

ASSEMBLY BILL

No. 2315

Introduced by Assembly Member Mazzoni

February 24, 2000

An act to add Section 1203.15 to the Penal Code, and to add Chapter 6 (commencing with Section 16575) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to children of incarcerated parents.

LEGISLATIVE COUNSEL'S DIGEST

AB 2315, as introduced, Mazzoni. Children of incarcerated parents.

Existing law provides various services for the care of children, including foster care placement, child welfare services, services for children who are exposed to alcohol or drugs or who are HIV positive.

This bill would require the Attorney General and the Secretary of the Health and Human Services Agency to convene a study group within 2 months of enactment of this act to include representatives of state and local law enforcement, child welfare and mental health agencies, and the courts for the purpose of developing a model protocol that addresses how best to ensure the temporary and long-term safety, security, and care of children at the time of their parent's arrest. The bill would require the arresting officer to inquire at the time of an arrest whether the arrested individual has dependent children and where they are located. This information would be required to be shared with child protective service agencies and the courts. By increasing

the duties of local officials, this bill would impose a state-mandated local program.

The bill would also require a court at the time of entry of a plea of guilty or nolo contendere or upon the rendering of a verdict of guilty of any person over 18 years of age if the defendant has children. If the court determines that the defendant has children, the court would be required to refer the case to the probation department to determine what arrangements have been made for those children. The probation department would also be required to make recommendations to the court concerning the children. The court would be authorized to refer the matter of the children's care and custody to the family or probate court, or to the child protective services agency for assessment, review, and appropriate disposition. By increasing the duties of local officials, this bill would impose a state-mandated local program.

Additionally, the bill would require the Secretary of the Health and Human Services Agency and the Secretary of the Adult and Youth Correctional Agency to convene the Advisory Committee on the Children of Incarcerated Parents. The committee would be comprised of representatives from the Department of Education, the Judicial Council, visitor center providers, researchers, and local law enforcement and child welfare agencies. The committee would be required to develop recommendations on how to provide and target state and local services to children of incarcerated parents and caregivers. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



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

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

1 SECTION 1. Section 1203.15 is added to the Penal
2 Code, to read:

3 1203.15. (a) The court shall inquire at the time of
4 entry of a plea of guilty or nolo contendere or at the time
5 a verdict of guilty is rendered of any defendant over 18
6 years of age if the defendant has one or more children. If
7 the court determines that the defendant has children, the
8 court shall refer the case to the probation department to
9 determine what arrangements have been made for the
10 care of the children if the parent is incarcerated. The
11 probation report filed with the court shall specify the
12 arrangements that have been made for the minor
13 children and, if appropriate, make recommendations to
14 the court concerning the children. The court may
15 directly refer the matter of the children’s care and
16 custody to the family or probate court for appropriate
17 orders, or to the County Child Protective Services
18 Agency for assessment, review, and appropriate
19 disposition.

20 (b) The Judicial Council shall adopt rules and forms to
21 implement this section.

22 SEC. 2. Chapter 6 (commencing with Section 16575)
23 is added to Part 4 of Division 9 of the Welfare and
24 Institutions Code, to read:

25

26 CHAPTER 6. CHILDREN OF INCARCERATED PARENTS

27

28 16575. This article shall be known and may be cited as
29 the Children of Incarcerated Parents Act of 2000.

30 16576. The Legislature declares as follows:

31 (a) An estimated 80 percent of the 11,600 women in
32 state youth and adult correctional facilities, and the
33 approximately 10,000 women in county jails, are parents.
34 Most of these women are single parents who have an
35 average of two children. Approximately three-fourths of



1 these women had custody of their children at the time of
2 their arrest.

3 (b) About one in five children are present at the time
4 of their parent’s arrest, and many of these children are
5 between the ages of three and six years old.

6 (c) The children of incarcerated parents may suffer
7 from separation anxiety, fear, and guilt, and may act out
8 by withdrawing or by aggressive behavior. Repeated
9 separations due to their parent’s recidivism may
10 aggravate these problems.

11 (d) The children of incarcerated parents are at risk for
12 poor outcomes in school, mental health and social
13 problems, and juvenile delinquency. There is increasing
14 evidence of intergenerational incarceration.

15 (e) Most jurisdictions do not request or collect family
16 information from arrested persons, nor do they have
17 protocols in place to define official roles and
18 responsibilities for addressing the needs of the children of
19 prisoners at the time of arrest or at sentencing.

20 16577. (a) The Attorney General and the Secretary
21 of the Health and Human Services Agency shall jointly
22 convene a study group within two months of enactment
23 of this chapter, to include representatives of state and
24 local law enforcement, child welfare and mental health
25 agencies, and the courts. The study group shall develop
26 a model protocol within six months of its first meeting that
27 addresses how best to ensure the temporary and
28 long-term safety, security, and care of children at the time
29 of their parent’s arrest. This would include having the
30 arresting officer inquire at the time of arrest whether the
31 arrestees have dependent children and where those
32 children are located. Information about the children and
33 their whereabouts shall be shared with child protective
34 service agencies and the courts as soon as possible, in a
35 manner specified by the model protocol.

36 (b) The study group shall disseminate the model
37 protocol to county boards of supervisors and city councils,
38 and to local law enforcement, judicial, child welfare, and
39 mental health agencies.



1 (c) Upon enactment of this chapter, counties shall
2 ensure that they have in place standard operating
3 procedures for identifying, locating, and providing
4 appropriate arrangements to ensure the safety, security,
5 and well-being of the minor child of an arrestee. Upon
6 receiving the model protocol developed by the state
7 study group, counties shall again review the standard
8 operating procedures and incorporate any elements of
9 the model protocol that may be omitted from those
10 standard operating procedures.

11 16578. (a) The Secretary of the Health and Human
12 Services Agency and the Secretary of the Adult and Youth
13 Correctional Agency shall jointly convene the Advisory
14 Committee on the Children of Incarcerated Parents. The
15 advisory committee shall include agency officials and
16 representatives from the Department of Education, the
17 Judicial Council, visitor center providers, researchers,
18 and local law enforcement and child welfare agencies, as
19 suggested by the secretaries.

20 (b) The advisory committee shall develop
21 recommendations within six months on how to best
22 provide and target state and local services to the children
23 of incarcerated parents and caregivers. The committee
24 shall suggest how to develop a database that will track the
25 needs and outcomes of these children while ensuring
26 confidentiality of the data. The committee shall also
27 consider how to facilitate visitation with the incarcerated
28 parent when in the best interest of the child.

29 SEC. 3. Notwithstanding Section 17610 of the
30 Government Code, if the Commission on State Mandates
31 determines that this act contains costs mandated by the
32 state, reimbursement to local agencies and school
33 districts for those costs shall be made pursuant to Part 7
34 (commencing with Section 17500) of Division 4 of Title
35 2 of the Government Code. If the statewide cost of the
36 claim for reimbursement does not exceed one million
37 dollars (\$1,000,000), reimbursement shall be made from
38 the State Mandates Claims Fund.

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