

DEFENDING SO-CALLED “BAD PARENTS”: PREVENTING ADMISSION OF BIASED CHARACTER EVIDENCE ABOUT PARENTING MISTAKES

WDA DEFENDER CONFERENCE 2025
SUN MOUNTAIN LODGE
WINTHROP, WASHINGTON
26 APRIL 2025



Roadmap

- Who We Are
- What We Do
- Why We Do What We Do
- Ideas for Defenders
- Trial Tactics
- 15% Solutions



Who We Are

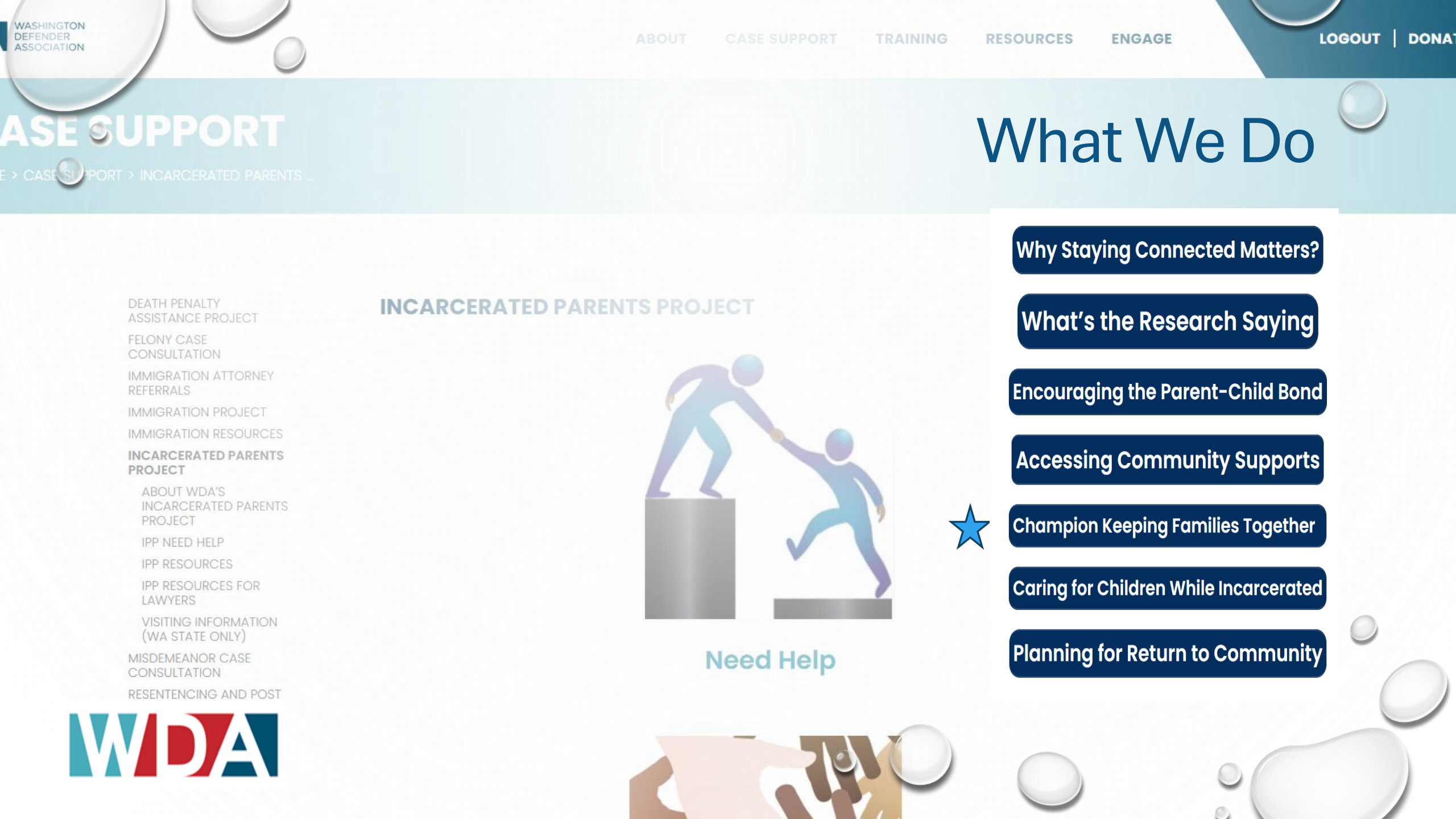
WDA is the voice of the
public defense
community providing
support for zealous and
high-quality legal
representation
across Washington



