
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

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Bill No: SB 1146 **Hearing Date:** April 17, 2018
Author: Stone
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Urgency: No **Fiscal:** No
Consultant: SJ

Subject: *Prisoners: Rights*

HISTORY

Source: Author
Prior Legislation: None
Support: Unknown
Opposition: None known

PURPOSE

The purpose of this bill is to authorize the staff at the California Department of Corrections and Rehabilitation (CDCR) to open and inspect outgoing mail for purposes of enforcing a restraining order or protective order against an inmate.

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) shall have 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 authorizes a court with jurisdiction over a criminal matter to issue a protective order upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. (Pen. Code, § 136.1, subd. (a).)

Existing law authorizes a court, in all cases in which a defendant has been convicted of specified crimes, to issue an order restraining the defendant from any contact with a victim of the crime for up to 10 years. (Pen. Code, § 136.1, subd. (i), § 368, subd. (l), 646.9, subd. (k), § 1201.3, subd. (a).)

COMMENTS

1. Need for This Bill

According to the author:

Existing California law provides an individual a protection order by the court, to include no contact via mail, verbal, nonverbal, or electronic by another individual. Existing law also provides fines and up to one year in jail for breaking a protective order. Individuals currently incarcerated have little deterrence in the action of harassing an individual who holds a protective order against themselves. While the law does give a penalty for breaking a protective order, the penalty has little to no effect on an incarcerated individual. This slap on the wrist does not detour the incarcerated individual while simultaneously forcing the protected individual, sometimes the victim of domestic assault, to endure the emotional trauma of the communication. SB 1146 seeks to give a protected individual that protection from the emotional trauma of receiving letters or communications from incarcerated individuals by giving the prison authorities the authority to enforce these restraining orders in inspecting inmates outgoing mail.

2. CDCR Policies on Inmate Mail Generally

CDCR's regulations requires that inmates and parolees obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person. (Cal. Code of Regs., tit. 15, § 3005, subd. (a).) The regulations provide that the sending and receiving of mail by inmates shall be uninhibited except as specifically provided. (Cal. Code of Regs., tit. 15, § 3130.) Each warden or head of a correctional facility must prepare and maintain a plan of operation for the sending and receiving of mail for all inmates housed in the facility. (Cal. Code of Regs., tit. 15, § 3131.) Procedures of the correctional facility must conform to the policies, regulations, and provisions of law related to inmate mail, and those procedures apply to all inmates of the facility. (*Id.*)

Under the existing regulations, correspondents are personally responsible for the content of each item of mail they send into or out of a correctional facility, and all persons corresponding with inmates must comply with existing laws, regulations, and local rules. (Cal. Code of Regs., tit. 15, § 3132, subd. (a).) A violation of the laws governing mail will be referred to postal authorities and to appropriate criminal authorities. (*Id.*) Violations of law, CDCR policies and regulations, or of approved facility mail procedures may result in the temporary suspension or denial of correspondence between the persons involved. (*Id.*)

All incoming packages and non-confidential mail addressed to an inmate will be opened and inspected before delivery to the inmate. (Cal. Code of Regs., tit. 15, § 3133, subd. (b)(1).) Among the stated purposes of inspection is the prevention of the introduction of contraband. (*Id.*) All non-confidential incoming and outgoing inmate mail is subject to being read in its entirety by designated staff. (*Id.*) Non-confidential correspondence may be disallowed if the text of the correspondence presents a danger, or a threat of danger, to any person. (Cal. Code of Regs., tit. 15, § 3135, subd. (a).) However, disagreement with the sender's or receiver's morals, values, attitudes, veracity, or choice of words is not cause for correctional staff to disallow mail. (Cal. Code of Regs., tit. 15, § 3135, subd. (b).)

Under current regulations, certain correspondence is disallowed in order to ensure the safety and security of the institution or facility. This includes but is not limited to:

- Any mail of a character tending to incite murder, arson, a riot, or any form of violence or physical harm to any person, or any ethnic, gender, racial, religious, or other group.
- Threats of blackmail or extortion.
- Contraband, or sending or receiving contraband.
- Plans to escape or assist in an escape.
- Plans to disrupt the order, or breach the security, of any institution or facility.
- Plans for activities which violate the law, these regulations or local procedures.
- Correspondence that contains coded messages.
- Correspondence that describes the making of any weapon, explosive, poison, or destructive device.
- Illustrations, explanations, and/or descriptions of how to sabotage or disrupt computers, communications, or electronics.
- Maps depicting any area within a ten-mile radius of an institution/facility.
- Gambling or lottery information or paraphernalia.
- Material that is obscene in nature.
- Correspondence that contains human or animal hair, substances, or fluids.
- Correspondence that contains written materials or photographs that indicate an association with validated Security Threat Group members or associates, as described. (Cal. Code of Regs., tit. 15, § 3135, subd. (c).)

