

AMENDED IN ASSEMBLY AUGUST 4, 2004

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~~ 858.2, 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~~ *at an arraignment where the defendant's charges could result in incarceration for a period of 6 months or more*, the court to 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.

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. The Legislature hereby finds and declares the
4 following:

5 (a) 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 (b) 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 (c) 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 (d) 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 ~~(e) 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 from that plea. It is~~
30 ~~also the intent of the Legislature that the court in those 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. 3. Section 858.2 is added to the Penal Code, to read:*

36 *858.2. (a) The Legislature finds and declares that in many*
37 *instances involving a defendant who is the custodial parent of a*
38 *minor child or minor children, a plea of guilty or nolo contendere*
39 *is entered without an appropriate warning of the special*
40 *consequences for the defendant's parental rights that may result*



1 from the plea. Therefore, it is the intent of the Legislature, in
2 enacting this section, to promote fairness to accused individuals
3 and their minor children by requiring in cases involving custodial
4 parents that an acceptance of a guilty plea or plea of nolo
5 contendere be preceded by an appropriate warning of the special
6 consequences for a defendant's parental rights that may result
7 from that plea. It is also the intent of the Legislature that the court
8 in those cases provide the defendant a reasonable amount of time
9 to appropriately attend to the needs of his or her minor children for
10 safe and appropriate care prior to accepting a guilty plea or plea
11 of nolo contendere.

12 (b) At arraignment of a defendant who has been charged with
13 a misdemeanor or felony that could result in incarceration for a
14 period of six months or more, the court shall advise the defendant
15 on the record that if the defendant is a custodial parent, conviction
16 of the offense for of which he or she has been charged may have
17 consequences for his or her parental rights.

18 (c) A motion to withdraw a plea based on the court's failure to
19 advise the defendant pursuant to this section shall be entered in
20 accordance with Section 1018.

21 (c) Failure by a court to provide the advisement required by this
22 section prior to January 1, 2005, shall not require the vacation of
23 judgment and withdrawal of the plea or constitute grounds for
24 finding a prior conviction invalid.

25 (d) Nothing in this section precludes the defendant, based on
26 the failure of the court to advise pursuant to this section, from
27 seeking relief from the conviction by writ, appeal, or any other
28 avenue available through existing law.

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

30 2057. The Department of Corrections shall maintain existing
31 policies and procedures that foster family contact and parent-child
32 bonding.

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

34 2057.5. The Department of Corrections shall provide
35 resources and information for families of the incarcerated,
36 including, specifically, children of incarcerated parents, on the
37 department's Web site. These resources and information may
38 include:



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

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

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

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

10 (e) Information and resources to support families of the
11 incarcerated, including specific information on support for
12 children of incarcerated parents.

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

15 (g) Information about the programs and activities available at
16 each institution that encourage productive relationships between
17 families and inmates.

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

19 2058. (a) While ensuring the safety of correctional officers,
20 visitors, and inmates, the Department of Corrections shall,
21 whenever possible, provide a child-friendly, positive environment
22 for visits with prisoners and their minor children.

23 (b) In addition to existing security training on visitation
24 policies and procedures, correctional officers with responsibilities
25 for family visiting areas shall be provided with information and
26 training in order to develop family-oriented community skills and
27 understand and respond appropriately to the needs of minor
28 children visiting their prisoner parent. This information and
29 training shall include information on age-appropriate interactions
30 and expectation of behavior by minor children. This additional
31 information shall be provided within existing resources.

32 SEC. 7. Section 2081.5 of the Penal Code is amended to read:

33 2081.5. The Director of Corrections shall keep complete case
34 records of all prisoners under custody of the department, which
35 records shall be made available to the Board of Prison Terms at
36 those times and in the form as the board may prescribe.

37 Case records shall include all information received by the
38 Director of Corrections from the courts, probation officers,
39 sheriffs, police departments, district attorneys, State Department
40 of Justice, Federal Bureau of Investigation, and other interested



1 agencies and persons. Case records shall also include a record of
2 diagnostic findings, considerations, actions and dispositions with
3 respect to classification, treatment, employment, training, and
4 discipline as related to the institutional correctional program
5 followed for each prisoner.

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

9 The director shall appoint, after consultation with the Board of
10 Prison Terms, those employees of the various institutions under his
11 control as may be necessary for the proper performance of the
12 duties of the Board of Prison Terms, and when requested shall also
13 have in attendance at hearings of the Board of Prison Terms,
14 psychiatric or medical personnel. The director shall furnish, after
15 consultation with the Board of Prison Terms and the Director of
16 General Services, hearing rooms and other physical facilities at the
17 institutions as may be necessary for the proper performance of the
18 duties of the Board of Prison Terms.

