



CASE SERVICE PLANNING FOR INCARCERATED PARENTS

APPLYING *In re Mason*

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Children's Services Administration

Department of Human Services

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IN RE MASON, 486 MICH 142 (2010)

- DHS and Private Agency Foster Care (PAFC) providers must ensure that an incarcerated parent has an opportunity to participate in the development of a case service plan and is evaluated on the basis of his or her compliance with and benefit from that plan.
- The petitioner must not rely solely on a parent's incarceration to establish a ground to terminate his or her parental rights.

WHEN DOES *MASON* APPLY?

- If the department must make reasonable efforts to reunify a family, the foster care worker must engage incarcerated parents in developing case service plans.
 - Does not apply to cases in which the department is requesting TPR at initial disposition. Reasonable efforts to reunify not required (MCL 722.638(2), 712A.19a(2)) or not appropriate.
 - Does not apply to CPS services cases (even with court jurisdiction). *Mason* did not address cases involving reasonable efforts to prevent removal.
- This requirement applies regardless of the length of the parent's incarceration.

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IDENTIFYING & LOCATING INCARCERATED PARENTS, RELATIVES

- Follow the Absent Parent Protocol and related policy.
- Confirm the parent's prison or jail number, prison or jail facility, charge or conviction offense, and parole or release eligibility date.
 - Verified LEIN information, ICHAT, OTIS, www.vinelink.com, www.bop.gov
- Follow policy on identifying and consulting with relatives.
- Notify incarcerated parent of a "considered removal" Permanency Planning Conference.

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PETITION REQUIREMENTS

- CPS and FC workers and department's legal representative must ensure available incarceration information is included in an original, amended, or supplemental petition.
 - If parent is under MDOC jurisdiction, include statement in caption: "A telephonic hearing is required under MCR 2.004."
- If appropriate, include allegations that the incarcerated parent has failed to arrange proper care and custody for the child while the parent is incarcerated.

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COMMUNICATING WITH PRISONERS REGARDING CASE SERVICE PLANNING

- MDOC Prisoners
 - Mail to and from a prisoner
 - Do not send SASE's to a prisoner (considered contraband).
 - Email to a prisoner using the J-Pay system. Account required. Treated the same as mail upon arrival at the facility.
 - Phone from prisoner
 - Ask prisoner to add worker to phone list at next opportunity.
 - All calls are collect or prepaid. Account required.
 - Except for emergencies, calls are a leisure time activity and limited to a maximum of 15 minutes.

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COMMUNICATING WITH PRISONERS REGARDING CASE SERVICE PLANNING

- Federal Prisons
 - No SASE's
 - Ask prisoner to add worker to phone list.
 - Prisoner must pay for calls unless collect calls arranged in advance.
 - 15 minutes maximum
- County Jails and Out-of-State Facilities
 - Contact facility

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FORMULATING THE CASE SERVICE PLAN

- First, determine the services and work opportunities available within the facility in which the parent is incarcerated.
- Workers are not required to arrange for service providers outside of a facility to deliver services within the facility but may utilize such services if they are currently available within the facility.
- If the incarcerated parent has been convicted of or substantiated for criminal sexual conduct against a child, refer to FOM 722-12, Expenditure of State Funds in Substantiated Sexual Abuse Cases, before proceeding with efforts to reunify a child with the parent. A court order may be required.

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FORMULATING THE CASE SERVICE PLAN

- For parents under the jurisdiction of the MDOC, identify available services at <http://www.michigan.gov/corrections>.
- Confirm the availability of services through the designated DHS contact at the facility.
- A parent may be eligible for a “priority position” on a substance abuse treatment waiting list. MCL 333.6232; FOM 722-12.

FORMULATING THE CASE SERVICE PLAN

- Information on services available in federal prisons may be found at <http://www.bop.gov/>.
- Confirm the availability of services through the facility.
- Federal policy requires all federal prisons to conduct parenting programs.

FORMULATING THE CASE SERVICE PLAN

- Begin a search for services available in county jails and out-of-state facilities at www.vinelink.com.
- Determine the availability of services by contacting the facility.

