

Termination of Parental Rights for Incarcerated Mothers

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Introduction:

In this paper I discuss the termination of parental rights for incarcerated women from a legal perspective, a female prisoner's perspective, and the perspective from a current foster-parent. The paper is designed to present the law, and then illustrate how the law actually influences different types of people.

First, I examine an important federal case and federal statute that influenced Oregon's laws regarding termination of parental rights. Next, a chronology of Oregon cases is presented that involves termination of incarcerated women's parental rights. While the final case discussed is not about a woman, it sets out the most current law applicable to future cases for women litigating the termination of their parental rights.

The other perspectives were taken from personal interviews. The second perspective is voiced by Carole Pope, a former inmate who later became an advocate for incarcerated mothers' rights. Ms. Pope discussed the availability of legal resources for incarcerated women and how she changed the system. Ms. Pope also described how the federal and state laws affected incarcerated mothers and the termination of their parental rights. The third perspective was from a foster mother, Ms. Turner. Ms. Turner described the foster care process and the need for children to be removed from parents that neglect or abuse them. Ms. Turner also commented on the how the current laws affect natural parents trying to avoid termination of their parental rights.

Perspective One: The Law

FEDERAL LAW

The landmark U.S. Supreme Court case on the issue of termination of parental rights cases is *Santosky v. Kramer*.¹ The main issue before the Court in *Santosky* was whether the New York Family Court Act's "fair preponderance of the evidence" for termination of parental rights hearings violated the Due Process Clause from the Fourteenth Amendment. The Court held the standard was unconstitutional, and determined the appropriate standard for termination proceedings of parental rights should be "clear and convincing evidence."²

The New York law at issue in *Santosky* provided the state could terminate a parent's rights upon a finding a child was "permanently neglected," as measured by a "fair preponderance of the evidence."³ The Family Court applied this standard during a neglect proceeding and terminated the petitioners' parental rights over their three natural children.⁴ On appeal, the petitioners' asserted the "fair preponderance of the evidence" standard violated procedural due process. The Supreme Court found the parents had a fundamental interest in raising their children and applied the procedural due process analysis.

The *Santosky* Court balanced factors from *Mathews v. Eldridge*.⁵ The factors included "the private interests affected by the proceedings; the risk of error created by the State's chosen procedure; and the countervailing governmental interest in supporting use of the challenged procedure."⁶ The Supreme Court considered the parents' interests in raising their children:

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been

¹ *Santosky v. Kramer*, 102 U.S. 1388 (1982).

² *Id.* at 1391.

³ *Id.*, see *New York Family Court Act* § 622 (1981-1982).

⁴ *Santosky*, 102 U.S. at 1390.

⁵ *Mathews v. Eldridge*, 424 U.S. 319 (1976).

⁶ *Id.* at 335.

model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.⁷

The Supreme Court found the parents' interests in the termination hearing compelling.⁸

In reviewing the state's interests, the Court found it had "*parens patriae* interest in preserving and promoting the welfare of the child and a fiscal and administrative interest in reducing the cost and burden of such proceedings."⁹ Comparing the state's interests to the parents' interests, the Court found all the private interests were better served by a higher standard of proof.¹⁰ Next, the Court weighed the risks of error in the application of the preponderance standard in parental rights termination proceedings. When the Supreme Court considered the risks inherent in applying the preponderance standard, it analogized the proceedings several times to a criminal trial. The Court stated: "In New York, the fact-finding stage of a state-initiated permanent neglect proceeding bears many of the indicia of a criminal trial."¹¹ The Court found the preponderance standard allowed for the risk of erroneous fact-finding and too much judicial discretion.¹² Neither of these weaknesses was deemed appropriate for the termination proceeding that was so similar to a criminal trial. In evaluating the preponderance standard, the Court found this standard too weak for the important private interests. The Court expressed disapproval that the state applied the same standard for "terminating the parent-child relationship as they must when they have to suspend a driver's license."¹³

⁷ *Santosky*, 102 U.S. at 1395.

⁸ *Id.* at 1397.

⁹ *Id.* at 1401.

¹⁰ *Id.*

¹¹ *Id.* at 1399.

¹² *Id.*

¹³ *Id.* at 1402.

The Court then considered what standard should apply to termination proceedings of parental rights. The Court decided the “clear and convincing standard” was appropriate. The Court rejected applying the criminal standard of “beyond a reasonable doubt” because of the kinds of factors a termination proceeding must consider, factors that could rarely ever be proved beyond a reasonable doubt. The Court stated:

Like civil commitment hearings, termination proceedings often require the fact-finder to evaluate medical and psychiatric testimony, and to decide issues difficult to prove to a level of absolute certainty, such as lack of parental motive, absence of affection between parent and child, and failure of parental foresight and progress.¹⁴

The Court concluded consideration of these subjective factors would lead to many evidentiary problems. In opting for the “clear and convincing standard,” the Court found it fairly balanced the competing interests between parents and the state.¹⁵ The Court held that “such a standard adequately conveys to the fact-finder the level subjective certainty about his factual conclusions necessary to satisfy due process.”¹⁶ A “clear and convincing standard” protected private interests and provided more constitutional protection. The Court left it up to states to determine whether to apply an equal or more protective standard than the “clear and convincing evidence” standard in parental rights termination proceedings.¹⁷

THE ADOPTION AND SAFE FAMILIES ACT OF 1997

In 1997 the federal government passed the Adoption and Safe Families Act (ASFA), which strongly impacted the termination of parental rights of incarcerated mothers.¹⁸ Prior to this act, the government focused on reuniting children in foster care with their biological

¹⁴ *Santosky*, 102 U.S. at 1403.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Pub. L. No. 105-89, 111 Stat. 2115 (1997) (codified in scattered sections of 42 U.S.C.).

parents.¹⁹ ASFA shifted the government's attention to "the safety of the child, rather than the reunification of the family."²⁰ The goal of the ASFA was to get children out of foster care and get them adopted. In order to meet this goal, the government sped up the process of terminating parental rights.

The ASFA had several important effects. First, ASFA narrowed the amount of "reasonable effort" the government had to expend in reuniting families.²¹ Second, ASFA provided the government with an "expedited timetable" to terminate parent rights.²² ASFA provided:

To avoid unnecessary and lengthy stays in the foster care system, the Adoption and Safe Families Act of 1997 specifically requires, among other things, that States move to terminate the parental rights of the parents of those children who have been in foster care for *15 of the last 22 months*.²³

The Act also fiscally encouraged states to terminate parental rights by providing states with "adoption incentive payments."²⁴

Since ASFA provided financial incentives for states to promote adoptions, fewer resources were consequently allocated to aid parents in maintaining their parental rights.²⁵ Instead, the 15-22 month timeline accelerated the termination process. ASFA "also resulted in incarcerated women being at greater risk for having their parental rights terminated based on the length of their prison sentence."²⁶ This problem was greatly exacerbated by mandatory sentencing.

