

AMENDED IN SENATE MAY 20, 2004

AMENDED IN SENATE APRIL 26, 2004

SENATE BILL

No. 1287

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

February 17, 2004

An act to amend Section 2081.5 of, and to add Sections 1016.7, 2057, 2057.5, 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)~~

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

12 ~~(2)~~

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

18 ~~(3)~~

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

28 ~~(4)~~

29 (d) It is the intent of the Legislature in enacting this act to
30 reduce recidivism and intergenerational patterns of incarceration.

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

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



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

4 (b) Upon request, the court shall allow the defendant additional
5 time to consider the appropriateness of the plea in light of the
6 advisement as described in this section. If, after January 1, 2005,
7 the court fails to advise the defendant as required by this section
8 and the defendant shows that conviction of the offense to which the
9 defendant pleaded guilty or nolo contendere may have the
10 consequence for the defendant of termination of their parental
11 rights, the court, on defendant’s motion, shall vacate the judgment
12 and permit the defendant to withdraw the pleas of guilty or nolo
13 contendere, and enter a plea of not guilty. Absent a record that the
14 court provided the advisement required by this section, the
15 defendant shall be presumed not to have received the required
16 advisement.

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

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



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

2 2057. (a) ~~The Department of Corrections shall, using~~
3 ~~existing resources, identify and change policies that unnecessarily~~
4 ~~hinder family contact and parent-child bonding.~~

5 (b) ~~The department shall, using existing resources, investigate~~
6 ~~and implement programs and activities that encourage productive~~
7 ~~relationships between families and inmates.~~

8 (c) ~~The department shall, using existing resources, provide~~
9 ~~inmates with minor children information on the programs to~~
10 ~~strengthen the family, including, but not limited to, parent~~
11 ~~education classes available at their assigned institution, and the~~
12 ~~process for participation in those programs. maintain existing~~
13 ~~policies and procedures that foster family contact and parent-child~~
14 ~~bonding.~~

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

16 2057.5. The Department of Corrections shall provide
17 resources and information for families of the incarcerated,
18 including, specifically, children of incarcerated parents, on the
19 department’s Web site. These resources and information may
20 include:

21 (a) Information about how families may contact prisoners,
22 including each institution’s policies on contact by mail, contact by
23 telephone, and visitation.

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

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

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

30 (e) Information and resources to support families of the
31 incarcerated, including specific information on support for
32 children of incarcerated parents.

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

35 (g) Information about the programs and activities available at
36 each institution that encourage productive relationships between
37 families and inmates.

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

39 2058. (a) While ensuring the safety of correctional officers,
40 visitors, and inmates, the Department of Corrections shall,



1 whenever possible, provide a child-friendly, positive environment
2 for visits with prisoners and their minor children.

3 (b) In addition to existing security training on visitation
4 policies and procedures, correctional officers with responsibilities
5 for family visiting areas shall be provided with information and
6 training in order to develop family-oriented community skills and
7 understand and respond appropriately to the needs of minor
8 children visiting their prisoner parent. This information and
9 training shall include information on age-appropriate interactions
10 and expectation of behavior by minor children. This additional
11 information shall be provided within existing resources.

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~~

26 *Commencing January 1, 2005, new* case records shall also
27 include information about classes or services ordered by any court
28 in order that the prisoner may sustain a parental relationship.

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

39 ~~SEC. 8. On or before January 1, 2006, the Department of~~
40 ~~Corrections shall report to the Legislature on the implementation~~



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

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