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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

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**Bill No:** AB 1226                      **Hearing Date:** June 13, 2023  
**Author:** Haney  
**Version:** March 22, 2023  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Corrections: Placement of incarcerated persons*

### HISTORY

**Source:** Alliance for Boys and Men of Color  
Legal Services for Prisoners with Children  
The Place4Grace  
Underground Scholars Initiative, UC Berkeley  
Jessie's Place

**Prior Legislation:** SB 1139 (Kamlager), Ch. 837, Stats. 2022  
AB 990 (Santiago), vetoed 2021  
AB 964 (Medina), held in Assembly Appropriations 2019  
SB 843 (Comm. on Budget), Ch. 33, Stats. 2016  
SB 1157 (Mitchell), vetoed 2016  
AB 2133 (Goldberg), Ch. 238, Stats. 2002

**Support:** California Alliance for Youth and Community Justice; California Attorneys for Criminal Justice; California Immigrant Policy Center; California Public Defenders Association; Children's Law Center of California; Communities United for Restorative Youth Justice; East Bay Family Defenders; Ella Baker Center for Human Rights; Felony Murder Elimination Project; First 5 Alameda County; Initiate Justice; Legal Aid at Work; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; Prosecutors Alliance California; Root & Rebound; Safe Return Project; Secure Justice; Showing Up for Racial Justice Bay Area; Showing Up for Racial Justice Santa Cruz County; Sister Warriors Freedom Center; Smart Justice California

**Opposition:** None known

**Assembly Floor Vote:** 70 - 0

### PURPOSE

*The purpose of this bill is to require the California Department of Corrections and Rehabilitation (CDCR) to assign or reassign an incarcerated person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child, except as specified.*

*Existing law* provides that the term of imprisonment fixed by the judgment in a criminal action commences to run only upon the actual delivery of the defendant into the custody of the Secretary of CDCR at the place designated by the Secretary. (Pen. Code, § 2900, subd. (a).)

*Existing law* requires CDCR to examine and study each person who is newly committed to a state prison. Provides that this includes the investigation of all pertinent circumstances of the person's life such as the existence of any strong community and family ties, the maintenance of which may aid in the person's rehabilitation, and the antecedents of the violation of law for which the person has been committed to prison. (Pen. Code, § 5068.)

*Existing law* requires CDCR, upon the basis of the examination and study, to classify incarcerated persons, and when reasonable, assign an incarcerated person to the institution of the appropriate security level and gender population nearest the person's home, unless other classification factors make such a placement unreasonable. (Pen. Code, § 5068.)

*Existing law* defines "reasonable" to include consideration of the safety of the prisoner and the institution, the length of term, and the availability of institutional programs and housing. (Pen. Code, § 5068.)

*Existing law* defines "prisoner's home" as a place where the prisoner's spouse, parents, or children reside at the time of commitment. (Pen. Code, § 5068.)

*Existing law* provides that the "parent child relationship" is established between a child and natural parent, by proof of having given birth to the child, or between a child and adoptive parent, by proof of adoption. (Fam. Code, § 7610.)

*Existing law* defines "guardian" as the legal guardian of the child, who assumed care and control of the child while the child was in the guardian's control, and who is not a biological or adoptive parent. (Fam. Code, § 17550.)

*Existing law* defines "relative caregiver" as a relative, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent. (Fam. Code, § 17550.)

*Existing law* defines a "relative" as an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of those persons even if the marriage was terminated by death or dissolution. (Welf. & Inst. Code, § 11362.)

*Existing law* prohibits an incarcerated persons from being prohibited from family visits based solely on the fact that the person were sentenced to life without the possibility of parole or sentenced to life and is without a parole date established by the Board of Parole Hearings. (Pen. Code, § 6404.)

*Existing law* requires that regulations adopted by CDCR which may impact the visitation of incarcerated persons to, among other things, consider the important role of visitation in establishing and maintaining a meaningful connection with family and community. (Pen. Code, § 6400.)

*This bill* provides that following the initial intake evaluation, an incarcerated person's placement may be reevaluated to determine whether existing orders and dispositions should be modified or continued in force, including, but not limited to, whether the incarcerated person's child has moved to a place significantly nearer to an otherwise suitable and appropriate institution.

*This bill* requires the Secretary to classify incarcerated persons based on the initial evaluation or reevaluation, and requires the Secretary, when reasonable, to assign or reassign an incarcerated person to the institution of the appropriate security level and gender population nearest the incarcerated person's home, unless other classification factors make that placement unreasonable.

*This bill* requires the Secretary, if the person has a parent and child relationship with a child under 18 years of age, as described, or is a guardian or relative caregiver, as defined, to place an incarcerated person in the correctional institution or facility that is located nearest to the primary place of residence of the person's child, provided that the placement is suitable and appropriate, would facilitate increased contact between the person and their child, and the incarcerated parent gives their consent to the placement.

*This bill* provides that an incarcerated person may request a review of their housing assignment when there is a change in the primary place of residence of the person's child upon which the person's housing assignment was based.