¹⁹ Mariely Downey, *Losing More Than Time: Incarcerated Mothers And The Adoption And Safe Families Act of 1997*, 9 Buff. Women's L.J. 41, 43 (2000-2001).

²⁰ *Id.* at 44.

²¹ *Id.*

²² *Id.*

²³ 42 U.S.C.A. § 670, Sec.2(4) (West 1997) (emphasis added).

²⁴ 42 U.S.C.A. § 673(b); *see* Downey, 9 Buff. Women's L.J. at 44.

²⁵ *Id.*

²⁶ *Id.* at 42.

Generally mandatory sentencing laws negatively impacted women by lengthening their prison sentences. Women became “the fastest growing segment of the prison population,” and most of them had children.²⁷ Mandatory sentencing removed judicial discretion to consider a woman’s family obligations.²⁸ Since most women are the primary caretakers of their children, when women go to prison their children are often forced into foster care or placed with extended family members.²⁹ Women who commit minor crimes, such as theft or drug use, now face much harsher prison sentences.³⁰ Children languish in foster care longer as a direct result. The increased length of incarceration adds additional punishment when women’s parental rights are terminated by states influenced by the rigid ASFA.³¹ Now that I examined the federal law on termination of parental rights, I will explore how it impacts Oregon law.

OREGON LAW

One of the most famous Oregon cases regarding the termination of an incarcerated woman’s parental rights occurred in Lane County, in 1962. In *State v. Grady*, the Oregon Supreme Court refused to terminate the parental rights of a young incarcerated woman.³² The issue before the court was whether the woman’s incarceration rendered her an unfit parent “by reason of conduct or conditions which were seriously detrimental to the child as required by ORS 419.525(2).”³³ ORS 419.525(2) provided that: “Before parental rights can be terminated without the consent of the parent, the juvenile court must find a) that the parent or parents are unfit by reason of conduct or conditions seriously detrimental to the child; or b) that they have

²⁷ Downey, 9 Buff. Women’s L.J. at 45.

²⁸ *Id.*

²⁹ *Id.*, see also Myrna S. Raeder, *Remember The Family: Seven Myths About Single Parenting Departures*, 13 Fed. Sent. R. 251 (2001).

³⁰ *Id.* at 257.

³¹ *Id.* at 252.

³² *State v. Grady*, 231 Or. 65 (1962).

³³ *Id.* at 67.

abandoned the child.”³⁴ The Oregon Supreme Court took on a very paternalistic tone in discussing the plight of the young woman before them in light of the Oregon statute, a tone completely different from the more recent cases that will be discussed afterwards.

The woman was twenty-years-old. At stake was the custody of her ten-month infant (she also had two other daughters in the care of her mother). The court repeatedly stressed the fact the woman’s parents had divorced when she was 11, and that she lived in various foster homes in her youth.³⁵ However, the court never explicitly addressed how the divorce was relevant.

The woman was convicted of forgery in 1960. She violated her probation and was taken into custody. At the time the court considered her case, she was about to be considered for parole.³⁶ The facts of the case suggested the woman made some efforts to correspond with her children and inquire into their welfare.³⁷ The court approved of her efforts and stated “we deem it of no little significance and a display of the depth of her maternal regard that, notwithstanding her penal situation, she elected to contest the effort to take the child away from her forever.”³⁸

After the court considered the mother’s maternal behavior, it started a legal analysis. The court held that incarceration alone could not automatically terminate the rights of a parent.³⁹ Here the infant was a “child of tender age,” and the mother demonstrated “her natural maternal instincts.”⁴⁰ The court expressed hope the mother would “later demonstrate a rehabilitation by sufficient conduct and character in accord with the accepted standards and duties of motherhood.”⁴¹ Despite the use of a preponderance standard, the court concluded “[n]or do we

³⁴ *Grady*, 231 Or. at 67.

³⁵ *Id.* at 66-67, 69.

³⁶ *Id.* at 66.

³⁷ *Id.* at 68.

³⁸ *Id.* No more recent opinion I have read has so tenderly assigned weight to a mother’s decision to fight the termination process!

³⁹ *Id.* at 67.

⁴⁰ *Id.* at 67-68.

⁴¹ *Id.* at 68.

find in the mother's social conduct, considering her age and the divorce of her parents in her early years, any showing of inherent traits of character that can not be corrected."⁴²

The court vacated the termination of the woman's parental rights, and addressed the broader goals of punishment. The court cited the Oregon Constitution: "Laws for the punishment of crime shall be founded on the principles of reformation, and not vindictive justice."⁴³ This implied that the woman was being punished enough for her crime by her incarceration, and that the permanent removal of her parental rights would be an inappropriate additional layer of punishment. The court went on to ask: "What better inducement can she have for redemption than the assurance that she may have again her little girls in one united family?"⁴⁴

The theory of termination of parental rights as "additional punishment" does not appear in another court opinion. Neither does any language regarding the hope for rehabilitation as an incentive to reduce recidivism rates among incarcerated mothers.⁴⁵

TERMINATION OF A MOTHER'S RIGHTS

In 1979 in the *Matter of Moyer*, the Oregon Court of Appeals reached a different result than *Grady*.⁴⁶ The court in *Moyer* held that the mother's "past criminal activity, present incarceration and inadequate performance during the two parole periods are sufficient to meet the [preponderance] standard for termination."⁴⁷ The court strongly disapproved of the female prisoner's conduct.

⁴² *Grady*, 231 Or. at 69.

⁴³ *Id.*

⁴⁴ *Id.* at 70.

⁴⁵ However, in Carole Pope's interview she advocates for both!

⁴⁶ *Matter of Moyer*, 42 Or. App. 655 (1979), *cert. denied*, (Or. Feb. 26, 1980).

⁴⁷ *Id.* at 662.

