File No.	210822	Committee Item No.		
		Board Item No.	80	

COMMITTEE/BOARD OF SUPERVISORS

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	Assembly Bill No. 990 CA State Association of Count		
Prepared by: Prepared by:	Jocelyn Wong	Date:	July 16, 2021

1	[Supporting Assembly Bill No. 990 (Santiago) - Family Unity - Incarcerated Persons' Visiting Rights]
2	
3	Resolution supporting California State Assembly Bill No. 990, "Family Unity -
4	Incarcerated Persons' Visiting Rights," authored by Assembly Member Miguel Santiago
5	(AD-53), to establish personal visits for incarcerated people as a right.
6	
7	WHEREAS, There are many barriers to maintaining family bonds during incarceration;
8	and
9	WHEREAS, Visits are treated as a privilege rather than a right and can be denied for
10	disciplinary reasons unrelated to visiting or for simple mistakes on paperwork; and
11	WHEREAS, Family members can be excluded based on arrest or conviction histories
12	unrelated to visiting security, which further divides families who live in communities that are
13	heavily policed and impacted by mass incarceration; and
14	WHEREAS, Visits can be very expensive and time-consuming, as many people in
15	California are incarcerated hundreds of miles from their homes; and
16	WHEREAS, After taking the long, costly trip to visit a loved one, visitors often face long
17	waiting times that use up limited visiting hours, or are turned away or removed for petty
18	reasons such as wearing a V-neck shirt, having inadequate documentation, or holding hands
19	too long; and
20	WHEREAS, Screening process can be disrespectful and intimidating to children, such
21	as contraband searches of minors and strip searches of women by correctional staff; and
22	WHEREAS. Family members of loved ones who get seriously sick in custody, including
23	those who have died of COVID, often receive no notice or opportunity to call or visit; and
24	WHEREAS, Phone and video calling access is limited and has historically been grossly
25	overpriced and while the California Department of Corrections and Rehabilitation (CDCR)

1	recently took steps to increase such access and reduce costs, those gains need to be
2	guaranteed by law with a commitment that they supplement rather than supplant in-person
3	visiting; and
4	WHEREAS, The loss of family connections has received renewed attention due to the
5	COVID pandemic, which has led to the wholesale cancellation of in-person visits and only
6	minimal increases in phone communications in our state prisons; and
7	WHEREAS, Significant barriers to visitations and phone contact existed before the
8	pandemic and have only been exasperated since; and
9	WHEREAS, California State Assembly Bill No. 990 (AB 990), the Family Unity -
10	Incarcerated Persons' Visiting Rights, introduced by Assembly Member Miguel Santiago (AD-
11	53), establishes personal visits for incarcerated people as a right, rather than a privilege, and
12	ensures that revoking the visitation right is limited to special circumstances; and
13	WHEREAS, AB 990 addresses the current problems with limited visiting in prisons by
14	removing barriers to visits in order to ensure families remain connected; and
15	WHEREAS, Specifically, AB 990 will reinstate incarcerated persons' right to receive
16	visits in the Prisoners' Bill of Rights and the prior legal standard for enforcement of that right;
17	and
18	WHEREAS, AB 990 will prohibit denial of visits as discipline for conduct unrelated to
19	visiting, prohibit denial of visits based on mistakes on a visitors' application where the correct
20	information is in the visitor's criminal background report, and prohibit denial of visits based on
21	the visitor's or incarcerated person's law enforcement history unless related to serious abuses
22	of visiting rules; and
23	WHEREAS, By establishing incarcerated persons' right to personal visits, AB 990 will
24	support families with incarcerated persons, improve emotional connections during

1	incarceration, and ultimately help incarcerated people thrive once they return to their
2	community; now, therefore, be it
3	RESOLVED, That the San Francisco Board of Supervisors hereby supports California
4	Assembly Bill No. 990, The Family Unity – Incarcerated Persons' Visiting Rights" and urges
5	the California State Legislature to pass this bill in order to ensure families with incarcerated
6	persons remain connected by improving emotional connections during incarceration and
7	ultimately help incarcerated people thrive once they return to their community; and, be it,
8	RESOLVED, That the Board of Supervisors urges Governor Gavin Newsom to pass
9	AB 990; and, be it
10	FURTHER RESOLVED, That the Board of Supervisors hereby directs the Clerk of the
11	Board to transmit a copy of this Resolution to Governor Gavin Newsom and the Bill's primary
12	sponsor, Assembly Member Miguel Santiago.
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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.

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(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.