*This bill* requires the department to make a separate determination for each individual child if an incarcerated person has more than one child under 18 years of age.

*This bill* defines "incarcerated person's home" to include a place where the incarcerated person's spouse, parents, or children reside at the time of commitment or at the time of a review of an incarcerated person's classification or housing assignment.

*This bill* defines "reasonable" to include consideration of the safety of the incarcerated person and the institution.

*This bill* defines "reassign" to mean the transfer of an incarcerated person's housing assignment from one institution to another.

## COMMENTS

### 1. Need For This Bill

According to the author:

A relationship between a parent and child is crucial for the child's behavioral and emotional development. Sadly, children with incarcerated parents have a harder time creating a relationship with their parent because they have less contact with them. One of the main barriers to children and incarcerated parents maintaining contact is the long distances between prison and the child's home. There are thousands of incarcerated parents who are placed more than 500 miles from their children, making it difficult for the child to maintain contact. AB 1226 respects

the right of a child to remain in contact with their incarcerated parent by requiring CDCR to place incarcerated parents in the closest institution to their child's home.

## 2. Placement of Persons Incarcerated at CDCR

CDCR's Department Operations Manual (DOM) establishes the procedures for reception, processing, and transfer of incarcerated persons into CDCR institutions. (DOM § 61010.2.) Upon reception, staff processes each newly incarcerated person by collecting their social and criminal history as well as interviewing the person. (DOM § 61010.4.) A correctional counselor reviews all relevant documents available during the reception process and completes a score sheet. (DOM § 61010.9.) An incarcerated person's placement score usually determines to which institution to the person will be assigned. (*Ibid.*)

The correctional counselor takes into account a wide array of factors to calculate the placement score, including but not limited to the incarcerated person's gang involvement, immigration status, psychiatric and medical conditions, age at first arrest, age at reception, number of years of their total term, prior incarceration, prior incarceration behavior including any serious disciplinary history, whether the person is condemned or serving life without the possibility of parole, history of escape, whether the person has a current or prior conviction for a violent felony, and whether the case is one of public interest. (DOM §§ 61010.11.2-61010.11.6.) The incarcerated person's score determines the security level institution of the institution where they can be placed. (*Ibid.*)

Each year an annual review is performed by a counselor to determine if an incarcerated person's placement score should be reduced or increased. CDCR, *What to Expect* <<https://www.cdcr.ca.gov/ombuds/ombuds/entering-a-prison-faqs/>> [as of Jun. 6, 2023].) An incarcerated person has the opportunity to reduce their score if the person has been programming and have not received any disciplinary actions, and an incarcerated person's score and subsequent housing level can be increased as a result of disciplinary actions. The incarcerated person's family location is taken into consideration when the person is initially assigned to be housed at a particular institution, but being placed near family is not guaranteed due to many other factors. (*Ibid.*)

This bill would require CDCR, if an incarcerated person has a child under 18, or is a guardian or relative caregiver, to place the person in the correctional institution or facility that is located nearest to the primary place of residence of the child, if the placement would facilitate increased contact between the person and their child, and if the incarcerated parent gives their consent to the placement. This bill would also allow an incarcerated parent to request a review of their housing assignment when there is a change in the primary place of residence of their children.

## 3. Benefits of Visitation

Proponents of this bill argue that it would reduce barriers to in-person visitation given that incarcerated individuals are less likely to receive visits the further they are housed from home. 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/](https://www.prisonpolicy.org/blog/2021/12/21/family_contact/)> [as of Jun. 6, 2023].) 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.*)

#### 4. Argument in Support

Legal Services for Prisoners with Children, one of the bill's co-sponsors, writes:

Currently, about 195,000 children have incarcerated parents in California state prisons. Due to sudden separation from their caregiver, children with incarcerated parents experience unique issues such as antisocial behavior and drug abuse. However, children who are able to maintain contact with their parents experience less severe harmful impacts.

Additionally, incarcerated parents who participate in family visitation programs have lower rates of parole violation and recidivism after release. Regular contact between children and their incarcerated parents also improves family reunification following the parent's release from prison.

Under current CDCR practices, the incarcerated parent's family location is taken into consideration. However, there is no law that requires CDCR to place a parent close to their minor child and many families end up hundreds of miles apart from each other.

Being incarcerated long distances from home is the number one barrier to families with minor children staying in contact with one another.

In 2019, CDCR released information that said only 25% of incarcerated people in California state prisons are placed in institutions less than 100 miles from their home. ...

Visitation falls off significantly the farther from home a person is incarcerated. 50% of people placed less than 50 miles away from home receive frequent family visitation, but only 15% of people placed 500 miles away receive visitors.

Incarcerated mothers in particular, struggle to maintain contact with their children. More than half of incarcerated mothers do not receive any visits from their children while they are in prison. The single most significant reason for lack of contact is the children's distance from their mothers' prisons, many of which are located far from major population centers.

AB 1226 removes contact barriers between children and their incarcerated parents or caregivers by requiring CDCR to assign the incarcerated person to serve their term in the institution closest to their minor child's home.

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