

HOUSE No. 2314

The Commonwealth of Massachusetts

PRESENTED BY:

Marjorie C. Decker

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to strengthen family and community connection with incarcerated people.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/19/2023</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>3/13/2023</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>3/13/2023</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>3/13/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/13/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>3/13/2023</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>3/13/2023</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>3/13/2023</i>
<i>Samantha Montaño</i>	<i>15th Suffolk</i>	<i>3/13/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>3/13/2023</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>3/13/2023</i>

HOUSE No. 2314

By Representative Decker of Cambridge, a petition (accompanied by bill, House, No. 2314) of Marjorie C. Decker relative to unreasonable limits on in-person visitation of inmates. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2440 OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act to strengthen family and community connection with incarcerated people.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 127 of the General Laws, as appearing in the 2020 Official Edition, is hereby
2 amended by striking out section 36C and inserting in place thereof the following:-

3 Section 36C.

4 (1) A correctional institution, jail or house of correction shall not: (i) prohibit, eliminate
5 or unreasonably limit in-person visitation of incarcerated people; or (ii) coerce, compel or
6 otherwise pressure an incarcerated person to forego or limit in-person visitation. For the purposes
7 of this section, to unreasonably limit in-person visitation of incarcerated people shall include, but
8 not be limited to:

9 (a) providing an incarcerated person fewer than 5 4-hour visiting periods per week;

- 10 (b) providing an incarcerated person fewer than 2 visiting periods per day;
- 11 (c) providing an incarcerated person with visitation less than 8am through 4pm on
12 Saturdays or Sundays or providing less than one 4-hour visiting period on every holiday;
- 13 (d) placing limitations on the number of unique individuals who may be eligible to visit
14 the incarcerated person;
- 15 (e) prohibiting an individual from visiting more than one incarcerated person in the
16 custody of the department of correction, or more than one incarcerated person in the same
17 facility, absent an individual determination that such visitation would pose a threat to security or
18 orderly running of the facility;
- 19 (f) requiring eligible visitors to submit more private and personal information to be pre-
20 approved to visit than is strictly necessary for the safety and security of the institution and/or
21 without complying with all applicable statutes, regulations, and orders governing the protection
22 of sensitive and/or private personal information;
- 23 (g) requiring a visitor to resubmit a pre-approval application because their personal or
24 private information has changed or because they were removed from the visitation list by an
25 incarcerated person or by the institution;
- 26 (h) requiring first time visitors traveling from 75 miles or more to be pre-approved, so
27 long as they can pass an on the spot criminal background history and victim notification registry
28 check;
- 29 (i) limiting incarcerated people to receiving visitors from a pre-approved list without
30 permitting them to update their list upon request, or limiting incarcerated people to receiving

31 visitors from a pre-approved list without providing a reasonable process for them to request an
32 exception allowing for approval of visitors where visitation could not have been reasonably
33 foreseen. Such requests shall be approved within 10 calendar days absent an individual
34 determination that such visitation would pose a threat to security or orderly running of the
35 facility;

36 (j) refusing to permit a visitor or visitors who previously visited an incarcerated person
37 without incident or who was on an incarcerated person's previously approved visitor list to visit
38 that incarcerated person upon his or her admission or transfer to a new facility, absent a specific
39 determination that such visitor(s) would pose a threat to security or orderly running of the
40 facility; or requiring a new pre-approved list of authorized visitors upon an incarcerated person's
41 admission or transfer to a new facility without permitting at least 2 adult visitors and any of the
42 incarcerated person's minor children to visit the incarcerated person pending authorization of the
43 person's visitor applicants;

44 (k) excluding a visitor from eligibility solely on the basis of their criminal history or
45 status as formerly incarcerated;

46 (l) excluding a visitor from eligibility solely on the basis of their role, past or present, as a
47 volunteer in a state or federal prison, jail or house of correction;

48 (m) excluding a visitor from eligibility solely because of their participation in community
49 functions, events, or meetings;

50 (n) excluding a visitor from eligibility unless there is a reasonable individualized
51 suspicion that their visitation poses a threat to institutional security; the reasonable individualized
52 suspicion shall be articulated in writing to the excluded person and to the incarcerated person

53 they visited or attempted to visit within 5 days of the determination to exclude them, including
54 an expiration date for the exclusion as soon as is reasonable to address the articulated threat and
55 further providing the excluded person the right to appeal their exclusion as well as to have their
56 exclusion re-evaluated after no more than 1 month has passed;

57 (o) prohibiting an incarcerated person from holding their minor children, failing to
58 provide a designated visiting area for visitors with minor children, or prohibiting incarcerated
59 people or visitors from playing with or instructing their children;

60 (p) prohibiting incarcerated people and visitors from sitting side by side or from engaging
61 in reasonable physical contact, including but not limited to a brief handshake, touching/holding
62 hands, hug, and closed-mouth kiss during the visit;

63 (q) prohibiting contact visitation wherever such visitation is feasible;

64 (r) removing contact visitation as a disciplinary measure for more than 15 days;

