

Date of Hearing: April 20, 2021

Counsel: Nikki Moore

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 990 (Bonta) – As Amended April 15, 2021

As Proposed to be Amended in Committee

SUMMARY: Establishes the right of visitation as a protected civil right for a person in custody of the California Department of Corrections and Rehabilitation (“CDCR”), changes the standard of review for when CDCR limits civil rights, and codifies specific procedures and visitation rules, including requiring CDCR permit in-person visitation at least four days per week.

Specifically, **this bill:**

- 1) Establishes that a person in custody of CDCR may be deprived of rights only as necessary and the limitation is narrowly tailored to further the legitimate security interests of the government.
- 2) Requires any amendments to CDCR’s visitation policy to consider the right of visitation, and requires CDCR to adopt regulations necessary to effectuate the provisions of this pursuant to the Administrative Procedure Act.
- 3) Provides that the follow are not justification to deny a person visitation:
 - a) 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.
 - b) 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.
 - c) 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, other than 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.
 - d) 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, other than a conviction for an offense as specified, except when required by Section 1202.05.
- 4) Permits CDCR to limit, for up to one year, a person’s right of visitation if the visitor has engaged in specified activity to warrant being prohibited from visiting a person, by bringing contraband to a CDCR facility, for engaging in sexual conduct during a family visit, for

committing violence during a visit, or for attempting to aid in an escape.

- 5) States that an incarcerated person shall not be 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.
- 6) Establishes that in-person contact visits, noncontact visits, and family visits shall each be provided at least four days per week. Requires CDCR to ensure sufficient visiting and calling space and times for every person who seeks a visit or call when requested.
- 7) Requires that emergency phone calls between made available to persons inside and outside CDCR custody when:
 - a) incarcerated person has been hospitalized for a serious medical reason.
- 8) Establishes a designated person as a medical contact for an incarcerated person, and sets forth procedures for notifying that person of medical issues about an incarcerated person.
- 9) Requires CDCR to maintain a dedicated line for outside people to call to inform the department that a family member, approved visitor or caller, or primary support person of the incarcerated person has been hospitalized, becomes critically ill, or has died. CDCR shall notify the incarcerated person of this call.
- 10) Requires emergency in-person contact visits be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in critical or more serious medical condition.
- 11) Makes legislative findings and declarations.

EXISTING LAW:

- 1)
- 1) Provides that a person in CDCR custody may be deprived of rights only as is reasonably related to legitimate penological interests. (Pen. Code, § 2600.)
- 2) Enumerates specific civil rights of prisoners including, to own, sell, and convey property; correspond confidentially with any member of the State Bar and holder of public office; purchase, receive, and read newspapers, periodicals, and books; initiate civil actions; marry; create power of appointment, create a will; and to receive certain benefits. (Pen Code, § 2601.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author's Statement:** According to the author, "AB 990, strengthens visiting rights for family members of incarcerated people. This bill will support the children left behind in

communities that are heavily impacted by incarceration, will improve in-custody conduct, and reduce recidivism.

“The loss of family connections has received renewed attention due to the COVID pandemic, which has led to the wholesale cancellation of in-person visits and only minimal increases in phone communications in our state prisons. Unfortunately, significant barriers to visiting and phone contact existed before the pandemic and have only been exacerbated since. These barriers include denials of visits for reasons unrelated to visiting conduct or security, limited hours, and onerous regulations. Staying connected with incarcerated individuals can be costly. Families have to account for transportation costs, long travel times, and fees for phone calls. This bill addresses many of these barriers.

“AB 990 is a comprehensive bill that removes barriers to family visitations and helps ensure we keep Californian families connected. This bill demonstrates California’s commitment to rehabilitating individuals who are incarcerated. Denying incarcerated people the right to see their loved ones impacts the mental health and well-being of both the individual and their family members. With this measure, we can ensure we are not punishing innocent family members of incarcerated individuals by denying them the right to visit their loved one, while simultaneously eliminating barriers to one of the most successful methods of reducing recidivism and improving in-custody conduct: keeping families connected.”

- 2) **Purpose of this Bill:** This bill seeks to overhaul the right of visitation at county jails and state prisons to provide incarcerated people and their loved ones with more robust access to communications and visits. This bill would require CDCR to hold visiting hours at least four days per week. This bill would also limit CDCR’s ability to deny a person the right to visit an incarcerated person, and prevent CDCR from withholding visitation rights as a form of discipline. Additionally, this bill sets forth procedures for an incarcerated person with CDCR to designate an emergency medical contact, and grant speedy access to communications and visits when a person is in serious medical peril.
- 3) **Elevating Visitation Right to an Enumerated Civil Right:** This bill seeks to codify the right of visitation as a civil right that shall only be limited in a way that is narrowly tailored to further the legitimate security interests of the government. This amends current law, which has established that a person in CDCR custody may be deprived of enumerated civil rights only as is reasonably related to legitimate penological interests.

