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### Prison Visitation Policies: A Fifty-State Survey<sup>†</sup>

*Chesa Boudin,\* Trevor Stutz,\*\* and Aaron Littman\*\*\**

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<sup>†</sup> The dataset supporting this Feature can be found at [ylpr.yale.edu/sites/default/files/data/32\\_1\\_prison\\_visitation.pdf](http://ylpr.yale.edu/sites/default/files/data/32_1_prison_visitation.pdf). In places where a state's policy is referenced without quotation or elaboration, no footnote has been provided; however, the dataset contains citations for all referenced policies.

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## INTRODUCTION

This Feature presents a summary of the findings from a survey of prison visitation policies in the fifty states and in the system run by the Federal Bureau of Prisons (BOP). The lives of prisoners and their families are deeply affected by visitation policies and, to date, there has been no comprehensive effort to compare these policies across all of the fifty states.<sup>1</sup> We embarked on the project with three primary goals. First, we wanted to provide for relatively easy state-by-state comparisons across a group of common visitation-related categories. Second, we hoped to identify similarities and differences across states in the categories we

1. Fifty-state surveys exist in related areas. See, e.g., BRENDA V. SMITH, FIFTY STATE SURVEY OF STATE CRIMINAL LAWS PROHIBITING THE SEXUAL ABUSE OF INDIVIDUALS UNDER CUSTODIAL SUPERVISION (2008) (documenting policies preventing sexual abuse in prisons); LEGAL ACTION CENTER, AFTER PRISON: ROADBLOCKS TO REENTRY (2004) (comparing barriers to reentry from prison); NAT'L INST. OF CORR., U.S. DEP'T OF JUSTICE, SERVICES FOR FAMILIES OF PRISON INMATES (2002), <http://www.nicic.org/pubs/2002/017272.pdf> (surveying the services available for families of prisoners). Note, too, that in 2002 the Department of Justice and the National Institute of Corrections surveyed the Departments of Corrections of all fifty states about initiatives related to families of inmates. See Jade S. Laughlin et al., *Incarcerated Mothers and Child Visitation: A Law, Social Science, and Policy Perspective*, 19 CRIM. JUST. POL'Y REV. 215, 225-26 (2008).

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tracked. Third, we sought to encourage more and improved visitation opportunities for inmates. The dataset presented here is the first to explore the contours of how prison administrators use their discretion in prescribing visitation policies.<sup>2</sup> This comparative analysis has many uses, both in identifying best practices and in uncovering practices that warrant concern as a matter of law or policy.

We believe, based on substantial empirical evidence, that frequent, high-quality visitation<sup>3</sup> can reduce prison violence, maintain family bonds, break the intergenerational cycle of incarceration,<sup>4</sup> and smooth the reentry process,<sup>5</sup>

2. A variety of historical texts include references to past visitation practices in individual facilities, *see, e.g.*, PRISON WRITING IN TWENTIETH CENTURY AMERICA (H. Bruce Franklin ed., 1998), and there are studies of penal harshness more generally, *see* WILLIAM J. STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE (2011); JAMES Q. WHITMAN, HARSH JUSTICE: CRIMINAL PUNISHMENT AND THE WIDENING DIVIDE BETWEEN AMERICA AND EUROPE (2005), but because this is the first comprehensive study of visitation policies, it is difficult to systematically assess how these policies have changed over time. What is clear, though, is that the population affected by prison visitation policies—incarcerated people and their families—has grown dramatically in recent decades. *See* ONE IN 100: BEHIND BARS IN AMERICA 2008, PEW CTR. ON THE STATES (2008), [http://www.pewstates.org/uploadedfiles/pcs\\_assets/2008/one%20in%20100.pdf](http://www.pewstates.org/uploadedfiles/pcs_assets/2008/one%20in%20100.pdf). For a discussion of the impacts of mass incarceration on communities, *see* TODD R. CLEAR, IMPRISONING COMMUNITIES: HOW MASS INCARCERATION MAKES DISADVANTAGED NEIGHBORHOODS WORSE (2009); MEGAN COMFORT, DOING TIME TOGETHER: LOVE AND FAMILY IN THE SHADOW OF PRISON (2008); and INVISIBLE PUNISHMENT: THE COLLATERAL CONSEQUENCES OF MASS IMPRISONMENT (Meda Chesney-Lind & Marc Mauer eds., 2002).
3. As early as 1980, the New York Department of Correctional Services published findings suggesting that the overnight family visiting program decreased recidivism rates as much as sixty-seven percent. D.G. MACDONALD & D. KELLY, NAT'L INST. OF JUSTICE, FOLLOW-UP SURVEY OF POST-RELEASE CRIMINAL BEHAVIOR OF PARTICIPANTS IN FAMILY REUNION PROGRAM 6 (1980).
4. *See* Denise Johnston, *Parent-Child Visitation in the Jail or Prison*, in CHILDREN OF INCARCERATED PARENTS 135 (Katherine Gabel & Denise Johnston eds., 1995); JEREMY TRAVIS ET AL., URBAN INST., FAMILIES LEFT BEHIND: THE HIDDEN COSTS OF INCARCERATION AND REENTRY 2 (2005); Keva M. Miller, *The Impact of Parental Incarceration on Children: An Emerging Need for Effective Interventions*, 23 CHILD & ADOLESCENT SOC. WORK J. 472, 478 (2006); Nkechi Taifa & Catherine Beane, *Integrative Solutions to Interrelated Issues: A Multidisciplinary Look Behind the Cycle of Incarceration*, 3 HARV. L. & POL'Y REV. 283, 289 (2009). *See generally* RENNY GOLDEN, WAR ON THE FAMILY: MOTHERS IN PRISON AND THE FAMILIES THEY LEAVE BEHIND (2005) (analyzing collateral impacts of mass incarceration).
5. PRISONERS ONCE REMOVED: THE IMPACT OF INCARCERATION AND REENTRY ON CHILDREN, FAMILIES, AND COMMUNITIES 8 (Jeremy Travis & Michelle Waul eds., 2003); William D. Bales & Daniel P. Mears, *Inmate Social Ties and the Transition to Society: Does Visitation Reduce Recidivism?*, 45 J. RES. IN CRIME & DELINQ. 287, 304 (2008); Jeremy Travis, *Families and Children*, 69 FED. PROBATION 31, 31-32 (2005); *see also* Solangel Maldonado, *Recidivism and Paternal Engagement*, 40 FAM. L.Q. 191 (2006) (analyzing the development of parenting skills in prison).

thereby reducing recidivism rates.<sup>6</sup> In short, smart visitation policies make prison personnel and prisoners safer, decrease crime, save money, and mitigate the damage incarceration wreaks on families and communities.

The empirical support for this normative claim comes not just from social scientists and scholars, but also from prison administrators' studies. A recent Minnesota Department of Corrections study, one of the largest and most thorough of its kind, concluded that prisoners who received visits while incarcerated were substantially less likely to recidivate. Tracking over sixteen thousand prisoners released from Minnesota prisons between 2003 and 2007,<sup>7</sup> the study showed that, when controlling for numerous other factors, prisoners who received visits were thirteen percent less likely to be reconvicted of a felony after release and twenty-five percent less likely to have their probation or parole revoked.<sup>8</sup> The study also identified administrative policies as one of three major barriers to visitation, along with the remote location of many facilities and the uncomfortable settings of the visits themselves.<sup>9</sup> Additionally, the study concluded that visits from certain people (e.g., fathers, mentors, and clergy) had significantly greater effect.<sup>10</sup>

A separate study, conducted by the Ohio Department of Corrections, concluded that visitation had a positive impact on prisoner behavior and prison safety. The Ohio study found a statistically significant relationship between increased visitation and decreased rule infractions, with even one visit found to have a positive correlation, and visits from parents or guardians found to be particularly significant.<sup>11</sup> Taken together, these two studies underscore the point that an increased number of visits to prisoners can be beneficial to both prison safety and reentry.

Visitors often represent the only contact inmates have with the world outside the prison walls—a world to which they will most likely return after serving out their sentences. The strength of the connections inmates maintain with their communities may depend substantially on the scope and quality of relationships maintained with visitors.

Comparative analysis of visitation policies is particularly important given that administrative discretion almost exclusively determines the contours of

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6. Christy A. Visher & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 100 (2003).
  7. Grant Duwe & Valerie Clark, *Blessed Be the Social Tie that Binds: The Effects of Prison Visitation on Offender Recidivism*, 24 CRIM. JUST. POL'Y REV. 271, 277 (2013).
  8. *Id.* at 289.
  9. *Id.* at 273.
  10. *Id.* at 284.
  11. Gary C. Mohr, *An Overview of Research Findings in the Visitation, Offender Behavior Connection*, OHIO DEP'T OF REHAB. & CORR. (2012), <http://www.asca.net/system/assets/attachments/4991/OH%20DRC%20Visitation%20Research%20Summary.pdf>.

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prison visitation, unconstrained except at the margins by judicial oversight. The Supreme Court and other federal courts have been largely deferential to prison administrators, granting them wide latitude generally and in the realm of visitation regulations specifically.<sup>12</sup>

In 2003, the Supreme Court unanimously decided a landmark case on prison visitation policies.<sup>13</sup> The ruling in *Overton v. Bazzetta* upheld the Michigan Department of Corrections' policies severely restricting visitation, including visitation by children and non-contact visits.<sup>14</sup> The Sixth Circuit had upheld Michigan's efforts to eliminate contact visits,<sup>15</sup> but later found that the restrictions on non-contact visits went too far and were unrelated to legitimate penological goals.<sup>16</sup> The Supreme Court's reversal, refusing to recognize even the limited constitutional limits on which the Sixth Circuit had based its opinion, was a definitive endorsement of a long line of jurisprudence upholding limitations on visitation and prisoners' rights.<sup>17</sup> Now more than ten years old, *Overton v. Bazzetta* has

12. See *Overton v. Bazzetta*, 539 U.S. 126 (2003) (holding unanimously that a ban on visits by minors and a restriction on visits for inmates with substance abuse violations did not violate the Fourteenth Amendment's Due Process Clause, the Eighth Amendment's prohibition on cruel and unusual punishment, or the inmates' right to freedom of association under the First Amendment, on the grounds that both regulations were, as required under the four-part standard for evaluating challenges to conditions of confinement articulated in *Turner v. Safley*, 482 U.S. 78, 89 (1987), "reasonably related to legitimate penological interests").
13. This paragraph draws heavily on Chesa Boudin, *Children of Incarcerated Parents: The Child's Constitutional Right to the Family Relationship*, 101 J. CRIM. L. & CRIMINOLOGY 77, 105-06 (2011).
14. 539 U.S. at 126. In reaching this conclusion, the Court relied heavily on the four-factor *Turner* test. See *Turner*, 482 U.S. at 89-90. Its application of the *Turner* test has been criticized. See, e.g., Marsha M. Yasuda, Note, *Taking a Step Back: The United States Supreme Court's Ruling in Overton v. Bazzetta*, 37 LOY. L.A. L. REV. 1831 (2004).
15. *Bazzetta v. McGinnis*, 124 F.3d 774 (6th Cir. 1997).
16. *Bazzetta v. McGinnis*, 286 F.3d 311 (6th Cir. 2002).
17. See, e.g., *Ky. Dep't of Corr. v. Thompson*, 490 U.S. 454, 464 (1989) (holding that inmates do not have a liberty interest in receiving visitors that is entitled to the protections of the Due Process Clause); *Block v. Rutherford*, 468 U.S. 576, 586 (1984) (finding a jail's blanket prohibition on contact visits to be constitutionally valid); *Macedon v. Cal. Dep't of Corr.*, 67 F. App'x 407, 408 (9th Cir. 2003) (affirming summary judgment against an inmate's challenge of the denial of family visits); *Newman v. Alabama*, 559 F.2d 283, 291 (5th Cir. 1997) (leaving visitation regulations to the discretion of prison administrators); *Bellamy v. Bradley*, 729 F.2d 416, 420 (6th Cir. 1984) ("Prison inmates have no absolute constitutional right to visitation."); *Ford v. Beister*, 657 F. Supp. 607, 611 (M.D. Pa. 1986) ("[T]he Constitution does not require that detainees be allowed contact visits . . ."); *Laaman v. Helgemoe*, 437 F. Supp. 269, 322 (D.N.H. 1977) (allowing curtailment of visitation as punishment but recognizing First Amendment limits); *Craig v. Hocker*, 405 F. Supp.

been widely cited for the proposition that “freedom of association is among the rights least compatible with incarceration.”<sup>18</sup>

But *Overton* was only the most recent in a long line of Supreme Court decisions deferring to prison administrators. The Supreme Court has repeatedly emphasized that “prison officials must be accorded latitude,”<sup>19</sup> because, according to the Court, “[t]he ‘normal activity’ to which a prison is committed—the involuntary confinement and isolation of large numbers of people, some of whom have demonstrated a capacity for violence—necessarily requires that considerable attention be devoted to the maintenance of security.”<sup>20</sup> The Court has recognized the expertise of prison officials and that the judiciary is “‘ill equipped’ to deal with the difficult and delicate problems of prison management.”<sup>21</sup> As the Court explained in *Overton*, “We must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.”<sup>22</sup> Advocates and activists seeking to change prison visitation policies rarely find support in the courts.

