



Representing  
**Incarcerated Parents**  
in  
**Child Protection Cases**

# Scope of the Problem

- In 2010 2.3 million people in the US were in jail or prison.
- This affected 2.7 million children.
- Having a parent in prison makes a child 4 times more likely to encounter the child protection system.
- Half the prison population, including one out every 100 African American women, are there for drug crimes.
- 2/3 of women in prison are mothers.



It is hard to represent parents in child protection cases.

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



# 5<sup>th</sup> Amendment and Self Incrimination

- Risks of incrimination in criminal case by statements made in a civil child protection case.
- In civil cases, 5<sup>th</sup> amendment applies, but fact finder can make inference from decision not to testify (unlike criminal).
- In some cases, depending on severity of crime, it may make strategic sense to allow criminal case to proceed first.



**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



## Statutes / Rules cont.

- Reasonable Efforts NOT required
- (260C.001 Subd.3)
  - ✓ *Egregious harm*
  - ✓ *Abandoned infant*
  - ✓ *Prior involuntary TPR*
- Efforts to reunify would be futile.
- Must be petitioned by County / ordered by Court.
- For clients convicted of certain crimes, visitation may not be possible.



## Statutes / Rules cont.

- In all cases (under 260.007 Subd. 6) reasonable efforts are **REQUIRED**.
- Need to prepare advocacy from onset of case for potential TPR.
- In particular on issues 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 cont.

- *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 cont.

- *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 cont.

- Unpublished Opinions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. Non-custodial
- Length of incarceration / type of crime
- Visitation
- Reasonable efforts



# Custodial v. Non-custodial (Gender of Client)

- 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?



# Custodial v. Non-custodial (Gender of Client) cont.

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?



# 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 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 is not possible per DOC policy, but non-contact visits may be allowed.
- Handout with contact information for prisons.



# Reasonable Efforts

- Make arguments from the beginning of case.
- Identify services at prison / jail that might be useful to parent (and make sure they are included in the case plan if a plan is ordered).
- Make certain parent can participate in hearings.
- Ensure visitation through court order.



# Don't Give Up!

- Clients are often in better position in prison to work on issues.
- May be real opportunity for change during this time.
- Part of the job is to convince county / judge to give client a chance.

