

# CHAPTER 13: YOUR RIGHT TO PRIVATE COMMUNICATIONS\*

## A. INTRODUCTION

Communication with the outside world while you are in prison is important for your future and wellbeing. Keeping in touch with your family can help you rejoin your community when you are released, and communicating with your attorney is necessary for you to stay involved with your legal defense. However, prison administrators are allowed to restrict your communication with courts, attorneys, family, friends, and the news media. Courts give prison officials great authority in making decisions about prison administration. The prison authorities, however, cannot completely restrict your ability to communicate. The U.S. and state constitutions, as well as federal, state, and city regulations, limit prison administrators' power to restrict your access to the outside world. You keep some constitutional rights upon imprisonment, like parts of your First Amendment protections of speech, press, and religion.<sup>1</sup> However, the prison administration can limit these rights if they need to maintain prison security or order or further their goals of rehabilitating prisoners. The Louisiana Constitution gives you a right to private communications and allows you to challenge a violation of that right in court.<sup>2</sup>

## B. THE RIGHT TO GENERAL NON-LEGAL CORRESPONDENCE

### 1. Your Federal Constitutional Protections

The First Amendment to the U.S. Constitution creates a minimum level of protection of your right to communicate with the outside world. This means that no government may pass laws or regulations falling below this level of protection. Courts treat incoming mail (mail sent to you) and outgoing mail (mail sent by you) differently. Restrictions on incoming mail are greater than on outgoing mail because incoming mail can pose a greater security threat within the prison.

#### a. Outgoing Correspondence

Restrictions on outgoing, non-legal mail must further an important governmental objective, *and* the restriction must be no greater than necessary to further that goal.<sup>3</sup> An individual normally has a reasonable expectation of privacy in his own home that protects him from police searches done without a warrant, or without official permission from a judge. However, the Supreme Court held that prisoners do not have this expectation of privacy in their prison cells.<sup>4</sup> This reasoning extends to your outgoing mail. Therefore, a prison official does not need a search warrant to read your outgoing mail, even if he has only suspicions about what might be in it.<sup>5</sup>

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\* This Chapter of the Louisiana Supplement was written by Raquel Toledo.

<sup>1</sup> U.S. CONST. amend. I; *Bell v. Wolfish*, 441 U.S. 520, 545, 99 S. Ct. 1861, 1877, 60 L. Ed. 2d 447, 472 (1979). Courts generally do not decide whether incarcerated people continue to have constitutional rights and instead determine whether the restriction on the right is reasonable. *See, e.g., Overton v. Bazzetta*, 539 U.S. 126, 131–132, 123 S. Ct. 2162, 2167–2168, 156 L. Ed. 2d 162, 169–170 (2003).

<sup>2</sup> *See* LA. CONST. ANN. art. I, § 5 (“Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy . . . . Any person adversely affected by a search or seizure conducted in violation of this Section shall have standing to raise its illegality in the appropriate court.”).

<sup>3</sup> *Procunier v. Martinez*, 416 U.S. 396, 413–414, 94 S. Ct. 1800, 1811, 40 L. Ed. 2d 224, 240 (1974) (holding that restrictions on mail must satisfy this test); *Thornburgh v. Abbott*, 490 U.S. 401, 413, 109 S. Ct. 1874, 1881, 104 L. Ed. 2d 459, 473 (1989) (limiting the *Martinez* test to outgoing mail).

<sup>4</sup> *Hudson v. Palmer*, 468 U.S. 517, 525–526, 104 S. Ct. 3194, 3200 (1984) (holding that the Fourth Amendment proscription against unreasonable searches does not apply within the confines of the prison cell).

<sup>5</sup> *See State v. Dunn*, 478 So. 2d 659, 663 (La. App. 2 Cir. 1985) (holding that a prison deputy did not violate prisoner’s right against unreasonable searches and seizures when he searched prisoner’s outgoing mail after another prisoner reported a theft of a one-hundred-dollar bill).

### b. Incoming Correspondence

In deciding whether a restriction on *incoming* correspondence (mail and publications sent to you) is constitutional, the Court has held that the proper standard of review is that the regulations must be *reasonably related* to a legitimate penological interest (things important to running a prison, for example, security, order, or rehabilitation).<sup>6</sup> This means that prison officials can restrict mail and publications being sent to you as long as their purpose in limiting your mail is reasonably related to a legitimate goal like maintaining security within the prison or ensuring that prisoners are rehabilitated.

### c. “As Applied” versus “Facial” Challenges

There are two ways to challenge restrictions on your right to non-legal correspondence: “facial” challenges and “as applied” challenges. A facial challenge to a law claims the law is always unconstitutional, no matter how it is applied. This type of challenge can be based on a number of legal arguments. For example, the law could conflict with a specific amendment to the U.S. Constitution, also known as the Bill of Rights, or it might be too broad and limit more actions or people than needed to achieve its goal. This is different from an “as applied” challenge, which argues that a law or regulation is unconstitutional in a particular situation or with a specific type of person.

The case *Vodicka v. Phelps* is a helpful example of the difference between these two challenges.<sup>7</sup> In that case, a prisoner challenged the constitutionality of a rule restricting incoming mail with both “facial” and “as applied” challenges. In *Vodicka*, a prison warden at Angola prohibited the Louisiana Coalition on Jails and Prisons (LCJP) from distributing an issue of a newsletter called “Inside,” because the lead article was about a recent prisoner work strike that occurred at the prison and called for the creation of a labor union for prisoners. The court noted that the prison warden had met with the publisher promptly and told LCJP that the newsletter would not be distributed but that earlier and later editions were not banned.<sup>8</sup> The court upheld this rule as constitutional both “facially” and “as applied.”

First, the plaintiff (the person who brought the case to court, or *Vodicka* in this case) challenged the restriction using a “facial” challenge. He argued that the regulation being challenged was “void for vagueness.” The regulation stated that inmates were allowed to receive books, magazines, newspapers and other printed materials unless they created an immediate threat to the security of the institution.<sup>9</sup> *Vodicka* believed this rule did not give people enough of a warning of what could and could not be sent to prisoners and said it gave prison officials “unbridled discretion” to decide what was an “immediate threat.” He argued that the regulation could be written more specifically and still achieve the same purpose. This is a facial challenge because it challenges the law itself, not the way the law is applied to the prisoners. The court held that the regulation was facially valid and constitutional because it met the standard in place at the time.<sup>10</sup> The court also held that the language clearly required the prison officials to show that the publication was “in fact detrimental to a legitimate government interest.”<sup>11</sup>

*Vodicka* also challenged the regulation as unconstitutional “as applied.” *Vodicka* argued that the prison only banned this newsletter because of the identity of the sender, not because the content posed a threat. While *Vodicka*’s newsletter had been banned, a different news story from the New Orleans Times-Picayune had been allowed in the prison. The court held that the prison was allowed to consider the identity of the sender in determining the threat posed by the newsletter.<sup>12</sup> There was a history of conflict between

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<sup>6</sup> *Thornburgh v. Abbott*, 490 U.S. 401, 404, 109 S. Ct. 1874, 1877, 104 L. Ed. 2d 459, 467 (1989) (citing *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261–2262, 96 L. Ed. 2d 64, 79 (1987)).

