
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 1986 **Hearing Date:** May 28, 2024
Author: Bryan
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Urgency: No **Fiscal:** Yes
Consultant: JD

Subject: *State prisons: banned books*

HISTORY

Source: Initiate Justice

Prior Legislation: None

Support: A New Way of Life Reentry Project; A.B.O. Comix; ACLU California Action; Alliance for Boys and Men of Color; Asian Americans Advancing Justice Southern California; Black Equity Collective; Black Women Organized for Political Action (BWOPA); Books Beyond Bars At UCLA; Boundless Freedom Project; California Alliance for Youth and Community Justice; California Black Power Network; California Faculty Association; California Immigrant Policy Center; California Public Defenders Association; California-Hawaii State Conference of The NAACP; California Reparations Task Force Members Dr. Cheryl Grills, Lisa Holder, and Don Tamaki; Californians for Safety and Justice; Californians United for A Responsible Budget; Chicago Books to Women in Prison; Children's Defense Fund – CA; Communities United for Restorative Youth Justice (CURYJ); Courage California; Culver City Democratic Club; Defy Ventures; Democrats for Israel – CA; Democrats for Israel Los Angeles; Ella Baker Center for Human Rights; Equal justice Society; Etta; Fair Chance Project; Felony Murder Elimination Project; Friends Committee on Legislation of California; Grip Training Institute; Hadassah; Holocaust Museum LA; IKAR; Initiate Justice; Initiate Justice (UNREG); Initiate Justice Action; JCRC Bay Area; Jewish Center for Justice; Jewish Democratic Club of Marin; Jewish Democratic Club of Solano County; Jewish Democratic Coalition of The Bay Area; Jewish Family and Children's Service of Long Beach and Orange County; Jewish Family and Children's Services of San Francisco; the Peninsula, Marin and Sonoma Counties; Jewish Family Service of Los Angeles; Jewish Family Services of Silicon Valley; Jewish Federation of Greater Los Angeles; Jewish Federation of The Greater San Gabriel and Pomona Valleys; Jewish Free Loan Association; Jewish Long Beach; Jewish Public Affairs Committee; Jewish Silicon Valley; LA Defensa; Lawyers' Committee for Civil Rights of The San Francisco Bay Area; Legal Services for Prisoner With Children; Los Angeles County Democratic Party; Los Angeles Regional Reentry Partnership (LARRP); Michelson Center for Public Policy; MILPA Collective; Multi-faith Action Coalition; Oakland Privacy; Pen America; Prison FTIO; Prison Yoga Project; Progressive Zionists of California; Root &

Rebound; Rubicon Programs; Safe Return Project; San Francisco Public Defender; Santa Cruz Barrios Unidos; Sister Warriors Freedom Coalition; Smart Justice California; The Amelia Ann Adams Whole Life Center; The Transformative In-prison Workgroup; Transformative Programming Works; UC Berkeley's Underground Scholars Initiative (USI); UnCommon Law; White People 4 Black Lives; Young Women's Freedom Center

Opposition: None known

Assembly Floor Vote: 71 - 0

PURPOSE

The purpose of this bill is to require the Office of The Inspector General (OIG) to add to its website a “Centralized List of Disapproved Publications” as maintained by the California Department of Corrections and Rehabilitations (CDCR). The bill also allows for the OIG to review each publication and determine whether it should remain disapproved or be allowed for use by incarcerated persons.

Existing law provides that Congress shall make no law abridging the freedom of speech. (U.S. Const. 1st amend.)

Existing law provides that no State shall deprive any person of life, liberty, or property, without due process of law. (U.S. Const. 14th amend.)

Existing law provides that a law may not restrain or abridge liberty of speech or press. (Cal. Const. art. 1, § 2.)

Existing law establishes CDCR and creates the Division of Adult Institutions (DAI) within CDCR. (Gov. Code, §§ 1238, 1238.1.)

Existing law vests the authority to supervise, manage and control state prisons in the Secretary of CDCR. (Pen. Code, § 5054.)

Existing law vests the authority to prescribe and amend rules and regulations for the administration of the prisons to the Secretary of CDCR. (Pen. Code, § 5058.)

Existing law establishes the independent OIG and provides that the office shall not be a subdivision of any other governmental entity. (Pen. Code, § 6125.)

Existing law provides that the OIG shall be responsible for contemporaneous oversight of internal affairs investigations and the disciplinary process of CDCR under policies to be developed by the Inspector General. (Pen. Code, § 6126.)

