

AMENDED IN SENATE APRIL 26, 2004

**SENATE BILL**

**No. 1287**

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**Introduced by Senator Kuehl**  
**(Coauthor: Senator Romero)**

February 17, 2004

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1287, as amended, 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.

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

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

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

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

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

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

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

33 “If you are a custodial parent, you are hereby advised that  
34 conviction of the offense for which you have been charged may  
35 have consequences for your parental rights.”

36 (b) Upon request, the court shall allow the defendant additional  
37 time to consider the appropriateness of the plea in light of the  
38 advisement as described in this section. If, after January 1, 2005,



1 the court fails to advise the defendant as required by this section  
2 and the defendant shows that conviction of the offense to which the  
3 defendant pleaded guilty or nolo contendere may have the  
4 consequence for the defendant of termination of their parental  
5 rights, the court, on defendant's motion, shall vacate the judgment  
6 and permit the defendant to withdraw the pleas of guilty or nolo  
7 contendere, and enter a plea of not guilty. Absent a record that the  
8 court provided the advisement required by this section, the  
9 defendant shall be presumed not to have received the required  
10 advisement.

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

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

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

36 2057. (a) The Department of Corrections shall, using  
37 existing resources, identify and change policies that unnecessarily  
38 hinder family contact and parent-child bonding.



1 (b) The department shall, using existing resources, investigate  
2 and implement programs and activities that encourage productive  
3 relationships between families and inmates.

4 (c) The department shall, using existing resources, provide  
5 inmates with minor children information on the programs to  
6 strengthen the family, including, but not limited to, parent  
7 education classes available at their assigned institution, and the  
8 process for participation in those programs.

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

10 2057.5. The Department of Corrections shall provide  
11 resources and information for families of the incarcerated,  
12 including, specifically, children of incarcerated parents, on the  
13 department’s Web site. These resources and information may  
14 include:

15 (a) Information about how families may contact prisoners,  
16 including each institution’s policies on contact by mail, contact by  
17 *telephone*, and visitation.

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

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

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

24 (e) Information and resources to support families of the  
25 incarcerated, including specific information on support for  
26 children of incarcerated parents.

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

29 (g) Information about the programs and activities available at  
30 each institution that encourage productive relationships between  
31 families and inmates.

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

33 2058. (a) While ensuring the safety of correctional officers,  
34 visitors, and inmates, the Department of Corrections shall,  
35 whenever possible, provide a child-friendly, positive environment  
36 for visits with prisoners and their minor children.

37 (b) In addition to existing security training on visitation  
38 policies and procedures, correctional officers with responsibilities  
39 for family visiting areas shall be provided with information and  
40 training in order to develop family-oriented community skills and



1 understand and respond appropriately to the needs of minor  
2 children visiting their prisoner parent. This information and  
3 training shall include information on age-appropriate interactions  
4 and expectation of behavior by minor children. This additional  
5 information shall be provided within existing resources.

6 ~~SEC. 7.—Section 2058.5 is added to the Penal Code, to read:~~  
7 ~~2058.5.—In determining which correctional institution an~~  
8 ~~inmate will be confined in, the Department of Corrections shall~~  
9 ~~consider, among other factors, the proximity of the correctional~~  
10 ~~institution of confinement to the prisoner’s family.~~

11 ~~SEC. 8.~~  
12 *SEC. 7.* Section 2081.5 of the Penal Code is amended to read:  
13 2081.5. The Director of Corrections shall keep complete case  
14 records of all prisoners under custody of the department, which  
15 records shall be made available to the Board of Prison Terms at  
16 those times and in the form as the board may prescribe.

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

28 The director shall appoint, after consultation with the Board of  
29 Prison Terms, those employees of the various institutions under his  
30 control as may be necessary for the proper performance of the  
31 duties of the Board of Prison Terms, and when requested shall also  
32 have in attendance at hearings of the Board of Prison Terms,  
33 psychiatric or medical personnel. The director shall furnish, after  
34 consultation with the Board of Prison Terms and the Director of  
35 General Services, hearing rooms and other physical facilities at the  
36 institutions as may be necessary for the proper performance of the  
37 duties of the Board of Prison Terms.

38 ~~SEC. 9.—Section 13012 of the Penal Code is amended to read:~~  
39 ~~13012.—The annual report of the department provided for in~~  
40 ~~Section 13010 shall contain statistics showing all of the following:~~



1 ~~(a) The amount and the types of offenses known to the public~~  
2 ~~authorities.~~

3 ~~(b) The personal and social characteristics of criminals and~~  
4 ~~delinquents.~~

5 ~~(c) The administrative actions taken by law enforcement,~~  
6 ~~judicial, penal, and correctional agencies or institutions, including~~  
7 ~~those in the juvenile justice system, in dealing with criminals or~~  
8 ~~delinquents.~~

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

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

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

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

40 ~~SEC. 10.~~



1 SEC. 8. On or before January 1, 2006, the Department of  
2 Corrections shall report to the Legislature on the implementation  
3 of this act. *The report shall include the administrative actions*  
4 *taken and resources made available by the department for*  
5 *prisoners to sustain parental relationships. The report shall*  
6 *include, but not be limited to, the number of prisoners ordered by*  
7 *any court to take classes or receive services in order to sustain a*  
8 *parental relationship and the number of prisoners who receive*  
9 *those required classes and services. The report shall also include*  
10 *information on any administrative actions that effect family*  
11 *visitation.*

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