
UNFINISHED BUSINESS

Bill No: SB 1139
Author: Kamlager (D)
Amended: 8/15/22
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 3/29/22
AYES: Bradford, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-0, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NO VOTE RECORDED: Bates, Jones

SENATE FLOOR: 28-2, 5/24/22
AYES: Allen, Atkins, Becker, Bradford, Cortese, Dodd, Durazo, Eggman, Glazer, Gonzalez, Hueso, Hurtado, Kamlager, Laird, Leyva, Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener
NOES: Melendez, Wilk
NO VOTE RECORDED: Archuleta, Bates, Borgeas, Caballero, Dahle, Grove, Hertzberg, Jones, Nielsen, Ochoa Bogh

ASSEMBLY FLOOR: 56-0, 8/23/22 - See last page for vote

SUBJECT: Prisons: visitation

SOURCE: Prison From the Inside Out

DIGEST: This bill requires the Department of Corrections and Rehabilitation (CDCR) to make emergency phone calls available to an incarcerated person and specified people outside of CDCR when the incarcerated person has been hospitalized for a serious medical reason or when the incarcerated person's family member has become critically ill or died; update certain visitor and medical documents annually or within 30 calendar days of an infectious disease outbreak;

notify specified people within 24 hours of an incarcerated person being hospitalized; and make emergency in-person visits and video calls available whenever an incarcerated person is hospitalized, as specified.

Assembly Amendments remove the requirement that an incarcerated person be allowed to update specified documents within 30 days of an infectious disease outbreak; limit the definition of serious or critical medical condition to mean the incarcerated person needs medical treatment for a terminal illness, needs to receive life-sustaining treatment, or has been admitted to a public or community hospital; limit emergency in-person contact visits or video calls to circumstances in which the incarcerated person has been hospitalized; and eliminate the prohibition on visitor approval when the incarcerated person is in imminent danger of dying and instead require that video visitation be offered without clearance if in-person visitation is unable to take place.

ANALYSIS:

Existing law:

- 1) Provides that the Secretary of CDCR may prescribe and amend rules and regulations for the administration of the prisons. (Pen. Code, § 5058.)
- 2) Requires any amendments to existing regulations and any future regulations adopted by CDCR which may impact the visitation of inmates do all of the following: recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates; recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community; and recognize and consider the important role of inmate visitation in preparing an inmate for successful release and rehabilitation. (Pen. Code, § 6400.)
- 3) Requires CDCR to obtain from an incarcerated person, upon entry and annually, the name and last known address and phone number of any person or persons to be notified in the event of the person's death or serious illness or serious injury, as determined by the physician in attendance. Requires the persons be notified in the order of the incarcerated person's preference. Requires the incarcerated person be provided with the opportunity to modify or amend his or her notification list at any time. (Pen. Code, § 5022, subd. (a).)
- 4) Requires CDCR to use all reasonable means to contact the person or persons set forth in the notification list upon the death or serious illness or serious

injury, as determined by the physician in attendance, of the incarcerated person. (Pen. Code, § 5022, subd. (b).)

- 5) Allows any adult patient of a health care provider and any patient's personal representative to inspect patient records upon presenting to the health care provider a request for those records and upon payment of reasonable costs. (Health & Saf. Code, § 123110, subd. (a).)

This bill:

- 1) Prohibits the Secretary of CDCR from charging a fee for an incarcerated person to request, review, or use their medical records.
- 2) Requires that emergency phone calls are made available to persons outside of CDCR and to incarcerated people, as specified. Requires CDCR to provide persons outside the facility the means to initiate a phone call to an incarcerated person in either of the following circumstances:
 - a) When the incarcerated person has been admitted to the hospital for a serious medical reason.
 - b) When a family member, approved visitor, next of kin, or persons listed on the medical release of information form or medial power of attorney form has become critically ill or has died while the incarcerated person has been hospitalized.
- 3) Requires that at intake and at least once a year thereafter, and within 30 calendar days of an infectious disease outbreak in a department facility, every incarcerated person be asked whom they want covered by the following documents:
 - a) Approved visitor list. Requires CDCR, if the incarcerated person would like to add a visitor, to provide a visitor application form for the incarcerated person to sign and send to the potential visitor, who may then complete and submit it to the visiting department of the facility.
 - b) Medical release of information form.
 - c) Medical power of attorney form.
 - d) Next of Kin form authorizing control over body and possessions in case of death.

