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Post-Conviction Rights of Pregnant Women Under North Carolina Law

Under North Carolina law a convicted criminal defendant generally begins to serve her sentence on the date that the court issues the order of commitment.[1] During the 1983 session of the North Carolina General Assembly, legislation was passed to allow a judge to defer the imprisonment of a pregnant defendant convicted of a nonviolent crime until six weeks after either the birth of the child or the termination of the pregnancy.[2] The new amendment is one of two statutory provisions for pregnant inmates under North Carolina law. The other provision requires the surrender of a child born to a female prisoner while in custody to the department of social services unless the mother places the child with the legal father or another suitable relative.[3] Although the amendment allowing sentence deferral for pregnant inmates is a positive step toward adequate statutory provisions for these inmates, the limited scope of North Carolina's statutes dealing with the treatment of pregnant inmates represents a failure on the part of the legislature to consider adequately either the best interests of the inmate's child or the rehabilitation of the mother. These statutes fail to address whether an incarcerated mother should have the right under certain circumstances to care for her child in prison.

This note examines the rights of pregnant defendants and inmates within the framework of existing North Carolina law. The note addresses two issues: whether allowing an incarcerated mother to care for her child is in the best interest of the child, and whether an incarcerated mother has a constitutional right to care for her child. Although reaching the conclusion that an incarcerated mother does not have a constitutional right to care for her child, the note urges the legislature to adopt statutes that will consider more adequately the best interests of the child and allow, in some circumstances, an incarcerated mother to care for her child.

During the 1983 legislative session the General Assembly amended North Carolina General Statutes section 15A-1353(a) to allow a judge to defer the imprisonment of a pregnant defendant convicted of a nonviolent crime. As amended, the pertinent portion of section 15A-1353(a) provides:

> If a female defendant is convicted of a nonviolent crime and the court is provided medical evidence from a licensed physician that the defendant is pregnant or the court otherwise determines that the defendant is pregnant, the court may specify in the order that the date of service of the sentence is not to begin until at least six weeks after the birth of the child or other termination of the pregnancy unless the defendant requests to serve her term as the court would otherwise

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1. N.C. GEN. STAT. § 15A-1353 (1983). The court may grant a stay so that the defendant can get her affairs in order.
2. *Id.*
3. *Id.* § 148-47.

order. The court may impose reasonable conditions upon defendant during such waiting period to insure that defendant will return to begin service of the sentence.[4]

The statute's basic meaning is clear. The term "nonviolent," however, is not defined. Presumably, a woman convicted of either a misdemeanor or a felony could be eligible for sentence deferral if the judge determines that her crime was nonviolent.[5] The language of the statute encourages the judge to defer the sentence; the judge is allowed expressly to defer the sentence unless the defendant requests to serve her term as the court otherwise would order.

This statute provides a benefit both to the defendant and the State. The defendant is spared the emotional and physical trauma of beginning a term of imprisonment while pregnant.[6] Deferral of imprisonment allows her to retain the assistance and emotional support of family and friends and the freedom to pursue medical care as needed. The primary benefits to the State are economic and administrative. By allowing pregnant women convicted of nonviolent crimes to defer their imprisonment, the State reduces the number of pregnant women inmates in the prison population.[7] Because pregnant women often require special medical treatment, special diets, hospitalization for delivery, and transportation to hospital facilities for treatment, the reduction in the number of pregnant women inmates through sentence deferral reduces costs to the Department of Corrections.

Another result of sentence deferral is that the Department of Corrections does not become involved as an intermediary in the process of arranging for the care of the child. Since imprisonment is delayed until six weeks after the child's birth, the woman is free to make arrangements for care of the child

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4. *Id.* § 15A-1353. The commentary to the statute states that the section applies both to an initial sentence of imprisonment and to activation of a sentence following probation revocation.

5. *See* REPORT OF THE CITIZENS COMMISSION ON ALTERNATIVES TO INCARCERATION (1982) (available in the library of the Institute of Government, Chapel Hill, N.C.) [hereinafter cited as *Alternatives to Incarceration*] which suggests that "nonviolent" offenders should include misdemeanants and persons guilty of felony offenses in classes H, I, and J. Misdemeanor offenses for which individuals are sentenced to prison in North Carolina include writing worthless checks and nonsupport of dependents. H, I, and J felons are persons convicted of larceny, breaking and entering, forgery, embezzelment, and credit card crimes. N.C. GEN. STAT. § 14-1.1(a) (1981). *See Alternatives to Incarceration*, *supra*, at 11 (advocating community based alternative penalties for those convicted of nonviolent crime).

