
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 2709 **Hearing Date:** July 2, 2024
Author: Bonta
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Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Prison visitation*

HISTORY

Source: A New Way of Life; All of Us or None; Alliance for Boys and Men of Color; Anti-Recidivism Coalition; California Families Against Solitary Confinement; California's Impacted; Empowering Women Impacted by Incarceration; Community Works; CHANGES; Communities United for Restorative Youth Justice; Jesse's Place Organization; Drop LWOP; East Bay Family Defenders; Felony Murder Elimination Project; Families United to End LWOP; Homies Unidos; Legal Services for Prisoners with Children; Pillars of the Community; Place4Grace; Power in Unity Fellowship; Prison From-The-Inside-Out, Inc.; RTime Co; Sister Warriors; Starting Over, Inc.; Young Women's Freedom Center

Prior Legislation: AB 1226 (Haney), Ch. 98, Stats. 2023
AB 134 (Comm. on Budget), Ch. 47, Stats. 2023
AB 958 (Santiago), held in Senate Appropriations 2023
SB 1139 (Kamlager), Ch. 837, Stats. 2022
AB 990 (Santiago), vetoed in 2021
AB 964 (Medina), held in Assembly Appropriations 2019
SB 1157 (Mitchell), vetoed in 2016
SB 843 (Comm. on Budget & Fiscal Review), Ch. 33, Stats. 2016
AB 900 (Solorio), Ch. 7, Stats. 2007
AB 2133 (Goldberg), Ch. 238, Stats. 2002
SB 1221 (Calderon), Ch. 132, Stats. 1996
SB 1260 (Hurtt), 1994
AB 1512 (Filante), Ch. 17, Stats. 1982

Support: California Faculty Association; California Immigrant Policy Center; California Public Defenders Association; Californians United for A Responsible Budget; Ella Baker Center for Human Rights; Essie Justice Group; Friends Committee on Legislation of California; Initiate Justice; Initiate Justice Action; La Defensa; Root & Rebound; San Francisco Public Defender; Transformative Programming Works; 3 Individuals

Opposition: California Correctional Peace Officers Association; Los Angeles County Professional Peace Officers Association

Assembly Floor Vote: 47 - 8

PURPOSE

The purpose of this bill is to prohibit a person incarcerated in a state prison from being prevented from receiving personal visits, except as specified; limit the ability of the California Department of Corrections and Rehabilitation (CDCR) to deny or restrict a person's visiting access; prohibit the use of strip searches, visual body cavity searches, and physical body cavity searches of visitors who are under 18 years of age; and codify a probable cause standard for strip searches of adult visitors.

Existing law provides that a person sentenced to imprisonment in a state prison or to imprisonment pursuant to Section 1170 subdivision (h) may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600, subd. (a).)

Existing law provides that each person sentenced to imprisonment in a state prison or to imprisonment pursuant to Section 1170 (h) has the following civil rights:

- To inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment, except as provided. However, CDCR may restrict or prohibit sales or conveyances that are made for business purposes, to the extent authorized under the law.
- To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.
- To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office, except as specified.
- To initiate civil actions, as specified.
- To marry.
- To create a power of appointment.
- To make a will.
- To receive specified benefits. (Pen. Code, § 2601, subd. (a)-(h).)

Existing law requires that any amendments to existing regulations and any future regulations adopted by CDCR which may impact the visitation of incarcerated individuals do all of the following:

- Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates.
 - Recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community.
 - Recognize and consider the important role of inmate visitation in preparing an inmate for successful release and rehabilitation.
- (Pen. Code, § 6400.)

Existing law requires every incarcerated person to be asked at intake who they would like included on their approved visitor list. Requires every incarcerated person to be assisted in completing the necessary paperwork for their approved visitor list. (Pen. Code, § 6401, subd. (a)(1)(A).)

Existing law requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized due to a serious or critical medical condition, including imminent danger of dying. Requires CDCR allow up to four visitors at one time to visit the incarcerated person when the person is in imminent danger of dying. (Pen. Code, § 6401, subd. (c).)