The mother was twenty-five years old and had a history of running away during her youth.⁴⁸ She had two children who were constantly in and out of foster care as a result of her incarceration and parole violations. The mother was first jailed for forgery, and while in prison she gave birth to her first child, Miranda.⁴⁹ The mother was paroled to a halfway house but she escaped.⁵⁰ She was later apprehended, imprisoned, and gave birth to Tony in prison. During her second round of parole, the mother was convicted of theft, burglary, and assault.⁵¹ Back in prison again, the mother took college courses and received counseling. She became a “model prisoner” according to prison officials.⁵² However, the appellate court reviewed these changes as too little, too late.

In evaluating the facts of the case, the court emphasized the devastating effects the mother’s actions had on her children.⁵³ The court ignored her attempts to change and judged her solely from her past, and for them, unforgivable conduct. The court cited *Grady* for the proposition that incarceration alone could not justify termination of parental rights, and found it distinguishable.⁵⁴ The mother in *Moyer* “failed to provide” for her children since they both lived in foster care, and the state provided a long list of factors that showed detriment to the children:

[R]epeated incarceration which removed the mother as a resource to the children; disruption of Miranda’s life by transfers of custody; the children’s immediate need for a stable parental figure; the alleged lack of effort on the mother’s part to adjust her conduct to circumstances during parole or permit her to take custody of her children; and the *threat of future disruptions when the mother is released again*.⁵⁵

⁴⁸ *Matter of Moyer*, 42 Or. App. at 657.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 658.

⁵³ *Id.* at 659.

⁵⁴ *Id.* at 661.

⁵⁵ *Id.* at 662 (emphasis added).

The court's take on this mother's chances of rehabilitation were directly opposite those of the *Grady* court. Here, the court disregarded the mother's attempts at rehabilitation. The court failed to mention why it ignored the words of prison officials who described the mother as a "model prisoner" who made efforts to obtain an education and the guidance of counseling. Instead of positively expressing hope the mother could change and be motivated to care for her family, the court described her release as a "threat." The court repeatedly emphasized the mother's past, and this bias clouded the mother's future. Her parental rights were terminated under the same preponderance standard under which *Grady* protected a mother's parental rights.⁵⁶

CHANGING THE STANDARD

Oregon changed its preponderance standard for evaluating the evidence in termination of parental rights hearing in 1982. A mother was in the middle of appealing her termination of rights in *Matter of Farrell* when *Santosky* was decided.⁵⁷ In *Farrell*, the Oregon appellate court adopted the "clear and convincing" standard demanded under the U.S. Constitution.⁵⁸ The court reviewed the facts of the case, held the evidence met the clear and convincing standard and affirmed the trial court's order terminating a mother's parental rights.⁵⁹ The next important case

⁵⁶ The Oregon Supreme Court denied review of *Moyer* on Feb. 26, 1980.

⁵⁷ *Matter of Farrell*, 58 Or. App. 258 (1982).

⁵⁸ *Id.*

⁵⁹ The court failed to review the facts of the case in its opinion, instead the court stated it "reconsidered our earlier opinion and conclude[d] that the requisite facts were established by clear and convincing evidence." *Id.* at 266. I reviewed the facts of the earlier court opinion-which was vague. The mother gave premature birth to girl. Five months later the infant was hospitalized for malnutrition, failure to thrive, and developmental delay. *State ex rel. Juvenile Dept. of Multnomah County v. Farrell*, 55 Or. App. 897 (1982). A year later the mother gave birth to another child that was also hospitalized for failure to thrive. *Id.* at 899. After being released from the hospital, both children became wards of the court and lived with their grandparents. *Id.* The mother submitted to psychological exams and attended parenting classes, but according to the court, failed to improve her parenting skills.

to apply the new clear and convincing standard to an incarcerated mother was *State ex. rel. Children's Services Div. v. Rollins*.⁶⁰

In *Rollins*, the Oregon Court of Appeals reversed a trial court's decision to terminate the parental rights of an incarcerated mother. The court held the state failed to prove by clear and convincing evidence that the mother's attempts at drug rehabilitation would be unsuccessful.⁶¹ The mother in *Rollins* had a long history of drug abuse and incarceration.⁶² The Child Services Division (CSD) moved to terminate the mother's rights after she was sentenced to 24 months in prison for drug offenses.⁶³ The trial court terminated the mother's rights pursuant to ORS 419B.504, which provided:

The rights of the parent or parents may be terminated ... if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent or parents is improbable in the foreseeable future due to conduct or conditions not likely to change. In determining such conduct, the court shall consider but is not limited to the following:

...

(3) Addictive or habitual use of intoxicating liquors or controlled substances to the extent that parental ability has been substantially impaired.

...

(5) Lack of effort of the parent to adjust the circumstances of the parent, conduct, or conditions to make the return of the child possible or failure of the parent to effect a lasting adjustment after reasonable efforts by available social agencies for such extended duration of time that it appears reasonable that no lasting adjustment can be effected.⁶⁴

Based on this statute, the trial court held that the mother's incarceration prevented her from caring for her children's physical and emotional needs.⁶⁵ The lower court also stated: "It is

⁶⁰ *State ex rel. Children's Services Div. v. Rollins*, 140 Or. App. 222 (1996). This case was fifteen years later, after mandatory sentencing had been instituted. However, *Rollins* was decided prior to ASFA.

⁶¹ *Id.* at 226.

⁶² *Id.* at 224.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

unlikely that mother's [drug] problem will be under control in the foreseeable future to the extent that she would be able to perform the role a parent with minimal adequacy."⁶⁶

The appellate court disagreed with this conclusion based on evidence that the mother had made successful efforts towards drug rehabilitation at the time of the proceeding. The court gave significant weight to the fact the "mother had entered the Department of Correction's Summit 'boot camp' program and was reported to be fully cooperating and making a serious effort to eliminate her drug dependency."⁶⁷ The court stressed that the mother's drug addiction was the source of her inadequate parenting, and that if she overcame her addiction her children would be well taken care of and loved.⁶⁸ The court reversed the judgment terminating her parental rights.

Rollins reached a remarkably different conclusion from that in *Moyer*. Both cases involved mothers with histories of incarceration and drug abuse. Both cases involved some evidence that the mothers made efforts to improve their behavior. The mother in *Moyer* took educational classes and underwent counseling, like a model prisoner.⁶⁹ The mother in *Rollins* attended boot camp.⁷⁰ One difference between the two cases was the *Moyer* court focused narrowly on the mother's criminal past and seemed to ignore her present efforts, while the *Rollins* court examined the mother's history in light of her current actions. Another crucial difference was the application of a stricter evidentiary standard in *Rollins*. Perhaps the introduction of the "clear and convincing evidence" standard was the reason the *Rollins* court took a closer look at the mother's efforts at rehabilitation.

