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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** SB 1139                      **Hearing Date:** March 29, 2022  
**Author:** Kamlager  
**Version:** February 16, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** SJ

**Subject:** *Prisons: visitation*

## HISTORY

**Source:** Prison from the Inside Out

**Prior Legislation:** AB 990 (Santiago), vetoed 2021  
AB 45 (Stone), Ch. 570, Stats. 2019

**Support:** California Attorneys for Criminal Justice; California Catholic Conference; California Public Defenders Association; Communities United for Restorative Youth Justice; Ella Baker Center for Human Rights; Empowering Women Impacted by Incarceration; Essie Justice Group; Friends Committee on Legislation of California; Humane Prison Hospice Project; Initiate Justice; Jesse's Place; Legal Services for Prisoners with Children; Starting Over, Inc.; Transformative In-Prison Workgroup

**Opposition:** Riverside Sheriffs' Association

## PURPOSE

*The purpose of this bill is to require CDCR to: 1) make emergency phone calls available to an incarcerated person and specified people outside of CDCR when the incarcerated person has been hospitalized for a serious medical reason or when the incarcerated person's family member has become critically ill or died; 2) update certain visitor and medical documents annually or within 30 calendar days of an infectious disease outbreak; 3) notify specified people within 24 hours of an incarcerated person being hospitalized; and 4) make emergency in-person visits and video calls available whenever an incarcerated person is hospitalized, as specified.*

*Existing law* provides that the Secretary of CDCR may prescribe and amend rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)

*Existing law* requires 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.)

*Existing law* requires CDCR to obtain from an incarcerated person, upon entry and annually, the name and last known address and phone number of any person or persons to be notified in the event of the person's death or serious illness or serious injury, as determined by the physician in attendance. Requires the persons be notified in the order of the incarcerated person's preference. Requires the incarcerated person be provided with the opportunity to modify or amend his or her notification list at any time. (Pen. Code, § 5022, subd. (a).)

*Existing law* requires CDCR to use all reasonable means to contact the person or persons set forth in the notification list upon the death or serious illness or serious injury, as determined by the physician in attendance, of the incarcerated person. (Pen. Code, § 5022, subd. (b).)

*Existing law* allows any adult patient of a health care provider and any patient's personal representative to inspect patient records upon presenting to the health care provider a request for those records and upon payment of reasonable costs. (Health & Saf. Code, § 123110, subd. (a).)

*This bill* prohibits the Secretary of CDCR from charging a fee for an incarcerated person to request, review, or use their medical records.

*This bill* requires that emergency phone calls are made available to persons outside of CDCR and to incarcerated people, as specified. Requires CDCR to provide persons outside the facility the means to initiate a phone call to an incarcerated person in either of the following circumstances:

- When the incarcerated person has been admitted to the hospital for a serious medical reason.
- When a family member, approved visitor, next of kin, or persons listed on the medical release of information form or medical power of attorney form has become critically ill or has died while the incarcerated person has been hospitalized.

*This bill* requires that at intake and at least once a year thereafter, and within 30 calendar days of an infectious disease outbreak in a department facility, every incarcerated person be asked whom they want covered by the following documents:

- Approved visitor list. Requires CDCR, if the incarcerated person would like to add a visitor, to provide a visitor application form for the incarcerated person to sign and send to the potential visitor, who may then complete and submit it to the visiting department of the facility.
- Medical release of information form.
- Medical power of attorney form.
- Next of Kin form authorizing control over body and possessions in case of death.

*This bill* requires that incarcerated individuals be assisted in completing the above paperwork.

*This bill* requires CDCR, within 24 hours of an incarcerated person being hospitalized for a serious medical reason, to inform persons covered by the current medical release of information form about the incarcerated person's health status and to facilitate phone calls between the incarcerated person and those persons if the incarcerated person consents.

*This bill* provides that a serious medical reason includes any of the following:

- A medical professional has determined that the incarcerated person needs medical treatment in a public or community hospital.
- A medical professional has determined that the incarcerated person needs medical treatment for a terminal disease.
- A medical professional has determined that the incarcerated person needs to receive life-sustaining medical treatment.
- The incarcerated person has suffered from a medical emergency and is receiving treatment at a prison hospital.
- The incarcerated person has died.

*This bill* requires within 24 hours of an incarcerated person being hospitalized and if the incarcerated person is able to provide knowing and voluntary consent, CDCR to ask the incarcerated person whether they want to add people to any of the above specified forms who have not previously been designated. Requires CDCR to promptly assist, as necessary, the incarcerated person in completing the paperwork. Requires CDCR to promptly inform the newly designated persons on the medical release form of the incarcerated person's condition and facilitate a phone call between the incarcerated person and the newly designated person.

