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Washington Defender Association's Incarcerated Parents Project

Open Adoption is not a Suitable Alternative to Guardianship

Currently, our open adoption laws are unenforceable. The Incarcerated Parents Project at Washington Defender Association, Legal Voice and the Incarcerated Mothers Advocacy Project as well as peer mentors at King County's Parent 2 Parent Program, hear story after story where open adoption agreements have not been followed. As the law stands, there is no recourse for parents who have lost communication with the adoptive family. When informal attempts to get the agreement enforced fail, there is little the birth parent of the now adopted child can do. Under RCW 26.33.295, the statute says the agreement can be enforced by a civil action. However, advocates have spoken to adoption lawyers and court staff and there is currently no mechanism in place to effectively start a civil suit.

A guardianship under 13.36 on the other hand, has a clear mechanism for enforcement, for modification and termination, and is therefore a preferable alternative when a child needs permanency but maintaining contact with the parent is in the best interest of the child.¹ 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, etc.), the law provides that the state should consider options other than adoption that would allow parents and their children to maintain their relationship.² Guardianship allows for both permanency and the preservation of the parent child relationship, but most importantly, it prevents the unnecessary termination of parental rights.³

A 13.36 guardianship should be considered before any termination proceedings are heard by the court.

¹ 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 2/07/2015).

² RCW 13.34.180(5).

³ Public testimony by Denise Revels Robinson, Assistant Secretary for Children's Administration on Substitute H.B. 2680, 61st Leg., Reg. Sess. (Wash 2010) (allowing caregivers "to have a choice to not terminate parental rights" and create "viable option for permanency" a "value and benefit for the child, as they would have a forever home."), available at: http://www.tvw.org/index.php?option=com_tvwliveplayer&eventID=2010011225 (last visited 2/07/2015).