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A Proposal for Considering Intoxication at
Sentencing Hearings: Part I

Charles J. Felker

Alcohol and Crime on the Reservation: A
10-Year Perspective

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Views on AIDS in Probation

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This Issue in Brief

A Proposal for Considering Intoxication at Sentencing Hearings: Part I.—What sentence should a judge impose on a convicted offender who was intoxicated at the time he committed the crime? The U.S. Sentencing Commission decided that an offender's intoxication is "not ordinarily relevant" to his sentence. Author Charles Felker proposes, instead, that intoxication is a relevant and important factor in determining an appropriate sentence. In Part I of this article, the author surveys current theories about the connection between alcohol and crime, the responsibility of alcohol abusers for their acts, and the way offender intoxication affects the purposes of sentencing. In Part II, the author will develop a specific proposal based on a survey of state laws and cases.

Alcohol and Crime on the Reservation: A 10-Year Perspective.—Author Darrell K. Mills examines the relationship between alcohol abuse and crime on the part of Indian felony defendants in the Federal District Court in Wyoming from 1978-88. The author characterizes the types of crime and typical defendant from the reservation and focuses on the history of alcoholism, treatment, and prior arrest of these defendants. The article also discusses the issue of alcoholic denial.

Practitioners' Views on AIDS in Probation and Detention.—The question of how to provide humane and effective supervision for HIV-positive offenders or offenders with AIDS is an important issue facing policy-makers in corrections. Author Arthur J. Lurigio reports on a survey of probation and detention personnel in Illinois conducted to examine views regarding AIDS and its impact on policies, procedures, and work behavior. Comparisons were made between probation and detention personnel. Survey results indicated that probation and detention respondents anticipate that the AIDS

health crisis invariably will affect their management of cases. Detention participants were more concerned about occupational risk and precautionary measures. Both groups recommended policy and procedural guidelines governing legal liability, confidentiality, mandatory testing, case contacts, and the education of offenders and staff.

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Prison Visiting: Is It Time to Review the Rules?

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Introduction

GROWING INTEREST in the families of prisoners has begun to focus attention on the impact of incarceration on the family unit and the problems families face in their efforts to maintain ties with imprisoned relatives. National conferences have been held to explore family needs and problems, and several organizations have been formed to develop information networks for prisoners' families and those who assist them. While these efforts are important and helpful the single most important vehicle for preserving family relationships is the opportunity to spend time together—the visit. Prison officials are directly responsible for these opportunities and thus play a vital role in the maintenance of family-prisoner ties.

Visiting an incarcerated family member is inherently difficult. Time, effort, and expense constitute major obstacles to regular visits for many prisoners' families. Interaction between prisoner and visitor during the visit is often awkward, painful, and emotionally draining, and thus the visit itself mitigates against visitors' plans to return. The prison should try to assure that it does not make this already difficult experience even more so.

¹H.E. Barnes and N.K. Teeters, *New Horizons in Criminology* (3rd edition). Englewood Cliffs, NJ: Prentice Hall, 1959, p. 505.

²D. Glaser, *The Effectiveness of a Prison and Parole System*. Indianapolis: Bobbs-Merrill, 1964.

³N. Holt and D. Miller, "Explorations in Inmate-Family Relationships," *Research Report #46*. Sacramento, CA: California Department of Corrections, 1972.

⁴Robert Borgman, "The Influence of Family Visiting Upon Boys' Behavior in a Juvenile Correctional Institution," *Child Welfare*, 64(6), 1985, pp. 629-638.

⁵Sidney Friedman and T. Conway Esselstyn, "The Adjustment of Children of Jail Inmates," *Federal Probation*, 36(4), 1965, pp. 27-33; T.J. Cottle, "Angela: A Child Woman," *Social Problems*, 23(4), 1976, pp. 516-523; A. Lowenstein, "Temporary Single Parenthood—the Case of Prisoners' Families," *Family Relations*, 35, January 1986, pp. 79-85; E. Herrmann-Keeling, "When Dad Goes to Prison," *Nurturing Today*, X(1), 1988, p. 15.