The findings and declarations of this bill offer the justification for greater access to visitation for incarcerated people, and the public generally: “Therefore, it is the intent of the Legislature to strengthen visiting rights to support the emotional health of Californians and their incarcerated loved ones, to improve in-custody conduct, and to reduce recidivism. By strengthening these visiting rights, it is further the intent of the Legislature to align California law with the practices that social science tells us are most effective for incarcerated individuals, their family members and loved ones, and for society as a whole.”

The expansion of the standard for limiting a person’s civil rights in prison applies to all civil rights afforded to an incarcerated person, not just the new right of visitation. These civil rights under existing law including the right to own, sell, and convey property; to correspond confidentially with any member of the State Bar and holder of public office; to purchase,

receive, and read newspapers, periodicals, and books; to initiate civil actions; to marry; to create power of appointment; to create a will; and to receive certain benefits. Under current law, these rights may only be curtailed as reasonably necessary to further a legitimate penological interest. By raising the standard to one that is narrowly tailored to further a legitimate security interest, this bill would narrow the ability of CDCR to limit these enumerated rights, including visitation rights.

Supporters of the bill argue that this change in standard is appropriate:

“Former sections 2600-2601 remained basically the same until 1994,¹ when the Legislature changed the legal standard in section 2600 to ‘reasonably related to legitimate penological interests,’ the highly deferential standard adopted by the United States Supreme Court for the enforcement of federal rights in actions against state prison officials.² Two years later, the Legislature removed the right to ‘personal visits’ from section 2601.³ The author’s goal was to make visiting a privilege rather than a right (except as guaranteed by the Constitution). In the sponsor’s words, ‘Only then can inmates be taught that they are accountable for their actions’ and disabused of the ‘misguided notion that people deserve something for nothing.’⁴

“This antiquated view is inconsistent with the Legislature’s current policy that incarceration is for rehabilitation and not merely punishment.⁵”

Supporters also affirm that the purpose of changing the standard is to create greater judicial oversight of CDCR’s decisions: This bill “[r]estores the legal standard in Penal Code section 2600 to language similar to the original 1975 law, with the addition of ‘narrowly tailored’: ‘necessary and narrowly tailored to further the legitimate security interests of the government.’ (AB 990, § 2 [Pen. Code, § 2600, subd. (a)].) The bill adopts the same standard in section 2601 and specifies that the standard of appellate judicial review is for legal error and substantial evidence, not the lesser ‘some evidence’ standard often applied to prison decisions. (AB 990, § 3.) These language changes are designed to ensure that the rights adopted in AB 990 are enforceable in court.”

- 4) Applicable Agencies:** This bill applies to both state prison and county jail, with respect to the establishment of visitation as a civil right. It also changes the standard for judicial review, as discussed above, for any limitation of an enumerated civil right imposed by either a county jail or state prison. This bill only applies to a person who is serving a felony sentence in a county facility, not a lesser sentence.

In opposition, the California State Sheriffs’ Association writes that AB 990 “would provide that a person serving a felony sentence in a county jail has a right to receive personal visits and

¹ See Sen. Comm. on Judiciary Bill Analysis of SB 1260 (1993-1994 Reg. Session) as amended March 16, 1994, at p. 4.

² See Sen. Comm. on Judiciary Bill Analysis of SB 1260 (1993-1994 Reg. Session) as amended March 16, 1994, at p. 3 [citing *Turner v. Safley* (1987) 482 U.S. 78]; Stats. 1994, ch. 555, § 1.

³ Stats. 1996, ch. 132, § 1 (SB 1221).

⁴ Sen. Comm. on Crim. Proced. Bill Analysis, SB 1221 (1995-1996 Reg. Session), as introduced, at pp. 2-3. Sen. Comm. on Crim. Proced. Bill Analysis, SB 1221 (1995-1996 Reg. Session), as introduced, at pp. 2-3.

⁵ See Pen. Code, § 1170, subd. (a)(1); cf. Sen. Comm. on Crim. Proced. Bill Analysis, SB 1221 (1995-1996 Reg. Session), as introduced, at pp. 7-8 [noting section 1170 then provided the purpose of incarceration was punishment].

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.”

