

Beyond the Bench XXI -- San Francisco, December 15, 2011

**THE IMPACT OF RECENT
CRIMINAL JUSTICE LEGISLATION
(REALIGNMENT) ON THE COURTS,
MEDIATION, AND PARENT-CHILD CONTACT**

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**IMPACT OF RECENT
CRIMINAL JUSTICE LEGISLATION
(REALIGNMENT)**

Mary Butler
*Chief Probation Officer
Napa County*

PROBATION AND REALIGNMENT

ROLES OF PROBATION:

- ✦ ARM OF THE COURT
- ✦ SUPERVISE THOSE ON FORMAL PROBATION
- ✦ COMMUNITY SAFETY
- ✦ VICTIM RESTITUTION
- ✦ VICTIM SAFETY

PROBATION AND REALIGNMENT

HOW DOES SOMEONE GET ON PROBATION:

- ✦ FELONY VS MISDEMEANOR
- ✦ PRISON VS JAIL
- ✦ PROBATION VS PAROLE
- ✦ SENTENCING OPTIONS UNDER REALIGNMENT

PROBATION AND REALIGNMENT

WHAT HAPPENS WHILE ON PROBATION:

- ✦ RISK ASSESSMENT
- ✦ NEEDS ASSESSMENT
- ✦ CONDITIONS OF PROBATION
- ✦ PROGRAM REFERRALS
- ✦ MANDATORY PROGRAMS
- ✦ COURT INVOLVEMENT

PROBATION AND REALIGNMENT

Realignment in a nutshell:

Offenders released from prison on expected release date return to local community for supervision by Probation Department

Offenders who are eligible for sentencing under PC 1170(h) and considered non serious, non violent and non sex crimes remain local rather than going to prison.

PROBATION AND REALIGNMENT

Offenders that stay local can either serve straight time in local jail based on charge or get a split sentence of confinement time and supervision time.

Sentencing rules have not changed nor have times of sentences. Only thing that has changed is where sentence is served.

**Impact of Recent
Criminal Justice Legislation
(Realignment)**

Carol Strickman
Staff Attorney
Legal Services for Prisoners with Children

Alternative Custody Program

- ✦ SB 1266 (2010) sponsored by Senator Carol Liu
- ✦ Penal Code section 1170.05
- ✦ A true “early release” program

Eligibility

- ✘ Currently in prison with less than 24 months on sentence
- ✘ Female or pregnant female
- ✘ Primary caregiver of dependent child age 17 or under
(CDCR is starting with female prisoners)

Where Will the Participant Live?

- ✘ Residential home
- ✘ Residential drug or treatment program
- ✘ Transitional care facility

Program Elements

- ✘ Voluntary
- ✘ Individualized Treatment and Rehabilitation Plan (ITRP)
- ✘ "Evidence based practices"
- ✘ Employment, counseling, classes, other services

Program Elements, Cont'd

- ✘ Curfew and electronic monitoring
- ✘ Warrantless searches
- ✘ Local law enforcement notification
- ✘ Parole officer is the case manager
- ✘ Successful completion of the program results in "release" to parole
- ✘ Non-compliance can result in return to prison

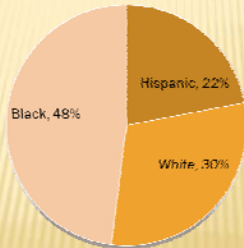
Impact on Family Courts

- ✘ CDCR estimates 500 women will be released from 10/1/11 through 6/30/12
- ✘ They may petition the court for custody or visitation
- ✘ Would have been released fairly soon anyway
- ✘ These prisoners are the "cream of the crop" from CDCR's perspective
- ✘ These parents may have more restrictions on them than other parents released from prison

Mass Incarceration

Disproportionality

Ethnicity of Minor Children with Parents in State and Federal Prison, 2007



Source: Bureau of Justice Statistics, 2008

Emotional Impact on Kids

- ✘ Confusion
- ✘ Fear
- ✘ Insecurity
- ✘ Grief
- ✘ Anger
- ✘ Depression
- ✘ Sense of powerlessness



A Question:

Do you believe it is in the best interests of the child to have contact with an incarcerated or recently released parent?