6. For a discussion of some of the potential adverse affects of prison on a pregnant inmate's physical health, see McHugh, *Protection of the Rights of Pregnant Women in Prisons and Detention Facilities*, 6 NEW ENG. J. PRISON L. 231, 235-45 (1979-80) and Resnik & Shaw, *Prisoners of Their Sex: Health Problems of Incarcerated Women*, 3 PRISON L. MONITOR 57, 75-77 (1981). *See also* United States *ex rel.* Guy v. McCauley, 385 F. Supp. 193 (E.D. Wis. 1974) (a woman seven months pregnant was twice forced to painfully bend over for vaginal searches conducted in an unsterile environment by two untrained policewomen). Other cases specifically citing lack of adequate medical facilities and medical care for pregnant women inmates include Lasky v. Quinlan, 419 F. Supp. 799, 802-03 (S.D.N.Y. 1976), *vacated as moot*, 558 F.2d 1133 (2d. Cir. 1977); Morales v. Turman, 383 F. Supp. 53, 102 (E.D. Tex. 1974); and Newman v. Alabama, 349 F. Supp. 278, 282-83 (M.D. Ala. 1972).

7. Pregnancy is not a problem limited to female convicts who have not yet begun to serve their sentences. An incarcerated female may become pregnant as a result of "intercourse or rape by guards or jail officials, intercourse with other inmates in a sexually integrated prison, conjugal visits, furloughs and work releases, and even prostitution." Note, *Nine Months to Life—The Law and the Pregnant Inmate*, 20 J. FAM. L. 523, 525 (1981-82).

personally or, if she cannot provide for the child, to place the child with the Department of Social Services in her home community. If the Department of Social Services or the domestic court is involved, sentence deferral increases the likelihood that the woman will be able to participate actively in the process of determining where the child will be placed. Thus, deferral of imprisonment has many benefits for both the mother and the Department of Corrections.

When considered separately, the amendment to section 15A-1353(a) represents a positive change in North Carolina correctional law. The statute establishes a reasonable compromise between the physical and emotional well-being of pregnant defendants and the requirements of the correctional system. Because sentence deferral is limited to nonviolent offenders, the State's interest in the safety of its citizens is not compromised. The statute also is fair. Pregnant defendants do not receive more favorable treatment than others convicted of similar crimes, just a temporary deferral of their sentences. Thus, the statute does not create an incentive for female defendants to attempt to become pregnant to receive lenient treatment.

Despite the positive benefits of section 15A-1353, North Carolina law fails to address other crucial issues that arise when a pregnant woman is sentenced to a prison term. Apart from the recent amendment to section 15A-1353, the only statute that addresses the subject of pregnant inmates is section 148-47,[8] which provides:

> Any child born of a female prisoner while she is in custody shall as soon as practicable be surrendered to the director of social services of the county wherein the child was born upon a proper order of the domestic relations court or juvenile court of said county affecting the custody of said child. When it appears to be for the best interest of the child, the court may place custody beyond the geographical bounds of Wake County: Provided, however, that all subsequent proceedings and orders affecting custody of said child shall be within the jurisdiction of the proper court of the county where the infant is residing at the time such proceeding is commenced or such order is sought: Provided, further, that nothing in this section shall affect the right of the mother to consent to the adoption of her child nor shall the right of the mother to place her child with the legal father or other suitable relative be affected by the provisions of this section.[9]

Unlike section 15A-1353, which strikes a balance between state correctional goals and the mother's emotional and physical needs, section 148-47 fails to provide a framework for considering the best interests of the child and the mother's relationship with the child. The statute assumes that the infant will not be allowed to remain with the mother in prison. This assumption,

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8. In comparison, the federal regulations, applicable only to federal prisoners, are quite comprehensive, ensuring medical and social services, birth control, and abortions if desired. Delivery of a child must take place in a hospital outside of the institution. No provision, however, is made for mothers to keep their infants with them in prison. The child only is allowed to visit the institution. 28 C.F.R. §§ 551.20-24 (1980).

