



**PRISON LAW OFFICE**  
General Delivery, San Quentin, CA 94964  
Telephone (510) 280-2621 • Fax (510) 280-2704  
www.prisonlaw.com

*Director:*  
Donald Specter

*Managing Attorney:*  
Sara Norman

*Staff Attorneys:*  
Rana Anabtawi  
Steven Fama  
Alison Hardy  
Sophie Hart  
Corene Kendrick  
Rita Lomio  
Margot Mendelson  
Thomas Nosewicz  
Shira Tevah  
Camille Woods

### **Your Responsibility When Using the Information Provided Below:**

When putting this material together, we did our best to give you useful and accurate information because we know that people in prison often have trouble getting legal information and we cannot give specific advice to all who ask for it. The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you use this information, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your facility's law library.

## **FAMILY VISITING INFORMATION**

February 2019

You are receiving this letter because you contacted our office requesting information or assistance regarding family visits in the California Department of Corrections and Rehabilitation (CDCR) prisons. Unfortunately, our resources are limited and we cannot provide you with individual assistance. This letter contains information about CDCR's family visiting policies and what you can do if you feel you have unfairly been denied family visiting. Any documents you sent are being returned with this letter.

The information in this letter is from CDCR's family visiting regulations in the California Code of Regulations, Title 15, § 3177 (15 CCR § 3177). Attached to this letter are the most recent changes to those regulations, which took effect in January 2019.

### **What is a Family Visit?**

Each California prison has facilities for "family visits" (sometimes called "conjugal" visits) with "immediate family members." These visits allow a person in prison to be with their family for approximately 30 to 40 hours in a private space, usually a small trailer on the prison grounds. There is no cost to the person or visitors, but the visitors must provide food for themselves and the person. An eligible person must put in an application for a family visit with their correctional counselor.

For the purpose of family visiting, "immediate family members" are a person's legal spouse, registered domestic partner, natural parents, adoptive parents (if the adoption occurred prior to incarceration), stepparents or foster parents, grandparents, siblings, natural and adopted children, stepchildren, and grandchildren. A verified foster sibling may be allowed to participate in family visiting with prior approval from the warden.

#### Board of Directors

Penelope Cooper, President • Michele WalkinHawk, Vice President  
Marshall Krause, Treasurer  
Harlan Grossman • Christiane Hipps • Margaret Johns • Cesar Lagleva  
Laura Magnani • Michael Marcum • Ruth Morgan • Seth Morris

### **Am I Eligible for Family Visits?**

The CDCR previously excluded people serving life without the possibility of parole (LWOP) or indeterminate life terms from family visiting. In 2016, the state enacted a law that required the CDCR to change its policy.<sup>1</sup> In 2017, the CDCR announced a policy expanding eligibility for family visits, and in January 2019, the CDCR adopted permanent new family visiting rules, which are attached here. The new CDCR regulations slightly expand eligibility for family visiting. Under these rules, you are eligible for family visiting *unless* you fall into one or more of the following categories:

- ◆ sentenced to death;
- ◆ in a reception center;
- ◆ assigned to Administrative Segregation Unit (ASU) or Security Housing Unit (SHU);
- ◆ classified as Close custody;
- ◆ in work group C;
- ◆ found guilty of a Division A or B prison rule violation within the last 12 months;
- ◆ found guilty of narcotics distribution in a state prison; or
- ◆ conviction of a violent offense where the victim was a minor or family member or conviction of any sex offense; prison officials also can decide to prohibit family visits when there is “substantial documented evidence or information” that you have committed these types of misconduct (even if you do not actually have a criminal conviction for the misconduct). The new rules permit a classification committee to grant you family visits even if you committed a violent offense where the victim was a minor or family member, *if* you have demonstrated “sustained, positive behavior” for 5 years (if you were a minor under age 18 when you committed the offense) or 10 years (if you were an adult age 18 or older when you committed the offense); this does *not* apply if you were convicted of a sex offense.<sup>2</sup>

### **Can My Family Visits be Taken Away Due to Rule Violations or Other Reasons?**

The CDCR rules state that for some types of rules violations, a person will lose all visits, followed by a period of non-contact visiting restriction, followed by an additional period of loss of family visits. The rule violations that are punished by loss of family visits are use of a controlled substance (this does not include alcohol) or unauthorized medication, distribution of a controlled substance, possession of dangerous property, possession of a cell phone or other wireless communication device or component, and refusal to provide a urine sample for alcohol or drug testing. The length of time that a person will be barred from family visits depends on the type of rule violation and whether the person has had one or more prior such rule violations; in some situations, the bar on family visits will be permanent.<sup>3</sup>

The CDCR rules also allow prison officials to restrict family visiting when necessary for prison operations or to maintain order, safety, or security. Thus, for example, family visits might be cancelled

---

<sup>1</sup> Penal Code § 6404.

