

**ASSEMBLY BILL**

**No. 1530**

---

---

**Introduced by Assembly Member Negrete McLeod**

February 21, 2003

---

---

An act to amend Sections 3412, 3415, 3417, 3418, and 3419 of the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 1530, as introduced, Negrete McLeod. Prisoners: community treatment program.

Existing law requires the Department of Corrections to establish and implement a community treatment program under which women inmates sentenced to state prison who have one or more children under the age of 6 years shall be eligible for release with their children to a public or private facility in the community suitable to their needs. Existing law provides that the probation department shall notify a woman sentenced to the state prison of these provisions, as specified. Existing law provides that the Department of Corrections may, in its discretion, and if there is space available, admit a pregnant inmate meeting admission criteria. Existing law also requires the department to provide pediatric care to children residing in a community treatment program.

This bill would provide that the probation department shall give notice of and a written application to the program to a woman sentenced to the state prison and her counsel, thereby imposing a state-mandated local program. This bill would also specify that the notice shall contain, but need not be limited to, guidelines for qualification for, and the timeframe for application to, the program, and the process for appealing a denial of admittance. This bill would provide that the Department of

Corrections shall admit to the program any applicant who meets admission criteria, as specified, whose child was born prior to her incarceration, or who is pregnant. This bill would also ensure that mothers and children residing in community treatment programs have access to and assistance in participating in available local Head Start, Healthy Start, and programs for childhood development under the California Children and Families Program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 3412 of the Penal Code is amended to
- 2 read:
- 3 3412. (a) The Department of Corrections shall provide
- 4 pediatric care consistent with medical standards and, to the extent
- 5 feasible, shall be guided by the need to provide the following:
- 6 ~~(a)~~
- 7 (1) A stable, care giving, stimulating environment for the
- 8 children as developed and supervised by professional guidance in
- 9 the area of child development.
- 10 ~~(b)~~
- 11 (2) Programs geared to assure the stability of the parent-child
- 12 relationship during and after participation in the program, to be
- 13 developed and supervised by appropriate professional guidance.
- 14 These programs shall, at a minimum, be geared to accomplish the
- 15 following:
- 16 ~~(+)~~
- 17 (A) The mother’s mental stability.



1     ~~(2)~~  
2     (B) The mother’s familiarity with good parenting and  
3 housekeeping skills.

4     ~~(3)~~  
5     (C) The mother’s ability to function in the community, upon  
6 parole or release, as a viable member.

7     ~~(4)~~  
8     (D) The securing of adequate housing arrangements after  
9 participation in the program.

10    ~~(5)~~  
11    (E) The securing of adequate child care arrangements after  
12 participation in the program.

13    ~~(e)~~  
14    (3) Utilization of the least restrictive alternative to  
15 incarceration and restraint possible to achieve the objectives of  
16 correction and of this chapter consistent with public safety and  
17 justice.

18    (b) (1) *The Department of Corrections shall ensure that the*  
19 *children and mothers residing in a community treatment program*  
20 *have access to, and are permitted by the community treatment*  
21 *program to participate in, available local Head Start, Healthy*  
22 *Start, and programs for early childhood development pursuant to*  
23 *the California Children and Families Program (Division 108*  
24 *(commencing with Section 130100) of the Health and Safety*  
25 *Code).*

26    (2) *The community treatment program shall provide each*  
27 *mother with written information about the available local*  
28 *programs, including the telephone numbers for enrolling a child*  
29 *in a program.*

30    (3) *The community treatment program shall also provide*  
31 *transportation to program services and otherwise assist and*  
32 *facilitate enrollment and participation for eligible children.*

33    SEC. 2. Section 3415 of the Penal Code is amended to read:

34    3415. (a) The probation department shall, no later than the  
35 day that any woman is sentenced to the state prison, ~~notify such~~  
36 *provide the woman and her counsel notice, on the record,* of the  
37 provisions of this chapter, *and a written application for the*  
38 *program described herein,* if the term of the state imprisonment  
39 does not exceed six years on the basis of either the probable release  
40 or parole date computed as if the maximum amount of good time



1 credit would be granted. The probation department shall  
2 determine ~~such~~ *the* term of state imprisonment at ~~such time~~ *the*  
3 *time the notice is given* for the purposes of this section. *The notice*  
4 *shall contain, but need not be limited to, guidelines for*  
5 *qualification for, and the timeframe for application to, the*  
6 *program, and the process for appealing a denial of admittance.*

7 (b) The woman may, upon the receipt of ~~such~~ *the* notice and  
8 upon sentencing to a term in state prison, give notice of her desire  
9 to be admitted to a program under this chapter. The probation  
10 department or the defendant shall transmit ~~such~~ *the* notice to the  
11 Department of Corrections, and to the appropriate local social  
12 services agency that conducts investigations for child neglect and  
13 dependency hearings.

14 SEC. 3. Section 3417 of the Penal Code is amended to read:

15 3417. (a) Subject to reasonable rules and regulations adopted  
16 pursuant to Section 3414, the Department of Corrections shall  
17 admit to the program any applicant whose child was born prior to  
18 the receipt of the inmate by the department, *whose child was born*  
19 *after the receipt of the inmate by the department, or who is*  
20 *pregnant*, if all of the following requirements are met:

21 (1) The applicant has a probable release or parole date with a  
22 maximum time to be served of six years, calculated after deduction  
23 of any possible good time credit.

24 (2) The applicant was the primary caretaker of the infant prior  
25 to incarceration. “Primary caretaker” as used in this chapter  
26 means a parent who has consistently assumed responsibility for the  
27 housing, health, and safety of the child prior to incarceration. A  
28 parent who, in the best interests of the child, has arranged for  
29 temporary care for the child in the home of a relative or other  
30 responsible adult shall not for that reason be excluded from the  
31 category, “primary caretaker.”