Who We Are

WDA IPP works to end family separation caused by parental incarceration in Washington





CASE SUPPORT

HOME > CASE SUPPORT > INCARCERATED PARENTS PROJECT

What We Do

DEATH PENALTY
ASSISTANCE PROJECT

FELONY CASE
CONSULTATION

IMMIGRATION ATTORNEY
REFERRALS

IMMIGRATION PROJECT

IMMIGRATION RESOURCES

**INCARCERATED PARENTS
PROJECT**

ABOUT WDA'S
INCARCERATED PARENTS
PROJECT

IPP NEED HELP

IPP RESOURCES

IPP RESOURCES FOR
LAWYERS

VISITING INFORMATION
(WA STATE ONLY)

MISDEMEANOR CASE
CONSULTATION

RESENTENCING AND POST

INCARCERATED PARENTS PROJECT



Need Help



Why Staying Connected Matters?

What's the Research Saying

Encouraging the Parent-Child Bond

Accessing Community Supports

Champion Keeping Families Together

Caring for Children While Incarcerated

Planning for Return to Community



A photograph of a person's arm holding a child's hand. The child is wearing a blue backpack. The background is a soft-focus outdoor scene.

Why We Do What We Do

Incarcerated parents are
twice as likely to lose their
children forever.



Corrections Center

Minimum Security Unit

Airway Heights Corrections Center (Airway Heights, WA)