<sup>7</sup> *Vodicka v. Phelps*, 624 F.2d 569 (5th Cir. 1980).

<sup>8</sup> *Vodicka v. Phelps*, 624 F.2d 569, 575 (5th Cir. 1980).

<sup>9</sup> *Vodicka v. Phelps*, 624 F.2d 569, 570 (5th Cir. 1980).

<sup>10</sup> The standard at the time was that the regulation must be “no greater than necessary” to help the legitimate government interest. This standard was later overruled and replaced by one that gave more power to prison officials. *Procunier v. Martinez*, 416 U.S. 396, 94 S. Ct. 1800, 1803, 40 L. Ed. 2d 224 (1974), *overruled by* *Thornburgh v. Abbott*, 490 U.S. 401, 109 S. Ct. 1874, 104 L. Ed. 2d 459 (1989).

<sup>11</sup> *Vodicka v. Phelps*, 624 F.2d 569, 571 (5th Cir. 1980).

<sup>12</sup> *Vodicka v. Phelps*, 624 F.2d 569, 575 (5th Cir. 1980).

Vodicka's organization and prison officials, and the prison warden believed that communications between the prisoners and the LCJP had encouraged the strike, which caused a major disruption from which the prison was just recovering. The prison warden also said Vodicka's newsletter contained factual inaccuracies, most importantly attributing statements to prison officials that the warden said they had never made.<sup>13</sup> Significantly, the court's decision did not depend on the factual inaccuracies in the newsletter. Rather, the court held that prisons can decide a specific sender may pose a threat regardless of what is contained in his message.<sup>14</sup>

#### d. Legal Protections

Prison officials must still respect important rights that you have related to getting and sending mail. First, a prisoner should be notified if prison officials return a letter addressed to him or if a letter sent by a prisoner is returned to the prison. Second, the person who wrote the returned letter should be allowed to make a complaint to the prison about their mail being rejected and not delivered to the prisoner.

##### i. *State and Federal Protections of the Right to General (Non-Legal) Correspondence*

A number of factors determine which regulations apply to you. The first thing you should find out is whether you are in a federal or Louisiana state prison. If you are in federal prison, your conviction was probably for a crime against the United States or a crime violating the Washington, D.C. code. Regulations governing your communications while you are incarcerated can be found in the Code of Federal Regulations at Title 28, Chapter V, Subchapter C, Part 540. This Part is called, "Contact with Persons in the Community."<sup>15</sup> If you are in Louisiana state prison for crimes under Louisiana law, rules governing your personal communications are in the Louisiana Administrative Code, Title 22, Part 1, Chapter 3, Subchapter A.<sup>16</sup> In addition to the type of prison you are in, other factors may affect your correspondence. This Chapter will try to point out those factors, but you should carefully read any prisoner manuals available to you, as well as the laws that apply to you, since they could change after this Louisiana Supplement is published.

##### (a) Federal Regulations

Generally, the staff at a federal prison opens and inspects all incoming mail, and they may read incoming mail to keep security or to keep track of a specific prisoner.<sup>17</sup> Outgoing mail may also be read by staff, so you cannot seal it.<sup>18</sup> An important exception to this rule is "special mail." Special mail is defined differently for incoming and outgoing mail. For outgoing mail, special mail includes mail sent to the "President and Vice President of the United States, the U.S. Department of Justice (including the Bureau of Prisons), U.S. Attorneys Offices, Surgeon General, U.S. Public Health Service, Secretary of the Army, Navy, or Air Force, U.S. Courts (including U.S. Probation Officers), Members of the U.S. Congress, Embassies and Consulates, Governors, State Attorneys General, Prosecuting Attorneys, Directors of State Departments of Corrections, State Parole Commissioners, State Legislators, State Courts, State Probation Officers, other Federal and State law enforcement offices, attorneys, and representatives of the news media."<sup>19</sup> The list of special mail senders is smaller. It includes mail received from "[the] President and Vice President of the United States, attorneys, Members of the U.S. Congress, Embassies and Consulates, the U.S. Department of Justice (excluding the Bureau of Prisons but including U.S. Attorneys), other Federal law enforcement officers, State Attorneys General, Prosecuting Attorneys, Governors, U.S. Courts (including U.S. Probation Officers), and State Courts."<sup>20</sup>

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<sup>13</sup> Vodicka v. Phelps, 624 F.2d 569, 574 (5th Cir. 1980).

<sup>14</sup> Vodicka v. Phelps, 624 F.2d 569, 575 (5th Cir. 1980).

<sup>15</sup> 28 C.F.R. § 540 (2017).

<sup>16</sup> LA. ADMIN. CODE tit. 22, pt. I (2017).

<sup>17</sup> 28 C.F.R. § 540.14(a) (2017).

<sup>18</sup> 28 C.F.R. § 540.14(b) (2017).

<sup>19</sup> 28 C.F.R. § 540.2(c) (2017).

<sup>20</sup> 28 C.F.R. § 540.2(c) (2017).

For incoming mail to be considered special mail, it must state who the sender is, and the front of the envelope must be marked, “Special mail—open only in the presence of the inmate.”<sup>21</sup> This means prison staff may open incoming special mail, but you must be there when they do. Additionally, prison staff may only inspect the mail for physical contraband, or prohibited items. They may not read or copy the mail.<sup>22</sup> You can seal the outgoing special mail and it may not be inspected by prison staff unless you have been placed on “restricted special mail status.”<sup>23</sup> An example of why you might be placed on restricted special mail status is if you have used special mail to threaten officials in the past.<sup>24</sup> The warden must tell you in writing why you were placed on restricted special mail status, and he or she must review the decision every 180 days.<sup>25</sup> You may still send special mail if you are on restricted status, but the mail and the packaging will be inspected before you seal it.<sup>26</sup>

Prison officials may not open and read mail that you are sending out from a minimum- or low-security prison. The only exceptions to this are if the officials think the mail would affect the orderly running of the prison, that it would be threatening to the person it is being sent to, or that it would lead to criminal activity.<sup>27</sup> In medium- and high-security institutions, prison officials may read all mail other than “special mail.”<sup>28</sup>

Federal prisons must give you paper and envelopes at no cost, but you must pay for stamps. If you cannot afford stamps, the warden must provide them for a reasonable number of letters each month.<sup>29</sup>

#### (b) Louisiana Regulations

As a Louisiana prisoner, you are allowed to send mail as often as you wish, unless prison officials believe that they need to limit you to protect public safety or order in the prison.<sup>30</sup> You may send mail to anyone, with a few exceptions. You may not write to:<sup>31</sup>

- 1) A victim of any crime for which you have been convicted, or for which disposition (the court’s final determination) is pending, or to an immediate family member of the victim, except by following specific rules established by department regulations or by the warden along with the Crime Victims Services Bureau.
- 2) Any person under the age of 18 when that person’s parent or guardian states verbally or in writing that he or she is against such mail.
- 3) Any person that a court order prohibits you from writing to.
- 4) Any person who has made a verbal or written request to not receive mail from you.
- 5) Any other person, when prohibiting such correspondence is needed to promote security, order, or rehabilitation.

