

AMENDED IN ASSEMBLY MAY 24, 2021

AMENDED IN ASSEMBLY APRIL 22, 2021

AMENDED IN ASSEMBLY APRIL 15, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 990

Introduced by Assembly Member Santiago
(Coauthors: Assembly Members Kalra, Lee, Quirk, and Stone)
(Coauthors: Senators Kamlager and Skinner)

February 18, 2021

An act to amend Sections 2600, 2601, and 6400 of, and to add Sections ~~6401 and 6401.5~~ to, *Section 6401* to, the Penal Code, relating to prisoners.

LEGISLATIVE COUNSEL'S DIGEST

AB 990, as amended, Santiago. Prisons: inmate visitation.

(1) Under existing law, a person sentenced to imprisonment in a state prison may during that period of confinement be deprived of only those rights as is reasonably related to legitimate penological interests. Existing law enumerates certain civil rights of a state prisoner, including the right to purchase, receive, and read newspapers, periodicals, and books accepted for distribution by the United States Post Office.

This bill would include the right to personal visits as a civil right. The bill would provide that these civil rights may not be infringed upon, except as necessary and only if narrowly tailored to further the legitimate security interests of the government, and would provide that any governmental action related to these civil rights may be reviewed in court for legal error under a substantial evidence standard of review.

(2) Existing law authorizes the Secretary of the Department of Corrections and Rehabilitation to prescribe and amend rules and regulations for the administration of prisons, and requires regulations, which are adopted by the Department of Corrections and Rehabilitation, that may impact the visitation of inmates to recognize and consider 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. Existing regulations establish the framework for establishing a visiting process in prisons that is conducted in as accommodating a manner as possible, subject to the need to maintain order, the safety of persons, the security of institutions and facilities, and required prison activities and operations. Existing law requires the department to contract with a private nonprofit agency or agencies to establish and operate a visitor center outside of each state adult prison in California that has a population of more than 300 inmates, and prescribes the minimum level of services to be available to prison visitors, including emergency clothing and information on visiting regulations and processes. Existing law requires the department to cooperate with the Department of Transportation in the development of public transportation services to prisons, requires these department to evaluate the addition of stations or stops on existing bus or rail routes, or the addition of new services, which improve transportation access for visitors to prisons, and requires the department to publicize the availability of transportation services provided by the Department of Transportation.

This bill would additionally require those regulations pertaining to inmate visits to recognize and consider the right to personal visits as a civil right. The bill would establish the right of a person to have an in-person visit with an incarcerated person, and would only permit a visit to be denied in prescribed circumstances, including that the incarcerated person freely holds consent to the visit. The bill would prohibit in-person contact visits from being denied, as specified, including as a disciplinary sanction against the incarcerated person. ~~The bill would also require in-person contact visits to be provided no less than 4 days a week and would require emergency phone calls to be made available to certain incarcerated persons, as specified.~~

~~This bill would require the department to adopt regulations necessary to effectuate this act, including emergency regulations.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares all of the
2 following:

3 (1) The United States Supreme Court has recognized a
4 constitutional right to maintain parent-child relationships absent
5 a compelling government interest, such as protecting a child from
6 an “unfit” parent (*Santosky v. Kramer* (1982) 455 U.S. 745,~~753~~;
7 753). The United States Court of Appeals for the Ninth Circuit has
8 recognized that this constitutional right logically encompasses a
9 right to maintain a relationship with a life partner. (*United States*
10 *v. Wolf Child* (2012) 699 F.3d 1082,~~1091~~; 1091).

11 (2) In 2009, the Legislature passed Senate Concurrent Resolution
12 No. 20 (Resolution Chapter 88 of the Statutes of 2009), which
13 encouraged the Department of Corrections and Rehabilitation to
14 use the bill of rights created by the San Francisco Children of
15 Incarcerated Parents Partnership as a framework for analysis and
16 determination of procedures when making decisions about services
17 for the children of incarcerated parents.

