony"].

⁸ *See* Substitute H.B. 2680, 61st Leg., Reg. Sess. (Wash 2010).

⁹ RCW 13.36.010 and *In Re A.C.*, 123 Wn.App. 244, 251, 98. P.3d 89 (2004).

¹⁰ Public testimony by House sponsor Rep. Mary Helen Roberts, "... a good step to better meet the need of children who have an incarcerated parents..." Available at: http://www.twv.org/index.php?option=com_twvliveplayer&eventID=2010011225 (last visited 11.23.2014).

¹¹ RCW 13.36.010.

child, as they would have a forever home.”¹² Further, since the underlying dependency is dismissed and a permanency is created, guardianships are form of resolution—which particularly benefits parents and their children, as permanency can be established without a finding of unfitness, but the parent is still legally the parent.¹³ If a guardianship petition is filed, the petition may be granted if guardianship, rather than termination of parental rights or any further attempt at reunification, is in the child’s best interests.¹⁴ Although more successful if the Department is in support of the guardianship, if the Department is not in support, as long at the potential guardian agrees to the proposed guardianship, the parents attorney may still file the petition. Some of the factors that can be considered when assessing what is in the child’s best interest include the benefit of continued contact with the parent or the extended family.¹⁵

With the passage of both SHB 1284 and SHB 2680, the legislature has spoken twice on its intent as an alternative to terminating parental rights or voluntary adoption, to support maintaining incarcerated parent’s relationships with their children through the establishment of a guardianship.

¹² See Public testimony, available at: http://www.tvw.org/index.php?option=com_tvwliveplayer&eventID=2010011225 (last visited 11.23.2014).

¹³ Public testimony by House sponsor Rep. Mary Helen Roberts, “... a good step to better meet the need of children who have an incarcerated parents...” Available at: http://www.tvw.org/index.php?option=com_tvwliveplayer&eventID=2010011225 (last visited 11.23.2014).

¹⁴ RCW 13.36.040(2)(a).

¹⁵ *In re A.C.*, 123 Wn. App. 244, 251, 98. P.3d 89 (2004).