- 4) Requires that incarcerated individuals be assisted in completing the above paperwork.
- 5) Requires CDCR, within 24 hours of an incarcerated person being hospitalized for a serious medical reason, to inform persons covered by the current medical release of information form about the incarcerated person's health status and to facilitate phone calls between the incarcerated person and those persons if the incarcerated person consents.
- 6) Provides that a serious medical reason includes any of the following:
 - a) A medical professional has determined that the incarcerated person needs medical treatment in a public or community hospital.
 - b) A medical professional has determined that the incarcerated person needs medical treatment for a terminal disease.
 - c) A medical professional has determined that the incarcerated person needs to receive life-sustaining medical treatment.
 - d) The incarcerated person has suffered from a medical emergency and is receiving treatment at a prison hospital.
 - e) The incarcerated person has died.
- 7) Requires within 24 hours of an incarcerated person being hospitalized and if the incarcerated person is able to provide knowing and voluntary consent, CDCR to ask the incarcerated person whether they want to add people to any of the above specified forms who have not previously been designated. Requires CDCR to promptly assist, as necessary, the incarcerated person in completing the paperwork. Requires CDCR to promptly inform the newly designated persons on the medical release form of the incarcerated person's condition and facilitate a phone call between the incarcerated person and the newly designated person.
- 8) Requires CDCR to maintain a phone line for outside people to call to inform the department that a family member or a person designated in any of the above listed forms has become critically ill or has died while the incarcerated person has been hospitalized. Requires CDCR to notify the incarcerated person of these calls upon their receipt.
- 9) Requires emergency in-person contact visits and video calls to be made available whenever an incarcerated person is hospitalized or moved to a

medical unit within the facility and the incarcerated person is in a critical or more serious medical condition. Requires video calls be made available 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. Requires any visitor approval process to be conducted within 24 hours. No visitor approval process is required when the incarcerated person is in imminent danger of dying. Requires CDCR to allow up to four visitors at one time to visit the incarcerated person when the incarcerated person is in imminent danger of dying.

- 10) Provides that "hospital" includes an on-site facility set up to provide hospital-like services during a public health emergency.
- 11) Requires CDCR to have a grievance process in place by which the incarcerated person, or the person designated by the incarcerated person on the above specified forms, may file a formal grievance to review:
 - a) CDCR's failure to provide the incarcerated person's health care information and records to the designated person;
 - b) CDCR's failure to provide notice to the designated person as required;
 - c) CDCR's decision to deny visitation as required; or
 - d) CDCR's failure to provide adequate medical care and treatment.
- 12) Provides that CDCR's existing grievance process satisfies the requirements that CDCR have a grievance process as outlined above.
- 13) Provides that it is contingent upon the appropriation of funds by express reference in the annual Budget Act or another statute.

Background

Phone Calls

CDCR regulations generally require the state's prisons to provide phones for use by incarcerated individuals. (Cal. Code Regs, tit. 15, § 3282, subd. (b).) Incarcerated individuals may place collect phone calls to persons outside the facility at designated times and on designated phones, as set forth in local procedures. (*Id.*) Limitations may be placed on the frequency and length of such calls based on the person's privilege group and to ensure equal access. (*Id.*) Regulations further provide that if a staff member determines that an incoming call

concerns an emergency matter, the staff member is required to obtain the caller's name and phone number, to notify the incarcerated person promptly of the situation, and to permit the incarcerated person to place an emergency call. (Cal. Code Regs, tit. 15, § 3282, subd. (g).) "Emergency call" is defined as a phone call regarding the serious illness or injury, or the death of an incarcerated person's immediate family member. (Cal. Code Regs, tit. 15, § 3282, subd. (a).)

Visitation

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 10 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).)

Finally, the institution head is required to maintain visiting procedures for visiting at each institution or facility that are consistent with department regulations. (Cal. Code Regs., tit. 15, § 3171, subd. (a).)

In Custody Injuries and Deaths

Current law requires CDCR to obtain from an incarcerated person, upon entry and annually, the name and last known address and phone number of any person or persons to be notified in the event of the person's death or serious illness or serious injury, as determined by the physician in attendance. (Pen. Code, § 5022, subd. (a).) Existing law also requires the incarcerated person be provided with the opportunity to modify or amend his or her notification list at any time. (*Id.*) CDCR is required to use all reasonable means to contact the person or persons set forth in the notification list upon the death or serious illness or serious injury, as determined by the physician in attendance, of the incarcerated person. (Pen. Code, § 5022, subd. (b).)