18 (3) The bill of rights created by the San Francisco Children of
19 Incarcerated Parents Partnership includes all of the following:

20 (A) The child has the right to speak with, see, and touch their
21 parent. Actions to realize this right include, but are not limited to,
22 providing access to visiting rooms that are child-centered,
23 nonintimidating, and conducive to bonding, considering proximity
24 to family when siting prisons and assigning incarcerated persons,
25 and encouraging child welfare departments to facilitate contact.

26 (B) The child has the right to support as that child faces a
27 parent’s incarceration. Actions to realize this right include, but are
28 not limited to, training adults who work with young people to
29 recognize the needs and concerns of children whose parents are
30 incarcerated, providing access to specially trained therapists,
31 counselors, and mentors, and allocating 5 percent of the
32 corrections-related budget to support the families of incarcerated
33 persons.

34 (C) The child has a right to a lifelong relationship with their
35 parent. Actions to realize this right include, but are not limited to,
36 reexamining the federal Adoption and Safe Families Act of 1997,
37 designating a family services coordinator at prisons and jails,

1 supporting incarcerated parents on reentry, and focusing on
2 rehabilitation and alternatives to incarceration.

3 (4) The principles announced in the bill of rights created by the
4 San Francisco Children of Incarcerated Parents Partnership
5 additionally apply to close family members and loved ones of
6 incarcerated people, including individuals who are not traditionally
7 defined as family members.

8 (5) The United Nations has established minimum standards for
9 the treatment of incarcerated people that require regular
10 communication with family and friends by visits, telephone,
11 electronic or digital communications, and mail. Moreover,
12 “disciplinary sanctions or restrictive measures shall not include
13 the prohibition of family contact.”

14 (6) The American Bar Association has established minimum
15 standards for incarcerated people that require sufficient visiting
16 space, convenient visiting times, family-friendly environments,
17 and no unreasonable exclusions of visitors based on criminal
18 convictions.

19 (7) Research confirms that incarceration imposes heavy burdens
20 on the families of incarcerated people, including trauma for the
21 children of incarcerated parents, as recognized on the adverse
22 childhood experience index, in addition to the high costs of
23 maintaining contact by telephone and visits. Consistent visits also
24 have the potential for reducing the likelihood of intergenerational
25 criminality.

26 (8) Isolation from lack of visits and limited phone
27 communications adversely affect the mental health of incarcerated
28 people, and that isolation contributes to mental suffering and
29 conflict within prisons. Research shows that visits and family
30 programming reduce disciplinary infractions, increase the chances
31 of successful parole, and decrease recidivism rates upon release
32 and reentry into the community. Forty to 80 percent of incarcerated
33 people rely on their families immediately after release to overcome
34 reentry obstacles, including unemployment, debt, and
35 homelessness.

36 (9) The COVID-19 pandemic has exacerbated these burdens
37 for families and adverse effects of isolation for incarcerated
38 persons. Since March 2020, in-person visits have been canceled,
39 and this policy exists as of January 2021. Only limited free phone

1 calls have been provided. Since December 2020, limited video
2 calling has become available.

3 (b) Therefore, it is the intent of the Legislature to strengthen
4 visiting rights to support the emotional health of Californians and
5 their incarcerated loved ones, to improve in-custody conduct, and
6 to reduce recidivism. ~~By strengthening these visiting rights, it is
7 further the intent of the Legislature to align California law with
8 the practices that social science tells us are most effective for
9 incarcerated individuals, their family members and loved ones,
10 and for society as a whole.~~

11 SEC. 2. Section 2600 of the Penal Code is amended to read:

12 2600. (a) A person sentenced to imprisonment in a state prison
13 or to imprisonment pursuant to subdivision (h) of Section 1170
14 may during that period of confinement be deprived of rights if the
15 deprivation of those rights is necessary and narrowly tailored to
16 further the legitimate security interests of the government.

17 (b) This section does not overturn the decision in Thor v.
18 Superior Court, 5 Cal. 4th 725.