Existing law prohibits incarcerated persons from being denied family visits based solely on the fact that the incarcerated person is sentenced to life without the possibility of parole or is sentenced to life and is without a parole date. (Pen. Code, § 6404.)

Existing law requires CDCR upon request by a visitor, to scan various documents such as a marriage license or birth certificate into the Strategic Offender Management Systems. (Pen. Code, § 6405, subd. (a).)

Existing law defines “in-person visit” to mean an on-site visit that may include barriers. Includes interactions in which an incarcerated person has physical contact with a visitor, the incarcerated person is able to see a visitor through a barrier, or the incarcerated person is otherwise in a room with a visitor without physical contact. Specifies that it does not include an interaction between an inmate and a visitor through the use of an on-site, two-way, audio-video terminal. (Pen. Code, § 4032, subd. (a)(1).)

Existing law includes the following definitions:

- “Body cavity” means the stomach or rectal cavity of a person, and vagina of a female person;
- “Physical body cavity search” means physical intrusion into a body cavity for the purpose of discovering any object concealed in the body cavity;
- “Strip search” means a search which requires a person to remove or arrange some or all of his or her clothing so as to permit a visual inspection of the underclothing, breasts, buttocks, or genitalia of such person; and,
- “Visual body cavity search” means visual inspection of a body cavity.
(Pen. Code, § 4030, subd. (c).)

Existing law outlines the parameters for strip searches, visual body cavity searches, and physical body cavity searches for all youth detained in a juvenile detention center. (Pen. Code, § 4031.)

This bill prohibits a person sentenced to imprisonment in a state prison from being prevented from receiving personal visits, including, but not limited to, noncontact, contact, and family visits, unless such deprivation is necessary and narrowly tailored to further legitimate security and safety interests.

This bill requires that any restriction or deprivation of access to personal visiting, including family visits, be deemed necessary and for legitimate security and safety interests only if it arises from conduct, as described, occurring within visiting areas during visiting hours or conduct that poses a clear and imminent risk of physical violence within visiting areas during visiting hours.

This bill includes the following definitions:

- A visit is “denied or restricted” when it is disapproved, suspended, revoked, or terminated early, except to equitably accommodate visiting room overcrowding, or and when a visitor is excluded or any other administrative action that reduces a specified incarcerated person’s or visitor’s access to visiting.
- A “family visit” is an in-person contact visit that occurs overnight in a private, apartment-like facility on prison grounds in which only eligible incarcerated people and eligible immediate family members, as both are defined in regulations by the Department of Corrections and Rehabilitation, may participate.
- A “disciplinary sanction” is any consequence of a sustained finding of a serious rule violation pursuant to a disciplinary hearing, including a change in privilege group, except that incarcerated people may be limited to noncontact visits when placed in administrative segregation or Security Housing Units (SHU).

This bill prohibits denials of or restrictions on visits or visiting access from exceeding what was permissible under department regulations as of January 1, 2025.

This bill prohibits an in-person noncontact and contact visit, including a family visit for eligible persons, from being denied or restricted by CDCR for any of the following reasons:

- As a disciplinary sanction against an incarcerated person, except as specified.
- Because of a visitor’s criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, whether or not it resulted in a criminal conviction, except as specified.
- Because of a visitor’s current status of being under supervision, including, but not limited to, parole, postrelease community supervision, probation, or informal probation supervision.
- Because of a visitor’s previous incarceration, including incarceration in the facility where the visit will take place.
- Because of a visitor’s pending criminal charges, except as specified.
- Because of a visitor’s outstanding unpaid fines, fees, or restitution.
- Because of an incarcerated person’s criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, regardless of whether it resulted in a criminal conviction, except as specified, except when required by Section 1202.05 or required or permitted by regulation in existence as of January 1, 2025, based on convictions or arrests for sex crimes against minors. Provides family visits with a specific visitor may be denied or restricted because of an incarcerated person’s convictions for registerable sex offenses or violence against a specific visitor, a family member, or against a minor in the person’s care or custody if there is a substantial risk of violence or sexual abuse against that specific visitor.

