
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: AB 990 **Hearing Date:** July 13, 2021
Author: Santiago
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Prisons: inmate visitation*

HISTORY

Source: Coalition for Family Unity

Prior Legislation: 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: A New Way of Life Re-Entry Project; ACLU California Action; All of Us or None, Los Angeles/Long Beach Chapter; All of Us or None, Orange County Chapter; All of Us or None, Riverside Chapter; All of Us or None, Sacramento Chapter; All of Us or None, San Diego Chapter; Alliance for Boys and Men of Color; Alliance San Diego; Anti-Recidivism Coalition; Asian Solidarity Collective; Blameless and Forever Free Ministries; California Catholic Conference; California Coalition for Women Prisoners; California Families Against Solitary Confinement; California Families Rise; California Prison Focus; California Public Defenders Association; Californians for Safety and Justice; Californians United for A Responsible Budget; Center for Employment Opportunities; Center on Juvenile and Criminal Justice; Change Begins With Me; Communities United for Restorative Youth Justice; Community Legal Services in East Palo Alto; Community Works; Del Cerro for Black Lives Matter; Democratic Club of Vista; Democratic Woman's Club of San Diego County; Dependency Legal Services; Drop LWOP Coalition; Drug Policy Alliance; East Bay Family Defenders; Ella Baker Center for Human Rights; End Life Without Parole; Essie Justice Group; Families United to End LWOP; Felony Murder Elimination Project; Fresno Barrios Unidos; Friends Committee on Legislation of California; From the Inside Out; Hillcrest Indivisible; Homeboy Industries; Homies Unidos; Human Rights Pen Pals; Immigrant Legal Resource Center; Initiate Justice; John Burton Advocates for Youth; Legal Services for Prisoners With Children; Mary Mac Homes; Mission Impact Philanthropy; National Association of Social Workers, California Chapter; National Institute for Criminal Justice Reform; Partnership for the Advancement of New Americans; Pillars of the Community; Place 4 Grace; Policy Link; Pride in Truth; Progressive

Democrats of America - Middle East Alliances; Project Avary; Racial Justice Coalition of San Diego; Re:Store Justice; Rise Up; Root & Rebound; Rubicon Programs; San Bernardino Fatherhood; San Diego Progressive Democratic Club; San Francisco Public Defender; Santa Cruz Barrios Unidos; SD QTPOC Colectivo; Secure Justice; Showing Up for Racial Justice Bay Area; Showing Up for Racial Justice Marin; Showing Up for Racial Justice North County San Diego; Showing Up for Racial Justice San Diego; Silicon Valley De-Bug; Social Workers for Equity & Leadership; Starting Over; Team Justice; Think Dignity; UnCommon Law; Underground Scholars Initiative, UC Berkeley; Underground Scholars Initiative, UC Riverside; Uprise Theatre; We the People - San Diego; Young Women's Freedom Center; 3 individuals

Opposition: California State Sheriffs' Association; San Bernardino County Sheriff's Department

Assembly Floor Vote: 47 - 18

PURPOSE

The purpose of this bill is to establish the right to personal visits for each person serving a sentence in state prison or county jail for a realigned felony; to prohibit all enumerated civil rights from being infringed upon, except as necessary and only if narrowly tailored to further the legitimate security interests of the government; and to prohibit the denial of in-person contact visits, as specified.

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 inmates 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.)

This bill 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 rights if the deprivation of those rights is necessary and narrowly tailored to further the legitimate security interests of the government.

This bill adds the right to receive personal visits to the list of enumerated civil rights. Provides that these rights may not be infringed upon, except as necessary and only if narrowly tailored to further the legitimate security interests of the government. Provides that any governmental action related to these rights may be reviewed in court for legal error and under a substantial evidence standard of review.

