

Assembly Bill No. 1530

Passed the Assembly August 12, 2004

Chief Clerk of the Assembly

Passed the Senate July 29, 2004

Secretary of the Senate

This bill was received by the Governor this _____ day of
_____, 2004, at _____ o'clock __M.

Private Secretary of the Governor



CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1530, 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 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 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 require the Department of Corrections to 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, but the bill would provide, in addition, that nothing in its provisions shall be construed as granting or requiring preferential access or enrollment for children of incarcerated mothers to any of the specified programs.

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

SECTION 1. Section 3412 of the Penal Code is amended to read:

3412. (a) The Department of Corrections shall provide pediatric care consistent with medical standards and, to the extent feasible, shall be guided by the need to provide the following:



(1) A stable, caregiving, stimulating environment for the children as developed and supervised by professional guidance in the area of child development.

(2) Programs geared to assure the stability of the parent-child relationship during and after participation in the program, to be developed and supervised by appropriate professional guidance. These programs shall, at a minimum, be geared to accomplish the following:

(A) The mother's mental stability.

(B) The mother's familiarity with good parenting and housekeeping skills.

(C) The mother's ability to function in the community, upon parole or release, as a viable member.

(D) The securing of adequate housing arrangements after participation in the program.

(E) The securing of adequate child care arrangements after participation in the program.

(3) Utilization of the least restrictive alternative to incarceration and restraint possible to achieve the objectives of correction and of this chapter consistent with public safety and justice.

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

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

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

(4) Nothing in this subdivision shall be construed as granting or requiring preferential access or enrollment for children of incarcerated mothers to any of the programs specified in this subdivision.



SEC. 2. Section 3417 of the Penal Code is amended to read:

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

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

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

(3) The applicant had not been found to be an unfit parent in any court proceeding. An inmate applicant whose child has been declared a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code shall be admitted to the program only after the court has found that participation in the program is in the child’s best interest and that it meets the needs of the parent and child pursuant to paragraph (3) of subdivision (e) of Section 361.5 of the Welfare and Institutions Code. The fact that an inmate applicant’s child has been found to come within Section 300 of the Welfare and Institutions Code shall not, in and of itself, be grounds for denying the applicant the opportunity to participate in the program.

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

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

(A) A sex offense listed in Section 667.6.

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



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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 3418 of the Penal Code is amended to read:



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

(b) The notice provided by the department 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.

SEC. 4. Section 3419 of the Penal Code is amended to read:

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

(b) The notice provided by the department 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.



Approved _____, 2004

Governor