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

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

- (1) The United States Supreme Court has recognized a constitutional right to maintain parent-child relationships absent a compelling government interest, such as protecting a child from an "unfit" parent (Santosky v. Kramer (1982) 455 U.S. 745, 753.). 753). The United States Court of Appeals for the Ninth Circuit has recognized that this constitutional right logically encompasses a right to maintain a relationship with a life partner. (United States v. Wolf Child (2012) 699 F.3d 1082, 1091.). 1091).
- (2) In 2009, the Legislature passed Senate Concurrent Resolution No. 20 (Resolution Chapter 88 of the Statutes of 2009), which encouraged the Department of Corrections and Rehabilitation to use the bill of rights created by the San Francisco Children of Incarcerated Parents Partnership as a framework for analysis and determination of procedures when making decisions about services for the children of incarcerated parents.
- (3) The bill of rights created by the San Francisco Children of Incarcerated Parents Partnership includes all of the following:
- (A) The child has the right to speak with, see, and touch their parent. Actions to realize this right include, but are not limited to, providing access to visiting rooms that are child-centered, nonintimidating, and conducive to bonding, considering proximity to family when siting prisons and assigning incarcerated persons, and encouraging child welfare departments to facilitate contact.
- (B) The child has the right to support as that child faces a parent's incarceration. Actions to realize this right include, but are not limited to, training adults who work with young people to recognize the needs and concerns of children whose parents are incarcerated, providing access to specially trained therapists, counselors, and mentors, and allocating 5 percent of the corrections-related budget to support the families of incarcerated persons.
- (C) The child has a right to a lifelong relationship with their parent. Actions to realize this right include, but are not limited to, reexamining the federal Adoption and Safe Families Act of 1997, designating a family services coordinator at prisons and jails,

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

- (4) The principles announced in the bill of rights created by the San Francisco Children of Incarcerated Parents Partnership additionally apply to close family members and loved ones of incarcerated people, including individuals who are not traditionally defined as family members.
- (5) The United Nations has established minimum standards for the treatment of incarcerated people that require regular communication with family and friends by visits, telephone, electronic or digital communications, and mail. Moreover, "disciplinary sanctions or restrictive measures shall not include the prohibition of family contact."
- (6) The American Bar Association has established minimum standards for incarcerated people that require sufficient visiting space, convenient visiting times, family-friendly environments, and no unreasonable exclusions of visitors based on criminal convictions.
- (7) Research confirms that incarceration imposes heavy burdens on the families of incarcerated people, including trauma for the children of incarcerated parents, as recognized on the adverse childhood experience index, in addition to the high costs of maintaining contact by telephone and visits. Consistent visits also have the potential for reducing the likelihood of intergenerational criminality.
- (8) Isolation from lack of visits and limited phone communications adversely affect the mental health of incarcerated people, and that isolation contributes to mental suffering and conflict within prisons. Research shows that visits and family programming reduce disciplinary infractions, increase the chances of successful parole, and decrease recidivism rates upon release and reentry into the community. Forty to 80 percent of incarcerated people rely on their families immediately after release to overcome reentry obstacles, including unemployment, debt, and homelessness.
- (9) The COVID-19 pandemic has exacerbated these burdens for families and adverse effects of isolation for incarcerated persons. Since March 2020, in-person visits have been canceled, and this policy exists as of January 2021. Only limited free phone

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

- (b) Therefore, it is the intent of the Legislature to strengthen visiting rights to support the emotional health of Californians and their incarcerated loved ones, to improve in-custody conduct, and to reduce recidivism. By strengthening these visiting rights, it is further the intent of the Legislature to align California law with the practices that social science tells us are most effective for incarcerated individuals, their family members and loved ones, and for society as a whole.
 - SEC. 2. Section 2600 of the Penal Code is amended to read:
- 2600. (a) A person sentenced to imprisonment in a state prison or to imprisonment pursuant to subdivision (h) of Section 1170 may during that period of confinement be deprived of rights if the deprivation of those rights is necessary and narrowly tailored to further the legitimate security interests of the government.
- (b) This section does not overturn the decision in Thor v. Superior Court, 5 Cal. 4th 725.
 - SEC. 3. Section 2601 of the Penal Code is amended to read:
- 2601. Each person described in Section 2600 shall have all of the following civil rights set forth under subdivisions (a) to (i), inclusive. These rights may not be infringed upon, except as necessary and only if narrowly tailored to further the legitimate security interests of the government. Any governmental action related to these rights may be reviewed in court for legal error and under a substantial evidence standard of review.
- (a) Except as provided in Section 2225 of the Civil Code, to inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment. However, to the extent authorized in Section 2600, the Department of Corrections and Rehabilitation may restrict or prohibit sales or conveyances that are made for business purposes.
- (b) To correspond, confidentially, with any member of the State Bar of California or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.
- 38 (c) (1) To purchase, receive, and read any and all newspapers, 39 periodicals, and books accepted for distribution by the United