⁶⁶ *Rollins*, 140 Or. App. at 224.

⁶⁷ *Id.* at 225.

⁶⁸ *Id.*

⁶⁹ *Moyer*, 42 Or. App. at 658.

⁷⁰ *Rollins*, 140 Or. App. at 225.

CURRENT OREGON LAW

The most recent case in Oregon about termination of an incarcerated parent's rights was *State ex rel. State Office for Services to Children and Families v. Stillman*.⁷¹ This case was decided after ASFA. The parent involved was a man, but a discussion of the case is included because of the termination test the court spells out that is pertinent and applicable to future cases involving incarcerated mothers. In *Stillman*, the Oregon Supreme Court refused to terminate the parental rights of a father who had four months left to serve in prison, made serious efforts to end his drug addictions, stayed sober for 26 months and whose children were doing relatively well living with extended family members.⁷² The main issue before the court was whether the father's drug history and current incarceration rendered him unfit under ORS 419B.504.⁷³ To determine the father's fitness as a parent, the court first reviewed the facts.

The father had a history of using methamphetamines, and had two prior drug convictions.⁷⁴ He was arrested a third time for possession with intent to manufacture methamphetamine.⁷⁵ The State Office of Services to Children and Families (SOSCF) moved to terminate the father's parental rights after placing his two children with their mother's former step-mother.⁷⁶ (The children's mother also suffered from drug addiction and alcoholism.) The SOSCF argued the children needed permanence, and that moving them around between extended

⁷¹ *State ex rel. State Office for Services to Children and Families v. Stillman*, 333 Or. 135 (2001).

⁷² *Id.*

⁷³ This statute was modified slightly in 1997 to read: "The rights of the parent or parents may be terminated ... if the court finds that the parent or parents are unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home of the parent or parents is improbable *within a reasonable time* due to conduct or conditions not likely to change. In determining such conduct, the court shall consider but is not limited to the following: ... (6) *Criminal conduct that impairs the parent's ability to provide adequate care for the child.*" ORS 419B.504 (emphasis added). The emphasized parts were added in 1997 in response to the ASFA. Or. Laws 1997, ch. 873, § 7.

⁷⁴ *Stillman*, 333 Or. at 138.

⁷⁵ *Id.*

⁷⁶ *Id.*

family members created tension.⁷⁷ One of the children gained weight during foster care, and SOSCF attributed this to anxiety caused by her situation. The SOSCF presented the trial court with general testimony regarding the impact of foster care of the children, but very little psychological evidence.⁷⁸

The SOSCF also introduced a psychological evaluation of the father that was performed two years prior to the termination hearing.⁷⁹ The report basically concluded the father's main problem was his chemical dependency, and aside from that he had no other mental health problems that would impair his parenting abilities.⁸⁰ The father countered this report with evidence of his own. The father's counselor testified about the father's success in drug treatment programs. The father's therapist testified he was "the most successful client with whom she had ever worked with."⁸¹ The father also completed several parenting and vocational classes and organized a prison 12-step program, gaining praise from many prison officials.⁸² The Supreme Court was impressed that "[a]s of the time of the termination hearing, father had been clean and sober for 26 months."⁸³ In every respect, the father appeared to be the model prisoner who made an incredibly successful effort at rehabilitation.

The father had four months left to serve in prison at the time of his termination hearing.⁸⁴ He then planned to move to a halfway house until he could find a job and care for his children. The trial court found "that father's desire to make the children wait until he had established himself was an example of the father putting his needs ahead of the children's."⁸⁵ However, the

⁷⁷ *Stillman*, 333 Or. at 139.

⁷⁸ *Id.* at 140.

⁷⁹ *Id.*

⁸⁰ *Id.* at 141.

⁸¹ *Id.*

⁸² *Id.* at 142.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.* at 143.

trial court found this conflicted with the children’s more pressing need for permanency, and that the father was unable to care for his children “by virtue of his incarceration.”⁸⁶ As a result the trial court terminated the father’s parental rights. The Oregon Court of Appeals reversed the trial court’s termination decision. It held the lower court failed to prove by clear and convincing evidence, that “father’s prior drug use had made him unfit as a parent.”⁸⁷ The Supreme Court affirmed this decision after applying a detailed analysis of ORS 419B.504.

ORS 419B.504 sets out the criteria for determining a parent’s unfitness as grounds for termination. The changes to the statute in 1997 in reaction to ASFA provided that parents now had a “reasonable time” to integrate their children into their home, instead of the more vague amount of time “in the foreseeable future.”⁸⁸ “Reasonable time” was defined as “a period of time that is reasonable given a child’s emotional and developmental needs and ability to form and maintain lasting attachments.”⁸⁹ This new phrase focused more specifically on the needs of the children.

The Supreme Court found that ORS 419B.504 set out a two-part test:

1. **Parent’s Fitness:**
 - a. Parent engaged in some conduct or condition, and
 - b. The conduct/condition is “seriously detrimental” to the child.
2. **Integration:** The integration of the child into the home of the parent or parents is improbably within a reasonable time due to conduct or conditions not likely to change.⁹⁰

In applying the test, the court first examined the father’s alleged conduct or condition.

The state alleged the father was unfit because of his history of drug abuse and his incarceration. The Supreme Court held the father’s drug history did not make him unfit at the

⁸⁶ *Stillman*, 333 Or. at 143.

⁸⁷ *Id.*

⁸⁸ *Id.* at 144.

⁸⁹ ORS 419A.004(21).

⁹⁰ *Stillman*, 333 Or. at 145.

time of the hearing due to his extensive and successful efforts at rehabilitation.⁹¹ The court emphasized the statute required examination of the father’s “condition or conduct” at the time of the termination hearing. Next, the court found the father’s condition of incarceration could affect his parental fitness, and proceeded to determine whether the condition was “seriously detrimental” to the children.⁹²

The court held the father’s incarceration was not “seriously detrimental” to the children in light of the facts. There was evidence that the children suffered from anxiety, but the court found this natural given the children’s worries about their father and the uncertainty of the termination proceeding.⁹³ The court stressed that “other than the hearing testimony of the children’s therapist, the record contains no psychological reports or evaluations of the children’s mental or emotional health; neither does it contain *any* evidence shedding light on the effects of father’s conduct or condition *as a parent* on the children.”⁹⁴ The children did well in school, had friends and participated in sports and other extra-curricular activities.⁹⁵ The children liked visiting their father and he communicated with them frequently throughout his incarceration.⁹⁶ The court accredited the success of the children to the relatives who cared for them. It suggested that if the foster-parents had been strangers, the children might have suffered the detriment needed under ORS 419B.504 for termination of parental rights. However, since that was not the case, the court held “SOSCF has failed to show by clear and convincing evidence the father’s conduct or condition was seriously detrimental to his children so as to warrant a finding of

⁹¹ *Stillman*, 333 Or. at 148.