9. N.C. GEN. STAT. § 148-47 (1983).

however, has been criticized by commentators,[10] and some states have statutes that allow inmates to care for their newborns under certain circumstances.[11] Of the states that permit mothers to care for their infants on more than a temporary basis, one allows the child to stay with the mother until two years of age,[12] and the other provides for care until the child is six years old.[13] Some commentators have suggested that, after the child reaches the age of two, any positive benefits the child might gain from its mother's care are offset by the prison's restrictive environment.[14] A consideration of whether and under what circumstances an imprisoned inmate should be allowed to care for her child requires a balanced examination of the best interests of the child and the mother's parental rights within the context of the correctional system.

Proponents of statutes allowing incarcerated women to care for their infants argue that under some circumstances, it is in the child's best interest to be cared for by its mother even if the mother is in prison.[15] The "child's best interest" argument is based upon psychological studies showing the importance of mother-child bonding.[16] Research has shown that one of the critical factors in the formation of an emotionally healthy child is the development of an enduring attachment to at least one care-giver during infancy.[17] The formation of this bond also increases the likelihood that the mother and child will readjust successfully after the mother's release from prison.[18] Psychological studies also provide support for the contention that after two years of age, the restrictive environment of a prison would be detrimental to the child's

10. *See* Fabian, *Toward the Best Interests of Women Prisoners: Is the System Working?*, 6 NEW ENG. J. PRISON 1, 58 (1979-80); Comment, *The Prisoner—Mother and Her Child*, 1 CAP. U.L. REV. 127, 138-44 (1972); Note, *The Loss of Parental Rights as a Consequence of Conviction and Imprisonment: Unintended Punishment*, 6 NEW ENG. J. PRISON L. 61, 111 (1979-80) [hereinafter cited as Note, *Loss of Parental Rights*]; Note, *Mothers Behind Bars: A Look at the Parental Rights of Incarcerated Women*, 4 NEW ENG. J. PRISON L. 141, 152-55 (1977-78) [hereinater cited as Note, *Mothers Behind Bars*]; Comment, *Babies Behind Bars: Should Incarcerated Mothers Be Allowed to Keep Their Newborns with Them in Prison?* 16 U. RICH. L. REV. 677 (1981-82) [hereinafter cited as Comment, *Babies Behind Bars*]; Note, *On Prisoners and Parenting: Preserving the Tie That Binds*, 87 YALE L.J. 1408, 1422-29 (1978) [hereinafter cited as Note, *Tie That Binds*].

11. CAL. PENAL CODE §§ 3410-3422 (West 1982), authorizes the development of a community treatment program for prison mothers with children under six years of age. Other states allow the child to stay with the mother on a temporary basis until permanent placement elsewhere can be arranged. *See* CONN. GEN. STAT. ANN. § 18-69 (West Supp. 1984) (baby can stay for 60 days while permanent placement arranged); ILL. ANN. STAT. ch. 38, § 1003-6-2 (Smith-Hurd 1982) (allowing a child to remain with its mother until the child is one year old if the Director of Corrections determines that there are special reasons why the child should continue in custody of the mother); N.Y. CORRECT. LAW § 611 (McKinney 1968). For over 50 years New York's policy has been to allow inmate mothers to keep their newborn infants. Apgar v. Beauter, 75 Misc. 2d 439, 441, 347 N.Y.S.2d 872, 875 (1973). N.C. GEN. STAT. § 148-47 (1983) (baby can stay only until permanent placement is made elsewhere).

12. N.Y. CORRECT. LAW § 611 (McKinney 1968).

13. CAL. PENAL CODE §§ 3410-3422 (West 1982).

14. *See* Note, *Tie That Binds*, *supra* note 10, at 1424-25.

15. *See id.*

16. *See id.* at 1411-22 for further discussion of the pyschological results of the formation of the parent-child bond.

17. *Id.* at 1411-12. *See also* Comment, *Babies Behind Bars*, *supra* note 10, at 680-82.

18. *See* Note, *Loss of Parental Rights*, *supra* note 10, at 99.

development.[19]

These arguments in favor of allowing the mother to care for her infant until age two are most persuasive under circumstances in which the mother's sentence is relatively short and will be served in a minimum security environment,[20] the mother will assume full-time care of the child upon her release,[21] and the mother's background and crime provide no indication of parental unfitness.[22] Care by the mother also is preferable when the infant's only other alternative would be undesireable institutional or foster care.[23] Conversely, the best interests of the child militate against care by the mother if she has a history of violence or of abusing or neglecting her children.[24] Also, when the mother's sentence is long and chances of parole are nonexistent during the early years of the child's life, it would seem undesirable for the infant to become emotionally attached to the incarcerated mother.