Courtesy of WA DOC Family Services Division, 2018

Ideas for Defenders

VISITOR PASS



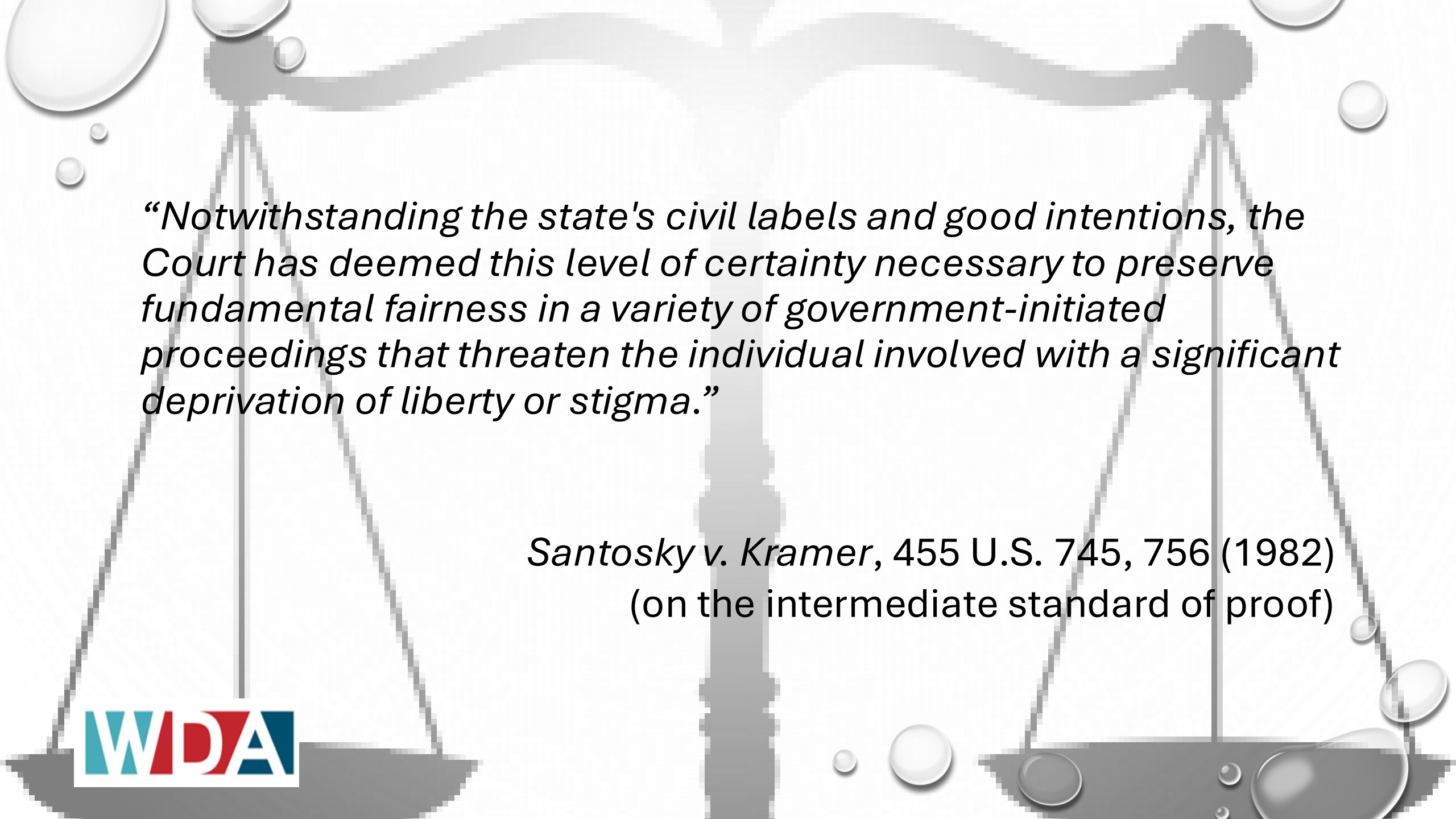
Expressly v. Impliedly Bad Parent

Parents have committed particular ‘bad acts’ that directly affect the ability to parent safely and effectively

v.

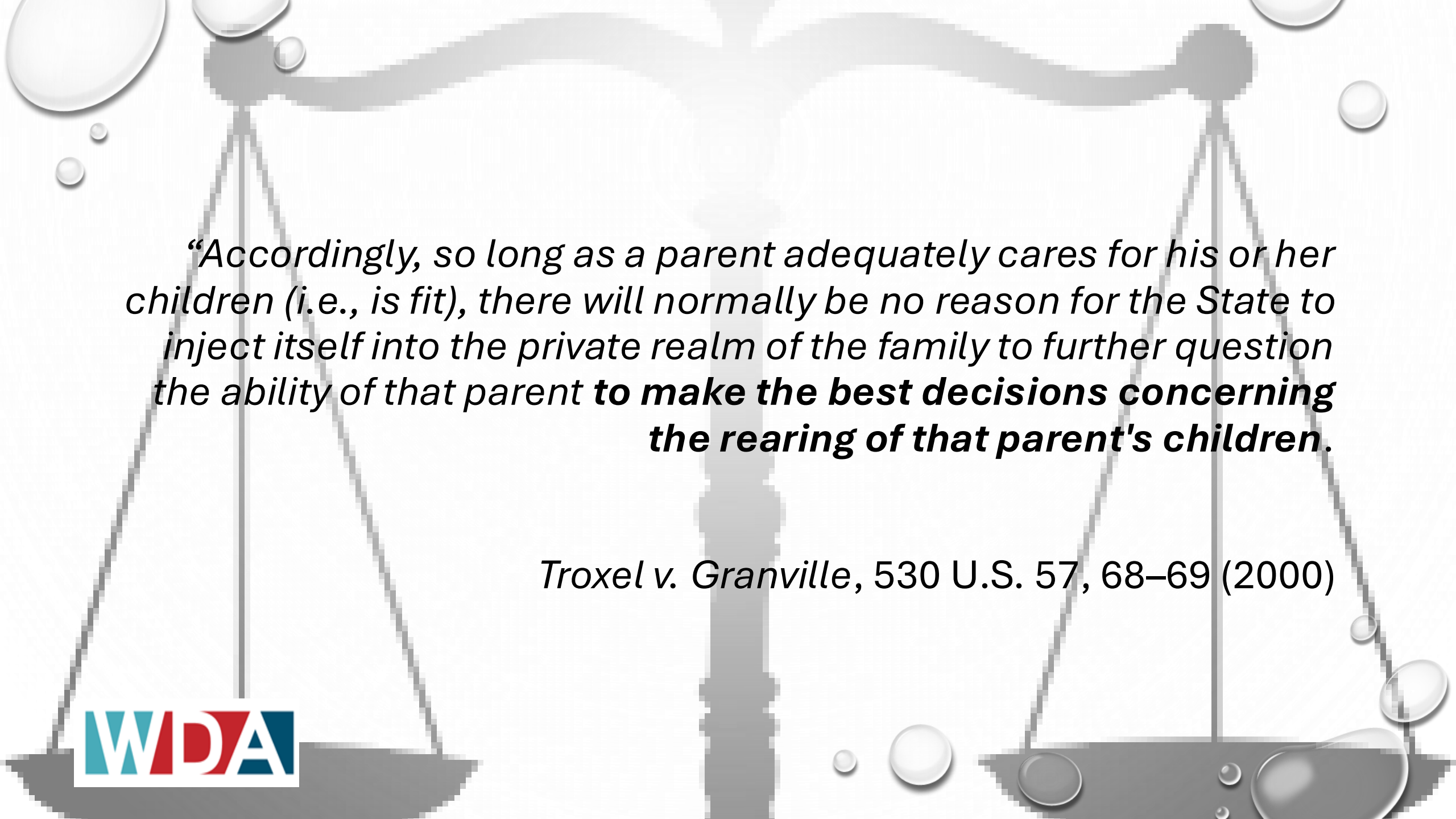
Parents as unfit as a result of factors primarily related to their imprisonment as opposed to behavior or conduct directly related to parenting.





