

**Little Hoover Commission Hearing
May 27, 2004**

**Unique Characteristics of Women Offenders and What is Required for them to
Successfully Reintegrate into the Community and Reunite with their Children
Following Incarceration**

OUTLINE OF TESTIMONY

BY

**Judge Stephen V. Manley
Superior Court of California
Santa Clara County**

Introduction: My remarks are based on my years of experience in working on policy change in Criminal Justice at the local level, including specific changes relating to women in custody, and leaving custody as a unique group of offenders with special needs to achieve success in reintegration and reunification.

I have no expertise or hands-on experience in the operations of the California Department of Corrections, or in Parole Policies, and my remarks must be considered in that light.

However, through Drug Court, Proposition 36 Court, and Mental Health Court I have worked with and continue to work with women who have been incarcerated in the State Prison, as well as in our local jail, and I believe that many of the lessons that we have learned and changes that we have attempted to institute locally have the potential for a much larger and more comprehensive application statewide.

**A. The Intersection between the Adult Criminal Justice System and the
Dependency System that Women in Custody must Navigate.**

When women with children are arrested and held in custody, their intersection with the Dependency System is a “collision,” not an interaction.

On the one hand, the majority of the women who are sentenced to serve custody time are substance abusers and/or limited in their skills in parenting, and face a period during which it is nearly impossible for them to demonstrate that they are able to provide for the care of their children (absent placement with the other parent or relatives).

On the other hand, the Dependency system has timelines and rules that are strict and short (six months and one year). Termination of parental rights may be based on the incarceration and unavailability of the parent. Even if reunification services have been offered, a basis to terminate those services is that there is no “substantial probability” of return of the child or children within 18 months from the original removal.

The net result for many incarcerated women with children is placement of their children in foster care or group care. A recent study of two major Counties and Dependency Courts in California noted that 90% of the parents before the Court were women, more than 60% of the Dependency mothers had a criminal history, and that in nearly all studies of children involved with the child welfare system, parental substance abuse is a major contributing factor.¹

California leads the nation in the number of children placed in foster care, and the largest share of children in care were ages 11-15, followed closely by children ages 6-10 and 1-5.

In the year 2000, more than one-fourth (28%) of children in foster care had been in care for at least two years, and 17% had been in foster care for more than 5 years.²

There is little doubt that many of the children placed in foster care and group homes are the children of incarcerated women because of their “unavailability” to take advantage of reunification services. The law does not favor reunification under many circumstances that apply to women held in custody: the Court has terminated reunification services as to other siblings; the parent has severe drug or alcohol problems and has failed to comply with substance abuse treatment; the parent is incarcerated and the provision of reunification services would be detrimental to the child.³

Those few women in the criminal justice system who are granted reunification rights find themselves driven by these same two systems to meet conflicting requirements. For example, both systems require drug testing. However, in a Dependency Court a single positive test may result in far more severe consequences than in a Criminal Court. The treatment plans for the mother are different in each of the systems, and this often leads to the promotion of “helplessness” rather than compliance. I often hear the words in my courtroom that the participant in our treatment program simply has “too much on her plate” and is ready to give up.

The unfortunate result is that women who are or have been incarcerated stand little or no chance at regaining custody of their children, nor in reintegrating into the community as parents.

However, anyone who observes the Dependency System and its relationship to women who are in custody and the Criminal Court System must be concerned that although the Dependency Court removes children from mothers in custody, these same women give birth to additional children who are subsequently removed.

¹ Family Drug Treatment Court, Process Documentation and Retrospective Outcome Evaluation prepared for the Department of Health and Human Services, 2003

² Pew Commission on Children and Foster Care, May, 2004

³ Welfare and Institutions Code Sec. 361; Welfare and Institutions Code Sec. 361.5 (b)(13); Welfare and Institutions Code Sec. 361.5(e)(1)

Moreover, the foster care system is a system that does not work. As this Commission has previously noted several years ago in examining the functioning of the foster care system: "That children can come to harm--and even die--while supposedly under the protection of foster care is not in dispute." ⁴

Yet we know what does work. If assessment and treatment are offered to parents immediately, with court monitoring, as well as incentives and sanctions, family reunification rate increases, the cost of foster care decreases, and fewer parents have new child abuse or neglect reports and new criminal arrests. ⁵

Women in prison are not offered this proven model.

