

HOUSE No. 2440

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>2/12/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/14/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/23/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>2/25/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>3/19/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>3/22/2021</i>

HOUSE No. 2440

By Ms. Decker of Cambridge, a petition (accompanied by bill, House, No. 2440) of Marjorie C. Decker and others relative to unreasonable limits on in-person visitation of inmates. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 SECTION 1. Section 36C of Chapter 127 of the General Laws is hereby amended by
2 striking out, in part (i) of the first sentence, the word “inmates” and replacing it with
3 “incarcerated people”, striking out in part (ii) of the first sentence the word “inmate” and
4 replacing it with “incarcerated person”, and striking out the word “inmate” in the second
5 paragraph.

6 SECTION 2. Section 36C of chapter 127 of the General Laws is hereby amended by
7 striking out the second sentence and inserting in place thereof the following sentences:-

8 For the purposes of this section, to unreasonably limit in-person visitation of incarcerated
9 people shall include, but not be limited to:

10 (a) providing an eligible person fewer than 3 opportunities for in-person visitation during
11 any 7-day period;

12 (b) placing limitations on the number of unique individuals who may be eligible to visit
13 the person;

14 (c) prohibiting an individual from visiting more than one person in the custody of the
15 department of correction, or more than one person in the same facility, absent an individual
16 determination that such visitation would pose a threat to security or orderly running of the
17 facility;

18 (d) requiring eligible visitors to submit more private and personal information to be pre-
19 approved to visit than is strictly necessary for the safety and security of the institution and/or
20 without complying with all applicable statutes, regulations, and orders governing the protection
21 of sensitive and/or private personal information;

22 (e) limiting people to receiving visitors from a pre-approved list without permitting them
23 to update their list upon request, or limiting people to receiving visitors from a pre-approved list
24 without providing a reasonable process for them to request an exception allowing for approval of
25 visitors where visitation could not have been reasonably foreseen. Such requests shall be
26 approved within 10 calendar days absent an individual determination that such visitation would
27 pose a threat to security or orderly running of the facility;

28 (f) refusing to permit a visitor or visitors who previously visited an person without
29 incident or who was on a person's previously approved visitor list to visit that person upon his or
30 her admission or transfer to a new facility, absent a specific determination that such visitor(s)
31 would pose a threat to security or orderly running of the facility; or requiring a new pre-approved
32 list of authorized visitors upon a person's admission or transfer to a new facility without

33 permitting at least two adult visitors and any of the person's minor children to visit the person
34 pending authorization of the person's visitor applicants;

35 (g) excluding a visitor from eligibility solely on the basis of their status as formerly
36 incarcerated;

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

39 (i) excluding a visitor from eligibility unless there is a reasonable individualized
40 suspicion that their visitation poses a threat to institutional security, articulated in writing to the
41 excluded person, and articulating a fixed period of time with an expiration date for the exclusion;
42 and further without providing the excluded person the right to appeal their exclusion as well as to
43 have their exclusion re-evaluated after no more than one year has passed;

44 (j) prohibiting an incarcerated person from holding their minor children, or prohibiting
45 incarcerated people or visitors from playing with or instructing their children, or, where there is a
46 designated children's area, prohibiting incarcerated people or visitors from playing with or
47 instructing their children within the confines of that area.

48 (k) prohibiting incarcerated people and visitors from sitting side by side or from engaging
49 in reasonable physical contact, including but not limited to a brief handshake, hug, and/or closed-
50 mouth kiss;

51 (l) prohibiting contact visitation wherever such visitation is feasible;

52 (m) removing contact visitation as a disciplinary measure for more than 15 days;

53 (n) implementing a dress code that is unreasonable and/or fails to respect a visitor's
54 religion, race, class, culture, gender identity, and sexual orientation; "unreasonable" includes but
55 is not limited to barring any clothing or accessory that does not pose a threat to security or the
56 orderly running of the facility or preventing a visitor whose dress was deemed unacceptable from
57 returning during a designated visiting period on the same day with alternate clothing;

58 (o) turning away a visitor on the basis of a dress code violation without consulting the
59 superintendent, shift commander, or designee, provided, however, that if a visitor is turned away
60 for a dress code violation that the specific reason must be in writing and provided to the visitor
61 upon request;

62 (p) prohibiting people in restrictive housing or any other unit separated or segregated
63 from the general population from having access to the same visitation as people in general
64 population, provided, however, that visits may be restricted for up to 15 days for a disciplinary
65 offense;

66 (q) failing to provide a separate confidential room for legal visits in each correctional
67 facility;

68 (r) prohibiting daily access to visitation during all facility or hospital visiting hours
69 should an incarcerated person be transferred to an outside facility or hospital and be in critical
70 condition or in imminent danger of death;

71 (s) failing to establish a policy that visitation be maximized and as free and
72 unencumbered as possible, provided it is not inconsistent with a facility's operational and
73 security needs.

74 (t) failing to allow incarcerated people and visitors to use the restroom during regular
75 visitation hours without being prohibited from resuming the visit after using the restroom.

76 (u) using a drug-detection dog to screen minor children who are otherwise conducting a
77 lawful visit, when other drug-detection screening options are available at the facility.

78 (v) failing to post visitation schedules, including holidays and other foreseeable changes,
79 in the visitor lobby of the facility and online at least 3 weeks in advance.

80 SECTION 3. Section 36C of chapter 127 of the General Laws is hereby amended by
81 adding the following paragraph after the second paragraph.

82 Video or other such electronic communication with visitors shall not be unreasonably
83 limited, as defined in parts (a)-(v) of this Section. Minor children shall always be allowed to be
84 on screen with adults during video or other electronic communication, notwithstanding any other
85 rules or procedures to the contrary. Incarcerated people shall not be strip searched prior or
86 subsequently to video or electronic communication with visitors unless there is an individualized
87 and particularized suspicion that justifies such search. There shall be no cost associated with any
88 video or electronic communication with visitors.

89 SECTION 4. Section 36C of chapter 127 of the General Laws is hereby amended by
90 inserting this paragraph at the end: -

91 Every guard, corrections officer and employee of a correctional institution, jail or house
92 of correction shall be required to attend a training session and receive educational information
93 on; (1) the importance of ongoing visitation to individuals who are incarcerated as related to
94 reducing recidivism, violence and increasing successful re-entry, and (2) the importance of

95 civility and respectful conduct toward family members and other members of the public who
96 visit individuals who are incarcerated so as to encourage visitation on a regular basis while
97 maintaining security. Training materials and educational information shall be developed in
98 consultation with representatives of the Massachusetts Bar Association, the Women's Bar
99 Association, Prisoners Legal Services, ex-prisoners community based organizations, and
100 community based re-entry programs, and prior to implementation shall be submitted to the joint
101 committee on the judiciary and the joint committee on public safety and homeland security.