

# APPENDIX

**PUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 19-7346**

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JAMES PAUL DESPER,

Plaintiff - Appellant,

v.

HAROLD CLARKE, Director of the Department of Corrections; A. DAVID ROBINSON, Chief of Operations; JANE/JOHN DOE, for each member of the Sex Offender Visitation Committee and the Sex Offender Program Director; JANE/JOHN DOE, Corrections Operations Administrator; MARIA STRANSKY; MARIE VARGO,

Defendants - Appellees.

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Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, Senior District Judge. (7:17-cv-00549-GEC-PMS)

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Argued: May 6, 2021

Decided: June 15, 2021

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Before NIEMEYER, FLOYD, and RUSHING, Circuit Judges.

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Affirmed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Floyd and Judge Rushing joined.

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**ARGUED:** Minahil Khan, GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Appellant. Michelle Shane Kallen, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, for Richmond, Virginia, for Appellees. **ON BRIEF:** Erica Hashimoto, Director, Joshua Marcin, Supervising Attorney, Nicolas Sansone, Supervising Attorney, John McGowan, Student Counsel, Appellate Litigation Program,



GEORGETOWN UNIVERSITY LAW CENTER, Washington, D.C., for Appellant. Mark R. Herring, Attorney General, K. Scott Miles, Deputy Attorney General, Margaret O'Shea, Assistant Attorney General, Toby J. Heytens, Solicitor General, Martine E. Cicconi, Deputy Solicitor General, Jessica Merry Samuels, Assistant Solicitor General, Kendall T. Burchard, John Marshall Fellow, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

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NIEMEYER, Circuit Judge:

James Desper, a sex offender incarcerated at Augusta Correctional Center in Craigsville, Virginia, was twice denied in-person visitation privileges with his minor daughter, to whom we assign the fictional name “Emma.” At the times when those privileges were denied, Emma was 10 and 11 years old, respectively. In his complaint filed under 42 U.S.C. § 1983, challenging the prison’s decisions, Desper alleged that for years before 2015, he enjoyed in-person visits with Emma without incident. But consistent with amendments to prison Operating Procedures adopted in March 2014, Emma was removed from his in-person visitation list in 2015. As amended, Operating Procedure 851.1 prohibits those inmates required to register on Virginia’s *Sex Offender and Crimes Against Minors Registry* from having in-person visits with minors unless the offender receives an exemption from prison officials.

Desper twice — in March 2016 and again in June 2017 — applied for but was denied an exemption for Emma’s visits. Contending that the prison officials’ denial violated his right to association under the First Amendment, as well as his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, he named as defendants numerous officials of the Virginia Department of Corrections (hereafter collectively, “VDOC”) and sought a declaratory judgment, injunctive relief ordering the VDOC to allow him to visit with Emma, and punitive damages. The district court granted the VDOC’s motion to dismiss, and we affirm.

## I

On May 14, 2007, Desper and his wife took a 16-year-old girl to a residence, “proceeded to partially undress the child . . . and then [Desper] removed his penis from his pants and put it up against the 16-year-old’s face.” After the girl “resisted and screamed . . . another man from another room in the house came and made [Desper] and his wife stop what they were doing to the 16-year-old child.” Desper thereafter pleaded guilty to taking indecent liberties with a child, in violation of Virginia Code § 18.2-370.1, and was sentenced to five years’ imprisonment, three and one-half of which were suspended, and three years of supervised probation, subject to conditions. One of the conditions was that Desper not have unsupervised contact with any minor. The conviction triggered Desper’s obligation to register as a sex offender in Virginia. *See* Va. Code Ann. § 9.1-902.

While on probation for that offense, Desper was convicted in 2009 of raping an 18-year-old girl who was mentally incapacitated, having an IQ of 60. For his conviction on three counts of rape, he was sentenced to 19 years’ imprisonment, which he is now serving at Augusta Correctional Center.