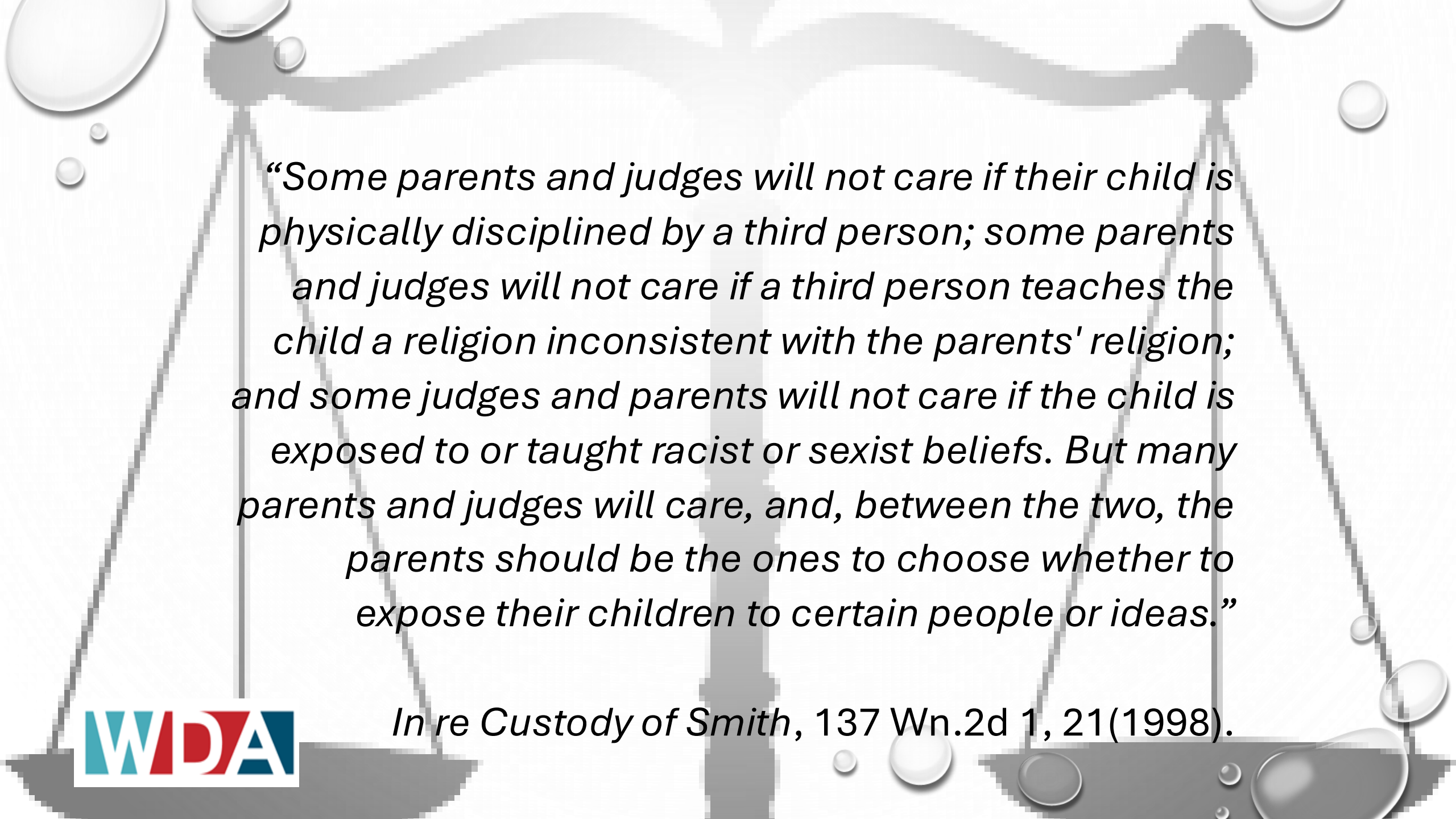
“Notwithstanding the state's civil labels and good intentions, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma.”