⁹² The court distinguished incarceration as a “condition” and not “conduct,” since incarceration was consequence of criminal conduct and not an act of conduct itself. *Id.* at 147.

⁹³ *Id.* at 149.

⁹⁴ *Id.* at 150.

⁹⁵ *Id.*

⁹⁶ *Id.* at 151.

unfitness.”⁹⁷ Since the first part of ORS 419B.504 (parental unfitness) was not met, the court did not examine the second part of the test related to the integration of the children within a reasonable amount of time. The father kept his parental rights over his children.

The termination process for parental rights has greatly progressed. Initially, the standard for terminating parental rights was by a preponderance of evidence. *Santosky* and *Farrell* raised the standard to clear and convincing. With the change of the standard, Oregon courts have begun to take a closer look at incarcerated mothers. Instead of focusing only on women’s previous substance abuse problems, courts are now examining what efforts mothers have made to change. Incarcerated mothers that make sincere and successful efforts at rehabilitation now have a better chance at maintaining their parental rights than their predecessors.

However, because ASFA and Oregon statutes now provide for a quicker termination process, incarcerated mothers are faced with another obstacle. Lengthy periods of incarcerations prevent mothers from attending their children and this may cause serious detriment to the children. Carole Pope addresses how she thinks ASFA has impacted incarcerated mothers and how she hopes these obstacles can be overcome with more resources allocated for parents.

⁹⁷ *Stillman*, 333 Or. at 152-153.

Perspective Two: Carole Pope

BRIEF BIOGRAPHY OF CAROLE POPE

Carole Pope is the director of Project Link-Up, a program designed to give law students an opportunity to work with female prison inmates at the Coffee Creek Correctional Facility. Twenty-five years ago Ms. Pope was an inmate of the state penitentiary for four years. Ever since then she has advocated for incarcerated women's rights. Ms. Pope is familiar with how the Oregon criminal justice system treats women, from both the inside and out.⁹⁸ The following discussion is based on an interview with Ms. Pope, and expresses the opinions and facts stated by Ms. Pope not the author. All the quotations were comments made directly by Ms. Pope.

PROJECT LINK-UP

In 2002 Ms. Pope connected with University of Oregon Law School and the Wayne Morse Center for Law and Politics to create Project Link-Up. The goal of the program is for students to advise women inmates with children about their legal rights regarding custody and the termination of parental rights. Ms. Pope started this program because "I care about the women, and I care about the children." Ms. Pope's goal for the program was to educate women about the legal process for termination of parental rights and help women become more active in the process itself, to essentially give the women more of a voice in the termination process. Ms. Pope commented on ASFA, discussed earlier, which she thinks lead to a huge increase in termination proceedings.

⁹⁸ At the time of Ms. Pope's incarceration twenty-five years ago, women had shockingly little access to legal resources. The men's prison, Oregon State Penitentiary (OSP), had a law library and several inmates that read the law books and counseled other male inmates. Ms. Pope stated that during the time she was incarcerated, the women's prison did not have a law library. She also stated that under federal law, female inmates had a right to access a law library and a paralegal, and had neither. So Ms. Pope started lobbying to get the women's prison a law library, and after much effort, succeeded. Ms. Pope remembered the glow of her success: "Inmates had access to the law library, WOMEN had access to the law library *for the first time!!*" Ms. Pope said these developments began to help rectify many of the things that were wrong with women's cases, such as when the court terminated a woman's parental rights.

IMPACT OF THE ADOPTION AND SAFE FAMILIES ACT

In 1997, Congress passed the Adoption and Safe Families Act (ASFA). Ms. Pope thought the bill was passed because Child Services felt children were *languishing* in foster care while their parents were in prison trying to get their acts together, and Child Services found this unfair to children. Around the same time, Ms. Pope stated Measure 9 and Measure 11 were passed in Oregon, establishing mandatory minimum sentencing for offenders and the “three strikes” policy. These measures resulted in women being incarcerated for even longer periods of time, while their children were sentenced to longer stays in foster care. Ms. Pope stated: “All this is going on and children are just being dumped into foster care system, and there is no room for them. So they come up with idea of terminating parental rights, *sooner*. Now state of Oregon has got it down to a fine art.” The new sentencing laws had the effect of increasing the number of children in foster care, and so the government tried to decrease this number by terminating parental rights *sooner*.

Ms. Pope described how ASFA allowed the state to start terminating parental rights when a child stayed in foster care for 15-22 months, or even sometimes even sooner. Ms. Pope had a strong opinion on the financial incentives the federal government offered to the states that complied. She stated: “What they[the states] want is to free these kids up for adoption because there are financial incentives in the law, \$8000-\$10,000 for these kids to be adopted. So they are worth more being sold on the market, they are spending that \$8000-\$10,000 to help Mom get her act together so she can raise her children.”

Ms. Pope was also concerned about what impact the financial incentives would have on foster parents. “Some of these foster homes are 100 times more dangerous than mom and dad

ever could be ... These kids are hard to handle ... and a lot of these people[foster parents] are in it for the bucks.”

Another aspect of the ASFA that frustrated Ms. Pope was that the rules only applied to men and women in the criminal justice system. Department of Human Services (DHS) considered drug abuse and addiction to be child abuse for termination grounds. Ms. Pope stated: “This rule doesn’t apply to any other screwed up mom and dad who use recreational drugs ... [it] only applies if DHS is called to take the child when the mom or dad is arrested. That’s it.” The rule is apparently triggered and clock starts running when parents are arrested and taken into custody. Ms. Pope said the role of DHS is supposed to be to find an alternative to termination of parental rights. However, sometimes she found this is not always the case.

Ms. Pope described a phone call she received earlier in the day from an inmate in Coffee Creek, in Portland. The inmate had been in jail since September 5, 2002, and he had a five-year old son. The inmate had a citizens’ review hearing the next morning that he wanted to discuss with Ms. Pope. Apparently the inmate himself had languished in the foster care system for thirteen years. He screwed up, and was arrested on drug charges. Based on his experiences, the man did not want his child to go into the foster care system and he wanted to maintain his parental rights. Ms. Pope described how the man had a family member in Arizona that was willing to take his child, permanently if necessary. Then she stated: “But DHS here hasn’t bothered to return their phone calls. They would rather terminate this man’s parental rights!” This man was one example of a perpetual cycle Ms. Pope described.