As a result of the substantial discretion afforded to prison administrators by courts, decisions made by corrections officials are among the primary determinants of whether and how inmates are able to maintain relationships. We found that some jurisdictions generally restrict visitation, while others specifically encourage and promote visitation as a core part of the rehabilitation process. While the various state policies exist on a continuum, these extremes reflect divergent policy approaches to visitation and suggest key questions for further exploration: Do states that promote and encourage visitation in their policies have better or worse outcomes in terms of institutional security or recidivism rates? To what

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656, 674 (D. Nev. 1975) (“So long as there are reasonable alternative means of communication, a prisoner has no First Amendment right to associate with whomever he sees fit.”). *But see* *Morrow v. Harwell*, 768 F.2d 619, 626 (5th Cir. 1985) (finding a jail’s policy of forbidding weekend visitation and preventing visits by minors to be unlawful); *McMurry v. Phelps*, 533 F. Supp. 742, 764 (W.D. La. 1982) (rejecting a policy that prevented children under the age of fourteen from visiting their jailed parents); *Valentine v. Englehardt*, 474 F. Supp. 294, 295 (D.N.J. 1979) (holding that county jail procedures totally barring visitation by inmates’ children are unconstitutional).

18. *Overton*, 539 U.S. at 131; *see, e.g., Warren v. Pennsylvania*, 316 F. App’x 109, 113 (3d Cir. 2008); *Jones v. Brown*, 461 F.3d 353, 360 (3d Cir. 2006); *Torres Garcia v. Puerto Rico*, 402 F. Supp. 2d 373, 381 (D.P.R. 2005).
19. *Pell v. Procunier*, 417 U.S. 817, 826 (1974) (quoting *Cruz v. Beto*, 405 U.S. 319, 321 (1972)).
20. *Id.* at 826-27.
21. *Thornburg v. Abbott*, 490 U.S. 401, 407-08 (1989) (quoting *Procunier v. Martinez*, 416 U.S. 396, 405 (1974)).
22. *Overton*, 539 U.S. at 132.

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extent, if any, does the general attitude towards visitation articulated in policy directives correlate with actual visitation practices?<sup>23</sup>

We presented the findings discussed here to correctional administrators at the Association of State Correctional Administrators' annual training conference in October 2012. Some administrators were very receptive, and the interchange has already borne fruit in the concrete form of revisions to outlier policies in both Utah and Washington.<sup>24</sup>

This Feature is organized as follows. Part I describes the methodology we employed and discusses the challenges and limitations of our research. Part II provides our key substantive findings, beginning with specific highlights of the data in several key areas and continuing with broad observations about the similarities and differences across the fifty states. Part III provides a detailed description of two policy areas that raise particularly complex and specialized considerations: virtual visitation and overnight family (also called "conjugal" or "extended") visitation. Finally, Part IV outlines possible next steps for research on this topic.

23. A given jurisdiction's prison visitation policies are likely to contain both relatively liberal and relatively restrictive provisions, making it difficult to classify jurisdictions as consistently liberal or restrictive. For example, Massachusetts imposes no limit on the number of names on an inmate's visiting list but provides for neither family overnight nor virtual visitation, whereas Colorado does limit the number of listed visitors to twelve but offers both family overnight and virtual visitation (in practice, though not in policy) in some facilities. We did consider whether there is a correlation between express promotion of visitation in policy documents and the presence of the two programs we focused on: overnight family and virtual visitation. These variables are treated as binary here, though these programs vary widely in scope; notably, some of the jurisdictions that offer virtual visitation do so only for inmates who have been restricted from normal visiting. Of the thirty jurisdictions (59% of total) that promote visitation, one (3%) offers both (New Mexico), four (13%) allow for overnight family visitation (California, Colorado, New York, Washington), five (17%) have virtual visitation programs (Indiana, Minnesota, New Jersey, Oregon, Virginia), and twenty (67%) offer neither (Federal Bureau of Prisons, Alaska, Arkansas, Georgia, Hawaii, Idaho, Iowa, Louisiana, Maryland, Missouri, Montana, New Hampshire, Ohio, Oklahoma, Rhode Island, South Carolina, Texas, Vermont, West Virginia, Wyoming). Of the twenty-one jurisdictions (41% of total) that do not promote visitation, none (0%) offer both, two (10%) allow for overnight family visitation (Connecticut, Mississippi), two (10%) have virtual visitation programs (Pennsylvania, Wisconsin), and seventeen (81%) offer neither (Alabama, Arizona, Delaware, Florida, Illinois, Kansas, Kentucky, Maine, Massachusetts, Michigan, Nebraska, Nevada, North Carolina, North Dakota, South Dakota, Tennessee, Utah).

24. These changes are discussed in detail *infra* Part II.C.

## I. METHODOLOGY

A. *Background*

This Feature arose from an unlikely collaboration between legal academics and correctional administrators. These two groups are often at loggerheads and frequently on opposite sides of litigation. Against this backdrop, several years ago, we began our partnership with the Association of State Correctional Administrators (ASCA), which counts as its members corrections directors from every state and the federal BOP.

In 2010, Ashbel T. (A.T.) Wall, II, the long-serving Director of the Rhode Island Department of Corrections, and Dora B. Schiro, Commissioner of the New York City Department of Correction, spoke as panelists at the Thirteenth Annual Liman Colloquium at Yale Law School. The colloquium participants—lawyers and prisoner-rights advocates—many of whom had frequently litigated in opposition to corrections practices, embraced the opportunity to ask the correctional leaders questions that their legal proceedings had never allowed. In response to one litigator’s story of the labyrinthine court proceedings required to obtain a simple policy change, Commissioner Schiro said: “Why don’t you just call me next time?” In this spirit of collaboration, we met with ASCA’s leadership and ultimately envisioned this project as a way to inform smart policymaking.

This data set is unique in that no other piece of scholarship has attempted to marshal visitation policies from across the country. Given the relative opacity in the corrections sphere, this comparison, and the cross-pollination of ideas that it enables, will allow states to more easily adopt new practices and more readily identify where one of their policies is an outlier. Indeed, this is already happening; thanks, in part, to the research in this Feature, at least two states have already implemented significant reforms to outlier visitation policies.<sup>25</sup>

Whenever data was unavailable online, we relied on ASCA to help us acquire it. Ultimately, ASCA sent its members a draft of this report, including an earlier version of the spreadsheet cited previously, and solicited feedback. We received valuable updates from more than half of the departments; most of the others responded to confirm that we had accurately represented their most recent policies. Through this process, we were able to obtain information about the visitation policies of all fifty-state prison systems and the BOP.<sup>26</sup>

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25. See *infra* Part II.C.

26. As of 2005, the last time comprehensive data was collected, there were 1,190 confinement (as opposed to community-based) correctional facilities operated under state authority (including private facilities), and 102 operated under federal authority. James J. Stephan, *Census of State and Federal Correctional Facilities, 2005*, BUREAU JUST. STAT. 10 tbl.2 (2008). This data set does not map perfectly onto ours, but the match is close; ours excludes facilities like city, county and regional jails, military facilities, and immigration detention centers, which are not under the authority of state DOCs.

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*B. Sources of Data*<sup>27</sup>

Three layers of rules govern prison visitation.<sup>28</sup> The first two—administrative regulations (often general grants of rulemaking authority to correctional administrators) and policy directives (more detailed rules promulgated by those administrators)—apply to the state system as a whole.<sup>29</sup> Facility-specific rules, which form the third layer, vary considerably and are usually the most detailed, although they do not always cover the full scope of visitation policies.<sup>30</sup>

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27. The research for this Feature took place over nearly a three-year period, and the policies and regulations we studied change constantly. We last received feedback from state correctional administrators and updated our data set in September 2012, though that cut-off is a rough one, because in some cases states responded to our draft by sending not-yet-published policies, and we incorporated those. Some policies have changed since then, and, while more recent policies are cited in a few instances, we were unable to comprehensively update this Feature and the associated spreadsheet during the writing and production process.

28. We do not discuss the process of prison rulemaking in any depth in this Feature. For an excellent study of the process of correctional regulation, see Giovanna Shay, *Ad Law Incarcerated*, 14 BERKELEY J. CRIM. L. 329 (2010).

29. For the purposes of this Feature, a “regulation” or “administrative regulation” refers to the code promulgated pursuant to each state’s administrative law procedures. A “policy directive” is a list of policies promulgated and signed by the head of the DOC or his or her designee. Throughout this Feature, we differentiate between policy directives and administrative regulations, although this distinction can at times be murky, since jurisdictions do not always use the same terminology when referring to the policies that guide their discretion. Often, a state’s policy directives closely track the language in its regulation.

30. The degree of detail of, and the topical areas covered within, administrative regulations, policy directives, and facility-specific rules differs considerably between states, and some do not even employ all three forms of regulation. An example may be illustrative. Consider the family member of a Connecticut inmate who attempts to obtain information about visiting hours at the facility where her relative is incarcerated. An administrative regulation, CONN. AGENCIES REGS. § 18-81-15 (1997), requires that such information be publicly available:

(b) Copies of regulations, written statements of policy or interpretations formulated, adopted or used by the department of Correction in the discharge of its functions, all forms and instructions used by the Department and all final orders, decisions and opinions are maintained at, or may be obtained through, the Office of the Commissioner of Correction. The foregoing information will be made available for public inspection upon reasonable request made to, and at such reasonable time and location as may be determined by, the Commissioner or his designee.

(c) The subject matter of information available for public inspection does not include material deemed to be privileged, confidential, related to the

We began by reviewing the websites for each state's Department of Corrections (DOC) and the federal BOP. We found that some websites contained direct links to the various departmental policy directives, others only gave thumbnail sketches of their visitation policies, and others had little or no information available on topic. Some of these websites also included visitor "handbooks."<sup>31</sup>

We compiled copies of all the available regulations, policy directives, and any other materials directly related to visitation that were available online. Roughly half of the jurisdictions have administrative regulations available on Westlaw,<sup>32</sup> and the vast majority of jurisdictions have policy directives. As we noted, where a directive was not available online, we contacted DOCs through ASCA to obtain a directive if one existed.

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security of institutional personnel or inmates, or otherwise detrimental to the orderly and secure operations of the Department of Correction.

The Department of Correction's policy directive, CONN. DEP'T OF CORR. POLICY 10.6.6.B (2009), sets a general baseline for the availability, duration, and scheduling of visits:

Times. Restrictions may be placed on visiting hours and the duration of a specific visit as required to accommodate security, safety, extraordinary numbers, facility need and order. Normally the following time and scheduling conditions shall be met:

1. At least one (1) evening visit weekly;
2. Weekend visits; and,
3. Visits of at least one (1) hour in duration.

Finally, facility-specific visiting hours are presented in downloadable charts at *Visiting*, STATE OF CONN. DEP'T OF CORR. (last visited Aug. 9, 2013), <http://www.ct.gov/doc/cwp/view.asp?a=1502&q=450602>.

31. Visitor handbooks or rules on a website are primarily informational, and not binding. Where available, handbooks provide a range of information about visitation policies and procedures in plain English rather than legalese. Often handbooks closely track policy directives or regulations. Handbooks are issued both statewide, for an entire prison system, and by individual facilities. We considered only the former category.
32. See Prison Visitation Regulations Dataset, Column F, [ylpr.yale.edu/sites/default/files/data/32\\_1\\_prison\\_visitation.pdf](http://ylpr.yale.edu/sites/default/files/data/32_1_prison_visitation.pdf). We also acquired some administrative regulations that were not available on Westlaw directly from the DOCs.

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We chose to focus our review at the level of policy directives for several reasons.<sup>33</sup> First, the directives articulate policy more comprehensively than institution-specific rules<sup>34</sup> and in much more detail than most regulations. They also contain the DOC's policy rationale for and philosophy of visitation. While we missed out on some variation between facilities within each of the jurisdictions, this approach allowed us to develop an understanding of visitation policies across the nation in a manageable way.

Second, we focused on policy directives because they are most amenable to systemic assessment, and, if necessary, reform. Policy directives are issued by a single, common entity—the director of the state's DOC. Each policy directive governs all facilities, with some amount of discretion left up to each facility's warden.<sup>35</sup> Amending policy directives may be the most pragmatic approach to advancing policy goals, because it is likely easier to amend a policy directive than it is to change state-level regulations. Additionally, amendment or replacement of policy directives would likely have a broader and more lasting impact than changing practices at any single facility.<sup>36</sup>

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33. While we relied principally on policy directives, we included information from administrative regulations for states where information was different or more detailed. Although administrative regulations are generally less specific, some are quite detailed, and so we considered these. Five states (Florida, Illinois, Oregon, Utah, Vermont) rely exclusively on such regulations rather than on policy directives.
  34. Institution-specific rules proved too numerous, inaccessible, and subject to change for productive study, given our limited time and resources. We do reference institution-specific policies in the more detailed discussions of family and video visitation. *See infra* Part III.
  35. Some variation between facilities is surely appropriate: men's and women's prisons; maximum and medium security prisons; those with high-tech and low-tech security systems. However, in many states there is so much discretion and variation at the facility-specific level as to render statewide policies little more than a shell. The problem with this approach is that it results in substantial inequality in access to visitation from one prison to another even within the same jurisdiction, and makes it harder to ensure that minimum constitutional standards are met.
  36. This methodology yields data that are limited in several ways. First, our analysis does not provide a picture of how each of the numerous provisions is actually implemented, institution by institution. Second, this survey does not account for distinctions among particular prison populations. Third, in order to create data points for comparison, we organized our review into several categories. The policy directives and regulations, however, range from a few to dozens of pages and contain a disparate breadth and depth of information, and hence did not always fit neatly into the categories we constructed. Our review necessarily left much more to do. Based on our initial review of the policy directives, we chose categories to target issues that came up frequently, for which there was a wide range of responses, or that presented important questions. We also chose to delve more deeply into two policies that both potentially provide greater access to and alter the experience of visitation: overnight family visitation and virtual visitation.