Santosky v. Kramer, 455 U.S. 745, 756 (1982)
(on the intermediate standard of proof)



*“Accordingly, so long as a parent adequately cares for his or her children (i.e., is fit), there will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent **to make the best decisions concerning the rearing of that parent's children.***

Troxel v. Granville, 530 U.S. 57, 68–69 (2000)



“Some parents and judges will not care if their child is physically disciplined by a third person; some parents and judges will not care if a third person teaches the child a religion inconsistent with the parents' religion; and some judges and parents will not care if the child is exposed to or taught racist or sexist beliefs. But many parents and judges will care, and, between the two, the parents should be the ones to choose whether to expose their children to certain people or ideas.”



In re Custody of Smith, 137 Wn.2d 1, 21(1998).

Cedar Creek Corrections Center (Littlerock, WA)



Courtesy of WA DOC Family Services Division, 2018

Combating “Bad Parent” Evidence





Assigning Stigma or Status of “Bad Parent”

Heightened Standard Required

To assign stigma or status that results in
infringement of fundamental liberty interest



Heightened Burden of Proof

*“The intermediate standard, which usually employs some combination of the words ‘clear,’ ‘cogent,’ ‘unequivocal,’ and ‘convincing,’ is less commonly used, but nonetheless is no stranger to the civil law. **One typical use of the standard is in civil cases involving allegations of fraud or some other quasi-criminal wrongdoing by the defendant.** The interests at stake in those cases are deemed to be more substantial than mere loss of money and some jurisdictions accordingly reduce the risk to the defendant of having his reputation tarnished erroneously by increasing the plaintiff’s burden of proof. Similarly, this Court has used the ‘clear, unequivocal and convincing’ standard of proof to protect particularly important individual interests in various civil cases.”*

