
THIRD READING

Bill No: AB 990
Author: Santiago (D), et al.
Amended: 8/26/21 in Senate
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 7/13/21
AYES: Bradford, Durazo, Kamlager, Skinner
NO VOTE RECORDED: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 6-1, 8/26/21
AYES: Portantino, Bradford, Jones, Kamlager, Laird, McGuire
NOES: Bates

ASSEMBLY FLOOR: 47-18, 6/2/21 - See last page for vote

SUBJECT: Prisons: inmate visitation

SOURCE: Coalition for Family Unity

DIGEST: This bill establishes the right to personal visits for each person serving a sentence in state prison or county jail for a realigned felony; prohibits 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 prohibits the denial of in-person contact visits, as specified.

ANALYSIS:

Existing law:

- 1) 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).)

- 2) Provides that each person sentenced to imprisonment in a state prison or to imprisonment pursuant to Section 1170 (h) has the following civil rights:
 - a) 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, the California Department of Corrections and Rehabilitation (CDCR) may restrict or prohibit sales or conveyances that are made for business purposes, to the extent authorized under the law.
 - b) 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.
 - c) To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office, except as specified.
 - d) To initiate civil actions, as specified.
 - e) To marry.
 - f) To create a power of appointment.
 - g) To make a will.
 - h) To receive specified benefits. (Pen. Code, § 2601, subd. (a)-(h).)
- 3) 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:
 - a) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates.
 - b) Recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community.
 - c) Recognize and consider the important role of inmate visitation in preparing an inmate for successful release and rehabilitation. (Pen. Code, § 6400.)

This bill:

- 1) Provides that a person sentenced to imprisonment in a state prison or to imprisonment pursuant to Penal Code 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.
- 2) Adds the right to receive personal visits to the list of enumerated civil rights. Specifies that the provisions of this bill do not require in-person visits for people incarcerated pursuant to Section 1170, subdivision (h), in counties that are not required to provide those visits pursuant to other state laws, as specified.
- 3) Provides that the enumerated civil 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.
- 4) Prohibits an in-person contact visit, including a family visit, from being denied for any of the following reasons:
 - 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 that CDCR consults to assess applications.
 - 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, except as specified, a visitor's current status of being under parole, post-release 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, except as specified.

- 5) 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:
 - a) 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.
 - b) 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.
 - c) Committing violence during a visit or the visiting screening process.
 - d) Attempting, or aiding in, an escape during a visit.
- 6) Requires CDCR to inform an applicant of the specific reason for any denial of a visit.
- 7) 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.
- 8) 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.
- 9) Includes several legislative findings and declarations.

Background

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."

Existing CDCR Visitation Policies

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, including family 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.
- 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.

This bill additionally requires CDCR to provide the specific reason for the denial of 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- *Counties:* Unknown, potentially-significant costs in the aggregate for counties to allow individuals incarcerated for a felony conviction to receive “personal visits.” (General Fund- Prop 30, local funds)
- *CDCR:* Unknown, potentially-significant ongoing personnel costs associated with family visits. Currently, the family visiting application requires additional processes that regular visiting applications do not. The process of applying for family visiting requires staff to verify the identity and relationships of the proposed visitors. Under existing practice, falsification of any information would be cause for the cancellation of family visiting privileges and potentially could result in disciplinary action.

Additionally, CDCR would incur one-time costs of roughly \$50,000 to update regulations and the department operating manual to reflect the changes proposed by AB 990. Additionally, CDCR may incur potentially-significant costs resulting for litigation brought for alleged infringement of specified statutory civil rights. (General Fund)

- *Courts:* Unknown, potentially-significant workload cost pressures to the courts to adjudicate alleged violations of civil rights by CDCR and/or county jailers. While the superior courts are not funded on a workload basis, an increase in workload could result in delayed court services and would put pressure on the General Fund to increase the amount appropriated to backfill for trial court operations. For illustrative purposes, the Budget Act of 2021 allocates \$118.3 million from the General Fund for insufficient revenue for trial court operations. (General Fund- Trial Court Trust Fund)
- *Department of Justice (DOJ):* Unknown workload cost pressures for DOJ to represent CDCR in litigation alleging violations of civil rights. Costs to DOJ would be reimbursed through direct billing to the client agency. (Special fund- Legal Services Revolving Fund)

SUPPORT: (Verified 8/26/21)

Coalition for Family Unity (source)

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
Three individuals

OPPOSITION: (Verified 8/26/21)

California State Sheriffs' Association
San Bernardino County Sheriff's Department

ASSEMBLY FLOOR: 47-18, 6/2/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner
Horvath, Bryan, Burke, Calderon, Carrillo, Chau, Chiu, Cooley, Friedman,
Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Holden, Jones-Sawyer, Kalra,
Lee, Levine, Low, Maienschein, McCarty, Medina, Mullin, Nazarian, Quirk,
Quirk-Silva, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio,
Santiago, Stone, Ting, Villapudua, Waldron, Ward, Akilah Weber, Wicks,
Wood, Rendon

NOES: Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Frazier,
Gallagher, Gray, Lackey, Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith,
Voepel

NO VOTE RECORDED: Bigelow, Cervantes, Cooper, Daly, Lorena Gonzalez,
Grayson, Irwin, Kiley, Muratsuchi, O'Donnell, Petrie-Norris, Ramos, Salas,
Valladares

Prepared by: Stephanie Jordan / PUB. S. /
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**** END ****