

SENATE No. 1541

The Commonwealth of Massachusetts

PRESENTED BY:

Liz Miranda

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 visitation rights of incarcerated people.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Liz Miranda</i>	<i>Second Suffolk</i>	
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/8/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/21/2023</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>2/21/2023</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>3/2/2023</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>3/27/2024</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>4/10/2024</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Norfolk</i>	<i>4/16/2024</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>4/22/2024</i>

SENATE No. 1541

By Ms. Miranda, a petition (accompanied by bill, Senate, No. 1541) of Liz Miranda, Jack Patrick Lewis, James B. Eldridge, Adam Gomez and others for legislation to strengthen visitation rights of incarcerated people. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act to strengthen visitation rights of 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 of 2020, as amended by
2 section 92 of chapter 69 of the acts of 2018, is hereby amended by striking out the section in its
3 entirety and inserting in place thereof the following:-

4 Section 36C.

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

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

11 (b) providing an incarcerated person fewer than two visiting periods per day;

12 (c) providing an incarcerated person with visitation less than 8am through 4pm on
13 Saturdays or Sundays or providing less than one 4-hour visiting period on every holiday;

14 (d) placing limitations on the number of unique individuals who may be eligible to visit
15 the incarcerated person;

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

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

24 (g) requiring a visitor to resubmit a pre-approval application because their personal or
25 private information has changed or because they were removed from the visitation list by an
26 incarcerated person or by the institution;

27 (h) requiring first time visitors traveling from 75 miles or more to be pre-approved, so
28 long as they can pass an on the spot criminal background history and victim notification registry
29 check;

30 (i) limiting incarcerated people to receiving visitors from a pre-approved list without
31 permitting them to update their list upon request, or limiting incarcerated people to receiving
32 visitors from a pre-approved list without providing a reasonable process for them to request an

33 exception allowing for approval of visitors where visitation could not have been reasonably
34 foreseen. Such requests shall be approved within 10 calendar days absent an individual
35 determination that such visitation would pose a threat to security or orderly running of the
36 facility;

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

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

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

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

51 (n) excluding a visitor from eligibility unless there is a reasonable individualized
52 suspicion that their visitation poses a threat to institutional security; the reasonable individualized
53 suspicion shall be articulated in writing to the excluded person and to the incarcerated person
54 they visited or attempted to visit within 5 days of the determination to exclude them, including

55 an expiration date for the exclusion as soon as is reasonable to address the articulated threat and
56 further providing the excluded person the right to appeal their exclusion as well as to have their
57 exclusion re-evaluated after no more than one month has passed;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

135 (5) Any corrections officer, staff, administrator, or employee of a correctional institution,
136 jail, or house of correction who refuses training under subsection (4) or otherwise found in
137 violation of any provision of G.L. c. 127 s. 36C shall be prohibited from overseeing or working
138 in visiting areas or visitor processing.

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

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