⁶M. Schwartz and J. Weintraub, "The Prisoner's Wife: A Study in Crisis," *Federal Probation*, 38(4), 1974, pp. 20-26. Donald P. Schneller, "Prisoners' Families: A Study of Some Social and Psychological Effects of Incarceration on the Families of Negro Prisoners," *Criminology*, 12(4), Feb. 1975, pp. 402-415; A. Crosthwaite, "Punishment for Whom? The Prisoner or his Wife?," *International Journal of Offender Therapy*, 19(3), 1975, pp. 275-284; and others.

⁷Pauline Morris, *Prisoners and Their Families*. New York: Hart Publishing Company, Inc., 1965.

Prison officials, through the promulgation of visiting policies and regulations, help to determine the quality of the visiting experience. This article is a preliminary effort to assess visiting in American prisons through an analysis of visiting rules.

Background of the Study

Traditionally, prison officials have viewed family visits as privileges to be granted or denied the prisoner on the basis of his or her behavior. Barnes and Teeters¹ reported references to family visiting in the 1808 minutes of the board of directors of the Walnut Street Jail. Provision was made for family visits to "hardworking" and "diligent" prisoners once every 3 months for a period of 15 minutes. Viewing the visit as a reward for good behavior continued to be part of prison policy through the middle of the 20th century. Today visits are more often seen as an integral part of the rehabilitative process and as a key factor in successful post-release adjustment.

There is some empirical evidence to support the notion that visits are rehabilitative in and of themselves. Glaser found that Federal prisoners whose families demonstrated "active" interest were significantly more successful on parole than were prisoners with no family interest.² Holt and Miller reported that "loners" in California prisons were six times more likely to return to prison during their first year of release than were prisoners who received three or more visits.³ The prisoner who is released into a supportive family structure has a greater chance to achieve successful reintegration into the community than the prisoner released without a support network. Moreover, there is some evidence that visits not only increase chances of parole success but contribute to improved institutional behavior, at least among juveniles.⁴

Studies of the families of incarcerated men have focused on the adjustment problems of the prisoner's children⁵ and on the prisoner's wife, who has been described as living with her minor children in an urban area and in marginal poverty.⁶ Morris found that the primary reason that wives of English prisoners did not visit their husbands was the expense involved.⁷ Homer estimated that transportation costs to Attica Prison from New York City

constituted approximately "176.25%" of a welfare wife's total weekly income.⁸ Since the family is a "natural support system" whose involvement can improve the prisoner's release success, it has frequently been recommended that the Department of Corrections subsidize family visits.⁹ The girlfriends of prisoners are also an important potential source of release support, according to Schwartz and Zeisel, and their relationships with the prisoners might also be sympathetically encouraged.¹⁰

Efforts to strengthen family relationships have also been described in the literature.¹¹ These efforts have included opportunities for extended family visits.¹²

Such studies make it not surprising that more and more corrections professionals subscribe to the National Advisory Commission's recommendation that correctional authorities "encourage visitors rather than merely tolerating them."¹³ The Commission and several subsequent observers have suggested that prison visitors should be assisted, as well as encouraged, noting that prisoners' families often find visiting a financial hardship.

In 1973 the National Advisory Commission called for conjugal visits as well as subsidization in Standard 2.17:

⁸E.L. Homer, "Inmate-Family Ties: Desirable but Difficult," *Federal Probation*, 43, 1965, p. 50.

⁹Susan H. Fishman and Albert S. Alissi, "Strengthening Families as Natural Support Systems for Offenders," *Federal Probation*, 43(3), 1979, pp. 16-21.

¹⁰M. Schwartz and L. Zeisel, "Unmarried Cohabitation: A National Study of Parole Policy," *Crime and Delinquency*, 22, April 1976, pp. 137-148.

¹¹See, for example, N. Fenton, *The Prisoner's Family*. Palo Alto, CA: Pacific Books, 1959; Joseph Neussendorfer, "Marriage Group-Counseling Inside," *American Journal of Correction*, 13(4), 1969, pp. 33-34; Judith F. Weintraub, "The Delivery of Services to Families of Prisoners," *Federal Probation*, December 1976, pp. 28-31; R.L. Marsh, "Services for Families: A Model Project to Provide Services for Families of Prisoners," *International Journal of Offender Therapy and Comparative Criminology*, 27(2), 1983, pp. 156-162; James Boudouris, *Prisons for Kids: Programs for Inmate Parents*. College Park, MD: American Correctional Association, 1985; B. Burton, "Is There Hospitality in the House? Overnight Housing for Prison Visitors," *Nurturing Today*, X(1), 1988, p. 13.

