



ADVOCATING FOR HOUSING IN DEPENDENCY PROCEEDINGS: INSIGHTS FROM THE WASHINGTON STATE FAMILY DEFENDER APPELLATE STRIKE TEAM

FAMILIES STRONGER TOGETHER ANNUAL CONFERENCE 2024
WASHINGTON STATE FAMILY DEFENDER APPELLATE STRIKE TEAM

WHAT IS THE PURPOSE OF THE WASHINGTON STATE FAMILY DEFENDER APPELLATE STRIKE TEAM?

WHAT ARE THE GOALS?

- Creation of family-friendly case law in Dependency, Guardianship, and Termination of Parental Rights cases
- Identification of specific, targeted appellate issues to be brought before the Court of Appeals
- Asking and encouraging parent attorneys to raise target issues in the trial court
- Asking and encouraging parent attorneys to file Notices of Discretionary Review and Appeals

HOW DO WE ACCOMPLISH THE GOALS?

- Provide support and technical assistance to parent attorneys
- Provide training on target topics and appellate skills in support of parent attorneys
- Listen to, and be led by, advisory group consisting of parents with lived experience in the system

WHO IS THE WASHINGTON STATE FAMILY DEFENDER APPELLATE STRIKE TEAM?

Member Name	Firm/Organization	Strike Team Slot	Email
Connor O'Neil	ABC Law Group	Trial attorney Division 1	oneil@abclawgroup.net
William Wolf	Pierce County DAC	Trial attorney Division 2	william.wolf@piercecountywa.gov
Emily Nelson	Parents Defense Counsel	Trial attorney Division 3	emily@parentsdefensecounsel.com
Christopher Desmond	Desmond Law Group	Trial Attorney – At Large	christopher@desmondlaw.org
Jan Trasen	Washington Appellate Project	Appellate Attorney - Div 1	jan@washapp.org
Jodi Backlund	Backlund & Mistry	Appellate Attorney - Div 2	backlundmistry@gmail.com
Elizabeth Halls	Titus Halls & Sellers, PLLC	Appellate Attorney - Div 3	elizabeth@titushallssellers.com
Marci Comeau	Office of Public Defense	OPD Representative	marci.comeau@opd.wa.gov

WHAT ARE THE TARGET ISSUES IDENTIFIED BY THE WASHINGTON STATE FAMILY DEFENDER APPELLATE STRIKE TEAM?

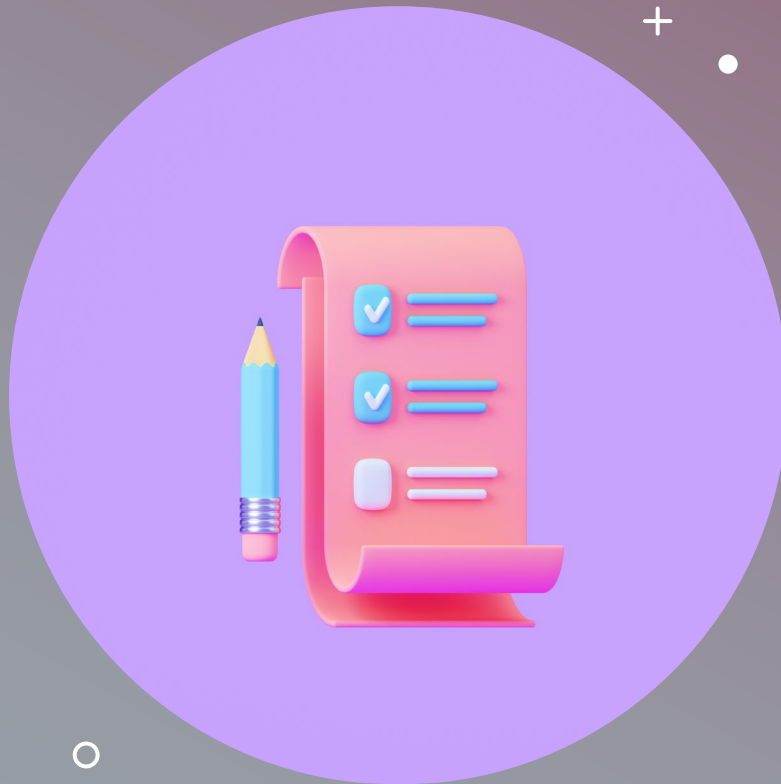
- ✓ **Competent representation at shelter care:** Establishing a right to competent counsel at the 72-hour hearing, which must include early appointment of attorneys as well as provision of discovery before shelter care hearing, with a meaningful opportunity to review the discovery.
- ✓ **Reasonable efforts:** Clarifying and raising the bar on what constitutes reasonable efforts and what falls below the standard at all stages of case, including pick-up orders, shelter care, review hearings, and disposition.
- ✓ **Housing assistance:** Challenging the Department's failure to offer substantial housing assistance, while seeking to clarify and advocate for the court's authority to order the Department to provide such assistance.