B. Why the Goals must Change

If we do nothing, we perpetuate two systems that are antagonistic to one another, involved with a parent who is caught in the middle, without motivation, and given no incentive, let alone hope. Continued recidivism on release is the foregone conclusion.

1. In Dependency Court the goal is to protect the health and welfare of the child, and the easiest way to protect that child, when the mother has been arrested and is in custody, is to permanently remove the child or children from the home of the mother;
2. In Criminal Court, the goal (other than punishment) is to "rehabilitate" the mother, help her to learn how to modify behavior, obtain parenting skills, become a contributing member of society and achieve family reunification.
3. The woman offender is ignored, which fuels continued lack of self respect and confidence, continued substance abuse brought about by a disease that is marked by relapse, manipulation, and the ability to "overcome" both the Dependency and Criminal Courts by giving birth to additional children.
4. The woman offender as a mother faces multiple issues and barriers to her parenting success that will not be overcome through incarceration. Based on a recent evaluation, 40% of mothers appearing before the Dependency Court have a co-occurring mental health issue in addition to substance abuse that affects their family's stability; over 50% have been a victim of domestic violence, and 40% lack suitable housing regardless of incarceration. ⁶

⁴ Little Hoover Commission, Report #115, For The Sake of the Children: Restructuring Foster Care in California, April 9, 1992

⁵ Family Drug Treatment Court, Process Documentation and Retrospective Outcome Evaluation prepared for the Department of Health and Human Services, 2003

⁶ Family Drug Treatment Court, Process Documentation and Retrospective Outcome Evaluation prepared for the Department of Health and Human Services, 2003

If we truly believe in successful offender reentry and family reunification, then we must take risks and create change.

In sum, I have concluded that children are given a better chance at success if they remain with their mothers and the needed services are provided and mandated, while the participants are under continued Judicial supervision, and that mothers will more likely reunify with their children if we change our goals.

C. Changing the Goals

In Santa Clara County we recognized that we were not meeting the needs of women while they were in custody, and that we were not reuniting them with their children when they left custody.

Therefore, we decided to attempt to implement a simple shared goal: keep as many families together as possible, and assist women in custody to reenter the community with self-esteem and parenting skills and reunify with their families.

We have done this realistically, recognizing the substantial barriers that mothers who are in custody face. We do not define “reunification” as the only alternative, but concentrate on the best possible outcome available given the circumstances in each case. For some participants, this may mean supervised visits only.

Another shared goal is that the program be “preventive” as often as possible. By identifying women who are pregnant or have young children, the program is not reserved solely for those who have had their children removed; it includes pregnant women and mothers who have been able to temporarily find safe and healthy placement for their children with a relative or family member, but may well lose that advantage, as well as custody, if they remain incarcerated for a prolonged period.

D. Implementing the New Shared Goal

To achieve our shared goal, we centered the program at the county jail, and built outward because we were convinced that change must start immediately on entry into the criminal justice system.

We formed a strong collaboration of the Superior Court, Office of the District Attorney, Office of the Public Defender, the Department of Corrections, the Department of Drug and Alcohol Services, Adult Custody Medical Staff, the Department of Social Services, Public Health Nurses, Mental Health staff, and community provider resources, including interns.

We named the program “Artemis” based on the Greek mythological figure.

We accepted the fact that this would not only be a gender specific program, but a program that was prepared to offer women at the earliest possible moment an opportunity to start building or rebuilding self esteem, and learning or continuing to improve the role of being a responsible parent.

An assessment component was developed to refer pregnant women and women with small children to the program as soon as possible after arrest and incarceration.

A separate jail dorm was created to house a specialized custody treatment program for parenting and pregnant women, offering an 8 to 12 week cycle depending on the needs of the participant.

