
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 1157 **Hearing Date:** April 12, 2016
Author: Mitchell
Version: April 6, 2016
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Inmates: Visitation*

HISTORY

Source: Women's Foundation of California, Women's Policy Institute; CIVIC; Ella Baker Center; Friends Committee on Legislation of California; Legal Service for Prisoners with Children; A New Way of Life Re-Entry Program; Prison Law Office; Project WHAT!

Prior Legislation: None known

Support: All of Us or None; American Civil Liberties Union; American Friends Service Committee; Architects/Designers/Planners for Social Responsibility; Asian Americans Advancing Justice—California; Bautistas por la Paz'; California Catholic Conference, Inc.; California Immigrant Policy Center; California Public Defenders Association; Californians United for a Responsible Budget; California Attorneys for Criminal Justice; Cares for Youth; Central American Resource Center; Center on Juvenile and Criminal Justice; City and County of San Francisco Office of the District Attorney; Communities United for Restorative Youth Justice; Community Coalition; Essie Justice Group; Familia: Trans Queer Liberation Movement; Forward Together; Friends Outside; Grassroots Leadership; Healing Dialog and Action; Human Rights of the Incarcerated Coalition at UC Berkeley; Immigrant Legal Resource Center; Inland Coalition for Immigrant Justice; Justice for Families; Justice Not Jails; Lawyers' Committee for Civil Rights of the San Francisco Bay Area; Media Alliance; National Center for Youth Law; National Immigration Law Center; Nation Inside; National Compadres Network; Opening Door; Pacific Juvenile Defender Center; Pangea Legal Services; Prison Policy Initiative; Public Counsel; Returning Home Foundation; San Francisco Children of Incarcerated Parents; San Francisco Public Defender; San Francisco Youth Commission; Services, Immigrant Rights, and Education Network; Starting Over, Inc.; Southeast Asia Resource Action Center; W. Haywood Burns Institute; The Young Women's Freedom Center; Numerous Individuals

Opposition: California State Sheriffs' Association

PURPOSE

The purpose of this legislation is to prohibit local correctional facilities and juvenile facilities from replacing in-person visits with video or other types of electronic visitation, as specified.

Existing regulations require a correctional facility administrator to develop written policies and procedures for inmate visiting which provides for as many visits and visitors as facility schedules, space, and number of personnel will allow. For sentenced inmates in Type I facilities and all inmates in Type II facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week. In Type III and Type IV facilities there shall be allowed one or more visits, totaling at least one hour, per week. (15 CCR 1062.)

Existing regulations define a:

- “Type I facility” as a local detention facility used for the detention of persons for not more than 96 hours excluding holidays after booking. Such a Type I facility may also detain persons on court order either for their own safekeeping or sentenced to a city jail as an inmate worker, and may house inmate workers sentenced to the county jail provided such placement in the facility is made on a voluntary basis on the part of the inmate. As used in this section, an inmate worker is defined as a person assigned to perform designated tasks outside of his/her cell or dormitory, pursuant to the written policy of the facility, for a minimum of four hours each day on a five day scheduled work week.
- “Type II facility” as a local detention facility used for the detention of persons pending arraignment, during trial, and upon a sentence of commitment.
- “Type III facility” as a local detention facility used only for the detention of convicted and sentenced persons.
- “Type IV facility” as a local detention facility or portion thereof designated for the housing of inmates eligible under Penal Code Section 1208 for work/education furlough and/or other programs involving inmate access into the community.

(15 CCR 1006.)

This bill would prohibit local detention facilities from replacing in-person visits with video or other types of electronic visitation, as specified.

This bill would require that incarcerated persons in Type I facilities and all inmates in Type II facilities be allowed no fewer than two visits totaling at least one hour per inmate each week, as specified.

This bill would require that incarcerated persons in a Type III facility or a Type IV facility be allowed no fewer than one in-person visit totaling at least one hour per incarcerated person each week.

This bill provides the following definitions.

- “In-person visit” or “in-person visitation” means a visit or visitation during which an incarcerated person has contact with a visitor, is able to see a visitor through glass, or is otherwise in an open room without contact with a visitor.

- “Local Detention facility” has the same meaning as defined in Section 6031.4.
- “Type I facility” as a local detention facility used for the detention of persons for not more than 96 hours excluding holidays after booking. Such a Type I facility may also detain persons on court order either for their own safekeeping or sentenced to a city jail as an inmate worker, and may house inmate workers sentenced to the county jail provided such placement in the facility is made on a voluntary basis on the part of the inmate. As used in this section, an inmate worker is defined as a person assigned to perform designated tasks outside of his/her cell or dormitory, pursuant to the written policy of the facility, for a minimum of four hours each day on a five day scheduled work week.
- “Type II facility” as a local detention facility used for the detention of persons pending arraignment, during trial, and upon a sentence of commitment.
- “Type III facility” as a local detention facility used only for the detention of convicted and sentenced persons.
- “Type IV facility” as a local detention facility or portion thereof designated for the housing of inmates eligible under Penal Code Section 1208 for work/education furlough and/or other programs involving inmate access into the community.

