
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 254 **Hearing Date:** July 6, 2021
Author: Jones-Sawyer
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Contraband in state prisons*

HISTORY

Source: Author

Prior Legislation: SB 139 (Alquist), vetoed in 2011
SB 1066 (Oropeza), vetoed in 2010
SB 434 (Benoit), held in Assembly Appropriations 2009
SB 1730 (Padilla), held in Senate Appropriations 2008
SB 655 (Margett), Chap. 655, Stats. 2007

Support: Amador County District Attorney's Office; Monterey County District Attorney's Office; Orange County District Attorney's Office; San Francisco District Attorney's Office

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to require the Department of Corrections and Rehabilitation (CDCR) to revise its policies to include searches of all persons entering state prisons.

Existing law prohibits unreasonable searches and seizures. (U.S. Const. 4th Amend.; Cal. Const. art. I, § 13.)

Existing law requires CDCR to develop policies related to the department's contraband interdiction efforts for individuals entering CDCR facilities. (Pen. Code, § 6402.)

Existing law requires CDCR's contraband interdiction policies to include:

- Application to all individuals, including visitors, all department staff, including executive staff, volunteers, and contract employees;
- Use of methods to ensure that profiling is not practiced during random searches or searches of all individuals entering the prison at that time;
- Establishment of unpredictable, random search efforts and methods that ensures that no one, except department employees specifically designated to conduct the random search, shall have advance notice of when a random search is scheduled;

- All visitors attempting to enter a CDCR detention facility shall be informed that they may refuse to be searched by a passive alert dog;
- All visitors attempting to enter a CDCR detention facility who refuse to be searched by a passive alert dog shall be informed of options, including, but not limited to, the availability of a noncontact visit;
- All individuals attempting to enter a CDCR detention facility, who have a positive alert for contraband by an electronic drug detection device, a passive alert dog, or other technology, shall be informed of further potential search or visitation options;
- Establishment of a method by which an individual may demonstrate an authorized health-related use of a controlled substance when a positive alert is noted by an electronic drug detection device, a passive alert dog, or other technology;
- Establishment of specific requirements for additional search options when multiple positive alerts occur on an individual employee within a specified timeframe; and,
- In determining which additional search options to offer visitors and staff, CDCR shall consider the use of full-body scanners. (Pen. Code, § 6402, subs. (a)-(i).)

Existing law provides that any person, who knowingly brings or sends into, or knowingly assists in bringing into, or sending into, any state prison, prison road camp, prison forestry camp, or other prison camp or prison farm or any other place where prisoners of the state are located under the custody of prison officials, officers or employees, or into any county, city and county, or city jail, road camp, farm or other place where prisoners or inmates are located under custody of any sheriff, chief of police, peace officer, probation officer or employees, or within the grounds belonging to the institution, any controlled substance, as specified, any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming a controlled substance, is guilty of a felony punishable by for two, three, or four years in county jail. (Pen. Code, § 4573, subd. (a).)

Existing law provides that any person who knowingly brings into any state prison or other institution under the jurisdiction of CDCR, or other detention facilities, as specified, any alcoholic beverage, any drugs, other than controlled substances, in any manner, shape, form, dispenser, or container, or any device, contrivance, instrument, or paraphernalia intended to be used for unlawfully injecting or consuming any drug other than controlled substances, without having authority so to do by the rules of CDCR, the rules of the prison, institution, camp, farm, place, or jail, or by the specific authorization of the warden, superintendent, jailer, or other person in charge of the prison, jail, institution, camp, farm, or place, is guilty of a felony. (Pen. Code, § 4573.5.)

Existing law provides that any person in a local correctional facility who possesses a wireless communication device, including, but not limited to, a cell phone, pager, or wireless Internet device, who is not authorized to possess that item is guilty of a misdemeanor, punishable by a fine of not more than \$1,000. (Pen. Code, § 4575, subd. (a).)

Existing law provides that a person who possesses with the intent to deliver, or delivers, to an inmate or ward in the custody of CDCR any cellular telephone or other wireless communication device or any component thereof, including, but not limited to, a subscriber identity module (SIM card) or memory storage device, is guilty of a misdemeanor, punishable by imprisonment in the county jail not exceeding six months, a fine not to exceed \$5000 for each device, or both. (Pen. Code, § 4576, subd. (a).)

This bill requires CDCR policies related to contraband interdiction efforts to include searches of all persons entering CDCR adult facilities, including the search of personal property brought inside the facility.