ADVOCATING FOR HOUSING ASSISTANCE

CONNOR O'NEIL

AGENDA



Understanding the Need
Legal/Factual Basis to Argue for Housing
Utilizing the Evidence
Case Timeline and When to Argue
Next Steps



Providing a family with effective housing assistance impacts the child in the following ways:

- Stability and continuity for the child's physical, mental, and emotional health.
- Reduction in trauma and disruption to the child's day-to-day life.
- Supports educational continuity
- Facilitates positive parental engagement
- Prevents secondary adverse effects.

HOUSING'S IMPACT ON CHILD WELLBEING



WHY WE NEED TO FOCUS MORE ON HOUSING

- According to a 2016 study, 1/3rd of individuals who are homeless have alcohol or drug use disorders.
- 2/3rd have a lifetime history of alcohol or drug disorder.
- Although the relationship is complex, studies suggest that substance use is both a CAUSE and CONSEQUENCE of homelessness.
- Other barriers to housing:
 - Locations not close to children's school/necessary facilities
 - Pets
 - Belongings/possessions
 - Car

HOUSING ASSISTANCE

RCW 13.34.030 – Definitions

- (9) “experiencing homelessness” means lacking a fixed, regular, and adequate nighttime residence, including circumstances such as sharing the housing of other persons due to loss of housing, economic hardship, fleeing domestic violence, or as defined in McKinney Vento homeless assistance Act.
- (15) “housing assistance” means appropriate referrals by the department or other agencies to federal, state, local or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. “housing assistance” is not a remedial service or family reunification service.
- (21) “prevention services” means preservation services, [...] including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.



This Photo by Unknown Author is licensed under [CC BY-ND](#)



HOMELESS \neq NEGLIGENT TREATMENT OR MALTREATMENT BY ITSELF

RCW 26.44.020(19),

[...] poverty, experiencing homelessness, or exposure to domestic violence as defined in RCW 7.105.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

13.34.065(5)(a)(ii)(B)(I)

[...] the existence of community or family poverty, isolation, single parenthood, age of the parent, crowded or inadequate housing, substance abuse, prenatal drug or alcohol exposure, mental illness, disability or special needs of the parent or child, or nonconforming social behavior does not by itself constitute imminent physical harm;



RCW 13.34.065(4)(d)

If the dependency petition **or other information** before the court alleges that experiencing homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, **the court shall inquire as to whether housing assistance was provided to the family to prevent the need for removal of the child or children.**



RCW 13.34.065(5)(b)(i-ii)

(b) If the court finds that the elements of (a)(ii)(b) of this subsection require removal of the child, the court shall further consider:

- (i) Whether participation by the parents, guardians, or legal custodians in any prevention services would prevent or eliminate the need for removal and, if so, shall inquire of the parent whether they are willing to participate in such services. **If the parent agrees to participate in the prevention services identified by the court that would prevent or eliminate the need for removal, the court shall place the child with the parent.** The court shall not order a parent to participate in prevention services over the objection of the parent, however, parents shall have the opportunity to consult with counsel prior to deciding whether to agree to proposed prevention services as a condition of having the child return to or remain in the care of the parent; and
- (ii) whether the issuance of a temporary order of protection directing the removal of a person or persons from the child's residence would prevent the need for removal of the child.

“Prevention Services” – INCLUDES HOUSING



RELEVANT CASE LAW (THE GOOD):

Washington State Coal. for the Homeless v. Dep't of Soc. & Health Servs., 133 Wash. 2d 894, 901, 949 P.2d 1291, 1295 (1997)

- Held: trial court in a dependency proceeding could order the Department to provide housing assistance in cases where “homelessness is a primary factor in the decision to place or keep a child in foster care.”