- 5) CDCR Has Increased Access to Telephone and Video Calls:** CDCR has taken substantial efforts to increase telephone and video communications for incarcerated people and their family and friends. Recently, CDCR partnered with the California Department of Technology (CDT) to contract with Global Tel*Link Corporation (GTL) to provide reduced telephone rates for calls with an incarcerated person. As of March 19, nationwide calls are 2.5 cents per minute, down 5.1 cents per minute for calls within California, and 18.5 cents per minute for calls outside of California. Each incarcerated person receives 15 minutes of free phone calls every two weeks.

Additionally, CDCR is in the process of providing tablets to every single incarcerated person. It expects that all adult institutions will have implemented tablets by the end of 2021, and all fire camps by the end of March 2022. These tablets will permit secured emailing, allow for monitored video calls, in addition to their many other uses, with each incarcerated person receiving 15 minutes of free video phone calls every two weeks, 20 cents a minute after that. Setting up a GTL account is free of charge to family and friends. CDCR does not receive commission for telephone calls or any other services that require a fee from users.

6) Practical Considerations

- a) Visitation:** *A prior version of this bill required CDCR to allow for visitation seven days per week for 12 hours per day. This version requires a minimum of four days of visitation.* Outside the pandemic restrictions—which prohibited in-person visitation—CDCR permits visiting two days per week; in the past CDCR has hosted visitation for a maximum of four days per week. Much of the education and programming offered by CDCR are hosted in the visitor spaces. This bill could have the unintended consequence of reducing rehabilitative and educational programming for individuals in custody.
- b) Denial of Right to Visit:** This bill codifies rules regarding when a visitor may be denied access to visit an incarcerated person. The list does not appear to be exhaustive to adequately account for all possible conduct and information to be considered in denying a

person the ability to visit a person. Specifically, this bill does not contemplate activity occurring prior to, and unrelated to, a visit. This bill does not, however, purport to limit CDCR's right to deny access based on other factors it deems appropriate and includes in, or has included in, its regulations.

- 7) **Emergency Medical Contact:** This bill sets forth procedures for emergency phone calls to be made available to persons outside of CDCR and to incarcerated people, as specified. Sponsors of the bill state, "Numerous families have received no notice of the serious illness or death of their incarcerated loved ones due to COVID, much less an opportunity to call or visit in their loved ones' final hours. Our bill would ensure that incarcerated people and their loved ones can reach each other in a medical emergency. (AB 990, § 6 [Pen. Code, § 6401.5, subs. (e), (f)].)"

This bill would require CDCR to provide persons outside the facility the means to initiate a phone call to an incarcerated person when 1) the incarcerated person has been admitted to the hospital for a serious medical reason, and 2) when a family member, approved visitor or caller, or primary support person has been hospitalized, becomes critically ill, or has died. The incarcerated person shall be notified of any calls received pursuant to this section.

Additionally, this bill seeks to provide that emergency in-person contact visits and video calls shall be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in critical or more serious medical condition. "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, video calls shall be made available. Any visitor approval process shall be conducted within 24 hours. However, no visitor approval process shall be required when the patient is in imminent danger of dying."

Existing CDCR Inmate Visiting Guidelines do not detail regulations regarding emergency visits, but do instruct families on the limitations on emergency visits for persons not already approved to visit an incarcerated person: "Sometimes emergency or hardship visits are allowed before a person has been approved to visit. Such visits are at the discretion of prison staff (usually the Visiting Sergeant or Lieutenant) and are usually to accommodate an unexpected visitor traveling from a distance in excess of 250 miles. You should not rely on receiving approval to visit without going through the normal visiting application process. Whenever possible, you should plan ahead for visits and have each adult who might want to visit submit applications before they embark on a trip that will include a visit to a prisoner." (Available at <https://www.cdcr.ca.gov/visitors/inmate-visiting-guidelines/>.)

- 8) **Argument in Support:** According to the *UC Berkeley's Underground Scholar's Initiative*, "Research shows that visits improve the mental health of the whole family -- and promote healthy child development -- while reducing recidivism. Yet only a small percentage of people incarcerated in California prisons receive any visits, much less regular visits. Multiple barriers get in the way:
- unreasonable exclusion of visitors for reasons unrelated to visiting security
 - infrequent and inconvenient visiting hours
 - disrespectful and harassing screening procedures and supervision of visits
 - unpredictable cancellations

- placement of incarcerated people far from their hometowns, which burdens families with long travel times and costs.

“AB 990 will remove many of these barriers and promote prison visiting for the benefit of communities across California inside and outside of our prisons.”