32 (3) The applicant had not been found to be an unfit parent in any  
33 court proceeding. An inmate applicant whose child has been  
34 declared a dependent of the juvenile court pursuant to Section 300  
35 of the Welfare and Institutions Code shall be admitted to the  
36 program only after the court has found that participation in the  
37 program is in the child’s best interest and that it meets the needs  
38 of the parent and child pursuant to paragraph (3) of subdivision (e)  
39 of Section 361.5 of the Welfare and Institutions Code. The fact that  
40 an inmate applicant’s child has been found to come within Section



1 300 of the Welfare and Institutions Code shall not, in and of itself,  
2 be grounds for denying the applicant the opportunity to participate  
3 in the program.

4 (b) The Department of Corrections shall deny placement in the  
5 community treatment program if it determines that an inmate  
6 would pose an unreasonable risk to the public, or if any one of the  
7 following factors exist, except in unusual circumstances or if  
8 mitigating circumstances exist, including, but not limited to, the  
9 remoteness in time of the commission of the offense:

10 (1) The inmate has been convicted of any of the following:

11 (A) A sex offense listed in Section 667.6.

12 (B) A sex offense requiring registration pursuant to Section  
13 290.

14 (C) A violent offense listed in subdivision (c) of Section 667.5.

15 (D) Arson as defined in Sections 450 to 455, inclusive.

16 (E) The unlawful sale or possession for sale, manufacture, or  
17 transportation of controlled substances as defined in Chapter 6  
18 (commencing with Section 11350) of Division 10 of the Health  
19 and Safety Code, if large scale for profit as defined by the  
20 department.

21 (2) There is probability the inmate may abscond from the  
22 program as evidenced by any of the following:

23 (A) A conviction of escape, of aiding another person to escape,  
24 or of an attempt to escape from a jail or prison.

25 (B) The presence of an active detainer from a law enforcement  
26 agency, unless the detainer is based solely upon warrants issued for  
27 failure to appear on misdemeanor Vehicle Code violations.

28 (3) It is probable the inmate's conduct in a community facility  
29 will be adverse to herself or other participants in the program, as  
30 determined by the Director of Corrections or as evidenced by any  
31 of the following:

32 (A) The inmate's removal from a community program which  
33 resulted from violation of state laws, rules, or regulations  
34 governing Department of Corrections' inmates.

35 (B) A finding of the inmate's guilt of a serious rule violation,  
36 as defined by the Director of Corrections, which resulted in a credit  
37 loss on one occasion of 91 or more days or in a credit loss on more  
38 than one occasion of 31 days or more and the credit has not been  
39 restored.



1 (C) A current written opinion of a staff physician or  
2 psychiatrist that the inmate's medical or psychiatric condition is  
3 likely to cause an adverse effect upon the inmate or upon other  
4 persons if the inmate is placed in the program.

5 (c) Nothing in this section shall be interpreted to limit the  
6 discretion of the Director of Corrections to deny or approve  
7 placement when subdivision (b) does not apply.

8 (d) The Department of Corrections shall determine if the  
9 applicant meets the requirements of this section within 30 days of  
10 the parent's application to the program. The department shall  
11 establish an appeal procedure for the applicant to appeal an adverse  
12 decision by the department.

13 ~~(e) The department may, in its discretion, admit a pregnant~~  
14 ~~inmate to the program prior to the birth of the child if it determines~~  
15 ~~that the admission would otherwise comply with this chapter, and~~  
16 ~~there is space available.~~

17 SEC. 4. Section 3418 of the Penal Code is amended to read:

18 3418. (a) In the case of any inmate who gave birth to a child  
19 after the date of sentencing, and in the case of any inmate who gave  
20 birth to a child prior to ~~such~~ *that* date and meets the requirements  
21 of Section 3417 but has not yet made application for admission to  
22 a program, the department shall, at the earliest possible date, but  
23 in no case later than the birth of the child, or the receipt of the  
24 inmate to the custody of the Department of Corrections, as the case  
25 may be, notify the inmate of the provisions of this chapter *and*  
26 *provide her with a written application for the program described*  
27 *in this chapter.*

28 (b) *The notice provided by the department shall contain, but*  
29 *need not be limited to, guidelines for qualification for, and the*  
30 *timeframe for application to, the program and the process for*  
31 *appealing a denial of admittance.*

32 SEC. 5. Section 3419 of the Penal Code is amended to read:

33 3419. (a) In the case of any inmate who gives birth after her  
34 receipt by the Department of Corrections, the department shall,  
35 subject to reasonable rules and regulations promulgated pursuant  
36 to Section 3414, *provide notice of, and a written application for,*  
37 *the program described in this chapter, and upon her request,*  
38 declare the inmate eligible to participate in a program pursuant to  
39 this chapter if all of the requirements of Section 3417 are met.



1     ***(b) The notice provided by the department shall contain, but***  
2     ***need not be limited to, guidelines for qualification for, and the***  
3     ***timeframe for application to, the program and the process for***  
4     ***appealing a denial of admittance.***

5     SEC. 6. Notwithstanding Section 17610 of the Government  
6     Code, if the Commission on State Mandates determines that this  
7     act contains costs mandated by the state, reimbursement to local  
8     agencies and school districts for those costs shall be made pursuant  
9     to Part 7 (commencing with Section 17500) of Division 4 of Title  
10    2 of the Government Code. If the statewide cost of the claim for  
11    reimbursement does not exceed one million dollars (\$1,000,000),  
12    reimbursement shall be made from the State Mandates Claims  
13    Fund.

