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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IN RE THE DEPENDENCY OF M.S.R AND T.S.R.,

Washington State DSHS,

Respondent,

v.

Nyakat Luak,

Appellant.

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SUPREME COURT
STATE OF WASHINGTON
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**BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES
UNION OF WASHINGTON, TEAMCHILD, WASHINGTON
DEFENDER ASSOCIATION, SOCIETY OF COUNSEL
REPRESENTING ACCUSED PERSONS, AND THE
DEFENDER ASSOCIATION**

TEAMCHILD
Hillary Behrman, WSBA No. 22675
Nicole McGrath, WSBA No. 32330
Brent Pattison, WSBA No. 29695
(Middleton Children's Rights Center,
Drake University School of Law)
1225 South Weller Street, Suite 420
Seattle, WA 98144
(206) 322-2444

WASHINGTON DEFENDER
ASSOCIATION
Travis Stearns, WSBA No. 29355
110 Prefontaine Pl. S., Suite 610
Seattle, WA 98104
(206) 623-4321

ORIGINAL

SOCIETY FOR COUNSEL
REPRESENTING ACCUSED
PERSONS

Jana Heyd, WSBA No. 20151
1401 E. Jefferson, Suite 200
Seattle, WA 98122
(206) 322-8400

THE DEFENDER ASSOCIATION

Floris Mikkelsen, WSBA No. 11909
Robert D. Wyman Jr., WSBA No.
30844
810 Third Ave., Suite 800
Seattle, WA 98104
(206) 447-3900

ACLU OF WASHINGTON
FOUNDATION

Sarah A. Dunne, WSBA No. 34869
Nancy L. Talner, WSBA No. 11196
M. Rose Spidell, WSBA No. 36038
901 Fifth Ave., #630
Seattle, WA 98164
(206) 624-2184

Jared Van Kirk, WSBA No. 37029
Garvey Schubert Barer
1191 Second Ave., #1800
Seattle, WA 98101
(206) 464-3939

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I. SUMMARY OF THE ARGUMENT

Proceedings to terminate parental rights (TPR) result in permanent termination of the child's constitutionally protected rights. For this reason, and because the risk of error is very high without counsel for the child, this Court should rule that all children in TPRs have a constitutional right to counsel.

II. IDENTITY AND INTEREST OF AMICI

The identity and interest of *Amici* in the current matter is set forth in *Amici's* Motion for Leave to File *Amici Curiae* Brief.

III. STATEMENT OF THE CASE

Amici adopt the Mother's statement of the case. The record shows the children here wanted to maintain a relationship with their mother.

IV. ARGUMENT

A. CHILDREN HAVE NUMEROUS SIGNIFICANT AND CONSTITUTIONALLY PROTECTED LIBERTY INTERESTS AT STAKE IN TPR PROCEEDINGS.

1. In TPRs, Children Lose All Legal Relationship to Their Biological Parents and are "Committed" to the Custody of the State.

The first factor that must be considered to determine if a child has a due process right to counsel in TPRs is the nature of the private interests at stake. *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18

(1976).¹ Both parties cite authority establishing that the parent-child relationship is a constitutionally protected liberty interest of both the child and parent. *See* Supp. Br. of App. at 5-9 and Supp. Br. of Resp. at 10.

A child's right to a relationship with her parent is only one of many constitutionally protected interests unique to children impacted by a TPR proceeding. A TPR proceeding results in an order indefinitely "committing" the child to State custody, determines sibling relationships, and gives the State authority to consent to the child's adoption, health care, educational placement and services and other life-altering matters. Due to the significance of the child's interests at stake, it follows that the child has a constitutional right to counsel.

An order terminating the parent-child relationship does more than terminate *parental rights*; it determines the legal rights of the *child*.

An order terminating parental rights does far more than merely terminate the rights of a relinquishing parent. It deprives the children of their right to financial support from that parent, their right to the companionship and guidance of that parent, their right of inheritance from that parent, and their right to social security benefits in the event of that parent's death or disability.

In re Marriage of Furrow, 115 Wn.App. 661, 664, 63 P.3d 821 (2003). A court's TPR order under RCW 13.34.190 states that all rights, powers,

¹ Amici also urge the Court to find a due process right to counsel for children in TPRs based on Wash. Const. Art. 1, sec. 3, for the reasons stated in the Mother's Brief, Supp. Br. of App. at 19-26 and the Brief of Amicus ACLU-WA filed in *In re Dependency of DR and AR*, Supreme Court Case No. 84132-2.

privileges, immunities, duties, and obligations, including any rights to custody, control, visitation, or support existing *between the child and parent* shall be severed and terminated and the parent shall have no standing to appear at any further legal proceedings concerning the child.² The TPR order in this case had precisely that effect.³ After entry of a termination order, the Court is without authority to order a partial continuation of the relationship, despite the obvious benefit in many cases of some continuing relationship between the parties. *See In re A.V.D.*, 62 Wn.App. 562, 572-3, 575, 815 P.2d 277 (1991) (trial court recognized continued contact between father and child would benefit child, but was powerless to provide that benefit because “the statutory scheme does not allow us to grant a biological parent visitation rights after his parental rights have been terminated.”)