Initially, Desper was allowed to receive visits from Emma, and these allegedly took place for six years without incident. But prison regulations were amended on March 1, 2014, to further regulate visitation privileges.

Included in the amendments that the VDOC adopted were amendments to Operating Procedure 851.1, which, as relevant, prohibit inmates with “any conviction requiring registration in the *Sex Offender and Crimes against Minors Registry*” from “visit[ing] with any minor until granted a sex offender visitation exemption.” To obtain an exemption, an

eligible inmate and the parent or guardian of the minor are required to submit completed questionnaires to the inmate's "counselor," providing background information and explaining how the minor's visitation will benefit the minor. Under the procedure, the completed questionnaires are then forwarded to "an evaluator," who completes an assessment based on the inmate's history, actuarial data, and a "Mental Status Evaluation." The evaluator's assessment is then forwarded to the "Sex Offender Program Director," who presents it to the "Sex Offender Visitation Committee." That Committee makes a recommendation on the inmate's application for a visitation exemption and the "Corrections Operations Administrator" makes the final decision. A denial, however, is not permanent, as the inmate "can reapply [for an exemption] after one year."

Following adoption of the amendments to Operating Procedure 851.1, the VDOC removed Emma from Desper's approved visitor list "around December 2015." In accordance with the Operating Procedure, Desper applied for an exemption by submitting a completed "Sex Offender Minor Visitation Questionnaire" in March 2016. In explaining his prior sexual crimes on that form, he stated:

In 2007 on my indecent liberties charge, I was just playing around with this girl who was 16 years old and she took it seriously. I had no intention of harming her. My current offense was with someone who was 18 years, of legal age. I was accused of raping her by use of her mental incapacity. Even though I was convicted all the evidence shows that I did not commit a crime. Her grade point average was higher than mine. So mentally me and this girl is the same.

And to explain the benefit of in-person visitations with Emma, he stated:

For the child to maintain father/daughter relationship. For the child to know that she's loved. Also so I can participate in her care to help my mother make decisions regarding my daughter.

In early April 2016, Desper's mother, as guardian of Emma, also submitted a completed questionnaire, as required by the Operating Procedure. And "around April or May 2016," Desper was evaluated by a mental health professional.

When Desper had heard nothing further regarding his application, he wrote a letter to prison officials, dated January 7, 2017, to inquire as to its status. He received no response, but on February 24, 2017, Desper's mother was informed by email that the application for visitation rights had been denied, and his mother so informed Desper. She was also told that she could "re-submit evaluation forms after 6/10/2017." Despite repeated inquiries, neither Desper nor his mother was able to receive the reasons for the decision.

On June 10, 2017, Desper reinitiated the process for an exemption, and in August 2017, he was again evaluated by a mental health professional, who was different from the first. Desper was advised in September 2017 that "visitation [by Emma] was disapproved again." His mother later called the VDOC to request an explanation but, according to Desper's complaint, "[t]he person she talked to said that there was no specific reason why the visitation was disapproved."

In December 2017, Desper, acting pro se, commenced this action based on, as he alleged, "denial of his rights and privileges to visit with his daughter in violation of the Association Clause of the First Amendment," and the "due process and equal protection clause[s] of the Fourteenth Amendment." He requested a declaratory judgment that the VDOC had violated his constitutional rights, an injunction "ordering defendants to allow [him] to visit with his daughter," and punitive damages. Later, he filed a motion for

summary judgment and a motion for a preliminary injunction. The VDOC filed a motion to dismiss Desper's complaint, arguing that the VDOC's actions violated none of Desper's constitutional rights.