¹²C.B. Hopper, "Conjugal Visiting at the Mississippi State Penitentiary," *Federal Probation*, 29(2), 1965, pp. 39-46; Shaun C. Esposito, "Conjugal Visitation in American Prisons Today," *Journal of Family Law*, 19(2), 1980, pp. 313-330.

¹³National Advisory Commission on Criminal Justice Standards and Goals, *Corrections*. Washington, DC: U.S. Government Printing Office, 1973.

¹⁴*Ibid.*, p. 66.

¹⁵Commission on Accreditation for Corrections, *Standards for Adult Correctional Institutions* (2nd edition). College Park, MD: American Correctional Association, 1981.

¹⁶N.E. Schafer, "Prison Visiting: A Background for Change," *Federal Probation*, 42(3), 1978, pp. 42-44.

VISITATION. Offenders should have the right to communicate in person with individuals of their own choosing. The following additional guidelines should apply:

1. Correctional authorities should not limit the number of visitors an offender may receive or the length of such visits except in accordance with regular institutional schedules and requirements.
2. Correctional authorities should facilitate and promote visitation of offenders by the following acts:
 - a. Providing transportation for visitors from terminal points of public transportation. In some instances, the correctional agency may wish to pay the entire transportation costs of family members when the offender and the family are indigent.
 - b. Providing appropriate rooms for visitation that allow ease and informality of communication in a natural environment as free from institutional or custodial attributes as possible.
 - c. Making provisions for family visits in private surroundings conducive to maintaining and strengthening family ties.
3. The correctional agency may supervise the visiting area in an unobtrusive manner but should not eavesdrop on conversations or otherwise interfere with the participants' privacy.¹⁴

More recent standards, developed by the Commission on Accreditation for Corrections, iterate many of the same goals. For accreditation purposes contact visits are essential "except in instances of substantiated security risk," and "extended visits" in private surroundings are deemed essential where state statutes permit.¹⁵ Neither visit length nor number of visitors permitted should be limited except by schedule, personnel, or space restraints. These standards also address the importance of assisting visitors and seem designed to encourage prisons to maximize opportunities for prisoners and their visitors to maintain and strengthen family relationships.

While the importance of family relationships to rehabilitation efforts has been widely recognized, there have been no recent attempts to examine on a national basis the extent to which prisons encourage visitors. The maximization of opportunities to maintain family ties bears a direct relationship to the institution's understanding of, and commitment to, the importance of maintaining a "natural support system" on which the prisoner can rely upon release. Such opportunities for visiting can be quantified. Visiting schedules can be translated into hours and days and so can visit length.¹⁶

Although numeric measures of visiting opportunities can provide an indication of the institution's commitment to encouraging the maintenance of family ties, it is the visit itself which provides the real key to assessing whether the visitor has been encouraged enough to return regularly to the prison, thus taking advantage of available opportunities for maintaining his relationship with the prisoner. However, the quality of the visiting experience is

difficult to define or measure. A prison visiting room can never be an ideal place for demonstrating a commitment to a loved one. Participant observation might provide some evidence by which to assess visit quality, but such an effort could involve only a very small sample. By reviewing visiting rules as they have been promulgated to visitors and prisoners, it is possible to gain some idea of both the quality of the visiting experience and the extent to which American prisons encourage family visits.

Current Visiting Rules

Several sets of prison visiting rules were collected in conjunction with a 1987 survey of visiting policies and practices in state-operated long-term adult facilities. The letter which accompanied the survey requested copies of the prison's visiting rules. Seventy-one of the 252 responding prisons complied with this request. The collection includes rules from 31 of the 46 states represented in the survey. Rules for private family visits (conjugal visits) were received from one state but they are not included in the following discussion.