Existing law provides that the OIG shall be responsible for contemporaneous oversight of grievances that fall within CDCR’s process for reviewing and investigating inmate allegations of staff misconduct and other grievances, examining compliance with regulations, CDCR policy, and best practices. (Pen. Code, § 6126, subd. (i).)

Existing law requires the OIG to issue regular reports to the Governor and Legislature summarizing its recommendations concerning oversight of CDCR and require the reports to be posted on the OIG's website and otherwise made available to the public. (Pen. Code, § 6133.)

Existing law provides that a person sentenced to imprisonment in a state prison may only be deprived of rights as is responsibly related to penological interest. (Pen. Code, § 2600.)

Existing law provides that persons sentenced to imprisonment in a state prison have the specified civil rights, including among others, the right to own personal property and the right to purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the USPS. (Pen. Code, § 2601, subs. (a) & (c).)

Existing law allows prison authorities to ban any of the following material:

- Obscene publications or writings;
- Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence; and,
- Any matter concerning gambling or a lottery. (Pen. Code, § 2601, subd. (c).)

Existing law states that prison officials can establish reasonable restrictions as to the number of newspapers, magazines, and books that an incarcerated person may have in their cell or elsewhere in the prison at one time. (Pen. Code, § 2601, subd. (c).)

This bill requires the OIG to post on its website a "Centralized List of Disapproved Publications" as maintained by CDCR.

This bill requires the following additional information to be included on the OIG's website:

- The title;
- The author;
- The publisher;
- The year of publication; and,
- The stated legitimate penological interest for banning the publication.

This bill allows an incarcerated person to request a review of a publication on the list to determine the penological reasoning as to why it was originally added. Upon review, the OIG may remove the publication if there is no legitimate penological interest for it to remain disapproved.

This bill defines "publication" as any newspaper, periodical, magazine, or book that can be mailed through the United States Postal Service.

COMMENTS

1. Need for This Bill

According to the Author:

Access to knowledge is essential for rehabilitation and it helps people reintegrate into society. Within our state prisons, however, the books currently banned seem to be disproportionately written by Black authors and other authors of Color. AB 1986 will bring accountability and increased transparency to the California Department of Corrections and Rehabilitation (CDCR) book banning process.

AB 1986 will require the Office of Inspector General (OIG), who is an independent agency tasked with oversight, to post the CDCR list of banned books. Most importantly, AB 1986 empowers the OIG to remove books from the list if they find that there is insufficient evidence to ban the book in the first place. Books are more than just sources of information; they are tools for empowerment and transformation with an incalculable value for all people.

2. Incarcerated Persons' Right to Own Books

Publishers “have a First Amendment right to communicate with prisoners by mail, and inmates have a First Amendment right to receive this mail.” (*Prison Legal News v. Lehman* (9th Cir. 2005) 397 F.3d 692, 699.) The scope and potency of these rights are, however, “subject to substantial limitations and restrictions in order to allow prison officials to achieve legitimate correctional goals and maintain institutional security.” (*Walker v. Sumner* (9th Cir. 1990). 917 F.2d 382, 38.) To determine whether a correctional institution’s regulation that “impinges on inmates’ constitutional rights” is valid, the regulation must be “reasonably related to legitimate penological interests.” (*Turner v. Safley* (1997) 482 U.S. 78, 89.)

Under existing law, incarcerated persons are guaranteed specified civil rights and may only be deprived of these rights as is responsibly related to penological interest. (Pen. Code, § 2600.) These rights include, among others, the right to own personal property (such as books) and the right to purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the USPS. (Pen. Code, § 2601, subs. (a) & (c).)

Prison authorities are allowed to ban obscene publications or writings, publications that contain matter that tends to “incite murder, arson, riot, violent racism, or any other form of violence” and, publications that contain matter concerning gambling. (Pen. Code, § 2601, subd. (c).) Additionally, prison officials can establish reasonable restrictions as to the number of newspapers, magazines, and books that an incarcerated person may have in their cell or elsewhere in the prison at one time. (Pen. Code, § 2601, subd. (c).)