## II. KEY FINDINGS

In this Part, we first provide a detailed summary of the key findings on several specific aspects of visitation policies. We then offer more general observations about the similarities and differences the data revealed across jurisdictions. While most of the factual information in this Part is also presented in the spreadsheet available online, the discussion that follows provides additional analysis and, in synthesizing the data, provides a context in which to place the policies of any particular state.

### A. Overview of Key Findings

This Section reviews the main findings from our survey, organized thematically. It includes both summary statistics and illustrative examples.

#### 1. Institutional Authority over Visitation

Written policies allow prisoners and their visitors to plan and utilize available visitation opportunities. When policies are clear and readily accessible, visitors and prisoners can more easily follow the rules. Statewide policy directives often provide more detail than administrative regulations, though facilities may have additional local rules.

Forty-six jurisdictions have DOC policy directives—policies promulgated by the head of the DOC. All of the five states that lack policy directives follow an administrative regulation or have written policies on the department website.<sup>37</sup>

#### 2. Number and Duration of Visits

Visiting a prisoner is not always an easy task. States vary widely as to the lengths of visits allowed, and the number of times in a given period during which friends and family may visit. The statewide policy then binds individual facilities to a minimum or maximum amount of visitation. Especially for visitors who live a great distance from the prison, or who have jobs, children, or other responsibilities, the greater the number of visitation options, the easier it is to visit.

Some states explicitly recognize the importance of visitation in their policies, though it is difficult to draw conclusions about how this recognition impacts other policies and practices.<sup>38</sup> Twenty-nine jurisdictions<sup>39</sup> promote or encourage

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37. Florida, Illinois, Oregon, Utah, Vermont.

38. *See supra* note 23.

39. Federal Bureau of Prisons, Arkansas, California, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Louisiana, Maryland, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, Wyoming.

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visitation at the outset of their policy directives or regulations.<sup>40</sup> For example, in Alaska, “[t]he Department encourages prisoner visitation because strong family and community ties increase the likelihood of a prisoner’s success after release. Visitation is subject only to the limitations in this policy and as necessary to protect persons and maintain order and security in the institution.”<sup>41</sup> However, these states are not necessarily the ones in which visitation is most liberally permitted, and, indeed, some have policies that severely limit visitation.<sup>42</sup>

Twenty-eight jurisdictions have a floor for the minimum number of days or hours visitation must be made available.<sup>43</sup> For example, in Georgia, “[a] minimum of SIX (6) hours shall be allotted each day for visitation periods on Saturdays, Sundays and holidays. . . . Normally, there will be no restrictions placed on the length of visits during the facility’s established visitation periods.”<sup>44</sup>

Several other states provide for ceilings on visitation hours. For instance, Oregon allows only one visit per day per visitor on weekends and holidays,<sup>45</sup> and Utah allows no more than two hours per visit per day. Overall, New York State’s maximum security prisons provide perhaps the most welcoming visitation policy, allowing for up to six hours of visits 365 days per year *and* overnight visits approximately every two months. North Carolina is perhaps the most restrictive, establishing a ceiling of no more than one visit per week of up to two hours (excluding legal and clerical visits).

### 3. Inmate Eligibility for Visits

Because states uniformly consider visiting a “privilege,” policies often limit prisoners’ access to visitors as a sanction and may reward good behavior with greater access to visitation. In contrast, some policies provide greater access to

40. Many states have separate policies for legal, clerical, media, and other special categories of visit. For purposes of this Feature, we have focused on social and family visits, which are by far the most common visits and the most regulated visits.

41. ALASKA DEP’T OF CORR. POLICY 810.02.VI.A (2010).

42. A number of other jurisdictions explained in communication with us that their correctional philosophy does recognize the value of visitation; we have included in this count only those states that articulate this stance in an official policy document.

43. Alaska, Arkansas, California, Connecticut, Florida, Georgia, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, New Mexico, New York, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Wisconsin, Wyoming.

44. GA. DEP’T OF CORR. POLICY IIB01-0005.VI.C.1–3 (2006).

45. Under this system, inmates are given a number of points per month to spend on visits. Weekend and holiday visits deduct two points per visitor per session (only one session per day is allowed for any given visitor), weekday visits deduct one point per visitor per session (two sessions per day are allowed for any given visitor), and visits with minor children do not deduct any points. OR. ADMIN. R. 291-127-0250 (2008).

visitation for prisoners who may have the greatest need for visits. Prisoners are categorized by their crimes and primarily based upon their behavior within the prison.

Twenty-three jurisdictions specify that offenders at certain security classifications will be subject to limits on visitation.<sup>46</sup> In addition, several states have special provisions limiting the ability of minors to visit sex offenders. Many jurisdictions note that though the policy directives do not limit visitation based on inmate classifications, individual facilities will determine their own specific rules. In most states that differentiate based on security classification, higher-security inmates are allowed fewer visiting opportunities.

In Oklahoma, for example, maximum-security inmates are given up to four hours per week of visitation, while minimum-security inmates get up to eight hours per week. Likewise, Mississippi's regulations state that Long-Term Administrative Segregation Status offenders are allowed only "one (1) hour non-contact visit each quarter of any year with any approved visitors on their visitation list."<sup>47</sup> In contrast, New York is the only state that provides more visitation opportunities and more flexible timing of visits to inmates in higher-security settings.<sup>48</sup> While New York's policy does not articulate a particular reason for this uncommon approach, one can infer that it is to provide the inmates with the greatest needs and most long-term, profound isolation from their communities with ongoing, meaningful contacts outside of prison.

In general, higher-security inmates and those in segregation within the prison may face additional barriers to visitation, such as restriction to "no-contact" visits. Georgia, however, has a specific provision to allow visitation to inmates in the most restrictive custody.<sup>49</sup> Additionally, prisoners may be temporarily or permanently banned from visits for disciplinary violations. Michigan enforces a potentially irrevocable permanent ban on visiting in some circumstances.<sup>50</sup> And new regulations in New York have introduced harsher penalties

46. Arizona, Arkansas, California, Connecticut, Delaware, Massachusetts, Minnesota, Mississippi, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wyoming.

47. MISS. DEP'T OF CORR. POLICY 31-03-01 (2010).

48. N.Y. DEP'T OF CORR. POLICY 4403.III.A (1993) ("At maximum security facilities, visiting is allowed every day of the year and at hours intended to encourage maximum visitation. At medium and minimum facilities, visiting is allowed on weekends and holidays only. At Work Release facilities, only inmates held in restriction status shall be allowed visitors.").

49. GA. DEP'T OF CORR. POLICY IIB01-0005.VI.K.1 (2006) ("Protective custody and administrative segregation inmates shall in general have the same rights to visitation as general population inmates unless this is not feasible. Non-feasibility must be documented. An example would include inmates with documented assaultive and destructive behavior.").

50. These two provisions in combination seem to effectuate a permanent ban:

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for inmate misconduct, including a six-month to year-long suspension of all visiting privileges for any drug-related charges, whether stemming from a visit or not.<sup>51</sup>

#### 4. Approval of Visitors

Primarily because of security concerns, every state requires that visitors seek advance approval from the prison before visiting. That process can include a background check, fees,<sup>52</sup> and a waiting period. Many states limit how many visitors may be approved for each prisoner and limit how frequently the approved visitor list may change. These added barriers require that prospective visitors plan their visits, sometimes months in advance.

Thirty-one jurisdictions limit the number of visitors an inmate may have on an approved visiting list.<sup>53</sup> Pennsylvania allows the longest visitor list (forty) and

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Except as set forth in Paragraph AAA, the Director may restrict all of a prisoner's visits if the prisoner is convicted or found guilty of any of the following:

1. A felony or misdemeanor that occurred during a visit.
2. A major misconduct violation that occurred during a visit or was associated with a visit.
3. Escape, attempted escape, or conspiracy to escape.
4. Two or more violations of the major misconduct charge of substance abuse for behavior that occurred on or after January 1, 2007, which do not arise from the same incident. This includes failure to submit to substance abuse testing.

MICH. DEP'T. OF CORR. POLICY 05.03.140.XX (2007).

The Director may remove a restriction upon written request of the Warden or the restricted prisoner, subject to the following:

1. The restriction shall not be removed if it is based on a felony or misdemeanor that occurred during a visit or if it is based on an escape, attempted escape, or conspiracy to escape associated with a visit.

*Id.* 05.03.140.BBB (2007).

51. N.Y. DEP'T OF CORR., VISITING PROGRAM GUIDELINES (2012), [http://www.doccs.ny.gov/PressRel/2012/Visiting\\_Program\\_Guidelines\\_20121001.pdf](http://www.doccs.ny.gov/PressRel/2012/Visiting_Program_Guidelines_20121001.pdf).
52. *See, e.g., Inmate Visitation Application*, ARIZ. DEP'T OF CORR., [http://www.azcorrections.gov/new\\_visitation\\_application.aspx](http://www.azcorrections.gov/new_visitation_application.aspx) (last visited Oct. 26, 2013) (requiring that adults applying to visit inmates pay a "one-time, non-refundable, \$25.00 background check fee," but exempting minors, attorneys of record, foster parents or court appointed legal guardians, and applicants for telephone-only contact).
53. Alabama: 8, Arizona: 20, Arkansas: 20, Colorado: 12 plus minor children, Connecticut: 5-10 depending on security classification, Florida: 15 plus children under twelve, Georgia: 12, Indiana: 10 family and 2 friends, Iowa: 4 plus immediate family, Kansas: 20 with restrictions on higher security classifications, Kentucky: 3 plus immediate family, Louisiana: 10, Maryland: 15, Michigan: 10 plus immediate family, Minnesota: 24, Mississippi: 10 plus children, Missouri: 20, New Hampshire: 20 plus

South Dakota the shortest (two plus family). Of these thirty-one jurisdictions, the mean number of visitors allowed is fourteen and the mode numbers are ten and twenty with six states each. In contrast, California affirmatively places no limit on the number of approved visitors.<sup>54</sup>

Many states allow a visitor to be on only one inmate's approved visitors list, unless a visitor has multiple immediate family members incarcerated. Although not usually made explicit, this policy is generally aimed at promoting security by limiting communication between separately housed inmates via outside visitors. In Connecticut,

[n]o visitor, except an immediate family member, shall be on more than one (1) inmate's visiting list at the same facility (i.e., to visit two or more inmates at the same facility, the visitor must be an immediate family member to all the inmates on whose list the visitor is on). This requirement may be waived at the discretion of the Unit Administrator.<sup>55</sup>

In Maine,

[v]isitors shall not be approved to be placed on the approved visitor list of more than one prisoner within a facility, unless they are members of the immediate family (spouse, natural, foster or adoptive mother, father, son, daughter, grandfather or grandmother, grandchild, brother or sister, or stepmother, stepfather, stepson, stepdaughter, stepgrandfather or stepgrandmother, stepgrandchild or stepbrother or stepsister) of more than one prisoner.<sup>56</sup>

States vary in their policies for adding and removing visitors to or from the "approved visitors" list. In some cases, such as North Carolina and Wisconsin, states provide opportunities to add visitors to or remove them from the list only once every six months.<sup>57</sup> Tennessee requires a visitor taken off one inmate's list

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immediate family, New Mexico: 15, North Carolina: 18, Ohio: 15, Oklahoma: varies by facility but not less than 6 immediate family members plus one friend and one clergy member, except for the State Penitentiary, which may restrict to 3 visitors plus one clergy member, Oregon: 20 plus children under thirteen years old, Pennsylvania: 40, Rhode Island: 9, South Carolina: 15, South Dakota: 2 plus family, Tennessee: 8 plus immediate family, Texas: 10, Wisconsin: 12 plus children, Wyoming: 10 plus children.

54. CAL. DEP'T OF CORR., OPERATIONS MANUAL 54020.18 (2012).

55. CONN. DEP'T OF CORR. POLICY 10.6.4.A.4.b (2009).

56. ME. DEP'T OF CORR. POLICY 21.4.VI.B.7 (2006).

57. N.C. DEP'T OF CORR. POLICY 956, AT 1 (2006); WIS. DEP'T OF CORR. POLICY 309.06.01.II.B.5 (2010).

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to wait a full year prior to appearing on another inmate's list.<sup>58</sup> Utah requires that all adult visitors reapply every year to stay on an inmate's visitors list.<sup>59</sup>

## 5. Exclusion of Visitors

Not just anyone can visit a prisoner. Policies often exclude individuals with criminal records from visiting, with the likely goal of diminishing security risks and negative influences. In communities and social groups where having a criminal record may be common, this limitation circumscribes the number of potential visitors. In contrast, some policies take the opposite approach, with the goal of encouraging visitation.