<sup>2</sup> 15 CCR § 3177(b)(1)-(2).

<sup>3</sup> 15 CCR § 3177(b)(2); 15 CCR § 3315(f)(5).

while a facility is on lock-down or during an emergency situation.<sup>4</sup>

### **What Can I Do If I Have Unfairly Been Denied Family Visits or there is a Problem With My Family Visits?**

The CDCR regulations state that family visiting is a privilege rather than a right. Courts grant the CDCR broad discretion in setting its family visiting policies and have upheld restrictions on family visiting against various constitutional challenges.<sup>5</sup> However, CDCR officials are still legally required to follow the CDCR rules and to apply the rules fairly.<sup>6</sup>

If you are in prison, you should use the CDCR Form 602 administrative appeal process to raise family visiting issues.<sup>7</sup> If the issue involves a denial of visiting, you should attach the denial notice to the administrative appeal, along with any supporting information.

People who visit you or who want to visit you can also appeal family visiting issues by sending a letter to the prison warden (if the issue is about a decision by prison staff or a local practice) or the CDCR Director of Adult Institutions (if the issue is about a CDCR policy). The letter should describe the problem and state that it is an appeal of a visiting issue pursuant to CDCR rules. The warden must provide a written response to the letter within 15 working days; the warden's decision can then be appealed by writing a letter to the CDCR Director and attaching a copy of the warden's response. The Director has 20 working days from the date of receiving a letter to provide a written response.<sup>8</sup>

If the administrative appeal(s) are denied at the Director's level of review, you can consider filing a court action. Usually, a state court petition for writ of habeas corpus is the simplest and speediest type of action you can use to challenge a violation of your visiting rights. In some cases, you might instead consider filing a federal civil rights lawsuit or a state tort lawsuit.

Prison Law Office has information packets on administrative appeals, state habeas corpus petitions, and federal civil rights/state tort lawsuits, which are available for free by sending a request to Prison Law Office, General Delivery, San Quentin, CA 94964 or by visiting the Resources page at [www.prisonlaw.com](http://www.prisonlaw.com). Also, *The California Prison and Parole Law Handbook (Prison Law Office, 2019)* contains information on your rights and how to protect them; look for the *Handbook* in the law library or get information on how to obtain it by writing to Prison Law Office or visiting [www.prisonlaw.com](http://www.prisonlaw.com).

---

<sup>4</sup> 15 CCR § 3177(b)(1)(D).

<sup>5</sup> See, for example, cases upholding prior CDCR policies: *In re Cummings* (1982) 30 Cal.3d 870 [180 Cal.Rptr. 826] (upholding exclusion of common-law spouse and spouse's child from family visiting); *Pro-Family Advocates v. Gomez* (1996) 46 Cal.App.4th 1674 [54 Cal.Rptr.2d 600] (rejecting ex post facto and equal protection challenges to new regulations making more people ineligible for family visits); *Cooper v. Garcia* (S.D. Cal. 1999) 55 F.Supp.2d 1090, 1098-1100 (upholding bar on family visits for people with "R" suffix even though person never convicted of a sex offense).

<sup>6</sup> *Atkins v. Rivera* (1986) 477 U.S. 154, 162 [106 S.Ct. 2456; 91 L.Ed.2d 131]; *United States v. Nixon* (1974) 418 U.S. 683, 695-696 [94 S.Ct. 3090; 41 L.Ed.2d 1039]; *Agricultural Labor Relations Board v. Superior Court* (1976) 16 Cal.3d 392, 401 [128 Cal.Rptr. 183]; *In re Reina* (1985) 171 Cal.App.3d 638 [217 Cal.Rptr. 535]; *In re French* (1980) 106 Cal.App.3d 74, 85 fn. 24 [164 Cal.Rptr. 800]; *In re Scott* (2003) 113 Cal.App.4th 38, 44 [5 Cal.Rptr.3d 887]; *In re Lusero* (1992) 4 Cal.App.4th 572, 575 [5 Cal.Rptr.2d 729]; *In re Carter* (1988) 199 Cal.App.3d 271, 276-277 [244 Cal.Rptr. 648].