Most of the rules assembled reflect concerns about security and order. Many of them are specifically related to contraband. In addition to visiting hours, days, etc., there are five main areas covered in the sample collection of rules:

1. Becoming a visitor - rules governing who may visit and how a visitor gains prior approval for visiting.
2. Visitor processing - what constitutes proper identification, how one gains admittance to the visiting room, rules on searches, what goods and materials may be left for the inmate.
3. Special rules related to contraband - often including specification of items permitted in the visiting room.
4. Conduct - including grounds for denial of the visit and grounds for visit termination.
5. Dress codes - appropriate attire in the visiting area.

Not all of these areas are covered in every set of rules. Some prisons permit families to bring lunches for "picnics"; others prohibit any food not purchased from visiting room vending machines. The differences sometimes appear to be related to the custody level of the institution, sometimes to state guidelines.

Becoming a Visitor

Most institutions define family members for purposes of visitation. Some do not require an application from defined family members, but most do. Every institution in the sample specified that children must be accompanied by an adult. Some placed the age limit at 18 for an unaccompanied visitor, others had a limit of 16 years. Friends must usually complete an application in order to be placed on the

prisoner's approved visitor list. In 80 percent of the institutions family members must also complete the application.

Visitors who are on parole or who are former prisoners usually must have special permission to visit unless they are members of the immediate family. While the directions regarding applications to visit imply that the information provided will be checked, the survey conducted at the same time these rules were collected found that 45 percent of the 252 responding institutions did not conduct background checks of visitors. Once a visitor is placed on the prisoner's visiting list a visit is permitted.

Visitor Processing

Identification is required of visitors at all of the prisons in the sample. Though acceptable ID is needed for admittance to the visiting area, many of the institutions suggest that purses or other forbidden items be locked in the visitor's car; others provide lockers. Nearly one-third of the institutions (32.3 percent) have a written rule which states that persons who are "conspicuously inebriated" will be refused admission to the visiting area.

Some prisons permit items to be left at the processing desk to be delivered to the inmate after the visit. A list of acceptable items is often included in the rules.

All of the rules specify that visitors and their belongings will be searched. In most a metal detector is used on the visitors, but a few indicate that a body search may be required. All suggest that a refusal to be searched will result in a denial of the visit. This processing is clearly related to a concern for institutional security and a need to detect any effort at bringing contraband into the institution.

Contraband

Every set of rules deals with contraband. More than 80 percent define contraband and refer to legal penalties. Some reprint the relevant statutes from their state's penal code. State statutes specifically address felony charges associated with attempts to bring drugs and weapons into state penal facilities. While the responding institutions specify weapons and drugs, they are concerned with other contraband items as well. The most frequently mentioned of these is money, but cameras and tape recorders are also on many lists.

In order to control contraband, prisons in 23 of the 31 states either list items which are allowed in the visiting room or list items which are forbidden.

The lists often suggest previous institutional experience with efforts to smuggle in forbidden items. An example is infant items. While a few indicate that diaper bags are permitted (though subject to search), many expressly forbid them. Of those which forbid them, three allow "infant items" of an unspecified nature. The remainder make it very clear exactly what infant items are permitted, and some specify the type of item. Four institutions expressly prohibit quilted baby blankets. Clearly money or drugs could be concealed in the stuffing of such blankets. Infant seats are specifically permitted in some institutions and specifically prohibited in others.

Some examples by state, not institution, of permitted "infant items":

Arkansas	- 1 bottle, 2 diapers
Hawaii	- 1 blanket, 1 bottle, 2 diapers
Indiana	- 1 blanket, 1 bottle, 1 diaper
Michigan	- 1 blanket, 2 plastic bottles, 3 diapers, coats
Montana	- 1 blanket not quilted, 1 bottle, 1 jar baby food, 1 spoon, 4 diapers
New York	- 1 diaper bag, 3 diapers, plastic bottles
Tennessee	- 1 blanket, 2 plastic bottles, 3 diapers
Wisconsin	- infant seat, bottles, change of clothes, blankets, diapers, food in jars.

The specified differences in the number of items permitted are directly related to the permitted length of the visit. Requiring plastic rather than glass baby bottles is related to security and perhaps to prior institutional experience.

Money is contraband in most facilities in the country, yet most visiting rooms have vending machines from which visitors can purchase sodas, food, etc. Several of the rules state that prisoners may not handle money. Most indicate that change for vending machines is allowed. Several indicate an amount which ranges from \$2 to \$25.

