

Information Item 1:

Copies of letters received in date order:

Public Comment

Title 15 and 24 Regulations Revisions

Returning Home Foundation

A 501(c)(3) Non-Profit Corporation

303 Magnolia Drive, Laguna Beach, CA 92651
phone 949.494.4571 • fax 949.494.2072
caroleurie@returninghomefoundation.org

June 28, 2016

Ms. Linda Penner, Chair
Board of State and Community Corrections
2590 Venture Oaks Way
Sacramento, CA 95833

RE: Public Comment June 9, 2016

Dear Ms. Penner:

Thank you for allowing public comment prior to the BSCC vote on revisions to Title 15 and 24 recommendations by the Executive Steering Committee.

Yes, I did know that Staff had recommended that the Board forego the vote on the revisions to Title 15, Section 1062 Visiting pending legislative action of SB1157 and pass on definitions of "visiting" as well. However, the vote had not confirmed that. Further, and eventually, the subject will be again under review by the Board.

It was with that understanding, that I chose to use my three minutes to review comments by the American Bar Association, American Correctional Association, and the Sentencing Project all who anticipated the advent of video visitation and cautioned about its exclusive use; and, to cite reports in 2014 by the DOJ and in 2015 by Prison Policy Initiative to emphasize that only recently had any real research been conducted concerning the use of video visitation and recidivism.

It is possible; therefore, that early video-only installations that were approved by the BSCC were installed without benefit of present research that appears to favor video as an adjunct to in-person visitation.

Unfortunately, the following ESC recommendations in reference to in-person visits were not adopted by the work group and therefore not part of their report to the Board: *"In-person visits should not be limited due to the existence of a video visitation option. Some facilities have stopped in-person visitation due to implementing a video visitation option. We do not want to see that happen in any facilities in California. Visiting policies shall ensure equal access for incarcerated people and visitors with disabilities, including provision of auxiliary aids and assistive devices to facilitate their full participation in visits"*

The consideration of Article 1006 definitions of in-person visit", "contact visit" or "video visit" was also delayed. If approved by the Board, it would have satisfied the requirements of "visiting" by any manner effectively making all video-only facilities retroactively in compliance.

I am therefore suggesting that the Board consider two definitions for "visiting": "In-person visit means an on-site visit that may or may not include barriers" AND "Video visit means an on-site or remote visit through the means of audio-visual communication devices"- and that those definitions be connected by an "AND" and not an "OR" - to be used to clarify the word and to parallel present references to the two types of visitation.

Yesterday June 27, the Governor signed into law a \$270 million lease revenue bond for jail construction with the direction that the "BSCC shall award funding to those that have previously received only a partial award or have never received an award within the financing programs authorized in Chapters 3.1." (AB1616, SB844). The regulations contained the following requirements: f) Any locked facility constructed or renovated with state funding awarded under this program shall include space **to provide onsite, in-person visitation capable of meeting or surpassing the minimum number of weekly visits required by state regulations** for persons detained in the facility". By this enactment, the Governor has defined "visiting" in the present regulations.

Lastly, SB1157, the bill that delayed the Board's vote has already passed the Senate and the Assembly Public Safety Committee and is scheduled for the Assembly Floor soon. It has bipartisan support.

Whether or not the Bill passes, I am hoping the BSCC Board will reconsider visiting regulations in light of present and continuing evidence and research.

I am also hoping, that the BSCC might also be able to use part of the \$270 million bond (RFP?) to fund those facilities who may be required to or have a desire to redesign, construct or renovate to provide onsite, in-person visitation space even if they have previously received funds. The funds seem appropriately earmarked by the Governor.

Yours truly,



Carole Urie
Director

cc: All BSCC Board Members
Allison Ganter, Deputy Director BSCC
Encl: "Screening Out Family Time" (PPI report)
Raphael Sperry (news article)

Raphael Sperry: San Mateo's new jail has no place to visit inmates

By Raphael Sperry, Special to The Mercury News
The Mercury News

Posted: Fri May 06 15:00:00 MDT 2016

San Mateo County's new Maple Street jail is not your typical jail. It features a computer lab, radiant floor heating, and even images of California nature on the walls, which is probably why Supervisor Adrienne Tissier calls it an example of "compassionate corrections."

But one thing the brand new jail lacks is a visiting room. When family members travel to the jail to visit their incarcerated loved ones, they will "visit" via computer screen.

Unfortunately, San Mateo County is not the only county that has eliminated in-person visits. A report produced last year by the nonprofit Prison Policy Initiative found that 74 percent of jails nationwide that adopt video visitation use the technology to replace in-person visits. **At least six counties in California have eliminated in-person visitation in one of their jails, even though face-to-face visitation is a correctional best practice.**

The American Bar Association's criminal justice standards clearly state, "Correctional officials should develop and promote other forms of communication between prisoners and their families, including video visitation, provided that such options are not a replacement for opportunities for in-person contact."

Architects agree. The American Institute of Architects' Academy of Architecture for Justice sustainable jail design guidelines, which I helped write, recommend that jails "provide robust option for video visitation without supplanting in-person visiting."

Sheriffs like video visiting because it reduces movement within jails, saving staff time. But this is fools' savings: Studies have shown that family visits are one of the best predictors of a successful reentry from jail to society, and even a single in-person visit can reduce recidivism by 13 percent. No research has studied video visitation's impact on recidivism, but the lack of emotional connection and privacy are obvious.

Attorneys will always need to meet confidentially and in-person with their clients, and legal visits by video have already been surreptitiously recorded by jail authorities without the knowledge or consent of lawyers and their clients.

Last year, the Texas Legislature decided that Texas jails with video services must also offer in-person visits. California State Sen. Holly Mitchell of Los Angeles has introduced a worthy bill, Strengthening Family Connections: In-Person Visitation, that would protect in-person visits in California jails and juvenile facilities.

The lack of a visiting room isn't the only problem with San Mateo's new jail, however. From the get-go, the county could have safely reduced its jail population to the size where it would not have needed a new building at all, using bail reform and other common sense criminal justice measures.

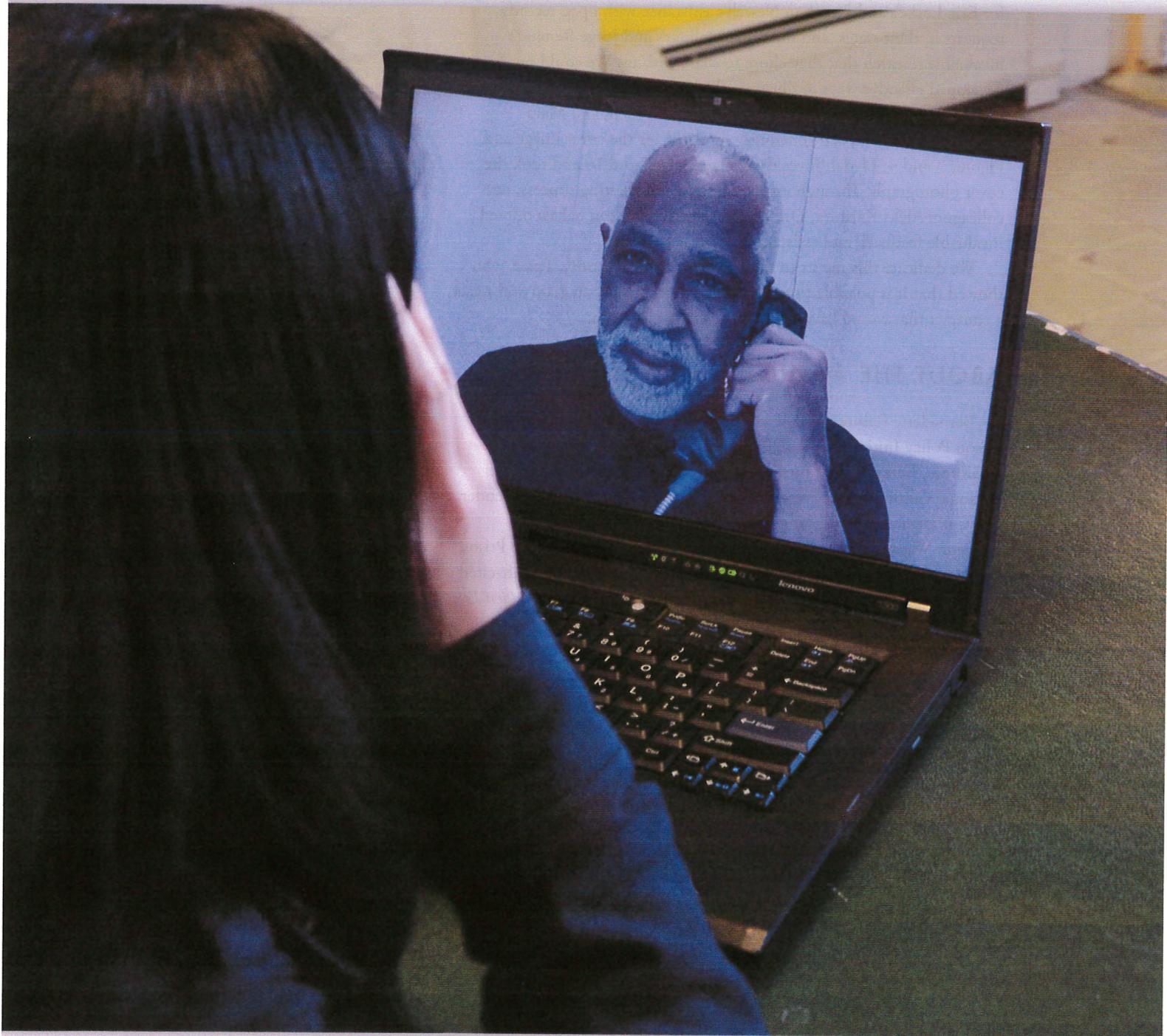
But as an architect, I know how alluring the promise of a new building can be. It seems like a stronger statement of justice reform rather than simply letting people stay in their homes while awaiting trial.

Other California counties should take the lesson: Do everything you can to avoid the need to build a new jail, lest your best intentions end up depriving people of something as basic, and as essential, as a hug from your wife, husband, parent or child.

Raphael Sperry is a San Francisco architect and president of Architects/Designers/Planners for Social Responsibility. He wrote this for the Mercury News.

SCREENING OUT FAMILY TIME

THE FOR-PROFIT VIDEO VISITATION INDUSTRY IN PRISONS AND JAILS



by Bernadette Rabuy and Peter Wagner
January 2015

PRISON
POLICY INITIATIVE

ACKNOWLEDGMENTS

This report was made possible by the passion of hundreds of people for a fair communications system. This report was supported by the Returning Home Foundation, by the individual donors who invest in our work so that we can take on critical emerging issues like video visitation, and by the American Constitution Society David Carliner Public Interest Award awarded to Peter Wagner in June 2014. We are grateful for the research help provided by family members, incarcerated people, and company officials who answered questions and shared their experiences, for Eric Lotke's and Dee Ann Newell's assistance with open records requests in their states, and for Brian Dolinar's and Jorge Renaud's invaluable research that they chose to share with us. We could not have developed effective ways to illustrate the human cost of video visitation without the fresh ideas of Elydah Joyce, Jazz Hayden, and Mara Lieberman. Jazz Hayden generously modeled for the cover image and Figures 3 and 4; Elydah Joyce drew Figures 1, 9, and 10 and took the cover photograph. Throughout the research and drafting process, our colleagues Aleks Kajstura, Drew Kukorowski, and Leah Sakala offered invaluable feedback and assistance.

We dedicate this report to the people of Dallas County, Texas, who showed that it is possible to stand up to a video visitation giant and reject a contract that would have banned in-person visitation.

ABOUT THE AUTHORS

Bernadette Rabuy is a Policy & Communications Associate at the Prison Policy Initiative and a 2014 graduate of the University of California, Berkeley. Her previous experience includes work with the National Council on Crime and Delinquency, Voice of the Ex-Offender, and Californians United for a Responsible Budget.

Peter Wagner is an attorney and the Executive Director of the Prison Policy Initiative and a co-author of the Prison Policy Initiative's oft-cited exposé *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry*.

ABOUT THE PRISON POLICY INITIATIVE

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to challenge over-criminalization and mass incarceration through research, advocacy, and organizing. We show how the United States' excessive and unequal use of punishment and institutional control harms individuals and undermines our communities and national well-being. The Easthampton, Massachusetts-based organization is most famous for its work documenting how mass incarceration skews our democracy and how the prison and jail telephone industry punishes the families of incarcerated people. The organization's groundbreaking reports and its work with SumOfUs to collect 60,000 petitions for the Federal Communications Commission have been repeatedly cited in the FCC's orders.

FOR MORE INFORMATION

For more information, including additional copies of this report and up-to-date information about fair telephone rates and fair visitation policies for families of the incarcerated, see <http://www.prisonpolicy.org/visitation/>

PRISON
POLICY INITIATIVE

Prison Policy Initiative

PO Box 127 Northampton MA 01061

<http://www.prisonpolicy.org>

SCREENING OUT FAMILY TIME:

The for-profit video visitation industry in prisons and jails

A Prison Policy Initiative report

Executive Summary

Video technology like Skype or FaceTime can be a great way to stay together for people who are far apart. It is not the same as being there in person, but it is better than a phone call or sending a letter.

Given that there are 2.2 million people who are incarcerated, often many hundreds of miles from their homes, it should be no surprise that prison and jail video visitation is quietly sweeping the nation.

But video visitation is not like Skype or FaceTime. For one, these well-known technologies are a high-quality, free supplement to time spent together, in-person. The video visitation that is sweeping through U.S. jails is almost the exact opposite.

In order to stimulate demand for their low-quality product, jails and video visitation companies work together to shut down the traditional in-person visitation rooms and instead require families to pay up to \$1.50 per minute for visits via computer screen.

In this report, we collect the contracts and the experiences of the facilities, the families, and the companies. We:

- Determine how this industry works, and explain the key differences between video visitation in jails (where it is most common and most commonly implemented in explicitly exploitative ways) and video visitation in prisons (where there is a proven need for the service and where prices are more reasonable yet the service is actually pretty rare).
- Hold the industry's fantastic promises up against the hard evidence of experience, including the industry's own commission reports.
- Give hard data showing just how unpopular this service is. We analyze the usage data, and then walk through exactly why families consider this unreliable and poorly designed technology a serious step backwards.
- Identify the patterns behind the worst practices in this industry, finding that the most harmful practices are concentrated in facilities that contract with particular companies.
- Analyze why the authors of correctional best practices have already condemned the industry's preferred approach to video visitation.
- Review the unanimous opposition of major editorial boards to business models that try to profit off the backs of poor families, when we should be rewarding families for trying to stay together.
- Identify how video visitation could be implemented in a more family-friendly way and highlight two small companies who have taken some of these steps.

Finally, we make 23 recommendations for federal and state regulators, legislators, correctional facilities, and the video visitation companies on how they could ensure that video visitation brings families together and makes our communities stronger instead of weaker.

" We hold the industry's fantastic promises up against the hard evidence of experience.

SCREENING OUT FAMILY TIME:

The for-profit video visitation industry in prisons and jails

Executive Summary.....i

Report

Introduction1

Reviewing the promises and
drawbacks of video visitation1

Video visitation reaches critical mass in 20144

Why families are unhappy with
the state of the video visitation industry7

What this industry is doing: Major themes11

Broken promises from the industry and its boosters .. 15

How are Securus video contracts different
from other companies?20

The way *jails* typically implement
video visitation systems violates correctional
& policy best practices21

Video visitation can be a step forward24

Recommendations27

Sidebars

Video visitation and video phones:
What is the difference?4

Attorneys say:
Video visitation is not the same as in-person visits7

Families find the promises most misleading of all16

JPay video visitation: A review19-20

A victory in Dallas County:
Preserving in-person visitation32

Table of Exhibits33

SCREENING OUT FAMILY TIME:

The for-profit video visitation industry in prisons and jails

A Prison Policy Initiative report
Bernadette Rabuy and Peter Wagner
January 2015

Introduction

Every Thursday, Lisa* logs on to her computer and spends \$10 to chat for half an hour via video with her sister who is incarcerated in another state. Before the Federal Communications Commission capped the cost of interstate calls from prisons, these video chats were even cheaper than the telephone. Lisa's experience is representative of the *promise* of video visitation.