The rights of the child determined by a TPR do not end with termination of the parent-child relationship. A termination does not transfer custody from one parent to another person or to a “permanent” home.⁴ Instead the child is committed to the permanent legal custody of

² RCW 13.34.200(1); Washington Pattern Form Order JU 04.01110 (7/2011).

³ CP 437.

⁴ *Matter of Dependency of Esgate*, 99 Wn.2d 210, 214, 660 P.2d 758, 759 (1983); *In re Dependency of J.W.*, 90 Wn.App. 417, 430, 953 P.2d 104, 110 (1998) (both affirming terminations even when adoption or placement will not immediately follow).

the State.⁵ The child is placed in “legal limbo” – or made “legally free.” There is no assurance that a permanent home exists at the time of the TPR trial or will in the near future.⁶ The TPR order gives the State the authority to consent to the child’s adoption, marriage, enlistment in the armed forces, surgery and other medical care (even institutionalization)⁷, education decisions and anything else that would normally require the parents’ or a guardian’s consent.⁸ Termination of the child’s relationship with their natural parents places the government in charge of all aspects of the child’s life including residential placement, with the possibility of a placement far from home, disconnection from their cultural heritage and loss of relationships with extended family members (viewed in many cultures as just as important as the parent). And as other amicus briefs in this case discuss, children left in the legal limbo of State custody face

⁵ RCW 13.34.210; Washington Pattern Form Order JU 04.01110 (7/2011).

⁶ *Id.* In Washington, approximately 500 children “age out” of the foster care system each year (turn 18 in foster care with no permanent placement). *State’s foster care system discharges ill-equipped young adults*, The Spokesman Review, July 17, 2011, <http://www.spokesman.com/stories/2011/jul/17/out-on-their-own/>. Washington ranks high among states in the number of children who are legally free and “awaiting adoption” (whether an adoptive home is identified or not). *Children in Public Foster Care Waiting to be Adopted: FY 2002 - FY 2010* (updated June 2011), U.S. Department of Health and Human Services, http://www.acf.hhs.gov/programs/cb/stats_research/.

⁷ As occurred in *In re Dependency of DR and AR*, Supreme Court Case No. 84132-2.

⁸ RCW 13.34.210; Washington Pattern Form Order JU 04.01110 (7/2011).

years of uncertainty or changes in placement, multiple group homes and school changes, and a risk of abuse and other violations of their rights.⁹

The legal effect of a TPR is that a child risks being subjected to a new relationship with an entirely new family and a location, values and heritage chosen for them by the State. This flows from the parts of the TPR order that give the State the right to consent to the child's adoption and to set the terms of the adoptive relationship. In most circumstances when a child lacks legal counsel the child has no say whatsoever in the choice of potential adopted family. The TPR order therefore directly implicates a child's constitutional liberty and association rights, necessitating that they have a voice in the proceedings through counsel.

2. The Child's Constitutionally Protected Relationships With Siblings and Extended Family are Determined by a TPR Order.

The relationship between a dependent youth and her siblings and extended family is tremendously important, sometimes more so than her

⁹See *State to pay \$7.3 million to 3 abused as foster children*, by Queenie Wong, Seattle Times, June 3, 2011 (http://seattletimes.nwsourc.com/html/localnews/2015228991_settlement04m.html); *4 sue state over abusive Tacoma foster home*, by Christine Clarridge, Seattle Times, August 23, 2011 (http://seattletimes.nwsourc.com/html/localnews/2015990609_dshslawsuit24m.html). The State's own Office of the Family & Children's Ombudsman has documented that many foster youth in group homes following TPRs face risks to their safety and failures to have their basic needs consistently met. See Group Care. What youth say about living in a group home, Office of the Family & Children's Ombudsman, 2007 Outreach and Survey Results - Summary Report (http://www.governor.wa.gov/ofco/reports/group_care_summary_2007.pdf)

relationship with her parents. Siblings often play a significant role in families where the parents are abusive or neglectful because siblings may provide the care, support, and stability that the parents do not, and act as a buffer against harsh circumstances.¹⁰ As one foster child stated:

Being taken from my parents didn't bother me. . . . But being torn away from my brothers and sisters . . . they were my whole life. . . . It was probably the most painful thing in the world. They told me I would be able to see them a lot, but I was lucky to see them at all.¹¹

Based on the importance of sibling and other extended family relationships, the courts have found those relationships to be of constitutional dimension. The Supreme Court has described "family relationships, [which] by their nature, involve deep attachments and commitments to the necessarily few other individuals with whom one shares not only a special community of thoughts, experiences, and beliefs but also distinctly personal aspects of one's life" as a constitutionally protected liberty right. *Roberts v. United States Jaycees*, 468 U.S. 609, 619-20, 104 S.Ct 3224, 82 L.Ed.2d 462 (1984) (associational freedom of family members is "an intrinsic element of personal liberty"); *see also Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531

¹⁰ *Siblings Issues in Foster Care Adoption*, CHILD WELFARE INFORMATION GATEWAY, <http://www.childwelfare.gov/pubs/siblingissues/siblingissues.pdf> (last visited Aug. 17, 2011).

¹¹ Gloria Hochman, et al., *Foster Care: Voices From the Inside*, THE PEW COMMISSION ON CHILDREN IN FOSTER CARE (2003) (<http://pewfostercare.org/research/voices/voices-complete.pdf>).

(1977) (grandparent's right to live with and associate with grandchildren is part of constitutionally protected right of a association); *Trujillo v. Board of Cnt'y Commissioners of the County of Sante Fe*, 768 F.2d 1186, 1188 (10th Cir. 1985) (collecting cases recognizing non-parental family relationships as liberty interests). In particular, courts hold that sibling relationships are constitutionally protected interests. *Trujillo*, 768 F.2d at 1188-89; *Rivera v. Marcus*, 696 F.2d 1016, 1022-26 (2nd Cir. 1982) (half-sister who was foster mother to her siblings, *and the siblings*, had constitutionally protected interest in preserving their familial relationships: "The liberty interests at stake in this action are rendered more compelling given the important interests that the Ross children maintain in preserving the integrity and stability of their extended family.") "[Foster children's] relationships with their siblings are even more important because their relationships with their biological parents are often tenuous or non-existent." *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1006 (N.D. Ill. 1989). Since a TPR threatens a child's constitutionally protected right to sibling and extended family relationships, a due process right to counsel should be found.

It is indisputable that these constitutional interests in sibling and extended family relationships are directly determined in a TPR proceeding. The statute requires that the court determine the nature of the

child's relationship with their siblings and the nature and extent of sibling placement, contact, or visits, and TPR orders govern these matters. RCW 13.34.200(3). Sibling and extended family visits are also relevant to the best interest determination the TPR court makes, since children who have regular, frequent contact with their family while in foster care have more positive experiences: a greater likelihood of reunification, shorter stays in out-of-home care, and overall improved emotional well-being and positive adjustment to placement.¹² Accordingly, the first part of the *Mathews* test clearly weighs in favor of a child's right to counsel in TPRs.

B. THE STATE'S INTERESTS ARE CONSISTENT WITH THE IMPROVED OUTCOMES FOR THE CHILD AND LOWER RISK OF ERROR RESULTING FROM THE CHILD HAVING A RIGHT TO COUNSEL.

The second factor considered under the *Mathews* test is the governmental interest at stake. The State's interests in a TPR - promoting improved outcomes for the child and avoiding the increased costs of litigation and prolonged foster care – support a constitutional right to counsel for all children, for the reasons discussed below. *And see* Supp. Br. of App. at 16-18.

¹² *From Evidence to Practice, Family Visitation in Child Welfare, Helping Children Cope with Separation While in Foster Care*, Partners For Our Children, April 2011, http://www.partnersforourchildren.org/pocweb/userfiles/Best%20Practice%20Brief_visitation_final.pdf

C. DETERMINING IMPORTANT LEGAL RIGHTS AND THE BEST INTERESTS OF THE CHILD IN A TPR WITHOUT COUNSEL FOR THE CHILD CARRIES AN EXCESSIVE RISK OF ERROR

The third *Mathews* factor is the risk of error. The risk of error in denying the right to counsel for children in TPRs is clear. These children may have been abused or neglected, are unsure if they will continue to know their family, and when—or whether—they will ever have a permanent home. Nonetheless, in TPRs in Washington, most of these children will not have a lawyer who can explain their rights, answer legal questions about the proceeding, present evidence to the judge, or help effectively assert their position in the case.