Opponents of statutes allowing women to care for their infants in prison argue that prison is no place for a child and that the idea of babies behind bars is shocking.[25] The lack of adequate facilities and trained personnel, possible physical danger to the child, and a negative moral influence upon the child are advanced as reasons why inmate mothers should not be allowed to care for their infants.[26] Proponents of statutes allowing infants to remain with their incarcerated mothers, however, counter that the fears of physical danger to children have proved unfounded at facilities where mothers are allowed to care for their children.[27] Furthermore, the risk that a child's morals will be influenced negatively by exposure to inmates is slight due to the highly supervised living situation and the infancy of the child.[28]

Although the child's best interest often might be served by allowing her mother to care for her while in prison,[29] the idea has not been adopted by the majority of state legislatures.[30] Only New York and California expressly allow the child to stay with her mother for a definite period of time.[31] Other states allow the child to stay only until other arrangements for care can be

19. *See* Note, *Tie That Binds*, *supra* note 10, at 1425. *See also* Comment, *Babies Behind Bars*, *supra* note 10, at 681.

20. *See* Note, *Tie That Binds*, *supra* note 10, at 1423.

21. *See* Comment, *Babies Behind Bars*, *supra* note 10, at 680-81.

22. Bailey v. Lombard, 101 Misc. 2d 56, 420 N.Y.S.2d 650 (1979).

23. *See* Note, *Tie That Binds*, *supra* note 10, at 1418-22 for a discussion of the potential harm to a child as a result of institutional or foster care. *See also*, Fabian, *supra* note 10, at 49-50 (example of inadequate foster care for incarcerated mother's child).

24. Bailey v. Lombard, 101 Misc. 2d 56, 420 N.Y.S.2d 659 (1979) (incarcerated mother who previously had exhibited lack of parental concern for her other children was denied permission to care for her newborn infant).

25. *See* Note, *Tie That Binds*, *supra* note 10, at 1424.

26. *See* Comment, *Babies Behind Bars*, *supra* note 10, at 681. *See also* Note, *Tie That Binds*, *supra* note 10, at 1424 n.79.

27. *See* Comment, *Babies Behind Bars*, *supra* note 10, at 681-82 & n.31.

28. *See* Note, *Tie That Binds*, *supra* note 10, at 1423 n.74 (discussion of residential facilities for adult offenders).

29. *See supra* notes 15-24 and accompanying text.

30. *See supra* note 11.

31. *See supra* notes 11-13.

made.[32] In some states, litigation by women inmates seeking to enforce existing statutory provisions allowing women inmates to care for their infants has triggered repeal of those statutes.[33]

Given the lack of statutory provisions allowing women inmates to care for their children, several commentators have attempted to develop constitutional theories to support a claim by a woman inmate of the right to care for her infant while in prison. One possible theory advanced is that the parent-child relationship is fundamental[34] and therefore protected by the due process clause of the fourteenth amendment.[35] Parents, however, never have possessed an absolute right to raise their children. The state always has retained the power to intervene on the child's behalf when necessary to protect the child's best interest.[36] The state's power to terminate permanently parental rights against the wishes of the parent is drastic, but constitutional.[37] At most, society seems to recognize that parental rights include some sort of interest in the care, custody, and nurture of one's child.[38]

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32. *See supra* note 11.

33. Wainwright v. Moore, 374 So. 2d 586 (Fla. Dist. Ct. App. 1979). A 22 year old pregnant inmate brought suit to enjoin Florida correctional officials from separating her from her child after the child was born. She based her suit on Act of May 16, 1957, ch. 57-121, § 22, 1957 Fla. Laws 186, 193 (repealed 1981), which allowed women inmates to care for their babies in prison if they so desired. The court of appeals reversed a lower court decision in the inmate's favor on the grounds that the statute merely permitted the child to remain with her mother if the court determined that to do so was in the child's best interest. Since the trial court had made no determination of the child's best interest, the court of appeals remanded the case for this determination. Before the trial court could rehear the case, however, the mother was paroled and left prison with her infant. After the *Wainwright* case, the Florida legislature repealed the statute upon which the suit was based. *See* Comment, *Babies Behind Bars*, *supra* note 10, at 678 n.8.