The district court granted the VDOC's motion to dismiss and denied Desper's motions for summary judgment and a preliminary injunction. In doing so, the court first expressed doubt that the First Amendment protected any right to visitation, citing *White v. Keller*, 438 F. Supp. 110, 115 (D. Md. 1977), *aff'd*, 588 F.2d 913 (4th Cir. 1978) (per curiam); and *Oxendine v. Williams*, 509 F.2d 1405, 1407 (4th Cir. 1975) (per curiam). But it held that even if the First Amendment did protect such a right, the VDOC's regulations passed muster under the four-factor test laid out in *Turner v. Safley*, 482 U.S. 78 (1987), and *Overton v. Bazzetta*, 539 U.S. 126 (2003). As for Desper's due process claim, the court held that neither the Due Process Clause nor the VDOC's regulations created a protected liberty interest in visitation. The court also explained that the visitation policy did not "impose[] an atypical and significant hardship on Desper compared to ordinary prison circumstances." Finally, the court held that Desper failed to state an equal protection claim because he had not adequately alleged that he was similarly situated to other individuals who had been granted exemptions.

From the district court's dismissal order dated January 29, 2019, and its order denying Desper's motion for reconsideration dated September 11, 2019, Desper filed this appeal. By order dated August 21, 2020, we appointed counsel to represent him.

## II

Desper contends first that the VDOC violated his “intimate familial association rights under the First Amendment by arbitrarily denying him visitation with [Emma].” He argues that a “fundamental aspect of [his] constitutionally protected right to freedom of association is ‘the formation and preservation’ of his relationship with [Emma], which ‘by [its] nature, involve[s] deep attachments and commitments.’” (Quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618–20 (1984)). He notes that the Seventh, Ninth, and Tenth Circuits have recognized that the parent-child relationship continues to be constitutionally protected to some extent even after the parent is incarcerated, citing *Easterling v. Thurmer*, 880 F.3d 319, 323 & n.6 (7th Cir. 2018) (per curiam); *Dunn v. Castro*, 621 F.3d 1196, 1205 (9th Cir. 2010); and *Wirsching v. Colorado*, 360 F.3d 1191, 1201 (10th Cir. 2004). He urges us to follow this authority and recognize that “he holds a narrow First Amendment right to some opportunity to visit with his minor daughter, unless prison officials have a legitimate penological justification to deny all visitation.” He then explains why in-person visits are crucial to maintaining his relationship with Emma, pointing to aspects of love, guidance, decisionmaking, and emotional, physical, and mental health.

The VDOC contends in response that the issue is narrower than that stated by Desper. It notes first that Desper did not allege that he faced a “complete denial” of visitation with Emma or that the VDOC indefinitely or arbitrarily denied him any rights. It understands the complaint to be alleging that “Desper did not receive an exemption after the mental health evaluations and that he was not told the precise reason why he was not selected for an exemption.” It argues, therefore, that the issue presented is whether Desper

“has a constitutionally protected right to in-person visitation with his minor child,” and on that issue, it claims that “no case[] establish[es] such a right.” Indeed, it maintains that the courts of appeals, including this court, have rejected the argument “that prisoners have a constitutionally protected right to in-person visitation,” citing *Oxendine*, 509 F.2d at 1407 (stating that a prison inmate “has no constitutional right to physical contact with his family”), *White*, 588 F.2d at 914 (affirming as “correct” the district court’s decision, which had concluded that “there is no constitutional right to prison visitation, either for prisoners or visitors,” 438 F. Supp. 110, 115 (D. Md. 1977)), and numerous unpublished decisions of this court.

While “[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution,” *Turner*, 482 U.S. at 84, they do severely curtail those protections. “The very object of imprisonment is confinement. Many of the liberties and privileges enjoyed by other citizens must be surrendered by the prisoner.” *Overton*, 539 U.S. at 131. Thus, “[a]n inmate does not retain rights inconsistent with proper incarceration.” *Id.* And even those rights that *do* survive incarceration are afforded less protection by the Constitution than the rights of free citizens. As the Supreme Court held in *Turner*, “when a prison regulation impinges on inmates’ constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.” 482 U.S. at 89; *see also Overton*, 539 U.S. at 132; *Pell v. Procunier*, 417 U.S. 817, 822 (1974).