An incarcerated person’s ability to possess personal property is also subject to CDCR’s regulations. Incarcerated persons are prohibited from possessing any writing which describes the making of any dangerous weapons or destructive devices, any matter that may incite murder, arson, riots, or violence, blackmail, anything that would assist in escape, coded messages, maps depicting any area within a 10-mile radius of a facility, gambling or a lottery, and obscene

material. (Cal. Code Regs., tit. 15 § 3006.) Further, CDCR's regulations require that each prison contain a library. This material is also prohibited from prison libraries. (Cal. Code Regs., tit. 15 § 3120.)

The regulations specify that incarcerated persons are permitted to purchase or subscribe to books, newspapers, magazines and periodicals. However, subscriptions or books that are purchased for the incarcerated person by a third party or donated must be mailed directly from a book store, book distributor, or publisher. Personal correspondents cannot mail books, periodicals, or other publications directly to inmates. (Cal. Code Regs., tit. 15 § 3134.1.) Title 15 Regulations provide that disagreement with the sender's or receiver's morals, values, attitudes, veracity, or choice of words will not be cause for correctional staff to disallow mail. "Correctional staff shall not challenge or confront the sender or receiver with such value judgments." (Cal. Code Regs., tit. 15 § 3135.) Unless otherwise prohibited, incarcerated persons are allowed to possess all publications, including books and subscriptions to periodicals. There are no "Approved Vendor Lists" for publications and incarcerated persons may receive publications from any publisher, book store or book distributor that does mail order business. (Cal. Code Regs., tit. 15 § 3190.)

3. CDCR's Centralized List of Disapproved Publications

CDCR's Division of Adult Institutions (DAI) is required to distribute to each institution a Centralized List of Disapproved Publications (Centralized List) that are prohibited as contraband. Examples of publications that would be included on the Centralized List include, but are not limited to, publications that contain, obscene material, sexually explicit images that depict frontal nudity, warfare or weaponry, and bomb making instructions. Publications that are enumerated on the Centralized List are not allowed in any CDCR institution. (Cal. Code Regs., tit. 15 § 3134.1.) When a publication is placed on the Centralized List, DAI sends a letter to the publisher explaining why the publication is prohibited. At a minimum, the letter must include the reason why the publication is prohibited, the applicable regulation that the publication violates, and a notice to the publisher of its right to appeal. (Cal. Code Regs., tit. 15 § 3134.1.)

Individual local institutions cannot add items to the Centralized List. When incoming books, magazines, or publications to an incarcerated person may be withheld or disallowed on a temporary basis by the institution pending approval from DAI. The institution must request that DAI affirm or deny the withholding of the temporarily disallowed publication. DAI must provide a decision within 30 calendar days of receiving the request. If DAI affirms the withholding of the publication, disallowance of the publication becomes permanent. If DAI denies the withholding of the publication, the institution must deliver the publication to the incarcerated persons within 15 days. (Cal. Code Regs., tit. 15 § 3134.1.)

Concurrently, a letter is sent by the institution to the publisher explaining why the item was denied. At a minimum the letter must include the reason why the publication was denied, the names and CDCR number for all incarcerated persons, the applicable regulation that the publication violates, and a notice to the publisher of their right to appeal. At the same time, the institution must also notify the person who sent the publication via CDCR Form 1819 Notification of Disapproval-Mail/Packages/Publications. The CDCR Form 1819 includes the reason, disposition, name of official disallowing the publication, and the name of the official to whom a grievance can be directed. (Cal. Code Regs., tit. 15 § 3134.1.)

For periodicals, DAI may include a periodical on the Centralized List, provided that all issues of the publication for twelve consecutive months violate departmental regulation or policy. However, an institution may disallow individual issues of a periodical. The disallowance of individual issues of a periodical shall become permanent, as to those issues only, if DAI affirms an institution's decision to temporarily withhold or disallow the individual issues. If the DAI denies the institution's decision to temporarily withhold individual issues of a periodical, the institutional shall deliver those issues to the incarcerated person within 15 days. (Cal. Code Regs., tit. 15 § 3134.1.)

The most recent Centralized List includes over one thousand publications. For some of these, it is obvious based on the title of the publication alone, that there is a legitimate penological reason for prohibiting the publication in a prison environment. However, other publications on the Centralized List, such as "*Color For Painters: A Guide to Traditions and Practice, Drawing Made Easy*, the *Concise Atlas of the World, Fifth Edition* and *Health-The Basics, 11th Edition*, and many others may deserve further consideration of the reason for the censorship and whether their ban actually supports any legitimate penological objective.