*This bill* requires CDCR to maintain a phone line for outside people to call to inform the department that a family member or a person designated in any of the above listed forms has become critically ill or has died while the incarcerated person has been hospitalized. Requires CDCR to notify the incarcerated person of these calls upon their receipt.

*This bill* requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in a critical or more serious medical condition. Requires video calls be made available if in-person contact visits are unavailable at the facility due to a public health emergency or are inconsistent with the patient's current medical treatment needs, as determined by their medical provider. Requires any visitor approval process to be conducted within 24 hours. No visitor approval process is required when the incarcerated person is in imminent danger of dying. Requires CDCR to allow up to 4 visitors at one time to visit the incarcerated person when the incarcerated person is in imminent danger of dying.

*This bill* provides that "hospital" includes an on-site facility set up to provide hospital-like services during a public health emergency.

*This bill* requires CDCR to have a grievance process in place by which the incarcerated person, or the person designated by the incarcerated person on the above specified forms, may file a formal grievance to review:

- CDCR's failure to provide the incarcerated person's health care information and records to the designated person

- CDCR's failure to provide notice to the designated person as required
- CDCR's decision to deny visitation as required, or
- CDCR's failure to provide adequate medical care and treatment.

*This bill* provides that CDCR's existing grievance process satisfies the requirements that CDCR have a grievance process as outlined above.

## COMMENTS

### 1. Need for This Bill

According to the author:

Currently, a designated person can sign a CDCR medical release form to receive an incarcerated person's medical information. Unfortunately, many families report not being made aware of this process until it is too late, leaving people blind to their loved ones' health care status. As a result, incarcerated people may suffer from illness and pass away alone with family members not being notified for days.

Prisons were hit particularly hard during the COVID-19 pandemic due to their very nature of confinement, leading to increased contamination. Hundreds of incarcerated people died. Many of these people died alone—no family members were present or notified to be a comfort to them in their time of need.

Unfortunately, for incarcerated people this type of treatment during medical emergencies is not limited to the COVID-19 pandemic. Incarcerated people and their loved ones have suffered this way for years. Incarcerated men and women who endure medical emergencies, and even slow deaths, suffer/pass away alone more often than not. Not only is this inhumane for the incarcerated person suffering from illness, but a terrible tragedy for their law-abiding families.

### 2. Existing CDCR Policies

#### *Phone Calls*

CDCR regulations generally require the state's prisons to provide phones for use by incarcerated individuals. (Cal. Code Regs, tit. 15, § 3282, subd. (b).) Incarcerated individuals may place collect phone calls to persons outside the facility at designated times and on designated phones, as set forth in local procedures. (*Id.*) Limitations may be placed on the frequency and length of such calls based on the person's privilege group and to ensure equal access. (*Id.*) Regulations further provide that if a staff member determines that an incoming call concerns an emergency matter, the staff member is required to obtain the caller's name and phone number, to notify the incarcerated person promptly of the situation, and to permit the incarcerated person to place an emergency call. (Cal. Code Regs, tit. 15, § 3282, subd. (g).) "Emergency call" is defined as a phone call regarding the serious illness or injury, or the death of an incarcerated person's immediate family member. (Cal. Code Regs, tit. 15, § 3282, subd. (a).)

*Visitation*

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).)

Finally, the institution head is required to maintain visiting procedures for visiting at each institution or facility that are consistent with department regulations. (Cal. Code Regs., tit. 15, § 3171, subd. (a).)

*In Custody Injuries and Deaths*

Current law requires CDCR to obtain from an incarcerated person, upon entry and annually, the name and last known address and phone number of any person or persons to be notified in the

event of the person's death or serious illness or serious injury, as determined by the physician in attendance. (Pen. Code, § 5022, subd. (a).) Existing law also requires the incarcerated person be provided with the opportunity to modify or amend his or her notification list at any time. (*Id.*) CDCR is required to use all reasonable means to contact the person or persons set forth in the notification list upon the death or serious illness or serious injury, as determined by the physician in attendance, of the incarcerated person. (Pen. Code, § 5022, subd. (b).)

