# SENATE COMMITTEE ON PUBLIC SAFETY

**Senator Jesse Arreguín, Chair**
**2025 - 2026 Regular**

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| **Bill No:** | AB 2286 | **Hearing Date:** | June 9, 2026 |
| **Author:** | Bryan | | |
| **Version:** | February 19, 2026 | | |
| **Urgency:** | No | **Fiscal:** | No |
| **Consultant:** | AB | | |

**Subject:** ***Criminal procedure: attorney visits: medical settings***

## HISTORY

Source: Los Angeles County Public Defender's Union, Local 148

Prior Legislation: AB 2215 (Bryan), Ch. 954, Stats. of 2024
AB 1209 (Jones-Sawyer), held in Assembly Appropriations, 2023

Support: ACLU California Action; Bridges of Hope CA; California Association of Licensed Investigators; California Attorneys for Criminal Justice; California Civil Liberties Advocacy; California Coalition for Women Prisoners; California Community Foundation; California Public Defenders Association; Communities United for Restorative Youth Justice; Courage California; Drug Policy Alliance; Ella Baker Center for Human Rights; Felony Murder Elimination Project; Justice2Jobs Coalition; La Defensa; Restoring Hope California; Rubicon Programs; San Francisco Public Defender; San Quentin Skunkworks; Smart Justice; Uncommon Law

Opposition: None known

Assembly Floor Vote: 68 - 0

## PURPOSE

***The purpose of this bill is to clarify that existing penalties for peace officers who refuse to allow an attorney to visit a prisoner apply if a prisoner is in a jail, prison, or medical setting.***

*Existing law* provides that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed and to have the assistance of counsel for his defense. (U.S. Const., Amend. 6)

*Existing law* provides that the defendant in a criminal cause has the right to a speedy public trial, to compel attendance of witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. (Cal. Const., art. I, §§ 15, 24.)

*Existing law* provides that in a criminal action the defendant is entitled to be allowed counsel as in civil actions, or to appear and defendant in person and with counsel. (Pen. Code, § 686.)

*Existing law* provides that when a complaint is filed with a magistrate charging a felony originally triable in the superior court of the county in which he or she sits, if, and only if, the magistrate is satisfied from the complaint that the offense complained of has been committed and that there is reasonable ground to believe that the defendant has committed it, the magistrate shall issue a warrant for the arrest of the defendant, except that, upon the request of the prosecutor, a summons instead of an arrest warrant shall be issued. (Pen. Code, § 813, subd. (a).)

*Existing law* provides that the prosecutor shall not request the issuance of a summons in lieu of an arrest warrant as provided in this section under any of the following circumstances:

- The offense charged involves violence.
- The offense charged involves a firearm.
- The offense charged involves resisting arrest.
  There are one or more outstanding arrest warrants for the person.
- The prosecution of the offense or offenses with which the person is charged, or the prosecution of any other offense or offenses would be jeopardized.
- There is a reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be imminently endangered.
- There is reason to believe that the person would not appear at the time and place specified in the summons.

*Existing law* provides that an arrest warrant shall be directed generally to any peace officer, or to any public officer or employee authorized to serve process where the warrant is for a violation of a statute or ordinance which such person has the duty to enforce, in the state, and may be executed by any of those officers to whom it may be delivered. (Pen. Code, § 816.)

*Existing law* provides that if the offense charged is a felony, and the arrest occurs in the county in which the warrant was issued, the officer making the arrest must take the defendant before the magistrate who issued the warrant or some other magistrate of the same county. (Pen. Code, § 821.)

*Existing law* provides that person who is specified or designated in a warrant of arrest for a misdemeanor offense may be released upon the issuance of a citation, in lieu of physical arrest, unless one of the following conditions exists:

- The misdemeanor cited in the warrant involves violence.
- The misdemeanor cited in the warrant involves a firearm.
- The misdemeanor cited in the warrant involves resisting arrest.
- The misdemeanor cited in the warrant involves giving false information to a peace officer.
- The person arrested is a danger to himself or herself or others due to intoxication or being under the influence of drugs or narcotics.
- The person requires medical examination or medical care or was otherwise unable to care for his or her own safety.
- The person has other ineligible charges pending against him or her.
- There is reasonable likelihood that the offense or offenses would continue or resume, or that the safety of persons or property would be immediately endangered by the release of the person.
- The person refuses to sign the notice to appear.

- The person cannot provide satisfactory evidence of personal identification.
- The warrant of arrest indicates that the person is not eligible to be released on a citation. (Pen. Code, § 827.1.)

*Existing law* provides that an arrest is taking a person into custody in a case and in the manner authorized by law, and that an arrest may be made by a peace officer or by a private person. (Pen. Code, § 834.)

*Existing law* provides that an arrest is made by an actual restraint of the person, or by submission to the custody of an officer, and that the person arrested may be subjected to such restraint as is reasonable for his arrest and detention. (Pen. Code, § 835.)

