

Introduced by Senator Kuehl

February 17, 2004

An act to amend Sections 2081.5 and 13012 of, and to add Sections 1016.7, 2057, 2057.5, 2058, and 2058.5 to, the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

SB 1287, as introduced, Kuehl. Prisoners: incarcerated parents.

Existing law generally establishes criminal procedures regarding pleas.

This bill would require, prior to acceptance of a plea, as specified, that the court advise the defendant that if the defendant is a custodial parent, conviction may have consequences for the defendant's parental rights.

Existing law generally regulates the confinement and treatment of prisoners.

This bill would direct the Department of Corrections to make resources and information available, and implement various procedures relating to prisoners who are parents of minor children. The bill would require the department to report to the Legislature no later than January 1, 2006, on implementation of the provisions of the bill.

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

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

- 1 SECTION 1. This bill shall be known and may be cited as the
- 2 Families and Children of the Incarcerated Act.

1 SEC. 2. (a) The Legislature hereby finds and declares the
2 following:

3 (1) Inmates with strong family ties and support networks are
4 more likely to succeed upon release. However, an increasing
5 number of prisoners are returning home with little preparation to
6 successfully reunite with their families and communities. The
7 parole failure rate for newly released California prisoners is nearly
8 twice that of the national average, an astounding 67 percent.

9 (2) The number of parents in prison has increased sharply in the
10 last decade, up 60 percent nationally, and over one-half of state
11 inmates report having at least one minor child. Prisoners in
12 California state prisons are parents to an estimated 192,000 minor
13 children, close to one-third of whom are under six years of age.

14 (3) A parent's arrest and imprisonment affects the whole
15 family. The children of incarcerated parents are at high risk for
16 failure in school, emotional withdrawal and delinquency, and are
17 more likely to become incarcerated than their peers. Many of these
18 children become involved in the state's troubled and expensive
19 foster care system. Yet the state's judicial, correctional, and child
20 welfare authorities have not attended to the specific needs of this
21 at-risk population. This lack of attention places the children and
22 ultimately the public at risk.

23 (4) It is the intent of the Legislature in enacting this act to
24 reduce recidivism and intergenerational patterns of incarceration.

25 SEC. 3. Section 1016.7 is added to the Penal Code, to read:

26 1016.7. (a) Prior to acceptance of a plea of guilty or nolo
27 contendere to any offense punishable as a crime under state law,
28 except offenses designated as infractions under state law, the court
29 shall administer the following advisement on the record to the
30 defendant:

31 "If you are a custodial parent, you are hereby advised that
32 conviction of the offense for which you have been charged may
33 have consequences for your parental rights."

34 (b) Upon request, the court shall allow the defendant additional
35 time to consider the appropriateness of the plea in light of the
36 advisement as described in this section. If, after January 1, 2005,
37 the court fails to advise the defendant as required by this section
38 and the defendant shows that conviction of the offense to which the
39 defendant pleaded guilty or nolo contendere may have the
40 consequence for the defendant of termination of their parental



1 rights, the court, on defendant’s motion, shall vacate the judgment
2 and permit the defendant to withdraw the pleas of guilty or nolo
3 contendere, and enter a plea of not guilty. Absent a record that the
4 court provided the advisement required by this section, the
5 defendant shall be presumed not to have received the required
6 advisement.

7 (c) With respect to pleas accepted prior to January 1, 2005, it
8 is not the intent of the Legislature that a court’s failure to provide
9 the advisement required by subdivision (a) of Section 1016.7
10 should require the vacation of judgment and withdrawal of the plea
11 or constitute grounds for finding a prior conviction invalid.
12 Nothing in this section, however, shall be deemed to inhibit a
13 court, in the sound exercise of its discretion, from vacating a
14 judgment and permitting a defendant to withdraw a plea.

15 (d) The Legislature finds and declares that in many instances
16 involving an individual who is the custodial parent of a minor child
17 or minor children, a plea of guilty or nolo contendere is entered
18 without the defendant being appropriately warned of the special
19 consequences for the defendant’s parental rights which may result
20 from the plea. Therefore it is the intent of the Legislature in
21 enacting this section to promote fairness to accused individuals
22 and their minor children by requiring in those cases that an
23 acceptance of a guilty plea or plea of nolo contendere be preceded
24 by an appropriate warning of the special consequences for such a
25 defendant’s parental rights which may result in such a plea. It is
26 also the intent of the Legislature that the court in such cases shall
27 provide the defendant a reasonable amount of time to
28 appropriately attend to the needs of his or her minor children for
29 safe and appropriate care prior to accepting a guilty plea or plea of
30 nolo contendere.

31 SEC. 4. Section 2057 is added to the Penal Code, to read:

32 2057. (a) The Department of Corrections shall, using
33 existing resources, identify and change policies that unnecessarily
34 hinder family contact and parent-child bonding.

35 (b) The department shall, using existing resources, investigate
36 and implement programs and activities that encourage productive
37 relationships between families and inmates.

38 (c) The department shall, using existing resources, provide
39 inmates with minor children information on the programs to
40 strengthen the family, including, but not limited to, parent



1 education classes available at their assigned institution, and the
2 process for participation in those programs.

3 SEC. 5. Section 2057.5 is added to the Penal Code, to read:

4 2057.5. The Department of Corrections shall provide
5 resources and information for families of the incarcerated,
6 including, specifically, children of incarcerated parents, on the
7 department’s Web site. These resources and information may
8 include:

9 (a) Information about how families may contact prisoners,
10 including each institution’s policies on contact by mail, contact by,
11 and visitation.

