

A photograph showing a person's hands clasped together, resting on a metal bar, symbolizing incarceration. The background is a dimly lit room with a blue wall and a window with vertical bars. The text is overlaid on a white rectangular box with a thin black border.

**Representing
Incarcerated Parents
in
Child Protection Cases**

It is hard to represent parents in child protection cases

It is *really* hard to represent parents in child protection cases who are incarcerated



Statutes / Rules

Case Law

Practical Advocacy Tools



Statutes / Rules

No reference to incarceration in 260C or RJPP

But need to determine what type of case to prepare best advocacy

- **Reasonable efforts NOT required**
- **Reasonable efforts required**



Reasonable Efforts NOT required (260C.001 Subd.3)

- **Egregious harm**
- **Abandoned infant**
- **Prior involuntary TPR**
- **Efforts to reunify would be futile**

Must be pled by County / ordered by Court

For clients convicted of certain crimes, visitation not possible



In all cases (under 260.007 Subd. 6) reasonable efforts REQUIRED

Need to prepare advocacy from onset of case for potential TPR

In particular on issue of visitation



Case Law

- *Children of Vasquez, 658 N.W.2d 249*
- Termination cannot be based on incarceration alone, requires further evidence
- This case has bad facts but good law



Case Law

- *In re: Staat, 287 Minn. 501, 178 N.W.2d 709*
- Separation of child and parent due to the incarceration of parent does not alone constitute intentional abandonment



Case Law

- *Welfare of M.D.O., 462 N.W.2d 370*
- Good language on what reasonable efforts for incarcerated parent might look like (at 377).



Case Law

Unpublished Opinions

***Welfare of Child of J.B.*, 2012 WL 5381911 (Minn. App).**

***Welfare of Children of K.B. and J.B.*, 2009 WL 2928561 (Minn. App.).**

- reasonable efforts to assess parental fitness



Advocacy

Custodial v. Noncustodial

Length of incarceration / type of crime

Visitation

Reasonable efforts



Custodial v. Non-custodial (Gender of Client)

For **non-custodial** parents, what would parenting duties look like in prison?

- taking interest in child?
- reaching out to social worker about child's well-being?
- **ability to pay child support? (260.301 Subd. 3)**
- Others?



Custodial v. Non-custodial

- **For custodial parent, what would case plan / reasonable efforts look like?**
- **Visitation**
- **Parenting classes in prison**
- **Mental health services in prison**
- **CD treatment in prison**
- **Other?**



Length of Incarceration / Type of Crime

If greater than 2 years likely barrier to reunification

- but may not be for transfer of custody**
- child support argument as reason not to TPR**

If less than 2 years, depending on age of child, may be able to achieve reunification if county / case worker open to providing real services for parent

For some crimes, no visitation / reunification possible



Visitation

Visitation is possible in MN prisons

Need to coordinate with county / case worker

For some crimes, contact visitation not possible per DOC policy, but non-contact visits may be allowed

Handout with contact information for prisons



Reasonable Efforts

Make arguments from beginning of case

Identify services at prison / jail that might be useful to parent (and make sure they are included in case plan if plan ordered)

Make certain parent can participate in hearings

Ensure visitation through court order



Don't Give Up!

Clients often in better position in prison to work on issues

May be real opportunity for change during this time

Part of job to convince county / judge to give client a chance