Louisiana requires prisoners to pay for their own mailing fees.<sup>32</sup> If you are indigent (meaning you cannot afford to pay), the prison will give you the postage needed to send two personal letters each week,

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<sup>21</sup> 28 C.F.R. § 540.2(c) (2017).

<sup>22</sup> 28 C.F.R. § 540.18(a) (2017).

<sup>23</sup> 28 C.F.R. § 540.18(c)(1) (2017). Since outgoing special mail is not inspected unless you are on restricted special mail status, the mail will be stamped with a warning statement to the receiver. The statement reads: “The enclosed letter was processed through special mailing procedures for forwarding to you. The letter has neither been opened nor inspected. If the writer raises a question or problem over which this facility has jurisdiction, you may wish to return the material for further information or clarification. If the writer encloses correspondence for forwarding to another addressee, please return the enclosure to the above address.” 28 C.F.R. § 540.18(d) (2017).

<sup>24</sup> 28 C.F.R. § 540.18(c)(2)(i) (2017).

<sup>25</sup> 28 C.F.R. §§ 540.18(c)(2)(ii), (iv) (2017).

<sup>26</sup> 28 C.F.R. § 540.18(c)(2)(iii) (2017).

<sup>27</sup> 28 C.F.R. § 540.14(c)(1)(i) (2017).

<sup>28</sup> 28 C.F.R. § 540.14(c)(2) (2017).

<sup>29</sup> 28 C.F.R. §§ 540.21(a), (b), (d), (e) (2017).

<sup>30</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(1) (2017).

<sup>31</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(3) (2017).

<sup>32</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(4) (2017).

postage needed to send out approved legal mail on a reasonable basis, and basic supplies needed to prepare legal documents.<sup>33</sup> However, your account will show the cost of the postage and supplies as a debt owed.

Like the federal rules, Louisiana prison rules allow prison employees to read and inspect your outgoing mail, as well as “farm mail” (mail sent to other prisoners within the same prison).<sup>34</sup> Mail inspection is meant mostly to look for and find illegal objects. The purpose of reading the mail is to discover any planned crimes or threats or the sending of controlled materials (such as sexually explicit materials, discussed further in Section E(2) of this Chapter). Prison officials have to tell you within 3 business days (weekdays, Monday to Friday) if your mail is rejected, and they must explain why it is rejected. An exception to this rule is if there is an ongoing investigation of your mail and telling you about the rejection might disrupt the investigation.<sup>35</sup> You may appeal a decision to reject your mail by using the administrative remedy procedure, which is another name for the procedure your prison has set up for dealing with prisoner complaints.

When you send or receive mail, it must follow prison rules. Outgoing mail must include a complete legible (readable) name and address of the party to whom you are mailing, as well as your name, your DOC number, your housing unit, and the name and mailing address of the prison. This information should be written or typed on the upper-left corner of the envelope. Drawings, writings, and markings on envelopes, other than return and sending addresses, are not allowed. Before mail leaves the prison mailroom, it will be stamped to show that it came from a prison.<sup>36</sup>

Your family and friends are allowed to send you money, but must send it through a system called JPay, which handles the DOC's money transactions.<sup>37</sup> Money may be sent in a number of ways: by mail, at walk-up locations of MoneyGram, over the Internet, by telephone, and at kiosks in prison visiting areas. Only money orders may be sent by mail, and they must include a JPay deposit slip.<sup>38</sup> The sender will have to send the money order to JPay directly at its office in Miami. JPay will then process the money and transmit it to your DOC account. This process could take a few days, so you should consider other options if you need money faster.<sup>39</sup> Any money sent directly to you will be rejected and returned to the sender.<sup>40</sup> You will be told about the rejection and will have to pay for the return of the mail.<sup>41</sup> There are various fees and limits on the amount of money that can be sent for the other types of money transfers. You should check the description of JPay's service and decide with the sender which is the best method for you.

You are not allowed to receive packages from home. Only packages containing release clothes can be sent from home, and they must be sent within 30 days of your release. The package will be held for you until your release.<sup>42</sup>

ii. *A Note on Foreign-Language Materials*

If the prisoner sending outgoing letters speaks English and if the letters are written in code or in a foreign language, they may be restricted, seized, returned to you, kept for further investigation, referred for

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<sup>33</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(4) (2017).

<sup>34</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5) (2017).

<sup>35</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5)(b) (2017).

<sup>36</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5)(d) (2017).

<sup>37</sup> For more information about JPay, see JPay—Louisiana Department of Corrections, *available at* <http://www.jpayers.com/Agency-Details/Louisiana-Department-of-Corrections.aspx> (last visited Sept. 2, 2017).

<sup>38</sup> Money Order Deposit Form, *available at* [https://jpayers.com/moneyOrderForms/LA\\_Money\\_Order\\_coupon.pdf](https://jpayers.com/moneyOrderForms/LA_Money_Order_coupon.pdf) (last visited Sept. 2, 2017).

<sup>39</sup> All approved money orders will be processed within ten (10) business days following receipt by JPay. The largest amount of money that can be sent via mail is \$999.99, and amounts greater than \$500 may be subject to investigation. See Money Order Deposit Form, *available at* [https://jpayers.com/moneyOrderForms/LA\\_Money\\_Order\\_coupon.pdf](https://jpayers.com/moneyOrderForms/LA_Money_Order_coupon.pdf) (last visited Jan. 21, 2018).

<sup>40</sup> The only exception is for purchases of hobbycrafts, or crafts made by prisoners that are available for purchase. Hobbycrafts can be purchased by money order, cash, personal check, or cashier's check sent to the prison. LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5)(b) (2017).

<sup>41</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(7)(d) (2017).