In this case, Desper did not allege that Operating Procedure 851.1 itself, which comprehensively regulates visitation, violated any right to association that may have survived his incarceration. And the issue here is not whether inmates generally have a



constitutional right to visitation. Indeed, as the complaint acknowledges, Operating Procedure 851.1 generally permits visitation. It provides:

The DOC encourages visiting by family, friends, clergy, and other community representatives when visits do not pose a threat to others or violate any state or federal law. Offender visitation is a privilege, and the Facility Unit Head may restrict visiting privileges when necessary to ensure the security and good order of the facility.

But it does provide an exception, which is applicable here:

Offenders with any conviction requiring registration in the *Sex Offender and Crimes against Minors Registry* will not be allowed to visit with any minor until granted a sex offender visitation exemption.

As to this exception, however, the Operating Procedure provides that if an exemption is denied, the inmate is allowed to reapply for an exemption “after one year.” Critically, this restriction on visitation focuses on the fact that the inmate is a sex offender or committed a crime *against a minor* and that in-person visitation is sought with *a minor*. Moreover, regardless of whether the inmate receives an exemption, the Operating Procedure still gives the inmate opportunities to have contact with the minor by telephone or mail.

In view of the allegations of the complaint setting forth the provisions of Operating Procedure 851.1 and the allegations that Desper had been convicted of a sex offense that involved a minor, the issue before us is narrower than whether an inmate generally has a right to visitation under the Constitution. It can be fairly stated as whether the right of association protected by the Constitution requires a prison to allow an inmate who has committed a sex offense against a minor to have in-person visitation with his minor daughter.

While the relationship between parent and child is constitutionally protected by the Due Process Clause, *see, e.g., Quilloin v. Walcott*, 434 U.S. 246, 255 (1978), it may also, to some degree, be protected by the freedom of association found in the First Amendment, *see Roberts*, 468 U.S. at 619–20. Desper locates the right primarily in the First Amendment. It appears, however, that the Supreme Court’s jurisprudence more naturally locates associations of an intimate and familial nature in the Fourteenth Amendment’s protection of liberty. *Id.* at 618–23. But no matter the constitutional footing, the “freedom of association is among the rights least compatible with incarceration,” *Overton*, 539 U.S. at 131, because “[t]he concept of incarceration itself entails a restriction on the freedom of inmates to associate with those outside of the penal institution,” *Jones v. N.C. Prisoners’ Labor Union, Inc.*, 433 U.S. 119, 126 (1977). It is no surprise, therefore, that “[a]lthough the Supreme Court has considered issues concerning the visitation rights of prisoners in several cases,” no case from that Court or our court “clearly establishes a constitutional right to visitation in prison grounded in the First . . . or Fourteenth Amendments.” *Williams v. Ozmint*, 716 F.3d 801, 806 (4th Cir. 2013); *see also Oxendine*, 509 F.2d at 1407 (observing that an inmate “has no constitutional right to physical contact with his family”); *White*, 588 F.2d at 914 (finding the district court “correct” in concluding that “there is no constitutional right to prison visitation, either for prisoners or visitors,” 438 F. Supp. at 115).

Given that there is no clearly established constitutional right to visitation in prison, we are ill-disposed to announce that a registered sex offender whose offense involved a minor possesses a right to in-person visitation with his minor child while incarcerated. This

purported aspect of the right to association seems directly “inconsistent with proper incarceration.” *Overton*, 539 U.S. at 131. “The very object of imprisonment is confinement,” *id.*, which not only punishes the offender by restricting his freedom, but also serves to deter others from committing crimes, protects society from dangerous individuals, and offers offenders a chance to rehabilitate themselves in a structured environment, *see, e.g., Pell*, 417 U.S. at 822–23. Finding that a registered sex offender whose crime involved a minor can demand in-person visitation with his minor daughter cuts against most, if not all, of these goals and is in this sense “inconsistent with his status as a prisoner.” *Id.* at 822. Indeed, Desper’s own complaint highlighted this inconsistency, as it suggested that he had failed to recognize the impropriety of his sexual history, heightening the risk of inappropriate interaction or unsafe conduct with *any minor* during an in-person visit, as well as indicating that he has not been sufficiently rehabilitated to be trusted around minors. This is not to “imply[] that any right to” familial association “is altogether terminated by incarceration or is always irrelevant to claims made by prisoners.” *Overton*, 539 U.S. at 131. But to find in the present context that this right “survives incarceration” to “the extent” Desper asserts would ignore the rationale for his confinement. *Id.* at 132.