FORMULATING THE CASE SERVICE PLAN

- The worker must send a letter to the incarcerated parent with the parent's prison number on the envelope; copy the court and the other parties to the case. The letter must:
 - Ask the parent whether he or she wishes to remain a parent to the child, and to identify any relatives who may be interested in placement of the child.
 - Explain the purpose of the case service plan.
 - Solicit the parent's views of his or her needs and strengths.
 - Note the services and work opportunities available to the parent.
 - Ask the parent to describe his or her plan to provide proper care and custody of the child upon release from incarceration.

FORMULATING THE CASE SERVICE PLAN

- Complete the DHS-145, Family Assessment/Reassessment of Needs and Strengths, for all incarcerated parents.
- *Given the services available to the incarcerated parent*, the DHS-67, Parent-Agency Treatment Plan and Service Agreement, must address the parent's needs and specify what the parent must do to be reunified with the child.
- After formulation of the case service plan, the worker must send two copies to the incarcerated parent. An accompanying letter must clearly request that the parent sign one copy and return it to the worker and keep the other copy for the parent's reference.
- Enclose a release of confidential information form (DHS-1555-CS) and ask the parent to sign and return the form. This will allow the worker to verify the parent's compliance with the service plan through prison records or contact with prison service providers.

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PARENTING TIME OR CONTACT

- Unless there is a judicial finding that parenting time or contact would be harmful to the child, the worker must attempt to arrange for regular parenting time or contact between parent and child.
- MDOC facilities: minors must be accompanied by parent, guardian, or immediate family member (unless the family is participating in a family reunification program).
- Federal facilities: children under age 16 must be accompanied by a "responsible adult."
- Letters sent through the worker or phone contact (monitored if necessary).

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EVALUATING COMPLIANCE WITH THE CASE SERVICE PLAN

- Evaluate incarcerated parents' compliance with and **benefit** from services in the same manner as non-incarcerated parents are evaluated.
- Use the DHS-147, Reunification Assessment. Address the parent's progress or lack of progress in the USP and any court report submitted to the court for a review hearing or permanency planning hearing.
- Obtain proof of a parent's compliance with and benefit from services from the parent and prison service providers.

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EVALUATING COMPLIANCE WITH THE CASE SERVICE PLAN

- Do not request termination of parental rights unless the incarcerated parent has had an opportunity to participate in services. *In re Schooler*, unpublished opinion per curiam of the Court of Appeals, Docket No. 297747 (November 16, 2010).
 - No relevant services available at the facility.
 - Parent placed on waiting list.
 - Document "compelling reason" at 15/22 months. MCL 712A.19a(6)(c).

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UPDATING THE CASE SERVICE PLAN

- If the parent has been paroled or released from incarceration or will likely be paroled or released in the near future, identify any additional services the parent needs prior to reunification with the child and update the case service plan accordingly.

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PERMANENCY PLANNING CONFERENCES

- DHS and PAFC providers are *required* to provide prior notice to an incarcerated parent of only the following PPCs:
 - A “considered removal” PPC.
 - A “change in permanency goal” PPC.
 - A “child in care for nine months with a goal of reunification” PPC.
- If the circumstances permit, DHS and PAFC providers must attempt to facilitate an incarcerated parent’s participation in other PPCs.
- The assigned worker **must** provide and document notice to the incarcerated parent by mail or telephone. The worker must contact the designated DHS contact at an MDOC facility or jail/prison administrator and ask that the parent be allowed to participate in the PPC by phone; the worker must document this contact.

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PERMANENCY PLANNING CONFERENCES

- A worker should notify the parent's attorney of the PPC, and the attorney must be allowed to attend the PPC.
- Following each PPC, workers must send incarcerated parents all information that a non-incarcerated parent receives, regardless of whether the incarcerated parent participated in the PPC.