Almost every jurisdiction excludes some categories of visitors, often former felons. Sometimes these restrictions bar former felons from *ever* visiting. For instance, Idaho excludes anyone who has a felony conviction, an arrest within the last five years, or a misdemeanor drug arrest within the last two years. Michigan prohibits visitation by "a prisoner or a former prisoner in any jurisdiction."<sup>60</sup> However, a prisoner or former prisoner who is "an immediate family member may be placed on the prisoner's approved visitors list with prior approval of the Warden of the facility where the visit will occur *and* written approval of the supervising field agent."<sup>61</sup> Hawaii, by contrast, specifically allows former felons to visit inmates, absent other aggravating circumstances, as do Massachusetts, Vermont, and the BOP.<sup>62</sup> New Jersey<sup>63</sup> and Nebraska<sup>64</sup> are the only states that explic-

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58. TENN. DEP'T OF CORR. POLICY 507.01.VI.B.6(a), (o) (2010).

59. *Visiting Rules*, UTAH DEP'T OF CORR., <http://corrections.utah.gov/index.php/prisons-visitation/visiting/39-prisons-visitation/923-visiting-rules.html> (last visited Oct. 25, 2013).

60. MICH. DEP'T. OF CORR. POLICY 05.03.140.J.2 (2007).

61. *Id.* 5.03.140.J.3 (2007).

62. Visiting Regulations: Prior Relationship, 28 C.F.R. § 540.44(d) (2003) ("The existence of a criminal conviction alone does not preclude visits."); HAW. CODE R. § 23-100-3(b) (LexisNexis 2000) ("While the existence of prior criminal convictions(s) of a visitor may not preclude visits, they are a factor to be considered in granting or denying visitations."); 103 MASS. CODE REGS. § 483.12(5) (LexisNexis 2012) ("If the visitor answers that he has been convicted of a felony, the visitor may be required, as a condition of entry, to provide a statement of the crime(s) for which the visitor was convicted and the sentences served."); 13-11 VT. CODE R. § 966 (1979) ("No group of persons, such as parolees or ex-offenders may be excluded from visiting residents solely because of their status.").

63. N.J. ADMIN. CODE § 10A:18-6.6 (2013) ("Visits shall be permitted between incarcerated relatives that are incarcerated in facilities under the jurisdiction of the New Jersey Department of Corrections.").

64. 68 NEB. ADMIN. CODE § 4-1 TO 4-8 (2013).

itly provide for inmate-to-inmate visitation in their written policies. States require various levels of background checks for visitors, ranging from nothing to a detailed criminal history check.

Many states do not allow victims to visit inmates. In Indiana, “[v]ictims generally shall not be allowed to visit offenders, unless the visit is for therapeutic reasons and a therapist has requested the visit and will be a part of the visit.”<sup>65</sup> Several jurisdictions have highly specific, and sometimes unique, rules excluding other categories of visitors. The BOP only allows visits from people inmates knew prior to their incarceration.<sup>66</sup> Oklahoma is the only state to prohibit married inmates from receiving visits from friends of the opposite gender.<sup>67</sup> Washington was the only state to explicitly require, in its written policy directive, non-citizens who wish to visit to provide proof of their legal status in the United States;<sup>68</sup> however, thanks in part to our research, Washington abolished that policy in January 2013.<sup>69</sup> Arkansas and Kentucky require visitors to include a social security number on the visiting information form,<sup>70</sup> and this may serve to deter or exclude undocumented immigrants from visiting their incarcerated family members even when the inmates themselves have legal status.

#### 6. Searches of Visitors

In order to prevent contraband, prisons search visitors as a matter of course. Searches range in their degree of invasiveness. Invasive searches may prevent more contraband from entering the prisons, though they may also deter well-

65. IND. DEP’T OF CORR. POLICY 02-01-102.IX (2009).

66. 28 C.F.R. § 540.44(c) (“The visiting privilege ordinarily will be extended to friends and associates having an established relationship with the inmate prior to confinement, unless such visits could reasonably create a threat to the security and good order of the institution. Exceptions to the prior relationship rule may be made, particularly for inmates without other visitors, when it is shown that the proposed visitor is reliable and poses no threat to the security or good order of the institution.”).

67. OKLA. DEP’T OF CORR. POLICY 030118 add. 01.A (2010) (“If the offender is married, no person of the opposite gender may be added as a ‘friend’ on the approved visiting list.”). Utah recently did away with a similar policy. *See infra* Part II.C. As a gender-based policy that discriminates against married inmates, the policy may violate inmates’ rights under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment.

68. WASH. DEP’T OF CORR. POLICY 450.300.IH (2011) (noting that “[p]ersons who are not United States (U.S.) citizens must provide proof of legal entry into the U.S.[.] Aliens require documentation to visit,” and providing a list of acceptable documentation).

69. *See infra* Part II.C.

70. ARK. DEP’T OF CORR. POLICY 11-49 attach. I (2010); KY. CORR. POLICY 16.1.II.D.2(b) (2008).

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intentioned visitors from coming at all, especially the young, the old, and the disabled.

Forty-three jurisdictions specify, with varying levels of detail, the search procedures for visitors.<sup>71</sup> In some cases, searches may extend to vehicles and to body cavities of visitors. Some jurisdictions specify additional search methods. For example, in Arizona, “[a]ll visitors and their possessions are subject to physical search by staff, electronic metal detection devices, barrier sniff screening (Narcotics Detection) by a Department Service Dog, and/or Ion Scanning. . . . All vehicles on Department property are subject to search.”<sup>72</sup>

In some cases, the refusal to submit to a more intrusive search bars entrance to the facility and can be cause for sanctions. In Georgia, “[i]f a person refuses to be searched, an incident report will be completed and this could be cause for removal from the inmate’s approved visitor list.”<sup>73</sup> Pennsylvania, however, prohibits its correctional officers from conducting pat or strip searches of incoming visitors.<sup>74</sup>

### 7. Dress and Behavior of Visitors

Several states also have noteworthy policies controlling what visitors can wear or bring with them into the prison. Tennessee’s visitor dress code, for instance, specifically requires visitors to wear undergarments but prohibits “thongs and water brassieres.”<sup>75</sup>

Many policy directives limit displays of physical affection. In New Hampshire, “[p]hysical contact and displays of affection will be kept within bounds of decorum with hugging and kissing allowed only at start and end of visits for 15 seconds or less,”<sup>76</sup> and in Kentucky, “[a]n inmate in the regular visiting area shall be allowed brief physical contact (example: holding hands, kissing, and embracing). This contact shall be permitted within the bounds of good taste and only at the beginning and end of the visit.”<sup>77</sup> Utah prohibited visitors from speaking any

71. Federal Bureau of Prisons, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

72. ARIZ. DEP’T OF CORR. POLICY 911.03.1.1.1, 911.03.1.3 (2009).

73. GA. DEP’T OF CORR. POLICY IIB01-0005.VI.J.7 (2006).

74. PA. DEP’T OF CORR. POLICY DC-ADM 812 § 3 (2009).

75. TENN. DEP’T OF CORR. POLICY 507.01.VI.M.1.b (2010).

76. N.H. DEP’T OF CORR. POLICY 7.09.IV.N.1.d (2008).

77. KY. CORR. POLICY 16.1.II.H.1 (2008).

language other than English, but thanks in part to our research, Utah abolished that discriminatory policy in July 2013.<sup>78</sup>

### 8. Children Visiting

For the 1.2 million prisoners with minor children,<sup>79</sup> visitation policies relating to minors may be significant. A relationship with one's children may be the most meaningful or important connection a prisoner has to the world outside the walls. However, the prison environment can be especially challenging for a child.

Some states have in place policy directives pertaining to minor visitors. Many provide for the termination of visits if children cannot be controlled.<sup>80</sup> New Hampshire prohibits all toys in the visiting room.<sup>81</sup> At the opposite end of the spectrum, some states, like Washington, provide for child-friendly visiting rooms, including toys, games, and rule enforcement sensitive to children.<sup>82</sup> Maine has a specific provision to ensure that minors can visit.<sup>83</sup> Eight states—

78. Previously, the DOC website provided a list of rules for visitors including: "All visits will be conducted in English." *Visiting Rules*, UTAH DEP'T OF CORR., [http://corrections.utah.gov/visitation\\_facilities/visiting\\_rules.html](http://corrections.utah.gov/visitation_facilities/visiting_rules.html) (last visited Oct. 10, 2012). *See infra* Part II.C.

79. This represents 54 percent of all prisoners. PEW CHARITABLE TRUSTS, COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY 4 (2010), [http://www.pewtrusts.org/uploadedfiles/wwwpewtrustsorg/reports/economic\\_mobility/collateral%20costs%20final.pdf](http://www.pewtrusts.org/uploadedfiles/wwwpewtrustsorg/reports/economic_mobility/collateral%20costs%20final.pdf). There are 2.7 million children (one in every twenty-eight children; one in every nine African-American children) with incarcerated parents. *Id.* Sesame Street has recently introduced a Muppet with an incarcerated father. Elizabeth Flock, "Sesame Street" Tackles Incarceration Through Muppet with Father in Jail, U.S. NEWS & WORLD REP. (July 17, 2013), <http://www.usnews.com/news/articles/2013/07/17/sesame-street-tackles-incarceration-through-muppet-with-father-in-jail>.

80. *See, e.g.*, TEX. DEP'T OF CRIMINAL JUSTICE POLICY I-218.3.14.1 (2008).

81. N.H. DEP'T OF CORR. POLICY 7.09.IV.I.3 (2008) ("Although children are allowed in the visiting room, no toys are allowed.").

82. WASH. DEP'T OF CORR. POLICY 450.300.I.A.1(a) (2011) ("Visit rooms will provide toys and games suitable for interaction by family members of all ages[;] rule enforcement will be sensitive to visitors, particularly children."). New York's maximum-security women's prison also has a separate visiting room for children, called the Children's Center. *See*, Lynne Ames, *The View From: Bedford Hills Correctional Facility; Keeping Families Intact, From Prison*, N.Y. TIMES, Apr. 28, 1996, <http://www.nytimes.com/1996/04/28/nyregion/view-bedford-hills-correctional-facility-keeping-families-intact-prison.html> (describing the Children's Center).

83. ME. DEP'T OF CORR. POLICY 21.4.VI.H (2003) ("Visits by Minors. Each facility shall ensure that minors (persons under 18 years of age, unless married or emancipated by court order) are permitted to visit prisoners, unless the minor is on the prisoner's Prohibited Visitor List. A minor visitor must have an application completed

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Illinois, Indiana, Nebraska, New York, Ohio, South Dakota, Washington, and West Virginia—have women’s prisons that run nursery programs for incarcerated mothers.<sup>84</sup> Prison nurseries allow mothers who are incarcerated during childbirth to keep newborns with them inside the facility. Most of these programs began in the last two decades, but the one in New York’s Bedford Hills Correctional Facility has been in place since the early 1900s.<sup>85</sup>

## 9. Extended Visits

Prisons often offer expanded visitation opportunities for certain classes of visitors. Extended visiting opportunities for visitors who must travel long distances incentivize making the trip. Extended visits also allow prisoners to forge stronger bonds with friends or family, sometimes allowing them to interact in more natural and less surveilled settings. For families, these opportunities may permit moments of normalcy and intimacy not generally available in the average visitation setting.

Nearly all states offer some form of extended daytime visit, and some offer overnight family visits. These visits look different in each jurisdiction, however, as there is no consistent length of time allotted for an “extended” visit, and there is no consistent definition of “family” for the purposes of overnight visit eligibility. In some cases, this category includes only children (of a certain age) or only spouses (and sometimes domestic partners), while in others it includes all immediate family members and legal guardians.

Forty-seven jurisdictions provide for “Special Visitation,” which in most instances specifically includes visitors who have traveled great distances to the prison.<sup>86</sup> In Iowa, for example,

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on their behalf and must be accompanied at the visit by an immediate family member or legal guardian who is an adult (persons 18 years of age or older, married, or emancipated by court order). An adult who is not an immediate family member or legal guardian may also be allowed to bring in a minor visitor with the written permission of the parent(s) having legal custody or the legal guardian of the minor and with the prior approval of the Chief Administrative Officer, or designee. A professional visitor from the Department of Health and Human Services may also be allowed to bring in a minor visitor with the prior approval of the Chief Administrative Officer, or designee.”).

84. Hendrik DeBoer, *Prison Nursery Programs in Other States*, OLR RESEARCH REPORT 2012-R-0157, Mar. 30, 2012, <http://www.cga.ct.gov/2012/rpt/2012-R-0157.htm>; see also NAT’L WOMEN’S LAW CTR., *MOTHERS BEHIND BARS* (2010), <http://www.rebeccaproject.org/images/stories/files/mothersbehindbarsreport-2010.pdf> (presenting “[a] state-by-state report card and analysis of federal policies on conditions of confinement for pregnant and parenting women and the effect on their children”).

