
YALE LAW & POLICY REVIEW

Taking Stock and Moving Forward to Improve Prison Visitation Practices: A Response to *Prison Visitation Policies: A Fifty-State Survey*

Philip M. Genty*

INTRODUCTION

*Prison Visitation Policies: A Fifty-State Survey*¹ is a wonderful resource. The authors' painstaking research has resulted in a dataset of immense importance. In addition, the authors have gone beyond simply describing their findings and have highlighted some of the issues they believe to be most significant. The authors express the hope that their work will both provide a useful body of information and be a catalyst for the research of others. An additional goal, already accomplished to some extent, is that the compilation and presentation of information from all of the states and the Federal Bureau of Prisons will encourage the administrators of the prison systems in these jurisdictions to engage with and learn from each other, thereby improving prison visitation policies throughout the United States.

In this Response, I want to offer my own suggestions for next steps that might be taken to build upon the impressive work of this study. These suggestions fall into four categories, some of which track those the authors offer in their concluding Section: (1) further analyzing the data the authors already have; (2) correlating data relating to *quantity* of visits with other existing statistical studies; (3) analyzing factors relating to *quality* of visits; and (4) undertaking further research. Each of these is discussed below.

* Everett B. Birch Innovative Teaching Clinical Professor in Professional Responsibility, Columbia Law School; Director, Prisoners and Families Clinic.

1. Chesa Boudin, Trevor Stutz & Aaron Littman, *Prison Visitation Policies: A Fifty-State Survey*, 32 YALE L. & POL'Y REV. 149 (2013).

I. FURTHER ANALYSIS OF DATA ALREADY OBTAINED

With respect to the information that the authors have already accumulated, it would be useful to step back and comment upon the patterns the authors have found in the state statutes, regulations, and directives. The authors identify a number of important issues, but their discussion also raises significant questions that should be explored. For example, is it possible to offer some general conclusions about aspects of prison visitation that need to be changed and improved? Are there states that stand out as being especially deficient in the way they handle prison visitation? Conversely, are there states that handle prison visitation especially well, and, if so, what are their particular strengths? Are there particular statutes, regulations, or directives that could serve as national models and should be replicated? Answering these questions will enhance the value of the authors' data.

II. CORRELATION OF DATA RELATING TO QUANTITY OF VISITS WITH OTHER EXISTING STATISTICAL STUDIES

The authors present a wealth of statistical information about state provisions relating to the frequency and length of visits. They discuss the differences among the states in what is permitted. They also note that some states provide for a "floor" for the minimum number of required visits, while others have "ceilings" that significantly limit incarcerated individuals' access to visits. They also discuss variation among the states with respect to extended or overnight visits, especially for those who have traveled an especially long distance to visit.

It would be instructive to correlate this information with available data about the visitation that actually occurs in each state. For example, the Bureau of Justice Statistics special report, *Parents in Prison and Their Minor Children*, provides aggregate national data about the frequency and type of contact that occurs between incarcerated parents and their minor children.² It would be possible to disaggregate the data by state and see what patterns emerge. One might expect that states in which visits occurred least frequently would be those with the strictest visitation policies. If so, this would support arguments about the harm to families caused by restricting visits and provide support for advocacy efforts to liberalize prison visitation in those states, including the provision of extended and overnight visits.

A comparison could also be made between the authors' findings about state visitation policies and available data about foster-care outcomes.³ One might expect that, for incarcerated parents with children in foster care, restrictive state

2. Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, BUREAU JUST. STAT. 18 tbl.10 (2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/pptmc.pdf>.

3. See, e.g., *Children of Incarcerated Parents in New York State: A Data Analysis*, N.Y.S. DIV. CRIMINAL JUSTICE SERVS. 11 (2013), http://www.doccs.ny.gov/NewsRoom/children_of_incarcerated_parents2013.pdf (finding that for 80 percent of children in foster care with a parent incarcerated in New York, parental rights had already

visitation policies would lead to a higher number of cases in which parental rights of incarcerated parents were terminated. Again, this would support advocacy efforts in those states to make it easier for children in foster care to have frequent and lengthy visits with their incarcerated parents in order to preserve and strengthen the parent-child relationship.