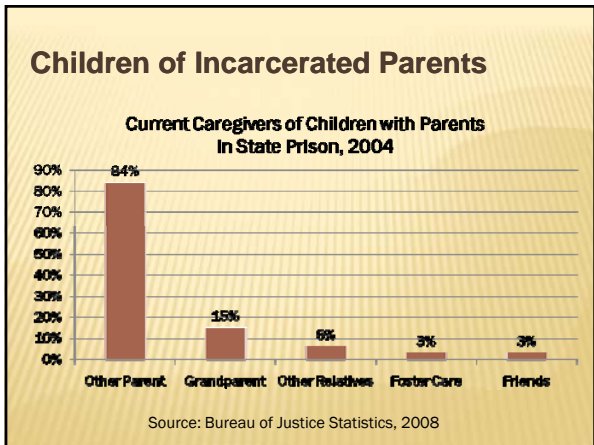
Keeping Family Ties Alive

- ✘ For the child's benefit
- ✘ For the parent's benefit
- ✘ For society's benefit

Bill of Rights

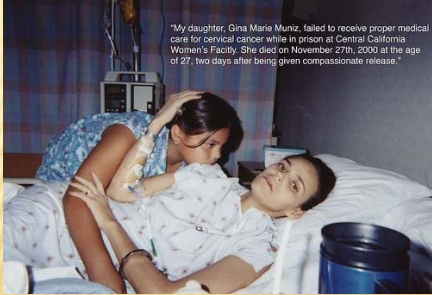
The right to a continuing relationship

The right to an educated and supported caregiver



The right to visits, phone calls and other contact

Prison Hospital Visit



The parent's right to be informed and included

The child's right to be heard

The child's right to emotional support

Resources

- ✘ "All Alone in the World" by Nell Bernstein
- ✘ Manuals on our website: www.prisonerswithchildren.org
 - + *Incarcerated Parents Manual*
 - + *Divorce Issue for People in California Prisons & Jails*
 - + *Transportation to Court*
 - + *Manual for Grandparent-Relative Caregivers*
- ✘ Project WHAT!
- ✘ Family law facilitators
- ✘ Local law libraries

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*Administrator of Probate & Family Court
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CHILDREN’S BILL OF RIGHTS

- 1. I have the right to be kept safe and informed at the time of my parent’s arrest.
- 2. I have the right to be heard when decisions are made about me.
- 3. I have the right to be considered when decisions are made about my parent.

“Bill of Rights” at <http://www.sfcipp.org/>

SAFETY AND CHILDREN’S BEST INTERESTS

Wait until parent is released?

Conduct mediation and develop parenting plan addressing incarceration and/or reentry?

BILL OF RIGHTS CONT.

- 7. I have the right not to be judged, blamed or labeled because my parent is incarcerated.
- 8. I have the right to a lifelong relationship with my parent.

PRISON MEDIATIONS

To arrange a **confidential call** for the purpose of court ordered mediation:

- ✦ Mediator, Administrator, or Director completes a CDCR 106A form:
<http://www.fdap.org/downloads/forms/CDCR-ConfidentialCallRequest-106a.pdf>
- ✦ Note on FCS/Superior Court letterhead requesting a confidential call for the purpose of mediation;
- ✦ Attach a copy of court order/minute order for mediation;
- ✦ Fax to CDCR facility's Litigation Coordinator.

JAIL MEDIATIONS

- ✦ Nothing in Family Code to inhibit mediation with incarcerated parents
- ✦ Presiding Judge, CEO, FCS Manager and Jail Operations support?
- ✦ Examples – Del Norte, Stanislaus, Contra Costa

RESOURCES

- ✦ Family to Family California Resource Page:
<http://www.f2f.ca.gov/res-YouthParents.htm>
- ✦ Friends Outside
- ✦ CA Victims of Crime Program
<http://www.vcgcb.ca.gov/victims/>
- ✦ National Resource Center on Children and Families of the Incarcerated
- ✦ National Reentry Resource Center

**PARENTING PLAN
PROBATION & PAROLE**

- ✦ Local Adult Probation Department
- ✦ Local Parole Office
- ✦ Local Jail Policies
- ✦ CDRC website: Parolee Conditions and Parole Requirements

PARENTING PLAN DEVELOPMENT

- ✦ Parent – Child relationship prior to arrest?
- ✦ Children's and other parent's experience of crime, arrest, incarceration?
- ✦ Violation/Re-incarceration plan?
- ✦ Natural resources – relatives, kin, church

PARENTING PLAN CONSIDERATIONS

- ✦ If contact during incarceration – What is jail policy? Who is responsible for taking child? Preparing child and visit facilitator (trial run without child).
- ✦ Phone contact – Monitored? Who is responsible?
- ✦ Mail – Managed and monitored by child's therapist? Custodial parent send photos and/or updates to incarcerated parent?

SERVICES DURING INCARCERATION

- ✦ CA Prisons have numerous parenting, domestic violence and substance abuse courses/programs
- ✦ Research your county jail services/classes

THANK YOU!

Q & A

- ✦ Any Questions?
