
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 353 **Hearing Date:** July 11, 2023
Author: Jones-Sawyer
Version: January 31, 2023
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Incarcerated persons: access to showers*

HISTORY

Source: Author

Support: Anti-Recidivism Coalition; California Public Defenders Association; Ella Baker Center for Human Rights; Initiate Justice; Los Angeles County District Attorney's Office; National Association of Social Workers, California Chapter; Social Change

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to require that each individual incarcerated in a state prison be permitted to shower at least every other day, and requires that denials for shower requests be approved by the facility manager as well as documented with the reason the request was denied.

Existing federal law prohibits cruel and unusual punishment. (U.S. Const., 8th Amend.)

Existing law prohibits cruel and unusual punishment. (Cal. Const., art. I, § 17.)

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

Existing law makes it unlawful to use any cruel, corporal or unusual punishment, or to inflict any treatment or allow any lack of care which would injure or impair the health of the incarcerated individual. (Pen. Code, § 2652.)

Existing law requires CDCR to provide each incarcerated individual with a bed, sufficient covering of blankets, and with garments of substantial material and of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health. (Pen. Code, § 2084, subd. (a).)

Existing law authorizes CDCR wardens to make temporary rules and regulations, in case of emergency, to remain in force until CDCR otherwise provides. (Pen. Code, § 2086.)

This bill requires that incarcerated individuals be permitted to shower at least every other day.

This bill requires, whenever a request for a shower is denied, that the decision be approved by the facility manager, and the reason or reasons for prohibiting an incarcerated person to shower be documented.

COMMENTS

1. Need For This Bill

According to the author:

Every person has the right to maintain good hygiene, regardless of their position in society. It is unjust, inhumane, and cruel to deny someone the opportunity to take a shower. Unfortunately, reports from individuals housed in CDCR prisons have shed light on the mistreatment they are facing. AB 353 aims to address one of these issues by legally stipulating the right of incarcerated individuals to shower and maintain proper hygiene. This bill specifically ensures that people in CDCR custody have access to showers at least every other day, irrespective of their employment status while incarcerated.

2. Constitutional Prohibition Against Cruel and Unusual Punishment

The Eighth Amendment's prohibition against cruel and unusual punishment protects incarcerated individuals from inhumane conditions of confinement. (*Farmer v. Brennan* (1994) 511 U.S. 825, 832.) Prison officials therefore have a "duty to ensure that prisoners are provided with adequate shelter, food, clothing, sanitation, medical care, and personal safety." (*Johnson v. Lewis* (9th Cir. 2000) 217 F.3d 726, 731.)

Although routine discomforts in prison are inadequate to show a violation of the Eighth Amendment, "those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation." (*Hudson v. McMillian* (1992) 503 U.S. 1, 9.) "The circumstances, nature, and duration of a deprivation of these necessities must be considered in determining whether a constitutional violation has occurred." (*Johnson v. Lewis*, supra, 217 F.3d at p. 731.)

Accordingly, "there is no constitutional right to a certain number of showers per week and an occasional or temporary deprivation of a shower does not rise to the level of a constitutional violation." (*Ontiveros v. Eldridge* (E.D. Cal. Apr. 13, 2020) U.S. Dist. LEXIS 64538, at *5.) But, "the denial of a shower on a continuous basis at some point will rise to the level of violating the Eighth Amendment." (*Pamer v. Schwarzenegger* (E.D. Cal. Dec. 22, 2010) U.S. Dist. LEXIS 135824, at *14.) "A prison official's failure to provide a prisoner with a shower or out-of-cell exercise for this extended period of time is sufficiently serious" to satisfy an Eighth Amendment claim. (*Ekene v. Cash* (C.D. Cal. Jan. 8, 2013) U.S. Dist. LEXIS 81952, at *20); see also *Keenan v. Hall* (9th Cir. 1996) 83 F.3d 1083, 1091 [Eighth Amendment guarantees sanitation and personal hygiene supplies].)

3. CDCR Regulations on Personal Hygiene

Regulations require CDCR institutions to “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.) The regulations further provide that incarcerated individuals “must keep themselves clean, and practice those health habits essential to the maintenance of physical and mental well-being.” (Cal. Code Regs., tit. 15, § 3061.) Further, CDCR is required to provide all incarcerated individuals with “basic supplies necessary for maintaining personal hygiene,” including soap, toothpaste, toothbrush, and toilet paper. (*Ibid.*)

CDCR’s Department Operational Manual (DOM) requires incarcerated individuals in segregated confinement to be permitted to shower at least three times a week. (DOM §§ 52080.21.6 & 52080.33.6.) However, there are no other rules regarding access to showers.