Moreover, Desper did not allege in his complaint that the application of Operating Procedure 851.1 to him lacked “a *rational relation* to legitimate penological interests,” as necessary to support his claim. *Overton*, 539 U.S. at 132 (emphasis added). As an inmate challenging the constitutionality of a prison regulation or action under that regulation, Desper carries the burden to “disprove” its validity. *Id.* Given the high bar of showing a

violation under the reasonableness standard, that burden is heavy. In *Turner*, the Court held that four factors are relevant to the inquiry:

[1] whether the regulation has a “valid, rational connection” to a legitimate governmental interest;

[2] whether alternative means are open to inmates to exercise the asserted right;

[3] what impact an accommodation of the right would have on guards and inmates and prison resources; and

[4] whether there are “ready alternatives” to the regulation.

*Overton*, 539 U.S. at 132 (quoting *Turner*, 482 U.S. at 89–91) (spaces added). In addition, courts must “accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” *Id.*

Here, Desper alleged that Emma was removed from his approved visitor list in December 2015 pursuant to Operating Procedure 851.1 and that, in March 2016, he submitted an application for an exemption, which required him to explain his prior sexual crimes. About those crimes, Desper stated:

In 2007 on my indecent liberties charge, *I was just playing around* with this girl who was 16 years old and she took it seriously. I had no intention of harming her. My current offense was with someone who was 18 years, of legal age. I was accused of raping her by use of her mental incapacity. Even though I was convicted all the evidence shows that *I did not commit a crime*. Her grade point average was higher than mine. So *mentally me and this girl is the same*.

(Emphasis added). According to Desper's complaint, he was then evaluated by a mental health professional, and in June 2016, his request for an exemption was rejected, although he did not hear of that rejection until months later. Then in June 2017, Desper reinitiated the process. He was again evaluated by a mental health professional — different from the first — and again his application was rejected. Desper's mother later called the VDOC to request an explanation, and according to Desper's complaint, "[t]he person she talked to said that there was no specific reason why the visitation was disapproved."

These allegations are insufficient to allow us "to draw the reasonable inference that" the VDOC arbitrarily denied Desper visitation in a way that violated the associational right he asserts. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Even liberally construed, Desper's complaint is skeletal. He offered facts of what happened to him, but failed to allege adequately *why* that chain of events was not reasonably related to a legitimate penological objective, which, again, was his burden to allege under *Turner* and *Overton*. The closest he gets is his allegation that a prison official told his mother that "there was no specific reason why the visitation was disapproved." But even taking as true that this statement of an unspecified prison official was made, it is not enough to move Desper's complaint "from conceivable to plausible." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). This is especially so "in light of the 'obvious alternative explanation,'" *McCleary-Evans v. Md. Dep't of Transp., State Highway Admin.*, 780 F.3d 582, 588 (4th Cir. 2015) (quoting *Iqbal*, 556 U.S. at 682), that he was denied visitation because in his application he failed to grasp the seriousness of his prior offenses and indicated an unwillingness to take responsibility for his criminal sexual history.

Desper sought to fill the gaps in his complaint by asserting conclusorily that the denials of his exemption requests were “for no legitimate reason.” But that is just a legal conclusion, which is “not entitled to the assumption of truth.” *Iqbal*, 556 U.S. at 679. Moreover, that legal conclusion runs counter to a commonsensical reading of Desper’s complaint — that he was denied visitation with his minor daughter because of his failure to appreciate the gravity of his prior crimes against a 16-year-old girl and an 18-year-old woman. *See Iqbal*, 566 U.S. at 679 (allowing a court reviewing a complaint “to draw on its . . . common sense”).