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States Post Office. Pursuant to this section, prison authorities may exclude any of the following matter:

- (A) Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.
- (B) Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.
- (C) Any matter concerning gambling or a lottery.
- (2) This section does not limit the right of prison authorities to do either of the following:
- (A) Open and inspect any and all packages received by an inmate.
- (B) Establish reasonable restrictions on the number of newspapers, magazines, and books that the inmate may have in their cell or elsewhere in the prison at one time.
- (d) To initiate civil actions, subject to a three dollar (\$3) filing fee to be collected by the Department of Corrections and Rehabilitation, in addition to any other filing fee authorized by law, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.
- (e) To marry.

- (f) To create a power of appointment.
- (g) To make a will.
- 24 (h) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and in Section 5069.
 - (i) To receive personal visits.
 - SEC. 4. Section 6400 of the Penal Code is amended to read:
 - 6400. Amendments to existing regulations and any future regulations adopted by the Department of Corrections and Rehabilitation that may impact the visitation of inmates shall do all of the following:
 - (a) Recognize and consider the right to personal visits as a civil right pursuant to subdivision (i) of Section 2601.
 - (b) Recognize and consider the value of visiting as a means to improve the safety of prisons for both staff and inmates.
 - (c) Recognize and consider the important role of inmate visitation in establishing and maintaining a meaningful connection with family and community.

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

- SEC. 5. Section 6401 is added to the Penal Code, to read:
- 6401. (a) An in-person contact visit shall not be denied for any of the following reasons:
- (1) 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.
- (2) 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 to the visitor, and the visitor provided government-issued identification.
- (3) 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 a conviction for an offense listed in paragraph (5), 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.
- (4) 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 set forth under paragraph (5), except when required by Section 1202.05.
- (5) A visitor or incarcerated person may be denied visits for up to one year after the commission of one of the following offenses:
- (A) Bringing contraband into the facility during a visit. For purposes of this subparagraph, contraband excludes any lawful amount of alcohol or other intoxicants for personal use in a vehicle parked on facility grounds.
- (B) (i) Engaging in sexual intercourse, penetration, masturbation, or oral copulation during a visit with a person other than a family visit or engaging in any sexual conduct with a child during a visit.
- (ii) For purposes of this subparagraph, "masturbation" means skin-to-skin contact with genitalia.

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

- (D) Attempting, or aiding in, an escape during a visit.
- (b) 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.
- (c) To the extent that visiting rules and standards, as prescribed in Title 15 of the California Code of Regulations, conflict with this section, the Department of Corrections and Rehabilitation shall adopt regulations that conform with this section.
 - SEC. 6. Section 6401.5 is added to the Penal Code, to read:
- 6401.5. (a) In-person contact visits, noncontact visits, and family visits shall be provided no less frequently than four days a week. Sufficient visiting and calling space and times shall be made available to allow every person who seeks a contact visit, a noncontact visit, family visit, a phone call, or a video call with an incarcerated person to have that visit or call with that person when requested.
- (b) Emergency phone calls shall be made available to persons outside of the Department of Corrections and Rehabilitation and to incarcerated people, as specified under paragraphs (1) and (2). The Department of Corrections and Rehabilitation shall provide persons outside the facility the means to initiate a phone call to an incarcerated person in either of the circumstances described in paragraphs (1) and (2).
- (1) When the incarcerated person has been admitted to the hospital for a serious medical reason.
- (A) At least once a year, and within 30 calendar days of an infectious disease outbreak in a department facility, every incarcerated person shall be asked whom they want covered by the following documents and shall be assisted in completing the necessary paperwork for the following documents:
- (i) Approved visitor list. If the incarcerated person would like to add a visitor, the department shall 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.
- (ii) Medical release of information form.
 - (iii) Medical power of attorney form.

