



Lillian Hewko, Attorney
(206) 623-4321 x 112
lillian@defensenet.org
www.defensenet.org/ipp

Washington Defender Association's Incarcerated Parents Project

Policy Arguments: Importance of DOC Visitation

DOC Policy Support

The State of Washington Department of Corrections (DOC) policy for visitation “recognizes the vital role families play in the re-entry process and will support offenders in maintaining ties with family, friends, and the community.”ⁱ Policies require that the facility provide a secure and welcoming space for visitors and provide a “child friendly environment with toys and games suitable for interaction by family members of all ages.”ⁱⁱ

Social Science Support

Studies have shown that maintenance of family ties during incarceration, especially through in-person visits, is one possible means of lessening the negative impact of incarceration on families and children.ⁱⁱⁱ Research shows that when children of incarcerated parents have strong, healthy relationships with others, they cope better with the loss of their parent and exhibit fewer problematic behaviors.^{iv} Additionally, maintaining a connection between the child and incarcerated parent was shown to further help children by better allowing them to express their emotional reactions to separation from the parent; promoting a more realistic understanding of the circumstances; maintaining existing relationships in order to contribute to an eventual, successful family reunification; improving recidivism rates; preserving important connections; and reducing child anxiety by knowing their parent is safe.^v

Visiting allows children to actually see their parents and be assured that they are safe.^{vi} Without this contact, children may begin to view their parents as strangers and believe that their parents neither love nor care about them.^{vii} One study found that children who were told about their parent's incarceration in an open, honest and age-appropriate manner and children who reacted with loneliness, rather than anger, to the separation from their parents, were slightly more likely than other children in the study to have secure, positive perceptions of their caregivers.^{viii}

From the voices of youth, we find that although their parents may be less than perfect, the love that they have for their parents is as real and strong as any other child's. The loss experienced by these children when their relationships are severed is real. This loss is one that we should be concerned about since there is 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 as well as lowers the likelihood of recidivism among incarcerated parents.^{ix} In the infamous book, All Alone in the World: Children of the Incarcerated, written by Nell Bernstein, a young person says: "There was so much emphasis on me, supposedly, that they forgot about her... [w]hat would have helped me most is compassion for my mom."^x

Further, evidence based research shows it is in the best interest of children to remain in phone and visitation contact with their parents while they are in prison as the parent and child will be able to maintain ties and it will bolster the child's well-being and healthy development; reduce the trauma of separation; and where appropriate, assist families in reunification after their parent's release.^{xi} It will also help correct frightening images children may have about their incarcerated parent's circumstances.^{xii} Finally, it allows children to learn that they are not alone – by seeing other children visit their parents, it helps children learn that their situation is not unique and that there are other families like their own.^{xiii}

Importance of DOC Visitation from Legislature and Case Law

For parents in the child welfare system, the Legislature recognized maintaining family ties could lessen the negative impact of incarceration on families and children.^{xiv} Substitute H.B. 1284, 63rd Leg., Reg. Sess. (Wash 2013). For ten years, the legislature has enacted legislation 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.^{xv} Substitute H.B. 2680, 61st Leg., Reg. Sess. (Wash 2010). H.R. 1422, 60th Leg., Reg. Sess. (Wa. 2007); see also RCW 74.04.800 (requiring the secretary of social and health services to adopt policies encouraging familial contact between children and incarcerated parents); RCW 72.09.495 (requiring the secretary of corrections to adopt such policies).

Further, in denying or limiting parent-child contact the department must "prove that visitation poses a current concrete risk to the children." *In re Dependency of T.L.G.*, 139 Wash.App. 1, 18 (2007). The

court also states that the “risk of harm must be an actual risk, not speculation based on reports” and that “[s]omething more than opinions based on a single incident is necessary to support a finding of risk of harm” *Id.* at 17-18.

Additionally, if the Department were to later pursue termination of the parent’s parental rights, “the Court shall consider whether a parent maintains a meaningful role in his or her child’s life based on factors identified in RCW 13.34.145(5)(b).” RCW 13.34.180(1)(a). A recent published decision by the Court of Appeals for Division I, made clear that the requirements added by SHB 1284 to RCW 13.34.180(1)(f) are mandatory findings because they are part of the elements necessary to terminate the parental rights of an incarcerated parent. *In re Dependency of A.M.M.*, No. 70832-5-I, 2014 WL 3842977 (Wn. App. Aug. 4, 2014).

According to RCW 13.34.145(5)(b), the “court’s assessment of whether a parent who is incarcerated maintains a meaningful role in the child’s life may include consideration of the following: (i) The parent’s expressions or acts of manifesting concern for the child, such as letters, *telephone calls, visits, and other forms of communication with the child.*” RCW 13.34.145(5)(b) (emphasis added). Further, 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. RCW 13.34.180(2). The court may consider such a showing as evidence of rebuttal to any presumption established pursuant to 13.34.180(1)(e)). *Id.* The legislature and caselaw clearly acknowledge the significance of ongoing contact and communication between a child and an incarcerated parent.

ⁱ DOC 450.300, Department of Corrections Policy, Visits for Prison Offenders, 2 (2015), available at <http://www.doc.wa.gov/policies/files/450300.pdf> (last visited 2/07/2015).

ⁱⁱ *Id.*

ⁱⁱⁱ La Vigne et. al., *Examining the effect of incarceration and in-prison family contact on prisoners’ family relationships*. *Journal of Contemporary Criminal Justice*, 21 (4), 314-335 (2005).

^{iv} La Vigne, et. al, *Understanding and Addressing the Needs of Children with Incarcerated Parents*, Urban Institute Justice Policy Center Research Report, 14 (2008).

^v Lynne Reckman and Debra Rothstein, Am. Bar Ass’n, *A Voice for the Young Child with an Incarcerated Parent*, (Jan 9, 2012), available at: <http://apps.americanbar.org/litigation/committees/childrights/content/articles/winter2012-young-child-incarcerated-parent.html> (last visited 11/23/14).

^{vi} *Id.*

^{vii} *Id.*

^{viii} Poehlmann, J., *Representations of Attachment relationship in children of incarcerated mothers*, *Child Development*, 76 (3), 679-696 (2005). (Data were collected from 54 children ages 2-7 whose mothers were incarcerated).

^{ix} *Supra* note iv.

^x Nell Bernstein, *All Alone in the World: Children of the Incarcerated*, 71 (2005).

^{xi} See Mary Ellen White, Eric Albers, and Christina Bitonti, *Factors in Length of Foster Care:*

Worker Activities and Parent-Child Visitation, *Journal of Sociology and Social Welfare*, Vol. XXIII, No. 2, 75–84. (June, 1996); 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); Judge Leonard P. Edwards, *Judicial Oversight of Parental Visitation in Family Reunification Cases*, *Juvenile and Family Court Journal* (Summer 2003).

^{xiii}Ann Adalist-Estin, *Why Maintain Relationships?*, The National Resource Center on Children and Families of the Incarcerated at Rutgers-Camden, Children of Prisoners Library, Facts and Issues: CPL 102 (2003). Available at <http://nrccfi.camden.rutgers.edu/resources/library/children-of-prisoners-library/> (last visited 11/24/14).

^{xiii} *Id.*

^{xiv}*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* Children of Incarcerated Parents, Final Report of the Oversight Committee (June 30, 2006).

^{xv} *Id.*