This bill provides that a visitor or incarcerated person may have visits denied or restricted only based on the following conduct during a visit:

- Possession of contraband while in or exiting the visiting area.
- Engaging in any sexual conduct with a minor.
- Engaging in sexual conduct with adults outside of a family visit.
- Committing physical violence during a visit or the visitor screening process.

- Escaping or aiding an escape or attempting to commit these acts.
- Visitors may be denied visiting access pursuant to reasonable uniformly enforced department-wide regulations, communicated to the public with adequate and timely notice, related to identification, dress, intoxication, search procedures, and authorization for visits by minors that are consistent with the provisions of this bill and Section 2601.5.

This bill provides that CDCR may require applicants for approval as visitors to provide sufficient information to enable it to obtain the applicant's criminal history records from the Department of Justice. Prohibits CDCR from requiring applicants to itemize their own criminal history, dates, or dispositions and shall not consider such voluntarily submitted information in determining whether to approve or deny the application.

This bill requires that when incarcerated persons are limited to in-person, noncontact visits, the length and frequency of their in-person, noncontact visits and video calls be equal to the length of in-person contact visits and video calls available to the general population, reasonable space permitting.

This bill requires both the visitor and the incarcerated person to receive written notice in the case of a denial of a request for a visit, within five days of such a decision being made. Prohibits an applicant from being restricted from reapplying for visitation for longer than 15 days for any denial of approval to visit, except as specified.

This bill requires the notice to include the date or dates of the decision and its effect together with the name, title, and institutional affiliation of the decisionmaking official. Requires the notice to state the reason for the denial, except as specified.

This bill provides that when the grounds for denial include any criminal record information, alleged personal conduct, or any other personal or private information about either or both parties, only the person to whom that information pertains, or about whom the allegations are made, is permitted to receive a detailed specification of the reasons for the denial.

This bill requires that notice of denial in all instances include written instructions on all procedures for appeals. Specifies that nothing in this bill restricts the legal remedies available to incarcerated persons or to nonincarcerated visitors to dispute or redress denials of visitations.

This bill prohibits an incarcerated person from being required to withhold consent to a visit as a disciplinary sanction, as a means of avoiding a disciplinary sanction, or as a condition of participating in or enjoying any privilege or program while incarcerated.

This bill requires CDCR to reinstate personal visits, including in-person visits and family visits, that were restricted or prohibited contrary to the standards outlines in this bill before January 1, 2025.

This bill requires CDCR, to the extent that rules and standards regarding visitation conflict with the provisions of this bill, to adopt regulations, policies, and procedures that conform to the provisions of this bill and that are readily accessible.

This bill requires CDCR to provide at least three days of in-person visiting per week at each facility. Requires CDCR to make strenuous efforts to maximize visiting space in order to accommodate as many visitors as possible in family-friendly settings. Provides that if in-person

visiting is impossible due to a public health emergency, natural disaster, or other state of emergency, the in-person visiting hours must be replaced by an equal number of video calling hours in addition to the regular video calling hours. Requires in-person visiting to be reinstated once the emergency is over.

This bill requires building and strengthening family bonds through in-person visiting to be a focus of each administration at each facility. Requires CDCR to ensure that a family visiting program is provided for all eligible incarcerated persons, free of unwarranted and unnecessary obstructions, impediments, or infringements.

This bill requires that all infrastructure, resources, and areas initially erected for the purpose of providing and facilitating family visits for incarcerated persons only be used for the purpose of family visits.

This bill prohibits staff or other departments outside of visiting departments from being allowed to infringe, control, or occupy any resources or structures that were used, built, contracted, or funded for the purpose of facilitating and providing family visits for incarcerated persons, except as provided.

This bill provides that facilities that had been repurposed, prior to January 1, 2025, for direct service to incarcerated persons that cannot be provided elsewhere in the institution may continue to be used for that purpose.

This bill provides that any facility with resources, structures, or spaces being utilized in conflict with the governing standards in this bill are contrary to the Legislature's intent and beliefs that creating and strengthening family bonds are essential to achieving rehabilitation.