Disapproval of inmate mail that is in clear violation of CDCR regulations must be referred to staff not below the level of Captain for determination and appropriate action. (Cal. Code of Regs., tit. 15, § 3136, subd. (a).) Disapproval of inmate mail that is not in clear violation of the regulations must be referred to the Warden or Chief Deputy Warden for determination and appropriate action. (*Id.*) An inmate must be informed when incoming or outgoing mail, packages, or publications addressed to or being sent by the inmate are withheld or disallowed, including the reason and disposition. (*Id.*) When inmate mail is disapproved, the supporting documentation must be retained by each facility for a minimum of seven years. (Cal. Code of Regs., tit. 15, § 3136, subd. (b).) Inmates are permitted to use the established inmate appeal procedures to challenge a decision disallowing the sending or receipt of mail. There are three levels of appeal; a denial at the third appeal level will result in the item of mail being disposed of. (Cal. Code of Regs., tit. 15, § 3137, subd. (b).) The regulations also provide procedures for someone other than an inmate to appeal CDCR policies and regulations and specific facility procedures or practices. (Cal. Code of Regs., tit. 15, § 3137, subd. (c).)

3. CDCR Policies on Confidential Mail

Inmates have the right “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.” (Pen. Code, § 2601, subd. (b).) Using confidential correspondence for personal non-business correspondence, the transmission of contraband items, or the smuggling of letters and other communications to be forwarded to persons not approved for confidential correspondence is an abuse of this right and may be subject to disciplinary action. (Cal. Code of Regs., tit. 15, § 3141, subd. (a).)

The regulations specify that the following are individuals with whom an inmate may correspond confidentially and from whom inmates may receive confidential correspondence:

- All state and federal elected officials.
- All state and federal officials appointed by the governor or the President of the United States.
- All city, county, state and federal officials having responsibility for the inmate’s present, prior or anticipated custody, parole or probation supervision.
- County agencies regarding child custody proceedings, as clearly identified in the communication and listed on the envelope.
- All state and federal judges and courts.
- An attorney at law, on active status or otherwise eligible to practice law, listed with a state bar association.
- All officials of a foreign consulate.
- The Secretary, Undersecretary, Chief Deputy Secretaries, Executive Director, Assistant Secretaries, Division Directors, Deputy Directors, Associate Directors, the Chief, Inmate Appeals, and the Lead Ombudsman’s Office of the Department.
- A legitimate legal service organization that consists of an established group of attorneys involved in the representation of offenders in judicial proceedings including, but not limited to:
 - The American Civil Liberties Union.
 - The Prison Law Office.
 - The Young Lawyers Section of the American Bar Association.
 - The National Association of Criminal Defense Lawyers.
 - California Appellate Project.

(Cal. Code of Regs., tit. 15, § 3141, subd. (c).)

Regulations also specify the requirements for inmate mail to be accepted and processed as confidential correspondence. (Cal. Code of Regs., tit. 15, § 3142.) Among the many requirements, inmates must present confidential mail unsealed to designated staff. (Cal. Code of Regs., tit. 15, § 3142, subd. (d).) In the presence of the inmate, the staff must remove the contents of the envelope upside down to prevent reading of the contents, and must remove the pages and shake them to ensure there is no prohibited material. (*Id.*) The contents must then be returned to the envelope and sealed if no prohibited material is discovered. The staff member is required to place his or her identifying information across the sealed area on the back of the envelope before mailing the envelope. (*Id.*) If prohibited material is found in the confidential mail, the prohibited material must be confiscated; however, the letter may be returned to the

inmate or mailed. If the prohibited material indicates a violation of the law or intent to violate the law, the matter may be referred to the appropriate authorities for possible prosecution. Administrative or disciplinary action, or both, is also required be taken against all parties involved. (Cal. Code of Regs., tit. 15, § 3142, subd. (e).)

CDCR regulations also detail the requirements for processing incoming confidential correspondence. Confidential correspondence must be opened in the presence of the inmate to whom the mail is addressed at a designated time and place, and staff is prohibited from reading any of the enclosed material. (Cal. Code of Regs., tit. 15, § 3143.) In order to check for the presence of prohibited material, staff must remove the pages and shake them. Inmates must sign for all confidential mail at the time of delivery which is kept in a log. (*Id.*)

As stated above, confidential mail will be opened and inspected for contraband in the presence of the inmate. Inspecting correctional officials may not read any of the contents of the confidential mail. Confidential mail may be further inspected, for cause only. Cause may include, but is not limited to, the reasonable belief by correctional officials that the letter is not addressed to or is not from one of the persons specifically permitted to correspond confidentially with inmates, or when other means of inspection indicate the presence of physical contraband in the envelope. (Cal. Code of Regs., tit. 15, § 3144, subd. (a).) In such instances the mail will be opened in the presence of the inmate for determination. Administrative action may be taken to restrict, for cause, the confidential mail privileges afforded to an attorney. (Cal. Code of Regs., tit. 15, § 3144, subd. (b).) For repeated or serious mail rule violations, including conduct that could be charged as a felony that jeopardizes the safety of persons or the security of the facility, CDCR confidential mail privileges may be suspended from one year up to an indefinite period of time. (*Id.*) Upon determining that the envelope contains prohibited material or that there is a misrepresentation of the sender's or the addressee's identity, the letter and any enclosures may be examined and read in its entirety to determine the most appropriate action, including referral to the appropriate criminal authorities for possible prosecution or disciplinary action, or both. (Cal. Code of Regs., tit. 15, § 3144, subd. (c).)