All children are uniformly disadvantaged in TPR proceedings as the only participants whose ability to protect his or her own rights are inherently limited, yet they are the only participants not *guaranteed* the assistance of counsel. Children's interests and rights in TPRs are not the same as the State's and parents' interests. The failure to provide counsel for children at this critical juncture deprives the court of a critical voice in the determination of the best interests of the child, and impairs the ability of the legal system to create better, less adversarial and less expensive outcomes for the child.

1. The Inherent Vulnerability and Limitations of Children Supports Appointment of Legal Counsel for Children in All TPR Proceedings.

Legal precedent and amici's experience demonstrate that the risk of error in TPRs is constitutionally unacceptable unless counsel is provided for children. The legal system treats children differently than adults;¹³ they cannot sign legally binding contracts, or bring lawsuits. From a child's point of view, TPR proceedings include impenetrable jargon and procedure; where the child will have few or no opportunities to ask questions, give opinions, or be advised of rights. Nonetheless, a child will generally be the only unrepresented party in this formal, complex, adversarial process.

The courts have acknowledged the inherent disadvantages children face in the justice system and their inability to participate on a level playing field with adult and state actors without assistance. The Supreme Court in *J.D.B. v. North Carolina*, 564 U.S. ___, 131 S.Ct. 2394, 2403, 180 L.Ed.2d 310 (2011) agreed that children have increased *inability* to assert their own rights in formal proceedings. The *J.D.B.* Court held that a child's age cannot be ignored when determining whether a reasonable child would consider him or herself "in custody" for the purpose of

¹³ Developmental differences between children and adults were a critical factor in the Supreme Court's recent decision to abolish the death penalty for juveniles. See *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005).

triggering the duty to provide *Miranda* warnings. *J.D.B.* recognizes that when determining when children should receive additional procedural protections of their constitutional rights, a child's age is paramount *and* requires due process protections be provided even where the same protections would not be provided to an adult.¹⁴ Under *J.D.B.*'s recognition that *all* children are less able to deal with legal complexities than adults, a child's need for counsel in a TPR is apparent.

Children in TPR proceedings are at a particular disadvantage when they lack counsel even in comparison with *children in general*. These children are more likely to have experienced abuse and neglect, have mental-health issues,¹⁵ and have learning disabilities that cause them to fall behind their school peers.¹⁶ Only about one-third of children in foster care graduate from high school,¹⁷ while their drop-out rate is double that of other students.¹⁸ Each of these issues can make already complex legal

¹⁴ The *JDB* Court's reasoning contrasts with the State's claim, Supp. Br. of Resp. at 27-28, suggesting that nineteenth century law should determine a child's right to counsel in TPRs.

¹⁵ Neal Halfon *et al.*, *Mental Health Services for Children in Foster Care*, Health Services for Children in Foster Care, UCLA Center for Healthier Children, Families, and Communities (September 2002) (<http://www.healthychild.ucla.edu/PUBLICATIONS/ChildrenFosterCare/Documents/Mental%20health%20brief%20final%20for%20distribution.pdf>).

¹⁶ Annie Pennucci, *Educational Advocacy for Foster Youth in Washington State*, Washington State Institute for Public Policy (April 2010) (<http://www.wsipp.wa.gov/rptfiles/10-04-3901.pdf>).

¹⁷ Mason Burley, *High School Graduation and Dropout Trends for Washington State Foster Youth*, Washington State Institute for Public Policy (October 2010) (<http://www.wsipp.wa.gov/rptfiles/10-10-3901.pdf>).

¹⁸ *See id.*

proceedings even more difficult for a child in a TPR to understand.¹⁹ Each is also connected to complex legal rights and procedures that are far beyond the ability of many adults to negotiate on their own, thus demonstrating the increased risk of error if children in TPRs are denied the right to counsel.

Contrary to the State's arguments, children's vulnerability and concerns about capacity are reasons to appoint legal counsel, not deny it. Based on these concerns, this Court has urged trial courts to appoint legal counsel for children in dependency, parentage, and custody actions. *In re Parentage of L.B.*, 155 Wn.2d 679, 712 n.29, 122 P.3d 161 (2005) ("When adjudicating the 'best interests of the child' we must in fact remain centrally focused on those whose interests with which we are concerned, recognizing that not only are they often the most vulnerable, but also powerless and voiceless."). *Id.*²⁰

The State also claims that a child may be making a poor decision in advocating either for or against termination of parental rights, and for that reason they do not need counsel. But it cannot be assumed in every case that children lack the wisdom to have meaningful input in essential decisions in their own lives. And the wisdom of a child's position is not

¹⁹ See the chart attached in the Appendix illustrating the complexity of the TPR process.