This bill requires CDCR, to the extent that practices, rules, and standards, any other facility plan of operation, or operational plan conflict with the provisions of this bill, to adopt and institute practices and regulations that conform to the provisions of this bill.

This bill provides that "strip search," "visual body cavity search," and "physical body cavity search" have the same meaning as defined in Section 4030.

This bill prohibits CDCR from conducting strip searches, visual body cavity searches, and physical body cavity searches of visitors who are under 18 years of age.

This bill requires CDCR, with the written consent of the visitor, to conduct a pat down or thorough clothing search of the individual if a visitor is unable to or does not consent to search by a metal detector, body scanner, or similar contactless screening method, or if the visitor requires further screening after undergoing such a search. Prohibits a thorough clothing search from requiring the removal of any clothing except outerwear such as jackets or coats.

This bill prohibits CDCR from requiring an adult visitor to consent to a strip search as a condition for entering the visiting area unless, after conducting a search by metal detector, body scanner, or similar contactless screening method, pat down, or thorough clothing search, probable cause exists to believe contraband is present and concealed on the visitor's person or in their body cavities.

This bill prohibits CDCR from performing a strip search of a visitor without both obtaining consent in writing and informing the visitor that they may decline the search and forgo the visit for that day. Prohibits CDCR from requiring a visitor to undergo a strip search due to the visitor's failure of a search or refusal to be searched on a previous day. Requires CDCR to retain a record of the consent or declination form and a record of the search results, whether positive, negative, or inconclusive, and provide a true and complete copy of the record to the person searched or proposed to be searched.

This bill requires any visitor who is denied visitation or has visitation restricted due to failing a search or refusing to consent to a search to be issued a written notice detailing the reason for the denial or restriction, including a list of any contraband items found, at the time of such denial.

This bill includes legislative findings and declarations.

COMMENTS

1. Need For This Bill

According to the author:

I am proud to introduce legislation that prioritizes the fundamental rights and familial connections of incarcerated individuals in our state prisons. This bill aims to strike a balance between ensuring institutional security and recognizing the importance of maintaining familial relationships and support networks for those who are incarcerated.

By guaranteeing incarcerated individuals the right to personal visits, including non-contact and family visits, unless necessary for legitimate security interests, we are upholding their dignity and acknowledging their humanity. This legislation underscores the significance of family bonds in the rehabilitation and successful reintegration of individuals into society upon release.

Moreover, this bill establishes clear guidelines for the Department of Corrections and Rehabilitation to follow, ensuring that visitation policies are fair, transparent, and consistent across facilities. By mandating minimum visitation hours and prohibiting intrusive searches of minors, we are promoting a more humane and respectful environment within our correctional institutions.

I believe that by enacting these measures, we can foster positive outcomes for both incarcerated individuals and their families, ultimately contributing to safer communities and a more equitable criminal justice system. I urge my colleagues to support this bill and join me in advancing policies that uphold the rights and dignity of all individuals, including those who are incarcerated.

2. Benefits of Visitation

Research has shown that in-person visitation is beneficial, particularly in reducing recidivism. (Prison Policy Initiative, *Research Roundup: The Positive Impacts of Family Contact for Incarcerated People and Their Families* (Dec. 21, 2021) available at https://www.prisonpolicy.org/blog/2021/12/21/family_contact/.) Visitation has also been

shown to have a positive correlation with increased compliance with prison rules. (*Ibid.*) Research has additionally found that visitation is linked to improved mental health for incarcerated individuals, including reduced depressive symptoms. (*Ibid.*) Finally, supportive family relationships can promote the psychological and physiological well-being of incarcerated individuals and their loved ones. (*Ibid.*)

3. Existing CDCR Policies on Visitation

There are three types of visits in CDCR institutions: contact visits, non-contact visits, and family visits. Most incarcerated individuals who are housed in a general population setting may receive contact visits which are not limited in duration except for normal visiting hours or terminations caused by overcrowding. Incarcerated individuals who are still in reception (e.g., recently admitted to prison or transferred from another prison) or are segregated from the general population (e.g., Administrative Segregation, Security Housing Units, pending specific rules violation report charges, etc.) are restricted to non-contact visits which occur with a glass partition in between the incarcerated person and the visitor and are limited in time, usually one to two hours. Finally, some incarcerated individuals are eligible for family visits which take place in private, apartment-like facilities on prison grounds and last approximately 30-40 hours. (<https://www.cdcr.ca.gov/visitors/inmate-visiting-guidelines/>)