<sup>7</sup> 15 CCR § 3179(a)(1)

<sup>8</sup> 15 CCR § 3179(b)-(d).

## TEXT OF ADOPTED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added or amended text.

California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs and Parole  
Chapter 1. Rules and Regulations of Adult Operations and Programs  
Subchapter 2. Inmate Resources.

### Article 7. Visiting

#### 3177. Family Visiting (Overnight).

**Section 3177 initial paragraph through (b) remains unchanged, but is shown for reference.**

Institution heads shall maintain family visiting policies and procedures. Family visits are extended overnight visits, provided for eligible inmates and their immediate family members as defined in Section 3000, commensurate with institution security, space availability, and pursuant to these regulations. Each institution shall provide all necessary accommodations, except for food, at no cost to the inmates and their visitors. Institutions shall require eligible inmates to purchase all food for the family visit through the institution family visiting coordinator. Each institution family visiting menu shall provide a balanced variety of nutritional selections. At all CDCR conservation camps, the visitors shall be required to bring all food for the visit.

Only those immediate family members as defined in Section 3000, including registered domestic partners, are authorized for family visits.

(a) When a bonafide and verified foster relationship exists between an inmate and another person, by virtue of being raised in the same foster family, the person may be approved for family visiting with the prior approval of the institution head or designee.

(b) Family visiting is a privilege. Eligibility for family visiting shall be limited by the assignment of the inmate to a qualifying work/training incentive group as outlined in section 3044.

#### **Subsection 3177(b)(1) is amended to read:**

(1) Family visits shall not be permitted for inmates convicted of a violent offense where the victim is involving a minor or family member or any sex offense, which includes but is not limited to the following Penal Code sections: 187 (when the victim is a family member as defined in Section 3000 or minor); 192 (when the victim is a family member or minor); 243.4; 261; 261.5; 262; 264.1; 266c; 266j; 273a; 273d; 273.5; 273.6; 285; 286; 288; 2878a; 288.2; 288.5; 289; 289.5; 311.1; 311.2; 311.3; 311.4; 313.1; 314; or 647.6, unless otherwise eligible pursuant to subsection (b)(1)(B) or (C) of this section.

#### **Subsection 3177(b)(1)(A) remains unchanged but is shown for reference:**

(A) Inmates may be prohibited from family visiting where substantial documented evidence or information of the misconduct described in section 3177(b)(1) exists, without a criminal conviction. The evidence or information appropriate for the purpose of this regulation shall include rule violation reports as well as the standard described in section 3173.1.

**Existing Subsection 3177(b)(1)(B) is renumbered and relocated to new Subsection 3177(b)(1)(D) and text remains unchanged.**

**New Subsection 3177(b)(1)(B) is adopted to read:**

(B) Inmates convicted as a minor of a violent offense where the victim was a minor or family member, excluding any sex offense, shall have eligibility for family visiting determined by a classification committee provided the inmate has demonstrated sustained, positive behavior to include: no serious rules violation reports in the last five years and documented participation in self-help groups, e.g., Anger Management, Narcotics Anonymous, Alcoholics Anonymous. The classification committee shall consider the circumstances of the offense involving a minor or family victim in determining whether the inmate poses a threat of harm to visitors during a family visit. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts, parole revocation transcripts.

**New Subsection 3177(b)(1)(C) is adopted to read:**

(C) Inmates convicted of a violent offense where the victim was a minor or a family member, excluding any sex offense, may be eligible for family visiting as determined by a classification committee providing the inmate has demonstrated sustained, positive behavior to include: no serious rules violation reports in the last ten years and documented participation in self-help groups, e.g., Anger Management, Narcotics Anonymous, Alcoholics Anonymous. The classification committee shall consider the circumstances of the offense involving a minor or family victim in determining whether the inmate poses a threat of harm to visitors during a family visit. In making its determination, the classification committee shall consider, but is not limited to, arrest reports, probation officer reports, court transcripts, parole revocation transcripts.