<sup>42</sup> Fed. Bureau of Prisons, Inmate Information Handbook 29 (2012), *available at* [http://www.bop.gov/locations/institutions/spg/SPG\\_aohandbook.pdf](http://www.bop.gov/locations/institutions/spg/SPG_aohandbook.pdf) (last visited Jan. 21, 2018).

disciplinary proceeding (*see* Chapter 11 of the *Louisiana State Supplement*, “Prison Disciplinary Hearings,” for information about disciplinary hearings), or handed over to law enforcement officials. However, this does not apply if the warden can determine that the person receiving the mail is not fluent in English.<sup>43</sup>

### C. LEGAL CORRESPONDENCE

#### 1. Legal Communication with Courts, Public Officials, and Attorneys: Privileged Correspondence

Generally, different laws do not exist for legal and non-legal mail. For example, under the First Amendment (freedom of speech), both kinds of mail generally get the same level of protection. However, legal mail—to courts, public officials, and attorneys—is more protected because restricting this mail involves two other important concerns: your right to meaningful access to the courts and the attorney-client privilege. Mail to and from attorneys, courts, paralegals, and legal organizations is treated as privileged and receives greater protection (for instance, this mail cannot usually be censored). Mail to and from other public officials and agencies is also usually treated as privileged and given more protection than regular mail.

##### a. First Amendment Protections

Courts pay more attention to legal mail than they do to non-legal mail when they try to figure out whether restrictions are appropriate, meaning mail from your attorney may have more protections than mail from friends and family. Prisons cannot restrict mail sent to attorneys unless the government has an “important or substantial” reason for the restriction. Because mail from your attorney is considered “incoming mail,” any prison regulations on the mail have to be “reasonably related to a legitimate interest.”<sup>44</sup> That means the prison can only regulate mail if you could think of a way the restriction is related to a “legitimate” or valid interest the prison has, such as checking the mail for contraband.<sup>45</sup>

The state can require your lawyer to clearly mark his letters as coming from an attorney and can require his address be written on the envelope if the letters are supposed to be treated in a special manner. The state can also require your lawyer to identify himself to prison officials before he begins speaking with you.

Even though the Supreme Court says a prisoner does not have to be around for prison officials to open letters from an attorney to a prisoner, many other courts have said that prisons cannot open mail from an attorney unless the prisoner is either present or has been given the chance to be present. Louisiana law does not require that the prisoner be present when his mail raises suspicion, but you should otherwise be present when legal mail is opened for inspection. This is discussed more in Section C(1)(d) below.

##### b. Your Right to Meaningful Access to the Courts and Assistance of Counsel

You have a constitutional right based on the Fourteenth Amendment to meaningful court access and assistance of counsel.<sup>46</sup> Courts have stated that allowing prison officials to read mail sent by prisoners to courts or between attorneys and prisoners can prevent prisoners from telling courts about violations and harms they have been subjected to in prison.<sup>47</sup> Even if your First Amendment claim fails because prison

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<sup>43</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5)(a)(v) (2017).

<sup>44</sup> *Thornburgh v. Abbott*, 490 U.S. 401, 414–419, 109 S. Ct. 1874, 1882–1885, 104 L. Ed. 2d 459, 473–477 (1989). *See also* *Turner v. Safley*, 482 U.S. 78, 89, 107 S. Ct. 2254, 2261, 96 L. Ed. 2d 65, 79 (1987).

<sup>45</sup> *Frye v. Henderson*, 474 F.2d 1263, 1264 (5th Cir. 1973).

<sup>46</sup> *See* *Bounds v. Smith*, 430 U.S. 817, 821–825, 97 S. Ct. 1491, 1394–1397, 52 L. Ed. 2d 72, 72–81 (1977) (reviewing Supreme Court decisions that established a right of access to the courts and the assistance of counsel). *But see* *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996) (finding that a prisoner must prove that lack of necessary legal assistance or library actually hindered his legal claims). *See* Chapter 12 and Chapter 9, Part H of the main *JLM* for a full discussion of the right to effective assistance of counsel.

<sup>47</sup> *See* *Taylor v. Sterrett*, 532 F.2d 462, 476 (5th Cir. 1976) (finding that outgoing mail, generally, could not be opened and incoming mail could be opened in the inmate’s presence if there was a reasonable possibility of contraband inclusion).

officials are restricting your mail to serve an important government objective, you can still challenge the restriction if it prevents you from having meaningful court access. However, these claims will not likely succeed unless you also prove that there was some actual harm to your ability to assert a legal claim.<sup>48</sup> Also, note that your constitutional right to access the courts and legal assistance does not require that prisons provide any particular arrangements. For example, the Fifth Circuit, the appeals court that covers Louisiana, held that a prisoner who had rejected his court-appointed public defender and gotten permission to defend himself *pro se* was not constitutionally entitled to access the prison law library.<sup>49</sup>

#### c. Attorney-Client Privilege

For communications with your attorney, you are also protected by the attorney-client privilege.<sup>50</sup> This privilege allows you to refuse to share confidential communications between you and your attorney, and it also allows you to prevent any other person from sharing confidential communications between you and your attorney. It does not matter if your communications with your lawyer are written or oral; both are equally privileged and protected.<sup>51</sup> The protection that the attorney-client privilege gives you is limited in two ways. First, it may only be used to challenge the reading of your legal mail, not the physical inspection of it. Others may be allowed to look at your legal correspondence, though they may not read the contents.<sup>52</sup> Second, attorney-client privilege does not protect everything; there are exceptions. For the attorney-client privilege to apply, you must intend for the communication to be kept strictly between you and your attorney.<sup>53</sup> In other words, if you share information you discussed with your attorney to someone other than your attorney or the people like law clerks and secretaries who work with your lawyer, this information will no longer be privileged.<sup>54</sup> You also cannot claim the attorney-client privilege if the communication helps future wrongdoing.<sup>55</sup>

#### d. Legal Correspondence and Louisiana Regulations

Louisiana generally handles mail with attorney-client privilege differently from other mail. For example, prisons can reject outgoing mail that officials consider “malicious, frivolous, false, and/or inflammatory statements or information, the purpose of which is reasonably intended to harm, embarrass, or intimidate an employee, visitor, guest or offender.”<sup>56</sup> But this does not apply to legal mail. You may provide information by mail that officials might otherwise consider malicious, false, etc. if your purpose is to get legal assistance.<sup>57</sup>

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<sup>48</sup> See *Lewis v. Casey*, 518 U.S. 343, 351, 116 S. Ct. 2174, 2180, 135 L. Ed. 2d 606, 618 (1996) (per curiam) (holding the prisoner must prove his prison’s law library or legal assistance program was lacking in a way actually hindering his efforts to pursue a legal claim).

<sup>49</sup> *Degrate v. Godwin*, 84 F.3d 768, 768–769 (5th Cir. 1996) (agreeing with Supreme Court precedent, affirming “the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.”) (citing *Bounds v. Smith*, 430 U.S. 817, 828, 97 S. Ct. 1491, 1498, 52 L. Ed. 2d 72 (1977)).

<sup>50</sup> LA. CODE EVID. ANN. art. 506 (2017).

<sup>51</sup> LA. CODE EVID. ANN. art. 506(B) (2017).

<sup>52</sup> *Frye v. Henderson*, 474 F.2d 1263, 1264 (5th Cir. 1973) (per curiam) (stating opening mail to check for contraband is a legitimate prison policy and “does not deny any federally-protected right that prisoners have.”).