²⁰ In *L.B.*, the Court did not reach the question of whether counsel was constitutionally required, but cited *Kenny A. v. Perdue*, 356 F.Supp.2d 1353, 1359-61 (N.D. Ga. 2005) for the proposition that it might be.

the test for whether due process requires appointed counsel. What must be considered instead is the risk of error in the TPR court's decision when, for example, a child is more likely to reveal abuse by a natural or foster parent if provided an attorney with whom they have a confidential relationship. The State offers no principled justification for increasing the risk of error by depriving the most incapable participants in a TPR proceeding of counsel, particularly when, as described below, there are numerous cases where counsel for the child makes the system work better.

2. Counsel for Children in TPRs Would Reduce the Risk of Error by Improving Outcomes for the Child

A child with counsel may provide proposals for a nuanced settlement in which visits with the natural parents, siblings, or extended family are accommodated, or other interests of the child are promoted. A child with counsel at the TPR can avoid costly post-termination order litigation, either in the form of a post-hearing challenge, undoing of an adoption after an appeal, or litigation to reinstate parental rights. The following examples from amici's experience provide compelling proof that the risk of error is very real to children, and that an attorney can make all the difference in a better outcome for the child.

One child's parents' rights were terminated when he was 6 years old in a proceeding where the child was not represented by counsel. His

relationship with his parents was completely severed; he was moved several times, placed in a non-relative guardianship but then removed and placed in a group home. When the child was 13, he got an attorney who learned that his mother had been calling DSHS trying to find him and his brother. The child thought his mother had died. His attorney was able to tell the child important information about his mother and use the legal process to arrange a meeting between the child and his mother, which led to proceedings reinstating his mother's rights. He has reconnected to his biological family, including his two older siblings. The child's attorney was one of the few stable aspects of his life; while he was in the State's custody he had 5 caseworkers in 4 years and had been in more than 10 placements in 3 states.

Another child had the relationship with her mother completely severed when she was 8 in a proceeding in which the child was not represented by counsel. The child lived with a relative, then a series of group homes. She eventually ran from group care and lived on the street. She began cutting herself and was involved in other risky activities. Shortly after the Parental Reinstatement statute which enables children to get counsel was enacted, the child's attorney facilitated a reconnection between the child and her mother and filed a successful parental reinstatement action. The child's mother was the only person to

successfully help the child overcome her harmful activities. The child returned to school full time and remained out of State custody.

Another child reported that her father had been sexually inappropriate with her. In a court proceeding in which the child was not represented by counsel, she was ordered to be placed with her paternal grandparents who did not believe her allegations. Once the child obtained an attorney, the attorney was able to advocate for the child's return to her mother. The dependency case was dismissed and the child did not return to foster care. The attorney ensured that the child received mental health services, involved school counselors and teachers, kept the court informed and had an enormous impact in ensuring the child's safety and well being.

In contrast to these positive outcomes, horrific tragedy can result when a child who is in state custody as a result of a TPR loses hope that anyone will help them. A July 21, 2011, Everett Herald story²¹ explains that a 14-year-old boy, in the State's custody after a TPR, jumped to his death from a Lynnwood freeway overpass in January 2011; he had been in 22 foster homes since 1998 and was on a waiting list for a bed at a state-run psychiatric hospital when he ran away from the group home where he had been placed.

²¹ <http://heraldnet.com/article/20110721/NEWS01/707219873>

These examples show that without counsel for the child the risk that the trial court's decision will be erroneous and the child harmed is clearly increased, while at the same time counsel for the child can prevent costly proceedings to undo the damage. As one commentator noted:

Appointing counsel allows the vulnerable to present their best arguments to decision makers whose authority is backed by the coercive power of the state. It reduces the risk of an arbitrary decision. Appointment of counsel increases the likelihood of an outcome consistent with the child's expressed preferences by partially redressing the imbalance of power between children and the adults who make decisions about them. Appointing counsel thus simultaneously enhances the likelihood of a just decision and the integrity of the justice system.

Catherine Ross, *From Vulnerability to Voice: Appointing Counsel for Children in Civil Litigation*, 64 *FORDHAM L. REV.* 1571 (1996).

3. Counsel for the Child Would Perform Critically Important Functions in Washington TPR Proceedings.

Only an attorney representing the child in a TPR can effectively perform the following functions:

Provide Legal Advice and Counsel. The child's lawyer is the only person in a TPR whose sole function is to advise, counsel, and advocate for the child's position. The child's lawyer focuses only on the child's interests and impartially asserts the child's rights. RPC 1.7, Comment 1 ("Loyalty and independent judgment are essential elements in the lawyer's relationship to a client."); RPC 1.2.

