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Regulation of Inmate Visitation

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Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Convicted prisoners "have no absolute, unfettered constitutional right to unrestricted visitation with any person, regardless of whether that person is a family member or not. Rather, visitation privileges are subject to the discretion of prison officials." *Bazzetta v. McGinnis*, 902 F.Supp. 765, 769 (E.D. Mich. 1995), *aff'd*, 124 F.3d 774 (6th Cir. 1997) (citations omitted) (upholding regulations restricting visitation by minors to children, stepchildren, or grandchildren of prisoners and the overall number of visitors a prisoner may see to 10). *See also Spear v. Sowders*, 71 F.3d 626, 629-30 (6th Cir. 1995) ("It is clear that a prisoner does not have a due process right to unfettered visitation A fortiori, a citizen simply does not have a right to unfettered visitation of a prisoner that rises to a constitutional dimension.") (citations omitted).

The United States Supreme Court has recognized that "[t]he very object of imprisonment is confinement. Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner." *Overton v. Bazzetta*, 539 U.S. 126, 131, 123 S.Ct. 2162, 2167, 156 L.Ed.2d 162 (2003). Prison inmates retain only those constitutional rights that are consistent with their status as prisoners or with the legitimate penological objectives of the corrective system. The "freedom of association is among the rights least compatible with incarceration. Some curtailment of that freedom must be expected in the prison context." *Id.*

In *Overton*, the United States Supreme Court addressed prison regulations affecting prisoners' visitation privileges. The regulations in question excluded minor nieces and nephews and children as to whom parental rights had been terminated from noncontact visitation of inmates, required children who were authorized to visit to be accompanied by an adult family member or legal guardian, prohibited inmates from visiting with former inmates, and subjected inmates with two substance-abuse violations to a ban of at least two years on future visitation. The Supreme Court held that the challenged regulations did not violate the prisoners' constitutional rights under the First and Eighth Amendments or violate their 14th Amendment substantive due process rights.

Turning to the restrictions on visitation by children, we conclude that the regulations bear a rational relation to MDOC's valid interests in maintaining internal security and protecting child visitors from exposure to sexual or other misconduct or from accidental injury. The regulations promote internal security, perhaps the most legitimate of penological goals, by reducing the total number of visitors and by limiting the disruption caused by children in particular. Protecting children from harm is also a legitimate goal.

To reduce the number of child visitors, a line must be drawn, and the categories set out by these regulations are reasonable. Visits are allowed between an inmate and those children closest to him or her - children, grandchildren, and siblings. The prohibition on visitation by children as to whom the inmate no longer has parental rights is simply a recognition by prison administrators of a status determination made in other official proceedings.

As for the regulation requiring children to be accompanied by a family member or legal guardian, it is reasonable to ensure that the visiting child is accompanied and supervised by those adults charged with protecting the child's best interests.

Id. at 133, 123 S.Ct. at 2168 (citations omitted).

MDOC's regulation prohibiting visitation by former inmates bears a self-evident connection to the State's interest in maintaining prison security and preventing future crimes. We have recognized that "communication with other felons is a potential spur to criminal behavior."

Id. at 133-134, 123 S.Ct. at 2168 (citations omitted).

Finally, the restriction on visitation for inmates with two substance-abuse violations, a bar which may be removed after two years, serves the legitimate goal of deterring the use of drugs and alcohol within the prisons. Drug smuggling and drug use in prison are intractable problems. Withdrawing visitation privileges is a proper and even necessary management technique to induce compliance with the rules of inmate behavior, especially for high-security prisoners who have few other privileges to lose. In this regard we note that numerous other States have implemented similar restrictions on visitation privileges to control and deter substance-abuse violations.

Id. at 134, 123 S.Ct. at 2168-2169 (citations omitted).

In addition, the court found that the two-year ban on visitation for inmates with two substance-abuse violations did not violate the Eighth Amendment prohibition against cruel and unusual punishment.

The restriction undoubtedly makes the prisoner's confinement more difficult to bear. But it does not, in the circumstances of this case, fall below the standards mandated by the Eighth Amendment. Much of what we have said already about the withdrawal of privileges that incarceration is expected to bring applies here as well. Michigan, like many other States, uses withdrawal of visitation privileges for a limited period as a regular means of effecting prison discipline. This is not a dramatic departure from accepted standards for conditions of confinement. Nor does the regulation create inhumane prison conditions, deprive inmates of basic necessities, or fail to protect their health or safety. Nor does it involve the infliction of pain or injury, or deliberate indifference to the risk that it might occur.

Id. at 136-137, 123 S.Ct. at 2170 (citations omitted).

In *Bazzetta v. McGinnis*, 423 F.3d 557 (6th Cir. 2005), the Sixth Circuit, addressing the same substance abuse regulation addressed in *Overton*, found that the regulation did not, on its face, violate the inmates' 14th Amendment procedural due process rights. The Sixth Circuit noted that "although the issue was not directly before the *Overton* Court, Court precedent and dictum has signaled against our finding a liberty interest on the face of the substance abuse regulation." *Id.* at 565. The Sixth Circuit found that the *Overton* Court had "foreclosed a facial procedural due process challenge under the standard set forth in" *Sandin v. Conner*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). *Id.* The court noted, however, that the Supreme Court's decision in *Overton* did not preclude individual prisoners from challenging a particular application of the substance abuse regulation on First Amendment, Eighth Amendment or 14th Amendment grounds.

In *Wirsching v. Colorado*, 360 F.3d 1191, 1198-1201, 1205 (10th Cir. 2004), the Tenth Circuit, applying *Overton*, held that prison officials did not violate a convicted sex offender's familial association and due process rights by refusing to allow prison visits by his daughter due to his refusal to comply with requirements of the prison's treatment program for sex offenders, and "that visitation with a particular person does not constitute basic necessity, the denial of which would violate the Eighth Amendment."

In *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861, 1884-1885, 60 L.Ed.2d 447 (1979), the Supreme Court considered whether it was permissible to conduct warrantless strip and body cavity searches of prisoners and pretrial detainees on less than probable cause after contact with outside visitors. The court held that requiring inmates to submit to a visual bodycavity search after every contact visit with a person outside the institution did not violate the Fourth Amendment.

The Fourth Amendment prohibits only unreasonable searches and under the circumstances, we do not believe that these searches are unreasonable.

A detention facility is a unique place fraught with serious security dangers. Smuggling of money, drugs, weapons, and other contraband is all too common an occurrence. And inmate attempts to secrete these items into the facility by concealing them in body cavities are documented in this record and in other cases.

441 U.S. at 558-559, 99 S.Ct. at 1884-1885. See also *Wood v. Hancock County Sheriff's Dept.*, 2003 WL 23095279 (1st Cir. 2003) (Except in atypical circumstances, a blanket policy of strip searching inmates after contact visits is constitutional.).

In *Block v. Rutherford*, 468 U.S. 576, 588, 104 S.Ct. 3227, 3234, 82 L.Ed.2d 438 (1984), the Supreme Court found that a county jail's blanket prohibition of contact visits between pretrial detainees and their spouses, relatives, children, and friends was an entirely reasonable nonpunitive response to the legitimate security concerns identified in the case and was consistent with the 14th Amendment.

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