85. DeBoer, *supra* note 84.

86. Federal Bureau of Prisons, Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana,

[t]he Warden/Superintendent or designee may permit special visits not otherwise provided for in this policy. These may include, but are not limited to, extended visits for close family members traveling extended distances, immediate visits for close relatives or friends about to leave the area, visits necessary to straighten out critical personal affairs, and other visits for similar reasons.<sup>87</sup>

A number of states exempt visitors who have traveled long distances from early visit termination due to overcrowding.<sup>88</sup>

Nine jurisdictions allow for overnight family visits or conjugal visits.<sup>89</sup> California, for example, provides for “Family Visiting” in great detail. Connecticut’s policy provides for “[a] prolonged visit between an inmate and specified immediate family member(s), and/or a legal guardian, in a designated secure area separate from the inmate population.”<sup>90</sup> However, family visitation is not currently operational in any Connecticut facilities.<sup>91</sup> Only Mississippi refers to these visits as “conjugal” visits.<sup>92</sup> Nebraska only allows for overnight visits in one women’s facility, and only for children under age six.<sup>93</sup> According to the Director of the DOC, Colorado also has overnight visits in its women’s prison, though its official policy directives do not mention this.<sup>94</sup> Though not in its formal policy, South

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Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

87. IOWA DEP’T OF CORR. POLICY 5.IV.J.2. (2010).

88. See, e.g., CAL. DEP’T OF CORR., OPERATIONS & REHABILITATION MANUAL 54020.30 (2007) (exempting from early termination of visits due to overcrowding those visitors who have traveled 250 miles or more and who have not visited within thirty days); COLO. DEP’T OF CORR. POLICY 300.01.IV.A, C (2009) (exempting from early termination of visits due to overcrowding those visitors who have traveled 200 miles or more).

89. California, Colorado, Connecticut, Mississippi, Nebraska, New Mexico, New York, South Dakota, Washington.

90. CONN. DEP’T OF CORR. POLICY 10.6.5.E (2009).

91. This information has been confirmed by the authors with the director of ASCA and with family members of Connecticut inmates.

92. MISS. DEP’T OF CORR. POLICY 31-03-01, at 1:13 (2011).

93. *Nebraska Correctional Center for Women*, NEB. DEP’T OF CORR. SERVS., <http://www.corrections.nebraska.gov/nccw.html> (last visited Oct. 10, 2012).

94. Letter from Tony Carochi, Exec. Dir., Colo. Dep’t of Corr., to the authors (Feb. 22, 2012) (on file with authors) (explaining that “the Denver Women’s Correctional Facility has implemented the Apartment Program . . . [as] an extended visitation program with an onsite apartment to facilitate overnight visits and to strengthen and maintain parental relationships between female offenders and their children”).

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Dakota also provides for weekend-long visits for incarcerated mothers and their children, which are “intended to alleviate some of the familial stress associated with the mother’s incarceration, create a better understanding of the parent role, and provide the opportunity of the inmate mother to maintain some direct responsibility for the care of her children.”<sup>95</sup>

## 10. Virtual Visits

As discussed in more depth *infra*, virtual visitation is a double-edged sword. Virtual visitation refers to video visits conducted over the internet or an intranet. Like other technological means of communication, virtual visits may make visitation far easier and cheaper for some and may also make visits less intimate or more costly for others. Some states use virtual visitation to affirmatively expand visitation opportunities, while others use it as a restrictive sanction in place of normal visits.

At least nineteen jurisdictions have some form of virtual visitation.<sup>96</sup> Indiana and Wisconsin allow video visitation when the inmate is not allowed other forms of visitation, on a temporary or permanent basis. Minnesota, New Mexico, Oregon, Pennsylvania, and Virginia, by contrast, allow for video visitation as a supplement to, rather than a replacement for, other forms of visitation. Alaska, Colorado, Florida, Georgia, Idaho, Kansas, Louisiana, New Jersey, New York, and Ohio reported that they also have programs, many of which are limited in scope and/or privately operated, but these programs do not appear in their policy directives or regulations.

The Alaska program is only for inmates at a contract facility in Hudson, Colorado run by the GEO Group; visitors must either go to a halfway house run by the GEO Group in Anchorage or use a videolink maintained by the Tanana Chiefs Conference in Fairbanks.<sup>97</sup> The Colorado program likewise exists in only one facility; the Georgia program is being piloted in women’s facilities. The New York program is facilitated, in part, by the Osborne Association. The Ohio program operates in four facilities. The Virginia program has recently expanded from one facility to ten and is now incorporated into the state’s official policy. Oregon explicitly permits video visitation in its policy documents but has decided to allow access to interactive video phones and includes the related policy directives as part of its administrative phone rule; it will offer interactive video phone calls at all institutions after piloting the concept at the two located most remotely

95. *South Dakota Women’s Prison*, S.D. DEP’T. OF CORR., <http://doc.sd.gov/adult/facilities/wp/mip.aspx> (last visited Oct. 2, 2013).

96. Alaska, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Virginia, Washington, Wisconsin.

97. E-mail from Richard Schmitz, Dir., Alaska Dep’t of Corr., to the authors (Apr. 16, 2012) (on file with authors).

from population centers. Florida, Idaho, Missouri, and Washington also have limited programs that do not appear in their policy directive or regulations.<sup>98</sup>

### *B. Similarities and Differences Across the Fifty States*

Substantial consistency and significant commonalities exist across all the jurisdictions surveyed. All states have some provisions for prison visitation; all states screen visitors and place limitations on who can visit and when; and all states provide a substantial amount of discretion to each prison's warden or superintendent in implementing the policy directives. Reading through the various policy directives, administrative regulations, and visitation codes makes clear that all DOCs treat visitation as a privilege, not a right. In most of the policies reviewed, DOCs note that inmates are not entitled to visits.<sup>99</sup>

The significant differences between states' visitation policies are also revealing. First, limits on visitation are often justified in terms of security, which may lead one to expect more consistent policies across jurisdictions than we observed. In some instances there is a direct tradeoff between security and prisoner access to the outside world through visitation such that limiting visitation increases security. However, most of the time, providing prisoners with access to the outside world through visitation decreases prison violence and facilitates rehabilitation. Thus, while contact visits may serve as a vehicle for contraband to enter the prison, they may also be essential to reduce fights in the prison and recidivism after release.<sup>100</sup> We do not know why similar security concerns yield widely variant statewide policies. Jurisdictions evaluate security in different ways in different contexts, so we need to learn more about policy in practice in order to understand this variation.

No clear regional, geographic, or political trends appear to explain the variation in policies. One might expect that certain policies—for example, overnight family visits—would exist in a state or group of states with certain common characteristics. Instead, the states in each category we examined do not appear to have much in common. The nine states that allow for overnight family visits, for example, are not from any one or even two geographic regions, and it is unclear what else of significance California, Colorado, Connecticut, Mississippi, Nebraska, New Mexico, New York, South Dakota, and Washington have in common.

98. See PATRICK DOYLE, CAMILLE FORDY & AARON HAIGHT, VT. LEGISLATIVE RESEARCH SERV., PRISON VIDEO CONFERENCING 3-6 (2011), <http://www.uvm.edu/~vlrs/CriminalJusticeandCorrections/prison%20video%20conferencing.pdf>; WASH. DEP'T OF CORR. POLICY 450.300.III, IV (2013).

99. The Supreme Court held in *Overton v. Bazzetta* that a ban on all visitation for two years following an inmate's second substance-abuse violation did not violate the Eighth Amendment, although it noted that "indefinite withdrawal of visitation or denial of procedural safeguards" might not pass muster. 539 U.S. 126, 136-37 (2003).

100. See Mohr, *supra* note 11; Duwe & Clark, *supra* note 7, at 273.

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Further, while the states often serve as laboratories of policy experimentation, one might expect some harmonization of best practices. If there has been such a harmonization or cross-pollination process, it is not apparent in several key areas. For example, North Carolina allows just one visit per week for a maximum of two hours, while New York allows its maximum-security offenders 365 days of visiting. While South Dakota allows only two people (plus family members) to be placed on an inmate's list of approved visitors, California allows inmates to list an unlimited number of visitors. It would be useful to know more about how these policies are developed and revised, both procedurally and substantively. What resources and which stakeholders are consulted when policy directives are drafted or updated? What prompts the issuance of new policies?

### C. Recent Policy Reforms

We presented our research and an early draft of this Feature at an ASCA conference in October 2012. Since then, we have continued to dialogue with many departments of corrections about policies we consider to be counterproductive outliers. In response, two states have already made significant reforms.

In February 2013, Washington state published a revised visitation policy that made numerous changes.<sup>101</sup> Most significantly, Washington removed the requirement that noncitizen visitors provide proof of legal status in the United States, and added a section outlining procedures for video visits and for "videograms."<sup>102</sup> These reforms will help ensure that inmates in Washington can maintain ties to their families and communities while incarcerated. The reforms to the identification requirements eliminated the only state policy in the country to require that visitors present proof of legal status and are a major step towards ending discrimination based on country of origin. The development of the video visitation policy helps modernize Washington's visiting options and ensure that those visitors who live across the state or out of state may still be able to maintain contact.

In July 2013, Utah announced significant reforms to its visitation policy.<sup>103</sup> Most significantly, Utah abolished what had been the only state policy in the

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101. Compare WASH. DEP'T OF CORR. POLICY 450.300 (2011), with WASH. DEP'T OF CORR. POLICY 450.300 (2013).

102. *Id.*

103. See, e.g., Brady McCombs, *English Only Rule Scrapped in Utah Prisons*, YAHOO! NEWS (July 10, 2013), <http://news.yahoo.com/english-only-rule-scrapped-utah-prisons-174729340.html> (reporting on the policy changes); Jim Shelton, *Yale Law Students Put Prison Visitation Policies Under the Microscope*, NEW HAVEN REG., July 31, 2013, <http://www.nhregister.com/general-news/20130731/yale-law-students-put-prison-visitation-policies-under-the-microscope> (highlighting the role of this research in achieving the reforms).

country to require that English be the only language spoken during visits.<sup>104</sup> Another change allows visitors to be on more than one inmate's approved visitation list.<sup>105</sup> This change will allow, for example, parents with two children in prison to visit both (though not at the same time). Yet another reform "allow[s] unmarried inmates to have more than one unmarried person of the opposite gender" listed as a friend on the approved visitor list.<sup>106</sup> The antiquated, gender-based policy this reform eliminated was originally justified in the interests of preventing fights between two girlfriends who showed up to visit on the same day, but in practice served to restrict inmates' ability to maintain contact with friends and support networks.<sup>107</sup> Overall, Utah's reforms were a significant step towards increasing equitable access to visitation.

### III. OVERNIGHT FAMILY VISITS AND VIRTUAL VISITATION

Two particular types of visitation stood out in our research as worthy of additional focus: overnight family visits and virtual visits. These forms of visitation are extremes. On the one hand, overnight family visits allow for the most intimate of human contact, as well as a wide range of interactions with spouses and children including cooking, helping with homework, changing diapers, putting to bed, and more. On the other hand, virtual video visits allow for secure visitation without contact and across great distances. Both kinds of visits are present in a minority of states. Overnight family visits have existed for approximately one hundred years in at least one state, while virtual visitation only became technologically feasible in recent years. Yet both of these forms of visitation present opportunities and risks from the perspective of prison safety on the one hand, and the rights of inmates and their families on the other. In short, these cutting edge topics make for an excellent point of departure for the research that will hopefully flow from our dataset.

The following Subsections will describe the policies that currently exist, and then discuss some potential costs and benefits of each.

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104. Brooke Adams, *Utah Prison Drops "English-Only" Rule During Visits to Inmates*, SALT LAKE TRIB., July 10, 2013, <http://www.sltrib.com/sltrib/news/56572505-78/prison-inmates-policy-rule.html.csp>.

105. *Id.*

106. *Id.*

107. *Id.* Oklahoma is one of the only other states to still have a gender-based policy along these lines. Oklahoma's comparable policy, supported by the same dubious rationale, also prohibits *married* inmates from receiving visits from friends of the opposite gender. OKLA. DEP'T OF CORR. POLICY 030118 add-01.A (2010).

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A. *Overnight Family Visits*

While most prisons limit visits to specially designated rooms under close supervision by correctional officers, several states allow for overnight family visits. Specifically, the policy directives in six states<sup>108</sup> allow for some sort of overnight family visit. Some states, such as Colorado, Nebraska, and South Dakota, provide for extended family visitation in some facilities, even though their policy directives or regulations do not mention such a program explicitly. Other states, such as Tennessee, allow for outdoor visits, including cooking and picnicking in lower-security facilities, or longer visits with family in supervised visitation rooms, but do not provide for overnight visiting. This Subsection describes the range of policies in those few states that address the issue of overnight visiting in their policy directives, as well as the costs and benefits of these rare programs.

California's "Family Visitation" program is described in the Department of Corrections and Rehabilitation Code.<sup>109</sup> Participating correctional facilities allow for overnight visitation, and provide the inmates and their families with all the necessary accommodations, except for food, at no cost.<sup>110</sup> Only those visitors meeting the statutory definition of "immediate family" are allowed to participate in the program.<sup>111</sup> Inmates convicted of sex offenses or violent offenses involving minors are barred from participating in the program, as is a broader class of inmates with extremely long sentences (such as life without parole).

