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A Good Cause Exception is Necessary for the Agency to Satisfy Permanency Planning Requirements

There is a growing recognition that longer periods of incarceration should not be the death knell for a family and is reflected by the recent amendments to RCW 13.34.¹ Allowing a good cause exception to the state's petition to terminate parental rights will allow the state to satisfy the permanency-planning requirements required by RCW 13.34.136(2)(b)(i). SHB 1284 established that the permanency plan must actually reflect the incarcerated parent's actual circumstances. Specifically, the new law requires state social workers to assess an incarcerated parent's ability to participate in meetings, the treatment available in the facility where they are confined and provide visitation unless it is deemed contrary to the best interest of the child.² In order to satisfy the requirements of SHB 1284, the Individualized Service and Safety Plan (ISSP) should reflect the services that are available to incarcerated parents and their children, and show efforts by the Department to encourage and strengthen the parent child relationship.³ Further, mandated by case law, the Department is required to make "reasonable efforts" to reunify, even if the parent is incarcerated, visitation cannot be denied simply because the child would be better off not visiting in a prison setting.⁴

¹ RCW 13.34.136(2)(b)(i) and *see also* 2009 amendments to RCW 13.34.180(1)(e)(iii) ("except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child.").

² RCW 13.34.136(2)(b)(i).

³ RCW 13.34.136(2)(b)(i).

⁴ *In re Custody of Smith*, 137 Wn.2d, 1, 16-17, 969 P.2d. 21 (1998).