Matter of Dependency of G.L.L., 20 Wash.App. 2d 425, 433, 499 P.3d 984, 988 (2021), as amended on denial of reconsideration (Jan. 7, 2022)

- Held: housing assistance can be a necessary service DCYF must offer before seeking termination. Here, the mother’s lack of housing was a factor preventing reunification with her child. The termination petition identified lack of safe and stable housing as a parenting deficiency. Housing services were necessary services.



RELEVANT CASE LAW (THE BAD):

In re Dependency of D.A., 124 Wash.App. 644, 651–52, 102 P.3d 847, 851 (2004)

- Held: DCYF can fulfill its duty to provide court-ordered services by providing a parent with nothing more than a list of referral agencies. Furthermore, the court may consider any service received, from whatever source, bearing on the potential correction of parental deficiencies, including sources that the parent seeks out on their own.



RCW 13.34.138(4)

(4)The court's authority to order housing assistance under this chapter is: (a) Limited to cases in which a parent's experiencing homelessness or lack of suitable housing is a **significant factor** delaying permanency for the child and housing assistance would aid the parent in providing an appropriate home for the child; and (b) subject to the availability of funds appropriated for this specific purpose. Nothing in this chapter shall be construed to create an entitlement to housing assistance nor to create judicial authority to order the provision of such assistance to any person or family if the assistance or funding are unavailable or the child or family are not eligible for such assistance.

Court's Authority to Order Housing Assistance



Bonus Statute: RCW 74.13.802 (SB 5256)

+



- (1) Within funds appropriated for this specific purpose, the department shall administer a child welfare housing assistance program, which provides housing vouchers, rental assistance, navigation, and other support services to eligible families.
 - a) The department shall operate or contract for the operation of the child welfare housing assistance program under subsection (3) of this section in one or more counties west of the crest of the Cascade mountain range and one or more counties east of the crest of the Cascade mountain range.
 - b) The child welfare housing assistance program is intended to reduce the need for foster care placement and to shorten the time that children remain in out-of-home care when placement is necessary.



EVIDENCE TO SUPPORT: CLIENT

Establishing the Situation and Getting the facts on the record:

- "Could you describe your living situation at the time of your children's removal?"
- "Where were you and your children residing prior to their removal from your care?"
- "Did you experience any episodes of homelessness or housing insecurity leading up to the removal of your children?"
- "Were there any specific factors that contributed to your housing instability during that time?"

Impact on Parenting:

- "How did your housing situation affect your ability to provide a safe and stable environment for your children?"
- "Did the lack of stable housing impact your ability to meet the needs of your children, such as attending school, or accessing healthcare?"
- "In what ways did your housing situation contribute to the challenges you faced in caring for your children?"

Efforts to Secure Housing:

- "Could you describe any efforts you made to address your housing situation prior to your children's removal?"
- "Did you seek assistance from any agencies or organizations to find stable housing for your family?"
- "What did DCYF do to assist you with securing suitable housing for yourself and your children?"



EVIDENCE TO SUPPORT: DCYF

Housing Needs Identification:

- Did you assess the family's housing situation as part of your initial evaluation?
- What information did you gather regarding the family's housing stability and living conditions?
- Were there any indications of housing instability on your safety threat analysis?

+



Efforts/Lack of Efforts to Connect Family with Resources:

- What efforts did you make to connect the family with resources or support services to address their housing needs?
- Can you provide details about the housing assistance programs or organizations you referred the family to?
- Did you explore all available options for housing assistance in the community?

Follow Up/Coordination beyond the referral:

- Did DCYF explore alternative housing options for the family beyond traditional referral programs, such as transitional housing or supportive housing?
- Were there discussions or considerations regarding temporary housing arrangements DCYF could provide to address immediate housing needs while working towards a more permanent solution?
- Did DCYF advocate on behalf of the family with housing authorities to address barriers or challenges in securing housing, such as rental barriers or discrimination?