4. Practical Considerations

This bill would require CDCR to provide its Centralized List to OIG, and then would require OIG to post the list on its website. It is unclear whether CDCR is required to provide the Centralized List to OIG periodically, or each time it is updated. For efficiency purposes, the Legislature should consider whether CDCR should, instead be required to post the Centralized List as it is updated on its website.

In addition, this bill would require the Centralized List posted online to include information about the publisher, the publication date, and the reason for the prohibition. Currently, the Centralized List includes over 1,000 publications and could date back several decades. The list does not include information such as the publisher, year of publication, and reason for the denial. It only includes the name of the publication, the author, and the pages that violate the regulations. However, CDCR is required to maintain a copy of the notification letter to the publisher regarding the reason why the publication was prohibited, and supporting documents for a minimum of seven years, pursuant to department regulation. (Cal. Code Regs., tit. 3134.1., subd. (d).) Accordingly, CDCR could maintain more information on the Centralized List going forward, it may be unduly burdensome for CDCR and the OIG to obtain information on publications that were prohibited more than 7 years ago.

Requiring CDCR and the OIG to track down and purchase a copy of the publication when a request for review is submitted may constitute an additional burden. It may be worth considering to require the requesting party to provide a copy of the publication so as to not burden CDCR or the OIG to track down and purchase a copy of the publication for review. Understandably, an incarcerated person may not have the means to provide a copy of the publication for review, therefore this consideration may only be suitable for other affected persons and publishers as mentioned by this bill.

Also, under current law, CDCR has the authority to manage and control state prisons and to prescribe its rules and regulations. (Pen. Code, §§ 5054 & 5058.) As a separate independent agency, the OIG is not a subdivision of CDCR, and it is authorized to review and investigate

allegations of staff misconduct and examine compliance with regulations, CDCR policy, and best practices. (Pen. Code, §§ 6125 & 6126.) The OIG issues regular reports to the Governor and Legislature summarizing its recommendations concerning oversight of CDCR and the law requires the reports to be posted on the OIG's website and made available to the public. (Pen. Code, § 6133.) This bill would require the OIG to review publications to "determine if the reason for prohibiting the publication is reasonably related to a legitimate penological interest" which could exceed the authority of the OIG. The Legislature could consider amendments that clarify that OIG may review CDCR's decision include a publication on the Centralized List and to assess whether that decision complies with CDCR's regulations and policy. Similarly, the OIG, as an independent agency has oversight over CDCR but, cannot require CDCR to act. While this bill does not authorize OIG to require CDCR to remove a book from the Centralized List, it does require CDCR to remove a book from the Centralized List upon a determination by OIG that the book should not be included on the list. A colorable argument exists that exceeds the authority of the OIG. Changes could be made to the bill to instead allow OIG recommend that CDCR remove a publication from the Centralized List and to issue a public report regarding its findings and recommendations. Such a provision would promote the author's goal of increasing transparency and ensure that the bill is not interpreted as OIG usurping CDCR's authority.

5. Argument in Support

According to Initiate Justice:

In the last couple of years, the movement to ban books has spread across the country. This is true in prisons as well. Carceral censorship is the most pervasive form of censorship in the United States. Prisons use book bans as a tool to limit access to education and impact nearly 2 million people in prisons and jails on any given day, nationally. In California, CDCR bans books they deem not to be in the penological interest of the state - and with great inconsistency. CDCR's process of what books, articles, and other pieces of information it bans is not public and they are not required to publicly post a list of their banned books.

The list of banned books in CDCR includes more than 1,600 disapproved publications. Notably, CDCR does not ban Mein Kampf but does ban The Kite Runner, The Handmaid's Tale, Lady Gaga: Born to Be Free, and Prison Ramen, to name a few examples. The books currently banned seem to be disproportionately written by Black authors, Latino artists, and activists. There are also educational books that include visual dictionaries and multiple atlases that are banned.

Prison censorship is often invisible to the public, yet the impact remains significant. Books are more than just sources of information and entertainment; they are bridges to other cultures and tools for empowerment and transformation that can assist with rehabilitation. Access to knowledge is essential to rehabilitation and it helps people reintegrate into society since more than 95% of incarcerated people eventually return home.

By requiring the Office of the Inspector General to post the CDCR list of banned books, there will be increased transparency about what's necessary to be banned and will allow

for the removal of books that should not be banned in the first place. AB 1986 (Bryan) is a Black Caucus Reparations priority.

-- END --