

ASSEMBLY THIRD READING

AB 990 (Santiago)

As Amended May 24, 2021

Majority vote

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 establishes restrictions on denying a person visitation rights.

Major Provisions

- 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) Makes legislative findings and declarations.

COMMENTS

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 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.

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.

According to the Author

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."

Arguments 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:

- 1) Unreasonable exclusion of visitors for reasons unrelated to visiting security
- 2) Infrequent and inconvenient visiting hours
- 3) Disrespectful and harassing screening procedures and supervision of visits

- 4) Unpredictable cancellations
- 5) 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."

Arguments in Opposition

According to the *California Correctional Peace Officers Association*, "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 bills 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."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, unknown, possibly significant costs in excess of \$150,000 annually to the CDCR to comply with a statutory right to visitation.

VOTES

ASM PUBLIC SAFETY: 6-1-1

YES: Jones-Sawyer, Bauer-Kahan, Quirk, Santiago, Wicks, Lee

NO: Seyarto

ABS, ABST OR NV: Lackey

ASM APPROPRIATIONS: 12-1-3

YES: Lorena Gonzalez, Calderon, Carrillo, Chau, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

NO: Fong

ABS, ABST OR NV: Bigelow, Megan Dahle, Davies

UPDATED

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CONSULTANT: Nikki Moore / PUB. S. / (916) 319-3744

FN: 0000510