As required by state law, the department's regulations "are made in recognition and consideration of the value of inmate visitation as a means of increasing safety in prisons, maintaining family and community connections, and preparing inmates for successful release and rehabilitation." (Cal. Code Regs., tit. 15, § 3170, subd. (a).) The regulations additionally provide that "[i]t is the intent of these regulations to establish a visiting process in the institutions/facilities of the department that is conducted in as accommodating a manner as possible, subject to the need to maintain order, the safety of persons, the security of the institution/facility, and required prison activities and operations." (*Ibid.*) Each institution must provide visiting for no less than 12 hours per week although a reduction in visiting hours can be authorized by the Secretary of CDCR, and regular visiting days must be consecutive and include Saturday and Sunday. (Cal. Code Regs., tit. 15, § 3172.2, subd. (a).) Beginning in July 2023, CDCR transitioned to three days of in-person visiting.

Before a person may be permitted to visit someone incarcerated in one of CDCR's institutions, the person must apply for approval using the department's questionnaire. (Cal. Code Regs., tit. 15, § 3172, subd. (b).) Regulations require that the visiting approval application process include an inquiry of personal, identifying, and the arrest history information of the prospective visitor sufficient to complete a criminal records clearance and a decision by the staff at the institution to approve or disapprove based upon the information provided. (Cal. Code Regs., tit. 15, § 3172, subd. (e).)

CDCR regulations provide the following non-exhaustive list of reasons for the disapproval of a prospective visitor:

- The prospective visitor has outstanding arrests or warrants, including a Department of Motor Vehicles Failure to Appear notice with no disposition from the court.
- The prospective visitor has one felony conviction within the last three years, two felony convictions within the last six years, or three or more felony convictions during the last ten years.

- The prospective visitor has any one conviction of the following types of offenses: distributing a controlled substance into or out of a state prison, correctional facility, or jail; transporting contraband, including weapons, alcohol, escape and drug paraphernalia, and cell phones or other wireless communication devices, in or out of a state prison, correctional facility, or jail; aiding or attempting to aid in an escape or attempted escape from a state prison, correctional facility, or jail; or the prospective visitor is a co-offender of the incarcerated individual.
- The prospective visitor is a former prison inmate who has not received the prior written approval of the institution head or designee.
- The prospective visitor is a supervised parolee, probationer, or on civil addict outpatient status and has not received written permission of his or her case supervisor and/or the prior approval of the institution head.
- The identity of the prospective visitor or any information on the visiting questionnaire, is omitted or falsified.
(Cal. Code Regs., tit. 15, § 3172.1, subd. (b).)

Visits with an incarcerated person may, without prior notification, be terminated, temporarily suspended, or modified in response to an institution emergency as determined by the institution head or designee. (Cal. Code Regs., tit. 15, § 3170, subd. (c).)

This bill makes a number of changes to CDCR visits. First, this bill prohibits a person incarcerated in state prison from being prevented from receiving personal visits, including, but not limited to, noncontact, contact, and family visits, unless such deprivation is necessary and narrowly tailored to further legitimate security and safety interests. This bill further requires that any restriction or deprivation of access to personal visiting be deemed necessary and for legitimate security and safety interests only if it arises from specified conduct occurring within visiting areas during visiting hours or conduct that poses a clear and imminent risk of physical violence within visiting areas during visiting hours. This bill prohibits an in-person contact visit from being denied for any of the following reasons:

- As a disciplinary sanction against an incarcerated person, except as discipline for commission of a specified offense during a visit.
- A visitor's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, whether it resulted in a criminal conviction, other than a conviction for a specified offense.
- A visitor's current status of being under supervision, including but not limited to, parole, postrelease community supervision, probation, or informal probation supervision.
- A visitor's previous incarceration, including incarceration in the facility where the personal visit will take place.
- A visitor's pending criminal charges, other than for specified offenses.
- A visitor's outstanding unpaid fines, fees, or restitution.
- An incarcerated person's criminal, juvenile delinquency, or other history of involvement with law enforcement or the criminal justice system, regardless of whether it resulted in a criminal conviction, other than a conviction for a specified offense.