A similar sequence of events occurred in California. In Cardell v. Enomoto, Memorandum of Intended Decision, No. 701-94 (Cal. Super. Ct. 1976) a prison mother sued for enforcement of Act of April 15, 1941, ch. 106, § 3401, 1941 Cal. Stat. 1080, 1116 (repealed 1980), which allowed young children to stay with their mothers in prison. Her suit failed because the court interpreted the statute as discretionary rather than mandatory. California subsequently repealed the statute. A new statute was adopted authorizing the development of a community program for prison mothers with children under six years of age. CAL. PENAL CODE §§ 3410-3424 (West 1982). Funding for the development of the program is uncertain, however, and the restrictive qualifications for the program ensure that few women actually would be eligible to participate if the program were developed. *See* Fabian, *supra* note 10, at 50-51.

34. *See* Griswold v. Connecticut, 381 U.S. 479, 495 (1965) (Goldberg, J., concurring) ("The entire fabric of the Constitution and the purposes that underlie its specific guarantees demonstrate that the rights to marital privacy, to marry and raise a family are of similar order and magnitude as the fundamental rights specifically protected."); Prince v. Massachusetts, 321 U.S. 158, 166 (1944) (In addressing the issue of a parent's right to control the religious training of a child, the court stated that, "it is cardinal with us that the custody, care and nurture of the child reside first in the parents.").

35. *See* Comment, *Babies Behind Bars*, *supra* note 10, at 682.

36. Dobson, *The Juvenile Court and Parental Rights*, 4 FAM. L.Q. 393, 396 (1970):

> [T]he venerable common law doctrine of paren patriae . . . declares the state to be the ultimate guardian of every child. Under this doctrine, with its great emphasis on the correlation of the welfare of the child with the welfare of the state, the state has not only the right, but the duty to establish standards for a child's care. The only constitutional check on this responsibility is that the standards so established must bear a reasonable relationship to the community's health, safety and welfare.

37. See Comment, *Child Custody: Best Interests of Children vs. Constitutional Rights of Parents*, 81 DICKINSON L. REV. 733 (1976-77) for a discussion of the violation of parents' constitutional rights in the process of determining the best interests of the child.

38. Stanley v. Illinois, 405 U.S. 645, 658 (1972) (an unwed father is entitled to a forum and

Because parental rights never have been defined in absolute terms, arguments that an incarcerated mother has a fundamental constitutional right to care for her child in prison are not persuasive. Even if raising one's child is a fundamental right, "[l]awful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system."[39] Litigation asserting claims to other rights related to maintaining familial bonds has not been successful. Conjugal visitation rights are not required by the Constitution.[40] Inmates have no constitutional right to physical contact with family or to sexual intimacy with their spouse or anyone else.[41] One court has held that neither prisoners nor their potential visitors have a constitutional right to prison visitation.[42] Given the hostility of the courts towards recognizing a constitutional right to simple family visitation privileges, it is highly unlikely that courts would recognize that an incarcerated mother has a constitutional right to care for her infant while in prison.

Other commentators have suggested that deprivation of parental rights is a form of cruel and unusual punishment,[43] unconstitutional under the eighth amendment.[44] Historically, violations of the eighth amendment have been found when inmates were subjected to abusive physical punishment, intolerable living conditions, or excessively long sentences for minor crimes.[45] Findings of cruel and unusual punishment have not been frequent when the inmate's deprivation is unrelated to his physical well being or the fairness of his sentence. One commentator who asserts that loss of parental rights constitutes cruel and unusual punishment[46] cites *Trop v. Dulles*[47] to support the proposition that the eighth amendment proscription is not limited to physical punishment. The Supreme Court held in that case that loss of citizenship, a nonphysical punishment for military desertion, was unconstitutional under the eighth amendment. Furthermore, in *Trop* Chief Justice Warren stated that the scope of the amendment is not static, but "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society."[48]

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the opportunity to show why his interest in his children should not be terminated after the death of the children's mother).

39. Price v. Johnston, 334 U.S. 266, 285 (1948). *See also* Jones v. North Carolina Prisoner's Union, 433 U.S. 119 (1977).

40. Tarlton v. Clark, 441 F.2d 384 (5th Cir.), *cert. denied*, 403 U.S. 934 (1971); Payne v. District of Columbia, 253 F.2d 867 (D.C. Cir. 1958).