65 (s) implementing a dress code that is unreasonable and/or fails to respect a visitor's
66 religion, race, class, culture, gender identity, and sexual orientation; "unreasonable" includes but
67 is not limited to restricting religious practices common to the public such as double layer
68 clothing for religious purposes, requiring children ages 12 and under to follow the adult dress
69 code, barring coats with hoods in facilities where visitors have to walk outside to enter the
70 visitation area during inclement weather, barring any clothing or accessory that does not pose a
71 threat to security or the orderly running of the facility or preventing a visitor whose dress was
72 deemed unacceptable from returning during a designated visiting period on the same day with
73 alternate clothing;

74 (t) turning away a visitor on the basis of a dress code violation without consulting the
75 superintendent, shift commander, or designee, provided, however, that if a visitor is turned away
76 for a dress code violation that the specific reason must be in writing and provided to the visitor
77 upon request;

78 (u) prohibiting incarcerated people in restrictive housing or any other unit separated or
79 segregated from the general population from having access to the same visitation as people in
80 general population, provided, however, that visits may be restricted for up to 15 days for a
81 disciplinary offense;

82 (v) failing to provide a separate confidential room for legal visits in each correctional
83 facility;

84 (w) prohibiting daily access to visitation during all facility or hospital visiting hours
85 should an incarcerated person be transferred to an outside facility or hospital and be in critical
86 condition or in imminent danger of death;

87 (x) providing any less than one confidential 4-hour visiting period to an incarcerated
88 person who experiences the death, or imminent danger of death, of an immediate family
89 member;

90 (y) failing to establish a policy that visitation be maximized and as free and
91 unencumbered as possible, provided it is not inconsistent with a facility's operational and
92 security needs;

93 (z) failing to allow incarcerated people and visitors to use the restroom during regular
94 visitation hours without being prohibited from resuming the visit after using the restroom;

95 (aa) using a drug-detection dog to screen minor children who are otherwise conducting a
96 lawful visit, when other drug-detection screening options are available at the facility;

97 (bb) failing to post and notify organization providing legal representation to prisoners of
98 visitation schedules, including holidays and other foreseeable changes, in the visitor lobby of the
99 facility and online at least 3 weeks in advance;

100 (cc) prohibiting or otherwise preventing visitation due to routine drills or other routine
101 operations.

102 (2) All correctional institutions, jails, and houses of correction that require advanced
103 scheduling for in-person visits or video communication shall allow visitors to schedule these
104 online.

105 (3) A correctional institution, jail or house of correction may use video or other types of
106 electronic devices for communication with visitors; provided, that such communications shall be
107 in addition to and shall not replace in-person visitation, as prescribed in this section.

108 Video or other such electronic communication with visitors shall not be unreasonably
109 limited, as defined in parts (1)(a)-(cc) of this Section. Any visitor that has been pre-approved for
110 an in-person visit shall be considered automatically pre-approved for video or electronic
111 communication. If such individuals are pre-approved, they may participate in the video visit
112 simultaneously. Video or electronic communication shall be no less than 30 minutes per video or
113 electronic communication session. Minor children shall always be allowed to be on screen with
114 adults during video or other electronic communication, notwithstanding any other rules or
115 procedures to the contrary. Incarcerated people shall not be strip searched prior or subsequently
116 to video or electronic communication with visitors unless there is an individualized and

117 particularized suspicion that justifies such search. There shall be no cost associated with any
118 video or electronic communication with visitors.

119 Nothing in this section shall prohibit the temporary suspension of visitation privileges for
120 good cause including, but not limited to, misbehavior or during a bonafide emergency.

121 (4) Every corrections officer, staff, administrator and employee of a correctional
122 institution, jail or house of correction shall be required to attend a bi-annual training session and
123 receive educational information on: (1) the importance of ongoing visitation to individuals who
124 are incarcerated as related to reducing recidivism, violence and increasing successful re-entry,
125 and (2) the importance of civility and respectful conduct toward family members and other
126 members of the public who visit individuals who are incarcerated so as to encourage visitation
127 on a regular basis while maintaining security and (3) awareness and sensitivity to racial, cultural,
128 gender, gender identity, sexuality, disability, and religious needs and differences. Training
129 session materials and educational information shall be developed in consultation with
130 representatives of the Massachusetts Bar Association, the Women’s Bar Association, Prisoners’
131 Legal Services, formerly incarcerated persons, community-based organizations, and community-
132 based re-entry programs, and prior to implementation shall be submitted to the joint committee
133 on the judiciary and the joint committee on public safety and homeland security.

134 (5) Any corrections officer, staff, administrator, or employee of a correctional institution,
135 jail, or house of correction who refuses training under subsection (4) or otherwise found in
136 violation of any provision of this section shall be prohibited from overseeing or working in
137 visiting areas or visitor processing.

138 No institution shall restrict and/or limit visiting area capacity

139 No institution shall enforce department of public health Covid-19 recommendations in a
140 way that restricts and/or limits visiting area capacity; or enforce department of public health
141 recommendations on incarcerated persons and visitors that have not tested positive for Covid-19
142 in a way that restricts and/or limits visiting privileges and/or times.