EVIDENCE TO SUPPORT: MOU

Present the statistics in the Washington State Housing and Child Welfare Collaboration ⁺



Family Treatment Court Steering Committee
Washington State Administrative Office of the Courts



Washington State Department of
CHILDREN, YOUTH & FAMILIES



**Collaboration in Washington State Between Child Welfare Agency and Public Housing
Authorities and Non-Profit Housing Organizations**
February 21, 2024



“BIG PICTURE” ARGUMENT

- **30% of out-of-home placements of children arise or last longer than necessary because the family lacks adequate housing.**
- **9% of young adults exiting Washington foster care become homeless within 3 months. After 12 months, 17% of them become homeless.**
- **Utilizing housing resources instead of foster homes reserves scarce foster homes for unavoidable placement.**
 - Highlight cases in which the court has no option but to utilize foster homes.
- **Furthermore, its anticipated to save the state funding.**
 - How much is spent paying the foster family, ensuring the parent has transportation, the cost of having a visit supervisor go and transport a child to and from visits, etc.
 - Shortening or preventing the need for foster care is estimated to save Washington State \$12 million annually
 - The National Center for Housing and Child Welfare Cost Study, 2022.

EVIDENCE TO SUPPORT: MOU

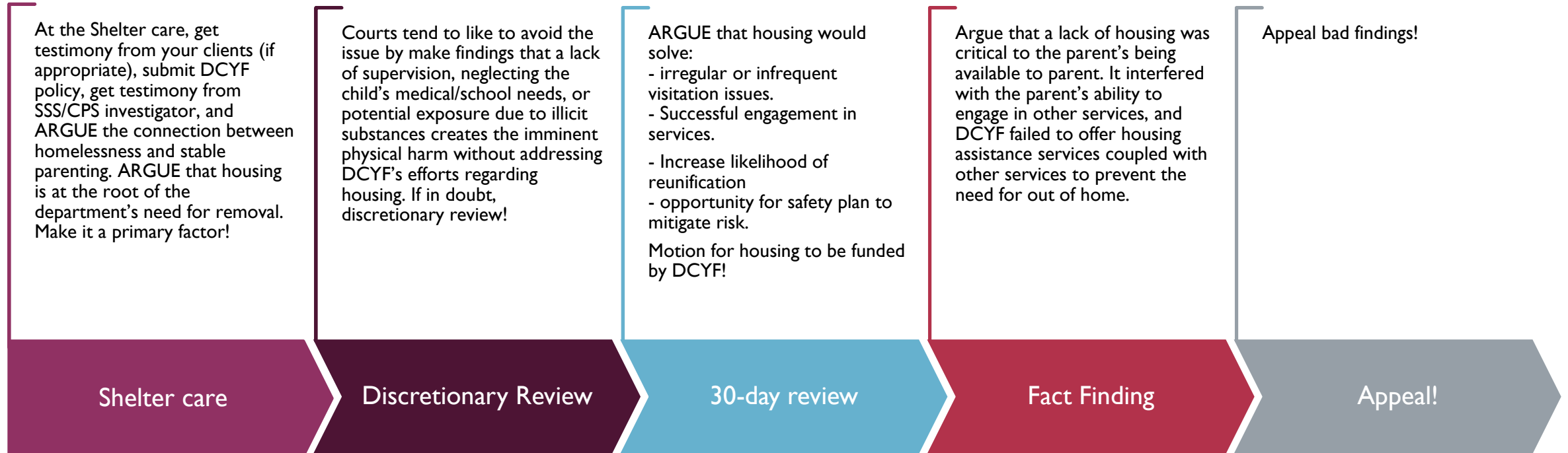
“Client, ‘Jane’, was a participant of the Lewis County drug court program and also was involved in a dependency. She was in full compliance for many months with drug court, about a year. She was also engaged fully in a plethora of services required by DCYF. Housing became the only barrier to reunification with her termination of parental rights trial pending. Though the court continued the termination trial there was still 6-8 months that passed during which the child would have been home except for housing. Jane was eventually able to get housing through funding to a local housing program coming in for a dozen families or so, of which Jane was one. Jane has gone on to obtain housing and is awaiting the establishment of her parenting plan before dismissal of the dependency. The cost of foster care during this time would have been much better spent on housing assistance, as it would have caused less strain on the family and saved money as this family had to spend extra time in the court dependency system because of lack of housing.”

[OPD Family Attorney, Lewis County 2020]

This is just one example that is included in the 2022 MOU, of the significant harm and delays to reunification our families face if housing is not addressed at the onset. When housing can take the longest to acquire, don't wait!



TIMELINE





TIMELINE (CONT.)

Argue that continued lack of suitable housing is compounding the trauma. Remind the court of DCYF's obligations to provide preventative services. Argue for no reasonable efforts! Argue for the court to order DCYF to provide funding for housing!