In comparison, local correctional facilities are required to permit incarcerated individuals to “shower/bathe upon assignment to a housing unit and at least every other day or more often if possible. Absent exigent circumstances, no person shall be prohibited from showering at least every other day following assignment to a housing unit. If showering is prohibited, it must be approved by the facility manager or designee, and the reason(s) for prohibition shall be documented.” (Cal. Code. Regs., tit. 15, § 1266.)

This bill requires that individuals incarcerated at CDCR institutions are allowed to shower at least every other day. CDCR would retain discretion to set the length and shower schedule. In addition, showers could still be denied or prohibited if the reasons are documented and the denial is approved by the facility manager.

4. Impact of Shower Restrictions

Individuals incarcerated in the state’s prisons have reported that they are unable to shower daily. One individual housed at San Quentin laid out the issue in a guest piece to Cal Matters:

For five years, I got up at 2 every morning and labored in the San Quentin State Prison kitchen, stirring kettles, scraping grills and scrubbing countertops and floors — covering myself in kitchen slime — just to get a five-minute shower.

I learned to keep a job if I wanted a daily shower. But hundreds of prisoners who live near me are unable to shower daily, despite the fact that outbreaks of diseases such as COVID-19 and norovirus and infestations of bedbugs and scabies are common.

The use of water as a weapon over prisoners by the California Department of Corrections and Rehabilitation violates basic human decency and endangers health — especially during a deadly pandemic.

...

Prisoners who don't have jobs — including those pursuing GEDs or college degrees — are allowed a five-minute shower on Tuesdays, Thursdays and Saturdays. To shower every day, you have to work to help maintain the prison or its industries.

Yet every day, most prisoners run up and down basketball courts, jog around the track, slide into home plate, or participate in other activities in the prison yard. Hundreds of men, soaked in sweat, return to their cramped cells and cannot shower.

(Steve Brooks, *Tying Water Access to Labor in Overcrowded Prisons is Wrong* (Jun. 28, 2022) available at <<https://calmatters.org/commentary/2022/06/tying-water-access-to-labor-in-overcrowded-prisons-is-wrong/>>.)

Many incarcerated people spend most of their time in “double occupancy—11-foot-by-four-foot cells that leave only three feet between each incarcerated person’s two-and-a-half-foot-wide bunk bed and shared sink and toilet, with limitations on flushing.” (Olivia Heffernan and Steven Brooks, *Prisoners Forced to Work for Showers Are Now Being Punished for Taking Them* (Sept. 27, 2022) available at <<https://www.thenation.com/article/society/water-restrictions-drought-california-prisons/>>.) Amid a pandemic, heat, and limited access to showers, some incarcerated individuals have received rule violations for taking showers outside of allotted days and times. (*Ibid.*)

Ensuring incarcerated individuals have regular access to shower plays a significant role in public health, infection control, and preventing the spread of communicable disease. For example, scabies and lice are common problems in correctional facilities, and appropriate management of suspected cases includes shower access. MRSA is hyperendemic in most correctional facilities, and risk factors include prolonged incarceration. Liberalizing access to soap, showers, and clean clothing may lead to less opportunity for secondary transmission. (Joseph Bick, *Infection Control in Jails and Prisons* (2007) 45 *Clinical Infectious Diseases* 8, 1047-55.)

5. Argument in Support

The Los Angeles District Attorney’s Office writes:

AB 353 requires the California Department of Corrections and Rehabilitation (CDCR) to permit inmates to shower at least every other day, unless access to a shower is prohibited. Whenever a request for a shower is prohibited or denied, the facility manager or their designee shall approve the decision and document the reasons for the denial.

CDCR’s Department of Operational Manual (DOM) requires inmates in segregated confinement to be permitted to shower at least times a week. There are no other regulations regarding access to showers... In comparison, local correctional facilities are required to permit inmates to “shower/bathe upon assignment to a housing unit and at least every other day or more often if possible. Absent exigent circumstances, no person shall be prohibited from showering at least every other day following assignment to a housing unit. If showering is prohibited, it must be approved by the facility manager or designee, and the reason(s) for prohibition shall be documented.”

...AB 353 ensures that California honors a basic human right and human dignity even for individuals who have committed serious offenses.

AB 353 will help improve the mental health of our inmate population and reduce health issues/problems that are common in correctional facilities.

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