

**DATE:** February 16, 2017 **AGENDA ITEM:** G

**TO:** BSCC Chair and Members

**FROM:** Kathleen Howard, Executive Director, [kathleen.howard@bscc.ca.gov](mailto:kathleen.howard@bscc.ca.gov)

**SUBJECT:** Title 15 and Title 24: Visiting, Promulgation of Regulations: **Requesting Approval**

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### Summary

This item requests the Board approve a revision to the Board's Titles 15 and 24 Regulations related to visitation. This agenda item requests approval of the draft regulations (Attachment G-1) and authority for staff to begin the rulemaking process with the Office of Administrative Law. The proposed regulations will prohibit additional adult correctional facilities from moving to a video-only approach for visitation. The proposed regulations will also require that all new adult local detention facilities be required to provide in-person visitation and any future adult correctional facilities be constructed with sufficient space to provide in-person visitation. Because of the significant costs of retrofitting facilities or changing construction plans, the regulation will be prospective only. Finally, the proposed regulations would require that the first hour of video visitation be provided free of charge.

### Background

The Board is required to establish minimum standards for local correctional facilities. (Pen. Code, § 6030.) During its biennial review, the Board received public comment criticizing proposed changes to Section 1006 of Title 15, Visiting. Concerns were also raised overall about the construction of local detention facilities without in-person visitation space. In addition, Senator Holly Mitchell introduced Senate Bill (SB) 1157, which sought to require local county jails to provide in-person visiting at all locations by January 1, 2022. At the June 2016 Board Meeting, the Board elected not to move forward on any changes to the visitation regulations, pending the outcome of SB 1157.

In September 2016, Governor Brown vetoed SB 1157. In his veto message, the Governor stated:

This bill as drafted does not provide adequate flexibility and creates a strict mandate. Nevertheless, I am concerned about the recent trend of making jail facilities unavailable for in-person visits. This practice could have an adverse impact on achieving rehabilitative goals and might affect in a negative way the families and loved ones of those incarcerated. I am directing the Board of State and Community Corrections to work with stakeholders to explore ways to address these issues.

In November and December 2016 the Board of State and Community Corrections (BSCC) met with stakeholders, including six of the sponsoring organizations of SB 1157, the California State Sheriffs' Association, the California State Association of Counties, the Urban Counties Caucus, and others to discuss the issues and identify possible options.

### **Summary of Stakeholder Discussions**

- There is broad conceptual agreement from all stakeholders on a policy basis that in-person visitation is important.
- In some situations, video visitation has clear benefits – some families might have greater access to visitation and might save in travel and childcare costs, etc. In some counties, there is access to “remote” video visitation so that family members and friends are able to visit from home (through a video connection similar to Skype or FaceTime). There is usually a fee for “remote visitation.” (Costs range from \$5 to \$15 per 20 minutes.)
- There are concerns that video visitation is less personal and not as beneficial as in-person visiting, and that the cost might be prohibitive for some families. It also sometimes is unreliable and can result in glitches and dropped connections.
- There is general consensus that there should be no charge for the first hour of video visitation, whether the video connection is at the detention facility or is remote. In addition, there is consensus that there should never be a charge for visitation at a detention facility, whether in-person or video visitation.
- There are concerns that a statute requiring access to in-person visitation would result in significant costs to create in-person visitation space where it does not currently exist. In addition, counties that have moved to video visitation have expressed concerns about costs for returning to in-person visitation.

### **Counties Without Access to In-Person Visiting**

It is difficult to inventory the visitation practices in all detention facilities because even those that have the space for in-person visits might not be operating or staffing them. Out of 58 counties, five counties provide no access to in-person visitation, five other counties have no access to in-person visitation at one facility, and eight counties (some of which overlap in the first two categories) have a facility under construction that will not have in-person visitation. Based on counties' self-reporting in December 2016 and January 2017, the BSCC summarized visitation practices in all counties. (Attachment G-2 Visitation in California Jails by Facility.)

Counties that currently have **no** access to in-person visitation:

1. Kings – has used video visitation exclusively since 2006
2. Madera – has used video visitation exclusively since 2012
3. Napa – in-person visitation is temporarily not available; when earthquake repairs are completed there will be access to in-person visitation
4. Tulare – as of January 9, 2017, Tulare has adopted video visitation exclusively in all county facilities
5. Tuolumne – although no in-person visitation is currently available, the county plans to have in-person visitation when its replacement facility is completed

Counties that have **at least one** facility in the county with no access to in-person visitation:

1. Imperial
2. Placer
3. San Bernardino
4. San Mateo
5. Solano

Counties with **facilities under construction** that do not include access to in-person visitation:

1. Imperial
2. Kings
3. Orange
4. Placer
5. Riverside
6. San Benito
7. Tehama
8. Tulare

Based on stakeholder input, the broad consensus view is that video visitation is a valuable service that allows inmates to maintain family and community ties, but that it should be used to supplement rather than replace in-person visitation. Therefore, staff recommends promulgating a prospective regulation that will maintain in-person visitation at existing and future facilities. Also, given concerns about the impact of the costs of video visitation, it is further recommended that the first hour of offsite video visitation be provided free of charge, and that on-site visitation at a detention facility always be provided free of charge, whether the format is in-person or video visitation.

### **Recommendation/Action Needed**

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1. The Board approve the draft regulations and direct staff to begin the rulemaking process through the Office of Administrative Law.

### **Attachments**

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- G-1: Propose Regulations to Titles 15 & 24
- G-2: Visitation in California Jails by Facility