6-month Review Hearings

Currently, case law is not in favor for parents to receive a definitive form of housing assistance. The "minimum" is currently set at simply offering a list of referrals.

We need more good cases to be appealed and set for discretionary review so we can raise the bar on the current "minimum" effort!

Discretionary Review

Washington State Coal. for the Homeless v. Dep't of Soc. & Health Servs., 133 Wash. 2d 894, 923–24, 949 P.2d 1291, 1306 (1997)
In re dependency of D.A. 124 Wash. App. 644, 651, 102 P.3d 847 (2004).



WHY WE NEED YOU TO FIGHT

- Although we have case law as old as 1997 that states DCYF can provide a plethora of different forms of housing assistance, the assistance families typically receive barely meets the minimum requirements.
- Housing assistance is defined in statute as far broader than to simply provide a list of referrals. As such, reasonable efforts findings should be made when more than a referral pamphlet is provided.
- With the passing of HB 1227, counsel for parents across the state have an opportunity to argue issues related to housing and housing assistance:
 - Inadequate housing does not constitute imminent physical harm in and by itself, AND
 - Even if there is a basis for removal, if the parents agree to preventative services that prevent eliminate the need for removal, the court SHALL place the child with the parent.

MAKING A RECORD FOR APPELLATE REVIEW OF HOUSING DENIAL

JODI BACKLUND

APPEAL ATTORNEY/TECHNICAL ASSISTANCE

BACKLUNDMISTRY@GMAIL.COM



ASK FOR HOUSING FUNDING AT A HEARING

- Ask for housing funding directly.
- Show all your requests to the SW, and if you have a SW affirming that housing is the only issue in an email, text, or whatever: print and file!
- Cite the statutes – RCW 13.34.065(4)(d) and RCW 74.13.802
- **GET A WRITTEN RULING**



ALL OF THE INFORMATION MUST BE IN THE COURT FILE

- **Sounds pretty basic, but:**
- **If you're at termination, you need to attach all the documents you need to your filing – the Court of Appeals will not have access to the dependency file**
- **If part of your argument refers to statements by DCYF staff: make it part of the court file**

ABSOLUTELY REQUIRED FOR APPELLATE REVIEW:



- **Think through all the logical steps of your argument and make sure they are each addressed in your court file**
- **Need to establish that but for housing issue, kids would be with your client**

WOULD BE GREAT FOR APPELLATE REVIEW:

Would be good to show what efforts your client has made toward housing or why efforts unrealistic but not required for appellate review

Would be good to cut off any easy outs: Court of Appeals can affirm on any basis, so remove the possibility if you can that there is another reason children are not with your client besides housing

Would be good to show the repeated requests for housing assistance

Would be good to file a separate motion and do a dedicated hearing



ABOUT SIGNING ORDERS:

Think long and hard before you
just sign an order

Consider adding “objections
preserved,” or “as to form only”

Consider demanding another
hearing on the issue, and
appealing that one too



MOOTNESS HORROR STORIES





TELL US ABOUT YOU!

What have your experiences been:

- ✓ Obtaining housing resources from DCYF?
- ✓ Filing motions in court regarding housing assistance?
 - ✓ Filing discretionary reviews or appeals regarding housing assistance?
- ✓ Filing discretionary reviews or appeals generally?

THANK YOU!



Washington State Family Defense Appellate Strike Team Members:

- Christopher Desmond, Desmond Law Group, At-Large Member, christopher@desmondlaw.org
- William Wolf, Pierce County Department of Assigned Counsel, Trial Attorney – Division Two, william.wolf@piercecountywa.gov
- Emily Nelson, Parents Defense Counsel, Trial Attorney – Division Three, emily@parentsdefensecounsel.com
- Jan Trasen, Washington Appellate Project, Appellate Attorney – Division One, jan@washapp.org
- Jodi Backlund, Backlund & Mistry, Appellate Attorney – Division Two, backlundmistry@gmail.com
- Elizabeth Halls, Titus Halls & Sellers, PLLC, Appellate Attorney – Division Three, elizabeth@titushallssellers.com
- Connor O'Neil, ABC Law Group, Trial Attorney - Division One, oneil@abclawgroup.net
- Marci Comeau, Washington State Office of Public Defense – marci.comeau@opd.wa.gov