This bill prohibits an in-person contact visit from being denied for any of the following reasons:

- As a disciplinary sanction against the incarcerated person that is not based on any violation of a law or regulation by the incarcerated person that occurred during the incarcerated person's visit with the affected visitor.
- Due to an omission or inaccuracy on the visitor application if the omitted or correct information is provided on the visitor's criminal history report, as issued by the Department of Justice (DOJ) to the visitor, and the visitor provided government-issued identification.
- Because of a visitor's criminal, juvenile delinquency, or other history of involvement with law enforcement, whether or not it resulted in a criminal conviction, except as specified, a visitor's current status of being under parole, postrelease community supervision, probation, or informal probation supervision, or a visitor's previous incarceration, including incarceration in the facility where the visit will take place.
- Due to the nature of the incarcerated person's criminal, juvenile delinquency, or other history of involvement with law enforcement, regardless of whether it resulted in a criminal conviction, except as specified.

This bill provides that a visitor or incarcerated person may be denied visits for up to one year after the commission of one of the following offenses:

- Bringing contraband into the facility during a visit. Excludes from the definition of contraband any lawful amount of alcohol or other intoxicants for personal use in a vehicle parked on facility grounds.
- Engaging in sexual intercourse, penetration, masturbation, or oral copulation during a visit with a person other than a family visit or engaging in any sexual conduct with a child during a visit. Defines "masturbation" to mean skin-to-skin contact with genitalia.
- Committing violence during a visit or the visiting screening process.

- Attempting, or aiding in, an escape during a visit.

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 programming or enjoying any privilege while incarcerated.

This bill requires, to the extent that existing visiting rules and standards conflict with the provisions of this bill, that CDCR adopt regulations that conform to the provisions of this bill.

This bill includes several legislative findings and declarations.

COMMENTS

1. Need for This Bill

According to the author:

Research has repeatedly confirmed that regular visits between family members and incarcerated people improve the mental health of the whole family – and promote healthy child development -- while helping incarcerated people endure the stress of prison and thrive after their release. CDCR, Governor Newsom and the Legislature recently acknowledged the importance of visits when CDCR requested and the governor included funding for an additional visiting day in all CDCR facilities (May 2021 Revise, p. 155), and the Legislature included the additional day in their proposed budget as well (Floor Report, p. 139). In its budget request, CDCR recognized that “[f]requent, high quality visiting programs for inmates have been proven to reduce prison violence, maintain family bonds, break the intergenerational cycle of incarceration and smooth the reentry process, thereby reducing recidivism rates.” The California Legislature also endorsed the San Francisco Children of Incarcerated Parents Partnership Bill of Rights as a policy guide for CDCR. (Sen. Con. Res. 20 (2009).) One of those rights is a child’s right to speak with, see, and touch his or her incarcerated parent.

Unfortunately, only about a third of people incarcerated in California prisons receive any visits, much less regular visits, in a given year. Multiple barriers get in the way, including unreasonable exclusion of visitors or withdrawal of visiting privileges for reasons unrelated to visiting security. AB 990 would remove many of these barriers by:

- Restoring the right to personal visits in Penal Code section 2600-2601, and restore the original legal standard for enforcement of the right
- Prohibiting denials of visits as discipline for rule violations unrelated to visiting
- Prohibiting denials of visits for omissions and inaccuracies on visiting applications when the information is provided on the criminal background report
- Prohibiting denials of visits based on law enforcement history of a visitor or incarcerated person other than serious violations of visiting rules

2. Codified Civil Rights

Penal Code section 2601 provides that each person serving a sentence in state prison or county jail for a realigned felony has specified civil rights, including the right to inherit, own, sell, or convey real or personal property, the right to correspond confidentially with any member of the State Bar or public office, the right to marry, and the right to make a will, among others. Penal Code section 2600 provides that a person serving a sentence in state prison or county jail for a realigned felony may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests.

This bill adds the right to personal visits to the list of enumerated civil rights. This bill also changes the standard for depriving an incarcerated person of the person's rights from a deprivation that "is reasonably related to legitimate penological interests" to a deprivation that is only permitted if "necessary" and "narrowly tailored to further the legitimate security interests of the government." This bill additionally provides for the review of any governmental action related to these rights by a court "for legal error and under a substantial evidence standard of review."