This bill requires CDCR to conduct an evaluation of its contraband interdiction policy and report to the Legislature on January 1 each year, starting on January 1, 2023, that includes all of the following:

- An assessment of the relative cost-effectiveness in reducing inmate drug use of each contraband interdiction strategy used in the policy;
- Data on and analysis of instances of contraband entering the prison, including, but not limited to, the following:
 - How the contraband was brought or attempted to be brought into the prison;
 - When the violation occurred;
 - Whether the person who is alleged to have committed the violation is an inmate, staff member, visitor, volunteer, contractor, or other;
 - The type of contraband involved;
 - How the violation was discovered;
 - Data on and analysis of arrests resulting from the violation, including, but not limited to, the number and type of arrests; and,
 - Data on and analysis of disciplinary actions taken against staff or inmates as a result of their participation in efforts to bring contraband into the prison.
- An assessment of whether the policy caused declines in or any other observable impact on visitation;
- An assessment of whether the policy caused changes in the prevalence of violence or lockdowns in the prison; and,
- Any other data the department determines has probative value as to the efficacy of the pilot program.

This bill provides that its provisions do not apply to a facility that the department has announced is subject to closure as of January 1, 2022.

COMMENTS

1. Need for This Bill

According to the author:

Unlawful contraband items such as weapons and drugs directly impact the safety of incarcerated persons, staff, and the public. According to a 2017 report on CDCR's contraband interdiction efforts, correctional institutions have struggled to limit the flow of contraband into California's prisons as well as the trading and use of contraband among staff and incarcerated persons.

Currently in California, while all visitors at any CDCR facility are screened through a variety of search tools (metal detectors, millimeter wave scanner, etc.) upon entry of a facility, CDCR employees are not currently required to undergo daily entry searches. Department policy requires intensive searches of

incarcerated persons which include clothed or unclothed searches and can lead to isolated Contraband Surveillance Watch if they are suspected of contraband use. As specified by CDCR Guidelines, CDCR staff are only subject to searches when an official deems it necessary or during random searches performed at minimum once a month. Most recently, fraud investigations involving CDCR and the Employment Development Department (EDD) have highlighted issues with cellphone contraband use within prisons even while pandemic safety policies have paused physical visitations. In a 2020 budget report, CDCR saw an increase of drugs discovered at its institutions when compared to previous years and recovered nearly 12,000 cellphones. This finding further elevates concerns on how contraband enters facilities that are heavily surveillance.

The safety and wellness of incarcerated persons and staff are put at risk when drug contraband enters prisons. California's nearly three dozen penal institutions recorded 997 overdoses in 2018, more than double the number just three years earlier. Forty prisoners died from overdoses in California in 2017, a rate three times the average nationwide. Efforts to ensure the safety of incarcerated persons, visitors, and staff are jeopardized when security loopholes are not addressed.

This bill would require the screening of every person, including CDCR staff, and their property upon entry to a prison facility. This bill would also require CDCR to provide an annual evaluation report to the Legislature addressing the efficacy of contraband interdiction efforts at CDCR adult facilities.

2. Contraband in the State's Prisons

Contraband entering the state's prisons, especially in the form of cell phones and illegal narcotics, has long been a problem. A 2009 report by the Office of the Inspector General highlighted the safety concerns stemming from the proliferation of cell phones among the state prison inmate population. (OIG, *Inmate Cell Phone Use Endangers Prison Security and Public Safety* (May 2009), available at <<https://www.oig.ca.gov/wp-content/uploads/2019/05/Special-Report-of-Inmate-Cell-Phone-Use.pdf>>.) A number of bills were introduced between 2006 and 2011 to combat this issue. SB 655 (Margett), Chapter 655, Statutes of 2007, prohibited possession or use of wireless communication devices by CDCR inmates. SB 1066 (Oropeza) would have required CDCR to oversee and conduct periodic and random searches of all employees and vendors entering all CDCR prisons for contraband, but was vetoed by Governor Schwarzenegger. SB 139 (Alquist) would have required CDCR to oversee and conduct periodic and random searches of employees and vendors entering the secure perimeter of a state prison for contraband, but was vetoed by the Governor Brown.

CDCR has continued to struggle to limit or stop the introduction of contraband into the state's prisons. A 2017 report on CDCR's contraband interdiction efforts lays out the problems created or exacerbated by the introduction of contraband:

Drug use and the presence of cellphones in prisons and jails pose several logistical and security challenges that contravene the objectives of correctional institutions. Many inmates have histories of drug and alcohol abuse and in many instances serious substance abuse problems. The availability of drugs behind bars clearly compromises rehabilitative programming efforts. The trafficking of contraband may augment violent conflict between inmates, and between inmates

and staff. Smuggling drugs and cellphones into prison may ensnare visiting family and friends who may be motivated by profit, feel compelled to help loved ones, or in some instances be coerced into bringing contraband to visiting centers. The smuggling of contraband by staff clearly undermines the authority and legitimacy of correctional officers and, more generally, prison and jail staff members. (Raphael et al., *The Effects of California's Enhanced Drug and Contraband Interdiction Program on Drug Abuse and Inmate Misconduct in California's Prisons* (2017), p. 8 available at <https://gspp.berkeley.edu/assets/uploads/research/pdf/Final_report_April_29_2017_finalv2.pdf>.)