Connecticut's "Extended Family Visitation" program is described in the general visitation policy directive. The program is defined as "[a] prolonged visit between an inmate and specified immediate family member(s), and/or a legal guardian, in a designated secure area separate from the inmate population."<sup>112</sup> All inmates wishing to participate in the program must be tested for tuberculosis and other unspecified contagious diseases. The policy directive does not provide many details but allows each facility offering the program to develop local rules.<sup>113</sup>

Mississippi mentions "conjugal visitation" for married inmates and extended family visits for their immediate family members as being available once every three months for up to five days at a time. There is a \$10 per night fee for use of the "family house."<sup>114</sup> Mississippi does not allow inmates who are HIV-

108. California, Connecticut, Mississippi, New Mexico, New York, Washington; see Kacy Elizabeth Wiggum, *Defining Family in American Prisons*, 30 WOMEN'S RTS. L. REP. 357, 357 (2009) (noting that seventeen states had overnight family visiting in 1993, but that by 2009 the number had dropped to six).

109. CAL. CODE REGS. tit. 15, § 3177 (2011).

110. *Id.* Note that the regulations do not stipulate the length of these visits.

111. This definition includes domestic partners.

112. CONN. DEP'T OF CORR. POLICY 10.6.3.G (2009).

113. Note that the Connecticut DOC does not, in practice, currently have any facilities that allow for overnight visitation. See *supra* notes 90-91 and accompanying text.

114. MISS. DEP'T OF CORR. POLICY 31-03-01, at 15 (2010).

positive or who have other sexually transmitted infections to receive conjugal visits from a spouse.<sup>115</sup> Overnight visitation has been in continual existence for nearly one hundred years in Mississippi.<sup>116</sup>

New Mexico's policy directive provides for "family visits," defined as "extended visit[s] between eligible inmates and their families where physical contact is allowed. Visits are conducted in the Family Visitation units," and the DOC provides accommodations in mobile or modular homes.<sup>117</sup> These visits are generally limited to spouses and children of inmates. The goal of the program is to "promote family stability, encourage participation in programming, and enhance the reintegration/rehabilitation process."<sup>118</sup> The DOC charges a fee to defray all costs associated with the family visit.<sup>119</sup> Access to the program is limited by type of conviction, disciplinary status, and security classification. New Mexico has a detailed list of eligibility requirements that vary by the inmate's sentence and must be met prior to approval of a family visit. For example, all inmates eligible for a family visit must request, schedule, and receive a family visit counseling session with medical staff before the family visit is allowed to take place. Information about the inmate's health may be communicated to his or her family prior to a family visit. In addition, inmates and their spouses are encouraged to use prophylactic devices when engaging in sexual activity, and condoms are available upon request.

The New Mexico family visit program is highly structured and divided into three phases. Phase I consists of six-hour family visits. Phase II consists of twelve-hour family visits. Finally, Phase III consists of twenty-four-hour family visits, but only those inmates who have successfully completed Phases I and II and are within one year of a projected release or discharge date may apply for Phase III visits.

115. *Id.* at 17. However, spouses "who [are] infected . . . may petition . . . for participation" in the visitation program, and uninfected spouses "may seek an exception to this rule . . . by pledging in a written petition to practice safe sex." *Id.* at 17-18.

116. Christopher Hensley, Sandra Rutland & Phyllis Gray-Ray, *Inmate Attitudes Toward the Conjugal Visitation Program in Mississippi Prisons: An Exploratory Study*, 25 AM. J. CRIM. JUST. 137, 137 (2000).

117. N.M. DEP'T CORR. POLICY CD-100200 (2010).

118. Note that New Mexico has two directives on point: one is a general family visit program directive and the other is specific to female inmates. It appears from the language of the directives that there is a female-specific program that is designed to allow children of female inmates to visit overnight though a program administered by a contractor. There is also a more general program—though it is unclear if this program is male-only—that allows spouses, children, and other family members to visit overnight. While this gender distinction may accurately reflect the reality of who visits whom and which inmates are likely to be actively engaged in parenting from prison, it also raises significant concerns. Compare N.M. DEP'T OF CORR. POLICY CD-100205 (2010), with N.M. DEP'T OF CORR. POLICY CD-100202 (2010).

119. Fees range from \$10 to \$30.

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New York's Family Reunion Program "is designed to provide approved inmates and their families the opportunity to meet for an extended period of time in privacy. The goal of the program is to preserve, enhance, and strengthen family ties that have been disrupted as a result of incarceration."<sup>120</sup> Only those inmates on good behavior and with active participation in prison programming will have access to the Family Reunion visits. Some prisoners may be denied the privilege of participating on the basis of their convictions or security statuses. Only immediate family members (a category which includes partners in same-sex marriages and civil unions) may visit, and they may only use the Family Reunion Program once they have "established a recent visiting pattern" in regular visiting rooms. The policy directive defines this as at least three regular visits over the preceding twelve months, although this requirement may be waived by the superintendent of the facility. The New York policy directive provides explanations of the program, including the application process, the punishment for violations (for example, testing positive for drug use), the protocols for contagious-disease testing and prevention, and the various forms used in administering the program.

Washington's "extended family visiting" program has been in place since 2001. The program is available to all inmates except those on death row, those in administrative segregation, and those who have recently been given disciplinary violations.<sup>121</sup> To be eligible, the inmate must actively participate in a re-entry plan including school or work.<sup>122</sup> The extended visiting program is available to immediate family of inmates, including domestic partners.<sup>123</sup> Prisons charge a \$10 per-night fee.<sup>124</sup> The purpose of the policy is to "support building sustainable relationships important to offender re-entry and to provide an incentive for those serving long-term sentences to engage in positive behavioral choices, therefore reducing violent infractions."<sup>125</sup>

Most of the state policy directives described above do not provide enough detail to allow for a meaningful comparison of overnight family visitation programs. Without knowing how many individual prisons actually offer the programs within each state, and how many inmates are eligible, it is difficult even to compare the sizes of the programs. However, the relative rarity of these programs was, in itself, notable; we wondered why more overnight family visitation programs do not exist around the country. Family visitation programs could be costly, because they would require institutions to construct modular or mobile homes, and secure them within appropriate fencing or walls. Allowing inmates, some of whom may be violent offenders, to have unsupervised visits over ex-

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120. N.Y. DEP'T OF CORR. POLICY 4500 (2007).

121. WASH. DEP'T OF CORR. POLICY 590.100 (2009).

122. *Id.* 590.100.IV.A.6.

123. *Id.* 590.100.II.

124. *Id.* 590.100.VI.A.

125. *Id.* 590.100.I.

tended periods of time may present certain risks, including the potential for physical violence and smuggling of contraband. Contagious diseases may be spread, and female inmates may become pregnant, increasing medical costs for the state.

On the other hand, those states that do have family visitation programs have maintained them, and other states might consider making the investment given their apparent positive impact on offender behavior. As far back as 1980, studies showed positive outcomes from participation in family visitation.<sup>126</sup> Participation in such programs could be a powerful incentive for good inmate behavior (if revocation effectively disincentivizes inmate misconduct), and the strengthened family ties that result may ease the transition home upon release.<sup>127</sup> Allowing conjugal visitation may also decrease sexual violence within prisons.<sup>128</sup> Family members and children who visit overnight and are thus able to build and sustain more meaningful relationships with their incarcerated parent or family member may benefit tremendously. Indeed, more generally, the positive impact of visitation on visiting family and on inmates has been well documented.<sup>129</sup> But to reap these

126. See, e.g., MACDONALD & KELLY, *supra* note 3, at 1 (finding that inmates who had participated in overnight visiting programs with their families were as much as 67 percent less likely to recidivate).

127. Studies evaluating the impact of family connections on recidivism have consistently found a strong positive effect. See Duwe & Clark, *supra* note 7; see also NANCY G. LA VIGNE, CHRISTY VISHER & JENNIFER CASTRO, URBAN INST., CHICAGO PRISONERS' EXPERIENCES RETURNING HOME 8-9 (2004), [http://www.urban.org/UploadedPDF/311115\\_ChicagoPrisoners.pdf](http://www.urban.org/UploadedPDF/311115_ChicagoPrisoners.pdf) (documenting the central role of family in facilitating prisoner reentry); MARTA NELSON, PERRY DEESS & CHARLOTTE ALLEN, VERA INST. OF JUST., THE FIRST MONTH OUT: POST-INCARCERATION EXPERIENCES IN NEW YORK CITY 8-13 (1999), [http://www.vera.org/sites/default/files/resources/downloads/first\\_month\\_out.pdf](http://www.vera.org/sites/default/files/resources/downloads/first_month_out.pdf) (noting the role of family and friends in supporting inmates immediately after reentry); CHRISTY VISHER ET AL., URBAN INSTIT., BALTIMORE PRISONERS' EXPERIENCES RETURNING HOME (2004), [http://www.urban.org/UploadedPDF/310946\\_BaltimorePrisoners.pdf](http://www.urban.org/UploadedPDF/310946_BaltimorePrisoners.pdf) (finding that families play an important supporting role for people recently released from prison); Bales & Mears, *supra* note 5 (studying the correlation between visitation and recidivism); Rebecca L. Naser & Christy Visher, *Family Members' Experiences with Incarceration and Reentry*, 7 W. CRIMINOLOGY REV. 20 (2006) (exploring the impact of incarceration and return on inmates and their families).

128. See Stewart J. D'Alessio, Jamie Flexon & Lisa Stolzenberg, *The Effect of Conjugal Visitation on Sexual Violence in Prison*, AM. J. CRIM. JUST. (Feb. 2012), <http://www.prearesourcecenter.org/sites/default/files/library/theeffectofconjugalvisitation.pdf> (finding that, after controlling for a variety of likely determinants of prison rape, the rate of inmate-on-inmate sexual violence was approximately four times lower—a statistically significant finding—in states with conjugal visitation programs than in those without); see also Rachel Wyatt, Note, *Male Rape in U.S. Prisons: Are Conjugal Visits the Answer?*, 37 CASE W. RES. J. INT'L L. 579 (2006) (advocating for conjugal visits as a way to reduce prison rape).

129. See CHILDREN WITH PARENTS IN PRISON: CHILD WELFARE POLICY, PROGRAM, AND PRACTICE ISSUES 13 (Cynthia Seymour & Creasie Finney Hairston eds., 2001); Denise

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benefits, DOCs must be willing to invest the resources to establish, maintain, and administer family visitation programs, and also to take on the liability that inevitably comes with extended, unsupervised visits.

Finally, political obstacles to developing family visitation programs in other states might include the difficulty of appropriating funds for prison programming, especially in times of widespread budget deficits. Overnight visitation programs may be particularly subject to attack as insufficiently punitive. Thus, before arguing for expansion into other jurisdictions, policy advocacy in this area may have to begin by justifying those programs that exist.

### B. Virtual Visitation

Virtual visitation has been implemented in a limited number of states, either to enable visitation where long distances create barriers or to enhance security where contact visits present safety concerns.

For a mother and child living in New York City whose husband and father is incarcerated at Attica Correctional Facility in upstate New York, it would take six hours to drive to the prison. Without a car, the journey by bus may be difficult to schedule. In addition to transportation costs, once at Attica, the mother and child would need to pay for food and accommodations. Depending on Attica's rules and whether there is an unforeseen lockdown (eliminating all visits) or other interruption, the mother and child are not guaranteed to see their husband and father. In sum, for the mere possibility of a short visit with their husband and father, the mother and child would likely have to spend several hundred dollars and commit at least two days. In other states with more limited visiting hours, such visits may only be feasible on certain days of the week or at certain hours.

Many inmates are incarcerated far away from friends and family; sheer distance and cost serve as major barriers to visitation.<sup>130</sup> Some inmates are incarcerated out of state due to a lack of prison bed space or inadequate facilities for

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Johnston, *Parent-Child Visitation in the Jail or Prison*, in CHILDREN OF INCARCERATED PARENTS 135 (Katherine Gabel & Denise Johnston eds., 1995); Joseph Murray & David P. Farrington, *The Effects of Parental Imprisonment on Children*, 37 CRIME & JUST. 133 (2008) (reviewing literature and citing studies); Christy A. Visser & Jeremy Travis, *Transitions from Prison to Community: Understanding Individual Pathways*, 29 ANN. REV. SOC. 89, 100 (2003); Note, *On Prisoners and Parenting: Preserving the Tie That Binds*, 87 YALE L.J. 1408 (1978) (arguing that facilitating child-parent bonds in the context of incarceration is in the interests of the children); see also STEVE CHRISTIAN, NAT'L CONFERENCE OF STATE LEGISLATURES, CHILDREN OF INCARCERATED PARENTS 1, 13 (2009), [http://www.cga.ct.gov/COC/PDFs/fatherhood/NCSL\\_ChildrenOfIncarceratedParents\\_0309.pdf](http://www.cga.ct.gov/COC/PDFs/fatherhood/NCSL_ChildrenOfIncarceratedParents_0309.pdf) (suggesting that visitation may be a crucial part of breaking intergenerational cycles of incarceration).