<sup>53</sup> *United States v. Robinson*, 121 F.3d 971, 976 (5th Cir. 1997) (finding that a meeting between a prisoner and a potential attorney, or a meeting that “take[s] place away from public view,” is not enough to prove that the prisoner intended the communication to be confidential).

<sup>54</sup> LA. CODE EVID. ANN. art. 506(B)(2) (2017).

<sup>55</sup> LA. CODE EVID. ANN. art. 506(C)(b) (2017).

<sup>56</sup> However, the law also says that the restriction of your communication cannot be based solely on “unwelcome or unflattering opinions” that you express about the prison and its officials. LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5)(c) (2017).

<sup>57</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(5)(c) (2017).

Outgoing privileged mail envelopes have to be marked in the same way as other mail,<sup>58</sup> but you are allowed to seal the envelope and officials may not open it for inspection.<sup>59</sup> There is an exception for outgoing privileged mail that raises suspicion. A warden or deputy warden can open and inspect incoming and outgoing privileged mail outside your presence if (1) letters look unusual or seem different from mail normally received or sent by the individual or public entity; (2) letters are a different size or shape than those normally received or sent by the individual or public entity; (3) letters have a city and/or state postmark that is different from the return address; (4) letters are leaking, stained, or emitting a strange or unusual smell or have a powdery residue; (5) prison officials have reasonable suspicion that illegal activity is occurring and their suspicion has led to an authorized formal investigation.<sup>60</sup>

Prison officials have an interest in preventing the entrance of contraband into the prison. As a result, incoming mail is more likely to be allowed to be inspected than is outgoing mail. All incoming privileged correspondence is opened in your presence to check for contraband and for material that is not privileged.<sup>61</sup> If you receive a privileged mailing that is sealed in a way that prevents inspection of the document inside the mailing, you have a choice. You can choose to allow staff to take it apart and inspect the document, or you can choose to return the mailing to the sender and ask them to resend it in a looser way to allow for inspection.<sup>62</sup> You may receive legal materials on a CD, or compact disc. However, you have the option of either returning the disc to the sender so the sender can make paper copies, or you can pay the prison to make paper copies for you.<sup>63</sup>

When inspected material contains correspondence that does not seem to be entitled to privilege or seems to require further inspection because of its unusual appearance, as described above, it “may be restricted, confiscated, returned to the sender, kept for further investigation, referred for disciplinary proceedings or forwarded to law enforcement officials.”<sup>64</sup> If cash, checks, or money orders are found, they will be forwarded to the business office to confirm that the transaction is legitimate.<sup>65</sup>

If your mail is rejected, you should “be notified within three working days, in writing, of the correspondence rejection” and the reason for rejection. Like with non-privileged mail, you will have seven days to decide what you want done with the letter, and you may use procedures your prison has set up to deal with prisoner complaints to appeal the rejection.<sup>66</sup> “If privileged correspondence is opened accidentally outside [your presence], the envelope will be immediately stapled or taped closed and marked “accidentally opened” along with the date and employee’s initials.” The employee will also be required to file an unusual occurrence report.<sup>67</sup>

#### D. INTERNET COMMUNICATION

The right of a prisoner to access the Internet, whether directly or indirectly, is a relatively new subject, since the Internet has only recently become common in day-to-day life. Therefore, there are not many cases about the extent to which a prisoner has a right to communicate through the Internet. However,

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<sup>58</sup> All outgoing privileged correspondence shall include: a complete legible name and address of the receiving party and the sender’s name, DOC number, housing unit, and the institution’s address on the envelope’s upper left corner. Anything other than return and sending address, is not permitted. All outgoing privileged correspondence shall be stamped in the mailroom, indicating it comes from a correctional institution. LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(9)(a), (b) (2017).

<sup>59</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(9)(c) (2017).

<sup>60</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(11) (2017).

<sup>61</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(a) (2017).

<sup>62</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(a) (2017).

<sup>63</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(a) (2017).

<sup>64</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(b)(ii) (2017).

<sup>65</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(b)(i) (2017).

<sup>66</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(b)(iii) (2017).

<sup>67</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(F)(10)(b)(iv) (2017).

any prison regulation that controls how you are allowed to communicate over the Internet still has to be reasonably related to a legitimate prison interest.<sup>68</sup>

Most, if not all, states ban prisoners from direct, unsupervised access to the Internet.<sup>69</sup>

## E. RECEIPT AND POSSESSION OF PUBLICATIONS

You have a First Amendment right to receive publications, and a publisher has a First Amendment right to send you publications. However, restrictions of this right are valid if they are reasonably related to a legitimate prison interest (the *Turner* standard).<sup>70</sup> The Supreme Court has said that when a court is deciding whether a restriction is reasonably related to a legitimate prison interest, it should take into consideration why the correction official imposed the restriction.<sup>71</sup> Courts don't like to second guess prison employees that say they are acting in the interests of prison safety or other legitimate prison interests. This means that it will be relatively easy for officials to restrict access to publications. However, censorship is not allowed just because the publication's content is unpopular or offensive.<sup>72</sup>

Louisiana prisons restrict your access to publications when it interferes with a legitimate penological objective (interests related to the treatment of prisoners) such as "deterrence of crime, rehabilitation of offenders, maintenance of internal/external security of an institution, or maintenance of an environment free of sexual harassment."<sup>73</sup> A publication is defined as a "book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, magazine/newspaper clipping, article printed from the internet, plus other materials addressed to a specific offender such as advertising brochures, flyers and catalogs."<sup>74</sup> Publications are inspected for contraband like any other mail you receive. They are also subject to restrictions on the type of content they may contain.

### 1. General Standards for Receiving Publications

Generally, all printed materials must be received directly from the publisher.<sup>75</sup> An exception to this rule is that you can receive newspaper and magazine clippings (or copies thereof) from someone who is not the publisher.<sup>76</sup> You may not receive multiple copies of the same publication, and any samples contained inside will be removed.<sup>77</sup> You may not receive more than five clippings in a mailing, and copies of the same clipping are not allowed. The prison may reduce the number of clippings you can receive, if necessary, to ensure timely review of all mail. It might take longer for the mail to get to you if it contains multiple clippings.<sup>78</sup> Materials that may pose a security risk include the following:<sup>79</sup>

- 1) Maps, road atlases, etc. that show a geographic region that could be interpreted to be a threat to security;
- 2) Writings that call for, assist in or are evidence of criminal activity or facility misconduct;
- 3) Instruction regarding the ingredients or manufacture of intoxicating beverages or drugs;

<sup>68</sup> *Thornburgh v. Abbott*, 490 U.S. 401, 404, 109 S. Ct. 1874, 1877, 104 L. Ed. 2d 459, 467 (1989) ("[R]egulations are valid if they are reasonably related to legitimate penological interests.") (quoting *Turner v. Safley*, 482 U.S. 78, 89 (1987)).