*-Addington v. Texas, 441 U.S. 418 , 424 (1979)
(emphasis added)*



Parentally Unfit

Parentally Incompetent

Parentally Deficient

Child Abuser

Domestic Abuser

Other Labels



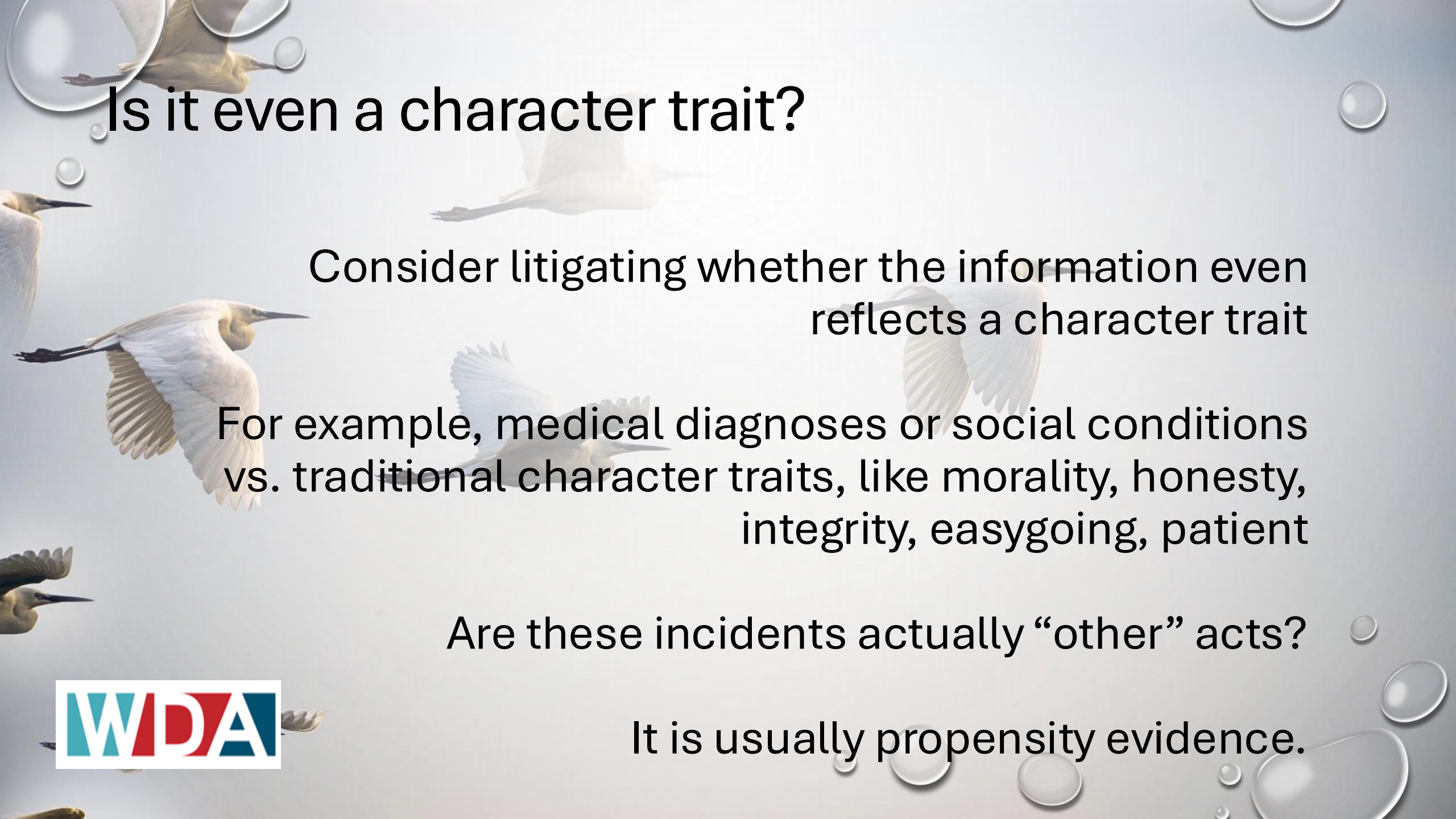
Are Incarcerated or Noncustodial Parent Unfit as a Matter of Law?



Clallam Bay Corrections Center (Clallam, WA)



Courtesy of WA DOC Family Services Division, 2018

The background of the slide features several white birds, likely egrets or herons, in various stages of flight. Some are in the foreground, while others are faded in the background. Scattered throughout the scene are numerous translucent water droplets of varying sizes, some with highlights, giving the impression of a misty or rainy environment.

Is it even a character trait?

Consider litigating whether the information even reflects a character trait

For example, medical diagnoses or social conditions vs. traditional character traits, like morality, honesty, integrity, easygoing, patient

Are these incidents actually “other” acts?

It is usually propensity evidence.



Focus on Conduct, Not Traits

- Lifestyle, demeanor or likability, and other personality traits, habits, medical conditions, attributes are not character evidence and inadmissible.
- Trigger warning for Bias in Judicial Decisionmaking



Mission Creek Corrections Center (Belfair, WA)



Courtesy of WA DOC Family Services Division, 2018



Trial Tactics



Focus on the Relationship

- Investigate parental support and nurture of the child
 - How strong is the parent-child bond?