**New Subsection 3177(b)(1)(D) is relocated and renumbered from existing Subsection 3177(b)(1)(B) and text remains unchanged.**

(BD) Family visiting shall be restricted as necessary to maintain order, the safety of persons, the security of the institution/facility, and required prison activities and operations, pursuant to section 3170.

**Subsection 3177(b)(2) is amended and reorganized to read:**

(2) Family visits shall not be permitted for inmates who are in any of the following categories: ~~sentenced to life without the possibility of parole; sentenced to life, without a parole date established by the Board of Parole Hearings;~~

(A) dDesignated Close Custody;

(B) dDesignated a condemned inmate;

(C) aAssigned to a reception center;

(D) aAssigned to an aAdministrative sSegregation uUnit;

(E) aAssigned to a sSecurity hHousing uUnit;

(F) dDesignated "C" status;

(G) gGuilty of one or more Division A or Division B offense(s) within the last 12 months; or

(H) gGuilty of ~~narcotics~~ narcotics distribution of a controlled substance while incarcerated in a state prison, under subsection 3016(d). Loss of family visiting (overnight) in accordance with subsection 3315(f)(5)(H).

**Sections 3177(b)(3) through 3177(g) remain unchanged.**

Note: Authority cited: Section 5058 and 6404, Penal Code. Reference: Section 297.5, Family Code; and Section 5054, Penal Code.

## **Subchapter 4 General Institution regulations**

### **Article 5.**

#### **3315 Serious Rule Violations**

##### **Subsections 3315(a) through 3315(f)(5)(G) remain unchanged.**

(f) Disposition. Upon completion of the fact-finding portion of the disciplinary hearing, the inmate may be found:

\*

\*

(5) The disposition may or when mandated shall include assessment of one or more of the following:

\*

\*

##### **Subsection 3315(f)(5)(H) is amended is amended to read:**

(H) For a violation of subsection 3016(d), there shall be a loss of visits for one year to be followed by non-contact visits for two years. In addition, the following loss of family visiting (overnight) shall apply upon conclusion of the non-contact visiting restriction:

1. Loss of family visiting (overnight) program for three years for first offense.
2. Loss of family visiting (overnight) program for seven years for second offense.
3. Permanent exclusion from family visiting (overnight) program for third offense.

##### **Subsection 3315(f)(5)(I) remains unchanged.**

(I) Loss of visits to be followed by non-contact visits for violations of subsection 3016(a) (with the exception of alcohol violations), or 3290(d) shall be as follows:

##### **Subsections 3315(f)(5)(I)1. through 3315(f)(5)(I)3. are amended to read:**

1. Loss of visits for 90 days, to be followed by non-contact visits for 90 days and loss of family visiting (overnight) program for one year upon conclusion of the non-contact restriction for the first offense.
2. Loss of visits for 90 days, to be followed by non-contact visits for 180 days and loss of family visiting (overnight) program for three years upon conclusion of the non-contact restriction for the second offense.
3. Loss of visits for 180 days, to be followed by non-contact visits for 180 days and loss of family visiting (overnight) program for five years upon conclusion of the non-contact restriction for the third offense.

##### **Subsections 3315(f)(5)(J) through 3315(f)(5)(P)3. remain unchanged.**

##### **New Subsection 3315(f)(5)(Q) is adopted to read:**

(Q) Violation of Subsection 3006(a) or 3006(c)(20) shall result in:

1. Loss of family visiting (overnight) program for one year for first offense.
2. Loss of family visiting (overnight) program for three years for second offense.
3. Loss of family visiting (overnight) program for five years for third offense.

##### **Subsections 3315(g) through 3315(h) remain unchanged.**

Note: Authority cited: Section 5058, Penal Code. Reference: Sections 295, 295.1, 295.2, 296, 296.1, 296.2, 297, 298, 298.1, 298.2, 298.3, 299, 299.5, 299.6, 299.7, 300, 300.1, 300.2, 300.3, 314, 530, 532, 646.9, 647, 653m, 2931, 2932, 2933, 4501.1, 4573.6, 4576, 5054 and 5068, Penal Code.