<sup>69</sup> See Titia A. Holtz, Note, *Reaching Out from Behind Bars: The Constitutionality of Laws Barring Prisoners from the Internet*, 67 BROOK. L. REV. 855, 898 (2002).

<sup>70</sup> *Thornburgh v. Abbott*, 490 U.S. 401, 404, 109 S. Ct. 1874, 1877, 104 L. Ed. 2d 459, 467 (1989) (citing *Turner v. Safley*, 482 U.S. 78, 89–90, 107 S. Ct. 2254, 2262, 96 L. Ed. 2d 64, 79 (1987)).

<sup>71</sup> See *Thornburgh v. Abbott*, 490 U.S. 401, 418, 109 S. Ct. 1874, 1884, 104 L. Ed. 2d 459, 476 (1989) (quoting *Turner v. Safley*, 482 U.S. 78, 90, 107 S. Ct. 2254, 2263, 96 L. Ed. 2d 64, 80 (1987)).

<sup>72</sup> See *Thornburgh v. Abbott*, 490 U.S. 401, 415–416, 109 S. Ct. 1874, 1882–1883, 104 L. Ed. 2d 459, 474 (1989).

<sup>73</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(D) (2017).

<sup>74</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(E) (2017).

<sup>75</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(1) (2017).

<sup>76</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(2) (2017).

<sup>77</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(1) (2017).

<sup>78</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(2) (2017).

<sup>79</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(a) (2017).

- 4) Information regarding the introduction of, or instructions in the use, manufacture, storage, or replication of, weapons, explosives, incendiaries, escape devices or other contraband;
- 5) Instructions in the use of martial arts;
- 6) Racially inflammatory material or material that could cause a threat to the offender population, staff, and security of the facility<sup>80</sup>;
- 7) Writings calling for violence or creating a danger within a correctional facility; and
- 8) Sexually explicit material (discussed in Section E(2) below).

All publications are sorted into three categories according to how closely they need to be examined. The warden can add or remove publications from categories as he sees fit.<sup>81</sup> Category 3 materials are assumed to be acceptable. They will usually be delivered to you without a problem. Category 2 materials require a case-by-case determination by the regional warden.<sup>82</sup> They will be forwarded to him for his review before they can be delivered to you. Category 1 publications are assumed to be unacceptable.<sup>83</sup> Whenever the prison receives a Category 2 publication addressed to you, you will receive a notice telling you that the item is being reviewed.<sup>84</sup> If the item is rejected, you will receive a notice stating the reasons for rejection. At that point, you have seven days to appeal the rejection through the agency (the Louisiana Department of Corrections) itself before you can bring the case to a court.<sup>85</sup> The item will be held until the issue is resolved.<sup>86</sup>

Photographs and other pictures created by digital imaging devices, such as digital cameras and medical imaging equipment, are subject to specific rules. For example, the prison might reject hard-back and laminated photos, as well as digital or other images that it decides interfere with prison goals.<sup>87</sup> To meet the prison requirements, images should cover any private areas of any person shown.<sup>88</sup> Photos of people wearing lingerie are normally unacceptable. Swimsuits may be acceptable if the overall context of the picture is “reasonably related” to an activity where people normally wear swimsuits.<sup>89</sup> A suggestive pose, regardless of the clothing worn in the picture, may be enough for the item to be rejected.<sup>90</sup> The prison has to inform you if pictures sent to you are rejected. If they are rejected, you have the same right to appeal the rejection through the agency (the Louisiana Department of Corrections).<sup>91</sup>

## 2. Receiving Sexually Explicit Materials

Prisoners in Louisiana are not allowed to receive sexually explicit materials. Publications that depict sexually explicit material are completely banned. Specific issues of other publications may be rejected if they use these types of images.<sup>92</sup> The law discusses specific security concerns associated with sexually explicit materials, such as the threat of non-consensual sex, harassment, or molestation of other prisoners or staff.<sup>93</sup> In addition, sexually explicit material often portrays women, and sometimes men, in disrespectful ways that could lead to sexual harassment of female employees.<sup>94</sup> Finally, it is impossible to control who sees the material once it enters the prison population. Courts have said that if an incarcerated sex offender

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<sup>80</sup> See, e.g. *Chriceol v. Phillips*, 169 F.3d 313, 315–317 (5th Cir. 1999) (confirming that federal courts, relying on *Abbott*, have upheld the withholding of publications that contain racist statements).

<sup>81</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(d) (2017).

<sup>82</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(e) (2017).

<sup>83</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(c)(i) (2017).

<sup>84</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(e) (2017).

<sup>85</sup> See LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(f) (2017).

<sup>86</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(f) (2017).

<sup>87</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(H)(1) (2017).

<sup>88</sup> See LA. ADMIN. CODE tit. 22, pt. I, § 313(H)(1) (2017) (stating that images may not “expose the genitals, genital area (including pubic hair), anal area, cheeks of the buttocks or female breasts (or breasts which are designed to imitate female breasts) [and t]hese areas must be covered with garments which cannot be seen through”).

<sup>89</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(H)(2) (2017).

<sup>90</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(H)(2) (2017).

<sup>91</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(H)(6) (2017).

<sup>92</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(b)(iv) (2017).

<sup>93</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(b)(i) (2017).

<sup>94</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(b)(ii) (2017).

views the material, it may encourage deviant sexual behavior and interfere with the prison's attempts to rehabilitate the prisoner.<sup>95</sup>

## F. ACCESS TO NEWS MEDIA

You may want to publicize your case by attracting the media's attention. The Supreme Court has held that a reasonable and effective means of communication between prisoners and the media must exist.<sup>96</sup> But prisons have a security interest in limiting access to visitors, including the press.<sup>97</sup> The court held that limiting or prohibiting face-to-face interviews with the press does not violate the First Amendment as long as prisoners can still communicate with the press through writing or visitations.<sup>98</sup> In *Houchins v. KQED*, the Supreme Court repeated that freedom of the press does not grant the media special access to prisons.<sup>99</sup> Therefore, the media can be restricted from physical access (through visitation, tours, photographs, etc.) just like the public can.

In Louisiana, if a news organization wants to interview you, it must contact the prison directly.<sup>100</sup> Generally the prison will allow interviews related to your involvement in facility programming, such as treatment and vocational services.<sup>101</sup> The prison will probably not allow a member of the press to interview you about the details of the crime for which you were convicted.<sup>102</sup> To be eligible for an interview, you must be in the general population of the prison, meaning you cannot be in the initial reception stage or in protective custody.<sup>103</sup> You must agree to the interview, and you cannot be paid for the interview.<sup>104</sup>

There are not many cases about media interviews with Louisiana prisoners. However, you should remember that prisons have a lot of freedom to regulate communication, as long as the regulations are reasonably related to a legitimate penological interest. Louisiana law names some specific times when a warden can deny an interview request, including pending court action, a prisoner's health, or a media organization's past rule breaking.<sup>105</sup>

You can read more about the rules for interviews with news organizations in LA. ADMIN. CODE tit. 22, pt. I, § 339 (2017). There is also information regarding non-news media, such as independent filmmakers and non-news magazines.