THE CYCLE OF INMATES

Ms. Pope stated that when the state terminates incarcerated parents' parental rights, 85% of their kids end up in the criminal justice system, just like their parents.⁹⁹ The man from Ms. Pope's example was in foster care for thirteen years, and he ended up in prison. Then the state of Oregon moved to terminate his parental rights and place his son in foster care. Will the cycle continue? Ms. Pope stated that "85% of kids are going to be in the system themselves, it's like we're a little garden, a little truck farm, we're just raising the next crop of kids to fill the prison." Ms. Pope proposed a better solution than terminating parental rights: helping the parents so they can help their children break the cycle.

Ms. Pope thought that a drug addiction should not automatically render a person a bad parent. "Maybe you're the biggest junkie in the world and you're the best parent in the world for that child. Rather than traumatize that child, by putting him into a foster care system, because a lot of these kids are born with attention deficit disorders, they're born with drug problems, they're born with emotional issues, they're born with a lot of baggage. I'm a firm believer that the one person to turn them around is mom, or dad. Not a stranger that who can't relate to any of the issues that these children have- race, ethnicity, whatever. You don't have the ability to understand it unless you've been there."

THE BEGINNING OF THE PROCESS

The cycle begins when a mother has a child. A lot of the women Ms. Pope worked with had children because they wanted something that belonged to only them and would love them unconditionally. Ms. Pope thought some of these women did not have a clue how to parent,

⁹⁹ According to a survey done in 1991 by the U.S. Bureau of the Census, 37% of inmates had an immediate family member who had been incarcerated. *Survey of State Prison Inmates*, U.S. Dept. of J. 1, 9 (March 1993, NCJ 136949). Of those prisoners, at least 7% had a parent who was incarcerated. *Id.* However, this statistic does not consider the issue of whether the prisoners' parents had their parental rights terminated.

since their parents were such poor role models. Ms. Pope stated: “These women needed to have this one little person in the whole world that would love them for who they were. Didn’t matter if they were a hooker, or a junkie or a thief. And so they had babies, lots of babies. And a lot of them didn’t deserve to keep them. But a lot of them deserved a chance to try.” Before the women had an opportunity to learn to parent, or for some even before birth, they would get arrested and the wheels of the cycle started to turn.

Ms. Pope described the cycle that began when a parent was arrested. The gender of a parent was important here, because gender often influenced what happened next to the children. Ms. Pope stated: “When men go to prison, the family unit stays very close around the male. When a female goes to prison, the family unit falls away.” This statement related to who took over custody of children after their parents were arrested. Often when a father was arrested, the mother continued to act as the primary caretaker for the children.¹⁰⁰ However, when a mother was arrested, the father was much less likely to presume the role of caretaker and often children were forced into foster care.¹⁰¹

Upon arrest, a mother can have anyone take custody of her children if DHS is not involved. The police give her an opportunity to call someone to pick up her children. This person could be a family member or a friend. In this case DHS may never get involved. However, when a mother has no one to call, the police notify DHS to come pick up the child. Then the clock starts to run for the purposes of ASFA. Ms. Pope said that a lot of the women she worked with did not have anyone to call, and so their children were entered into the DHS cycle. If the women were sentenced to a long prison term, which was often increased due to prior

¹⁰⁰ “Nearly all fathers in Federal prison (92%) said that they had a minor child in the care of the child’s mother, compared to 31% of mothers who reported the child’s father as the current caregiver.” Christopher J. Mumoloa, *Incarcerated Parents and Their Children*, U.S. Dept. of J. 1, 4 (August 2000, NCJ 182335). When mothers went to prison, children were usually cared for by their grandparents 53% of the time. *Id.* at 5.

¹⁰¹ *Id.*, see also Raeder, 13 Fed. Sent. R. at 252.

convictions, DHS began the process to terminate parental rights after fifteen months pursuant to ASFA.

A woman's parental rights were terminated after a series of hearings, according to Ms. Pope. Judges evaluated all the circumstances of the mother's charge, the length of her sentence, any programs the mother participated in while in prison, the amount of success she had with such programs and any communications the mother had with her children during her incarceration. Ms. Pope seemed frustrated with many steps of the process to terminate parental rights of incarcerated women.

PROBLEMS WITH THE TERMINATION PROCESS

Ms. Pope cited the issue of transportation to a hearing as one concern with the termination process.¹⁰² Ms. Pope said the law provided for female inmates to be transported to court for hearings. However, according to Ms. Pope, this was often not done. She said the prison would feign budget cuts as an excuse to not transport women to court. Often the distance from prison to the courts was greater for women than men, because of the fewer number of facilities for incarcerated women. When the final termination hearing rolled around, Ms. Pope described the courtroom as containing DHS, and nobody else! (Because the mother was not transported.) The mother was not there, the child was not there and no lawyer was there, it was "all loaded on one side- DHS."

Ms. Pope described one such case with a female inmate from Bend. Ms. Pope said a mother appeared on a video phone for a termination of parental rights hearing. During the meeting, the mother's phone signal cut out. The hearing went on without her. Ms. Pope said that two weeks later the mother received a letter terminating her parental rights. Besides

¹⁰² "Over 60% of parents in State prison were held more than 100 miles from their last place of residence." Mumoloa, U.S. Dept. of J. at 5.

transportation, another important issue for Ms. Pope is incarcerated mothers having contact with their children during their time in prison.

Ms. Pope mentioned that foster parents were not required to bring children to prison to visit their mothers. Foster parents also were not required to show children letters written by their mothers, if the foster parents ever even received any letters. Ms. Pope described a process where every letter a woman wrote had to go directly to her DHS worker, and that the DHS workers rarely forwarded the letters to the foster parents. All these factors most often came together in a negative fashion for the final termination hearing.

Ms. Pope summed up how all these factors combined during the final hearing. “If you’re the judge sitting there, and there has been no mom, no visits, no contact, regardless of what mom says, she’s written 500 letters, she’s tried to contact them, nobody’s made her child available to her, at all... The court looks at that whole picture, and then DHS paints her in the worst light. I’d terminate her parental rights too. Figuring, hell, she doesn’t care enough to be here, doesn’t care enough to see her kid, write her kid, do this, do that...”

