

Date of Hearing: March 7, 2023

Counsel: Liah Burnley

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

AB 353 (Jones-Sawyer) – As Introduced January 31, 2023

SUMMARY: Requires incarcerated persons to be permitted to shower at least every other day. Specifically, **this bill:**

- 1) Requires the California Department of Corrections and Rehabilitation (CDCR) to permit incarcerated persons to shower at least every other day, unless access to a shower is prohibited.
- 2) Provides that whenever a request for a shower is prohibited or denied, the facility manager or their designee shall approve the decision, and the reasons shall be documented.

EXISTING STATE LAW:

- 1) Prohibits cruel and unusual punishment. (Cal. Const., art. I, § 17.)
- 2) States that a person sentenced to imprisonment in a state prison may be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests. (Pen. Code, § 2600, subd. (a).)
- 3) Provides that it shall be unlawful to use in the prisons, any cruel, corporal or unusual punishment or to inflict any treatment or allow any lack of care whatever which would injure or impair the health of the prisoner, inmate or person confined. (Pen. Code, § 2652.)
- 4) Requires CDCR to provide each prisoner with a bed, sufficient covering of blankets, and with garments of substantial material and of distinctive manufacture, and with sufficient plain and wholesome food of such variety as may be most conducive to good health and that shall include the availability of plant-based meals. (Pen. Code, § 2084, subd. (a).)
- 5) Allows CDCR wardens to make temporary rules and regulations, in case of emergency, to remain in force until CDCR otherwise provides. (Pen. Code, § 2086.)

EXISTING FEDERAL LAW: Prohibits cruel and unusual punishment. (U.S. Const., 8th Amend.)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Author’s Statement:** According to the author, “All human beings have a right to ensure good hygiene, regardless of their status in society. It is immoral, inhumane, and cruel to

deprive someone of their right to shower. In spite of this, reports from persons housed at CDCR prisons shine a light on the abuses that are being committed against them. AB 353 seeks to rectify one of those by spelling out in law an incarcerated person's right to shower and uphold proper hygiene. Specifically, this bill guarantees that persons incarcerated at CDCR have access to showers, at least every other day, regardless of whether or not they have an employment position while incarcerated."

- 2) **Constitutional Prohibition against Cruel and Unusual Punishment:** The Eighth Amendment's prohibition against cruel and unusual punishment protects prisoners from inhumane conditions of confinement. (*Farmer v. Brennan* (1994) 511 U.S. 825, 832.) Prison officials therefore have a "duty to ensure that prisoners are provided with adequate shelter, food, clothing, sanitation, medical care, and personal safety." (*Johnson v. Lewis* (9th Cir. 2000) 217 F.3d 726, 731.)

Although routine discomforts in prison are inadequate to show a violation of the Eighth Amendment, "those deprivations denying the minimal civilized measure of life's necessities are sufficiently grave to form the basis of an Eighth Amendment violation." (*Hudson v. McMillian* (1992) 503 U.S. 1, 9.) "The circumstances, nature, and duration of a deprivation of these necessities must be considered in determining whether a constitutional violation has occurred." (*Johnson v. Lewis, supra*, 217 F.3d at p. 731.)

Accordingly, "there is no constitutional right to a certain number of showers per week and an occasional or temporary deprivation of a shower does not rise to the level of a constitutional violation." (*Ontiveros v. Eldridge* (E.D. Cal. Apr. 13, 2020) WL 1853003, at *2.) But, "the denial of a shower on a continuous basis at some point will rise to the level of violating the Eighth Amendment." (*Pamer v. Schwarzenegger* (E.D. Cal. Dec. 22, 2010) U.S. Dist. LEXIS 135824, at *14.) "A prison official's failure to provide a prisoner with a shower or out-of-cell exercise for this extended period of time is sufficiently serious" to satisfy an Eighth Amendment claim. (*Ekene v. Cash* (C.D. Cal. Jan. 8, 2013) U.S. Dist. LEXIS 81952, at *20); see also *Keenan v. Hall* (9th Cir. 1996) 83 F.3d 1083, 1091 [Eighth Amendment guarantees sanitation and personal hygiene].)