Evaluate if necessary to combat stereotype or prejudice

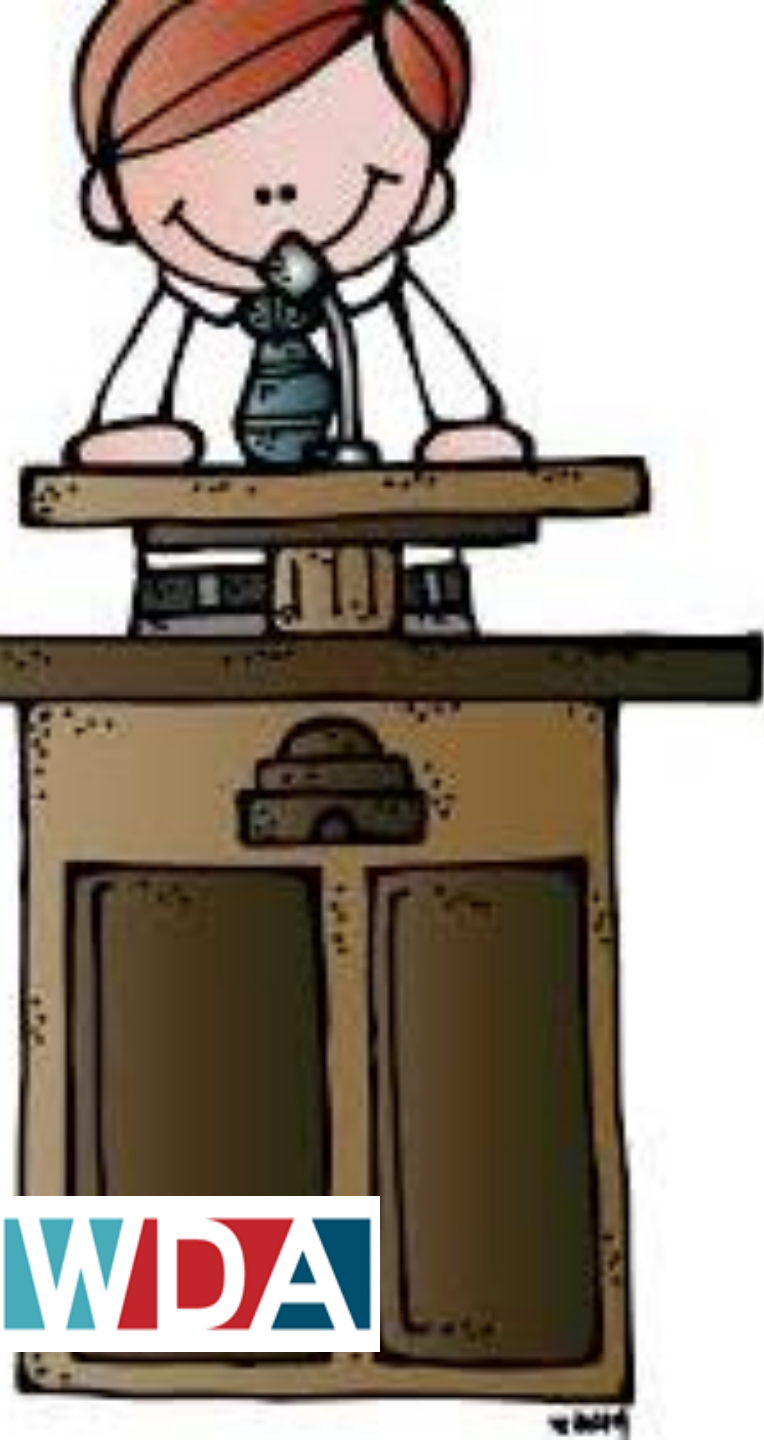
- Investigate lack of unsafe or detrimental behavior

Evaluate if necessary to combat speculative arguments about risk
and to prevent application of futility doctrine



Use of Experts

- To investigate parenting and family history
 - To observe, support visits
- To evaluate parenting skills or parent-child bond or both, & make recommendations
 - To present evidence of relational permanence
 - To address alleged parental unfitness
- To contradict other inexperienced opinion about best interests of the child



Coyote Ridge Corrections Center (Connell, WA)



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Courtesy of WA DOC Family Services Division, 2018



15% Solutions



Questions/Feedback



Thank You!

*D'Adre Cunningham (she/her)
WDA Incarcerated Parents Project
Resource Attorney
E: dadre@defensenet.org*