Next, this bill provides that a visitor or incarcerated person may have their personal visits denied or restricted based only on the following conduct during a visit:

- Possession of contraband while in or exiting the visiting area.

- Engaging in sexual conduct with a minor.
- Engaging in sexual conduct with an adult outside of a family visit.
- Committing physical violence during a personal visit or the visitor screening process.
- Escaping or aiding an escape, or attempting to escape or aid an escape.

This bill allows CDCR to deny a visitor access per reasonable uniformly enforced department regulations related to identification, dress, intoxication, search procedures, and authorization for visits by minors. This bill also outlines the steps the department must take if a personal visit is denied. Finally, this bill requires CDCR to provide at least three days of in-person visitation per week, and requires CDCR to make strenuous efforts to maximize visiting space in order to accommodate as many visitors as possible in family-friendly settings.

4. CDCR Visitor Search Policies

Any person coming onto the property of a CDCR institution is subject to inspection as necessary to ensure institution or facility security including prevention of the introduction of contraband. (Cal. Code Regs., tit. 15, § 3173.2, subd. (a).) Regulations provide that inspections may include a search of the visitor's person, personal property, and vehicle when there is reasonable suspicion to believe the visitor may be attempting to introduce or remove contraband or unauthorized items or substances into, or out of, the institution or facility. (*Ibid.*) Visitors are required to submit to any and all of the following: contraband or metal detection devices, electronic drug detectors, and a thorough search of all personal items. (Cal. Code Regs., tit. 15, § 3173.2, subd. (c).) All visitors are required to successfully pass through a metal detector unless a documented medical condition or disability exists that would preclude the visitor from passing through the detector. (Cal. Code Regs., tit. 15, § 3173.2, subd. (d)(1).) Additional screening will occur when an individual sets off the alarm of the metal detector, an individual is selected for additional screening, or an individual has provided documentation to substantiate a condition that precludes successful screening by metal detector. (Cal. Code Regs., tit. 15, § 3173.2, subd. (d)(2).) The additional screening may include a hand-held wand inspection in conjunction with a clothed body search of the visitor's body, including the torso, a clothed body search alone, or an unclothed body search. (*Ibid.*)

An unclothed body search involves visual inspection of a person's body and body cavities with all of their clothing removed and a thorough inspection of the person's clothing for the purpose of detecting contraband. (Cal. Code Regs., tit. 15, § 3173.2, subd. (d)(7).) The visitor's body will not be touched by staff during the unclothed body search. (*Ibid.*) Regulations require this procedure to be conducted with the visitor's consent and when there is a reasonable suspicion that the visitor may be carrying contraband and when no less intrusive means are available to conduct the search. (*Ibid.*) A clothed body search may include touching sensitive areas of the body. (Cal. Code Regs., tit. 15, § 3173.2, subd. (d)(6).)

Visitors who refuse to submit to an unclothed body search, where reasonable suspicion exists, will have their visiting privileges denied for that day. (Cal. Code Regs., tit. 15, § 3176, subd. (a)(3)(A).) Future visits may be conditioned upon the visitor's willingness to submit to an unclothed body search prior to being allowed to visit. (*Ibid.*) Regulations provide that such searches may be repeated on subsequent visits for as long as institution or facility officials have reasonable suspicion to believe the visitor may be attempting to introduce contraband, unauthorized substances or items into the institution or facility. (*Ibid.*)

This bill makes a number of changes to CDCR's visitor search policy. First, this bill prohibits CDCR from conducting strip searches, visual body cavity searches, and physical body cavity searches of visitors who are under 18 years of age. Next, this bill requires CDCR, with the written consent of the visitor, to conduct a pat down or thorough clothing search of the individual if a visitor is unable to or does not consent to search by a metal detector, body scanner, or similar contactless screening method, or if the visitor requires further screening after undergoing such a search.