Meanwhile, Mary* flies across the country to visit her brother who is being held in a Texas jail. She drives her rental car to the jail but rather than visit her brother in-person or through-the-glass, she is only allowed to speak with him for 20 minutes through a computer screen.

Elsewhere, Bernadette spends hours trying to schedule an offsite video visit with a person incarcerated in a Washington state prison. After four calls to JPay and one call to her credit card company, she is finally able to schedule a visit. Yet, when it is time for the visit, she waits for 30 minutes to no avail. The incarcerated person did not find out about the visit until the scheduled time had passed. The visit never happens.

How do video visitations work? While video visitation systems vary, the process typically works like this:



Figure 1. Most companies, including Securus, Telpate, and Renovo/Global Tel*Link, charge for a set amount of time and require pre-scheduled appointments.

Reviewing the promises and drawbacks of video visitation

Increasing the options that incarcerated people and their families have to stay in touch benefits incarcerated individuals, their families, and society at large. Family contact is one of the surest ways to reduce the likelihood that an individual will re-offend after release, the technical term

*Family members' names have been changed throughout the report.

for which is “recidivism.”¹ A rigorous study by the Minnesota Department of Corrections found that even a single visit reduced recidivism by 13% for new crimes and 25% for technical violations.² More contact between incarcerated people and their loved ones — whether in-person, by phone, by correspondence, or via video visitation — is clearly better for individuals, better for society, and even better for the facilities. As one Indiana prison official told a major correctional news service: “When they (prisoners) have that contact with the outside family they actually behave better here at the facility.”³

“When they (prisoners) have that contact with the outside family they actually behave better here at the facility.

— Richard Brown, assistant superintendent, Rockville Correctional Facility, Indiana.

Without a doubt, video visitation has some benefits:

- Most prisons and some jails are located far away from incarcerated people’s home communities and loved ones.⁴
- Prisons and jails sometimes have restrictive visitation hours and policies that can prevent working individuals, school-age children, the elderly, and people with disabilities from visiting.
- It can be less disruptive for children to visit from a more familiar setting like home.
- It may be easier for facilities to eliminate the need to move incarcerated people from their cells to central visitation rooms.
- It is not possible to transmit contraband via computer screen.⁵

But video visitation also has some serious drawbacks:

- Visiting someone via a computer screen is not the same as visiting someone in-person. Onsite video visitation is even less intimate and

¹ In criminal justice expert Joan Petersilia’s book, *When Prisoners Come Home*, Petersilia says, “Every known study that has been able to directly examine the relationship between a prisoner’s legitimate community ties and recidivism has found that feelings of being welcome at home and the strength of impersonal ties outside prison help predict postprison adjustment.” Joan Petersilia, *When Prisoners Come Home* (New York, NY: Oxford University Press, 2006), p 246. Milwaukee County Sheriff David A. Clarke Jr. has said that a functioning video visitation system is important “because caring attachment matters in human interactions.” Steve Schultze, “County jail visitations limited to audio only after system breaks down,” *Journal Sentinel*, January 23, 2014. Accessed on January 6, 2015 from: <http://www.jsonline.com/news/milwaukee/county-jail-visitations-limited-to-audio-only-after-system-breaks-down-b99190707z1-241732571.html>.

² Minnesota Department of Corrections, *The Effects of Prison Visitation on Offender Recidivism* (St. Paul, MN: Minnesota Department of Corrections, November 2011), p 27. Accessed on December 3, 2014 from: <http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf>.

³ Quote from Richard Brown, Rockville Correctional Facility’s assistant superintendent, in Jessica Gresko, “Families visit prison from comfort of their homes,” *CorrectionsOne*, July 2, 2009. Accessed on October 22, 2014 from: <http://www.correctionsone.com/products/corrections/articles/1852337-Families-visit-prison-from-comfort-of-their-homes/>.

⁴ Chesa Boudin, Trevor Stutz, and Aaron Littman, “Prison Visitation Policies: A Fifty State Survey” *Yale Law & Policy Review* Vol 32:149 (March 2014), 149-189.

⁵ On the other hand, it is also not possible to transmit contraband through the glass partition typically used in county jails either.

personal than through-the-glass visits, which families already find less preferable to contact visits.

- In jails, the implementation of video visitation often means the end of traditional, through-the-glass visitation in order to drive people to use paid, remote video visitation.
- Video visitation can be expensive, and the families of incarcerated people are some of the poorest families in the country.⁶
- The people most likely to use prison and jail video visitation services are also the least likely to have access to a computer with a webcam and the necessary bandwidth.⁷
- The technology is poorly designed and implemented. It is clear that video visitation industry leaders have not been listening to their customers and have not responded to consistent complaints about camera placement, the way that seating is bolted into the ground, the placement of video visitation terminals in pods of cells, etc.
- Technological glitches can be even more challenging for lawyers and other non-family advocates that need to build trust with incarcerated people in order to assist with personal and legal affairs.

The industry and correctional facilities have largely focused on the promised benefits of video visitation, but reform advocates have long expressed their concerns. We found an article by a person incarcerated in Colorado all the way back in 2008 that nicely summarized both the promise and fear represented by video visitation:

“If video visits are an addition [to in-person visits] they will be a help to all and a God-send to many. But, if video visits are a replacement

“ But if video visits are a replacement...their implementation would be a painful, unwelcome change that would be impersonal and dehumanizing.

— Claire Beazer predicting the harm of video visitation as a replacement to in-person visits in 2008

⁶ The Bureau of Justice Statistics conducted personal interviews of 521,765 people incarcerated in state prisons in 1991 and found that 86% of those interviewed had an annual income less than \$25,000 after being free for at least a year. Allen Beck et. al., *Survey of State Prison Inmates, 1991* (Washington, D.C.: Bureau of Justice Statistics, March 1993), p 3. Accessed on January 5, 2015 from: <http://www.bjs.gov/content/pub/pdf/SOSP191.PDF>. Bruce Western found that about a third of incarcerated individuals were not working when they were admitted to prison or jail. Bruce Western, “Chapter 4: Invisible Inequality,” in *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), p 85-107. Tom Miriam from Global Tel*Link explained to Dallas County Commissioners why Securus’s video visitation usage projections are unreasonably high, saying, “This demographic doesn’t have high-speed internet and credit cards.” The County of Dallas, “Dallas County Commissioners Court,” The County of Dallas Website, September 9, 2014. Accessed on January 6, 2015 from: <http://dctx.siretechnologies.com/sirepub/mtgviewer.aspx?meetid=177&doctype=AGENDA>.

⁷ According to a recent Census Bureau report, among households with income less than \$25,000, 62% have a computer but only 47% have high-speed internet. Thom File and Camille Ryan, *Computer and Internet Use in the United States: 2013* (Washington, D.C.: United States Census Bureau, November 2014), p 3. Accessed on November 2014 from: http://www.census.gov/content/dam/Census/library/publications/2014/acs/acs-28.pdf?e=gd&utm_medium=email&utm_source=govdelivery.

for the current visitation, their implementation would be a painful unwelcome change that would be impersonal and dehumanizing.”⁸

Video visitation reaches critical mass in 2014

Currently, more than 500 facilities in 43 states and the District of Columbia are experimenting with video visitation.⁹ Much of this growth has occurred in the last two to three years as prison and jail telephone companies have started to bundle video visitation into phone contracts. While there is not a detailed history of the industry’s growth, most sources trace the inception of the industry back to the 1990s.¹⁰

Now, in 2014, video visitation is ironically the least prevalent in state prisons, where it would be the most useful given the remote locations of such facilities, and the most common in county jails where the potential benefits are fewer. In contrast, jails typically implement video visitation in an unnecessarily punitive way. The differences between how prisons and jails approach video visitation are stark; Figure 2 summarizes our findings.

In the state prison context, the primary challenge to encouraging in-person visitation is distance, as many incarcerated people are imprisoned more than 100 miles away from their home communities and are

VIDEO VISITATION AND VIDEO PHONES: WHAT IS THE DIFFERENCE?

Video phones are an assistive technology for the deaf, designed for two deaf people to communicate via sign language or for one deaf person to communicate via sign language to an interpreter who then communicates with the person on the other end. It can be a special standalone device, or installed as software on a computer. Although to lay people the technology looks similar to video visitation, it is different and outside the scope of this report. For more on video phones in prisons and jails, and why facilities are required to provide communications access to deaf people in their custody, see Talila A. Lewis’s (Founder & President, Helping Educate to Advance the Rights of the Deaf) March 25, 2013 comment to the Federal Communications Commission: <http://apps.fcc.gov/ecfs/document/view?id=7022134808>

⁸ Clair Beazer, “Video Visitation,” The Real Cost of Prisons Project, March 25, 2008. Accessed on October 11, 2014 from: http://realcostofprisons.org/writing/beazer_video.html.

⁹ We identified the facilities with video visitation by reviewing the companies’ websites, hundreds of news articles, and interviews with facilities and companies. For the list, see Exhibit 1.

¹⁰ In Professor Patrice A. Fulcher’s analysis of video visitation, Fulcher talks about the lack of centralized data. Patrice Fulcher, “The Double Edged Sword of Prison Video Visitation: Claiming to Keep Families Together While Furthering the Aims of the Prison Industrial Complex” *Florida A&M University Law Review* Vol 9:1:83 (April 2014), 83-112. A *New York Times* article states that there were hundreds of jails in at least 20 states using or planning to adopt video visitation systems at that time. Adeshina Emmanuel, “In-Person Visits Fade as Jails Set Up Video Units for Inmates and Families,” *The New York Times*, August 7, 2012. Accessed on December 1, 2014 from: http://www.nytimes.com/2012/08/07/us/some-criticize-jails-as-they-move-to-video-visits.html?pagewanted=all&_r=0. Other excellent pieces on video visitation have been done by The Sentencing Project and The University of Vermont: Susan D. Phillips, Ph.D., *Video Visits for Children Whose Parents Are Incarcerated: In Whose Best Interest?* (Washington, D.C.: The Sentencing Project, October 2012). Accessed on October 11, 2014 from: http://sentencingproject.org/doc/publications/cc_Video_Visitation_White_Paper.pdf. and Patrick Doyle et. al., *Prison Video Conferencing* (Burlington, VT: The University of Vermont James M. Jeffords Center’s Vermont Legislative Research Service, May 15, 2011). Accessed on December 2014 from: <https://www.uvm.edu/~vlrs/CriminalJusticeandCorrections/prison%20video%20conferencing.pdf>.

	COUNTY JAILS			STATE PRISONS		
	Onsite	Regional visitation centers	Visit from home	Onsite	Regional visitation centers	Visit from home
Prevalence of video visitation type?	Common	Very rare.	Common	Never, with one exception.	Sometimes	Common
Cost?	Free, at least for the first few visits a week.	Free, at least for the first few visits a week.	\$	n/a	\$	\$
Does this require family members to travel long-distances?	Depends on the size of the county.	No	No	n/a	Not usually.	No
Operated by:	Private company, or the facility	Facility	Private company	n/a	State/non-profit partnerships	Private company
Prior to installation of video visitation, how are visits typically conducted?	In-person, through a glass barrier.			In-person, generally without a glass barrier.		
After installation of video visitation, is in-person visitation typically abolished?	Yes			n/a	No	No

Figure 2. How video visitation works by facility type and visitation method. Source: Our review of the companies' websites, hundreds of news articles, a quarter of the industry's contracts with individual facilities, and our interviews with facilities and companies.

sometimes even imprisoned in a different state.¹¹ Most of the state prisons that use video visitation currently do so only in small experimental programs or as a part of a larger contract for electronic payment processing systems and email. Many of these experimental programs focus on special populations or special purposes.¹² For example, New Mexico

¹¹ Boudin, Stutz, and Littman, 2014, p 179. A report by Grassroots Leadership found that four states collectively send more than 10,000 prisoners to out-of-state private prisons. For the report, see: Holly Kirby, *Locked Up & Shipped Away: Paying the Price for Vermont's Response to Prison Overcrowding* (Austin, TX: Grassroots Leadership, December 2014). Accessed on January 9, 2015 from: http://grassrootsleadership.org/sites/default/files/reports/locked_up_shipped_away_vt_web.pdf.

¹² State prison programs that are operated on a small scale and are specifically for incarcerated parents include Florida's Reading and Family Ties program, New Mexico's Therapeutic Family Visitation Program, and New York's program with the Osborne Association. According to Boudin, Stutz, and Littman, 2014, p 171, the following are other states using video visitation in a limited scope: Alaska, Colorado, Georgia, Idaho, Kansas, Louisiana, New Jersey, and Ohio.

has a special program for 25 incarcerated mothers,¹³ and a number of other states use video systems for court and parole hearings.¹⁴ Other states like Virginia and Pennsylvania have regional video visitation centers that families can use, thereby reducing the distance that families must travel.¹⁵

Five states have large video visitation programs that are bundled with another service. Four states — Georgia, Indiana, Ohio, and Washington — contract with the company JPay, and another industry player Telmate runs a video visitation system along with phone services in Oregon. In all of these cases, prisons use video visitation very differently than jails do. Given that prisons hold people convicted of more serious crimes, one might expect that if any facility were going to ban contact visits and require visitation via onsite video terminals, it would be state prisons. However, state prisons understand that family contact is crucial for reducing recidivism, and burdening individuals with extensive travel only to visit an incarcerated loved one by video screen is particularly counterproductive. As Illinois Department of Corrections Spokesman Tom Shaer explained to the *St. Louis Post-Dispatch*, the state had no plans to eliminate in-person visits: “I can’t imagine the scenario in which someone would travel to a prison and then wish to communicate through a video screen rather than see a prisoner face-to-face.”¹⁶

In contrast, county jails confine people who are generally not far from home, and the majority are presumed innocent while they attempt to pay bail or await trial. The 40% of people in jail who have been convicted¹⁷ are generally serving a relatively short sentence for misdemeanor crimes. Despite the fact that jails should be particularly conducive to in-person visits, most jails have replaced contact visits with through-the-glass visits. And when jails implement video visitation, they typically replace through-the-glass visiting booths with a combination of onsite and remote paid video visitation.

¹³ See Exhibit 2: New Mexico Corrections Department Contract with PB&J Family Services.

¹⁴ The states that use video conferencing for hearings include: Michigan, Minnesota, and New Jersey.

¹⁵ We are using the term “regional video visitation center” to describe situations where the state has made an effort to bring visitation to the visitors. For example, we consider having special places throughout the state or using a mobile van (Pinellas County, Florida) to be regional visitation centers, but we would not consider Maricopa County’s decision to make onsite video visitation terminals available at two of the county’s six jails to be regional visitation.

¹⁶ Paul Hampel, “Video visits at St. Clair County Jail get mixed reviews,” *St. Louis Post-Dispatch*, February 20, 2014. Accessed on December 22, 2014 from: http://www.stltoday.com/news/local/crime-and-courts/video-visits-at-st-clair-county-jail-get-mixed-reviews/article_b46594b0-9f01-5987-abf0-83152f76c9dd.html.

¹⁷ According to *Mass Incarceration: The Whole Pie*, of the 722,000 people in local jails, almost 300,000 are serving time for minor offenses. See Peter Wagner and Leah Sakala, *Mass Incarceration: The Whole Pie* (Easthampton, MA: Prison Policy Initiative, March 12, 2014). Accessed on December 2014 from: <http://www.prisonpolicy.org/reports/pie.html>.

Why families are unhappy with the state of the video visitation industry

Most families — the end-users of video visitation — are deeply unhappy with the combination of video visitation's poor quality, the cost of visitation, and the fact that jails often force the service on them. Some of the specific problems that families frequently cite are without a doubt fixable. Others are the inevitable result of the failed market structure: the companies consider the facilities — not the families paying the bills — as their customers. The primary complaint is apparent: video visits are not the same as in-person visits and are much less preferable to contact visits or through-the-glass visits.