130. For example, 62% of parents in state correctional facilities and 84% of parents in federal facilities were incarcerated more than 100 miles from their place of residence at arrest; only 15% of parents in state facilities and about 5% of parents in the federal system were incarcerated within 50 miles of their place of residence at arrest. Sarah Schirmer et al., *Incarcerated Parents and Their Children: Trends 1991-2007*,

housing specific offenders, or because out-of-state facilities are less expensive than in-state facilities. Other inmates are housed within their home states, but still hundreds of miles from their homes (for example, New York City residents housed in upstate New York). And from a security standpoint, in-person visitation presents a number of concerns, among them the potential for inmates to exchange contraband or to engage in dangerous conduct.

These programs generally, although not always, charge inmates or their visitors money. DOCs may also pay to install and operate virtual visitation facilities, both in correctional institutions and in the centers where visitors come to use the system. In assessing the value of virtual-visitation programs for inmates, visitors, and institutions, it will be important to compare the costs of these visits for each party to the costs of contact visits and phone calls. In part because prisoners are a captive market, phone calls to and from prisons are often much more expensive than normal calls.<sup>131</sup> There is a danger that the fees associated with virtual visitation will be used to exploit prisoners and their families,<sup>132</sup> especially if other forms of visitation are eliminated.

In the last decade, several private vendors have developed technologies that facilitate virtual visits over web-based or closed-circuit cameras.<sup>133</sup> One company,

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SENTENCING PROJECT 8 (2009), [http://www.sentencingproject.org/doc/publications/publications/inc\\_incarceratedparents.pdf](http://www.sentencingproject.org/doc/publications/publications/inc_incarceratedparents.pdf); see also Susan D. Phillips, *Video Visits for Children Whose Parents Are Incarcerated: In Whose Best Interest?*, SENTENCING PROJECT (2012), [http://www.sentencingproject.org/doc/publications/cc\\_video\\_visitation\\_white\\_paper.pdf](http://www.sentencingproject.org/doc/publications/cc_video_visitation_white_paper.pdf) (“Distance, along with the high costs of transportation, food, lodging, and the time involved make it difficult for families to take children to visit their parents.”).

131. *Why Does It Cost So Much for Prisoners to Keep in Touch with Their Families?*, ECONOMIST, May 25, 2013, <http://www.economist.com/news/united-states/21578411-why-does-it-cost-so-much-prisoners-keep-touch-their-families-cell-phones> (“Prisoners’ families tend to be poor. Talking to a brother, son or father behind bars can incur an upfront fee as high as \$4.99; per-minute charges may reach \$0.89. Americans at liberty, even if they don’t have Skype, can easily get unlimited domestic calls for \$9.99 a month. That would buy one six-minute call from a state prison in Georgia to a neighbouring state. Outside prison, phone companies compete fiercely for customers. Inside, they don’t have to. Each state typically grants a single company a monopoly over telephones in any given prison.”). Additionally, phone calls from prisons are often more expensive as a result of additional security technologies and because facilities receive revenues from the phone companies that operate these systems. See *id.*; Todd Shields, *Prison Phones Prove Captive Market for Private Equity*, BLOOMBERG NEWS (Oct. 4, 2012), <http://www.bloomberg.com/news/2012-10-04/prison-phones-prove-captive-market-for-private-equity.html>.

132. *Id.*

133. In addition to JPay, Primonics, Inc. has created a “Televisit Corrections” system to “reduce the need for physical visits” to jail facilities. *Westchester County Department of Corrections Selects Primonics’ Televisit Corrections Solution*, CORRECTIONS.COM

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JPay, has developed electronic kiosks installed in prison facilities that allow inmates to participate in video visits with friends and family using a personal computer. JPay advertises the service as “reduc[ing] traffic at the facilities and sav[ing] friends and family the cost of traveling to and from the facilities. Video visitation also facilitates a reduction in inmate movement; thereby increasing security within the facility.”<sup>134</sup> Private industry will likely play a continued role in promoting this form of visitation. Private vendors stand to gain from expanding their market. Companies like JPay will profit from installing access points for inmates, charging visitors and inmates for using the service, and potentially even from including advertising on the video feeds.<sup>135</sup>

The oldest continually running virtual visitation program in the country is in Pennsylvania.<sup>136</sup> In 2001, with a federal grant,<sup>137</sup> the Pennsylvania DOC and the nonprofit Pennsylvania Prison Society entered a partnership to provide inmates at a handful of state prisons the opportunity to visit with their families in Philadelphia via videoconferencing.<sup>138</sup> The goal of the program was to maintain family

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(Mar. 6, 2009), [http://www.corrections.com/vendor/show\\_press/15701](http://www.corrections.com/vendor/show_press/15701) (promoting its product as cost-saving for Westchester County, New York’s jail system).

134. Lisa Chunovic, *KDOC Contracts for Inmate Banking, Electronic Messaging, Video Visitations*, GOV. SECURITY NEWS, Sept. 23, 2009, [http://www.gsnmagazine.com/article/19246/kdoc\\_contracts\\_inmate\\_banking\\_electronic\\_messaging](http://www.gsnmagazine.com/article/19246/kdoc_contracts_inmate_banking_electronic_messaging).
135. *Jail Selling Ad Space on Video Visitation Monitors*, NBC2 (Oct. 7, 2009), <http://www.nbc-2.com/Global/story.asp?S=11267954> (“A few months ago, the Charlotte County Jail added video visitation for inmates in a separate building so inmates can have video contact with their friends, loved ones, and professionals. Visitors are no longer allowed to go into the main jail building for visitations. Officials with the Bureau of Corrections say the video terminals offer the opportunity to place advertisements that will be seen by both inmates and visitors and say the idea may be the first in the whole country.”).
136. DOYLE, FORDY & HAIGHT, *supra* note 98, at 2 (“[Pennsylvania’s] program was the first of its kind in the U.S.”). Predating the 2001 program, video conferencing for incarcerated inmates had been used for inmates to “attend court hearings . . . , reducing the costs and risks of transporting them to court.” Video conferencing “has also been discussed” for possible use during “inmate medical examinations.” Melissa Crabbe, *Virtual Visitation Program Uses Video Conferencing to Strengthen Prisoner Contacts with Families and Children*, 6 OFFENDER PROGRAMS REP. 35, 35 (2002). In Michigan, the Department of Corrections provided video visitation at no cost from 1998 to 1999 while the state temporarily housed prisoners in Virginia.
137. Crabbe, *supra* note 136, at 35 (noting that the “program is funded through a three-year federal grant through the Pennsylvania Commission on Crime and Delinquency”).
138. Katy Califa, *Prisoners as Parents: The Importance of Strong Parent-Child Relationships During Parental Incarceration* 21 (Stanford U. Crim. Just. Ctr., Working Paper, 2006), <http://papers.ssrn.com/abstract=977050>.

ties.<sup>139</sup> The initial program received positive feedback from inmates and corrections officials.<sup>140</sup> Today, the program has expanded from four prisons to eight prisons in Pennsylvania, as well as one in Michigan and one in Virginia, where some Pennsylvania inmates are housed.<sup>141</sup> The program allows families “real time” visits with inmates. Families can schedule a fifty-five-minute visit once a month in the Prison Society’s Philadelphia office, where the Society provides family-friendly rooms.<sup>142</sup> According to the DOC policy directive, families can also schedule visits in the Pittsburgh area.<sup>143</sup> Visits cost \$20, effectively pricing out many prisoners and their families.

As we noted, seven jurisdictions provide for some form of video visitation in their policy directives or regulations,<sup>144</sup> while another twelve have also implemented programs that are not mentioned in their policy directives.<sup>145</sup> Indiana and Wisconsin allow video visitation where the inmate is not permitted other forms of visitation. Wisconsin can limit inmates’ visitation to “no contact visits or visitation provided by technological means not requiring direct personal contact,

139. *Id.* Although the program still exists in a similar form, as of November 2011 it is no longer operating in partnership with the Pennsylvania Prison Society “due to a lack of funding.” *Virtual Visitation*, PA. PRISON SOC’Y, [http://www.prisonsociety.org/progs/ifs\\_fvv.shtml](http://www.prisonsociety.org/progs/ifs_fvv.shtml) (last visited Oct. 10, 2012); see *id.* (“Family Virtual Visitation’s goal was to help inmates incarcerated far from home stay connected to their families. Some family members cannot travel the long distance to prison locations due to their age, the cost of transportation, or disabilities. The virtual visits provided an opportunity for families who might not otherwise have a chance to see their loved ones at all. We believe that creating stronger links between families is important for the stability of the inmate’s family and his/her successful reentry into the community. Increasing the frequency of family visits helped support family relationships and improved the inmate’s ability to adjust to life in prison.”).

140. Crabbe, *supra* note 136 (“Participating in the virtual visitation program has been viewed as an effective inmate management tool. Better behavior from inmates involved in the program has been identified, as well as inmates providing positive feedback, indicating program success. However, the program has not come about without encountering obstacles, such as whether to allow program participation by sex offenders, and future funding. Part of the success of the program is that few, if any negative incidents have taken place in the first year of operation.”).

141. *Virtual Visitation*, *supra* note 139.

142. *Id.*

143. PA. DEP’T OF CORR. POLICY DC-ADM 812 §1-K (2009).

144. Indiana, Minnesota, New Mexico, Oregon, Pennsylvania, Virginia, Wisconsin.

145. The programs of Alaska, Colorado, Florida, Georgia, Idaho, Kansas, Louisiana, Missouri, New Jersey, New York, Ohio, and Washington are not addressed in detail because they do not appear in the states’ policy directives. Washington plans to pilot a JPay program at its women’s prison in the near future. Note, too, that Michigan has used video conferencing technology for more than a decade to save on inmate transportation costs for doctor’s visits, parole hearings and so forth, but not for visiting. DOYLE ET AL., *supra* note 98, at 3.

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such as video connections.”<sup>146</sup> Indiana’s policy directive has tied together the two concepts of video visitation and “non-contact” visitation,<sup>147</sup> such that video visitation is offered as an alternative to contact visits only when contact visits are prohibited.<sup>148</sup> Offenders in segregation may also have access to video visitation when restricted to “non-contact” visits. Indiana defines video visitation as a “method of visitation that allows offenders to visit through electronic media”<sup>149</sup> and does not specify whether a visitor can conduct her visit from home or is required to appear at a specific location. One provision does indicate that visitors could video-conference from outside a facility through vendors, where available.<sup>150</sup>

Pennsylvania’s policy directive provides the most comprehensive explanation of any virtual visitation program:

1. Virtual Visitation shall be available at the facilities listed in the Virtual Visiting Program Facilities . . . and limited to persons living in the Philadelphia and Pittsburgh areas.
2. The Virtual Visitation Program uses video conferencing technology as a means to:
  - a. enhance the parenting skills program;
  - b. allow an inmate to visit with immediate family members, caregivers of the inmate’s children, and other individuals on the inmate’s approved visiting list approved by the Facility

146. WIS. ADMIN. CODE DOC § 309.08(3) (2010). Wisconsin also intends to create a program for tele-visits, with terminals at community sites, for visitors who would have to travel long distances.

147. “Non-contact” visits usually take place in person, with the visitor on one side of a glass barrier. These visits minimize the risk of contraband exchange or violence between a prisoner and a visitor. A prisoner may be restricted to “non-contact” visits as a sanction for previous contraband or misbehavior, or because of his security classification.

148. IND. DEP’T OF CORR. POLICY & ADMIN. PROC. 02-01-102 § II (“The Department recognizes that in some cases, the visitation privilege can be abused or used for inappropriate purposes and for this reason the Department shall establish visitation guidelines. These guidelines may include the imposition of restrictions ranging from non-contact visits, including video visits, to not allowing certain persons to visit.”).

149. *Id.* § III; *see id.* § XVIII (“Offenders who are placed on non-contact visitation may have the option of regular non-contact visits, intra-facility video visitation or video visitation through a vendor, if these options are available at the facility. There shall be no cost for intra-facility video visitation; however, there may be a cost associated with video visitation provided by a vendor.”).

150. *Id.* § XVIII. Message boards indicate that the vendor option may only be available in a handful of facilities. *See Video Visits*, JPAY FORUM, <http://forum.jpay.com/showthread.php?57-video-visits> (last visited Oct. 10, 2012) (last posting Aug. 24, 2009).

