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Chapter 635: Allowing Arrested Parents to Arrange for Childcare

Laura Friedman

Code Section Affected

Penal Code § 851.5 (amended).

AB 760 (Nava); 2005 STAT. Ch. 635.

I. INTRODUCTION

“Charles” just wanted a person in his life who would show him some affection, talk to him, or take him places.¹ Instead, he learned how to steal cars and burglarize homes, participated in high-speed chases, and committed assault and battery.² He did not mind living in juvenile hall because his mother was in prison.³ Amanda’s eleven-year-old sister was so upset by the imprisonment of their mother that she tried to kill herself and was institutionalized.⁴ “Charles” and Amanda’s sister are merely two examples of what happens to children following the arrest and imprisonment of their sole custodial parent.⁵ To the extent that the incarceration of the parent effectively becomes a punishment for the child as well, these children often feel as though they, too, have committed some crime.⁶

Children who have parents in prison suffer a variety of negative effects. As a result of the separation, children may experience “denial, anger, anxiety, inability to concentrate, depression, sadness, grief, shame, and fear.”⁷ These feelings manifest in poor performance in school, truancy, delinquency, insomnia, and drug or alcohol abuse.⁸ A number of children develop a tendency toward aggressive or violent behavior, which can continue well into adulthood.⁹ These problems develop more significantly when the arrested parent was a single mother, as this situation often results in children being separated from siblings, shifted between homes, transferred between schools, and, as a result, losing friends.¹⁰ Chapter 635 attempts to circumvent some of the problems that befall a

1. CHARLENE WEAR SIMMONS, CAL. RES. BUREAU, CAL. LAW AND THE CHILDREN OF PRISONERS 7 (Feb. 2003), <http://www.library.ca.gov/crb/03/03/03-003.pdf> (on file with the *McGeorge Law Review*).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.* at 6.

8. *Id.* at 7.

9. *See id.* at 6-7 (discussing a study which found that of seventy children of mothers awaiting trial in Boston, fifty-two percent suffered from some combination of hyperactivity, depression, and anxiety, one-third were required to repeat a grade in school, and an additional one-third had been placed in special education classes due to emotional problems).

10. *See id.* at 8 (stating that adolescent girls are the most likely to experience emotional problems as a result of being separated from their mothers).

child after the arrest of his or her sole custodial parent by ensuring that the child receives care.¹¹

II. LEGAL BACKGROUND

A. *Prior California Law*

Existing California law states that an arrested person has a right to make three telephone calls upon being booked or within three hours of booking, unless making such calls is somehow physically impossible.¹² Law enforcement officials must allow these calls at no expense to the arrested person, as long as the calls are made within the local calling area. If the arrested person would like to make a call outside of the local calling area, he or she may do so at his or her own expense.¹³ California law requires that a sign outlining these rights be posted at “any police facility or place where police detain an arrestee.”¹⁴ The sign must further indicate that, if necessary, a public defender will be provided at no charge, and it must display the name and telephone number of a local public defender.¹⁵

In 1997, nineteen percent of inmates in California reported that at least one of their parents had also been incarcerated.¹⁶ A study of arrested children between the ages of nine and twelve years in Sacramento County indicated that forty-five percent of them had a parent in jail or prison.¹⁷ The Bureau of Justice statistics reported that forty-seven percent of inmates housed in California state prisons have at least one parent or other relative that has been in jail or prison, and half of all of the juveniles in state custody have at least one incarcerated parent.¹⁸ Prior law established no guidelines for law enforcement to follow to determine whether an arrestee had children who would require supervision during the parent’s incarceration.¹⁹

11. See generally ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 760, at 3 (Mar. 29, 2005) (discussing the impact of a parent’s incarceration on a child and stressing the importance of ensuring that the children of an arrested parent are well-treated).

12. CAL. PENAL CODE § 851.5(a) (West 1985 & Supp. 2006) (explaining that these calls may be made to an attorney, a bail bondsman, a relative, or another person).

13. *Id.* § 851.5(b).

14. *Id.*

15. *Id.*

16. SIMMONS, *supra* note 1, at 7.

17. *Id.*

18. *Id.*

19. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 760, at 3 (Aug. 29, 2005).