Sheriffs typically defend the transition from in-person, through-the-glass visits to video visits as being insignificant¹⁸ because both involve shatterproof glass and talking on a phone. To the families, however, replacing the real living person on the other side of the glass with a grainy computer image is a step too far.

A. Video visits are not equivalent to in-person visits

It is more difficult for families to ensure or evaluate the wellbeing of their incarcerated loved ones via video than in-person or through-the-glass. Families struggle to clearly see the incarcerated person with video visits and instead face a pixelated or sometimes frozen *image* of the incarcerated person. The poor quality of the visits only increases family members' anxiety. For example, a mother interviewed by the *Chicago Tribune* described her unease at seeing her son's arm in a sling during a video visit, and how she would have felt more assured about his health and safety if she could have seen him properly in a traditional visit.¹⁹ The physical elements that still remained in through-the-glass visits are now gone. As Kymberlie Quong Charles of advocacy group Grassroots Leadership told the *Austin Chronicle*, "Even through Plexiglass, it allows you to see the color of [an inmate's skin], or other physical things with

¹⁸ As Sheriff Dotson of Lincoln County told *The Oregonian*, "There's not much of a difference [between video and through-the-glass visitation] — shatterproof glass divides the visitor from the inmate at the jail and they talk by phone." Maxine Bernstein, "Video visitation coming soon to Multnomah County jails," *The Oregonian*, October 3, 2013. Accessed on October 27, 2014 from: http://www.oregonlive.com/portland/index.ssf/2013/10/video_visits_coming_soon_to_mu.html. The second-in-command at the Knox County, Tennessee detention center, Terry Wilshire, has also said that video visitation is almost the same as in-person, through-the-glass visits: "It's a standing booth, it's cold, it's got that big glass there — there's no more contact with a child there [than with a video]." Cari Wade Gervin, "Orange Is the New Green: Is Knox County's New Video-Only Visitation Policy for Inmates Really About Safety—or Is it About Money?," *Metro Pulse*, July 2, 2014. Accessed on September 2014 from: <http://www.metropulse.com/news/2014/jul/02/orange-new-green-knox-countys-new-video-only-visit/>.

¹⁹ Robert McCoppin, "Video visits at Illinois jails praised as efficient, criticized as impersonal," *Chicago Tribune*, January 12, 2014. Accessed on October 6, 2014 from: http://articles.chicagotribune.com/2014-01-12/news/ct-jail-video-visits-met-20140112_1_inmates-and-visitors-video-visitation-john-howard-association.

ATTORNEYS SAY: VIDEO VISITATION IS NOT THE SAME AS IN-PERSON VISITS

Families are not the only ones who are frustrated with video visitation. New Orleans lawyer, Elizabeth Cumming, is forthright: "Video visitation is not an acceptable substitute for in-person visitation."⁹² In fact, this point of disagreement between facilities and attorneys has brought about lawsuits in Travis County, Texas and Orleans Parish, Louisiana. New Orleans attorneys are concerned about the lack of privacy and the technological glitches that prevent them from building rapport with their clients.⁹³ As a result, attorneys are "avoiding the use of video visitation facilities"⁹⁴ and seeking court intervention to obtain "private and constitutional attorney-client visitation conditions at the Orleans Parish Prison."⁹⁵

In Travis County, Texas, criminal defense attorneys have sued Securus, the sheriff, and other county officials claiming video visitation has been used to violate the constitutional rights of Travis County defendants. The attorneys say that the sheriff's department "[does] record confidential attorney-client communications" and even discloses "those recorded conversations to prosecutors in the Travis County and District Attorneys' Offices."⁹⁶ Video visitation was meant to be convenient for all involved, but these concerns leave sheriffs and facilities needing to make separate visitation accommodations for these attorneys.

⁹² For Motion No. 2011-10638 in the Civil District Court for the Parish of Orleans State of Louisiana, see Exhibit 28, specifically page 52.

⁹³ See page 5 of the Orleans Parish motion in Exhibit 28.

⁹⁴ See page 52 of the Orleans Parish motion in Exhibit 28.

⁹⁵ See page 1 of the Orleans Parish motion in Exhibit 28.

⁹⁶ See page 4 of the Travis County criminal defense lawyers' amended class action complaint in Exhibit 17.

their bodies. It's an accountability thing, and lets people on the outside get some read on the physical condition of a loved one."²⁰



Figure 3. Visual acuity is important for human communication.

Second, companies and facilities set up video visitation without any regard for privacy. Video visitation is popular among jails because by placing the video visitation terminals in pods of cells or day rooms, there is no longer a need to transport incarcerated people to a central visitation room. Yet, the lack of privacy can completely change the dynamic of a visit. As an Illinois mother whose son is incarcerated in the St. Clair County Jail, Illinois explained, "I want to get a good look at him, to tell him to stand up and turn around so I can see that he's getting enough to eat and that he hasn't been hurt. Instead, I have to see his cellmates marching around behind him in their underwear."²¹ In the D.C. jail, Ciara Jackson had a scheduled video visit with her partner canceled when a fight suddenly broke out. Jackson was upset that their "[5-year-old daughter] daughter could see the melee in the background" and told *The Washington Post*, "Before, in the jail, you were closer and had more privacy. This, I don't know. This just doesn't seem right."²² Federal public defender Tom Gabel told the *St. Louis Post-Dispatch* that his clients are equally dissatisfied: "They want to actually see the people who come to visit them, not look at them on a computer screen from a crowded pod...It's just one more thing prisoners find impersonal at the jail."²³

Further, video visits can be disorienting because the companies set the systems up in a manner that is very different from in-person, human communication. Since the video visitation terminals were designed and set up with the camera a couple of inches above the monitor, the loved one on the outside will never be looking into the incarcerated person's eyes. Families have repeatedly complained that the lack of eye contact makes visits feel impersonal.

²⁰ Chase Hoffberger, "Through a Glass, Darkly," *The Austin Chronicle*, November 7, 2014. Accessed on November 8, 2014 from: <http://www.austinchronicle.com/news/2014-11-07/through-a-glass-darkly/>.

²¹ Hampel, 2014.

²² Peter Hermann, "Visiting a detainee in the D.C. jail now done by video," *The Washington Post*, July 28, 2012. Accessed on November 10, 2014 from: http://www.washingtonpost.com/local/crime/visiting-a-detainee-in-the-dc-jail-now-done-by-video/2012/07/28/gJQAcf1TGX_story.html.

²³ Hampel, 2014.

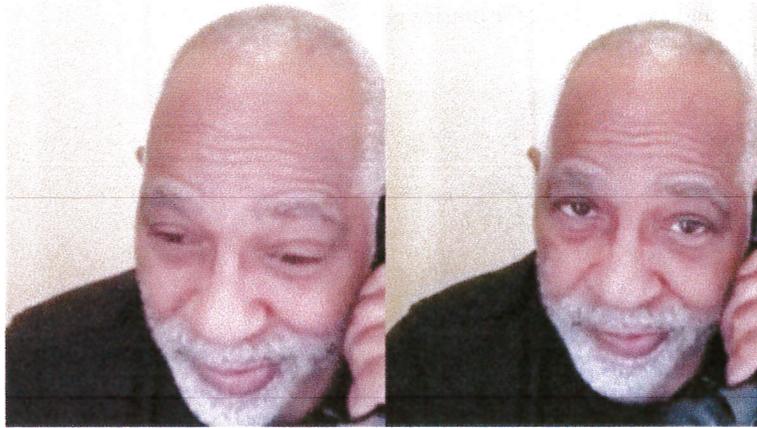


Figure 4. This image is from a video demonstrating that eye contact is important for human communication. (For the video, see <http://www.prisonpolicy.org/visitation/report.html>)

Video visitation can add to the already significant trauma that children of incarcerated parents face, especially for young children who are unfamiliar with the video technology. Dee Ann Newell, a developmental psychologist who has been working with incarcerated children for 30 years, has witnessed traumatic reactions to video visitation from young children as well as from some of the older ones.²⁴ Cierra Rice, whose partner is incarcerated in King County Jail, Washington told *The Seattle Times* that she does not bring her 18-month-old to video visits at the jail because he gets fidgety in the video visitation terminal and does not understand why he cannot hug his father.²⁵

Notably, the San Francisco Children of Incarcerated Parents Bill of Rights demands greater protections of family-friendly visitation: “Window visits’, in which visitors are separated from prisoners by glass and converse by telephone, are not appropriate for small children.”²⁶ If through-the-glass visits fall short for children, video visits are even more unacceptable.

B. Video visitation is not ready for prime time

Despite the commonly-made comparison, video visitation technology is not as reliable as widely-used video services such as Skype or FaceTime,

²⁴ Dee Ann Newell told the Prison Policy Initiative that she once had to take a child to the ER due to a traumatic video visit. For another example, see this video testimony of a grandmother from the January 21, 2014 Travis County Commissioners Court at 1:24:30: Travis County, “Travis County Commissioners Court Voting Session,” Travis County Website, January 21, 2014. Accessed on December 2014 from: http://traviscountytx.ig2.com/Citizens/Detail_Meeting.aspx?ID=1387.

²⁵ Jennifer Sullivan, “King County to install video system in jails for virtual inmate visits,” *The Seattle Times*, June 17, 2014. Accessed on October 2014 from: http://seattletimes.com/html/latestnews/2023866693_jailphonesxml.html.

²⁶ San Francisco Children of Incarcerated Parents, “Right 5,” San Francisco Children of Incarcerated Parents Website. Accessed on November 2014 from: <http://www.sfcipp.org/right5.html>.

and if video visitation is going to be the only option that some families have, it is nowhere near good enough. Families we interviewed who use onsite and offsite video visitation, including those who are experienced Skype and FaceTime users, consistently complain of freezes, audio lags, and pixelated screens in video visitation.²⁷ Referring to Securus's offsite video visitation system, Jessica* said that she has had video visits freeze for a full minute. By the time she was able to tell the incarcerated person that he froze, the visit would freeze again. In fact, Jessica does not think offsite video visitation is convenient. She calls it "almost a waste of money." Families and friends have also complained about lost minutes, with visits failing to start on time despite both ends being ready or ending abruptly due to a technical malfunction. Sara* — a mother whose son is incarcerated in Maricopa County, Arizona — said that she and her son's other visitors have had "continuous issues with connecting on time" and have lost up to five minutes. When visits are 20 minutes long, "five minutes is precious."

Technical problems can be systemic. Clark County, Nevada is currently upgrading its Renovo video system to address the problem with the current system where "more than half of the average 15,000 visits a month were canceled because of tech issues."²⁸

C. Video visitation puts a price tag on a service that should be free

Much of the video visitation industry, particularly in county jails, is designed to drive people from what was traditionally a free service towards an inferior, paid replacement. Even where onsite video visitation is offered and free, it is often run in a limited way to further encourage offsite video visitation. Unfortunately, companies and correctional facilities negotiate the terms and prices without any input from the people that pay. Tom Maziarz of St. Clair County, Illinois's purchasing department exemplified this disregard when he told the *St. Louis Post-Dispatch*, "A dollar a minute strikes me as a fair price. I guess it depends what viewpoint you're coming from. The way I look at it, we've got a captive audience. If they don't like (the rates), I guess they should not have got in trouble to begin with."

Charging for visitation also means charging the families that are least able to afford this additional expense. These families are poor. In an extensive survey of previously incarcerated people, the Bureau of Justice Statistics found that 86% of respondents had an annual income that was

"A dollar a minute strikes me as a fair price...The way I look at it, we've got a captive audience.

— Tom Maziarz, manager, St. Clair County, Illinois Purchasing Department

²⁷ We interviewed a handful of families and friends nationwide to hear about their firsthand experiences with video visitation. Jessica* has used Securus video visitation in Travis County, Texas, and Sara* has used Securus video visitation in Maricopa County, Arizona.

²⁸ Annalise Little, "Home video chats, other upgrades coming to CCDC," *Las Vegas Review-Journal*, October 13, 2014. Accessed on October 13, 2014 from: <http://www.reviewjournal.com/news/las-vegas/home-video-chats-other-upgrades-coming-ccdc>.

less than \$25,000.²⁹ As with the prison and jail telephone market, charging for visitation is, at best, a regressive tax where the government charges the most to the taxpayers who can afford it the least. The *Houston Chronicle* editorial board condemned the practice of charging families for visits, declaring, “Making money off the desire of prisoners to be in touch with family members and loved ones is offensive to basic concepts of morality.”³⁰

What this industry is doing: major themes

While there are tremendous differences in the rates, fees, commissions, and practices in each contract, three significant patterns are common:

1. Most *county jails* ban in-person visits once they implement video visitation.
2. Video visitation contracts are almost always bundled with other services like phones, email, and commissary, and facilities usually do not pay anything for video visitation.
3. Unlike with phone services, there is little relationship between rates, fees, and commissions beyond who the company is.

While virtually no state prisons³¹ ban in-person visitation, we found that 74% of jails banned in-person visits when they implemented video visitation. Though abolishing in-person visits is common in the jail video visitation context, Securus is the only company that explicitly requires this harmful practice in its contracts. The record is not always clear about whether the jails or the companies drive this change, but by banning in-

“ 74% of jails banned in-person visits when they implemented video visitation ”

²⁹ For the Bureau of Justice Statistics study based on surveys of people incarcerated in state prisons, see: Beck et. al., 1993, p 3. Additionally, the Census Bureau found that only 47% of households with income less than \$25,000 have high-speed internet. File and Ryan, 2014, p 3.

³⁰ Editorial Board, “Idea blackout,” *Houston Chronicle*, September 12, 2014. Accessed on September 12, 2014 from: <http://www.houstonchronicle.com/opinion/editorials/article/Idea-blackout-5752156.php>.

³¹ The one state prison exception that uses video visitation and bans in-person visitation, Milwaukee Secure Detention Facility in Wisconsin, considers itself to be very similar to a jail, writing on its website that it “functions in a similar manner to that of a jail operation.” See: Wisconsin Department of Corrections, “Milwaukee Secure Detention Facility,” Wisconsin Department of Corrections Website. Accessed on December 2014 from: <http://doc.wi.gov/families-visitors/find-facility/milwaukee-secure-detention-facility>.

person visits, it is clear that the jails are abandoning their commitment to correctional best practices.³²

Video visitation is rarely a stand-alone service, and 84% of the video contracts we gathered were bundled with phones, commissary, or email. Sometimes it is obvious that the bundling of contracts persuades counties to add video visitation. For example, in a contract approval form, Chippewa County, Wisconsin's jail administrator described how attractive this makes video visitation: "The installation and start-up of the Video Visitation is \$133,415.00 and Securus is paying all of it."³³ The county was further incentivized because by adding video, call management services "went from a discount of 30% to 76.1%." In Telmate's contract with Washington County, Idaho, Telmate says it *needs* to bundle its contracts or else it will be unable to provide video visitation free of charge to the facility.³⁴ In other words, in this county, Telmate apparently subsidizes the costs of video visitation equipment by charging families high fees to deposit funds into Telmate commissary accounts.

Since the contracts are negotiated with the understanding that the facility will not be required to pay anything, the facilities sign them without carefully looking at the real costs or who (the families) will be paying for the shiny new services. For example, in Dallas County, Texas, after a huge public uproar, the County Commissioners Court unanimously supported preserving traditional through-the-glass visitation and rejected Securus's request to ban in-person visitation. But two months later, the county inexplicably approved a contract with Securus that included the installation of 50 onsite visitor-side terminals; terminals that would only be useful if in-person visitation were eliminated in the

" Since the contracts are negotiated with the understanding that the facility will not be required to pay anything, the facilities sign them without carefully looking at the real costs....

³² Responsibility for banning in-person visitation cannot solely be attributed to the companies, because we note that even the jails that manage their own video visitation systems (Martin County, FL; Wapello County, IA; Cook County, IL; Lenawee County, MI; Olmsted County, MN; Northwest Regional Corrections Center, MN; Sherburne County, MN) use video as a replacement rather than a supplement to existing visitation. In Global Tel*Link's reply to the Alabama Public Service Commission's further order adopting revised inmate phone rules, it states, "The Commission seeks to review VVS contracts because it is 'concerned' that the contracts may contain provisions limiting face-to-face visitation at correctional facilities...These contracts are based upon the expressed needs of the correctional facilities. Correctional facilities have sole discretion to place limitations on face-to-face visitation at the facility..." Global Tel*Link seems to be implying that jails are the ones pushing to end in-person visitation. See Exhibit 3 for Global Tel*Link's reply. For more on Securus's role in banning in-person visits, see footnote 66.