4. Protective Orders

As a general matter, the court can issue a protective order in any criminal proceeding pursuant to Penal Code section 136.2 where it finds good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur. Protective orders issued under this statute are valid only during the pendency of the criminal proceedings. (*People v. Ponce* (2009) 173 Cal.App.4th 378, 382.)

When criminal proceedings have concluded, the court has the authority to issue protective orders, in specified cases, regardless of whether the defendant has been sentenced to state prison or county jail, is subject to mandatory supervision, or is placed on probation. (Pen. Code, § 136.2, subd. (i)(1).) For example, the court is authorized to issue no-contact orders lasting up to 10 years in cases involving a domestic violence-related offense, a gang-related offense, rape, spousal rape, statutory rape, or any crime requiring sex offender registration. (Pen. Code, § 136.2, subd. (i)(1).) The same is true in stalking cases and cases involving the abuse of an elder or dependent adult. (Pen. Code, §§ 646.9, subd. (k) & 368, subd. (l) .) Similarly, in cases involving a criminal conviction or juvenile adjudication for a sex offense in which the victim was a minor, the court may issue an order "that would prohibit ... harassing, intimidating, or threatening the victim or the victim's family members or spouse." (Pen. Code, § 1201.3, subd. (a).)

A willful and knowing violation of a protective order constitutes contempt of court, a misdemeanor, and is punishable by imprisonment in a county jail for not more than one year, by a fine of not more than \$1,000, or both. (Pen. Code, § 166, subd. (c).) In addition to being prosecuted for contempt, a person violating a protective order may be punished for any substantive offense, as described. (Pen. Code, § 166, subd. (e)(5).) Further, a person who is guilty of contempt of a court order by willfully contacting a victim by telephone or mail, or directly, and who has been previously convicted of a stalking is subject to imprisonment in a county jail for not more than one year, by a fine of \$5,000, or both. (Pen. Code, § 166, subd. (b)(1).) Each contact constitutes a separate offense and can be charged as such.

5. Complaints Regarding Mail Received from an Inmate

CDCR regulations provide that if the receiver of any mail, confidential or nonconfidential, directs a written complaint to CDCR administrative staff or to facility officials, consideration will be given to any reasonable remedy sought by the individual. Available remedies include discussion of the complaint with the inmate in an attempt to resolve the matter, reading of all mail, including confidential mail, addressed to the individual, and either disallowing only that correspondence which appears to perpetuate the problem, or disallowing all mail to the individual. (Cal. Code of Regs., tit. 15, § 3135, subd. (e).) Other remedies include complaints and requests for actions which would, if approved, restrict an inmate's correspondence. Any action taken in response to such complaints or requests must be fully documented on the specified CDCR form and placed in the inmate's central file, and the inmate must be given a copy of the completed form. (*Id.*)

6. Effect of This Legislation

Inmates are required to follow all laws, as well as all CDCR regulations. An inmate subject to a protective order is required to comply with the terms of the order. Willfully violating a court order could result in prosecution for contempt which carries a punishment of up to one year in county jail, or a fine of \$1000, or both. In addition, depending on the nature of the conduct, the inmate's behavior may constitute new criminal behavior. For example, if an inmate writes a letter to an individual—whom the inmate is prohibited from contacting pursuant to a protective order—threatening to have the inmate's friends attack the individual, the inmate may be charged with a new crime.

In addition, CDCR regulations prohibit correspondence that tends to incite any form of violence or physical harm to any person, as well as correspondence that include threats of blackmail or extortion, or plans to commit any crime. Violations of CDCR regulations are subject to disciplinary action, including placement in segregated housing, loss of credits, and loss of privileges. Furthermore, misconduct, including violations of protective orders or engaging in threatening or other criminal behavior, can be considered by the Board of Parole Hearings during parole suitability hearings for inmates subject to release by the board, and an inmate who has engaged in misconduct that is criminal may be referred for prosecution.

This bill would codify a specific circumstance under which correctional staff may read outgoing inmate mail. The existing department regulations authorize correctional staff to read all incoming and outgoing inmate non-confidential mail. Even confidential correspondence is subject to inspection for cause. All violations of laws and CDCR regulations are subject to punishment, and in some cases referral for prosecution.

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