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

- (B) Within 24 hours of an incarcerated person being hospitalized for a serious medical reason, the Department of Corrections and Rehabilitation shall inform all persons covered by the current medical release of information form about the incarcerated person's health status, and shall facilitate phone calls between the incarcerated person and those persons if the incarcerated person consents.
- (C) If the incarcerated person is able to provide knowing and voluntary consent, the Department of Corrections and Rehabilitation shall, within 24 hours of admission, ask the incarcerated person whether they want to add people to any of the forms included in clauses (i) to (iv), inclusive, of subparagraph (A) who have not previously been designated. The Department of Corrections and Rehabilitation shall promptly assist, as necessary, the incarcerated person in completing the paperwork. The Department of Corrections and Rehabilitation shall 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. The department shall also facilitate other outgoing phone calls by the incarcerated person at the incarcerated person's request.
- (D) If a person outside of the Department of Corrections and Rehabilitation seeks information about an incarcerated person who has been admitted to a hospital for a serious medical reason, and that person is not covered by the incarcerated person's medical release, the Department of Corrections and Rehabilitation shall, within 24 hours, ask the incarcerated person if they want to include the inquiring person in the scope of their medical release, or talk by phone with the person, or both. As applicable, the Department of Corrections and Rehabilitation shall amend the medical release, including assisting the incarcerated person with the necessary paperwork, if the incarcerated person is able to provide knowing and voluntary consent and shall inform the inquiring person of the incarcerated person's medical condition. As applicable, the department shall facilitate a phone call between the incarcerated person and the newly designated person. The patient shall be informed that they have the right to refuse consent and their refusal shall not be communicated to the inquiring party, and there shall

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

- (2) The Department of Corrections and Rehabilitation shall maintain a dedicated line for outside people to call to inform the department that a family member, approved visitor or caller, or primary support person, as designated in subdivision (a) of Section 6405, if the incarcerated person has been hospitalized, becomes critically ill, or has died. Upon receipt of these calls, the Department of Corrections and Rehabilitation shall notify the incarcerated person.
- (c) Emergency in-person contact visits and video calls shall be made available whenever an incarcerated person is hospitalized or moved to a medical unit within the facility and the incarcerated person is in critical or more serious medical condition. 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, video calls shall be made available. Any visitor approval process shall be conducted within 24 hours. However, no visitor approval process shall be required when the patient is in imminent danger of dying.
- (d) For purposes of this section, hospital shall include an on-site facility set up to provide hospital-like services during a public health emergency.
- SEC. 7. The Department of Corrections and Rehabilitation shall adopt regulations necessary to effectuate this act, including emergency regulations, pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

From:Gee, Natalie (BOS)To:BOS Legislation, (BOS)

Cc: Walton, Shamann (BOS); Zou, Han (BOS)

Subject: Walton - Introduction - Resolution in Support of AB 990

Date: Tuesday, July 13, 2021 4:05:33 PM

Attachments: ab 990 96 A bill.pdf

Walton - Introduction Form - Reso in Support of AB 990.pdf

Walton - Reso in Support of AB 990.doc

Good afternoon Clerk Team,

Attached is President Walton's introduction form and resolution in support of AB 990. I've also attached the text of the bill. Confirming that this resolution is routine and not controversial. The CSAC has a pending position and the LCC has taken a watch position.

Please let me know if you need anything else.

Thank you!

Natalie Gee 朱凱勤, Chief of Staff Supervisor Shamann Walton, District 10 President, Board of Supervisors

1 Dr. Carlton B. Goodlett Pl, San Francisco | Room 282

Direct: 415.554.7672 | **Office:** 415.554.7670

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp or meeting date I hereby submit the following item for introduction (select only one): 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment). ✓ 2. Request for next printed agenda Without Reference to Committee. 3. Request for hearing on a subject matter at Committee. 4. Request for letter beginning: "Supervisor inquiries" 5. City Attorney Request. from Committee. 6. Call File No. 7. Budget Analyst request (attached written motion). 8. Substitute Legislation File No. 9. Reactivate File No. 10. Topic submitted for Mayoral Appearance before the BOS on Please check the appropriate boxes. The proposed legislation should be forwarded to the following: Small Business Commission ☐ Youth Commission Ethics Commission **Building Inspection Commission** Planning Commission Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form. Sponsor(s): Walton, Haney Subject: Supporting Assembly Bill No. 990 (Santiago) – Family Unity – Incarcerated Persons' Visiting Rights The text is listed: Resolution supporting California State Assembly Bill No. 990, "Family Unity – Incarcerated Persons' Visiting Rights," authored by Assembly Member Miguel Santiago (AD-53), to establish personal visits for incarcerated people as a right. Signature of Sponsoring Supervisor: /s/ Shamann Walton

For Clerk's Use Only