³³ See Exhibit 4 for Chippewa County, Wisconsin's Securus video visitation contract approval form. In Washington County, Oregon's contract with Telmate for phone services and video visitation, the county even received a bonus of \$30,000 over three years. See Exhibit 5 for the Washington County, Oregon contract.

³⁴ For Telmate's justification of its commissary account deposit fees, see page 10 of the Washington County, Idaho contract with Telmate. See Exhibit 6.

county.³⁵ If the county were paying the \$212,500 for those onsite visitor side terminals³⁶ with its own — rather than families’ — funds, the county commissioners would have surely been less reluctant to question such a purchase.

In the prison and jail telephone industry, there is a well-documented correlation between rates, fees, and commissions that surprisingly does not exist in the video visitation market even though many of the same companies are involved.³⁷ In the phones market, the facilities demand a large share of the cost of each call, and these high commissions create an incentive for the facility to agree to set high call rates. In turn, the companies respond to the demand for high commissions by quietly tacking on new and higher fees to each family’s bill.³⁸

In the video visitation industry, this cycle does not appear to exist. Instead, to the degree that rates, fees, and commissions are related to anything at all, the details of the contract are most dependent on the *company*. We report the typical rates and commissions for some of the industry leaders in Figure 5.

While Securus’s rates are significantly higher than those of other companies, Securus does not provide jails with higher commission percentages. In fact, the lowest commission among the jail contracts can be found in Maricopa County, Arizona, which receives 10% of Securus’s total gross revenues from video visitation. Overall, commissions are lower

“ To the degree that rates, fees and commissions are related to anything at all, the details of the contract are most dependent on the *company*.”

³⁵ We have seen examples of facilities starting off with video as a supplement to in-person visits but then banning in-person visits shortly after the video system was in place. Pinal County, Arizona launched video visitation in April 2013 as a supplement, and saw substantial use of both video and traditional visitation. But by December 2014, Pinal County had banned traditional visitation. JJ Hensley, “MCSO to allow video jail visits — for a price,” *The Arizona Republic*, December 10, 2013. Accessed on December 17, 2014 from: <http://www.azcentral.com/news/articles/20131206mcs0-to-allow-video-jail-visits-price.html> and Bernadette Rabuy interview with Pinal County Sheriff’s Office on December 17, 2014.

³⁶ For the costs of the Dallas County video visitation system, see page 18 of the approved Dallas County contract with Securus. See Exhibit 7.

³⁷ As the Federal Communications Commission (FCC) notes, in the phones market, “site commission payments... inflate rates and fees, as ICS providers must increase rates in order to pay the site commissions.” See: Federal Communications Commission, *Second Further Notice of Proposed Rulemaking*, WC Docket No. 12-375 (Washington, D.C.: Federal Communications Commission, Released October 22, 2014), at ¶ 3. Accessed on January 8, 2015 from: <http://www.fcc.gov/document/fcc-continues-push-rein-high-cost-inmate-calling-0>.

³⁸ For more information on the prison and jail phone industry’s fees, see Drew Kukorowski et. al., *Please Deposit All of Your Money: Kickbacks, Rates, and Hidden Fees in the Jail Phone Industry* (Easthampton, MA: Prison Policy Initiative, May 8, 2013). Accessed on October 2014 from: <http://www.prisonpolicy.org/phones/pleasedeposit.html>. Phone company NCIC also produced an informational video on fees, which can be found here: <https://www.youtube.com/watch?v=S3iB0p49oZ8>

	Rates found	Typical rate	Commissions found	Typical commission
HomeWAV	\$0.50 – \$0.65/min	\$0.50/min	None – 40%	n/a
JPay	\$0.20 – \$0.43/min	\$0.33/min	0.75% – 19.3%	10%
Securus	\$0.50 – \$1.50/min	\$1/min	None – 40%	20%
TurnKey Corrections	\$0.35 – \$0.70/min	\$0.35/min	10% – 37%	n/a
Telmate	\$0.33 – \$0.66*/min	n/a	None – 50%*	n/a

Figure 5. The range of rates and commissions found for each company, and where possible, the typical rate and commission. The HomeWAV commissions, TurnKey commissions, the Telmate rates, and the Telmate commissions in our sample vary so much that it was difficult to identify a “typical” rate or commission. *The Telmate contract with Oregon has a \$0.60 cents per minute rate and 50% commission and may be an outlier because it is Telmate’s only state prison contract. It also includes a lot of other bundled services including phones, commissary, MP3 players, song downloads, etc.

for video visitation than they are for phones.³⁹ Oddly, the rates still varied among the few jails that do not accept commissions (Figure 6). It seems that sometimes negotiating to a lower commission may bring down the rate charged to families while other times it does not.

County	Company	Rate	Typical company rate
Adams County, MS	HomeWAV	\$0.50/min	\$0.50/min
Champaign County, IL	ICSolutions / VizVox	\$0.50/min	\$0.50/min
Dallas County, TX	Securus	\$0.50/min	\$1/min
Douglas County, CO	Telmate	\$0.33/min	n/a
San Juan County, NM	Securus	\$0.65/min	\$1/min
Saunders County, NE	Securus	\$1/min	\$1/min

Figure 6. These are counties that do not accept a commission on video visitation revenue. See Exhibit 1

The companies also differ in how they charge families. Almost all of the companies charge families per visit rather than per minute, which raises questions about whether families receive the full value that they pay for, especially since it is common for the image to freeze:

Company	Per minute or per visit?
HomeWAV	Per minute
ICSolutions / VizVox	Per visit
JPay	Per visit
Renovo	Per visit
Securus	Per visit
Telmate	Per visit
TurnKey Corrections	Per minute

Figure 7. Some companies charge per minute, others per visit.

As in the phone industry, the size of the hidden fees that add to the cost of each visit vary considerably. But unlike the phone industry, where

³⁹ The highest commission on video charges we have seen — out of the contracts we gathered — is in Placer County, California where ICSolutions sends 63.1% back to the sheriff. In our 2013 report on the phones industry, ICSolutions also provided the highest commission, 84.1% of phone revenue. For Placer County’s contract with ICSolutions, see Exhibit 10. For more on phones, see Kukorowski et. al., 2013.

“[a]ncillary fees are the chief source of consumer abuse and allow circumvention of rate caps,”⁴⁰ the fees for video visitation vary from burdensome to nonexistent. In fact, some of the high-fee companies in the telephone industry are the very same ones who do not charge any credit card fees for video visitation:

Company	How to pay for video visit	Fees
HomeWAV	Buy minutes on PayPal using credit/debit card, bank account, or prepaid gift card	\$1
ICSolutions / VizVox	Fund prepaid collect account online with a credit/debit card or through Western Union or money order	\$0 fee + taxes to \$9.99 Western Union fee + taxes, See Exhibit 11
JPay	Pay with credit/debit card when you schedule visit online or by phone	\$0
Renovo	Pay with credit/debit card or prepaid credit/debit card when you schedule visit online	\$0
Securus	Pay with credit/debit card when you schedule visit online	\$0
Telmate	Fund your Friends & Family account (various methods)	\$2.75 – \$13.78 fee, See Exhibit 11
TurnKey Corrections	Fund your communications account (various methods)	\$0 – \$8.95 fee, See Exhibit 11

Figure 8. This table shows how visitors must pay for video visits and the associated fees, when applicable. Source: Companies’ websites and calls and emails to customer service.

Broken promises from the industry and its boosters

The video visitation industry sells correctional facilities a fantasy. Facilities are pitched a futuristic world out of Star Trek where people can conveniently communicate over long distances as if they were in the same room while simultaneously helping facilities bring in revenue and eliminate much of the hassle involved in offering traditional visitation. In turn, the facilities sell these same benefits to the elected officials who must approve the contracts. But when hard lessons of experience bring down those dreams, the industry and the facilities are less forthcoming. This section reviews the record to date on the promises made by the industry and its boosters.

Our findings put the industry’s promises into question:

- **Increased safety and security?** The industry says, without evidence, that video visitation — and the “investigative capabilities”⁴¹ of these systems — will make facilities safer, primarily by eliminating

“ The video visitation industry sells correctional facilities a fantasy. Facilities are pitched a futuristic world out of Star Trek.... But when hard lessons of experience bring down those dreams, the industry is less forthcoming.”

⁴⁰ Federal Communications Commission, 2014, at ¶ 83.

⁴¹ See Exhibit 12 for Securus’s response to the Maricopa County, Arizona Request for Proposals for video visitation.

contraband. In the one study of this claim, Grassroots Leadership and the Texas Criminal Justice Coalition found that disciplinary cases for possession of contraband in Travis County, Texas increased 54% after the county completed its transition to video-only visitation.⁴² Correctional facilities tell elected officials that video visitation can also eliminate “fights in the lobby,”⁴³ but the public location of the terminals actually increases tensions in the cell pods. As a person incarcerated in Collier County, Florida described: “Everybody in the dorm or on the pod can still see who it is that’s visiting another. This in itself is invasive and potentially compromising and has led to fights among the inmates here.”⁴⁴

- **Increased efficiency and cost savings for the facility?** The industry tells the facilities that they can outsource handling families’ complaints, but when the systems do not work, it is the facilities that are left filling in the gaps of a system they neither designed nor control.⁴⁵
- **A lucrative source of revenue for the facility?** The available data reveals that video visitation is not a big money maker for facilities and may not even be profitable for the industry. First, refunds are common. For the month of August 2014, Charlotte County Jail, Florida and company Montgomery Technology, Inc. gave 35 refunds out of 89 total video visits. The facility and Montgomery Technology, Inc. did not gain revenue; each lost \$8.⁴⁶ Second, the contracts are often structured in a way that serves the needs of the

⁴² The Grassroots Leadership and Texas Criminal Justice Coalition study states that there was an “overall increase of 54.28 percent in contraband cases May 2014 versus May 2012.” See: Jorge Renaud, *Video Visitation: How Private Companies Push for Visits by Video and Families Pay the Price* (Austin, TX: Grassroots Leadership and Texas Criminal Justice Coalition, October 2014), p 9. Accessed on October 16, 2014 from: <http://grassrootsleadership.org/sites/default/files/uploads/Video%20Visitation%20%28web%29.pdf>.

⁴³ Sullivan, 2014.

⁴⁴ Jessica Lipscomb, “A new way to visit inmates at Collier jails: video conferencing,” *Naples Daily News*, December 11, 2014. Accessed on December 11, 2014 from: http://www.naplesnews.com/news/crime/a-new-way-to-visit-inmates-at-collier-jails-video-conferencing_50634238.

⁴⁵ When Mary* tried to drop in for an unscheduled video visit at a Texas county jail, she asked jail staff for assistance. Since Securus requires that video visits be scheduled at least 24 hours in advance, jail staff had to decide if they would make an exception for Mary who flew in from out of state to see her brother. Another requirement of Securus video visitation is that visitors take a photo of their identification in order to set up an account. Laina* used her personal computer’s webcam to take a photo of her ID, but her request to open an account was denied citing a blurry ID photo. Laina then had to travel to the jail to have jail staff look at her ID in-person and do a manual override.

⁴⁶ See Exhibit 13 for the August 2014 earnings report for Charlotte County Jail, Florida.

FAMILIES FIND THE PROMISES MOST MISLEADING OF ALL

It is no wonder that families are distrustful of video visitation and reluctant to even try the service: both the companies and the facilities are often misleading them. For example, when the District of Columbia jail decided to ban in-person visits, there was widespread resistance.⁹⁷ The facility did not back down from the change and instead claimed that the convenience of video visitation would benefit families. The convenience, jail staff said, would allow them to expand visits to seven days a week, but two years later, families are still waiting.⁹⁸

In Maricopa County, Arizona, Sheriff Joe Arpaio cut back visitation hours last year, just in time for the holidays. The sheriff’s spokeswoman told the *Phoenix New Times* that the change was being made “while we switch from one vendor to another vendor to update/improve MCSO’s video visitation program.”⁹⁹ The so-called “improvement” was that Sheriff Arpaio had signed a contract with Securus agreeing to get rid of the last of in-person visits in Maricopa’s jails.

⁹⁷ Fulcher, 2014, p 104.

⁹⁸ Editorial Board, “D.C. prisoners deserve better than flawed video-only visitation policy,” *The Washington Post*, August 12, 2013. Accessed on December 3, 2014 from: http://www.washingtonpost.com/opinions/dc-prisoners-deserve-better-than-flawed-video-only-visitation-policy/2013/08/12/68834128-035e-11e3-88d6-d5795fab4637_story.html.

⁹⁹ Matthew Hendley, “Joe Arpaio Cuts Back on Inmate Visitation, Just in Time for Holidays,” *Phoenix New Times*, December 3, 2013. Accessed on October 22, 2014 from: http://blogs.phoenixnewtimes.com/valleyfever/2013/12/joe_arpaio_cuts_back_on_inmate_visitation_christmas.php.

industry before the needs of the facilities.⁴⁷ In some cases, facilities must meet these unreasonably high usage requirements⁴⁸ set by companies as a prerequisite to receiving commissions. In other cases, video visitation companies require that their investments be recouped before they will pay commissions to the facilities. If this clause were in effect in Travis County, Texas — one of the few jurisdictions that have made commission data available — it would take 17 years before Travis County would receive commissions.⁴⁹ In Hopkins County, Texas, Securus anticipated that the county would generate \$455,597 over five years from its 70% commission on video visits and phone calls. However, in the 2014 fiscal year, Hopkins County earned a mere 40% of the expected yearly revenue.⁵⁰

- **Families will readily embrace remote video visitation?** Securus told Dallas County, Texas during the contract negotiation process that “most [families] will readily embrace the opportunity to visit from home.”⁵¹ Securus did not offer any evidence, and our review of the record in other counties shows Securus scrambling to stimulate

⁴⁷ For example, in one Securus contract, the commission is based on the gross revenue per month. If the gross revenue per month is \$5,001-\$10,000, the commission is 0%. If the revenue is \$10,001-\$15,000, the commission is 20%. If the revenue is \$15,001-\$20,000, the commission is 25%. If the revenue is \$20,001+, the commission is 30%. For the Collier County, Florida contract, see Exhibit 14.

⁴⁸ Tom Miriam of Global Tel*Link told the Dallas County Commissioners that it was unreasonable for Securus to propose to pay commissions only if the County achieves 1.5 paid visits per incarcerated person per month when “the national average is 0.5 visit per inmate per month.” See: The County of Dallas, September 9, 2014.

⁴⁹ In most Securus contracts, the video visitation terminals are valued at \$4,000 each, ignoring the cost of installation and software. Therefore, the 184 terminals installed in Travis County are valued at \$736,000, an immense sum compared to the \$43,445 Securus earned from offsite video visitation in the period September 2013-September 2014. Either Securus is losing money on each video visit, or the terminals are overvalued in the contracts, or Securus is using phone revenue to subsidize the video business. For the Travis County contract, see Exhibit 15. For the commission data, see Exhibit 16. Additionally, the *St. Louis Post-Dispatch* reported that St. Clair County, Illinois receives a 20% commission on video visits if it reaches 729 paid visitors a month, but there were only 388 in January 2014. See Hampel, 2014.

⁵⁰ Amy Silverstein, “Captive Audience: Counties and Private Businesses Cash in on Video Visits at Jails,” *Dallas Observer*, November 26, 2014. Accessed on November 28, 2014 from: http://blogs.dallasobserver.com/unfairpark/2014/11/captive_audience_counties_and_private_businesses_cash_in_on_video_visits_at_jails.php?page=all.