19 SEC. 3. Section 2601 of the Penal Code is amended to read:

20 2601. Each person described in Section 2600 shall have all of
21 the following civil rights set forth under subdivisions (a) to (i),
22 inclusive. These rights may not be infringed upon, except as
23 necessary and only if narrowly tailored to further the legitimate
24 security interests of the government. Any governmental action
25 related to these rights may be reviewed in court for legal error and
26 under a substantial evidence standard of review.

27 (a) Except as provided in Section 2225 of the Civil Code, to
28 inherit, own, sell, or convey real or personal property, including
29 all written and artistic material produced or created by the person
30 during the period of imprisonment. However, to the extent
31 authorized in Section 2600, the Department of Corrections and
32 Rehabilitation may restrict or prohibit sales or conveyances that
33 are made for business purposes.

34 (b) To correspond, confidentially, with any member of the State
35 Bar of California or holder of public office, provided that the prison
36 authorities may open and inspect incoming mail to search for
37 contraband.

38 (c) (1) To purchase, receive, and read any and all newspapers,
39 periodicals, and books accepted for distribution by the United

1 States Post Office. Pursuant to this section, prison authorities may
2 exclude any of the following matter:
3 (A) Obscene publications or writings, and mail containing
4 information concerning where, how, or from whom this matter
5 may be obtained.
6 (B) Any matter of a character tending to incite murder, arson,
7 riot, violent racism, or any other form of violence.
8 (C) Any matter concerning gambling or a lottery.
9 (2) This section does not limit the right of prison authorities to
10 do either of the following:
11 (A) Open and inspect any and all packages received by an
12 inmate.
13 (B) Establish reasonable restrictions on the number of
14 newspapers, magazines, and books that the inmate may have in
15 their cell or elsewhere in the prison at one time.
16 (d) To initiate civil actions, subject to a three dollar (\$3) filing
17 fee to be collected by the Department of Corrections and
18 Rehabilitation, in addition to any other filing fee authorized by
19 law, and subject to Title 3a (commencing with Section 391) of the
20 Code of Civil Procedure.
21 (e) To marry.
22 (f) To create a power of appointment.
23 (g) To make a will.
24 (h) To receive all benefits provided for in Sections 3370 and
25 3371 of the Labor Code and in Section 5069.
26 (i) To receive personal visits.
27 SEC. 4. Section 6400 of the Penal Code is amended to read:
28 6400. Amendments to existing regulations and any future
29 regulations adopted by the Department of Corrections and
30 Rehabilitation that may impact the visitation of inmates shall do
31 all of the following:
32 (a) Recognize and consider the right to personal visits as a civil
33 right pursuant to subdivision (i) of Section 2601.
34 (b) Recognize and consider the value of visiting as a means to
35 improve the safety of prisons for both staff and inmates.
36 (c) Recognize and consider the important role of inmate
37 visitation in establishing and maintaining a meaningful connection
38 with family and community.

1 (d) Recognize and consider the important role of inmate
2 visitation in preparing an inmate for successful release and
3 rehabilitation.

4 SEC. 5. Section 6401 is added to the Penal Code, to read:

5 6401. (a) An in-person contact visit shall not be denied for
6 any of the following reasons:

7 (1) As a disciplinary sanction against the incarcerated person
8 that is not based on any violation of a law or regulation by the
9 incarcerated person that occurred during the incarcerated person's
10 visit with the affected visitor.

11 (2) Due to an omission or inaccuracy on the visitor application
12 if the omitted or correct information is provided on the visitor's
13 criminal history report, as issued by the Department of Justice to
14 the visitor, and the visitor provided government-issued
15 identification.

16 (3) Because of a visitor's criminal, juvenile delinquency, or
17 other history of involvement with law enforcement, whether or
18 not it resulted in a criminal conviction, other than a conviction for
19 an offense listed in paragraph (5), a visitor's current status of being
20 under parole, postrelease community supervision, probation, or
21 informal probation supervision, or a visitor's previous
22 incarceration, including incarceration in the facility where the visit
23 will take place.