Regulations require, upon the death of an incarcerated person, a CDCR staff member to review the person's central file and locate the current Notification in Case of Inmate Death, Serious Injury, or Serious Illness to identify the person's next of kin or person or persons to be notified. (Cal. Code Regs., tit. 15, § 3999.417, subd. (e).) This form must be completed annually or when the incarcerated person is transferred to a new prison. (*Id.*) Regulations require counseling staff to complete the Notification and to witness the incarcerated person's dated signature. (*Id.*) The Notification must include: the name of the incarcerated person, CDCR number, personal identification number, and current

institution; the name, relationship, telephone, and address of person to be notified; the name, relationship, telephone, and address of the contact person for a will; and whether the inmate is a foreign national. (*Id.*) Staff is required attempt to notify the person or persons listed on the Notification in Case of Inmate Death, Serious Injury, or Serious Illness as the person(s) to be notified of the death, in person, or, if personal contact is not practical, by phone. (Cal. Code Regs., tit. 15, § 3999.417, subd. (f).) Staff is required to send a notification to the next-of-kin, person or persons to be notified, and the legally appointed representative which must include the name and telephone number of a staff member who may be contacted for additional information, among other things.

Health Care Grievances

Regulations specify that the health care grievance process provides an administrative remedy to patients for review of complaints of applied health care policies, decisions, actions, conditions, or omissions that have a material adverse effect on their health or welfare. (Cal. Code Regs., tit. 15, § 3999.226, subd. (a).) Health care grievances are subject to an institutional level review and may receive a headquarters' level grievance appeal review, if requested by the grievant. (*Id.*)

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

According to the Assembly Appropriations Committee, costs (General Fund) in the tens of millions of dollars to CDCR annually in additional staff and infrastructure to provide emergency phone calls, update visitor and medical documents, notify identified parties within 24 hours of an inmate being hospitalized, and arrange for emergency in-person visits in specified circumstances. Specifically, California Correctional Health Care Services (CHSS) estimates additional personnel will be required to meet the expected requests from the incarcerated population. CDCR also reports costs of an unknown, but potentially significant amount associated with contacting individuals as a result of an incarcerated person needing medical treatment in a public or community hospital CDCR noted that it sends hundreds of incarcerated people to public or community hospitals for treatment every week, meaning this bill would results in significant additional staff workload to make the necessary notifications. CDCR also estimates costs of an unknown, but potentially significant amount for the purchase of equipment to facilitate video calls at community or public hospitals. Depending on existing hospital infrastructure, it may be necessary to add video calling equipment to individual hospital rooms. CDCR also notices this bill may require additional security to comply with the visitation requirements at hospitals, and additional staffing to implement the grievance process for alleged violations of the bill's provisions.

SUPPORT: (Verified 8/23/22)

Prison From the Inside Out (source)
California Attorneys for Criminal Justice
California Catholic Conference
California Public Defenders Association
Communities United for Restorative Youth Justice
Dee Hill Foundation
Ella Baker Center for Human Rights
Empowering Women Impacted by Incarceration
Essie Justice Group
Friends Committee on Legislation of California
Humane Prison Hospice Project
Initiate Justice
Jesse's Place
Legal Services for Prisoners with Children
Starting Over
Transformative In-Prison Workgroup

OPPOSITION: (Verified 8/23/22)

California Correctional Peace Officers Association
Riverside Sheriffs' Association

ASSEMBLY FLOOR: 56-0, 8/23/22

AYES: Alvarez, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Cooley, Cunningham, Daly, Mike Fong, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Low, Maienschein, Mayes, McCarty, McKinnor, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Reyes, Luz Rivas, Robert Rivas, Salas, Santiago, Stone, Ting, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Aguiar-Curry, Bigelow, Chen, Choi, Cooper, Megan Dahle, Davies, Flora, Fong, Gallagher, Gray, Kiley, Lackey, Levine, Mathis, Nguyen, Patterson, Quirk-Silva, Ramos, Rodriguez, Blanca Rubio, Seyarto, Smith, Valladares

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