

On Parental Rights

MYTH: Child welfare agencies are required to terminate parental rights if a parent is incarcerated.

FACT: Important exceptions to the requirement to terminate parental rights provide child welfare agencies and states with the discretion to work with incarcerated parents, their children and the caregivers to preserve and strengthen family relationships.

The Adoption and Safe Families Act (ASFA) requires state child welfare agencies to initiate termination of parental rights if a child is in foster care for 15 out of the previous 22 months, unless one of several exceptions apply. The ASFA exceptions to the mandatory filing rule that are most relevant to incarcerated parents include:

- at the option of the State, the child is being cared for by a relative; and
- the State agency has documented in the case plan ...
- a compelling reason for determining that filing such a petition would not be in the best interests of the child.

These exceptions provide child welfare agencies with flexibility to work within the requirements imposed by ASFA by recruiting relatives as caregivers for children and by developing carefully written case plans that document, as circumstances warrant, that the severance of the parent-child relationship would be contrary to the child's best interests.

Because they are in federal statute, the exceptions provided in the law are available to every state, though not all use them in practice. Some states and the District of Columbia repeat the exceptions in their state statutes, emphasizing their applicability. These states include (as of February, 2010): Alabama, Alaska, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Oregon, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming.

For More Information

Children of Incarcerated Parents MythBuster Series

<https://ncsecondchance.org/wp-content/uploads/2018/03/Child-welfare.pdf>

Child Welfare State Policies

<https://www.childwelfare.gov/topics/systemwide/laws-policies>