*Existing law* states that a peace officer may arrest a person in obedience to a warrant, or without a warrant whenever any of the following circumstances occur:

- The officer has probable cause to believe that the person to be arrested has committed a public offense in the officer's presence.
- The person arrested has committed a felony, although not in the officer's presence.
- The officer has probable cause to believe that the person to be arrested has committed a felony, whether or not a felony, in fact, has been committed. (Pen. Code, § 836.)

*Existing law* provides that when a person is arrested for an offense declared to be a misdemeanor, including a violation of a city or county ordinance, and does not demand to be taken before a magistrate, that person shall, instead of being taken before a magistrate, be released according to specified procedures, although nothing prevents an officer from first booking the arrestee as specified. If the person is released, the officer or the officer's superior shall prepare in duplicate a written notice to appear in court, containing the name and address of the person, the offense charged, and the time when, and place where, the person shall appear in court. If the person is not released prior to being booked and the officer in charge of the booking or the officer's superior determines that the person should be released, the officer or the officer's superior shall prepare a written notice to appear in court. (Pen. Code, § 853.6, subd. (a).)

*Existing law* designates the following persons as magistrates:

- The judges of the Supreme Court.
- The judges of the courts of appeal.
- The judges of the superior courts. (Pen. Code, § 808.)

*Existing law* states that a defendant shall be taken before a magistrate without unnecessary delay, and, in any event, within 48 hours after his or her arrest, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).)

*Existing law* provides that after the arrest, any attorney may, at the request of the prisoner or any relative of the prisoner, visit the prisoner. Any officer having charge of the prisoner who willfully refuses or neglects to allow that attorney to visit a prisoner is guilty of a misdemeanor. Any officer having a prisoner in charge, who refuses to allow the attorney to visit the prisoner when proper application is made, shall forfeit and pay to the party aggrieved the sum of $500, to be recovered by action in any court of competent jurisdiction. (Pen. Code, § 825, subd. (b).)

*This bill* strikes the provision stating that after the arrest, any attorney may visit the prisoner at the request of the prisoner or any relative of the prisoner.

*This bill* specifies that the misdemeanor for willfully refusing or neglecting to allow an attorney to visit a prisoner applies when the prisoner is in a jail, prison, medical setting, or hospital.

## COMMENTS

### 1. Need for This Bill

According to the author:

> No incarcerated person should lose their constitutional right to meet with their attorney because they are receiving medical care. AB 2286 clarifies that when someone in custody is being held in a medical setting, their attorney must still be allowed to meet with them so they can meaningfully participate in their defense. Ensuring consistent access to counsel protects due process, strengthens the integrity of our justice system, and helps ensure that people facing serious medical issues are not further disadvantaged in their legal proceedings.

### 2. Constitutional Right to Counsel

The right to counsel in criminal proceedings is protected by both the Fifth and Sixth Amendments to the United States Constitution as well as Article 1 of the California Constitution.[1] Under these provisions, a criminal defendant is entitled to counsel at all stages of a proceeding when his or her substantial rights may be affected, although there is a crucial distinction between how and precisely when these rights apply in the criminal process. The Sixth Amendment right to counsel – and its California counterpart under Article 1, Section 15 of the California Constitution – attaches upon the formal initiation of adversarial judicial proceedings, and at specific, "critical" stages of the criminal process, including arraignment, indictment, information and preliminary hearing, among others.[2] Consequently, an arrestee's right to counsel prior to the initiation of such proceedings (i.e. prior to the commencement of the prosecution) relies on the Fifth Amendment's safeguard against self-incrimination. This doctrine is rooted in the landmark United States Supreme Court case of *Miranda v. Arizona* (1966) 384 U.S. 436, in which the Court imposed specific, constitutional requirements for the advice an officer must provide prior to engaging in custodial interrogation and held that statements taken without these warnings are inadmissible against the defendant in a criminal case. Specifically, the Court held that prior to any questioning, the suspect must be warned that, among other rights possessed by the detained person, they have a right to the presence of an attorney, either retained or appointed.[3]

In order for *Miranda* protections to apply, an individual must be subjected to "custodial interrogation," which is the case if a reasonable person in a similar situation would not feel free to end the interrogation and leave.[4] However, unlike the Sixth Amendment's right-to-counsel

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[1] U.S. Const., Amends. 5, 6; Cal. Const., art. 1, §§ 15, 24.
[2] *Powell v. Alabama* (1932) 287 U.S. 45, 57; *Kirby v. Illinois* (1972) 406 U.S. 682, 689; *Fellers v. United Stats* (2004) 540 U.S. 519; *Coleman v. Alabama* (1970) 399 U.S. 1, 7; *Rothgery v. Gillespie County* (2008) 554 U.S. 191
[3] *Id.* at p. 444
[4] *Id.*

guarantee, which ensures that the accused has legal assistance at specific stages of the criminal process, the Fifth Amendment right to counsel established in *Miranda* does not guarantee the presence of an attorney and functions solely as a shield against coercive interrogations. As explained by the Supreme Court in *McNeil v. Wisconsin* (1991) 501 U.S. 171, 178 whereas "the purpose of the Sixth Amendment right is to protect an unaided layman accused after the adverse positions of the government and the accused have solidified with respect to a particular alleged crime [...] the purpose of the *Miranda-Edwards* guarantee [...] is to protect a quite different interest: the suspect's 'desire to deal with the police only through counsel.'"[5]

