



## **Policy Arguments: Reasonable Efforts For Incarcerated Parents**

### ***Background on Incarcerated Parents Bill SHB 1284***

In response to a growing body of research that demonstrates that it is generally in the best interests of the child to maintain contact with their incarcerated parent, the Washington Legislature passed near unanimously, Substitute House Bill 1284.<sup>1</sup> By enacting this bill, the Legislature significantly strengthened and built upon almost a decade long effort to help preserve parent-child relationships when a parent is incarcerated.<sup>2</sup> Further, SHB 1284 was enacted in response to significant evidence that maintaining contact with one's incarcerated parent improves a child's emotional response to their parent's incarceration and supports parent-child attachment, while lowering the likelihood of recidivism among incarcerated parents and reducing chances of intergenerational incarceration.<sup>3</sup>

In order to uphold the Legislature's intent, SHB 1284 must be properly interpreted and applied by the Department and the courts.

### ***Guidance for Reasonable Efforts For Incarcerated Parents***

The Legislature's amendments to 13.34 with regard to incarcerated parents represents the growing recognition that longer periods of incarceration should not be the sole reason for termination.<sup>4</sup> Further, a parent's incarceration alone does not alleviate the

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<sup>1</sup> Substitute H.B. 1284, 63<sup>rd</sup> Leg., Reg. Sess. (Wash 2013). Reports and Public Hearings, *available at*: <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1284&year=2013> (last visited 2/07/15).

<sup>2</sup> See H.B. 1426 (2005); E2SHB 1422 (2007); RCW 13.34.180, HB 1782 (2009).

<sup>3</sup> 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"].

<sup>4</sup> *Id.* See also Public Testimony, *supra*, note 3 (The fact that the statute references "long-term" incarceration was purposeful, as the late Chair Carrell spoke at the Senate hearing on March 14, 2013,

department's obligations to provide reasonable efforts to reunify, or in the alternative, find permanency options that do not permanently sever parent-child ties.<sup>5</sup>

Importantly, the Legislature recognized that when the parent and child connection are maintained, a child's chances for a positive outcome in his or her own life improve.<sup>6</sup> To that end, SHB 1284 established protections for parent's involvement throughout the dependency process and the development of the permanent plan, including that (1) the permanency plan must actually reflect the incarcerated parent's actual circumstances and (2) parents have a right to participate in case conference hearings via teleconference or video conference.<sup>7</sup> Therefore in practice, an Individualized Service and Safety Plan (ISSP) that reflects the services that are available to incarcerated parents and their children and updates on the parent's efforts to access such services, represents an effort by the Department to encourage and strengthen the parent child relationship.<sup>8</sup>

### *Arguments at Termination or Appellate Level*

**Note: Whether 13.34.180 (1)(f) requires actual findings of reasonable efforts or whether it is a factor to be considered when determining whether the department has satisfied its burden of proof for this section is still being argued at the appellate level, however we are in support that an actual finding should be made.<sup>9</sup>**

The Legislature created a mandatory element that requires the court to take into consideration the unique circumstances of incarcerated parents and their children within

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commenting that this legislation is meant to address parents imprisoned for a "long term..." facing "significant lengths of time [away]...").

<sup>5</sup> See also Public Testimony, *supra*, note 3.

<sup>6</sup> Substitute H.B. 1284, 63<sup>rd</sup> Leg., Reg. Sess. (Wash 2013); see also Creasie, Finney, Hairston, Focus on Children with Incarcerated Parents: An Overview of the Research Literature, Annie E. Casey Foundation (2007) (explaining generally it is in the best interests of the child to maintain contact with their incarcerated parent), available at <http://www.f2f.ca.gov/res/pdf/FocusOnChildrenWith.pdf> (last accessed 2/8/2015); See also *Id.*

<sup>7</sup> RCW 13.34.136(2)(b)(i) (requiring state social workers to assess an incarcerated parent's ability to participate in meetings, the treatment available in the facility where they are confined and provide visitation unless it is deemed contrary to the best interest of the child).

<sup>8</sup> RCW 13.34.136(2)(b)(i).

<sup>9</sup> *In re Dependency of A.M.M.*, No. 70832-5-I, 2014 WL 3842977 (Wn. App. Aug. 4, 2014).

the child welfare system. Under the amended law, the court must consider “reasonable efforts” only in those cases where a parent is incarcerated. This distinction is extremely important as the federal definition of “reasonable efforts” focuses first on reunification and then permanency.

However, for some incarcerated parents—particularly long-term incarcerated parents— it is not sufficient to support “reasonable efforts” solely for reunification. For an incarcerated parent, a return home may be impossible due to a long sentence, or a due to a shorter sentence that runs up against the dependency timeline. Therefore, with the changes in the law, “reasonable efforts” for incarcerated parents is focused on the ability to maintain contact throughout the dependency process AND during permanency (evidenced by section 5 of the termination statute).

Further, even if a boilerplate finding for “reasonable efforts” were found from the record as the state suggests, in reading the statute harmoniously with the other sections of the bill, the state failed to provide such “reasonable efforts” as required from the outset of the case.

### ***Legislative History Support for Long-term Incarcerated Parents***

Additionally, a “reasonable efforts” finding would not place parent’s rights above the child’s unless we ignore the underlying research that led to the amendments and assume contact with an incarcerated parent is detrimental to children. To the contrary, during the public hearings, the Legislature acknowledged that often maintaining contact with ones incarcerated parent may actually is in the best interest of the child, as maintaining contact with one’s incarcerated parent improves a child’s emotional response to their parent’s incarceration and supports parent-child attachment. Largely in response to such social

science research showing that children fair better when they maintain contact with their incarcerated parent, the Legislature responded with passing SHB 1284 near unanimously, with only one vote against it in the senate.