This bill also prohibits CDCR from requiring an adult visitor to consent to a strip search as a condition for entering the visiting area unless, after conducting a search by metal detector, body scanner, or similar contactless screening method, pat down, or thorough clothing search, *probable cause* exists to believe contraband is present and concealed on the visitor's person or in their body cavities. This bill additionally prohibits CDCR from performing a strip search of a visitor without both obtaining consent in writing and informing the visitor that they may decline the search and forgo the visit for that day, and requires CDCR to retain a record of the consent or declination form and a record of the search results, whether positive, negative, or inconclusive, and provide a true and complete copy of the record to the person searched or proposed to be searched.

5. AB 990 Veto

AB 990 (Santiago), of the 2021-2022 Legislative Session, was substantially similar to this bill. In vetoing AB 990, the Governor stated:

My Administration has made it a priority to reform our state's rehabilitation processes, including visitation rights. In fact, this year's budget added a third day of weekly in-person visitation at all CDCR institutions and included funding to provide visitors with free transportation on select days throughout the year to all prisons. While I am in strong support of expanding and increasing visitation opportunities, the heightened standard in this legislation is likely to result in extensive and costly litigation from individuals denied visitation for what may be valid and serious safety and security concerns. I urge the author to work with CDCR to find a solution that expands access to visitation in a manner that protects all parties.

6. Argument in Support

The Essie Justice Group writes:

AB 2709 addresses the current institutional barriers that impede these connections by:

1. Prohibiting the denial of visits as a form of discipline for conduct unrelated to visiting.
2. Requiring the California Department of Corrections and Rehabilitation (CDCR) to rely on a Department of Justice criminal background report, rather than self-reported information, to determine a visitor's law enforcement history.
3. Ensuring that visits are not denied based on a visitor's law enforcement history unless it directly relates to a serious violation of visiting rules.

4. Mandating that CDCR provides specific written reasons for any denial of visiting.
5. Establishing a minimum of three in-person visiting days per week for individuals serving felonies in state prisons.
6. Prohibiting CDCR from mandating a strip search as a condition for a visit.

The impact of these measures cannot be overstated. They are not only about enabling visits but also about upholding the dignity and humanity of all individuals, including those who are incarcerated, and their families.

We firmly believe that AB 2709 aligns with the core principles of rehabilitation, successful reintegration, and community well-being. It builds upon the Legislature's recognition of the rehabilitative value of personal visits during incarceration and takes necessary steps to ensure that these visits are accessible and meaningful.

7. Argument in Opposition

According to the California Correctional Peace Officers Association:

CCPOA recognizes the importance of visitation to the lives and rehabilitation of the inmates incarcerated within ... CDCR and supports efforts to better streamline and improve access to visitation. This bill, however, is not in the state's best interests and fails to consider the risks of legitimate security concerns posed by certain individuals and situations.

...

According to AB 2709, without exception, an inmate may not have their visitation denied or restricted for any disciplinary action in response to an event that occurred outside of the visitation area. There are certainly relevant and practical reasons to hold an inmate accountable for their behavior and conduct within an institution with real, but temporary, consequences. For example, inciting violence or the actual commission of violence within the institution should influence the ability of the inmate to have access to visits, if only temporarily. Without consequences, there will be too few tools available to hold inmates accountable for their actions. This bill would guarantee the right to a contact visit for an inmate who stabbed a correctional officer the previous day. This is an untenable security risk for everyone in the visitation room and offers no accountability.

CCPOA also considers the reasons for which a visitation can be denied to visitors to be far too narrow. For example, as long as the visitor has provided a criminal history, they cannot be denied a visit based on the content of that criminal history unless they have committed the same narrow list of offenses within a prison visitation area. ... These new rules would enable incarcerated leaders of criminal organizations to exert their influence and manage their organizations from within the prison walls far more easily.

The provisions of AB 2709 are far too restrictive and limit the ability of prison staff and management to ensure the safety of inmates, visitors, and staff.