12 (b) Regularly updated information about the cancellation or
13 modification of inmate visiting hours at each institution.

14 (c) Information for families on what incarceration is like and
15 how they can provide support for the incarcerated family member.

16 (d) Information on how families can get involved to work for
17 better outcomes for their incarcerated family member.

18 (e) Information and resources to support families of the
19 incarcerated, including specific information on support for
20 children of incarcerated parents.

21 (f) Resources for caregivers on how to explain prisons to
22 children of incarcerated parents.

23 (g) Information about the programs and activities available at
24 each institution that encourage productive relationships between
25 families and inmates.

26 SEC. 6. Section 2058 is added to the Penal Code, to read:

27 2058. (a) While ensuring the safety of correctional officers,
28 visitors, and inmates, the Department of Corrections shall,
29 whenever possible, provide a child-friendly, positive environment
30 for visits with prisoners and their minor children.

31 (b) In addition to existing security training on visitation
32 policies and procedures, correctional officers with responsibilities
33 for family visiting areas shall be provided with information and
34 training in order to develop family-oriented community skills and
35 understand and respond appropriately to the needs of minor
36 children visiting their prisoner parent. This information and
37 training shall include information on age-appropriate interactions
38 and expectation of behavior by minor children. This additional
39 information shall be provided within existing resources.

40 SEC. 7. Section 2058.5 is added to the Penal Code, to read:



1 2058.5. In determining which correctional institution an
2 inmate will be confined in, the Department of Corrections shall
3 consider, among other factors, the proximity of the correctional
4 institution of confinement to the prisoner's family.

5 SEC. 8. Section 2081.5 of the Penal Code is amended to read:

6 2081.5. The Director of Corrections shall keep complete case
7 records of all prisoners under custody of the department, which
8 records shall be made available to the Board of Prison Terms at
9 ~~such~~ those times and in ~~such~~ the form as the board may prescribe.

10 Case records shall include all information received by the
11 Director of Corrections from the courts, probation officers,
12 sheriffs, police departments, district attorneys, State Department
13 of Justice, Federal Bureau of Investigation, and other interested
14 agencies and persons. Case records shall also include a record of
15 diagnostic findings, considerations, actions and dispositions with
16 respect to classification, treatment, employment, training, and
17 discipline as related to the institutional correctional program
18 followed for each prisoner. *The case records shall also include*
19 *information about classes or services ordered by and court in order*
20 *that the prisoner may sustain a parental relationship.*

21 The director shall appoint, after consultation with the Board of
22 Prison Terms, ~~such~~ those employees of the various institutions
23 under his control as may be necessary for the proper performance
24 of the duties of the Board of Prison Terms, and when requested
25 shall also have in attendance at hearings of the Board of Prison
26 Terms, psychiatric or medical personnel. The director shall
27 furnish, after consultation with the Board of Prison Terms and the
28 Director of General Services, ~~such~~ hearing rooms and other
29 physical facilities at ~~such~~ the institutions as may be necessary for
30 the proper performance of the duties of the Board of Prison Terms.

31 SEC. 9. Section 13012 of the Penal Code is amended to read:

32 13012. The annual report of the department provided for in
33 Section 13010 shall contain statistics showing all of the following:

34 (a) The amount and the types of offenses known to the public
35 authorities.

36 (b) The personal and social characteristics of criminals and
37 delinquents.

38 (c) The administrative actions taken by law enforcement,
39 judicial, penal, and correctional agencies or institutions, including



1 those in the juvenile justice system, in dealing with criminals or
2 delinquents.

3 (d) The administrative actions taken by law enforcement,
4 prosecutorial, judicial, penal, and correctional agencies, including
5 those in the juvenile justice system, in dealing with minors who are
6 the subject of a petition or hearing in the juvenile court to transfer
7 their case to the jurisdiction of an adult criminal court or whose
8 cases are directly filed or otherwise initiated in an adult criminal
9 court.

10 (e) The number of citizens' complaints received by law
11 enforcement agencies under Section 832.5. These statistics shall
12 indicate the total number of these complaints, the number alleging
13 criminal conduct of either a felony or misdemeanor, and the
14 number sustained in each category. The report shall not contain a
15 reference to any individual agency but shall be by gross numbers
16 only.

17 (f) *The administrative actions taken and resources made*
18 *available by the department for prisoners to sustain parental*
19 *relationships. This report shall include, but not be limited to, the*
20 *number of prisoners ordered by any court to take classes or receive*
21 *services in order to sustain a parental relationship and the number*
22 *of prisoners who receive those required classes and services. The*
23 *report shall also include information on any administrative*
24 *actions that affect family visitation.*

25 (g) It shall be the duty of the department to give adequate
26 interpretation of the statistics and so to present the information that
27 it may be of value in guiding the policies of the Legislature and of
28 those in charge of the apprehension, prosecution, and treatment of
29 the criminals and delinquents, or concerned with the prevention of
30 crime and delinquency. The report shall also include statistics
31 which are comparable with national uniform criminal statistics
32 published by federal bureaus or departments heretofore
33 mentioned.

34 SEC. 10. On or before January 1, 2006, the Department of
35 Corrections shall report to the Legislature on the implementation
36 of this act.

