
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 2533 **Hearing Date:** June 19, 2018
Author: Mark Stone
Version: April 3, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Inmates: Indigence*

HISTORY

Source: California Coalition for Women Prisoners

Prior Legislation: None

Support: ACLU of California; Anti-Recidivism Coalition; California Public Defenders Association; Californians United for a Responsible Budget; East Side Studios; Ella Baker Center for Human Rights; Fair Chance Project; Friends Committee on Legislation of California; Full Moon Pickles and Catering; Legal Services for Prisoners with Children; National Association of Social Workers, California Chapter; Restore Justice; Root & Rebound; San Francisco Public Defender; Survived & Punished; Transgender, Gendervariant, Intersex Justice Project; United Auto Workers Local 286; Women's Center for Creative Work; Young Women's Freedom Center; individuals

Opposition: None known

Assembly Floor Vote: 56 - 17

PURPOSE

The purpose of this bill is to require that a state prison inmate who has maintained an inmate trust account with \$25 or less for 30 consecutive days be deemed indigent, and to require that an indigent inmate be provided with sufficient resources to communicate with and access the courts, as specified, and not be charged for medical, dental, and mental health copayments.

Existing law provides that inmates engaged in productive work may receive compensation as determined by the Secretary of the California Department of Corrections and Rehabilitation (CDCR). (Pen. Code, § 2700.)

Existing law authorizes any prison or institution under the jurisdiction of the CDCR to maintain a canteen for the sale of toilet articles, candy, notions, and other sundries. (Pen. Code, § 5005.)

Existing law provides that the Director of CDCR shall specify what commodities shall be sold in the canteen and fix the sale prices of the articles offered for sale at amounts that will render each canteen self-supporting. (Pen. Code, § 5005.)

Existing law authorizes the Director of CDCR to charge a \$5 fee for each inmate-initiated medical visit to the prison account of the inmate. (Pen. Code, § 5007.5, subd. (a).)

Existing law provides that if an inmate has no money in her personal account, there shall be no charge for the medical visit. (Pen. Code, § 5007.5, subd. (b).)

Existing law provides that an inmate shall not be denied medical care because of a lack of funds. (Pen. Code, § 5007.5, subd. (c).)

Existing law provides that follow up medical visits, at the discretion of medical staff, shall not be charged to the inmate. (Pen. Code, § 5007.5, subd. (e).)

Existing law provides that all money received by the Director shall be expended to reimburse CDCR for direct provision of inmate health care services. (Pen. Code, § 5007.5, subd. (f).)

This bill requires that an inmate in a state prison who has maintained an inmate trust account with \$25 or less for 30 consecutive days be deemed indigent.

The bill requires that an inmate who is indigent be provided with sufficient resources to communicate with and access the courts, as specified, and not be charged for medical, dental, and mental health copayments.

COMMENTS

1. Need for This Bill

According to the author:

Under current California Department of Corrections and Rehabilitation regulations, any inmate who has less than \$1.00 in their Inmate Trust Account for 30 consecutive days is entitled to certain basic necessities. These necessities include the materials necessary for communicating with the courts, prescribed medical appliances, and, upon request, hygiene items.

However, the restrictively low indigence threshold creates significant ethical issues by preventing poor inmates from accessing the courts, threatening the health and safety of inmates and correctional staff, adding to the challenge of reintegration, and further burdening families, who are often primarily responsible for covering conviction-related costs.

Current CDCR practice requires indigent inmates to submit a request in order to receive basic hygiene supplies (soap, toothpaste, toothbrushes, laundry detergent, deodorant, denture adhesive, etc.). Stigma around this process prevents many indigent inmates from accessing the supplies they need to maintain health and safety. In addition, many inmates who are too poor to purchase necessary hygiene items still do not qualify for indigence under the current threshold. AB 2533 would ensure dignity for poor inmates by raising the threshold and requiring CDCR to provide *all* indigent inmates with the basic supplies necessary for maintaining personal hygiene.

Inmates are also required to pay a \$5 copayment for any medical, dental, or mental-health visit that they initiate; which limits access to care for poor inmates. While a \$5.00 co-payment may not seem restrictively high to those outside the prison system, the prison economy operates on a completely different scale. Inmates earning the prison minimum wage make 8 cents per hour, which means that the \$5.00 co-payment would be roughly equivalent to a \$687.50 co-payment for a minimum wage worker outside the prison system. In other words, it takes inmates up to 9 days of work to afford a single co-payment.

...

When an inmate is discouraged from seeking medical care or hygiene supplies by high cost, the entire correctional facility is endangered by the further spreading of communicable diseases like hepatitis C to staff and other inmates. This is particularly dangerous in prisons, an environment that is susceptible to the spread of disease...

...

AB 2533 will raise the indigence threshold to \$25 to ensure that all impoverished inmates can communicate with the courts, access adequate health and dental care, and maintain their personal hygiene. This will also reduce the burden on families who oftentimes bare the financial strain of the costs of incarceration.

2. CDCR Regulations Pertaining to Indigent Inmates

Indigent inmate is defined in regulation as “an inmate who is wholly without funds [in their trust account] at the time they were eligible for withdrawal of funds for canteen purchases.” (Cal. Code Regs., tit. 15, § 3000.)