AFTER TERMINATION

So what happens to a female prisoner once her parental rights are terminated? Ms. Pope said women lost their incentives to clean up, get treatment and stop committing crimes. She described one case where a woman served a twenty-two month sentence at the state penitentiary and was released last May. Ms. Pope said the state moved to terminate her parental rights in June. The woman had taken parenting, she was drug free and yet she still lost her child. Ms. Pope did not know what happened to the woman.

“But I would be willing to bet, knowing these women like I do, that she didn’t stay clean, that she didn’t stay straight, she didn’t stay crime free and she didn’t finish her parole.

Because why should she? You've just taken every reason for her to turn her life around, and taken it away from her. And told her that she is the failure that she truly, ultimately believes she is, she has no reason not to be anything else. But what you've told her she is has no value, she can't do anything, will never do anything, and she deserved to lose her child."

Ms. Pope also had some powerful words on what it was like for a woman to lose her parental rights while still serving time in prison. "You don't show your emotions in the pen. You laugh too much, they pull you in to see if you are, you know, doing dope or drinking. If you cry, they put you on drugs to shut you up. And so you learn real quick not to show your emotions. And so they[the women] are not able to process, they are not able to grieve, they are not able to do fully what they need to do. There is no separation, they don't get a last visit, they're not encouraged to sit down and write a letter to their child. Hell, they don't get visits, period! Why would they get a last one?"

SOLUTIONS

Child visitations were just one of many solutions proposed by Ms. Pope. Ms. Pope also wanted foster parents to take a more active role in facilitating children's communication with their mothers. "What I want for these women is to be able to have access to their kids. The more the merrier. What I would like to see in the state of Oregon is that it's mandatory, that if a child is in foster care, the foster parent must take the child to the pen. At least once a month, I'd love it once a week! Foster parents have to accept collect phone calls from parents in prison, and they have to give the children their mail. They have to sit down with the child, and if the child can't write, then the foster parent has to write what the child wants to write to mom or dad, or both."

Another change Ms. Pope advocated for was to use Project Link-Up to help women understand the logistics of the legal process involved in termination of parental rights proceedings. Ms. Pope wanted women to be transported from prison to the courts for their termination hearings. She thought women should demand the right “to be part of the process, to know what their rights were, and be able to fight for their rights. Even if they lost, then at least they were part of the process.” Ms. Pope also mentioned several proposals that were not specifically tied to the legal termination process itself.

Ms. Pope thought education and rehabilitation were vital for change. Ms. Pope stated she wanted politicians and the public to be educated about female inmates’ situations, and the vicious cycle of turning generations of families into criminals that the system currently perpetuated. She also asserted that rehabilitating female inmates was vital to break the cycle by helping women get their lives back together so they could do a better job caring for their children.

“There should be programs, and there should be ways to help people turn their lives around, rehabilitate. For a lot of the people that you work with, they have to be habilitated in the first place before you can rehabilitate them. You have to teach them to live in the world, the world that they are frightened of, the world that they have been so damaged by, and traumatized by, for them to trust, to learn, to have some self esteem, some feelings of self worth, to value themselves. Some of these women are the most amazing women you’ve ever met in your life.”

Ms. Pope negatively viewed ASFA’s effects as increasing termination of incarcerated women’s parental rights. She thought more efforts should be made to help parents instead of terminating their rights. Ms. Pope wanted to focus on starting programs to help habilitate, and rehabilitate incarcerated women. She said that right now, even if one wanted to send a woman to

a program, that option was unlikely to be available because of the lack of programs. Ms. Pope viewed information as a key way to “empower women to take back their lives, so they are not so devastated.”¹⁰³ Ms. Pope hopes her words will inspire change and help incarcerated mothers find their own voices to speak in termination of parental rights proceedings. During the next interview, foster mother Ms. Turner shared similar views to Ms. Pope regarding the need for more resource allocations to incarcerated mothers fighting for their parental rights.

Perspective Three: Ms. Turner

INTERVIEW WITH A FOSTER PARENT

Since one goal behind terminating incarcerated mother’s parental rights is to remove children from foster care, I wanted a perspective from a case where foster care was necessary for a child’s safety. The discussion that follows was taken from an interview with a woman who is currently a foster parent in Lane County, Oregon. While the biological mother of the foster child was not incarcerated, the interview is provided as a comparison to Ms. Pope’s opinions that foster parents are financially motivated and that foster care is dangerous and traumatizing. The name of the foster mother and her foster child were changed for their protection. The following information describes the real life experiences of Ms. Turner and her opinions, not facts or opinions of the author. All the quotations were statements made directly by Ms. Turner.

Ms. Turner got into foster care because she saw a need to help children who were injured, abused, or neglected. She stated: “I wanted to make a difference in a child’s life. To provide a safe and comfortable place for a child who had been determined by the state to be at risk or in danger.” Ms. Turner thought there was a shortage of foster homes, and so she sought foster care

¹⁰³ During Ms. Pope’s discussion of terminating parental rights of incarcerated mothers, her friend popped her head into the room and commented: “This is just so shocking and heartbreaking, it’s all just hard to find words really. Carole finds many.”

certification. She attended three months of classes as part of her foster parent training. Her home was inspected and certified. Ms. Turner also had to pass a criminal record background check. Once Ms. Turner met the qualifications to become a foster parent, Mary entered her life.

Mary was three and a half years old. One day Mary ran barefoot down the street, in traffic, unattended. The neighbors called the police. When the police arrived, Mary was jumping barefoot up and down on top of a car hood. Inside the car, her designated caretaker was asleep and could not be roused awake. The police called the Department of Human Services (DHS). DHS determined Mary's parents neglected her, and failed to provide an adequate or safe home for their young child. A judge determined that it was in Mary's best interests for the state to retain custody over her, and she entered foster care at Ms. Turner's home.

When Mary met Ms. Turner, Mary had literally with only the clothes on her back. Mary's clothes were dirty, torn, and way too small for her. Mary wore plastic jelly shoes that she had outgrown and which caused sores on her feet. Ms. Turner described Mary behavior: "She hoarded her food initially, it seemed like there had not been enough food for her, so she hoarded her food and she still hoards her clothes ... you could infer because she had no clothes she's not willing to let them out of her sight." Mary craved attention and affection, she threw almost nightly temper tantrums. Ms. Turner and Mary attended counseling together. The counselor thought Mary never received what she needed as an infant, and that caused Mary's nightly regressions. Mary also had no idea what a book was for; no one had EVER read to her! Ms. Turner stated this was most likely because Mary's father was illiterate.