3. Existing CDCR Policies on Visitation

There are three types of visits in CDCR institutions: contact visits, no-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 to allow other visits to begin. Incarcerated individuals who are still in reception or are segregated from the general population (e.g., Administrative Segregation) 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. 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/>)

CDCR regulations provide for the general policies and protocols related to visits. 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." (*Id.*) 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 an in-person contact visit from being denied for any of the following reasons:

- As a disciplinary sanction against the incarcerated person that is not based on any violation of a law or regulation by the incarcerated person that occurred during the incarcerated person's visit with the affected visitor.
- Due to an omission or inaccuracy on the visitor application if the omitted or correct information is provided on the visitor's criminal history report, as issued by the Department of Justice (DOJ) to the visitor, and the visitor provided government-issued identification.
- Because of a visitor's criminal, juvenile delinquency, or other history of involvement with law enforcement, whether or not it resulted in a criminal conviction, except as specified, a visitor's current status of being under parole, postrelease community supervision, probation, or informal probation supervision, or a visitor's previous incarceration, including incarceration in the facility where the visit will take place.
- Due to the nature of the incarcerated person's criminal, juvenile delinquency, or other history of involvement with law enforcement, regardless of whether it resulted in a criminal conviction, except as specified.

Next, this bill provides that a visitor or incarcerated person may be denied visits for up to one year after the commission of one of the following offenses:

- Bringing contraband into the facility during a visit. Excludes from the definition of contraband any lawful amount of alcohol or other intoxicants for personal use in a vehicle parked on facility grounds.

- Engaging in sexual intercourse, penetration, masturbation, or oral copulation during a visit with a person other than a family visit or engaging in any sexual conduct with a child during a visit. Defines “masturbation” to mean skin-to-skin contact with genitalia.
- Committing violence during a visit or the visiting screening process.
- Attempting, or aiding in, an escape during a visit.

Finally, 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 programming or enjoying any privilege while incarcerated.

4. Argument in Support

The California Public Defenders Association writes:

AB 990 grants imprisoned individuals the right to personal visits and clarifies that it is a civil right subject to substantial evidence standard of review. AB 990 also explicitly guarantees an imprisoned individual the right to court process when any civil right in prison is infringed.

...

AB 990 will make California communities safer and save taxpayers money by investing in rehabilitation. First, it recognizes that imprisonment takes a toll on more than just the inmates: it hurts the inmate’s loved ones. By guaranteeing regular contact, the AB 990 will permit individuals and families to maintain a familial bond with each other in spite of the incarceration.

Second, relationships incentivize rehabilitation and law-abiding behavior. Regular contact with individuals on the outside may also facilitate post-incarceration employment.

5. Argument in Opposition

According to the California State Sheriffs’ Association:

Assembly Bill 990...would provide that a person serving a felony sentence in a county jail has a right to receive personal visits and that the inmate may only be deprived of that right if it is necessary and narrowly tailored to further the legitimate security interests of the government.

Sheriffs understand the benefits of visitation for incarcerated persons and their visitors, but this bill goes too far in mandating visitation at the expense of several other important considerations. By limiting the ability to suspend visitation to issues related to security, jail authorities would be prohibited from conditioning visitation and terms of visitation on behavior and discipline considerations. This language would also preclude the suspension of visitation that has been adopted by prisons and most jails because of the COVID-19 pandemic, which necessitated limiting access to, and movement within, correctional facilities for the medical safety of inmates and staff. Future challenges like other pandemics, natural

disasters, and even logistical realities like power outages and HVAC breakdowns would not suffice as legitimate reasons to cancel visitation.

Additionally, some jail facilities provide visitation via video technology. This process has been permitted under statute and regulation in place at the time and AB 990 would ostensibly impose massive, mandated costs if in-person visitation were required by this bill.

-- END --