- 3) **CDCR Regulations on Personal Hygiene:** Title 15 regulations require CDCR institutions to "provide the means for all inmates to keep themselves and their living quarters clean and to practice good health habits." (Cal. Code Regs., tit. 15, § 3060.) The regulations further provide that incarcerated persons "must keep themselves clean, and practice those health habits essential to the maintenance of physical and mental well-being." (Cal. Code Regs., tit. 15, § 3061.) "All inmates shall receive basic supplies necessary for maintaining personal hygiene. Inmates shall be provided products for washing hands, bathing, oral hygiene, and other personal hygiene, including but not limited to: soap, toothpaste or toothpowder, toothbrush, and toilet paper." (*Ibid.*)

CDCR's Department Operational Manual (DOM) requires incarcerated persons in segregated confinement to be permitted to shower at least three times a week. (DOM §§ 52080.21.6 & 52080.33.6.) There are no further rules regarding access to showers. However, the DOM allows staff to report on an incarcerated person's personal cleanliness. (DOM § 72010.7.1.)

In comparison, the regulations require local correctional facilities to permit incarcerated persons to "shower/bathe upon assignment to a housing unit and at least every other day or

more often if possible. Absent exigent circumstances, no person shall be prohibited from showering at least every other day following assignment to a housing unit. If showering is prohibited, it must be approved by the facility manager or designee, and the reason(s) for prohibition shall be documented.” (Cal. Code. Regs., tit. 15, § 1266.)

As is required of local correctional facilities, this bill would ensure that persons incarcerated at CDCR institutions are allowed to shower at least every other day. CDCR would retain discretion to set the length and shower schedule and can deny or prohibit showers, if the reasons are documented and the denial is approved by the facility manager.

- 4) **Shower Restrictions for Water Efficiency and Conservation:** To combat California’s severe drought, CDCR “implemented a combination of water conservation and water efficiency projects.” Water conservation efforts have included changes to operational procedures to reduce water consumption as required through CDCR’s implementation of Drought Action Plans. (CDCR, *Water Efficiency & Conservation* <<https://www.cdcr.ca.gov/green/cdcr-green/water-efficiency-and-conservation/>> [as of Feb. 22, 2023].)

“CDCR developed a statewide Drought Action Plan and required each institution to develop a site specific plan.” (CDCR, *Sustainability Roadmap 2020-2021 California Department of Corrections and Rehabilitation* at p. 82 <https://www.cdcr.ca.gov/green/wp-content/uploads/sites/176/2020/04/R_2020-21-CDCR-Sustainability-Roadmap-FINAL-Electronic-Signature.pdf> [as of Feb. 22, 2023].) Concerning showers, the Drought Action Plan mandates statewide that “inmate/ward shower duration shall not exceed 5 minutes,” requires institutions to “update and enforce existing shower schedules,” and to “shutdown and cease all inmate/ward showers that are not conducted inside each housing unit (i.e. yard showers, etc.)” (*Id.* at p. 83.) Other site-based measures include “inmate/ward workers assigned to culinary, construction/maintenance duties, and/or programs requiring showering shall be allowed to shower once daily not to exceed 5 minutes. All other inmates/wards will be permitted showers three times a week not to exceed 5 minutes.” (*Ibid.*)

- 5) **Impact of Shower Restrictions on Incarcerated Persons:** Incarcerated persons have reported that they are “unable to shower daily, despite the fact that outbreaks of diseases such as COVID-19 and norovirus and infestations of bedbugs and scabies are common.” (Cal Matters, *Tying Water Access to Labor in Overcrowded Prisons is Wrong* (June 2022) <<https://calmatters.org/commentary/2022/06/tying-water-access-to-labor-in-overcrowded-prisons-is-wrong/>> [as of Feb. 22, 2023].) “Prisoners who don’t have jobs — including those pursuing GEDs or college degrees — are allowed a five-minute shower on Tuesdays, Thursdays and Saturdays. To shower every day, you have to work to help maintain the prison or its industries. Yet every day, most prisoners run up and down basketball courts, jog around the track, slide into home plate, or participate in other activities in the prison yard.” (*Ibid.*) “Hundreds of men, soaked in sweat, return to their cramped cells and cannot shower. If we shower or even “bird bath” without permission, we can lose privileges, see our prison stay extended or have parole denied.” (*Ibid.*)