This distinction is especially important in the context of indigent defendants who do not necessarily have access to an attorney in the immediate post-arrest period. Although indigent defendants are constitutionally entitled to have an attorney provided for their defense (usually an attorney from a public defender's office), because the judge is procedurally responsible for determining indigency and appointing the public defender, this right is not triggered until the initial court appearance.[6] This can leave indigent arrestees particularly vulnerable during the prearraignment phase, when they are unrepresented by counsel but still subject to investigation an interrogation by law enforcement. Indeed, research has shown that low-income individuals who met with a public defender shortly after arrest were 28 percentage points more likely to be released pretrial, and 36 points more likely to see their cases dismissed relative to other similar individuals who would first meet with a public defender at arraignment.[7]

### 3. Effect of This Bill

This bill relates specifically to access to counsel by arrestees, defendants and prisoners in medical settings. It is well established that while hospitals and their staff may restrict access to counsel in particular cases, like where such a meeting would interfere with hospital operations or compromise the person's medical care, no attorney should be required to give the officer in charge of the prisoner the reason why he desired a private consultation with his client, as to do so could give the officer the power to determine whether such reasons were sufficient to grant such an interview, which would improperly substitute the judgment of the officer for the judgment of the prisoner and his counsel.[8] Indeed, the right an accused person, confined to *any* place of detention, to have an opportunity to consult freely with his counsel is "one of the fundamental rights guaranteed by the American criminal law – a right that no legislature or court can ignore or violate."[9]

Beyond its constitutional guarantees regarding the right to counsel, California law – Penal Code section 825 subdivision (b) – specifies that after an arrest, any attorney licensed in the state may, at the request of the prisoner or a relative of the prisoner visit the prisoner. Moreover, existing law makes it a crime, punishable as a misdemeanor, for any peace officer having charge of the prisoner to refuse or neglect to allow that attorney to visit the prisoner, and allows the "party

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[5] Quoting *Edwards v. Arizona* (1981) 451 U.S. 477, 484.
[6] Pen. Code, §§ 859, 987, subd. (a); *Gideon v. Wainwright* (1963) 372 U.S. 335, 342-343; *Tracy v. Municipal Court* (1978) 22 C3d 760, 766; *People v. Slayton* (2001) 26 Cal.4th 1076
[7] Johanna Lacoe, Brett Fischer, and Steven Raphael, "The Effect of Pre-Arraignment Legal Representation on Criminal Case Outcomes," NBER Working Paper 31289 (2023), https://doi.org/10.3386/w3128 ; For additional information and analysis on this issue see the 2022 Annual Report prepared by the Committee on the Revision of the Penal Code, p. 40, available at https://clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf
[8] *In re Application of Snyder* (1923) 62 Cal.App. 697, 701.
[9] *In re Application of Rider* (1920) 50 Cal.App 797, 799.

aggrieved" to recover from that officer damages in the amount of $500.[10] California case law establishes that the statute does not require that booking be completed in order for the right to attach, and that, because the statute was enacted to "protect the historic rights of the accused to have counsel, the "party aggrieved" clearly refers to the prisoner, not the attorney.[11]

The author asserts that "defense attorneys and public defenders have [experienced] refusal from sheriffs to see their clients while they were hospitalized" and stresses the importance of clarifying in statute that peace officers looking after incarcerated people be specifically disallowed from blocking a person's access to counsel in a hospital or medical setting. Accordingly, this bill further clarifies the application of section 825(b), namely by specifying that an officer having charge of a prisoner in a "jail, prison, medical setting or hospital," is subject to criminal liability under that section.

**4. Argument in Support**

According to California Attorneys for Criminal Justice:

> California law guarantees that individuals in custody have the right to meet with their attorney, however, this right is often denied when an incarcerated individual is hospitalized. In many cases, when an individual is transferred to a medical setting, sheriffs have denied an attorney's visits, sometimes even ignoring court ordered visits as well as failing to provide basic information about the client's status. When an attorney is unable to meet with their client, they are left without critical information, this can impact their ability to make decisions, obtain waivers, or inform courts of situations. Denying this access is a clear violation of due process rights. California must protect these rights regardless of whether a client is held in a jail, prison, or hospital. AB 2286 provides that solution.

**-- END --**

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[10] Pen. Code, § 825, subd. (b).
[11] *Beltram v. Appellate Department* (1977) 66 Cal.App. 3d 711, 717; *People v. Kingston* (1963) 216 Cal.App.2d Supp. 879.