TERMINATION OF PARENTAL RIGHTS

- Do not allege a parent's incarceration as the *sole reason* for terminating his or her parental rights.
- Under MCL 712A.19b(3)(h), the department must prove **all** of the following:
 - The parent's incarceration will deprive the child of a normal home for more than two years in the future.
 - The parent has not **provided for** the child's proper care and custody while incarcerated (for example, by arranging for a relative to care for the child).
 - There is no reasonable expectation that the parent will be able to **provide** the child with proper care and custody within a reasonable time considering the child's age.

OTHER GROUNDS FOR TPR

- MCL 712A.19b(3)(c)(i)
 - *In re McIntyre*, 192 Mich App 47 (1991)
- MCL 712A.19b(3)(g)
 - *In re Rood*, 483 Mich 73 (2009)
 - *In re Mason*, 486 Mich 142 (2010)
 - *In re Hamlet (After Remand)*, 225 Mich App 505 (1997), overruled on other grounds 462 Mich 341 (2000)

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ALTERNATIVE PERMANENCY PLANS

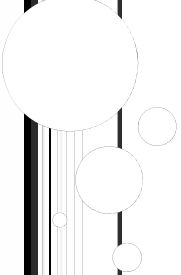
- *If appropriate*, consider juvenile guardianship and permanent placement with a fit and willing relative.
- Apply the policy criteria to determine whether it is in the child's best interest to maintain familial relationships.
- Document compelling reasons.

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In re Mason

**CASE SERVICE PLANNING FOR INCARCERATED PARENTS
DECEMBER 7, 2010**



**Hon. Susan L. Dobrich
Chief Judge
Cass County Probate Court**

IDENTIFICATION AND ENGAGEMENT

- Occurs at the first hearing
- Custodial parent is a wealth of information
- Friend of the Court records & criminal records

DEVELOP PROCEDURE FOR CLERICAL STAFF WHEN PARENT(S) ARE INCARCERATED

- **DO** Order to Prison
- **KEEP** record of contact
- **CONFIRM** with prison
- **MAKE CONTACT** prior to hearing and
- **GIVE** parent(s) attorney(s) the opportunity to talk privately with incarcerated parent(s)

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DEPARTMENT OF CORRECTIONS POLICY AS OF 11/18/10

- Incarcerated parent(s) are:
 - 1) able to participate in phone conference for court hearings and PPC
 - 2) allowed reasonable parenting time
 - 3) allowed to participate in DOC services

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DEPARTMENT OF CORRECTIONS POLICY

- The DOC must allow prisoner participation in services that will improve parenting skills
- Prisons must identify a contact person

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ENGAGE PARENT ON RECORD

- Ask detailed questions about status, including release dates
- Discuss services
- Discuss relatives for possible placement
- Advise incarcerated parent(s) of right to have a service plan
- Discuss history of parenting time and the types available

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RECORDS

- Require caseworker to obtain prison records
- Obtain police reports and records of offense
- Obtain any past psychological exams
- Court can order records

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SERVICES

- Worker shall
 - 1) become familiar with services provided
 - 2) obtain any records dealing with services
 - 3) Individualize the service plan provided to each parent

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PARENTING TIME

- Must be allowed, unless harmful
 - *need expert testimony to determine it is harmful*
- Different types of parenting time:
 - 1) Face to Face
 - 2) Telephone
 - 3) Letters

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OUT-OF-STATE PARENT(S)

- Will not excuse compliance
- Court may consider:
 - 1) court orders to obtain information
 - 2) paying for psychological
 - **last prong of MCL 712A.19b(3)(g) or 19b(3)(h)**
- County jails outside Michigan will allow phone contact with court in lieu of Writ of Habeas Corpus
- Judges in out-of-state jurisdictions will assist in helping us obtain home studies and services

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BENEFITING FROM PRISON SERVICE PLAN

- May need expert testimony to
 - 1) evaluate prison services, and
 - 2) determine whether they are *evidence-based* programs

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JUDGE MUST BE “CAPTAIN OF THE SHIP”

- At PPH, must evaluate:
 - 1) whether services were offered
 - 2) whether the parent was allowed to participate
- Consider a pre-trial conference before termination trial

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Questions?