This bill would prohibit, on or after January 1, 2017, a city, county, or other local entity from entering into, renewing, extending, or amending a contract with a private prison corporation that does not provide persons to be incarcerated or detained at the private corporation’s facility, at a minimum, the same amount of in-person visitation as required for a Type II facility.

This bill would, additionally, prohibit juvenile halls, ranches, camps or forestry camps from replacing in-person visits with video or other types of electronic visitation, as specified. And would require:

- Incarcerated minors be allowed to receive in-person visits by parents, guardians, or persons standing in loco parentis, at reasonable times, subject only to the limitations necessary to maintain order and security.
- A minimum of two-hours of in-person visitation per week.
- In-person visits may be supervised, but conversations cannot be monitored unless there is a security or safety need.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state’s ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its “ROCA” policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as “of December 9, 2015, 112,510 inmates were housed in the State’s 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015.” (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State’s 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants’ December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee’s consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

When a person is incarcerated, even for a short period of time, family contact and in-person visits are crucial to maintaining family stability, reducing disciplinary infractions and violence while incarcerated, reducing recidivism, increasing the chances of obtaining employment post-release, and facilitation successful re-entry.¹

Since the implementation of public safety realignment, more people are serving time in county jails and for longer period of time than ever before². Eliminating in-person

¹ U.S. Department of Justice, National Institute of Corrections (2015). *Video Visiting in Corrections: Benefits, Limitations and Implementation Considerations*. Washington D.C. P. 3. Retrieved from <https://s3.amazonaws.com/static.nicic.gov/Library/029609.pdf>

² Lofstrum, M., & Martin, B. (2015). *California’s County Jails*. Retrieved from http://www.ppic.org/main/publication_show.asp?i=1061

visitation would have a drastic and negative impact on families, particularly children, the wellbeing of incarcerated people, and the institutional environment. . .

It is unconscionable that 74% of county jails across the country that implemented video visitation eliminated in-person visitation.

Families with members in these institutions must pay for video calls from home or can video call their incarcerated family member from the jail lobby for free. In the latter situation, both the visitor and the incarcerated person are often in the same building, but instead of having a real visit, they can only see each other through a video screen.

Even when family members travel to these jails to “visit” their loved ones through a video screen, equipment often malfunctions, leaving them unable to see their loved ones at all.

2. History of this Issue

The California Board of State and Community Corrections (BSCC) is responsible for promulgating regulations for adult and juvenile detention facilities. The BSCC uses Executive Steering Committees (ESC) to inform decision making related to the Board’s programs, including distributing funds and developing regulations. (http://www.bscc.ca.gov/s_bscc_executivesteeringcommittees.php)

For purposes of updating and promulgating regulations, the BSCC utilizes the 2015 Adult Titles 15 and 24 Regulation Revision ESC. This ESC, which is responsible for regulations relating to visitation, requested that one of its working groups discuss the current visitation regulations as they relate to video visitation. The working group, which was comprised of *only* law enforcement representatives, stated:

The Programs and Services Workgroup meeting opened with two individuals offering public comment regarding the negative effects on inmates and on inmates' family/friends of providing only video visitation (lack of human contact, cost and inconvenience to visitors). Both individuals encouraged the workgroup to mandate in-person visiting at local detention facilities, in addition to any other method of visiting provided.

The workgroup engaged in a lengthy discussion regarding video visitation versus in-person visits. Several members of the group reported that their county is planning or building new facilities with space for video visiting only (no space for in-person visits). They felt that if Title 24 required space for in-person visits, then their new facilities would be noncompliant the day the facility opened. Some of the members cited some potential negative impacts of in-person visits such as exposing children to the inside of a jail, the staff time it can take to move inmates and the security concerns of moving high-security inmates.

Most of the group agreed that the regulation should remain flexible regarding how visitation is provided and decided to develop the following definitions:

- "In-person visit" means an on-site visit that may include barriers.
- "Contact visit" means an on-site visit without barriers.
- "Video visit" means an on-site or remote visit through the means of audio-visual communication devices.

The workgroup also discussed practices surrounding video visitation, both at the facility and remotely (possibly from the visitor's home). They agreed that the required one hour of visiting per week should be at no cost to the inmate, family and friends.

It must be noted that the workgroup was not unanimous in agreement over the decision not to require in-person visits in local detention facilities.