III. ANALYSIS OF FACTORS RELATING TO QUALITY OF VISITS

In addition to quantitative data about state provisions regulating frequency and length of visits, the authors present a rich body of information about policies relating to the qualitative aspects of visitation. For example, they discuss variation among the states with respect to whether contact visits are permitted; the nature of the searches to which the visitors are subjected; restrictions on dress code and behavior of visitors; and provisions relating to visits by children. The information about extended and overnight visits included in the above discussion of frequency and length of visits is also a relevant factor in assessing the quality of the visits.

While these categories are interesting when considered in isolation, the various qualitative categories within each state could be combined to draw some conclusions about the *overall experience of visiting* in each state. For example, it would be interesting to know whether visitors in a given state are subjected to a combination of invasive searches, severe restrictions on dress and behavior, and a lack of child-oriented facilities, and whether—having endured all of this—the visitors are even allowed to have contact visits with their loved ones. It would be helpful to discuss what makes for a good visiting experience and—analyzing each state’s policies across the qualitative categories—offer conclusions about which states offer such an experience to visitors and incarcerated individuals and which states are deficient. It might even be possible to develop a “quality of visitation index” ranking the states according to this combination of qualitative categories.⁴

been terminated or were in the process of termination). A number of reports and data sets prepared by different subdivisions of the Administration for Children and Families of the United States Department of Health and Human Services could be useful in this inquiry. See, e.g., *Child Welfare Outcomes Report Data*, CHILDRENS BUREAU, U.S. DEP’T HEALTH & HUMAN SERVS., <http://cwoutcomes.acf.hhs.gov/data/overview> (last visited Dec. 13, 2013).

4. Two detailed research studies have documented the importance of the quality of visits in supporting the parent-child relationship and mediating the trauma to children of parental incarceration. See Jonathan J. Beckmeyer & Joyce A. Arditti, *Implications of In-Person Visits for Incarcerated Parents’ Family Relationships and Parenting Experience*, J. OFFENDER REHABILITATION (forthcoming 2013); Joyce A. Arditti & Jyoti Savla, *Parental Incarceration and Child Trauma Symptoms in Single Caregiver Homes: Effects of Parental Incarceration* (2013) (unpublished manuscript) (on file with author). Interestingly, Beckmeyer and Arditti found that visitation *frequency* was much less important than visitation *quality* in maintaining parent-child relationships. Beckmeyer & Arditti, *supra*, at 17-18.

As with the quantitative categories, such an analysis of the qualitative categories is crucial to understanding which states support the maintenance of family ties and which states undermine them. If the restrictions imposed upon visitors make the experience of visiting oppressive, this will create a significant disincentive for continuing to visit. Over time, children—especially adolescents and older teens—may simply refuse to go on visits, and the parent-child relationships will gradually wither and die. As with the quantitative categories discussed above, we would therefore expect to find that fewer visits occur in states that impose the greatest restrictions on the conditions of visitation.

In addition to combining the qualitative categories discussed in the report to analyze the overall experience of visitation, this analysis could be linked more directly to the report's detailed discussion of virtual visits. It is likely that children and family members would find virtual visits most acceptable and even desirable in those states that impose the greatest restrictions on the conditions of actual visits. Connecting the analyses of qualitative aspects of visits and virtual visitation in this way would provide additional context for the authors' discussion of the pros and cons of virtual visits.

IV. POSSIBLE ADDITIONAL RESEARCH

As noted above, the authors provide their own thoughtful suggestions for additional research in their concluding Section. Several other possible areas of inquiry might be added to their list.

First, state court cases involving prison visitation might provide additional insight into the actual practices within the states. It would be instructive to learn whether any of the regulations and directives discussed in the report have been litigated and interpreted by the state courts. If so, favorable decisions might be used as models for advocacy in other states.

Second, one aspect of visitation that the authors do not really explore is the extent to which states provide transportation assistance (e.g., free or subsidized bus service) to make it easier for family members and others to visit their loved ones in prison. Prisons are often located at great distances from the communities in which the families live,⁵ so access to affordable transportation is crucial. Otherwise, many people will simply be unable to visit on a regular basis—or at all. It would therefore be useful to research what transportation, if any, is available in each of the states and to highlight any states that have model transportation programs.