⁵¹ For the Securus response to Dallas County’s additional best and final offer questions, see Exhibit 9.

demand where it does not exist,⁵² frequently charging promotional rates well below the prices in the contracts and for far longer than the promotional period described in the contracts.⁵³

- **Total visitation will go up?** Although families dispute the assumption, sheriffs argue that video visitation is equivalent to in-person visitation, and they are quick to assert that since video visitation is more efficient, visitation will increase. For example, Travis County, Texas Jail Administrator Darren Long told the County Commissioners Court that video visitation has allowed the jails to provide an additional 11,000 visits.⁵⁴ In reality, the number of visits in Travis County has declined. In September 2009, there were 7,288 in-person visits in Travis County jails.⁵⁵ In September 2013 — a few months after in-person visits were completely banned — there were 5,220 visits. Rather than increase, the total number of visits *decreased* by 28% after the imposition of video visitation because families are unhappy with both free, onsite video visits and the paid, offsite video visits.⁵⁶
- **Most prisons and jails are moving to video visitation?** The Travis County Jail Administrator Darren Long also asserted that video

⁵² Securus is not the only company facing the reality of low demand for video visitation services. In Washington County, Oregon — which contracts with Telmate and uses video visitation as a supplement — the jail logged 86 video visits in September 2013. See Bernstein, 2013. We calculated — using the U.S. Census figure for the jail population of 197 — that the jail logged an average of 13 minutes per incarcerated person for that month.

⁵³ Securus is charging a promotional rate in 67% of the contracts we gathered for our sample. For instance, in Saunders County, Nebraska's contract with Securus, a 30-minute offsite visit is priced at \$30, but for "a limited time," the promotional rate is \$5 for a 35-minute visit. (See Exhibit 18 for the Saunders County contract.) In the Securus contract with Travis County, Texas, the contract specifies that all video visits should be charged at standard rates after the system has been installed for three months. However, Securus has rarely charged the standard rate in the year and a half following implementation. (See Exhibits 15 and 16)

⁵⁴ For the video of Darren Long's testimony in Travis County Commissioners Court, see: Travis County, "Travis County Commissioners Court Voting Session," Travis County Website, January 21, 2014. Accessed on December 2014 from: http://traviscountytx.iqm2.com/Citizens/Detail_Meeting.aspx?ID=1387. Travis County, 2014.

⁵⁵ September 2009 was before video visitation was used at all for those incarcerated in general population. Travis County started using video visitation in 2006-2007 for maximum security and then for general population for those held in Building 12, which opened in Oct. 2009. Travis County switched to video for everyone in May 2013. See Exhibit 16 for visitation data.

⁵⁶ We interviewed three individuals who have used video visitation to visit loved ones incarcerated in Travis County. They are dissatisfied with the audio lags, the lack of eye contact, etc.

visitation “is best practices going across the nation right now”⁵⁷ and implied that Travis County would be terribly behind if it did not adopt video visitation. In reality, only 12% of the nation’s 3,283 local jails have adopted video visitation.⁵⁸ Administrator Long showed a slide with a list of 19 states that use video visitation, but, as discussed earlier, most state prison systems are using video conferencing and video visitation⁵⁹ on a very small scale as a supplement to existing visitation and certainly never as the dominant form of visitation.⁶⁰

- **Video visitation will reduce long lines?** Unlike traditional visitation, many video systems require families to schedule both onsite and offsite video visits at least 24 hours in advance. Many families find coordinating issues like transportation to the jail, childcare, and employment difficult, so requiring visits to be scheduled discourages people from attempting drop-in visits. To their credit, many facilities with policies requiring visits to be scheduled in advance appear to allow drop-in visits when possible, but this leads to confusion when there are even longer waits for a video visit than under the traditional system.⁶¹
- **Remote video visitation is convenient?** The promise of video visitation is that it will be easier for families, but these systems are very hard to use. In our experience doing remote video visits and in our interviews with family members, the most common complaint

⁵⁷ See: Travis County, 2014 for the video of the Commissioners Court meeting. A deputy at the Roane County, Tennessee jail also seems to believe that video visitation is a best practice. The deputy said, “If you’ve got a jail that’s been built in the last few years, it’s got video visitation.” See: Gervin, 2014.

⁵⁸ According to Wagner and Sakala, 2014, there are 3,283 local jails. From video visitation companies’ websites, news stories, and interviews of criminal justice colleagues, we have identified 386 local jails with video visitation.

⁵⁹ Video conferencing includes telemedicine programs in which doctors meet with incarcerated patients through a video system and programs in which parole hearings are done via video. Video visitation allows family members to visit incarcerated loved ones via video.

⁶⁰ The 23 states that use video visitation are: Alabama, Alaska, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, Washington, and Wisconsin. Administrator Long misleadingly cites the number 19 from the Boudin, Stutz, and Littman, 2014 study, even though the study explains that some states use video on a temporary or limited basis. Out of the 19 mentioned in this study, we omitted Idaho, which we do not believe has video visitation and added Alabama, Michigan, North Dakota, South Carolina, and South Dakota. One state prison, Milwaukee Secure Detention Facility, did replace in-person visits with video visits, but it compares itself to a county jail.

⁶¹ When Mary* showed up for an unscheduled video visit, jail staff told her she would get the next available visitor-side video terminal, but she ended up waiting over an hour despite the availability of 30 visitor-side terminals. The delay might have been because the video terminal that her incarcerated brother has access to could have been in use by another incarcerated person. Laina* said that when family members drop in for unscheduled video visits in Travis County, Texas, the wait can be anywhere from one to three hours.

JPAY VIDEO VISITATION: A REVIEW

We decided to try JPay, the leading provider of video visitation in state prisons.

We use Skype and FaceTime regularly and are familiar with the prison and jail telephone industry leaders, so we expected hiccups. However, our JPay experience left us more disappointed and frustrated than we expected.

- To schedule a remote video visit, we had to call JPay customer service four separate times. During our first call, the JPay employee had trouble locating our account saying she is only able to view accounts that are opened over the phone, not accounts created online. We even had to call our credit card company when JPay let us know that some credit card companies reject the way that JPay processes transactions. Later, we learned that JPay had actually been the one rejecting the transactions.
- Visit #1: When we finally had a scheduled video visit, we waited for 30 minutes to no avail. The incarcerated person we were attempting to visit did not see the email from JPay notifying him of the visit until he was off of work and able to check a video terminal. Unfortunately, this was after the scheduled time had already passed. Perhaps we should have scheduled the visit more than 24 hours in advance, but we figured JPay would have set that requirement — as other companies like Securus do — if this were a frequent problem.

Continued on next page.

— even from people who claim to be comfortable with computers — is that these systems are inconvenient.⁶² We heard of and experienced repeated problems getting pictures of photo IDs to companies,⁶³ scheduling visits, processing payments, and with some companies not supporting Apple computers.⁶⁴ Today in 2015, virtually every other internet-based company has made it easy for consumers to purchase and pay for their products, but the video visitation industry — perhaps because of its exclusive contracts — apparently has little desire to win customer loyalty through making its service easy to use.

The financial incentives in the video visitation market put the priorities of the companies before the facilities or the families, so it should come as no surprise the industry is not able to meet all of its attractive promises. Because video visitation is often framed as an “additional incentive” in phone or commissary contracts rather than a stand-alone product, it is unclear how much thought and planning the companies and facilities put into the actual performance of these systems.⁶⁵ The true end-users of this service — the families — are the ones who are served last. Worse still, these “add-ons” create spill-over effects, pushing their bloated costs onto other parts of the contract.

How are Securus video contracts different from other companies?

While most jails choose to ban in-person visitation after installing a video visitation system, only Securus contracts explicitly require this outcome. The Securus contracts also tend to go further with detailed micromanagement of policy issues that would normally be decided upon by elected and appointed correctional officials.

It is common to find the following elements in Securus contracts:

- “For non-professional visitors, Customer will eliminate all face to face visitation through glass or otherwise at the Facility and will utilize video visitation for all non-professional on-site visitors.”
- “Customer will allow inmates to conduct remote visits without quantity limits other than for punishment or individual inmate

- Visit #2: The quality was a disappointment. The person we were visiting was extremely pixelated. The audio delays made it difficult to even have a conversation. We could hear our voices getting to the incarcerated person with delays of 10 seconds. Additionally, six separate times, we were warned of insufficient bandwidth on both our side and on the incarcerated person’s side. Poor quality must be the standard if JPay is not utilizing the adequate bandwidth on the state prison side.
- Visit #3: We scheduled a visit with another person in a different facility but that too failed. While both parties sat at their designated posts at the agreed upon time, the visit never happened. The incarcerated person asked bystanders and learned that the video terminals in that facility had not been working for *months*.

On the positive side, JPay customer service is pretty helpful by telephone, although not by email.¹⁰⁰ While we ended up spending three hours on the phone trying to set up video visits, receiving a refund for the initial, failed visit was fairly easy. We have not been as lucky with other companies in this industry.

¹⁰⁰ A request for credit sent via JPay’s website for the failed visit was immediately acknowledged by an automatic email, with a human reply promised “soon.” But after a week, there was still no follow-up. However, a phone call to customer service resulted in an immediate credit.

⁶² For example, to visit at Wisconsin’s Milwaukee County Jail, families must register on one company’s website (HomeWAV) then schedule the video visit using another company’s website (Renovo). Milwaukee County Sheriff, “Visiting,” Milwaukee County Sheriff Website. Accessed on January 6, 2015 from: <http://county.milwaukee.gov/Visiting15657.htm>.

⁶³ In addition to Laina’s story mentioned in footnote 45, Bernadette had trouble taking a photo of her ID. When Bernadette tried to submit a photo of her ID to Securus, she tried taking the photo five times before she finally submitted it, but the photo was still rejected by the Texas jail. Bernadette was fortunate enough to have access to another, newer laptop. When she tried the laptop, which had a better webcam, the photo of her ID was accepted.

⁶⁴ See Exhibit 19 for the companies that only support Windows computers.

⁶⁵ For Securus’s financial proposal to Shawnee County, Kansas that frames video visitation as an additional incentive, see Exhibit 20.

misbehavior.” Apparently, Securus does not think that the profit share is enough of an incentive for facilities to encourage the use of offsite video visits.

- Additionally, Securus specifies that the county must pay for any free sessions the county wants to provide. With this clause and clauses that “reduce the on-site visitation hours over time,”⁶⁶ Securus is restricting free, onsite visits and pushing families toward paid, remote visits.
- Securus specifies how and where the incarcerated population may move in the facility, with a requirement that the terminals be available “7 days a week, 80 hours per terminal per week.”⁶⁷

Most of the other contracts we reviewed do not require specific correctional policies or changes. One company TurnKey Corrections has clauses in its contracts that are almost the opposite of those of Securus’s such as:

- “Provider wishes to minimize fees charged to inmate’s family and friends and allow revenue and efficiency to grow thus providing the County the maximum amount of revenue possible.”
- “Privileges may be revoked and suspended at any time for any reason for any user.” While communication between incarcerated people and their families should be encouraged, correctional facilities should be responsible for setting visitation policies, not private companies.
- “The communication of changes will be done a minimum of 15 days in advance of the change. Provider warrants to change prices no more than 3 times annually.”

The way *jails* typically implement video visitation systems violates correctional & policy best practices

With few exceptions, jail video visitation is a step backward for correctional policy because it eliminates in-person visits that are unquestionably important to rehabilitation while simultaneously making money off of families desperate to stay in touch. In fact, banning in-person visits and replacing them with expensive virtual visits runs contrary to both the letter and the spirit of correctional best practices as defined by the American Correctional Association (ACA), the nation’s leading

⁶⁶ There is further reason to believe that facilities are allowing Securus to make decisions about onsite visitation policies. Beyond banning in-person visits, Securus has tried to stimulate demand for remote video visits by proposing that Dallas County reduce onsite visitation availability to no more than 20 hours per week. For Dallas County’s proposed contract, see Exhibit 8. While this clause was taken out of the approved Dallas contract, the Securus contract with Adams County, Illinois unfortunately includes this clause. For the Adams County contract, see Exhibit 21. In Maricopa County, Arizona, the Securus contract states, “inmates will be allowed three (3) onsite visits per week, at no charge.” However, according to the Maricopa County Sheriff’s website, this has been cut down to one free onsite visit per week. For Maricopa County’s contract, see Exhibit 12. Also see footnote 32.

⁶⁷ This clause can be found in Securus contracts with, for example, Tazewell County, Illinois and Dallas County, Texas. For the Tazewell County contract, see Exhibit 22. For Dallas County’s approved contract, see Exhibit 7.

professional organization for correctional officials and the accreditation agency for U.S. correctional facilities.

In four conferences going back to 2001,⁶⁸ the ACA has consistently declared that “visitation is important” and “reaffirmed its promotion of family-friendly communication policies between offenders and their families.”⁶⁹ According to the ACA, family-friendly communication is “written correspondence, visitation, and reasonably-priced phone calls.”⁷⁰ The ACA believes that, in addition to visitation, correctional facilities should provide incarcerated people other forms of communication. In its 2001 policy on access to telephones, the ACA states that, while “there is no constitutional right for adult/juvenile offenders to have access to telephones,” it is “consistent with the requirements of sound correctional management” that incarcerated people have “access to a range of reasonably priced telecommunications services.”⁷¹

Yet, instead of being used as a supplemental telecommunications service, jails are frequently using video visitation to replace in-person visitation. Jail video visitation systems are further against correctional best policy because:

- The ACA is explicit that it “supports inmate visitation without added associated expenses or fees.” In the video visitation industry, visitation — which has long-been provided for free — now has a price tag. Most jails provide a minimum number of onsite video visits for free, but sometimes facilities and companies make it nearly impossible for families to utilize these free visits. In Washington County, Idaho, families are given two free visits per week, but these visits can only be used from 6-8am.⁷² Other counties are even more restrictive and in direct violation of the ACA resolution. Lincoln County, Oregon and Adams County, Mississippi left families with

⁶⁸ The ACA’s policy on telephones was unanimously ratified in 2001 and then amended in 2006 and 2011, and its resolution on visitation was adopted in 2011 and reaffirmed in 2012.

⁶⁹ American Correctional Association Resolution, “Supporting Family-Friendly Communication and Visitation Policies,” American Correctional Association Website, Reaffirmed January 24, 2012. Accessed on October 31, 2014 from: http://www.aca.org/ACA_Prod_IMIS/aca_member/ACA_Member/Govt_Public_Affairs/PandR_FullText.aspx?PRCode=R0015.

⁷⁰ American Correctional Association, 2012.

⁷¹ American Correctional Association Policy, “Public Correctional Policy on Adult/Juvenile Offender Access to Telephones,” American Correctional Association Website, Amended February 1, 2011. Accessed on October 31, 2014 from: http://www.aca.org/ACA_Prod_IMIS/aca_member/ACA_Member/Govt_Public_Affairs/PandR_FullText.aspx?PRCode=P0023.

⁷² For the Washington County visitation policy, see Washington County Jail, “Inmate Visiting Hours,” Washington County, Idaho Website. Accessed on November 2014 from: <http://law.co.washington.id.us/sheriff/washington-county-jail/>.

only one option to visit: *paid*, offsite video visits.⁷³ Portsmouth County, Virginia, which has offsite and onsite video visitation, goes as far as to charge for both.⁷⁴

- The ACA defines reasonably priced as “rates commensurate with those charged to the general public for like services.”⁷⁵ And, while sheriffs are usually quick to compare video visitation to services like Skype and FaceTime, those services are free. Video visitation, on the other hand, can cost over \$1 per minute. In Racine County, Wisconsin, a 20-minute video visit costs \$29.95.⁷⁶

Similarly, the American Bar Association (ABA), the nation’s largest association of lawyers, foresaw that facilities would use new technologies to abolish in-person visitation, so it urged in its 2010 criminal justice standards: “Correctional officials should develop and promote other forms of communication between prisoners and their families, including video visitation, provided that such options are not a replacement for opportunities for in-person contact.”⁷⁷

Notably, state prison officials are already in full compliance with this ABA recommendation, as the state prison officials who have considered video visitation understand the harm that would result from implementing video visitation systems as jails do.⁷⁸ Illinois Department of Corrections spokesman Tom Shaer told the *St. Louis Post-Dispatch*, “All

“ Correctional officials should develop and promote ... video visitation, provided that such options are not a replacement for opportunities for in-person contact.