(<http://www.bscc.ca.gov/downloads/Programs%20and%20Services%20Worksheets%20For%20ESC%20Review.pdf>)

The working group recommended, "Regarding video visitation, counties need to be legally defensible in its use." The workgroup revised the visitation regulation to state:

§ 1062. Visiting

- (a) The facility administrator shall develop written policies and procedures for inmate visiting which shall provide for as many visits and visitors as facility schedules, space, and number of personnel will allow. For sentenced inmates in Type I facilities and all inmates in Type II, ~~facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week.~~ In Type III and Type IV facilities there shall be allowed one or more visits, totaling at least one hour, per inmate each ~~per~~ week.
- (b) In Type I facilities, the facility administrator shall develop and implement written policies and procedures to allow visiting for non-sentenced detainees. The policies and procedures will include a schedule to assure that non-sentenced detainees will be afforded a visit no later than the calendar day following arrest.
- (c) The visiting policies developed pursuant to this section shall include provision for visitation by minor children of the inmate.
- (d) *One hour per week of on-site (in-person or video) visiting time shall be free of charge.*

The justification offered for the revision was:

As currently written, the second sentence of the regulation does not provide sufficient flexibility to facility operators because it seems to require visits on two separate days totaling one hour. Removing "facilities there shall be allowed no fewer than two visits totaling at least one hour per inmate each week" in the second sentence clarifies that the required visitation time of one hour may be provided in two half-hour visiting periods or one one-hour period.

Subsection (d) was added because some facilities use video visitation in lieu of the in-person visits between the inmate and family and friends. If providers of video visitation charge for the mandated one-hour of visitation, it could be a fiscal hardship to the inmate, family and friends.

On March 30, 2016, the ESC adopted the working group's recommendation not require in-person visitation and to, instead, provide one free hour of visitation, whether it be in-person or via video. The recommendation of the ESC will proceed to the BSCC for a final decision.

3. Effect of This Legislation

“Currently, more than 500 facilities in 43 states and the District of Columbia are experimenting with video visitation. Much of this growth has occurred in the last two to three years as prison and jail telephone companies have started to bundle video visitation into phone contracts.” (*Screening Out Family Time: The For-Profit Video Visitation Industry in Prisons and Jails*, Bernadette Rabuy and Peter Wagner, January 2015, <http://www.prisonpolicy.org/visitation/report.html>.)

This article additionally notes that while there are differences in the rates, fees, commissions, and practices in each contract, three patterns are common:

1. Most *county jails* ban in-person visits once they implement video visitation.
2. Video visitation contracts are almost always bundled with other services like phones, email, and commissary, and facilities usually do not pay anything for video visitation.
3. Unlike with phone services, there is little relationship between rates, fees, and commissions beyond who the company is.

While virtually no state prisons ban in-person visitation, we found that 74% of jails banned in-person visits when they implemented video visitation. Though abolishing in-person visits is common in the jail video visitation context, Securus is the only company that explicitly requires this harmful practice in its contracts. The record is not always clear about whether the jails or the companies drive this change, but by banning in-person visits, it is clear that the jails are abandoning their commitment to correctional best practices. (*Id.*)

The Securus website states that it currently provides services to California Jails, including Butte County Jail, Napa County Jail, San Diego County Jail- Facility 8, San Diego County Jail- Las Colinas Detention & Reentry Facility. (<https://securustech.net/facilities-and-pricing>.) According to information provided by the author, Napa, San Diego and Butte counties are not the only counties that have eliminated in-person visitation:

At least five California counties (Kings, Napa, San Bernardino, San Diego, and Solano) have eliminated in-person visitation in at least one of their jails, meaning families there can only see their loved ones through a computer screen.

Two counties (Imperial and Placer) have severely restricted in person visitation since adopting video visits.

Three additional counties (Orange, San Mateo, and Tulare) intend to renovate or build new facilities that have no space for in-person visits. Families with loved ones in these facilities will only be able to see their loved ones through a computer screen. At least six other California counties (Butte, Los Angeles, Mendocino, Plumas, Riverside and San Luis Obispo) use video visits in at least one of their jails and at least seven other counties (Merced, Sacramento, San Joaquin, Santa Barbara, Santa Cruz, Sutter, and Yolo) plan to adopt a video visitation system.

The elimination of in-person visitation could prove to be detrimental to both inmates and their families. “Visiting cannot replicate seeing someone in-person, and it is critical for a young child to visit his or her incarcerated parent in person to establish a secure attachment.” (*Video Visiting in Corrections: Benefits, Limitations and Implementation Considerations*, U.S. Department of Justice, National Institute of Corrections (2015), page 17 (Footnotes omitted).

Californians United for a Responsible Budget, who support this legislation, echo this concern:

In-person visitation is essential to a person's successful reentry into their community — it is proven to improve behavior inside correctional facilities, reduce recidivism, and increase chances of obtaining employment post-release. In-person visitation is also important for family members and loved ones on the outside, especially children, who also struggle with the incarceration of their loved ones. Video visits, however, have not been shown to increase family connectivity and likely have a negative effect on young children who struggle to understand that the person on the screen is their parent.

To address these concerns, this legislation requires that county correctional and juvenile facilities provide in-person visitation.

4. Argument in Opposition

According to the California State Sheriff's Association,

We do not disagree that in-person visitation can bring positive outcomes. That said, we are opposed to a prohibition on the exclusive use of video visitation. Some facilities are switching to video visitation because it can be more efficient, often allows more frequent visitation, and can significantly reduce the introduction of contraband into correctional facilities.

Video visitation has beneficial aspects and we have concerns about this legislative directive that attempts to over-regulate jail operations.

-- END --