It would seem that those prisons which actually specify the items that can be carried into the visiting room would have fewer problems with visitors bringing in items which visiting room supervisors would prefer to ban. Such specifications reduce the need for arbitrary decisions, which lead to negative feelings on the part of both prisoner and visitor.

Conduct

There are two categories of conduct covered in the visiting rules: One category deals with general behavior, the other with physical contact or decorum. Improper conduct can lead, in most of the facilities, to termination of the visit. In some, repeated failure to abide by the rules can lead to termination of the visiting privilege.

The rules of behavior are similar across institutions. The most frequently mentioned rule regards

control or management of children (46.4 percent of the sample). Another common rule regards moving around in the visiting room, changing seats, moving chairs, and/or "cross-visiting" (chatting with other prisoners or visitors). One-fourth of the sample rules mentioned this activity as potential grounds for termination of the visit. Loud voices, abusive behavior, and profanity were mentioned in several rule books, as were keeping the visiting area clean (use trash receptacles, use ash trays, etc.) and exchange of objects between visitor and inmate. Conduct "detrimental to security" was mentioned by seven facilities. One simply said that visitors must "obey the rules." The most interesting rule was a directive not to "leave animals or children unattended."

The rules of decorum in the sample were even more similar. Almost 40 percent of the responding institutions stipulated that a kiss and/or an embrace were permitted at the beginning and end of the visit. Nearly all of the 28 institutions with this rule permitted hand holding during the visit. Some facilities did not specify when embraces or kisses could be exchanged and used such terms as "orderly conduct," "respectable conduct," "good moral conduct," "good judgment," or "avoiding embarrassment."

Several, probably reflecting prior experience, specified forbidden behaviors. These included: no petting, no sitting on laps, no prolonged kissing, no sexually stimulating activity, no necking, no hands under clothing, no touching or stroking of breasts, buttocks, genitalia, or thighs, both feet on floor, no intertwining legs. One institution warns visitors about being "overly emotional," but it is not clear whether this relates to what has here been called "decorum" or to the general rules of behavior.

Physical contact during visits appears to be of great concern to prison officials. Although the standards for contact visits suggested by the National Advisory Commission on Criminal Justice Standards and Goals mention visiting facilities that provide "ease and informality of communication" and "a natural environment" (1973:66), the visiting rooms of some of the sample institutions are arranged in such a way that physical contact during the visit is minimal. Many direct that prisoners and visitors sit across a table from one another. Such a seating arrangement makes specific rules about touching, petting, lap sitting, etc., unnecessary. These rules are more likely to be required where the visiting room is arranged to permit prisoner and visitor to sit side-by-side. The furnishings then have an impact on the rules of decorum.

Dress Codes

In only three states did the responding institutions not mention attire in their rules for visitors; 90.3 percent made at least some reference to visitor dress. Five of the 31 states included general references to good judgment, appropriate dress, reasonable attire, or discretion. One mentioned only that male visitors could not wear blue jeans, obviously reflecting a concern about visitors dressing like prisoners. The remainder—twenty-two—dealt very specifically with dress and nearly all prohibited “provocative,” “indecent,” or “suggestive” attire.

All references to dress were collated by state rather than by institution. Thus, even if only one of several responding institutions in the state specified forbidden or required items of apparel, the state was included among the 22 with specific dress codes.

Several states mentioned certain articles of clothing very frequently:

Required items	Number of states
Shoes	22
Undergarments	13
Forbidden items	Number of states
shorts	19
mini-skirts/dresses	17
transparent/sheer/see-through	16
halter tops/bare backs	14
bare midriff	12
tank top/sleeveless/spaghetti straps	8
low cut/plunging neckline/cleavage	7
hats/headgear	6

Outer garments, other than hats, tended to be forbidden in other sections of the rules than those dealing with “appropriate dress.” Most institutions mentioned them in conjunction with instructions for lockers or in those portions of the rules which specified what items were or were not permitted in the visiting area.

The central issue in dress codes, other than the footwear requirement, was attire which might result in sexual stimulation or invite behavior banned in the rules of conduct, e.g., fondling, hands under clothing, etc. Included in the see-through category above was a ban on net/mesh shirts for visitors to a women’s institution. Another article banned in one institution can be specifically related to conduct rules—wrap skirts.