In an attempt to deal with this issue, the Legislature appropriated \$10.4 million to CDCR over two years beginning in fiscal year 2014-2015 to implement an interdiction effort. The report cited above describes how the program was implemented:

The program involved interdiction efforts at 11 of California's prisons; eight receiving a moderate intervention and three receiving an enhanced intervention. The EDCIP program was implemented in a manner that targeted institutions believed to have the most serious and pervasive contraband problems. The intervention introduced random monthly drug testing of roughly 10 percent of inmates at all institutions and enhanced use of K-9 detection teams and ion spectrometry scanning technology at intervention institutions. Detection screening technology, both for trace amounts of narcotics and in some instances full body scans, is applied in one form or another to inmates, visitors, staff, and mail and packages at intervention institutions, with the key differences between intensive and moderate intervention institutions residing in the volume of this scanning activity. (*Id.* at pp. 8-9.)

The report concluded that drug use at intensive intervention institutions dropped by nearly a quarter with the implementation of the drug and contraband interdiction program, but did not decline at moderate intervention institutions. (*Id.* at pp. 4-5.) The report further concluded that although recorded instances of inmate misconduct for drug violations increased at intensive intervention institutions and recorded instances of inmate misconduct related to cell phones declined, there was little evidence of an impact on any of the specific misconduct measures in moderate intervention institutions. (*Id.* at p. 7.)

3. Additional Background

The following information was also provided to the Committee by the author's office:

As specified by CDCR Guidelines, CDCR staff are only subject to searches when an official deems it necessary or during random searches performed at minimum once a month. Most recently, fraud investigations involving CDCR and the Employment Development Department (EDD) have highlighted issues with cellphone contraband use within prisons even while pandemic safety policies have paused physical visitations. In 2020 budget report, CDCR saw an increase of drugs discovered at its institutions when compared to previous years and recovered nearly 12,000 cellphones. This finding further elevates concerns on how contraband enters facilities that are heavily surveilled.

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...

The California Legislature provided CDCR with \$9.1 million General Fund in FY 2018-2019 and \$8.3 million in FY 2019-2020 to implement a two-year pilot Contraband Interdiction Program at the California Substance Abuse Treatment Facility and State Prison (SAFT). The intervention introduced contraband interdiction devices at the front entrance areas, employed staff to operate the devices, expanded SAFT’s canine teams, conducted enhanced vehicle and institution searches, and instituted a drug program. Specifically, the pilot program required the entrance screening be conducted on every individual and package entering the prison 24 hours per day/ 7 days a week and required CDCR to provide the Legislature with an evaluation report. According to a January 2021 evaluation completed by CSU Fresno, of the 253 total entry screening violations at SATF, staff had the highest rate of violations with 49% or 124 violations (Clement, Kieckhaefer, Marshall, 2021, p. 40). Millimeter Wave Full Body Scanner and Baggage and Parcel x-ray devices together accounted for 89% of entry screening contraband discoveries. The study found cell phones and the “other” category account for the majority of contraband discovered (*Id.* at p. 43). It’s important to note that 2020 saw the highest amount of items not scanned, due to a variety of self-reported issues, one shift missing data on 400-500 items (*Id.* at pp. 44-48).

Table 25: Individuals Contraband Recovered From via Entry Screening, SATF (Nov. 2018-June 2020)

SATF	Count	Percent
Staff	124	49.0
Visitor	104	41.1
N/A	20	7.9
Contractor	3	1.2
Volunteer	2	.8
Total	253	100.0

Recently, CDCR has submitted a budget change proposal to the California Legislature of \$1.8 million general fund dollars in 2021-2022 and ongoing to maintain an existing Managed Access System at 18 institutions for the implementation of a cellular interdiction program. During an Assembly Budget Subcommittee 5 hearing on that proposal, CDCR reported data showing a significant increase in drug contraband during 2020, even while outside visitations were halted. As demonstrated in the table below, marijuana, methamphetamines, and tobacco were increasingly discovered when compared to 2019. It’s important to note that while cellular telephones discovered decreased, a

total of 11,778 were still confiscated at institutions. When asked several questions about these statistics CDCR stated, ‘We have to recognize that only staff were coming in for many, many months and we have to do a better job at coming up with strategies to stop [contraband] before it comes in.’ (Budget Subcommittee 5, 2/22/2021 at 1:53:00).

Contraband Discovered in Institutions from

January 01, 2017 - December 31, 2020

Type of Contraband	2017	2018	2019	2020
Cellular Telephones	16,175	16,091	13,450	11,778
Heroin (lbs)	30.5	34.8	37.5	27.6
Marijuana (lbs)	104.9	147.7	73.3	100.8
Methamphetamines (lbs)	45.4	51.3	54.0	60.3
Tobacco (lbs)	730.1	649.5	481.2	544.1

Data obtained from CDCR’s Office of Research

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