5. Fifty-one percent of incarcerated parents in state prisons are imprisoned between 100 and 500 miles from home, and 11% are incarcerated more than 500 miles away. For parents incarcerated in federal prisons, 41% are imprisoned between 100 and 500 miles from home, and 43% percent are incarcerated more than 500 miles from home. Christopher J. Mumola, *Incarcerated Parents and Their Children*, BUREAU JUST. STAT. 5 (2000), <http://bjs.ojp.usdoj.gov/content/pub/pdf/iptc.pdf>.

Third, to provide support for efforts to improve visitation policies, research might be done about “best practices” for visitation in other contexts. For example, there is a good body of literature about parent-child visits in the child-welfare and foster-care contexts. Some of the most important research and recommendations have come from the government agencies themselves.⁶ Increasingly, these agencies have begun to look critically at restrictive visitation policies and to suggest that these do not serve the needs of the families. The agencies have recommended conducting visits in a way that will make them feel as natural as possible. Similar examinations of visitation practices should be conducted in the prison context.

A final, critically important area of possible research would be to conduct interviews with or survey family members. In their report, the authors understandably focus primarily on the perspective of the people who are incarcerated, but it would be useful to get a fuller sense of the perspectives of the family members and other visitors on these issues. For example: how would they describe their experiences with prison visits? What are their highest priorities? What aspects of visitation matter most to them? In what ways have their experiences with prison visits been positive? What are the most difficult parts of the process? What aspects of the experience would they most want to see changed and improved? Interviews and surveys could be used to develop narratives of prison visiting experiences. Such narratives can be an especially powerful tool for public education about the need for policy reforms.⁷

-
6. See, e.g., Ronald K. Chen, *Protecting and Promoting Meaningful Connections: The Importance of Quality Family Time in Parent-Child Visitation*, N.J. OFF. OF THE CHILD ADVOC. (2010), <http://www.state.nj.us/chiladvocate/reports/other/OCA%20Visitation%20Brief%20-%201-14-10.pdf>; *Child and Family Visitation: A Practice Guide to Support Lasting Reunification and Preserving Family Connections for Children in Foster Care*, MINN. DEP'T OF HUM. SERVICES (2009), <https://edocs.dhs.state.mn.us/lfserver/Legacy/DHS-5552-ENG>; *Determining the Appropriate Level of Supervision Needed During Visits for Families with Children in Foster Care*, Policy No. 2012/01, CITY OF N.Y. ADMIN. FOR CHILDREN'S SERV. (2012), http://www.nyc.gov/html/acs/downloads/providers_newsletter/july25/ACS%20Visitation%20Policy%20July%2017,2012.pdf; *Parent-Child Visits: Managing the Challenges, Reaping the Rewards*, N.C. DIV. OF SOC. SERVICES (2010), <http://www.fosteringperspectives.org/fpv15n1/v15n1.htm>; *Practice Bulletin: Family Interaction as a Pathway to Permanency*, IOWA DEP'T OF HUM. SERVICES (2009), http://www.dhs.state.ia.us/docs/10.09_Family_Interaction_Practice_Bulletin.pdf.
 7. For a vivid description of the process of traveling to and visiting an incarcerated father, see ADRIAN NICOLE LEBLANC, *RANDOM FAMILY: LOVE, DRUGS, TROUBLE, AND COMING OF AGE IN THE BRONX 188-94* (2003). For a good general discussion of prison visitation, see NELL BERNSTEIN, *ALL ALONE IN THE WORLD: CHILDREN OF THE INCARCERATED* 71-108 (2005).

CONCLUSION

An essential component of sound prison administration is ensuring that those who are incarcerated are able to remain connected to their families and other loved ones in a meaningful way. Visitation is a crucial part of this. *Prison Visitation Policies: A Fifty-State Survey* provides a solid foundation of knowledge of current visitation policies and documents the many ways in which the states are falling far short of this goal. But beyond this, the Feature will serve as a springboard for further analysis, reflection, and efforts to improve prison visitation. The research, policy, and advocacy communities owe a debt of gratitude to Chesa Boudin, Trevor Stutz, and Aaron Littman for their groundbreaking work.