



Ron Unger, Lander County Sheriff
P.O. Box 187
Battle Mountain, NV 89820

Hy Forgeron, Lander County District Attorney
P.O. Box 187
Battle Mountain, NV 89820

June 1, 2009

Re: Lander County Jail Visitation Policy

Dear Mr. Unger and Mr. Forgeron:

The ACLU of Nevada has received complaints from people who were denied the ability to visit inmates charged with felonies in the Lander County Jail.

It appears that Lander County has a policy that bans visits to inmates charged with felonies (other than by their attorneys). This violates the First and Fourteenth Amendment of the U.S. Constitution and also violates the Nevada Constitution. Indeed, the practice not only violates the inmates' rights – people who have notably only been *charged, not convicted*, of crimes – but it also violates the rights of the people trying to visit the inmates. While Lander County may establish reasonable regulations governing visits, it is hard to imagine why such a blanket ban is in place.

We understand that jail officials have invoked § 212.150 of the Nevada Revised Statutes to prevent the detainees from communicating with members of free society. The statute provides:

1. A person shall not visit, or in any manner communicate with, any prisoner convicted of or charged with any felony, imprisoned in the county jail, other than the officer having such prisoner in charge, his attorney or the district attorney, unless the person has a written permission so to do, signed by the district attorney, or has the consent of the Director of the Department of Corrections or the constable or sheriff having such prisoner in charge.
2. Any person violating, aiding in, conniving at or participating in the violation of this section is guilty of a gross misdemeanor.

Nev. Rev. Stat. Ann. § 212.150 (West 2009). This statute appears to violate the Constitution, especially since it has been applied to justify a blanket ban on visits to inmates charged with felonies.

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By criminalizing communication with prisoners charged with felonies, N.R.S. § 212.150 not only infringes the First Amendment rights of pretrial detainees, but also the First Amendment rights of those members of society who have not even been charged with a crime. *See Procunier v. Martinez*, 416 U.S. 396, 408 (1974) (applying strict scrutiny to prison mail censorship regulations, noting that “it is plain that [an outsider’s interest in uncensored correspondence with inmates] is grounded in the First Amendment’s guarantee of freedom of speech”). Put plainly, the family members and friends of inmates also have constitutional rights at stake that make the blanket ban unconstitutional.

“Pretrial detainees must be allowed reasonable visitation privileges and this right may not arbitrarily be restricted.” *Jones v. Diamond*, 636 F.2d 1364, 1377 n.12 (5th Cir. 1981). The U.S. Supreme Court and the Ninth Circuit Court of Appeals have consistently held that prisoners and pretrial detainees retain certain Constitutional rights, as “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution.” *Turner v. Safley*, 482 U.S. 78, 84 (1987). Among these protected rights are the freedoms of speech and association embodied in the First Amendment, which includes the right to communicate with members of free society. Under any analysis, a blanket ban cannot possibly pass constitutional muster.

In conclusion, we believe that denying all visits to inmates charged with felonies is impermissible punishment of pretrial detainees in violation of the First and Fourteenth Amendments. We urge the officials in charge of Lander County Jail to cease enforcement of this statute. Doing so will avoid any unnecessary litigation, and more importantly, will ensure that Lander County does not violate central constitutional principles. We look forward to hearing confirmation that you have ceased barring visits to inmates charged with felonies no later than June 15, 2009. Please feel free to contact us at [REDACTED] (Ms. McLetchie) or [REDACTED] (Ms. Rowland) with any questions or to discuss this matter.

Sincerely,

Sincerely,

Margaret A. McLetchie
ACLU of Nevada Staff Attorney

Lee B. Rowland
ACLU of Nevada Northern Coordinator