— American Bar Association, 2010

⁷³ For more on the Lincoln County ban on in-person visits, see Bernstein, 2013. For the Adams County, Mississippi contract and for the jail’s visitation policy, see Exhibit 23.

⁷⁴ Portsmouth County’s HomeWAV brochure says “there is a charge for all visits.” For the brochure and the Portsmouth County contract, see Exhibit 24.

⁷⁵ American Correctional Association, 2011.

⁷⁶ We recognize that companies face costs to provide correctional video visitation systems. More research needs to be done on how much it really costs companies to provide video visitation. Securus was the only company to consistently provide a cost breakdown in its contracts, but it is still unclear how much video visitation terminals cost. Generally, Securus contracts state that their video visitation terminals cost \$4,000 each. Lemhi County, Idaho’s contract with another company TurnKey (See Exhibit 25) states that a public video visitation terminal costs \$3,500 while TurnKey’s contract with Jefferson County, Idaho states that a public video visitation terminal costs \$995 each. (See Exhibit 26). According to Vice President of TurnKey, while TurnKey video visitation terminals normally cost \$995, additional terminals cost \$3,900. Lemhi County was given a \$400 discount.

⁷⁷ American Bar Association House of Delegates, *Criminal Justice Standards on the Treatment of Prisoners* (American Bar Association, Approved in February 2010), p 175. Accessed on October 2014 from: http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/treatment_of_prisoners_commentary_website_authcheckdam.pdf.

⁷⁸ In a letter to Bernadette Rabuy dated October 15, 2014, the Freedom of Information Officer for the Illinois Department of Corrections states, “At this time, the Department does not have a contract for video visitation services.” According to a *Chicago Tribune* article, the Department previously had apparently imminent plans to implement video visitation. See McCoppin, 2014.

research shows in-person visits absolutely benefit the mental health of both parties; video can't match that."⁷⁹

Further, the editorial boards of papers as diverse as *Austin American-Statesman*, *The Dallas Morning News*, *Houston Chronicle*, *The New York Times*, and *The Washington Post* have severely criticized jail video visitation systems⁸⁰ for weakening family ties and preying on those least able to afford another expense. A clear and strong national consensus has developed that jail video visitation systems are a major step in the wrong direction.

Video visitation can be a step forward

Much of this report has focused on the way that video visitation is implemented by the largest companies in the industry, arguing that it is a significant step backwards for families and public safety. But video visitation done differently could be a major step forward, and some companies are already taking some of these steps. For example, the data shows that it is economically beneficial to preserve existing visitation systems, and there are ways to operate a video visitation system that actually make visitation more convenient for families.

Two of the industry leaders, Securus and Telmate, claim that in order to be economically viable, they must ban in-person visitation, but some of their competitors have found other, more reliable ways to stimulate demand. Securus and Telmate are utilizing a strategy that is proven by their competitors to be penny-wise and pound-foolish.

Securus almost always requires facilities to ban in-person visitation and justified this to Dallas County, Texas saying that the "capital required upfront is significant and without a migration from current processes to remote visitation, the cost cannot be recouped nor can the cost of telecom be supported."⁸¹ Similarly, Telmate's CEO says that banning in-person

⁷⁹ For the *St. Louis Post-Dispatch* article, see Hampel, 2014.

⁸⁰ For the editorials, see: Editorial Board, "Editorial: A price too high for calls from jail," *The Dallas Morning News*, November 10, 2014. Accessed on November 10, 2014 from: <http://www.dallasnews.com/opinion/editorials/20141110-editorial-a-price-too-high-for-calls-from-jail.ece>. Editorial Board, "Idea blackout," *Houston Chronicle*, September 12, 2014. Accessed on September 12, 2014 from: <http://www.houstonchronicle.com/opinion/editorials/article/Idea-blackout-5752156.php>. The Editorial Board, "Unfair Phone Charges for Inmates," *The New York Times*, January 6, 2014. Accessed on January 6, 2014 from: http://www.nytimes.com/2014/01/07/opinion/unfair-phone-charges-for-inmates.html?_r=0. Editorial Board, "D.C. prisoners deserve better than flawed video-only visitation policy," *The Washington Post*, August 12, 2013. Accessed on December 3, 2014 from: http://www.washingtonpost.com/opinions/dc-prisoners-deserve-better-than-flawed-video-only-visitacion-policy/2013/08/12/68834128-035e-11e3-88d6-d5795fab4637_story.html.

⁸¹ For Securus's justification of the need to change traditional visitation when implementing video, see pages 3-4 of its response to Dallas County in Exhibit 9.

visits is the only way to increase video visitation volume in order to recoup Telpmate's investment.⁸²

However, TurnKey Corrections has found that when facilities offer families *more and better* visitation options, families will use remote video visitation more. TurnKey found:⁸³

- When traditional, through-the-glass visits are retained, the jail averages 23 minutes of offsite video visits per month per incarcerated person.
- When through-the-glass visits are replaced with onsite video visits, the jail averages 19 minutes of offsite video visits per month per incarcerated person.
- When offsite video visits are the only visitation option, the jail averages only 13 minutes of offsite video visits per month per incarcerated person.⁸⁴

Turnkey's experience is that the best way to sell offsite video visitation is to use other forms of visitation to build the demand. Putting up barriers to visitation does little besides discourage families from trying the company's paid service.⁸⁵

Two companies, Turnkey and HomeWAV, structure their systems differently than the market leaders and structure them more like phone services. Both charge per minute rather than per visit, and neither company requires families to pre-schedule video visits:

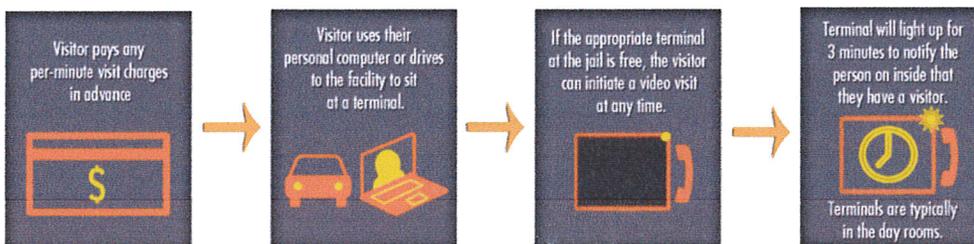


Figure 9. TurnKey charges per minute and allows the visitor to call into the facility without an appointment.

⁸² This is from Peter Wagner's conversation with Telpmate CEO Richard Torgersrud on July 10, 2013.

⁸³ This data is from an interview on November 17, 2014 with Patrick McMullan, Vice President of TurnKey Corrections.

⁸⁴ According to an article from October 2013, the jail in Lincoln County, Oregon — which contracts with TurnKey and only offers paid, offsite video visitation — has averaged 12-24 video visits a day. It is a 161-bed jail so it is averaging a mere 0.07-0.14 video visits per incarcerated person per month. TurnKey charges per minute. See Bernstein, 2013.

⁸⁵ Advocacy organization, Grassroots Leadership, did a survey on video visitation in 2014. A counselor responded to the survey and said that he or she refuses to use video visitation unless the video contract specifically indicates video visitation will only be used as a supplement to in-person visitation. When we interviewed Laina* about her experience with Securus video visitation, she said that she "doesn't care to give Securus money" but only decided to give video visitation a shot when it was offered at the promotional price of \$5 for a 20-minute visit.



Figure 10. HomeWAV charges per minute and does not require appointments. The visitor says when he or she is available, and then the person on the inside makes an outgoing video call.

HomeWAV told us that the average length of a visit on their system is 5.79 minutes, significantly fewer than the standard visit blocks of 20 or 30 minutes. By charging per minute, families are incentivized to use video visits for shorter time periods. For example, it is possible for a daughter to say goodnight to her incarcerated father or for a husband to ask his wife if she received her commissary money via video visit, without the visit being financially burdensome.

While some families find being able to schedule a video visit superior to waiting in a long line for an unscheduled visit, adding the *option* for unscheduled visits has other advantages including:

- It would be better than the telephone because it would allow family members to decide when to communicate, rather than being forced to sit and wait by the telephone.
- It makes per-minute pricing both possible and efficient for both families and the companies.

Additionally, some companies have prioritized supporting their customers and whatever computing devices they have and want to use. For example, HomeWAV reports that 60% of its visits are done using their HomeWAV Android or iPhone/iPad application. By contrast, some other companies do not even support Apple computers.

Company	Microsoft only?	Mobile/tablet application?
HomeWAV	No	Yes
ICSolutions / VizVox	Yes	No
JPay	No	Yes
Renovo	Not anymore	Only for scheduling
Securus	Yes	No
Telmate	No	Coming soon
TurnKey Corrections	No	Yes

Figure 11. This table shows which video visitation systems are compatible with Apple computers and mobile/tablet devices. Source: Companies' websites. See Exhibit 19

Making video visitation more convenient is the key to increasing demand, and with higher demand, the companies can lower prices, which will further stimulate demand.

In the facilities that contract with HomeWAV, which typically charges \$0.50 per minute, the average video visitation usage is 16 minutes per incarcerated person per month. By contrast, we found that the average usage of Securus video visitation in Travis County, Texas from September 2013 to September 2014 was 2 minutes per incarcerated person per

month.⁸⁶ Further, our analysis of the volume and pricing data in Securus's commission reports for Travis County found clear evidence that pricing matters:



Figure 12. Video visitation price vs. usage in Travis County, Texas jails

The lesson is clear: the current approach to jail video visitation from Securus and other large companies is not effectively stimulating demand. While companies and facilities could make many small and large changes to address the lack of demand, the companies should start by giving up on the failed idea that banning in-person visitation is the only way to stimulate demand.

Recommendations

The rapid rise of the video visitation industry has received shockingly little attention, especially given the potential for this technology to serve as an end-run around existing FCC regulation. Right now, while the service is still new and evolving, we have a unique opportunity to shape the future of this industry; lest its worst practices become entrenched as standard procedure. While this report identifies some clear negative patterns — namely the frequency by which jails ban in-person visitation after adopting this technology — the diversity of practices in this market gives us hope that video visitation *could* be positive for both facilities and families.

⁸⁶ Through the Texas Open Records Act, we requested and received the number of remote video visits and the video visit commissions in Travis County, Texas from September 2013 to September 2014. Since we have the contract for video visitation, we know that the commission provided to Travis County is 23% and were able to calculate the revenue. We also know that video visits in Travis County are 20-minutes long so we were able to calculate the total minutes of remote video visitation used per month and the rate charged per month. We used the average daily population in 2010 provided in the Travis County Justice System Profile to calculate the average minutes per incarcerated person per month. See Exhibit 15 for the Travis County contract and Exhibit 16 for the commission and visitation data.

The Federal Communications Commission should:

1. **After regulating both in-state telephone call rates and the unreasonable fees charged by the prison and jail telephone companies**, the FCC should regulate the video visitation industry so that the industry does not shift voice calls to video visits. The proposed regulations should build on comprehensive phone regulations to include rate caps for video visitation.
2. **Prohibit companies from banning in-person visitation.** The FCC should require companies, as part of their annual certification, to attest that they do not require any of their contracting facilities to ban in-person visitation. This requirement would not stop the sheriffs from taking such a regressive step on their own, but it would be a powerful deterrent.
3. **Prohibit the companies from signing contracts that bundle regulated and unregulated products together.** Requiring that facilities bid and contract for these services separately would end the current cross-subsidization. Alternatively, the FCC could strengthen safeguards when allowing the bundling of communications services in correctional facilities, to ensure that the facilities are better able to separately review advanced communications services as part of the Request for Proposals process. Either approach needs to enable all stakeholders to understand these services, their value, and the financial terms of the contracts.
4. **Consider developing minimum quality standards of resolution, refresh rate, lag, and audio sync for paid video visitation.** We note that JPay's official bandwidth requirements are extremely low, and that in our test the facility struggled to provide even that bandwidth. The FCC could collect comments that review the academic literature on the appropriate thresholds for effective human video communication and devise appropriate standards.
5. **Require family- and consumer-friendly features such as charging per-minute rather than per visit.** As the experiences of TurnKey and HomeWAV demonstrate, not every conversation needs to take the same amount of time. It is both fairer and more conducive to greater communication to charge for actual usage.

State regulators and legislatures should:

1. **Immediately catch up and implement regulations** like that of the Alabama Public Service Commission that actively regulate not only the prison and jail telephone industry but also these companies' video visitation products.⁸⁷
2. **Statutorily prohibit county jails from signing contracts that ban in-person visitation.** These statutes should recognize that video visitation is a potentially useful supplement to existing visitation

⁸⁷ Alabama Public Service Commission, *Further Order Adopting Revised Inmate Phone Service Rules*, Docket 15957 (Montgomery, AL: Alabama Public Service Commission, July 7, 2014). Accessed on December 2014 from: http://www.psc.state.al.us/telecom/Engineering/documents/July_7_2014_ICs_Order_TOc.pdf.

systems, but never a replacement.⁸⁸ Further, while facilities routinely restrict visitation as part of their disciplinary procedures, such internal rules have no place in a contract with a telecommunications provider.

Correctional officials and procurement officials should:

1. **Explicitly protect in-person visits and treat video only as a supplemental option.** Social science research and correctional best practices, as put forth by the American Correctional Association and the American Bar Association, encourage visitation because it is crucial to preventing recidivism and facilitating successful rehabilitation. Video could be beneficial as an additional option for communication, but facilities should ensure that they do not approve video contracts that will later lead to the banning of in-person visits.
2. **Refuse commissions. Commissions drive up the cost to families which leads directly to lower communication.** Particularly when introducing new services like video visitation, facilities should resist the penny-wise and pound-foolish temptation provided by commissions.
3. **Scrutinize contracts for expensive bells and whistles that facilities do not want or need.** Insist on removing these items and instead having the rates lowered or, if they choose to receive a commission, having that commission increased.
4. **When putting in video visitation systems, put some thought in to where the terminals are located so as to maximize privacy.** Existing visitation systems allow for monitored but otherwise private conversations, but putting video visitation terminals into busy pods of cells and day rooms can reduce the benefits of a family visit.
5. **Refuse to sign contracts that give private companies control over correctional decisions,** including visitation schedules, when it is acceptable to limit an incarcerated person's visitation privileges, or the ability of people in correctional custody to move within the facility.
6. **Refuse to sign contracts that bundle multiple services together.** Contracts for one service that contain a discount because of other contracts are fine, but bundling multiple services together makes it impossible to determine whether you are getting a good deal.
7. **Consider the benefits of providing incarcerated people a minimum number of free visits per month.** This minimal investment could reap large dividends for families and for reducing recidivism.
8. **Invite bids where the facility purchases equipment from the companies** instead of requiring that all bids be submitted on a no-

⁸⁸ A potential model is S.B. 231 (Whitmire) in Texas's 84th legislative session (2015), which would require Texas jails to provide each incarcerated person with a minimum of two in-person, through-the-glass visits per week.

cost basis.⁸⁹ Having the company finance the equipment and installation just increases the costs to families and cuts into any commission the facility chooses to receive.

9. **Experiment with regional video visitation centers for your state prison system and remote jails.** Regional centers serve as a great supplement to existing visitation systems. The centers operated by the Virginia Department of Corrections could serve as a possible model.
10. **Insist on contracts where companies list and justify not just the cost of each video visit, but all fees to be charged to families.** Lowering the fees keeps more money in families' pockets, making it easier for them to use the video visitation system more. This will have positive results both for reducing recidivism and also for any commission that the facility chooses to receive. For examples of questions that should be asked of prospective companies and evidence that such questions can bring about significant decreases in fees, see Securus's response to such questions as part of the Request for Proposals process in Dallas, Texas.⁹⁰
11. **If the facility allows the company to install any terminals for onsite visitation use by visitors, do not neglect basic issues like privacy partitions** between the terminals and height-adjustable seats so that children and adults of various heights can see the screen and be visible on camera.