24 (4) Due to the nature of the incarcerated person's criminal,
25 juvenile delinquency, or other history of involvement with law
26 enforcement, regardless of whether it resulted in a criminal
27 conviction, other than a conviction for an offense set forth under
28 paragraph (5), except when required by Section 1202.05.

29 (5) A visitor or incarcerated person may be denied visits for up
30 to one year after the commission of one of the following offenses:

31 (A) Bringing contraband into the facility during a visit. For
32 purposes of this subparagraph, contraband excludes any lawful
33 amount of alcohol or other intoxicants for personal use in a vehicle
34 parked on facility grounds.

35 (B) (i) Engaging in sexual intercourse, penetration,
36 masturbation, or oral copulation during a visit with a person other
37 than a family visit or engaging in any sexual conduct with a child
38 during a visit.

39 (ii) For purposes of this subparagraph, "masturbation" means
40 skin-to-skin contact with genitalia.

1 (C) Committing violence during a visit or the visiting screening
2 process.

3 (D) Attempting, or aiding in, an escape during a visit.

4 (b) An incarcerated person shall not be required to withhold
5 consent to a visit as a disciplinary sanction, as a means of avoiding
6 a disciplinary sanction, or as a condition of participating in
7 programming or enjoying any privilege while incarcerated.

8 (c) To the extent that visiting rules and standards, as prescribed
9 in Title 15 of the California Code of Regulations, conflict with
10 this section, the Department of Corrections and Rehabilitation
11 shall adopt regulations that conform with this section.

12 ~~SEC. 6. Section 6401.5 is added to the Penal Code, to read:~~

13 ~~6401.5. (a) In-person contact visits, nonecontact visits, and~~
14 ~~family visits shall be provided no less frequently than four days a~~
15 ~~week. Sufficient visiting and calling space and times shall be made~~
16 ~~available to allow every person who seeks a contact visit, a~~
17 ~~nonecontact visit, family visit, a phone call, or a video call with an~~
18 ~~incarcerated person to have that visit or call with that person when~~
19 ~~requested.~~

20 ~~(b) Emergency phone calls shall be made available to persons~~
21 ~~outside of the Department of Corrections and Rehabilitation and~~
22 ~~to incarcerated people, as specified under paragraphs (1) and (2).~~
23 ~~The Department of Corrections and Rehabilitation shall provide~~
24 ~~persons outside the facility the means to initiate a phone call to an~~
25 ~~incarcerated person in either of the circumstances described in~~
26 ~~paragraphs (1) and (2).~~

27 ~~(1) When the incarcerated person has been admitted to the~~
28 ~~hospital for a serious medical reason:~~

29 ~~(A) At least once a year, and within 30 calendar days of an~~
30 ~~infectious disease outbreak in a department facility, every~~
31 ~~incarcerated person shall be asked whom they want covered by~~
32 ~~the following documents and shall be assisted in completing the~~
33 ~~necessary paperwork for the following documents:~~

34 ~~(i) Approved visitor list. If the incarcerated person would like~~
35 ~~to add a visitor, the department shall provide a visitor application~~
36 ~~form for the incarcerated person to sign and send to the potential~~
37 ~~visitor, who may then complete and submit it to the visiting~~
38 ~~department of the facility.~~

39 ~~(ii) Medical release of information form.~~

40 ~~(iii) Medical power of attorney form.~~

1 ~~(iv) Next of Kin form authorizing control over body and~~
2 ~~possessions in case of death.~~

3 ~~(B) Within 24 hours of an incarcerated person being hospitalized~~
4 ~~for a serious medical reason, the Department of Corrections and~~
5 ~~Rehabilitation shall inform all persons covered by the current~~
6 ~~medical release of information form about the incarcerated person's~~
7 ~~health status, and shall facilitate phone calls between the~~
8 ~~incarcerated person and those persons if the incarcerated person~~
9 ~~consents.~~