Many incarcerated people spend most of their time in “double occupancy—11-foot-by-four-foot cells that leave only three feet between each incarcerated person’s two-and-a-half-foot-wide bunk bed and shared sink and toilet, with limitations on flushing.” (The Nation, *Prisoners Forced to Work for Showers Are Now Being Punished for Taking Them* (2022)

<<https://www.thenation.com/article/society/water-restrictions-drought-california-prisons/>>

[as of Feb. 22, 2023].) Amid a pandemic, heat, and limited access to showers, some incarcerated individuals have received rule violations for taking showers outside of allotted days and times. (*Ibid.*) The lack of an opportunity to have a regular shower or otherwise maintain personal hygiene may be psychologically and physically degrading and humiliating.

Not only does providing regular showers ensure the hygiene and dignity of people in detention, but it also helps avoid the transmission of certain infectious diseases. Among other things, the probability of transmission of potentially pathogenic organisms is increased by prison crowding and rationed access to soap, water, and clean laundry. For example, ectoparasites, such as scabies and lice, are common problems in correctional facilities. Appropriate management of suspected cases includes shower access. MRSA is hyperendemic in most correctional facilities, and risk factors include prolonged incarceration. Liberalizing access to soap, showers, and clean clothing may lead to less opportunity for secondary transmission. (Bick, Joseph, *Infection Control in Jails and Prisons* (2007) 45 *Clinical Infectious Diseases* 8, 1047-55.) Ensuring incarcerated persons have access to shower regularly plays a significant role in public health, infection control and preventing the spread of communicable disease.

- 6) **Argument in Support:** According to *Initiate Justice*, “Although regulations ensure the hygiene practices of incarcerated persons, those detained at the California Department of Corrections and Rehabilitation (CDCR) facilities have reported limited access to showers, a basic human right. If a person misses a shower for any reason, they are not allowed another opportunity to clean themselves. Incarcerated people have reportedly missed their chance to shower due to participation in other programming, medical appointments, or even “recreation” time. As a result, incarcerated individuals can go up to a week without taking a shower, essentially forced to sit in the stench of their body odor and musty clothes. This is not only inhumane but also very unsanitary and detrimental to each individual’s physical and mental health. Regardless of where individuals find themselves in life, human beings should not be denied the opportunity to shower.

“AB 353 (Jones-Sawyer) would improve these inhumane practices by ensuring that those incarcerated in CDCR facilities have access to a shower, no less than every other day, regardless of job placement, education or other assignments that would cause an individual to miss their shower time as governed by the correctional officers.”

- 7) **Related Legislation:** AB 280 (Holden) would require all detention facilities to impose no limitation on services, treatment, or basic needs such as bedding, clothing and food for individuals in segregated confinement. AB 280 is pending hearing in this Committee.

- 8) **Prior Legislation:**

- a) AB 2321 (Jones-Sawyer), Chapter 781, Statutes of 2022, limits the use of juvenile room confinement and ensures that minors and wards confined at juvenile facilities are provided reasonable access to toilets at all hours.
- b) AB 2632 (Holden), of the 2021-2022 Legislative Session, would have required all detention facilities to impose no limitation on services, treatment, or basic needs such as bedding, clothing and food for individuals in segregated confinement. AB 2632 was

vetoed.

REGISTERED SUPPORT / OPPOSITION:

Support

California Public Defenders Association (CPDA)
Ella Baker Center for Human Rights
Initiate Justice

Opposition

None submitted

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