

RESOLUTION 11-13-2002

DIGEST

Prisoner's Right to Establish Domestic Partnership

Amends Penal Code section 2601 to allow prisoners to establish domestic partnerships.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

Reasons:

This resolution amends Penal Code section 2601 to allow prisoners to establish domestic partnerships. This resolution should be approved in principle because it extends the same right to gay, lesbian and transgendered prisoners that has been given to heterosexual prisoners.

The U.S. Supreme Court has held that prisoners have a constitutionally protected right to marry. (*Turner v. Safley* (1987) 96 L.Ed.2d 64, 95-96, 55 USLW 4719.) Last year, the California State Legislature passed AB 25, which gives individuals the right to establish domestic partnerships and claim certain rights and remedies within their primary relationship. AB 25 is especially important to gays, lesbians, bisexual and transgendered persons who do not have the right to marry their chosen life partners. This resolution would give gay, lesbian, bisexual and transgendered prisoners, the same rights as their heterosexual peers under both *Turner v. Safley, supra*, and Penal Code section 2601, subdivision (e).

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates recommends that legislation be sponsored to amend Penal Code Section 2601 to read as follows:

- 1 § 2601
- 2 Subject only to the provisions of that section, each person described in Section
- 3 2600 shall have the following civil rights:
- 4 (a) Except as provided in Section 2225 of the Civil Code, to inherit, own, sell, or convey
- 5 real or personal property, including all written and artistic material produced or created
- 6 by the person during the period of imprisonment. However, to the extent authorized in
- 7 Section 2600, the Department of Corrections may restrict or prohibit sales or
- 8 conveyances that are made for business purposes.
- 9 (b) To correspond, confidentially, with any member of the State Bar or holder of public
- 10 office, provided that the prison authorities may open and inspect incoming mail to search
- 11 for contraband.
- 12 (c)(1) To purchase, receive, and read any and all newspapers, periodicals, and books
- 13 accepted for distribution by the United States Post Office. Pursuant to this section, prison
- 14 authorities may exclude any of the following matter:
- 15 (A) Obscene publications or writings, and mail containing information concerning
- 16 where, how, or from whom this matter may be obtained.
- 17 (B) Any matter of a character tending to incite murder, arson, riot, violent racism, or any
- 18 other form of violence.
- 19 (C) Any matter concerning gambling or a lottery.

- 20 (2) Nothing in this section shall be construed as limiting the right of prison authorities to
21 do the following:
22 (A) Open and inspect any and all packages received by an inmate.
23 (B) Establish reasonable restrictions as to the number of newspapers, magazines, and
24 books that the inmate may have in his or her cell or elsewhere in the prison at one time.
25 (d) To initiate civil actions, subject to a three dollar (\$3) filing fee to be collected by the
26 Department of Corrections, in addition to any other filing fee authorized by law, and
27 subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.
28 (e) To marry or to establish a domestic partnership.
29 (f) To create a power of appointment.
30 (g) To make a will.
31 (h) To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and
32 in Section 5069.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: Bay Area Lawyers for Individual Freedom

STATEMENT OF REASONS

Existing Law: provides that prison inmates retain certain rights, not inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system. (See Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800, 2804 (1974). The Supreme Court held that prisoners have a constitutionally protected right to marry. Turner v. Safley, 96 L.Ed.2d 64, 95-96, 55 USLW 4719 (1987) The Supreme Court took into account the incidents of marriage, such as governmental benefits (social security) and property rights (inheritance), in arriving at its decision that a “constitutionally protected marital relationship exists in the prison context.”

This Resolution: provides to gay, lesbian, bisexual, and transgender prisoners who wish to become domestic partners the same equal access to rights and benefits generally accorded to heterosexual prisoners who wish to marry. This resolution would be a step toward providing equal treatment and securing as many of the incidents of marriage as the state is willing, or constitutionally compelled to allow under a domestic partnership.

The Problem: Currently, prison inmates cannot establish a domestic partnership.

IMPACT STATEMENT

This proposed resolution does not affect any other law, statute or rule.

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