41. Oxendine v. Williams, 509 F.2d 1405 (4th Cir. 1975); Lyons v. Gilligan, 382 F. Supp. 198 (N.D. Ohio 1974); Stuart v. Hand, 359 F. Supp. 921 (S.D. Tex. 1973).

42. White v. Keller, 438 F. Supp. 110 (D. Md.), *aff'd*, 588 F.2d 913 (4th Cir. 1978).

43. *See* Comment, *Women, Prison and the Eighth Amendment*, 12 N.C. CENT. L.J. 434, 448-50 (1980-81); Note, *Female Offenders: A Challenge to Courts and the Legislature*, 51 N.C.L. REV. 827, 842 n.111 (1974-75); Note, *Loss of Parental Rights*, *supra* note 10, at 97.

44. U.S. CONST. amend. VIII.

45. Fair, *The Lower Federal Courts as Constitution-Makers: The Case of Prison Conditions*, 7 AM. J. CRIM. L. 119, 122-23 (1979); Robbins & Buser, *Punitive Conditions of Prison Confinement: An Analysis of* Pugh v. Locke *and Federal Court Supervision of State Penal Administration under the Eighth Amendment*, 29 STAN. L. REV. 893, 900-06 (1977).

46. *See* Note, *Loss of Parental Rights*, *supra* note 10, at 97.

47. 356 U.S. 86 (1958).

48. *Trop*, 356 U.S. at 101.

Commentators assert that parental rights are of at least comparable significance to rights of citizenship.[49] Their argument—that forfeiting one's parental rights is cruel and unusual punishment—is most persuasive in states whose statutes permit the permanent termination of parental rights without the parent's consent simply because the parent is incarcerated.[50] The argument is less persuasive when an incarcerated mother is deprived of her right to care for her infant while she is imprisoned, but retains all of her other parental rights. The likelihood that the courts would characterize the latter type of deprivations as cruel and unusual is remote.

A final argument in favor of allowing incarcerated mothers to keep their infants with them is that it may further the state's goal of rehabilitating the inmate. Inmates may not have a constitutional right to rehabilitation, but it is in the best interest of the inmate, the state, and the state's citizenry to promote responsible behavior among inmates who will be released from prison.

In conclusion, an inmate has no constitutional right to care for her newborn infant in prison. Thus, in states such as North Carolina, in which no statutory provision is made for pregnant mothers who wish to care for their newborns, an inmate has no legal grounds to assert a right to care for her child. The argument can be made, however, that separating the mother from her infant without making a determination of the best interest of the child undermines the State's goal of protecting the best interests of the child.[51] Furthermore, statutory provisions that are less destructive of family relationships, such as one allowing women inmates to care for their infants, would further the State's goal of rehabilitating the inmate. Provisions should be made for women inmates to care for their infants based upon a determination that this is in the best interest of the child and upon a consideration of the mother's circumstances, including the nature of her crime, the length of her sentence, and her chances of parole. North Carolina General Statutes section 148-47, which requires incarcerated mothers to relinquish the care of their newborns to others, fails to consider the best interests of the child.

The 1983 amendment to section 15A-1353(a) demonstrates legislative recognition of the need for the correctional system to consider the circumstances of the pregnant defendant while enforcing the requirements of the penal code. The amendment is a significant first step towards accommodating the requirements of the legal system to the needs of pregnant defendants. Further legisla-

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49. *See* Note, *Loss of Parental Rights*, *supra* note 10, at 97.

50. *See, e.g.*, N.Y. DOM. REL. LAW § 111(2)(d) (McKinney 1977) ("The consent shall not be required of a parent or of any other person having custody of the child . . . who has been deprived of civil rights pursuant to the civil rights law and whose civil rights have not been restored . . . ."). *See also In re* Anonymous, 79 Misc. 2d 280, 359 N.Y.S.2d 738 (1974). Some states have equated parental incarceration with abandonment of parental responsibility and have implied the power to terminate parental rights upon incarceration. *See, e.g.*, Logan v. Coup, 238 Md. 253, 208 A.2d 694 (1965); *In re* Jacques, 48 N.J. Super. 523, 138 A.2d 581 (1958), *cited in* Note, *Mothers Behind Bars*, *supra* note 10, at 145-46.

51. *See* Note, *Tie That Binds*, *supra* note 10, at 1419.

tion is needed, however, to ensure that the best interests of the child of an incarcerated woman are protected adequately.

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