10 ~~(C) If the incarcerated person is able to provide knowing and~~
11 ~~voluntary consent, the Department of Corrections and~~
12 ~~Rehabilitation shall, within 24 hours of admission, ask the~~
13 ~~incarcerated person whether they want to add people to any of the~~
14 ~~forms included in clauses (i) to (iv), inclusive, of subparagraph~~
15 ~~(A) who have not previously been designated. The Department of~~
16 ~~Corrections and Rehabilitation shall promptly assist, as necessary,~~
17 ~~the incarcerated person in completing the paperwork. The~~
18 ~~Department of Corrections and Rehabilitation shall promptly~~
19 ~~inform the newly designated persons on the medical release form~~
20 ~~of the incarcerated person's condition and facilitate a phone call~~
21 ~~between the incarcerated person and the newly designated person.~~
22 ~~The department shall also facilitate other outgoing phone calls by~~
23 ~~the incarcerated person at the incarcerated person's request.~~

24 ~~(D) If a person outside of the Department of Corrections and~~
25 ~~Rehabilitation seeks information about an incarcerated person who~~
26 ~~has been admitted to a hospital for a serious medical reason, and~~
27 ~~that person is not covered by the incarcerated person's medical~~
28 ~~release, the Department of Corrections and Rehabilitation shall,~~
29 ~~within 24 hours, ask the incarcerated person if they want to include~~
30 ~~the inquiring person in the scope of their medical release, or talk~~
31 ~~by phone with the person, or both. As applicable, the Department~~
32 ~~of Corrections and Rehabilitation shall amend the medical release,~~
33 ~~including assisting the incarcerated person with the necessary~~
34 ~~paperwork, if the incarcerated person is able to provide knowing~~
35 ~~and voluntary consent and shall inform the inquiring person of the~~
36 ~~incarcerated person's medical condition. As applicable, the~~
37 ~~department shall facilitate a phone call between the incarcerated~~
38 ~~person and the newly designated person. The patient shall be~~
39 ~~informed that they have the right to refuse consent and their refusal~~
40 ~~shall not be communicated to the inquiring party, and there shall~~

1 be no adverse consequences from medical or department staff for
2 refusing.

3 (2) ~~The Department of Corrections and Rehabilitation shall~~
4 ~~maintain a dedicated line for outside people to call to inform the~~
5 ~~department that a family member, approved visitor or caller, or~~
6 ~~primary support person, as designated in subdivision (a) of Section~~
7 ~~6405, if the incarcerated person has been hospitalized, becomes~~
8 ~~critically ill, or has died. Upon receipt of these calls, the~~
9 ~~Department of Corrections and Rehabilitation shall notify the~~
10 ~~incarcerated person.~~

11 (e) ~~Emergency in-person contact visits and video calls shall be~~
12 ~~made available whenever an incarcerated person is hospitalized~~
13 ~~or moved to a medical unit within the facility and the incarcerated~~
14 ~~person is in critical or more serious medical condition. If in-person~~
15 ~~contact visits are unavailable at the facility due to a public health~~
16 ~~emergency or are inconsistent with the patient’s current medical~~
17 ~~treatment needs, as determined by their medical provider, video~~
18 ~~calls shall be made available. Any visitor approval process shall~~
19 ~~be conducted within 24 hours. However, no visitor approval~~
20 ~~process shall be required when the patient is in imminent danger~~
21 ~~of dying.~~

22 (d) ~~For purposes of this section, hospital shall include an on-site~~
23 ~~facility set up to provide hospital-like services during a public~~
24 ~~health emergency.~~

25 ~~SEC. 7. The Department of Corrections and Rehabilitation~~
26 ~~shall adopt regulations necessary to effectuate this act, including~~
27 ~~emergency regulations, pursuant to the Administrative Procedure~~
28 ~~Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
29 ~~Division 3 of Title 2 of the Government Code).~~