## G. VISITATION AND PHONE CALLS

### 1. Visitation

Convicted prisoners' constitutional rights to visitation, or official visits to the prisoner, may be severely restricted, however prisoners who have not yet gone to trial are almost certainly allowed reasonable visitation rights,<sup>106</sup> since lack of access to visitors like attorneys can violate the rights to a fair trial and

<sup>95</sup> LA. ADMIN. CODE tit. 22, pt. I, § 313(G)(3)(b)(iii) (2017).

<sup>96</sup> *Pell v. Procunier*, 417 U.S. 817, 826, 94 S. Ct. 2800, 2806, 41 L. Ed. 2d 495, 503–504 (1974).

<sup>97</sup> *See Pell v. Procunier*, 417 U.S. 817, 826, 94 S. Ct. 2800, 2806, 41 L. Ed. 2d 495, 503–504 (1974); *see also Saxbe v. Wash. Post Co.*, 417 U.S. 843, 850, 94 S. Ct. 2811, 2815, 41 L. Ed. 2d 514, 519–520 (1974) (finding that under the Federal Bureau of Prisons regulations, the media does not have the right to access prisons and inmates beyond the rights granted to members of the general public. *Saxbe* differs from *Pell* in that *Saxbe* only looks at the rights of the media, while *Pell* also addresses the rights of prisoners to communicate with the media).

<sup>98</sup> *See Pell v. Procunier*, 417 U.S. 817, 824–825, 94 S. Ct. 2800, 2085, 41 L. Ed. 2d 495, 503 (1974) (allowing prisoners face-to-face visits with members of their family, their clergy, their attorneys, and friends or prior acquaintance).

<sup>99</sup> *Houchins v. KQED*, 438 U.S. 1, 16, 98 S. Ct. 2588, 2597, 57 L. Ed. 2d 553, 565 (1978).

<sup>100</sup> LA. ADMIN. CODE tit. 22, pt. I, § 339(H)(1) (2017).

<sup>101</sup> LA. ADMIN. CODE tit. 22, pt. I, § 339(H)(2) (2017).

<sup>102</sup> LA. ADMIN. CODE tit. 22, pt. I, § 339(H)(2) (2017).

<sup>103</sup> LA. ADMIN. CODE tit. 22, pt. I, § 339(H)(3)(a) (2017).

<sup>104</sup> LA. ADMIN. CODE tit. 22, pt. I, §§ 339(H)(3)(b)–(c) (2017).

<sup>105</sup> LA. ADMIN. CODE tit. 22, pt. I, § 339(H)(6) (2017).

<sup>106</sup> *See Jones v. Diamond*, 594 F.2d 997, 1013–1014 (5th Cir. 1979), *on reh'g*, 636 F.2d 1364 (1981).

legal advice.<sup>107</sup> In *Overton v. Bazzetta*, the Supreme Court discussed a prisoner's constitutional right to visits as part of the First Amendment freedom of association, or freedom of relationships. The court said that a rule limiting visits was connected to the interest of security and therefore not a violation of the prisoner's rights.<sup>108</sup> Regardless of the type of prisoner, visitation rights may be restricted to promote institutional administration (running the prison), security, and rehabilitation.<sup>109</sup> Prison officials may regulate the time, place, and manner of visits, though such regulations, at least regarding pretrial detainees, must be reasonable. Prison officials may also restrict some of the rights of visitors. These restrictions, however, must still be reasonably related to a legitimate prison interest, otherwise courts can strike them down. Contact visits are not constitutionally required for pretrial detainees or for prisoners.<sup>110</sup>

## 2. Rules for Who May Visit

Prisoners in Louisiana correctional facilities may keep a list of up to ten authorized guests,<sup>111</sup> who must be cleared by the correctional facility. You must provide applications to anyone you want on your visitation list. You must fill out their name, address, date of birth, race, and sex, and then send the application to them to complete and mail back to the facility.<sup>112</sup> Each of your listed visitors will also be subject to a criminal background check before they are allowed to visit you in prison. If that background check reveals a warrant for that person's arrest, the prison must report them to the police.<sup>113</sup> You will be notified once the visitation application has been approved or denied.<sup>114</sup> You may make changes to your list every four months.<sup>115</sup>

There are a few categories of persons who are not allowed to visit or may visit only under certain circumstances or with permission of the warden. These categories are:<sup>116</sup>

- 1) Individuals convicted of or with pending criminal charges for crimes involving contraband, explosives, or escape from a correctional facility.
- 2) The direct victims of your crime(s) cannot visit you, except in accordance with an established policy. The warden can waive this on a case-by-case basis.
- 3) Ex-prisoners must have been formally discharged from prison or from probation/parole for two years with no criminal record during that time. No one with three or more felony convictions in the last five years may visit.
- 4) Visits from staff or former employees of the prison are generally denied unless they are a member of your family. The warden may waive this.

If you have been convicted of a sex offense or have a documented history of sex abuse, your visits with minor children may be restricted. The strictest rules in this area are for prisoners convicted of sex

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<sup>107</sup> See *Procunier v. Martinez*, 416 U.S. 396, 419, 94 S. Ct. 1800, 1814, 40 L. Ed. 2d 224, 243 (1974) (“[I]nmates must have a reasonable opportunity to seek and receive the assistance of attorneys. Regulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid.”).

<sup>108</sup> *Overton v. Bazzetta*, 539 U.S. 126, 131–132, 123 S. Ct. 2162, 2167, 156 L. Ed. 2d 162, 170 (2003) (“We need not attempt to explore or define the asserted right of association at any length or determine the extent to which it survives incarceration because the challenged regulations bear a rational relation to legitimate penological interests. This suffices to sustain the regulation in question.”).

<sup>109</sup> See *Overton v. Bazzetta*, 539 U.S. 126, 129, 123 S. Ct. 2162, 2166, 156 L. Ed. 2d 162, 168 (2003) (finding that rehabilitation, maintenance of basic order, and prevention of violence are legitimate objectives of the correctional system); *Pell v. Procunier*, 417 U.S. 817, 822, 94 S. Ct. 2800, 2804, 41 L. Ed. 2d 495, 501 (1974) (finding that a prisoner keeps First Amendment rights that are consistent with legitimate penological objectives).

<sup>110</sup> See *Block v. Rutherford*, 468 U.S. 576, 589, 104 S. Ct. 3227, 3234, 82 L. Ed. 2d 438, 449 (1984) (holding contact visits are a privilege, not a right, and that visits can be denied because of security concerns).