Gain Trust through Confidentiality. The child's counsel is the only professional in a TPR proceeding who has a confidential relationship with the child. *See* RPC 1.6. As lawyers for children, the experience of *Amici* is that clients frequently tell their lawyers things that they would not readily share with other professionals because of confidentiality concerns. This helps children's attorneys investigate and protect their client's interests, and increases their ability to ensure the child's safety.

Advocate for the Child Pre-Trial. In *Amici's* experience, a substantial amount of time can pass between the filing of a TPR petition and a TPR trial.²² If the child has counsel, in that time period the child's lawyer can answer the petition, conduct discovery, make and respond to pretrial motions, as well as advocate on behalf of the child regarding visitation, sibling contact, placement, and safety. The lawyer can counsel the client regarding obligations set by a preexisting dependency order.²³ Without legal counsel, children have no one with the legal training, or an undivided duty of loyalty to them, to advise them and protect their rights.

In the pretrial phase of a TPR, children may be receiving a great deal of conflicting and distressing information. When children do not have lawyers, there is no one giving them independent legal counsel. As a

²² *See, e.g.*, King County LJUCR 4.3(c), which sets the trial date 150 days from the date of the petition.

²³ Violation of the dependency court order can lead to a motion for contempt against the child, even when the child did not have counsel when the dependency order was entered.

result, the children are either left out of the process entirely or are asked to express agreement with the State's or their parents' case without understanding their own rights. This creates a risk of critical decisions being made that are potentially erroneous and not understood by the children who must live with the results for the rest of their lives.

Negotiate Alternatives to Termination Including Maintaining Relationships. The lawyer for the child plays an essential role in negotiations. Because many TPR proceedings are resolved without a trial, a lawyer can negotiate alternatives to termination on the child's behalf. For example, in cases where the child will ultimately be placed with biological relatives, the child's lawyer can serve as an intermediary to help avoid a high-conflict termination trial and preserve family relationships. The attorney can assist in pursuing alternatives to termination, such as a guardianship. The child's lawyer will be the only person who can advise the child about what these alternatives mean, advocate for provisions important to the child, and otherwise protect the child's interests. In recent TPR proceedings, the child had begun requesting visits with her mother early in the case but the Department did not convey that to the court until the child was appointed legal counsel. Providing counsel for this child at the outset would have protected the child's interest and avoided the protracted and costly litigation.

Other examples illustrate the detriment to children when their voice is not heard through counsel regarding negotiated alternatives to termination. *Amici* have seen children, languishing in foster care after a TPR, risk significant harm to their lives by running from foster care to their previously terminated parents; children who languish in foster care for three years and then have to sort through the labyrinth of emotional scars and rebuild a relationship with their parents to facilitate reunification through a Reinstatement of Parental Rights proceeding; children given back to the Department under a “failed adoption” who are left without any family connections; and children not allowed to shape an Open Adoption Agreement that would have created a better outcome. These harms could be avoided with counsel.

Facilitate the Child’s Participation at Trial. Without a lawyer, there is little chance that anyone will facilitate the child’s participation in the TPR trial.²⁴ The child may have an interest in testifying or may be subpoenaed by another party, both situations where the child would need a lawyer to help prepare for testimony and to understand the impact

²⁴ There is a growing emphasis on youth participation in child welfare proceedings as a means to improve outcomes and lead to fairer, more accurate court decisions. See Eric Pitchal, *Where Are All the Children? Increasing Youth Participation in Dependency Proceedings*, 12 U.C. DAVIS J. JUV. L. & POL’Y 233 (2008); Theo Liebman & Emily Madden, *Hear My Voice – Perspectives of Current and Former Foster Youth*, 48 FAM. CT. REV. 255 (2010); Laws of 2008, ch. 267, §12 (creating a pilot project in four counties to increase youth participation in dependency hearings).

testifying may have on the case. The child will also need legal counsel to make motions, present evidence, and cross-examine witnesses, particularly the GAL if the child and GAL disagree. *Amici* have seen children without counsel unable to present evidence illustrating parental unfitness where the department's witnesses failed to provide that evidence.

Appeal Adverse Decisions. All children in TPRs need counsel to appeal a trial court's decision, making appointment on a case-by-case basis inadequate. *State v. Schermer*, 161 Wn.2d 927, 169 P.3d 452 (2007) (parents filed dependency petition asserting that they were unable to meet their son's needs and did not appeal the trial court's decision dismissing the petition; fortunately, the son had a lawyer who filed an appeal and successfully argued that a dependency finding could be based on a parent's inability to respond to a child's significant special needs.) Counsel can also argue for a stay of adoption while an appeal is pending, to prevent additional trauma if the termination is reversed on appeal.

