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Monitoring Inmate Conversations

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

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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Jail administrators may monitor and record an inmate's conversations with visitors. "[T]o say that a public jail is the equivalent of a man's 'house' or that it is a place where he can claim constitutional immunity from search or seizure of his person, his papers, or his effects, is at best a novel argument.... In prison, official surveillance has traditionally been the order of the day." *Lanza v. New York*, 370 U.S. 139, 143, 82 S.Ct. 1218, 1220-1221, 8 L.Ed.2d 384 (1962).

In *United States v. Hearst*, 563 F.2d 1331, 1344 (9th Cir. 1977), cert. denied, 435 U.S. 1000, 98 S.Ct. 1656, 56 L.Ed.2d 90 (1978), the defendant challenged the secret recording of a conversation between herself and her visitor, which took place in the jail visiting room over a telephone-like communication system while the two looked at each other through a bulletproof glass window. The conversation was monitored and recorded through a switchboard-type device operated by a deputy sheriff pursuant to an established jail policy to watch for security problems within the jail. The Ninth Circuit Court of Appeals stated:

An intrusion by jail officials pursuant to a rule or policy with a justifiable purpose of imprisonment or prison security is not violative of the Fourth Amendment. Under this rule, a prisoner is not deprived of all Fourth Amendment protections; the rule recognizes, however, the government's weighty, countervailing interests in prison security and order.

Id. at 1345 (citations omitted). As a result, the court found that the defendant's Fourth Amendment rights had not been violated and noted that the government "adequately established that its practice of monitoring and recording prisoner-visitor conversations was a reasonable means of maintaining prison security." *Id.* at 1346. See also *Christman v. Skinner*, 468 F.2d 723, 726 (2d Cir. 1972) (Monitoring county jail inmate's conversations with visitors violated no right of privacy possessed by inmate.); *Rodriguez v. Blaedow*, 497 F.Supp. 558, 559 (E.D. Wis. 1980) ("[A]n inmate's right of privacy is not violated when prison officials monitor his conversations with visitors."); *State v. McKercher*, 332 N.W.2d 286 (S.D. 1983) ("The United States Supreme Court has stated, however, that prisoners' constitutional rights are subject to some restrictions. These restrictions allow jail officials to monitor and record conversations between detainees and their visitors for security reasons and to use the conversation as evidence against the detainee without violating the Fourth Amendment."); *People v. Clark*, 466 N.E.2d 361, 365 (Ill. App. 1984) (holding that the defendant had no reasonable expectation of privacy in his conversation with another detainee in jail where electronic monitoring system was designed and used to maintain safety at jail); *People v. Myles*, 379 N.E.2d 897, 936 (Ill. App. 1978) ("It has also been held that there is no reasonable expectation of privacy in an ordinary jailhouse conversation between spouses.").

Likewise, in *United States v. Peoples*, 71 F.Supp.2d 967, 978 (W.D. Mo. 1999), the district court found that the visitor of prisoner did not have a reasonable expectation of privacy in conversations with the prisoner or in telephone calls involving the prisoner necessary to support a claim that his Fourth Amendment rights were violated when the prison recorded the conversations as part of a general recording program undertaken to maintain prison safety and order by reducing the flow of contraband into prison.

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