Companies should:

1. **Improve the product so that people will choose to use it even when they are not being forced to do so.** Areas of improvement include cost, video quality, usability of websites, streamlining the reservation process, and improving customer support.
2. **Experiment with ways to market the products that are more creative than banning in-person visitation.** Encouraging facilities to maintain traditional visitation — as TurnKey's experience has shown — increases demand for offsite visitation products.
3. **Take advantage of existing technology to improve eye contact for video visits.** Specifically, reduce the vertical distance between the camera and the screen and experiment with integrating the camera behind the screen of onsite terminals. The basic technology for this already exists. For example, the Prison Policy Initiative purchased a \$50 device that mounts over a webcam that repositions the on-screen video, allowing us to look directly into the lens while also seeing the people we are doing remote presentations with.⁹¹

⁸⁹ There is precedent. In Rutherford County, Tennessee's contract with City Tele Coin Company, the company is paying the full costs of video visitation up-front, but the County will be paying the company back for the video visitation system in 48 deductions of phone commissions. At the end of the 48 months, the County will own the video visitation system. For the contract, see Exhibit 27.

⁹⁰ For the Securus response to Dallas County, Texas, see Exhibit 9.

⁹¹ See the device demonstration of Bodelin Technologies's See Eye 2 Eye at: <https://www.youtube.com/watch?v=8n7n4n6SYIc>

4. **Support more operating systems and mobile devices.** JPay, HomeWAV, and TurnKey Corrections support mobile devices, Renovo only added support for Apple computers in late 2014, and Securus and ICSolutions still do not support Apple computers.
5. **Experiment with allowing incoming video visits without an appointment.** Most prisons and jails do not require appointments for traditional visits and TurnKey and HomeWAV's video visitation systems do not require appointments either.

A VICTORY IN DALLAS COUNTY: PRESERVING IN-PERSON VISITATION

All too often, video visitation quietly replaces in-person visitation before families and the public can respond and resist.¹⁰¹ Dallas was different. Prompted by County Judge Clay Jenkins, the people of Dallas stood up to jail telephone giant Securus who wanted the county to ban in-person visitation as part of its new video visitation contract. Securus initially proposed to ban in-person visitation, replacing it with a combination of onsite video visitation available for free for “no more than twenty (20) hours per week” and \$10 offsite video visits.

In September 2014 when County Commissioners first discussed the Securus proposal, a diverse group of Dallas County community members expressed their disapproval in *hours* of eloquent and unanimous testimony. The Commissioners later said that the proposal to ban in-person visits had generated more attention than anything else in the recent history of the Commissioners Court. The public effectively convinced the commissioners that ending in-person visitation would be detrimental to recidivism and that, as taxpayers, they had no interest in punishing the county’s most vulnerable families with high rates to keep in touch. There were two crucial victories, with the county pledging to:

- Forego a commission on video visitation.
- Preserve in-person visitation.

The Dallas County example is very important for anyone hoping to challenge harmful video visitation contracts. The county was able to stop the contract before it was too late due to a combination of important steps. First, Judge Jenkins was alarmed by the contract and decided to act on it, reaching out to groups such as Texas CURE, SumOfUs, and the Prison Policy Initiative to learn more about best practices in video visitation. The county learned how to address Securus’s ambiguities, asking about additional fees that are not included in the phone and video visitation rates and whether Securus was requiring “any changes to [their] in-person visitation policies.”

In person and in writing, Texas residents spoke out about the video visitation trend that had been developing in Texas jails. In just a matter of hours, SumOfUs collected 2,053 petitions from Texas residents urging Dallas County Commissioners to reject the Securus contract. The editorial boards of *The Dallas Morning News*, the *Austin American-Statesman*, and the *Houston Chronicle* unanimously declared that ending in-person visitation would be extremely shortsighted. In his remarks, Judge Jenkins emphasized just how rare it was for the public and the media to speak with just one loud, unanimous voice on an issue.

Ultimately, Dallas County did approve a Securus contract but with one concerning clause that led Judge Jenkins and advocates to oppose the final contract for fear that it was preparing the county to ban in-person visitation in the near future. The final contract requires Securus to provide 50 onsite visitor-side terminals, which in fact would only be needed if the county were planning to revoke its pledge to preserve traditional visitation through glass. Judge Jenkins read into the record a lengthy list of counties that banned in-person visits when they implemented onsite video visitation.¹⁰² He was rightly concerned that it simply did not make economic sense for Securus to invest in these terminals unless they were part of plan to encourage paid offsite video visitation.¹⁰³

While advocates are going to need to carefully monitor the jail to ensure that it upholds the spirit and letter of the Commissioners Court’s order to preserve free in-person visitation, this was a big victory with at least three lessons for other jurisdictions facing video visitation proposals:

1. The public must be activated, and it must be involved early.
2. County officials are easily confused by complicated contracts that bundle together services that the county does not necessarily want. Some of these services cut into the county’s potential commissions, and some even come with clauses that could commit the county to future expenditures.¹⁰⁴
3. Pushing the companies to lower rates and fees actually works. For example, Securus renegotiated its contract with Western Union to reduce its charge for payments from \$11.95 to \$5.95.¹⁰⁵

¹⁰¹ See sidebar, Families find the promises most misleading of all, on page 16.

¹⁰² For our current list of facilities that replace in-person, through-the-glass visits with onsite video visits, see Exhibit 29.

¹⁰³ One county employee argued at the November 11, 2014 Dallas County Commissioners Court that the terminals might never be built for the simple reason that the jail has no space for these terminals. This defense raises even more questions. Will the county later construct a building to hold the terminals? Does that make it even stranger that Securus would offer to provide technology that — at best — might never be used? One would think that Securus would prioritize lowering the rates or increasing its profits over providing the county with white elephants.

¹⁰⁴ At the November 11, 2014 meeting, employees of Global Tel*Link warned the commissioners that the 10 pages of additional items could end up costing the county millions.

¹⁰⁵ See page 3 of the Securus response in Exhibit 9.

TABLE OF EXHIBITS

All exhibits cited in *Screening Out Family Time* are available at <http://www.prisonpolicy.org/visitation/>

Exhibit Title

- 1 Facilities with Video Visitation
- 2 New Mexico Corrections Department Contract with PB&J Family Services
- 3 Global Tel*Link Reply to Alabama Order
- 4 Chippewa County, Wisconsin Securus Contract
- 5 Washington County, Oregon Telmate Contract
- 6 Washington County, Idaho Telmate Contract
- 7 Dallas County, Texas Approved Securus Contract
- 8 Dallas County, Texas Proposed Securus Contract
- 9 Securus Dallas County Additional BAFO Responses
- 10 Placer County, California ICSolutions Contract
- 11 Fee Breakdown
- 12 Maricopa County, Arizona Securus Contract and Proposal
- 13 Charlotte County, Florida Earnings August 2014
- 14 Collier County, Florida Securus Contract
- 15 Travis County, Texas Securus Contract
- 16 Travis County, Texas Commission and Visitation Data
- 17 Travis County, Texas Lawsuit Amended Complaint
- 18 Saunders County, Nebraska Securus Contract
- 19 Windows Only Companies
- 20 Securus Shawnee County, Kansas Financial Proposal
- 21 Adams County, Illinois Securus Contract
- 22 Tazewell County, Illinois Securus Contract
- 23 Adams County, Mississippi HomeWAV Contract and Visitation Policy
- 24 Portsmouth County, Virginia HomeWAV Contract and Brochure
- 25 Lemhi County, Idaho TurnKey Contract
- 26 Jefferson County, Idaho TurnKey Contract
- 27 Rutherford County, Tennessee City Tele Coin Company Contract
- 28 New Orleans Motion
- 29 Counties with Bans on In-person Visits

ACLU



CENTER FOR ADVOCACY & POLICY

Telephone: (916) 442-1036

Fax: (916) 442-1743

August 29, 2016

Ginger Wolfe, Associate Governmental Program Analyst
Board of State and Community Corrections
2590 Venture Oaks Way, Suite 200
Sacramento, CA 95833
Ginger.wolfe@bscc.ca.gov

Dear Ms. Wolfe,

The ACLU of California submits the following comments on the proposed amendments to the Minimum Standards for Local Detention Facilities, Title 15, Division 1, Chapter 1, Subchapter 4, California Code of Regulations. Our comments address two issues: (1) compliance with the federal Prison Rape Elimination Act; and (2) treatment of pregnant inmates.

I. Compliance with the Federal Prison Rape Elimination Act

The proposed amendments fail to comply with the minimum standards required of local detention facilities under the federal Prison Rape Elimination Act of 2003 (PREA). Specifically, the proposed regulations fail to include mandatory duties imposed on local facilities by PREA. By failing to include these federally mandated duties, the regulations fall below the minimum standards required by federal law. The proposed regulations thus are in conflict with federal law and their adoption would violate the Administrative Procedures Act. Failure to comply with PREA also subjects state and county facilities that detain adults to serious risks of legal liability and litigation costs. We therefore urge the BSCC to adopt changes to these proposed amendments to comply with PREA, as specified below.

A. The Requirement to Comply with PREA

The Prison Rape Elimination Act of 2003 (PREA), Pub. L. No. 108-79, 117 Stat. 972 (2003) (codified at 42 U.S.C. §§ 15601-15609), was passed by Congress and signed by President George W. Bush in 2003. The purpose of PREA is to end the unacceptable sexual assaults that occur in custodial facilities and to ensure the basic dignity and human rights of all detained people. Federal regulations on PREA implementation have now been adopted and are binding on every detention facility in the United States. (28 CFR Part 115, et seq.)¹ Under California's

¹ PREA directed the attorney general to promulgate standards for all confinement facilities including, but not limited to, local jails, police lockups, and juvenile facilities. See 42 U.S.C. § 15609(7). DOJ has promulgated regulations

ACLU OF NORTHERN CALIFORNIA
Andi Solani, Executive Director
39 Drumm Street
San Francisco, CA 94111
(415) 621-2493

ACLU OF SOUTHERN CALIFORNIA
Hector Villagra, Executive Director
1313 West Eighth Street
Los Angeles, CA 90017
(213) 977-9500

ACLU OF SAN DIEGO & IMPERIAL COUNTIES
Norma Chavez-Peterson, Executive Director
P.O. Box 87131
San Diego, CA 92138
(619) 232-2121

Administrative Procedures Act, any proposed regulations must be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” (Gov. Code §11349, subd. (d).) PREA has established minimum jail standards for every detention facility in the United States. California regulations may not contain lesser standards.

Additionally, PREA requires that “an organization responsible for the accreditation of Federal, State, local, or private prisons, jails, or other penal facilities may not receive any new Federal grants during any period in which such organization fails to . . . adopt accreditation standards consistent with the national standards adopted pursuant to [PREA]”. (42 U.S.C. §15608.) The BSCC is the regulatory agency in California with jurisdiction over county jails. BSCC both establishes and enforces jail standards on the counties. As such, BSCC is the “organization responsible for the accreditation” of county jails in California, within the meaning of PREA, and is therefore required to adopt standards consistent with PREA. Failure to do so would render BSCC ineligible for any new federal grants.

Furthermore, while PREA does not create a private right of action to sue for violations of the Act or regulations, litigants can argue that a facility’s noncompliance with the PREA standards presents evidence that facilities are not meeting their constitutional obligations to protect inmates and keep them safe.² If a state, agency or facility has maintained policies or practices that do not comply with PREA, this may be evidence that officials have been deliberately indifferent to an objectively serious risk of harm. This is particularly true where lesbian, gay, bisexual, transgender, and intersex (LGBTI) inmates are sexually harassed, abused, or assaulted. The findings of the National Prison Rape Elimination Commission (NREC) and the DOJ during the passage of PREA and the regulations to implement PREA all effectively put agencies and officials on notice of the particular vulnerability of LGBTI prisoners and of the specific steps needed to minimize the risk of harm.

In sum, state regulations must be consistent with and cannot fall below the minimum standards established by PREA. Moreover, incorporating PREA requirements into state regulations will significantly increase the likelihood that prisons and jails will quickly adopt PREA-compliant policies and practices. This will not only create safer criminal justice facilities but also result in fiscal benefits for the state and local facilities at risk of substantial loss or diversion of federal funds or litigation costs.

establishing standards for prisons and jails (28 C.F.R. §§115.11 – 115.93), lockups (28 C.F.R. §§115.111 – 115.193), residential community confinement facilities (28 C.F.R. §§115.211 – 115.293), and juvenile facilities (28 C.F.R. §§115.311 – 115.393).

² See, e.g. *Farmer v. Brennan*, 511 U.S. 825, 833 (1994) (holding, in the context of a case concerning failure to protect a transgender woman from harm in a male facility, that prisons and jails “have a duty to protect prisoners from violence at the hands of other prisoners.”).

B. “Nonduplication” Standards Within the APA

At its June 9, 2016 meeting, some BSCC staff and board members raised the issue of whether adopting PREA requirements in Title 15 would conflict with California’s Administrative Procedures Act (APA) standards regarding “nonduplication.” It would not. First, adopting standards established under federal law does not require duplication of federal law or regulations verbatim. Rather, it requires that the standards set forth as California’s minimum jail standards not fall below the federal standards. Second, the APA provides that its “nonduplication” standard is met where duplication of a federal or state law or regulation is necessary for purposes of clarity. (1 CCR §12(b)(1).) Here, adding language to Title 15 that informs counties of PREA requirements certainly clarifies what minimum standards they are legally required to meet. Lastly, the APA specifically provides for California regulations to “incorporate by reference” another document, such as federal statutes and regulations, where it is either cumbersome or impractical to publish the document in the California Code of Regulations or where “other applicable law specifically requires the adoption or enforcement of the incorporated material by the rulemaking agency.” (1 CCR §20.) Thus, the APA’s “nonduplication” requirements do not prevent California from adopting state regulations that are consistent with the federal PREA standards—in fact, the state is required to do so—and do not prevent the state from explicitly incorporating part or all of the federal regulations in Title 15 in order to provide clarity to local facilities.

C. Specific Recommendations

PREA requires adult institutions to prevent sexual assault from occurring in the first place.³ Among other things, jails and prisons must adopt new screening, classification, and housing procedures that screen people’s risk level for sexual assault, and make efforts to place people in the facility in the manner that makes them safe while also reducing unnecessary prolonged isolation and segregation.⁴ Housing classification determinations must be made on a case-by-case basis, taking into account a person’s own views about safety.⁵ Local agencies responsible for operating adult institutions also have to minimize opportunities for sexual assault by having sufficient staffing, rounds, and video monitoring, and by getting rid of physical spaces that might invite attacks.⁶ Adult institutions must also stop cross-gender viewing and monitoring in spaces where inmates are naked, as well as cross-gender invasive searching.⁷ Jails and prisons are never allowed to conduct searches for the purpose of determining a person’s genital status.⁸ Transgender inmates must be permitted to shower privately.⁹

³ 28 C.F.R. § 115.61.

⁴ 28 C.F.R. §§ 115.41-43.

⁵ 28 C.F.R. § 115.41-42.

⁶ 28 C.F.R. §§ 115.13.

⁷ 28 C.F.R. § 115.15.

⁸ *Id.*

⁹ 28 C.F.R. § 115.42.

None of these requirements are currently addressed in the proposed regulations about classification or safety. Further, the regulations fail to provide sufficient clarity to institutions regarding important areas of law. We explain in detail below.

1. Definitions Should be Added to the Regulations

PREA requires consideration of various forms of vulnerability to assess housing classification, including whether someone is transgender, gender nonconforming, or intersex. The proposed regulations are currently silent on this requirement, failing to give local institutions the necessary guidance to comply with this mandate of federal law. The proposed regulations should be amended to clearly state this and to define these terms in the classification regulation.

We propose the following definitions: Transgender means “a person whose gender identity (i.e., internal sense of feeling male or female) is different from the person’s assigned sex at birth.”¹⁰ Gender nonconforming means “a person whose appearance or manner does not conform to traditional societal gender expectations.”¹¹ Intersex means “a person whose sexual or reproductive anatomy or chromosomal pattern does not seem to fit typical definitions of male or female.”¹² Gender expression and gender identity should also be defined for the benefit of classification officers. Gender expression means “a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.”¹³ Gender expression is an entirely different thing than a person’s gender identity. A person’s gender identity is an individual’s internal, personal sense of their own gender (e.g. male, female, both or neither), which may or may not be associated with a person’s assigned sex at birth.