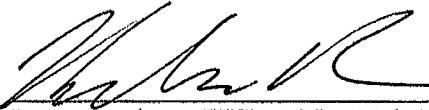
V. CONCLUSION

Amici respectfully urge the Court to hold that all children are entitled to appointment of counsel in TPR proceedings.

DATED this 16th day of September, 2011.

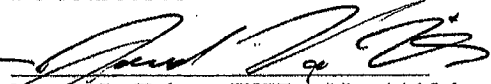
Respectfully submitted,

TEAMCHILD



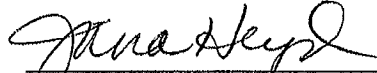
Brent Pattison, WSBA No. 29695
Hillary Behrman WSBA No. 22675
Nicole McGrath WSBA No. 32330

ACLU OF WASHINGTON
FOUNDATION



Nancy L. Talner, WSBA No. 11196
Sarah A. Dunne, WSBA No. 34869
M. Rose Spidell, WSBA No. 36038

SOCIETY FOR COUNSEL
REPRESENTING ACCUSED
PERSONS

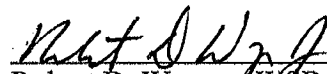


Jana Heyd, WSBA No. 20151

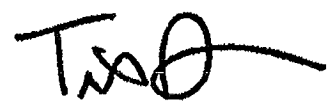
Jared Van Kirk, WSBA No. 37029
Garvey Schubert Barer
Attorneys for American Civil
Liberties Union of Washington