Regulations require, upon the death of an incarcerated person, a CDCR staff member to review the person's central file and locate the current Notification in Case of Inmate Death, Serious Injury, or Serious Illness to identify the person's next of kin or person or persons to be notified. (Cal. Code Regs., tit. 15, § 3999.417, subd. (e).) This form must be completed annually or when the incarcerated person is transferred to a new prison. (*Id.*) Regulations require counseling staff to complete the Notification and to witness the incarcerated person's dated signature. (*Id.*) The Notification must include: the name of the incarcerated person, CDCR number, personal identification number, and current institution; the name, relationship, telephone, and address of person to be notified; the name, relationship, telephone, and address of the contact person for a will; and whether the inmate is a foreign national. (*Id.*) Staff is required attempt to notify the person or persons listed on the Notification in Case of Inmate Death, Serious Injury, or Serious Illness as the person(s) to be notified of the death, in person, or, if personal contact is not practical, by phone. (Cal. Code Regs., tit. 15, § 3999.417, subd. (f).) Staff is required to send a notification to the next-of-kin, person or persons to be notified, and the legally appointed representative which must include the name and telephone number of a staff member who may be contacted for additional information, among other things.

### *Health Care Grievances*

Regulations specify that the health care grievance process provides an administrative remedy to patients for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare. (Cal. Code Regs., tit. 15, § 3999.226, subd. (a).) Health care grievances are subject to an institutional level review and may receive a headquarters' level grievance appeal review, if requested by the grievant. (*Id.*)

### **3. Effect of This Bill**

This bill makes a number of changes to CDCR policies regarding emergency phone calls, including calls made by and to an incarcerated person, notification of hospitalization of an incarcerated person for a serious medical reason, the frequency that visitation and medical documents are updated, visitation when an incarcerated person is hospitalized, and the health care grievance process. Specifically, this bill:

- Requires that emergency phone calls are made available to certain persons outside of CDCR and to incarcerated people in the following circumstances:
  - When the incarcerated person has been admitted to the hospital for a serious medical reason.
  - When a family member, approved visitor, next of kin, or persons listed on the medical release of information form or medial power of attorney form has become critically ill or has died while the incarcerated person has been hospitalized.
- Requires CDCR, within 24 hours of an incarcerated person being hospitalized for a serious medical reason, to inform persons covered by the current medical release of information form about the incarcerated person's health status and to facilitate phone

calls between the incarcerated person and those persons if the incarcerated person consents.

- Requires that at intake and at least annually, and within 30 calendar days of an infectious disease outbreak in a department facility, every incarcerated person be asked whom they want covered in their approved visitor list, medical release of information form, medical power of attorney form, and Next of Kin form authorizing control over body and possessions in case of death.
- Requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in a critical or more serious medical condition, and allows for video calls if in-person contact visits are unavailable due to a public health emergency or are inconsistent with the patient's current medical treatment needs.
- Requires CDCR to have a grievance process in place by which the incarcerated person, or the person designated by the incarcerated person on the above specified forms, may file a formal grievance to review CDCR's failure to provide the incarcerated person's health care information and records to the designated person, failure to provide notice to the designated person as required, decision to deny visitation as required, or failure to provide adequate medical care and treatment.

Finally, this bill prohibits CDCR from charging a fee for an incarcerated person to request, review, or use their medical records.

This bill raises a number of questions:

Is the 30-day deadline for updating visitor and medical documents following an infectious disease outbreak reasonable?

With respect to emergency in-person contact visits, the bill states that no visitor approval process shall be required when the incarcerated person is in imminent danger of dying. It is unclear if the intent is to prohibit a visitor approval process or to allow the institution to decide whether to impose a visitor approval under that circumstance. The author may consider adding clarifying language.

The bill provides that up to 4 visitors at one time are allowed to visit an incarcerated person who is in imminent danger of dying. Is there a limit on the total number of visits?

#### **4. Argument in Support**

The Friends Committee on Legislation of California writes:

Through our work with the Statewide Family Council, we became aware of the enormous hardships that families and loved ones endure when an incarcerated family member is hospitalized for a serious medical condition. They are notified that their loved one has been transferred to a hospital but are essentially kept in the dark as they have no way of finding out their loved one's status or condition. The Statewide Family Council tried to resolve this issue for years, but CDCR was unable to arrive at a practical solution.

SB 1139 would ensure that family members are able to stay connected with their loved ones when they are hospitalized for a serious medical condition. The bill also prohibits CDCR from charging fees for accessing medical records and

creates a grievance process for failure to provide important medical information and notice of hospitalization.

**5. Argument in Opposition**

According to the Riverside Sheriffs' Association:

We are extremely concerned that the safety and security of inmates, civilian staff and custodial officers will be dangerously compromised by publicizing the location of certain inmates who are temporarily re-located for medical care to a community hospital.

Even more troubling, the bill mandates that certain inmates be provided in-person contact visits at these unsecured locations.

Informing members of the public that potentially high risk inmates are located in a nearby hospital puts the inmate, as well as everyone near or around the inmate in jeopardy.

**-- END --**