- 9) **Argument in Opposition:** According to the *California Correctional Peace Officers Association*, “CCPOA has several issues with the bill. The first of which is the expansion of the current visitation days and hours.... The additional workload would place an unreasonable burden on our current correctional officers and necessarily leave inappropriate and unsafe staff to inmate ratios in other areas of state prison facilities. Without providing the needed correctional officer presence during visitation, the safety of visitors would not be guaranteed.

....

“The list of reasons for which a visitation can be denied is far too restrictive as well as the reasons for which a visitation cannot be denied. For example, the bill’s definition of ‘masturbation’ only includes skin-to-skin contact and fails to address relevant concerns when it occurs through the clothing. As long as the visitor has provided a criminal history, they cannot be denied a visit unless they have committed a very narrow list of offenses within a prison or jail. AB 990 would allow visitors unlimited access to inmate visitation even if they have criminal records indicating they are part of a criminal organization or enterprise associated with the inmate. These new rules for visitation would enable incarcerated leaders of criminal organizations to more easily exert their influence and manage their organizations from within the prison facility. CCPOA also finds it problematic that, without exception, visitation cannot be denied for any disciplinary action or status that occurred outside of visitation. There are certainly relevant and practical reasons for actions within an institution to have real, but temporary, consequences.”

- 10) **Related Legislation:** AB 717 (Stone) would require CDCR and the Department of Motor Vehicles to ensure that a person being released from CDCR custody has an identification card or a driver’s license. AB 717 is pending before the Assembly Appropriations Committee.

11) **Prior Legislation:**

- a) SB 555 (Mitchell), of the 2017-2018 Legislative Session, would prohibit a county jail from collecting commission fees for providing telephone services to inmates, and would have imposed other restrictions on a county’s ability to contract for commissary and communication services. SB 555 was vetoed by the governor.
- b) SB 1146 (Stone), of the 2017-2018 Legislative Session, would have authorized prison authorities to open and inspect outgoing inmate mail for the purpose of enforcing restraining and protective orders, excluding confidential correspondence between an inmate and their attorney. SB 1146 failed passage in this committee.

REGISTERED SUPPORT / OPPOSITION:**Support**

Alliance for Boys and Men of Color (Co-Sponsor)
Communities United for Restorative Youth Justice (CURYJ) (Co-Sponsor)
Felony Murder Elimination Project (Co-Sponsor)
Young Women's Freedom Center (Co-Sponsor)
A New Way of Life Re-entry Project
ACLU California Action
All of Us or None Los Angeles
All of Us or None San Diego
Anti-recidivism Coalition
Asian Prisoner Support Committee
Asian Solidarity Collective
Blameless and Forever Free Ministries
California Coalition for Women Prisoners
California Families Against Solitary Confinement (CFASC)
California Immigrant Policy Center
California Prison Focus
California Public Defenders Association (CPDA)
California United for A Responsible Budget (CURB)
Cat Clark Consulting Services LLC
Center for Empowering Refugees and Immigrants
Center on Juvenile and Criminal Justice
Chabot College
Children's Defense Fund-california
Community Legal Services in East Palo Alto
Community Works
Congregations Organized for Prophetic Engagement (COPE)
Ella Baker Center for Human Rights
Faith in The Valley
Father's & Families of San Joaquin
Friends Committee on Legislation of California
Homeboy Industries
Immigrant Legal Resource Center
Initiate Justice
Kern County Participatory Defense
Legal Aid At Work
Legal Services for Prisoners With Children
Long Beach Immigrant Rights Coalition
Mental Health Advocacy Services
National Center for Youth Law
National Institute for Criminal Justice Reform
Pillars of The Community
Pride in Truth
Prison From-theinside-out INC
Re:store Justice

Root & Rebound
San Bernardino Fatherhood
San Francisco District Attorney's Office
San Francisco Public Defender's Office
Santa Cruz Barrios Unidos INC.
Secure Justice
Showing Up for Racial Justice (SURJ) Bay Area
Showing Up for Racial Justice (SURJ) San Diego
Showing Up for Racial Justice North County
Silicon Valley De-bug
Starting Over INC.
Surj Contra Costa County
Team Justice
The Transformative In-prison Workgroup
Think Dignity
Time for Change Foundation
Timelist Group
UC Berkeley's Underground Scholars Initiative (USI)
Uncommon Law
Underground Scholars Initiative Berkeley
Underground Scholars Initiative, University of California Davis
We the People - San Diego

Oppose

California Correctional Peace Officers Association
California State Sheriffs' Association
Riverside Sheriffs' Association

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