Ms. Turner discussed what limited knowledge she had regarding Mary's natural parents. Mary had lived with them until she was 11 months old. Then for some reason Mary's parents gave her to some friends of theirs who became Mary's caretakers. Apparently Mary's natural

parents had been arrested for drug related crimes and put on probation. The mother failed to comply with the drug and parenting classes she was ordered to take while the father had attended both. Ms. Turner stated that both the drug program and parenting classes were now in jeopardy of being cut.

Ms. Turner cited the failure of citizens to pass Measure 28 in Lane County as the cause of these programs ending.¹⁰⁴ She stated: “This is a very, very difficult time with resources being cut for parents. [Mary’s] parents, for example, aren’t going to get drug treatment. They are going to be kicked off prescription programs, they are going to be kicked out of counseling programs, this is NOT going to help them get what they need to become good parents!” DHS sets plans, which the parents will not be able to comply with if they cannot afford to pay for the resources. Ms. Turner said resources were becoming scarce and this would set parents up to fail.¹⁰⁵ Ms. Turner feared this shortage in resources may result in Mary being returned to her natural parents despite their inability to get the resources necessary to be successful parents, or it would lead to termination of her parents’ rights, or both. Ms. Turner also stated that the failure of Measure 28 affected her personally in her capacity as a foster parent.

When Measure 28 failed, Ms. Turner said the state cut funding for employment related daycare. Ms Turner said the monthly check she receives that is supposed to cover all of her expenses for Mary’s needs is *less* than the amount she pays for Mary’s daycare.¹⁰⁶ Ms. Turner stated: “I am so far from making a profit off foster care and I think that some very good foster parents are quitting now. I know they’ve quit because they can’t get employment related

¹⁰⁴ Measure 28 was a three-year temporary income tax surcharge that Oregon state lawmakers put on the Jan. 28, 2003 ballot. *This Time It's Real: Measure 28 Cuts Would Be Devastating For Oregon*, The Register-Guard, Jan. 13, 2002. The goal of Measure 28 was to raise revenue to help solve the state’s budget crisis. The failure of Measure 28 resulted in an estimated \$310 million spending cuts for state agencies. *Id.*

¹⁰⁵ In Lane County, Oregon, budget cuts for the next fiscal year may require closing the county’s three rural public health clinics according to the most recent budget blueprint. Randi Bjornstad, *County May Close Clinics, Slash Jobs*, The Register-Guard, April 21, 2003.

¹⁰⁶ Ms. Turner stated that for caring for a child under the age of five, she received \$340 a month.

daycare. It's making it hard for the ones who do it from the heart." One area not immediately impacted by the current financial cutbacks was the child visitations organized by DHS.

After Mary stayed with Ms. Turner for two weeks, DHS ordered that Mary have a supervised visit with her natural parents. Ms. Turner told Mary she was getting a short visit with her parents and took her to DHS. The visiting room had a one-way mirror. When Ms. Turner approached the room, holding Mary in her arms, Mary caught sight of her parents through the mirror. Mary started screaming: "No, no, I don't want to go! I want to stay with you!" Once Mary calmed down, she visited with her parents for one hour. Ever since then, Mary has had supervised weekly visits with one hour with each of her parents.

One time Mary's father gave Mary his phone number. Ms. Turner was willing and glad to let Mary contact her father. She called Mary's DHS caseworker to approve the contact. However, the DHS worker decided the contact was inappropriate due to the father's anger and hostility towards the caseworker (who had removed his child). Ms. Turner had no discretion over the amount of communication and contact between Mary and her natural parents but was responsible to transporting Mary to the weekly visitations. Ms. Turner knew another foster parent whose work schedule conflicted with the visitations, and so the caseworker transported the kids. When asked if she would take Mary to the state penitentiary for visitations, Ms. Turner replied: "No, I couldn't personally do it. Could a caseworker do it? I don't know, do they have the resources to do it? I don't know. Would a judge order a worker to do it? I don't know. If someone is in the state pen do you want the child there, is that in the best interests of the child to see mom in the state pen? I don't know, I'm glad I don't have to make that decision!" Another decision Ms. Turner is glad she does not have to make is determining when or if parental rights should be terminated.

Ms. Turner thought termination of a parent's rights over a child was appropriate in some situations. "Some children are horribly abused by their parents. Some children's lives will be irrevocably harmed, there are children walking wounded because of the actions of their parents. That, I am sure of, because I've seen them in foster care and I've talked to their foster moms. Some of the worst, unimaginable torture, and I am talking torture like you hear about in Latin American countries, children with cigarette burns and genitals that have been cut, all kinds of things we don't want to think about happen to children by their natural parents." However, Ms. Turner did think children belonged with their natural parents as long as the parents cared for the children.

Ms. Turner said allocation of resources was the most important thing to help children and their parents avoid termination of parental rights. The natural parents of her foster-child Mary had problems with drug abuse, that Ms. Turner implied were more likely to be resolved if the parents received the resources they needed to beat their addictions and learn more about parenting. Ms. Turner painted the current picture in Lane County as a grim time for people without the finances to pay for DHS ordered treatment and classes. Ms. Turner was gravely uncertain about Mary's future in foster care or the possibility Mary would ever return to a safe home with her natural parents.

Conclusion

Termination proceedings ending incarcerated women's parental rights must now meet a clear and convincing standard. Oregon case law has developed to consider a parent's current efforts towards rehabilitating drug addictions and poor parenting skills. An incarcerated woman's parental rights cannot be terminated based solely on her state of incarceration; instead, the state must prove she was an unfit parent and that her children were unlikely to be integrated into her home within a reasonable amount of time.

The laws from both the federal government and state government have had different effects on women. Carole Pope discussed some of the effects of ASFA on termination proceedings. She also provided many insights into the availability of legal resources for incarcerated women. Ms. Pope discussed her views about foster care and state financial incentives to foster parents. Ms. Turner provided a different perspective on foster care and the need for children and their natural parents to receive more resources so termination proceedings can be avoided. Ms. Turner also argued for more resources to be allocated for incarcerated women seeking to avoid termination of their parental rights. Both Ms. Turner and Ms. Pope had many opinions on opposite ends of a spectrum, but seemed to agree resource allocation and education was in the best interests of children and their incarcerated mothers.¹⁰⁷

¹⁰⁷ Based on my research, I would recommend the same thing- more funding for parenting classes and drug rehabilitation programs in women's prisons.