2. The Regulations Should be Amended to be Consistent with PREA’s Requirements Regarding Staffing Levels, Video Monitoring and Safety Plans

The proposed amendments to 15 CCR §§1027 and 1027.5 change the state regulations concerning staffing levels and security checks, but do not reflect PREA’s staffing, video monitoring, and safety plan requirements. Indeed, the Administrative Working Group (AWG) considered but rejected a recommendation to include language informing counties of their obligation to provide a sufficient number of personnel required to ensure compliance with PREA. (AWG Draft at 34.) The proposed regulations should be amended to ensure local agencies responsible for operating adult institutions comply with staffing, video monitoring and safety plan requirements in PREA. The California regulations should specifically state that each institution is required to develop a plan that establishes sufficient staffing, rounds, and video monitoring and that takes into consideration the eleven criteria specified in the federal regulations.¹⁴ California’s regulations should also require documenting and justifying any

¹⁰ 28 C.F.R. § 115.5.

¹¹ *Id.*

¹² *Id.*

¹³ Cal. Penal Code § 422.56(c).

¹⁴ 28 C.F.R. 115.13

deviations from the plan, and getting rid of physical spaces that might invite attacks. Further, California's regulations should state that these plans must be reassessed by the local agency, in consultation with the PREA coordinator for the institution, on at least an annual basis, as required under federal law. Finally, California's regulations should state that each local agency must also have a policy of unannounced visits to each institution by supervisory staff, during both the day and night shifts, to deter sexual abuse and misconduct, again as required by federal law.¹⁵

3. The Regulations Should be Amended to Prohibit Cross-Gender Viewing and Searching, as Required by PREA

The proposed revisions fail to address PREA requirements to protect transgender people, and others, from risk of abuse by limiting cross-gender viewing and invasive searching.¹⁶ This is an area in which local facilities would benefit from greater clarity and guidance in the state regulations. We receive frequent questions from county jails and other law enforcement agencies about how to apply the federal rules on cross-gender viewing/searching to transgender inmates.

Title 15 should be amended to state that: (1) transgender inmates will be asked to indicate their preference with respect to the gender of the officer searching them; (2) the person conducting the search and the transgender inmate will both be of the same gender identity unless the transgender inmate has indicated a different preference; (3) searches will not be done for the purpose of observing the person's genitalia.

Note that under California law, sex and gender mean the same thing and both are defined to include a person's gender identity. (Cal. Penal Code §422.56: "'Gender' means sex, and includes a person's gender identity and gender expression. 'Gender expression' means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth."; see also Cal. Penal Code §422.57 (applying the definition of "sex" from Section 422.56 to the entire Penal Code)). Thus, when assessing compliance with cross-gender search rules, it is a person's gender identity and not anatomy that governs.

4. Transgender Shower Requirements

The proposed revisions fail to address PREA requirements that transgender people must be permitted to shower separately.¹⁷ Title 15 should be amended to specifically include this requirement.

¹⁵ 28 C.F.R. § 115.13.

¹⁶ 28 C.F.R. § 115.15.

¹⁷ 28 C.F.R. § 115.15.

5. Regulations Should be Amended to Incorporate PREA's Restrictions on Prolonged or Unsubstantiated Isolation and Programming Deprivations

PREA provides that prisoners cannot be placed in segregated housing against their will unless there has been an individualized assessment of all available alternatives and there are no available alternatives.¹⁸ No one should be involuntarily placed in segregated housing solely on the basis of their gender identity.¹⁹ If an involuntary segregated housing assignment is made, the reason must be clearly documented and it must be regularly reviewed.²⁰ When people are placed in segregated protective units, jails have to ensure they are given access to programs, privileges, education, and work opportunities to the greatest extent possible.²¹

The Classification Work Group has proposed amending 15 CCR §1053, concerning administrative segregation and programming access for those who jeopardize the safety and security of the facility or other inmates. (CWG at 10.) But the Classification Work Group has not addressed PREA's rules about segregation and the limits on segregation for people placed there for their own protection. The failure of the proposed regulations to address this distinct population may lead local facilities to conclude that no additional protections or measures are needed. This is inconsistent with the requirements of federal law.

Similarly, the Programs and Services Work Group, proposes amending 15 CCR §1061, concerning facility's inmate education plans. (PSWG at 5.) Unfortunately, these proposed amendments fail to address and incorporate PREA's requirements concerning the efforts jails and prisons must make to ensure those held in segregated custody for their own protection are not deprived of programming and work opportunities or other privileges, as required by 28 CFR § 115.43. The regulations should be amended to include these legal requirements.

6. The Regulations Should be Amended to Incorporate PREA's Discipline and Accountability Requirements

Under PREA, adult institutions must have a zero tolerance policy toward sexual abuse, harassment and assault.²² PREA requires a real investigation, accountability, and reporting of sexual assault incidents. There must be clear mechanisms to report sexual assault and those who report must be protected from retaliation.²³ Real investigations must happen, with uniform

¹⁸ 28 C.F.R. § 115.43.

¹⁹ 28 C.F.R. § 115.42.

²⁰ *Id.*

²¹ 28 C.F.R. § 115.43.

²² 28 C.F.R. § 115.11.6

²³ 28 C.F.R. §§ 115.51, 115.67, 115.78, 115.82(d); see also Cal. Penal Code § 2637(a).

protocols, and evidence preserved.²⁴ Inmates who engage in inmate-on-inmate sexual abuse must face serious consequences.²⁵ The same is true of staff, contractors, and volunteers.²⁶

None of these requirements are addressed in the proposed revisions to Title 15. The regulations should be amended to include these legal requirements.

7. The Regulations Should be Amended to Incorporate PREA's Medical and Mental Health Requirements

PREA requires that, when sexual assaults do occur, jails and prisons must provide people with appropriate medical and mental health services, confidentially, and at no cost, in a manner consistent with the level of care in the community.²⁷ This means people must get urgent trauma care, which includes treatment of injuries, STI testing, post-exposure prophylaxis, and, for those who need it, emergency contraception and pregnancy testing.²⁸ Prompt forensic exams must also be provided to incarcerated people who want them, in order to preserve evidence for a possible prosecution.²⁹ Adult institutions have to provide people with access to outside victim advocates and rape crisis organizations and, upon release, must connect them to relevant mental health and social services.³⁰ Jails and prisons must also have screening in place to identify people who have experienced sexual victimization, whether in the institutional setting or in the community, in order to ensure they receive follow-up screenings and care they need.³¹

The proposed revisions have not incorporated these legal requirements. For example, §1206, concerning the Health Care Procedures Manual, and §1208, concerning Access to Treatment, should be amended to require policies and procedures that implement PREA's medical, mental health and forensic exam requirements; §1206.5, concerning Management of Communicable Diseases in Custody Settings, should be amended to require plans for ensuring victims of sexual assault receive post-exposure prophylaxis; §1207, concerning Medical Receiving Screening, should be amended to reference PREA's requirements that inmates be screened for prior sexual victimization to ensure those victimized are offered follow-up meeting and care; and §1209 should be amended to reference policies and procedures needed to ensure access to outside advocates and rape crisis centers.

²⁴ 28 C.F.R. § 115.21(c), 22.

²⁵ 28 C.F.R. § 115.78.

²⁶ 28 C.F.R. § 115.76.

²⁷ 28 C.F.R. 115.82(a)-(b), (d); 28 C.F.R. 115.83(a)-(c).

²⁸ 28 C.F.R. § 115.82(c); 28 C.F.R. § 115.83(d)-(f).

²⁹ 28 C.F.R. § 115.21.

³⁰ *Id.*

³¹ 28 C.F.R. §§ 115.81, 83.

8. The Regulations Should be Amended to Incorporate PREA's Inmate Education Requirements

PREA requires that inmates at intake receive information explaining the agency's zero tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.³² Within 30 days of intake, jails and prisons must provide inmates with comprehensive education about their right to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.³³ Facilities must also make key information continuously and readily available or visible.

None of these requirements are reflected in the proposed draft amendments.³⁴ At a minimum, §1069, the Inmate Orientation regulation, should be amended to require discussion of inmate's rights under PREA and how to make PREA complaints.

II. Treatment of Pregnant Inmates

In 2005, Section 6030 of the Penal Code was amended to require the BSCC to adopt standards for local correctional facilities including the requirement that inmates who are pregnant be provided prenatal and postpartum information and health care. (AB 478 – Chap. 608, Stats. of 2005.) Eleven years later, there are still no such regulations in Title 15 that establish specific standards pertaining to women in county jails. Title 15 § 1206(f) merely states that local jails must set forth policies and procedures regarding care for pregnant and lactating women “in conformance with applicable state and federal law.” The state regulatory code, however, does contain a number of such provisions regarding women in state prisons (located in Cal. Code Regs., Title 15 § 3355.2). We strongly recommend that the BSCC make the provisions “Treatment of Pregnant Inmates,” found in Cal. Code Regs., Title 15 § 3355.2(a)-(l), applicable to women incarcerated in county facilities.

Section 3355.2 includes specific provisions for pregnancy care, including timing, frequency, and required components of prenatal care, and various accommodations necessitated by pregnancy. We have heard from many women incarcerated in county jails throughout the state that their prenatal and/ or postpartum health care is not provided 1) in a timely manner, 2) with enough frequency, and 3) in a comprehensive manner. We have also heard from women in county facilities that pregnancy accommodations (such as lower bunks and lower tier housing assignments) are often delayed or not provided at all. And finally, we have heard from women in county facilities that they would benefit greatly from being allowed a support person during labor and delivery (§ 3355.2(k)).

³² 28 C.F.R. § 115.33.

³³ *Id.*

³⁴ *Id.*

Thus, applying the protective provisions of § 3355.2(a)-(1) to women in county facilities is common sense. Because the affected populations share many of the same demographics and medical needs, both county jails and state prisons should afford pregnant and postpartum the same care and protections.

Finally, we also recommend that the BSCC include a requirement that postpartum women be given lactation accommodation (specifically - being provided a breastpump and instructions, and the ability to store milk for pick-up and delivery to the child). One of the major issues we have seen in county facilities is the lack of awareness that postpartum women need to express breastmilk. We have seen family crises affecting both incarcerated mother and her baby when facilities do not provide lactation accommodation, and therefore strongly suggest clearer guidance on this point.

Conclusion

We urge that these proposed revisions to Title 15 be amended to make the regulations fully consistent with the minimum requirements of PREA, and to include regulations requiring women in county jails to receive the same prenatal and postpartum care as women in state prison.

Respectfully,



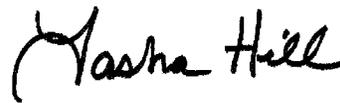
Natasha Minsker
Director
ACLU of California
Center for Advocacy & Policy



Steven Meinrath
Advocate
ACLU of California
Center for Advocacy & Policy



Melissa Goodman
Director
LGBTQ, Gender & Reproductive Justice Project
ACLU of Southern California



Tasha Hill
LGBTQ Rights Fellow/Staff Attorney
ACLU of Southern California

cc: Kathleen Howard, Executive Director, BSCC

BSCC Board members:
Linda Penner, Chair,
Scott Kernan
Guillermo Viera Rosa
Dean Growdon

Geoff Dean

Leticia Perez

Michelle Scray Brown

Michael Ertola

Hon. Ramona Garrett

David Bejarano

Scott Budnick

David Steinhart

Mimi H. Silbert

Aaron Maguire, General Counsel, BSCC

Prison Law Office



PRISON LAW OFFICE
General Delivery, San Quentin, CA 94964
Telephone (510) 280-2621 • Fax (510) 280-2704
www.prisonlaw.com

Director:
Donald Specter

Managing Attorney:
Sara Norman

Staff Attorneys:
Rana Anabtawi
Steven Fama
Alison Hardy
Sia Henry
Corene Kendrick
Margot Mendelson
Millard Murphy
Lynn Wu

September 12, 2016

Ginger Wolfe, Associate Governmental Program Analyst
Board of State and Community Corrections
2590 Ventura Oaks Way, Suite 200
Sacramento, CA 95833
Ginger.Wolfe@bscc.ca.gov

Dear Ms. Wolfe,

The Prison Law Office submits the following comments on the proposed amendments to the Minimum Standards for the Local Detention Facilities, Title 15, Division 1, Chapter 1, Subchapter 4, California Code of Regulations. Our comments address compliance with the federal Prison Rape Elimination Act of 2003 (PREA)¹.

Adopting the proposed regulations would be a violation of the Administrative Procedures Act.

All local correctional facilities are required to comply with PREA. The DOJ promulgated regulations that are binding on every detention facility in the country, including local jails and juvenile facilities.² The proposed amendments to the minimum standards in Title 15 fail to incorporate the duties federally mandated by PREA. The California Administrative Procedures Act requires proposed regulations to be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.”³ Adopting regulations that fall below the minimum standards established by PREA would, thus, violate the California Administrative Procedures Act.

Role of BSCC and Loss of Federal Funding

The BSCC “promulgates regulations for adult and juvenile detention facilities, conducts regular inspections of those facilities ... and administers significant public safety-related grant funding.”⁴ The BSCC is “the administering agency for a host of federal and state public safety grants.”⁵

As the state regulatory agency that establishes the minimum standards for local facilities, including county jails, and inspects those facilities for compliance, the BSCC, for purposes of PREA is the “organization responsible for the accreditation” of jails in California. Failure to adopt standards that meet or exceed those set in PREA will make the BSCC ineligible for any new Federal grants until those standards are adopted.⁶

¹ 42 U.S.C. §§ 15601-15609.

² 42 U.S.C. § 15609(7), 28 C.F.R. §§ 115.11-115.93, 115.311-115.393.

³ Gov. Code § 11349(d).

⁴ http://bscc.ca.gov/m_bscboard.php

⁵ http://bscc.ca.gov/m_bscboard.php

⁶ 42 U.S.C. § 15608.

Board of Directors
Penelope Cooper, President • Michele WalkinHawk, Vice President
Marshall Krause, Treasurer • Christiane Hipps • Margaret Johns
Cesar Lagleva • Laura Magnani • Michael Marcum • Ruth Morgan • Dennis Roberts

Role of BSCC and Liability

One of the central roles of the BSCC is that it “provides leadership to the adult and juvenile criminal justice systems”.⁷ Sheriff’s Departments and Probation Departments across the state are left without guidance from the BSCC about what their obligations are and how to comply with PREA. We have heard from local partners that they have been told by BSCC staff that BSCC is not providing guidance or monitoring PREA compliance in any way. This means counties are left on their own to figure out how to become compliant and schedule PREA audits, ignored by the state agency responsible for establishing and enforcing minimum standards.

By failing to incorporate PREA into the minimum standards in Title 15 and conducting biennial inspections of local facilities for compliance with standards that fall below the PREA requirements, the BSCC is failing its local partners and leaving them susceptible to litigation. A facility’s policies or practices that fall below the standards set forth in PREA are evidence of “deliberate indifference”. Since PREA was signed into law in 2003 and the DOJ has promulgated regulations, all county correctional agencies and staff have been on notice of the particular vulnerability of LGBTI people in their facilities and the minimum standards that need to be adopted to minimize harm to this vulnerable population of incarcerated people.

Failure to adopt policies that are PREA compliant is also evidence that a facility’s policies and procedures constitute a substantial departure from the accepted standards of conditions of confinement. The PREA standards were developed by a broad coalition of supporters from across the political spectrum, passed with bipartisan support, and signed into law by a Republican president. These standards are the minimum and to the extent that the minimum standards set forth in Title 15 fall below the PREA standards, they represent a departure from the accepted standards of conditions of confinement.

Conclusion

We urge the BSCC to establish minimum standards that rise to the level set by PREA. Adopting standards below this threshold will violate the Administrative Procedures Act and leave counties susceptible to a loss in federal funding and liability.

Please do not hesitate to contact us if you have any questions. Thank you.

Sincerely,



p.p. Don Specter
Director



Lynn Wu
Staff Attorney, Juvenile Justice Policy and Projects Manager

cc: Kathleen Howard, Executive Director, BSCC
BSCC Board Members
Aaron Maguire, General Counsel, BSCC

⁷ http://bscc.ca.gov/m_bscboard.php