B. Other States

Most states have laws permitting a person who has been arrested to make at least one telephone call to an attorney or another individual.²⁰ None of these statutes provide custodial parents with additional telephone calls made for the purpose of finding someone to care for their children during their incarceration.²¹

III. CHAPTER 635

Chapter 635 requires that police officers inquire during booking whether the arrestee has children who will be without supervision following the arrest.²² A custodial parent who is arrested may make up to two additional telephone calls to arrange for care for any dependent minor children while he or she is in custody.²³ The parent may make these calls at no personal expense, provided the calls are within the local calling area.²⁴ The calls will be permitted immediately upon the parent's request or as soon as is reasonably possible.²⁵ Chapter 635 makes it a misdemeanor²⁶ for any law enforcement officer to refuse to allow an arrested parent to make additional telephone calls to arrange for childcare.²⁷

IV. ANALYSIS

Chapter 635 has received widespread support from groups all over California.²⁸ Supporters of Chapter 635 believe that allowing additional telephone calls will help promote the safety and welfare of children whose parents are taken into custody.²⁹ A child whose sole parent or guardian is taken into custody is

20. See, e.g., ALASKA STAT. § 12.25.150(b) (2004) (providing that a prisoner is entitled, after arrest, to "telephone or otherwise communicate" with a relative or friend and an attorney); MASS. GEN. LAWS ANN. ch. 276, § 33A (West 2005) (allowing arrested persons telephone calls, at their own expense, to communicate with family or friends, contact a bail bondsman, or contact an attorney); NEV. REV. STAT. ANN. § 171.153 (West 2003) (providing that a person may place "a reasonable number of completed telephone calls" immediately after he is booked, or within three hours, which must include one completed call to an attorney and one completed call to a friend or bail bondsman).

21. See *supra* note 20.

22. CAL. PENAL CODE § 851.5(c) (amended by Chapter 635).

23. *Id.*

24. *Id.*

25. *Id.* § 851.5(d).

26. See *id.* § 17 (West 1999) (defining a misdemeanor as any crime that is neither an infraction nor punishable by death or imprisonment); see also *id.* § 17(b) (describing circumstances under which a felony may be classified as a misdemeanor); *id.* § 19.6 (explaining that a person who is guilty of an infraction will not be subject to imprisonment, has no right to a trial by jury, and is not entitled to a public defender unless held in jail awaiting trial).

27. *Id.* § 851.5(f) (amended by Chapter 635).

28. See, e.g., Letter from Aaron R. Maguire, Deputy Att'y Gen., to Assembly Member Pedro Nava, Cal. State Assembly (June 15, 2005) (on file with the *McGeorge Law Review*) (expressing support for AB 760).

29. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 760, at 4 (Mar. 29, 2005).

deeply affected by the loss.³⁰ Children with incarcerated parents are four to six times more likely to end up in the criminal justice system and are more likely to experience “anxiety, depression, attention disorders, truancy, and teen pregnancy.”³¹ Supporters of the law believe that Chapter 635 will alleviate the trauma that children suffer after witnessing not only the arrest of a parent, but also the resulting separation.³² Chapter 635 ensures that children are provided for following the arrest of the sole custodial parent.

With the implementation of Chapter 635, law enforcement officers will be less likely to inadvertently overlook the child in the process of arresting the adult.³³ Too often, children are present when a parent is arrested, and there are no clear procedures to instruct law enforcement officials how to handle the situation.³⁴ A related issue arises when the parent is arrested while the child is at school; upon returning home, the child has no way of knowing what happened to the caregiver.³⁵ Worried that their children may be placed into the state foster care system, some parents may withhold the fact that they have children.³⁶ Chapter 635 attempts to help avoid these problems by requiring law enforcement officers to determine during booking whether an arrestee is the sole custodial guardian of a minor child.³⁷

Chapter 635 encourages arrested parents to exercise their obligation to ensure that someone cares for their children.³⁸ A growing number of women are incarcerated each year.³⁹ More than fifty percent of these women had children in their care before entering the criminal justice system; most of them are the sole custodial parent.⁴⁰ Children in this situation suffer, thus Chapter 635’s supporters

30. See SIMMONS, *supra* note 1, at 6 (explaining that the following variables can affect a child’s adjustment to separation from his or her parent: the child’s age, the length of the separation, whether the child is familiar with the new caregiver, the strength of the child-parent bond, the frequency of previous incarcerations, the nature of the parent’s crime, and the child’s ability to receive support from his or her other relatives or the community).

31. Letter from Rhonda Gruska, Gov’t Rel. Dir., Girl Scout Councils of Cal., to Assembly Member Pedro Nava, Cal. State Assembly (Mar. 22, 2005) (on file with the *McGeorge Law Review*).

32. Letter from Wendy Rae Hill, Dir. of Gov’t Rel. and Pol. Aff., Nat’l Ass’n of Social Workers, to Senator Elaine Alquist, Cal. State Senate (June 13, 2005) (on file with the *McGeorge Law Review*).

33. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 760 at 4-5 (Mar. 29, 2005). See also SIMMONS, *supra* note 1, at 12 (explaining that children discovered at crime scenes are often left with a neighbor or relative, taken to juvenile hall, or taken to the police station with the parent).

34. SIMMONS, *supra* note 1, at 13.

35. *Id.* at 14.

36. Letter from Jim Lindburg, Friends Comm. on Legis. of Cal., to Assembly Member Mark Leno, Cal. State Assembly (Mar. 24, 2005) (on file with the *McGeorge Law Review*).

37. CAL. PENAL CODE § 851.5(c) (enacted by Chapter 635).

38. Letter from Glenn Boakes, Dir., Cal. Capitol Office, Drug Policy Alliance Network, to Assembly Member Mark Leno, Cal. State Assembly (Mar. 23, 2005) (on file with the *McGeorge Law Review*).

39. Letter from Elmy Bermejo, Chairperson, Cal. Comm’n on the Status of Women, to Senator Elaine Alquist, Cal. State Senate (June 15, 2005) (on file with the *McGeorge Law Review*).

40. *Id.*

contend it is a “humane and common sense approach” to promote child safety and preserve families.⁴¹

“Children should be protected and nurtured.”⁴² Many Chapter 635 supporters found it troubling that California had no statewide policies or procedures for law enforcement officials to ensure that children would receive care following the arrest of the sole custodial parent.⁴³ Supporters of Chapter 635 believe that the law will work to ensure that “the well-being of all children is safeguarded”⁴⁴ and that it goes a “long way toward ameliorating the potential harm of parental arrest on minor children.”⁴⁵

There is no registered opposition to Chapter 635.⁴⁶ The Assembly Committee on Public Safety raised some concern that the additional telephone calls may be used for reasons other than to arrange for childcare while the parent is incarcerated.⁴⁷ If inmates are permitted to make additional telephone calls, staffing or budgeting problems could arise, as someone will be required to monitor the calls to ensure that they are being used for the proper purpose.⁴⁸ Jails and prisons may also be required to hire additional officers to screen arrestees in an effort to determine whether they are custodial parents of minor children.⁴⁹ Additionally, the Legislature questioned whether offenders with children should be given preferential treatment over offenders without children where the same offense has been committed.⁵⁰ However, supporters of Chapter 635 believe that any inconveniences that may arise as the result of its implementation are outweighed by the benefits provided to children.⁵¹

41. Letter from Anne Fragasso, Legis. Comm. & Christina Riehl, President, L.A. Affiliate of the Nat’l Ass’n of Counsel for Children, to Assembly Member Pedro Nava, Cal. State Assembly (Mar. 28, 2005) (on file with the *McGeorge Law Review*).

42. Letter from Edward E. Dolejsi, Exec. Dir., Cal. Catholic Conf. of Bishops, to Senator Elaine Alquist, Cal. State Senate (June 10, 2005) (on file with the *McGeorge Law Review*).

43. See, e.g., Letter from Rhonda Gruska to Assembly Member Pedro Nava, *supra* note 31 (explaining the importance of addressing the needs of girls whose mothers are in prison).

44. Letter from Edward E. Dolejsi to Senator Elaine Alquist, *supra* note 42.

45. Letter from Barry Broad, Shane Gusman & Libby Sanchez, Cal. Pub. Defenders Ass’n, to Assembly Comm. on Public Safety, Cal. State Assembly (Mar. 24, 2005) (on file with the *McGeorge Law Review*).

46. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 760, at 5 (Mar. 29, 2005).

47. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF AB 760, at 3 (Apr. 6, 2005).

48. *Id.*

49. *Id.*

50. See *id.* at 2-3 (suggesting that lawsuits might arise out of the disparity in treatment between arrestees, based on whether or not an arrested individual has sole custody of minor children). The Committee indicated that people who believe that the law creates two classes of prisoners and gives special privileges to only one class could sue the state. *Id.* It is impossible to foresee the extent of these suits. *Id.*

51. Letter from Jim Lindburg to Assembly Member Mark Leno, *supra* note 36.

V. CONCLUSION

An estimated 800,000 children in California have at least one parent who is incarcerated.⁵² These children are likely to suffer from a number of emotional and psychological problems.⁵³ By allowing parents in custody to arrange for child care during their absence, Chapter 635 helps ensure that these children are not overlooked by the criminal justice system or abandoned after the imprisonment of their parents.

52. ASSEMBLY FLOOR, FLOOR ANALYSIS OF AB 760, at 4 (May 28, 2005).

53. SIMMONS, *supra* note 1, at 6-9.