<sup>111</sup> This number can be increased to up to fifteen visitors at the warden's discretion. LA. ADMIN. CODE tit. 22, pt. I, § 316(J)(1)(b) (2017).

<sup>112</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(G)(1) (2017).

<sup>113</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(G)(2) (2017).

<sup>114</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(G)(3) (2017).

<sup>115</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(J)(2)(a) (2017).

<sup>116</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(H)(2) (2017).

offenses against minor children who are members of their family. These prisoners may not have any minor child visit them, including their own biological children.<sup>117</sup> Prisoners convicted of sex offenses against children not in their family are also generally denied minor child visitors, but the warden may make an exception for the prisoner's biological children if the child's legal guardian submits a written request.<sup>118</sup> The legal guardian or someone named by the legal guardian must accompany the child, and the visits may be contact or non-contact, according to the warden's decision.<sup>119</sup>

There are other rules governing visitation. These rules set the conditions of the visit, how often visitors are allowed, and how visitors must dress, among other topics. If you plan to invite visitors, you should familiarize yourself with these rules<sup>120</sup> and any other regulations in your handbook.

### 3. Using Telephones

The Louisiana Electronic Surveillance Act (LESA) generally bans the interception and disclosure of wire, oral, and electronic communications.<sup>121</sup> This means that if your phone conversation is wiretapped, you may be able to file a Motion to Suppress (a request made to the judge to keep the conversation out of your trial) to keep the conversation from being used as evidence against you. Because LESA was written to match a federal rule, Title III's Omnibus Crime Control and Safe Streets Act, the federal law can help understand LESA when the language of both laws is similar.<sup>122</sup> However, Louisiana courts have found that two important exceptions apply. First, an intercepted conversation may be used at trial if it was recorded "by an investigative or law enforcement officer in the ordinary course of his duties."<sup>123</sup> The second exception is if you consented, or agreed, to the recording.<sup>124</sup> Consent may be express or implied. Consent is express, for example, if you agreed to allow a phone conversation to be recorded in writing. Consent may also be implied, if a reasonable person would understand that his conversation was being recorded and did nothing to stop the recording. Courts have held that even if a prisoner showed a subjective expectation of privacy, meaning that he acted as though he believed the call was not recorded, it is not enough because courts have said that society does not recognize that prisoners have a reasonable expectation of privacy, or a right to be left alone, in their cells.<sup>125</sup>

In Louisiana prisons, all calls are recorded and may be monitored.<sup>126</sup> Because the prison posts signs and plays a recorded message telling both people on the phone that the call is being recorded, your use of the telephone is considered consent to the recording.<sup>127</sup> You also consent in writing when you first arrive at the prison and are processed.<sup>128</sup> This consent includes legal calls.<sup>129</sup> Though your legal calls are recorded, monitoring calls with your designated attorney requires the warden's consent.

You are allowed to keep a master list of up to twenty phone numbers to call, including numbers for family, friends, and legal calls. That list will be programmed into the prison telephone system, which you can access with your PIN.<sup>130</sup> You cannot share space on your master list with other prisoners, meaning you

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<sup>117</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(I)(1)(a) (2017).

<sup>118</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(I)(1)(b) (2017).

<sup>119</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(I)(1)(b) (2017). Minor spouses, emancipated minors, and minors participating in an institutional program are exempt from the requirement that minors be accompanied by a guardian. LA. ADMIN. CODE tit. 22, pt. I, § 316(J)(1)(d) (2017).

<sup>120</sup> LA. ADMIN. CODE tit. 22, pt. I, § 316(K) (2017).

<sup>121</sup> LA. REV. STAT. ANN. § 15:1303 (2017).

<sup>122</sup> *Keller v. Aymond*, 98-884, p. 7 (La. App. 3 Cir. 12/23/98); 722 So. 2d 1224, 1227.

<sup>123</sup> LA. REV. STAT. ANN. § 15:1302(10)(a)(ii) (2017).

<sup>124</sup> LA. REV. STAT. ANN. § 15:1303(C)(3) (2017).

<sup>125</sup> *State v. Favors*, 09-1034, pp. 15–16 (La. App. 5 Cir. 6/29/10); 43 So. 3d 253, 259–260.

<sup>126</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(1)(d) (2017).

<sup>127</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(1)(e)–(g) (2017).

<sup>128</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(6)(e) (2017).

<sup>129</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(1)(d) (2017).

<sup>130</sup> LA. ADMIN. CODE tit. 22, pt. I, §§ 315(D)(1)(a)–(b) (2017).

are not allowed to program another prisoner's family member into your master list unless that person is also your family member.<sup>131</sup> People on your list can ask not to receive calls from you.<sup>132</sup>

You should check your prisoner handbook for the times of day that you may make calls, because this can be different at every prison. Time limits on phone calls may also be in place at your institution. If you are in a maximum-security prison, you may face more restrictions than prisoners at minimum- or medium-security prisons. You may also face additional restrictions based on your offender status, or how the prison system ranks you on its scale of risk for dangerousness or rule-breaking.<sup>133</sup> A staff member may grant emergency calls on a case-by-case basis.<sup>134</sup> For emergency notifications coming from your family to you, the chaplain is normally responsible for relaying the message.<sup>135</sup> The chaplain is also responsible for notifying your family if you are seriously ill, but he has discretion in doing so.<sup>136</sup> Non-emergency messages are not accepted.<sup>137</sup>

If you are hearing impaired, the prison will provide you with hearing aids or services to help you use the telephone.<sup>138</sup>

## H. CONCLUSION

Limitations on your right to communicate with the outside world, as discussed in this Chapter, may be among the most frustrating restrictions you have to face. In most circumstances, prison authorities have great discretion, or choice, to restrict your right to communicate based on the way they think your communication affects penological, or disciplinary, interests. If you feel the discretion prison officials exercise is not reasonably related to a legitimate prison interest, and therefore violates your constitutional rights, you may want to challenge the restriction or its application to you, but you should be careful that your claim does not appear frivolous (lacking in legal basis or having very little chance of success).<sup>139</sup>

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<sup>131</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(1)(b) (2017).

<sup>132</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(1)(h) (2017).

<sup>133</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(3)(a) (2017).

<sup>134</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(2)(b) (2017); LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(3)(b) (2017).

<sup>135</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(5)(a) (2017).

<sup>136</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(5)(b)–(c) (2017).

<sup>137</sup> LA. ADMIN. CODE tit. 22, pt. I, § 315(D)(4)(a) (2017).

<sup>138</sup> LA. ADMIN. CODE tit. 22, pt. I, § 312(C) (2017).

<sup>139</sup> The Prison Litigation Reform Act (PLRA) has a “three strikes” provision requiring prisoners to pay court costs if three of their suits have been dismissed as frivolous (wasteful) or as failing to state a claim. So, proceed carefully, using this chapter as a guide to the difference between successful and unsuccessful suits. For more information on the PLRA, see Chapter 14 of the main *JLM*.