- Manager/designee with whom he/she would otherwise not be able to visit;
- c. increase the frequency of visits for an inmate with the individuals listed on the inmate's approved visiting list; and
  - d. permit the scheduling of visits at times that are best for the individuals listed on the inmate's approved visiting list.
3. The cost to the inmate or his/her family participating in this program shall be determined by the Department.
4. Inmate participation in the Virtual Visitation Program is voluntary and every inmate in general population status, regardless of his/her custody level, is eligible. An inmate housed in Administrative and Disciplinary Custody is not permitted to participate in the Virtual Visitation Program. . . .
6. The Department shall attempt to reserve at least 10 percent of the Virtual Visitation Program visiting slots per month for long-term offender inmates. A long-term offender inmate is defined as having a minimum sentence of 10 or more years and an inmate serving a life sentence.
7. Up to five persons will be permitted to visit if space permits. . . .<sup>151</sup>

New Mexico and Oregon follow the Pennsylvania model with affirmative forms of virtual visitation. New Mexico distinguishes between "video visitation" and "tele-visits." A video visit is a restricted "non-contact visit using video cameras to permit visits between an inmate and any visitor"<sup>152</sup> that is used within the prison "when a resident is not allowed to visit face-to-face."<sup>153</sup> Tele-visits are "[p]rearranged televised visits coordinated through [partner organization] PBJ Family Services, Inc. and the facility between inmates and their child/children from the facility to a community site. The visits are designed to promote healthy family relationships by reunifying and connecting children with their incarcerated parents."<sup>154</sup> Inmates must meet certain criteria to be eligible for tele-visits and the "child/children participating in the visit must be relatives or the inmate must have been in a parenting relationship prior to the incarceration."<sup>155</sup> Once inmates have met the eligibility requirements, New Mexico provides a detailed step-by-step process for arranging a tele-visit.<sup>156</sup> Much like tele-visits, Oregon

151. PA. DEP'T OF CORR. POLICY DC-ADM 812 §1-K (2009).

152. N.M. DEP'T OF CORR. POLICY CD-100200, at 4 (2010).

153. N.M. DEP'T OF CORR., GUIDE FOR FAMILIES AND FRIENDS OF JUSTICE INVOLVED NEW MEXICANS 10, [http://www.corrections.state.nm.us/ocs/docs/Offender\\_Family\\_Guidebook.pdf](http://www.corrections.state.nm.us/ocs/docs/Offender_Family_Guidebook.pdf).

154. N.M. DEP'T OF CORR. POLICY CD-100200, at 4 (2010).

155. *Id.*

156. The policy notes:

- 1. The facility coordinator will communicate with the designated contact staff at Peanut Butter and Jelly (PB & J) Family Services, Inc., to inform of

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also provides an affirmative form of visitation. Oregon has established video interactive phones that will be available to all inmates.<sup>157</sup>

According to the Virginia DOC website, it appears that Virginia has followed Pennsylvania's model of partnering with nonprofits and establishing off-site visiting centers for visitors to log into the system.<sup>158</sup> Virginia's program is now included in its DOC policy for those "selected facilities" where it is available.<sup>159</sup>

As with any technological innovation and any correctional policy, video visitation has potential trade-offs. Among the salutary benefits, video visits can enhance access to visits for far-flung relatives and friends, young children who may be unable to comply with prison visiting rules, and elderly and disabled visitors. Video visits can save the cost and time of travel for visitors, as well as reduce costs for prison facilities.<sup>160</sup> The possibility for the exchange of contraband is elimi-

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the approval and the regional area where the child/children are located. The Tele-visit Application Form (CD-100204.1) indicating approval will be faxed to PB & J informing that the visit was approved at the facility level.

2. PB & J will contact the family and provide assistance in preparing the child/children for the visit, through support and therapy as needed. PB & J will inform the designated prison coordinator that the family has agreed to the visit and services.

3. PB & J will schedule the visit at the community site, make arrangements for transportation, and coordinate the time and date with the prison sponsor.

4. PB & J will provide ongoing support and therapy for the child/children following each of the visits. PB & J will coach inmate parents before and after the visit if needed.

5. Following each visit, PB & J staff will document an evaluation of the televised visit.

6. Prior to the actual visit, PB & J will conduct a tele-visit orientation with the inmate parent. The session will explain the program and process.

7. PB & J staff will conduct a group session yearly with the parent inmate for feedback and evaluation. The Corrections Family Services Liaison will coordinate this session.

*Id.*

157. OR. ADMIN. RULE 291-127-0210 (2011). This program became active November 1, 2012.

158. *Video Visitation Program*, VA. DEP'T OF CORR., <http://www.vadoc.state.va.us/offenders/prison-life/videovisitation.shtm> (last visited Oct. 10, 2012).

159. VA. DEP'T OF CORR. POLICY 851.1.IV.O (2012).

160. Primonics, Inc. claimed the technology would save Westchester County \$300,000 by increasing the efficiency of visits. See Press Release, Primonics, Westchester County Department of Corrections Selects Primonics' Televisit Corrections Solution (Mar. 2, 2009), <http://ns2.primonics.com/news/Primonics-WestchesterDOC-March-2009.pdf> ("County officers like bail expeditors and probation officers don't

nated, and prisons reduce the movement of persons through their facilities. Visitors would not be subjected to intense processing and search procedures. Visitors, especially children, could choose to avoid the potential trauma and intimidation of entering a prison.<sup>161</sup>

The flip side, however, is that video visitation could be used as an alternative or replacement for in-person visits. If video visitation is cheaper, easier, and safer, then prisons may begin to prefer this form of visitation, reduce or eliminate the availability of contact visits, and place less of a priority on locating inmates in facilities near their families.<sup>162</sup> Virtual visits that replace contact visits, even if potentially more frequent and less costly for visitors, might not serve as effectively to strengthen or maintain family ties and thereby reduce recidivism. Additionally, the loss of non-contact visits (which might be viewed as equivalent to telephone call privileges) may not provide as strong a disincentive to disciplinary infractions in the prison, thereby decreasing rather than increasing security in correctional facilities.<sup>163</sup>

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have to visit the jail. It saves on the cost of transportation and of correction officers to take the prisoners in and out of the housing locations.”).

161. As the Indiana directive notes, “Facilities shall take into consideration the impact that visits with parents or grandparents in a correctional facility may have on young children, especially preschool age children.” IND. DEP’T OF CORR. POLICY 02-01-102.IV (2009).
162. This concern was raised by the *Washington Post*, in response to the decision to replace in-person visits at the D.C. jail with (free) virtual visits. Editorial, *Virtual Visits for Inmates?*, WASH. POST, July 26, 2012, [http://www.washingtonpost.com/opinions/virtual-visits-for-inmates/2012/07/26/gJQAultJCX\\_story.html](http://www.washingtonpost.com/opinions/virtual-visits-for-inmates/2012/07/26/gJQAultJCX_story.html) (“While there may be benefits to video visitation, there are also significant drawbacks. In-person visits provide the obvious benefit of strengthening family ties in times that can threaten those bonds, and they do much to preserve inmates’ morale.”); see Adeshina Emmanuel, *In-Person Visits Fade as Jails Set Up Video Units for Inmates and Families*, N.Y. TIMES, Aug. 7, 2012, <http://www.nytimes.com/2012/08/07/us/some-criticize-jails-as-they-move-to-video-visits.html> (reporting that in the District of Columbia, virtual visits had entirely replaced contact visits, and recounting criticism of this wholesale shift from prisoner advocates and correctional administrators alike); see also *Jail Visitation Charges*, DALLAS CHRON., Oct. 1, 2013, <http://www.thedallaschronicle.com/news/2013/oct/01/jail-visitation-changes> (reporting that inmates at the Northern Orgeon Regional Correctional Facilities would no longer be allowed in-person visits, that inmates would be afforded one free half-hour visit per week, after which visits would cost \$7.50 if conducted from a computer in the jail lobby and \$15 if from a remote computer, and that visiting hours had been extended considerably).
163. This point and the preceding one are necessarily speculative; because virtual visitation in prisons is a relatively new phenomenon, there has been no research evaluating its impact on family relationships and on inmate behavior—or assessing whether it in fact increases visitation rates, by how much, and for whom.

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Virtual visitation in prisons is still an emergent practice. Advocates in Illinois have pushed for virtual visits;<sup>164</sup> Florida has experimented with it;<sup>165</sup> and Congress inserted it into a 2004 House bill, though it did not pass.<sup>166</sup> More generally, virtual visitation is a new concept in family law, where there is a relatively sparse literature analyzing virtual visitation in child custody disputes.<sup>167</sup> Undoubtedly, the technology will spread.

As virtual visitation expands, any jurisdiction seeking to implement such a program will need to consider several important factors: (1) how and where inmates will access the interface—in the yard, in a private booth, in a shared visiting room; (2) where visitors will access their interface—at the prison itself, at a partner organization, from their homes; (3) the degree to which video visits will be used to supplement or replace in-person visits; and (4) all of the related rules that accompany other forms of visitation—the degree of monitoring for the visits, eligibility to participate, sanctions for breaking the rules, the frequency and duration of visits, etc. These decisions will likely determine the contours of virtual visitation in a state or institution—how much it is used, by whom, and to what effect.

## CONCLUSION

Our fifty-one jurisdiction survey was a significant undertaking, but much work remains to be done. This final Part considers four categories of next steps: (1) further analyzing the information already available to us; (2) relating the data we have gathered to existing indicators of correctional success or failure; (3) gathering additional information to add depth and breadth to our survey; and (4) presenting these findings in accessible formats.

First, the areas detailed *supra* Part III—extended family visitation and virtual visitation—as well as other topics in the accompanying spreadsheet, such as grievance procedures and limitations on numbers of visitors or hours of visitation, warrant more detailed treatment. As an example, additional research might

164. Jeffrey M. Levring, *Illinois Virtual Visitation for Incarcerated Fathers*, FATHERS' RIGHTS (Apr. 1, 2009), <http://dadsrights.com/index.php/illinois-virtual-visitation-for-incarcerated-fathers>.

165. Califa, *supra* note 138, at 22.

166. *Id.* at 23 n.3. The 2004 Re-Entry Enhancement Act, H.R. 5075, 108th Cong. § 101(a)(17) (2004), was introduced in, but not passed by, Congress. The bill generally supported enhanced visitation opportunities, including “developing programs and activities that support parent-child relationships, such as . . . (B) using videoconferencing to allow virtual visitation when incarcerated persons are more than 100 miles from their families.” The proposed Act also promoted family visits of the sort discussed in our previous Section.

167. See, e.g., Charles P. Kindregan, Jr., *Family Interests in Competition: Relocation and Visitation*, 36 SUFFOLK U. L. REV. 31 (2002); Anne LeVasseur, Note, *Virtual Visitation: How Will Courts Respond to a New and Emerging Issue?*, 17 QUINNIPIAC PROB. L.J. 362 (2004).

track language in regulations referring to children (or to gender, marital status, or any number of other variables) and analyze the ways in which children (or males/females, or married/unmarried persons) are specially privileged or burdened in the context of prison visitation. Another analysis might scrutinize the various ways that visitation policies define “family,” where family members are granted special privileges. For example, which states recognize civil unions as equivalent to marriages for the purposes of visitation? Further analysis might likewise focus on the category of “special visits” by attorneys, clergy, and child welfare officials bringing children in their charge to see a parent. These arrangements tend to be subject to their own particular rules, and many states have detailed provisions on point. With the wealth of information in our spreadsheet and database, there are numerous other topics that could be worth pursuing.

Second, it could be valuable to combine the data we have gathered about visitation policies with data about correctional outcomes, such as recidivism rates and institutional security, to learn about correlations between certain visitation policies and better or worse correctional outcomes. These correlations could then in turn prompt research to better understand whether and how overall rates of visitation and specific features of visitation systems contributed to or detracted from the correctional missions of security and rehabilitation.<sup>168</sup>

Third, gathering more information could substantially enhance the value of our data for scholars, policymakers, and practitioners. Specifically, as we discussed, it would be useful to get more information on how visitation policies operate at the level of individual institutions. The administrator of each facility has substantial discretion to implement policies, and hence there is an inevitable gap between policies on paper and in practice.<sup>169</sup> Similarly, it would be useful to look into the legislative or regulatory process used in each jurisdiction to develop the regulations or policy directives currently on the books. In addition, other studies could adopt a broader scope by looking at visitation policies in detention facilities not covered by this data set, including jails and immigration detention centers.

Fourth, it would be valuable to present the information we have gathered in a format that is accessible not only to those who make and study visitation regulations, but also to those whose interpersonal relationships are so profoundly affected by them: inmates and their families and friends. Ensuring that prisoners

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168. See, e.g., Duwe & Clark, *supra* note 7 (studying the impact of visitation on recidivism).

169. Disparities between policy and practice might occur for any number of reasons, including variation between the inmate populations housed within different facilities, the locations of the facilities, physical infrastructure and staffing capacity, and attitudes towards visitation held by management and officers. Moreover, different sub-groups of prisoners are affected by different policies. One key sub-group is female prisoners, who may be affected differently than male prisoners by visitation rules. Security classification also likely has a significant impact on how prisoners are affected by visitation policies. These key differences, which could be a rich area for future research, are not adequately accounted for by the categories we tracked in policy directives.

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and prison visitors can easily access clear and comprehensive information about the rules governing their visits would allow them to maximize contact with loved ones and avoid frustration, and would promote institutional security through compliance. Discretion will always be a necessary feature of visitation management, but making visitation policies and their implementation in practice more transparent might even create opportunities for those who participate in the visitation process to work with correctional administrators to improve it.

In conducting the first fifty-state survey of prison visitation regulations, we have likely raised more questions than we answered. This Feature offers a sense of the policy landscape, and through further work on our part and the part of other researchers, we aim to better understand the ways these policies operate in practice and impact specific groups of inmates and their families and friends. We hope, too, that this research will offer correctional administrators the tools to consider their own and other states' approaches and develop best practices.