WASHINGTON DEFENDER
ASSOCIATION

THE DEFENDER ASSOCIATION



Robert D. Wyman, WSBA No. 30844
Floris Mikkelsen, WSBA No. 11909

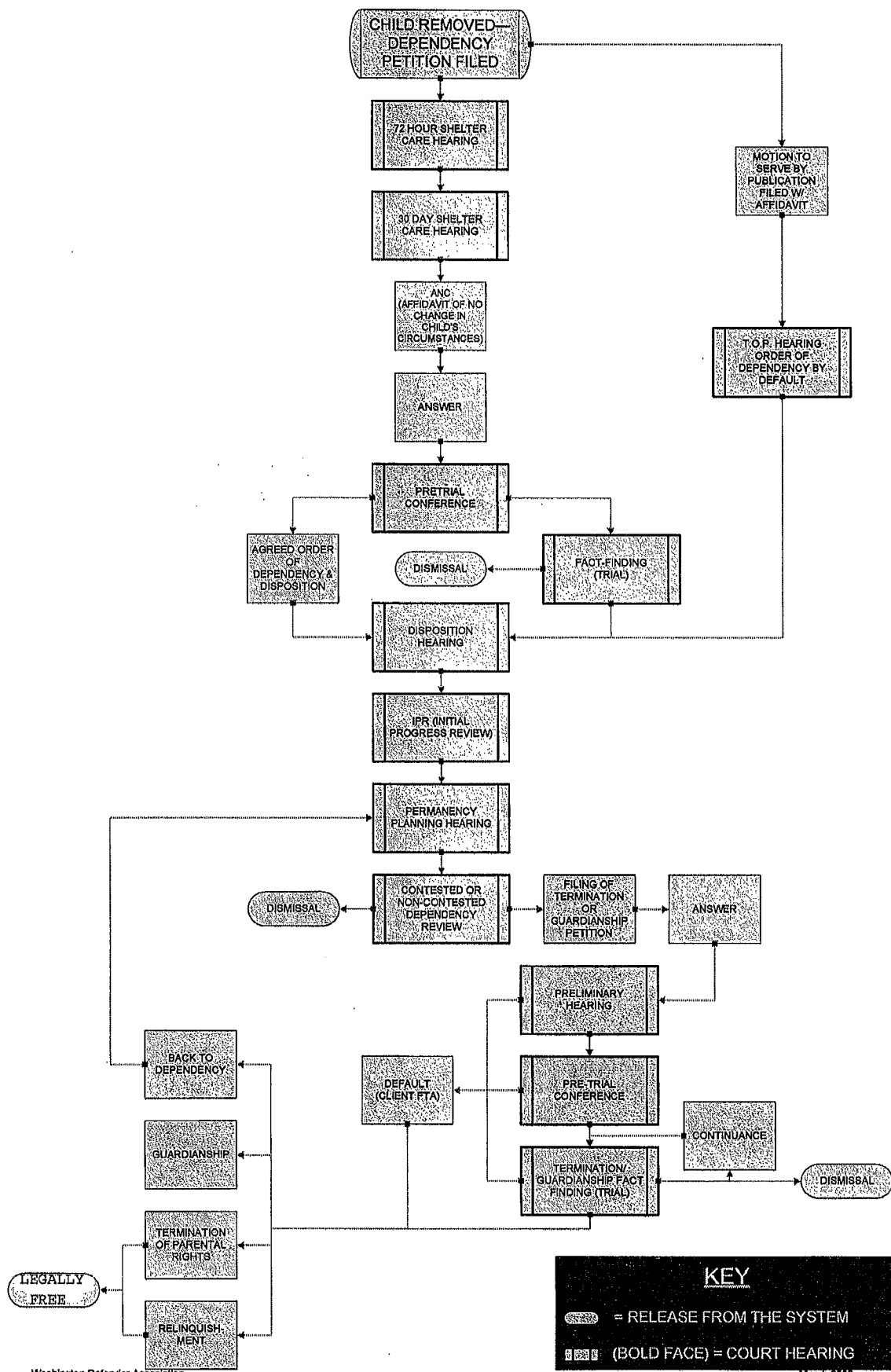


Travis Stearns, WSBA No. 29335

APPENDIX 1

Dependency System Flow Chart

Dependency System Flow Chart



DECLARATION OF SERVICE

I declare, under penalty of perjury, under the laws of the State of Washington, that on the date below I served a copy of the foregoing document by emailing and mailing the same, properly addressed and prepaid, to:

Casey Trupin
Erin K. Shea McCann
Columbia Legal Services
101 Yesler Way, Suite 300
Seattle, WA 98104
casey.trupin@columbialegal.org
Erin.SheaMcCann@columbialegal.org

Allyson Zipp
Peter Gonick
Susan Llorens
Rose Sampson
WA Attorney General's Office
1125 Washington Street SE
PO Box 40100
Olympia, WA 98504-0100
allysonz@atg.wa.gov
PeterG@atg.wa.gov
SusanL5@atg.wa.gov
RoseS@atg.wa.gov

J. Camille Fisher
Eric Merrifield
Perkins Coie LLP
1201 Third Avenue, Suite 4800
Seattle, WA 98101
CFisher@perkinscoie.com
EMerrifield@perkinscoie.com

Marla Zink
Jan Trasen
Mindy Carr
Washington Appellate Project
1511 Third Avenue, Suite 701
Seattle, WA 98101-3647
Marla@washapp.org
jan@washapp.org
mindy@criminaldefensewa.com

John Wilson
Kari L. Vander Stoep
K&L Gates
945 4th Ave., Suite 2900
Seattle, WA 98104
john.wilson@klgates.com
Kari.vanderstoep@klgates.com

Cheryl Kleiman
Bobbe Bridge
Center for Children and Youth
Justice
615 Second Ave.
Suite 275
Seattle, WA 98104
CKleiman@ccyj.org
BJBridge@ccyj.org

Linda Lillevik
Carey Lillevik
1809 7th Ave, Ste 1609
Seattle, WA 98101
lindalillevik@careylillevik.com

Lisa A. Kelly
Kim Ambrose
Children and Youth Advocacy
Clinic (CAYAC)
University of Washington School
of Law
William H. Gates Hall
Box 353020
Seattle, WA 98195
Lisak2@u.washington.edu
kambrose@u.washington.edu

Travis Stearns
Washington Defender Association
110 Prefontaine Pl. S., Suite 610
Seattle, WA 98104
stearns@defensenet.org

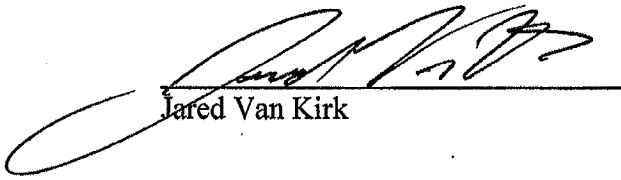
Sarah A. Dunne
Nancy L. Talner
M. Rose Spidell
American Civil Liberties Union of
Washington
901 Fifth Ave., #630
Seattle, WA 98164
dunne@aclu-wa.org
talner@aclu-wa.org
spidel@aclu-wa.org

Hillary Behrman
Nicole McGrath
Brent Pattison
TeamChild
1225 South Weller Street, Suite
420
Seattle, WA 98144
hillary.behrman@teamchild.org
nicole.mcgrath@teamchild.org
brent.pattison@drake.edu

Jana Heyd
Society for Counsel Representing
Accused Persons
1401 E. Jefferson, Suite 200
Seattle, WA 98122
jana.heyd@scraplaw.org

Floris Mikkelsen
Robert D. Wyman Jr.
The Defender Association
810 Third Ave., Suite 800
Seattle, WA 98104
robert.wyman@defender.org

Signed this 16th day of September 2011, at Seattle, King
County, Washington.


Jared Van Kirk