Discussion

In the last decade most state-operated adult facilities have maximized visiting opportunities by increasing the visiting schedule, extending the

permitted length of the visit, and permitting more visits and visitors. Many have improved the appearance of their contact visiting areas to make them comfortable and informal as the standards require. Some departments of corrections subsidize transportation to prisons from major population centers; others work with social agencies which subsidize visits. Most have not reviewed their visiting rules to determine if some of them are a hindrance to a successful visiting experience.

In most prisons the rules will fall into the categories already described. The discussion which follows deals with those categories and is intended to assist prison officials in examining rules at their institutions.

Visitor Processing

Since most prisons request completion of a visitor form for persons named by prisoners as potential visitors, it seems elementary to include the visiting rules in any packet mailed to prospective visitors, but many institutions do not do so. They rely on the prisoner to inform his family of the rules and regulations. At a minimum, the institution should specify the kinds of identification required for admission, any items which are not permitted in the visiting room, and any activities or apparel for which the visit can be denied. A visitor who is turned away is unlikely to return.

Most prisons are not located in easily accessible areas, and most prisoners’ families are from the lower socioeconomic levels. After arranging transportation and spending hours traveling they should not be turned away because they did not have prior notice of the rules. They also should not be expected to stand in long lines awaiting processing. This is especially difficult for visitors with small children. On days with particularly heavy visitor volume a take-a-number system might be utilized. Visitors leaving packages might be processed in a different line from those who are only visiting, since the paperwork involved in processing packages may slow down the processing of visitors.

Contraband

Penalties for bringing illegal items to the visit should be included in the rules sent to prospective visitors. Visitors should also be notified in advance of any items considered institutional contraband.

Proscriptions against cameras and tape recorders are based on both the ease with which contraband can be concealed in them and a concern about maintaining control over information about the

institution. Prior permission or special arrangements might be built into the rules so that pictures could be taken on special occasions.

Searches of items carried to the visiting area should be conducted with care. Contraband is a special concern of correctional institutions and must be controlled, but people's belongings can be handled with consideration and explanation even while a very thorough search of them is conducted.

Conduct

Visiting room rules should be prominently posted in the visiting area, and a conscientious effort to enforce them should be made. One person's unruly or disruptive behavior can spoil the visiting experience for everyone. The extent to which quiet displays of affection are disruptive might, however, be reassessed. Certainly the visiting room supervisor cannot permit openly sexual activity, but some institutions seem to be able to permit exchanges of kisses during the visit without problems while others permit kisses only at the beginning and end of the visit. While such differences may be based on the size of the visiting area or on its furnishings, or on the custody level of the institution, it does seem that more facilities might be able to relax such rules.

Dress Codes

Dress codes, too, might be reassessed. Except for a concern with attire which is too like that of the prison population (a security hazard), most of the dress codes in the sample are concerned with

provocative or sexually stimulating apparel. "Provocative" is, after all, in the eye of the beholder and is a subjective judgment. Shorts, sleeveless blouses, and dresses with spaghetti straps are acceptable street wear in most American cities and are not usually considered sexually stimulating.

An additional question which might require research is the effect of provocative dress on the operation of the institution. Is there evidence that exposure to women wearing shorts is detrimental to security? Do prisoners "act out" after seeing women with bare shoulders? Is sexual frustration in a prison population a measurable phenomenon brought about by visual stimuli?

A ban on dress which invites sexually explicit conduct or which makes it difficult to enforce rules about hands under clothing is justified. Those facilities which limit physical contact during the visit to hand holding (and they are the majority) do not need to be as concerned with sexual behavior as those which permit side-by-side contact. Dress codes in these facilities seem to be addressed at limiting visual pleasure. These prisons might reconsider their dress codes.

Rule changes should not be made without thought, but thought should be given to changing some rules. Prisons should consider the effect of the rules on encouraging or discouraging visitors and assess the reasons for each rule as well as the need to retain it or the consequences of changing it. Unless there is a substantial risk to security, rules governing visits and visitors should be designed to encourage visitors to return frequently.