

LIFE SUPPORT



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NEW VISITATION REGULATIONS

Background

The California Department of Corrections and Rehabilitation (CDCR) recently adopted regulations that detail the process by which inmates convicted of violent offenses may now be eligible for family visits provided the inmate has demonstrated sustained, positive behavior as defined.

SB 843 was enacted into California law in 2016. Its language provided: “Inmates shall not be prohibited from family visits based solely on the fact that the inmate was sentenced to life without the possibility of parole or was sentenced to life and is without a parole date established by the Board of Parole Hearings.” (Pen. Code, §6404.) CDCR’s new regulations now establish and implement rules extending family visits to lifers. The regulations went into effect January 15, 2019, major portions of which are described and highlighted below.

Family Visits

Family visits are extended overnight visits, provided for eligible inmates and their immediate family members, commensurate with institution security and space availability. In general, each institution shall provide all necessary accommodations, except for food, at no cost to the inmates and their visitors. Only those immediate family members, including registered domestic partners, are authorized for family visits. When a 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. Family visiting is a privilege and 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 of the regulations.

Eligibility for Violent Offenders

Family visits are generally not permitted for inmates convicted of a violent offense when the victim is a minor or family member. The new regulations provide for an exception, and permit such visits under specified circumstances. The criteria by which inmates

convicted of violent offenses will be evaluated looks first to whether they committed violent offenses when they were minors, or when they were adults. Thus, an inmate convicted as a minor of a violent offense “*shall* have eligibility”; and an inmate convicted as an adult “*may* be eligible” for family visiting. (Cal. Code Regs, title 15, § 3177, subs. (b)(1)(B) & (C).) In both cases, the determination is made by a classification committee that looks to whether an inmate has demonstrated “sustained, positive behavior.”

The regulations set forth the type of evidence that will be considered by the classification committee in determining that an inmate has demonstrated “sustained, positive behavior.” For inmates convicted as minors, the committee will look for no serious rules violations over the past five years; and for inmates convicted as adults, the committee will look for no serious rules violations over the past ten years. Other factors considered by the classification committee in making the eligibility determination are as follows:

[D]ocumented 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. (*Ibid.*)

Exclusions

Inmates who committed sex offenses, regardless of whether they were minors or adults at the time of their offense, are excluded from eligibility for family visits. Inmates who fall within other certain defined categories are also excluded, including those who are:

- A. Designated Close Custody;
- B. Designated a condemned inmate;
- C. Assigned to a reception center;
- D. Assigned to an Administrative Segregation Unit;
- E. Assigned to a Security Housing Unit;
- F. Designated “C” status;
- G. Guilty of one or more Division A or Division B offenses within the last 12 months; or
- H. Guilty of 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).

Disciplinary Action – Serious Rule Violations

Regulation section 3315 relates to serious rule violations. It sets forth inmate conduct that is classified as serious. It also details the investigatory and disciplinary hearing processes, and the discipline imposed for serious rule violations, including loss of privileges such as family visiting. The new regulations contain specific language relating to violation of rules relating to distribution and use of controlled substances, controlled substance testing, and possession of certain contraband. Regulations subsections 3315(a) through 3315(f) are otherwise largely unchanged.

Distribution of a Controlled Substance. Regulation subsection 3016(d) provides that inmates shall not distribute any controlled substance. 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.” (Cal. Code Regs, title 15, § 3315, subd. (f)(5)(H).) It further provides:

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.

Controlled Substance Use. Regulation subsection 3016(a) provides that inmates shall not “use, inhale, ingest, inject, or otherwise introduce into their body; any controlled substance, medication, or alcohol, except as specifically authorized by the institution’s/facility’s health care staff.” Regulation subsection 3290(d) provides that “[i]nmates must provide a urine sample when ordered to do so pursuant to these regulations, for the purpose of testing for the presence of controlled substances or the use of alcohol.” For a violation of subsection 3016(a), with the except of alcohol violations, or for a violation of subsection 3290(d), there shall be loss of visits to be followed by non-contact visits and other restrictions as follows:

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.

Contraband. Regulation subsection 3006(a) provides: “Inmates may not possess or have under their control or constructive possession any weapons, explosives, explosive making material, poisons or any destructive devices, nor shall they possess or assist in circulating any writing or voice recording which describes the making of any weapons, explosives, poisons, destructive devices, or cellular telephones or wireless communication devices capable of making or receiving wireless communications.” Regulation subsection 3006(c)(20), includes within the definition of contraband: “Any cellular telephone or wireless communication device accessory and/or component including, but not limited to, a subscriber identity module (SIM card), memory storage device, cellular phone battery, wired or wireless headset, and cellular phone charger.”

For a violation of regulations subsection 3006(a) and 3006(c)(2), there shall be a loss of family visiting as follows:

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.

(Cal. Code Regs, title 15, § 3315, subd. (f)(5)(Q).)

Common Questions

Common questions include how do the new regulations affect inmates whose victim was a minor, or who have domestic violence charges, escape charges, or old distribution charges. Regulation subsection 3177(b)(1)(B) and (C), specifically provides for eligibility for those inmates whose victim was a minor or a family member. This includes domestic violence charges. The classification committee will make inquiry into the circumstances of the offense involving a minor or family victim in determining whether the inmate poses a current threat of harm to visitors during a family visit. It will also look at the inmate’s participation in self-help groups, including Anger Management, NA or AA, in determining whether the inmate has demonstrated sustained, positive behavior.

Escape charges would certainly be evaluated as a serious rule violation, if not a basis for exclusion where the inmate by virtue of an attempted escape falls into an excludable designation/assignment category. (Cal. Code Regs, title 15, § 3177, subd. (b)(2).)

Finally, the regulations specifically address distribution charges, factoring in the number of offenses in determining the period one must wait before being considered for eligibility for family visits. (Cal. Code Regs, title 15, § 3315, subd. (f)(5)(H).) The classification committee will likely consider the time that has elapsed since the offense as well the regulations in making initial eligibility determinations.

Operation

The regulations are currently in effect. The Final Statement of Reasons for the regulations indicate that they will benefit CDCR staff, inmates, and the public by ensuring that CDCR is in compliance with the new state law, Penal Code section 6404. The regulations are also intended to promote positive behavior by providing the opportunity to gain eligibility for family visits that former regulations did not provide. The revisions to the eligibility criteria for family visits is anticipated to reduce violence, decrease the level of contraband, and promote an atmosphere of positive behavior and self-improvement to better prepare an inmate for successful release and/or rehabilitation.