This bill would define an indigent inmate as an inmate who has \$25 or less in his or her Trust Account for 30 consecutive days.

a) Inmate Trust Accounts

CDCR inmates are not permitted to have more than \$50 in their possession at any one time. (Department Operations Manual (DOM) § 83050.1.) Instead, each CDCR inmate keeps his or her money in an inmate trust account which is deposited in the State Treasury. (Pen. Code, § 5057.) All of an inmate’s money, including wages earned from inmate work as well as money deposited by an inmate’s family or friend, is deposited into the inmate’s trust account. (DOM §§ 47130.1, 54070.5.1.) All monies deposited in an inmate trust account are subject to restitution and administrative charges. (Cal Code of Regs., tit. 15, § 3097.) Inmates may use the funds in their trust account for health, legal, and mail needs as well as for discretionary spending, including canteen purchases. (Pen. Code, § 5007.5; Cal Code of Regs., tit. 15, § 3090, subd. (c).) A canteen operates like a small store within the prison, where inmates can purchase various items such as toothpaste, soap, shampoo, food, and beverages. All funds earned as profit from canteen purchases are deposited into the Inmate Welfare Fund. (DOM § 54070.1.)

b) Inmate Mail Supplies and Access to the Courts

Upon an indigent inmate's request, writing paper, envelopes, a writing implement, and the postage required for five one-ounce First-Class letters per week will be supplied by the institution. (Cal. Code Regs., tit. 15, § 3138, subd. (a).) The inmate is allowed to utilize the envelopes regardless of future deposits to the inmate's trust account. (Cal. Code Regs., tit. 15, § 3138, subd. (d).) The cost of postage for mailing documents to the courts is charged against an inmate's trust account unless the inmate is indigent. (Cal. Code Regs., tit. 15, § 3165, subd. (d).) Indigent inmates are provided free and unlimited mail to any court or the Attorney General's Office. (Cal. Code Regs., tit. 15, § 3138, subd. (h).)

In addition to any other court costs and filing fees, an inmate initiating a state civil action must pay a \$3.00 filing fee to CDCR, which is charged against the inmate's trust account. (Cal. Code Regs., tit. 15, § 3160, subd. (b).) However, if the inmate is without sufficient funds at the time of the charge, the civil action will be filed with the court, and the inmate will not be charged for the remaining balance of the filing fee. (Cal. Code Regs., tit. 15, § 3160, subd. (b)(3).)

For purposes of submitting or duplicating legal documents, indigent inmate is defined as an inmate who "currently has and for the previous 30 consecutive days has maintained \$1.00 or less in his or her inmate trust account." (Cal. Code Regs., tit. 15, § 3162, subd. (a).) An indigent inmate who does not have attorney representation may receive duplication services without charge for specified legal documents. (Cal. Code Regs., tit. 15, § 3162, subd. (d).)

c) Inmate Personal Hygiene Supplies

The U.S. Supreme Court has held that the Eighth Amendment requires inmates to be provided sanitation and personal hygiene. (*Keenan v. Hall* (1996) 83 F.3d 1083, 1091, finding that "[i]ndigent inmates have the right to personal hygiene supplies such as toothbrushes and soap"; *Hoptowit v. Ray* (1982) 682 F.2d 1237, 1246, finding that the Eighth Amendment guarantees sanitation; *Toussaint v. McCarthy* (1984) 597 F. Supp. 1388, 1411, stating that the Eighth Amendment guarantees personal hygiene.) CDCR regulations also require that its institutions "provide the means for all inmates to keep themselves and their living quarters clean and to practice good health habits." (Cal. Code Regs., tit. 15, § 3060.)

d) Inmate Medical Care and Health-Related Supplies

The government has an obligation to provide medical care for those whom it punishes by incarceration and cannot be deliberately indifferent to the medical needs of its prisoners. (See *Estelle v. Gamble* (1976) 429 U.S. 97, 104.) Inmates are charged a \$5 copay drawn from their trust account for inmate-initiated medical visits. (Pen. Code, § 5007.5, subd. (a).) An inmate who has no money in his or her inmate trust account is not charged for the medical visit, and cannot be denied medical care because of a lack of funds in his or her prison account. (Pen. Code, § 5007.5, subd. (b) & (c).) Follow up medical visits, at the discretion of medical staff, are not charged to inmates. (Pen. Code, § 5007.5, subd. (e).)

An inmate may purchase health-related appliances, including but not limited to eyeglasses, artificial eyes, dental prosthesis, artificial limbs, orthopedic braces and shoes, and hearing aids, using funds in the inmate's trust account. (Cal. Code Regs., tit. 15, § 3358, subd. (c).) An inmate's need for such appliance is based on medical necessity. (Cal. Code Regs., tit. 15, §

3358, subd. (a).) If an inmate is indigent, prescribed appliances are provided at state expense. (Cal. Code Regs., tit. 15, § 3358, subd. (c).)

3. Argument in Support

According to the ACLU of California:

[The existing] thresholds for indigence are far too restrictive to allow many California prisoners to meet their basic needs and access the courts, and discourages them from seeking medical treatment – CDCR currently charges \$5 for every medical visit. (PC 5007.5.) Indeed, someone with \$1 in their trust account at one point, but who has none when they need to send legal mail, will be denied this opportunity.

By revising the threshold for indigence, AB 2533 will ensure that all prisoners can communicate with the courts, access adequate health and dental care, and maintain personal hygiene. This will also reduce the burden on families who often bear the financial strain of the current policy by having to send money for personal care, writing materials, and notary services. AB 2533 will help ensure that prisoners can live with basic dignity, care, and due process.

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