

## CONCURRENCE IN SENATE AMENDMENTS

AB 990 (Santiago)

As Amended August 26, 2021

Majority vote

**SUMMARY**

Establishes the right of visitation as a protected civil right for people that are incarcerated, as specified. Changes the standard of review for when a custodial authority seeks to limit the civil rights of incarcerated individuals, as specified. Restricts the California Department of Corrections' (CDCR) power to deny a person visitation rights.

**Senate Amendments**

- 1) Provide that the provisions of this bill does not require in-person visits for people incarcerated in county jail on realigned felonies in counties that are not required to provide those visits pursuant to existing law, as specified.
- 2) Clarify that the provisions of this bill apply to CDCR family visits.
- 3) Specify that in person visitation shall not be denied 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.
- 4) Require CDCR to inform an applicant of the specific reason for any denial of a visit.
- 5) Make technical and conforming changes.

**COMMENTS**

*As passed by the Assembly,*

- 1) Established 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) Required 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) Provided 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) Permitted 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) Stated 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.

### **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 *University of California, 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 Senate Appropriations Committee:

- 1) Counties: Unknown, potentially-significant costs in the aggregate for counties to allow individuals incarcerated for a felony conviction to receive "personal visits." (General Fund\*, local funds)
- 2) Department of Corrections and Rehabilitation (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 this bill. Additionally, CDCR may incur potentially-significant costs resulting for litigation brought for alleged infringement of specified statutory civil rights. (General Fund)

- 3) 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\*\*)

- 4) 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\*\*\*)

\*Proposition 30 (2012) – see Staff Comments

\*\*Trial Court Trust Fund

\*\*\*Legal Services Revolving Fund

## 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

### ASSEMBLY FLOOR: 47-18-14

**YES:** 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

**NO:** Chen, Choi, Cunningham, Megan Dahle, Davies, Flora, Fong, Frazier, Gallagher, Gray, Lackey, Mathis, Mayes, Nguyen, Patterson, Seyarto, Smith, Voepel

**ABS, ABST OR NV:** Bigelow, Cervantes, Cooper, Daly, Lorena Gonzalez, Grayson, Irwin, Kiley, Muratsuchi, O'Donnell, Petrie-Norris, Ramos, Salas, Valladares

### SENATE FLOOR: 29-10-1

**YES:** Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Jones, Kamlager, Laird, Leyva, Limón, McGuire, Newman, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener

**NO:** Bates, Borgeas, Dahle, Grove, Hurtado, Melendez, Min, Nielsen, Ochoa Bogh, Wilk

**ABS, ABST OR NV:** Stern

**UPDATED**

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