Classes and counseling take place each day of the week and include substance abuse treatment at the core, as well as trauma recovery, positive parenting, domestic violence, health realization, spiritual growth, loss and grief counseling, self esteem, resolving family conflicts, playing with children, “practice visits”, and writing the first letter home. Life skills and educational opportunities are also provided.

The District Attorney screens each participant as to whether or not they may safely be released to the community because absent participation in this program, many of these women would be sentenced to prison.

Once eligible, the participant is brought directly into the Drug Treatment Court for plea and sentence or sentence modification, and a detailed treatment plan is developed for return to the community.

The Adult Criminal Drug Treatment Court meets weekly with the team from the Dependency Drug Treatment Court to discuss mutual clients, including women held in custody. Every effort is made to have the mother participate in some form of reunification, and to include reunification in the treatment plan, as well as reinforce one consistent message from two courts.

In addition, issues such as conflicting treatment requirements and drug testing are addressed to simplify the plan to the greatest extent possible. Since most women are not available immediately to participate in reunification in Dependency Court due to their incarceration, and are always in the role of trying to “catch up”, the team meetings are designed to report progress to the Dependency Court that the mother is making in custody treatment as well as in criminal drug court.

Many women are moved directly from custody treatment into a specialized women’s residential treatment program, and from that program they transfer to either the “House on the Hill” which is a residential program in which women may reside with one or two young children or babies, including newborns.

Another alternative often utilized is placement in a specialized and structured sober living home for women and their children.

The women appear regularly in Court for reviews. A special dedicated calendar was created for women with children. The Court encourages the presence of children, and they are always acknowledged.

An important component of the program is the use of coercion because of its proven success with substance abusers. The program utilizes the drug court model and is based on incentives and sanctions. However, although participants are not permitted to use their children to manipulate the Court and treatment, sanctions are tailored to assure that reunification continues. For example, advance preparations are made to place the child temporarily with another family member while the mother spends a short time in jail.

E. Does it Work?

Since the program was developed in 1998, we do have data on successful reentry into the community:

Number of Custody Graduates 1999 - 2003	Successfully in the Community for One Year	Probation Violated and Sent to CDC within One Year	Convicted of Any New Misdemeanor or Felony Offense within One Year
<i>341</i>	<i>307 (90%)</i>	<i>17 (5%)</i>	<i>54 (16%)</i>

Two years after completing the custody program an additional 11 of the participants were sent to CDC for probation violations and the recidivism rate increased to 34.1%. The remainder of the participants were continued their reintegration into the community with no new convictions nor probation violations.

F. Recommendations

1. Recognize that gender specific treatment, education and parenting should be afforded to every mother or pregnant woman sentenced to CDC, and motivate participation by granting additional credits against a sentence;

2. Recognize and require that treatment, education and parenting should begin immediately for every mother or pregnant woman sentenced to CDC;
3. Recognize that treatment and reunification for women will not be effective unless it continues in the community and require the development of early release programs consistent with public safety, and mandatory Reentry Drug Courts in the local community to facilitate the reintegration of women offenders into the community with continued community treatment, education and parenting, supervised through judicial monitoring, including incentives and sanctions, and the development of a strong working relationship with the Dependency Court;
4. Rely on local community programs that are tied to the Courts and existing systems that provide for “wrap-around” services for mothers and children, rather than attempt to provide services through a State program such as Parole;
4. Take advantage of the success of the child welfare waiver program, and create a treatment model for women in prison and the community with Federal funds;
5. Utilize savings in foster care and group home costs to fund additional community treatment and subsidized housing for women and their children on release from custody;
5. Change statutes and policies that serve as barriers to incarcerated women. For example, if women in custody are to be given an opportunity for reunification with their children, the timelines must be extended while the mothers are in reunification, and the fact that the disease of addiction is an ongoing condition must be considered, rather than be treated as a stigma and disqualifying factor.

Respectfully submitted,

Stephen V. Manley
Judge of the Superior Court
State of California
County of Santa Clara