In sum, we conclude that Desper did not plausibly allege that the VDOC’s denial of his applications for exemptions for in-person visitation with his minor daughter under Operating Procedure 851.1 violated any aspect of the right to association that may have survived incarceration.

### III

Desper next contends that the VDOC’s denial of his two applications for exemption denied him both his procedural and substantive due process rights, in violation of the Due Process Clause of the Fourteenth Amendment. That clause provides in relevant part, “No State shall . . . deprive any person of . . . liberty . . . without due process of law.” U.S. Const. amend. XIV, § 1. Recognizing that he must, as an initial matter, identify the source of a protected liberty interest, he relies on the Due Process Clause itself and, alternatively, the allegedly mandatory aspects of the VDOC’s visitation regulations. *See Wilkinson v. Austin*, 545 U.S. 209, 221 (2005) (observing that “[a] liberty interest may arise from the

Constitution itself, by reasons of guarantees implicit in the word ‘liberty,’ or it may arise from an expectation or interest created by state laws or policies” (citations omitted)).

With respect to Desper’s invocation of a liberty interest protected by the Due Process Clause, Desper relies upon case law defining a parent’s interest in “the companionship, care, custody and management of his or her children.” *Lassiter v. Dep’t of Soc. Servs. of Durham Cnty.*, 452 U.S. 18, 27 (1981) (citation omitted). But cases such as *Lassiter* considered the parent-child relationship outside of the prison context, and Desper does not, as a duly incarcerated person, have the same liberty interest as one who is not incarcerated. *See Dist. Attorney’s Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 68 (2009) (“A criminal defendant proved guilty after a fair trial does not have the same liberty interests as a free man”). By its very nature, prison restricts an incarcerated father’s interactions with his children. And restrictions placed on registered sex offenders — especially those whose offenses involved minor victims — may be all the more austere. *Cf. Smith v. Doe*, 538 U.S. 84, 104 (2003) (upholding a “State’s determination to legislate with respect to convicted sex offenders as a class”).

We therefore doubt that Desper has any protectable interest in visiting with a minor child. Most problematic for Desper in this regard is the Supreme Court’s holding in *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454 (1989), where the Court held that “[t]he denial of prison access to a particular visitor ‘is well within the terms of confinement ordinarily contemplated by a prison sentence,’ and therefore is not independently protected by the Due Process Clause,” *id.* at 461 (quoting *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)); *see also Williams*, 716 F.3d at 806 (rejecting the assertion that

an inmate has a “clearly establishe[d] . . . constitutional right to visitation in prison grounded in the . . . Fourteenth Amendment[.]”).

And, by any measure, Desper’s own allegations demonstrate that he received sufficient process from the VDOC. The Operating Procedure required that he submit a questionnaire, wherein he had the opportunity to explain his criminal and sexual history and his reasons for seeking visitation. A similar form was also completed by Emma’s guardian, Desper’s mother, who would accompany Emma on any visit. Following the specified procedure, these questionnaires were reviewed by Desper’s “assigned counselor” and then referred to an evaluator, who was charged with reviewing Desper’s “personal/social/sexual history” and “actuarial assessment,” as well as conducting a Mental Status Evaluation. The request, questionnaires, and completed evaluation were then shared with the “Facility Unit Head and the Sex Offender Program Director.” Next, the multi-member Sex Offender Visitation Committee considered the full breadth of these materials and made a recommendation to the Corrections Operations Administrator, who considered the Committee’s recommendation and made the final decision. Desper did not allege any deficiency in carrying out this multistep process with respect to either application for an exemption.

Moreover, the Operating Procedure 851.1 does not categorically deny prison visitation. It expressly guarantees an inmate’s ability to “reapply after one year,” a privilege that Desper exercised here, and does not limit the number of applications that an inmate may submit. Consequently, Desper has not suffered a permanent denial of visitation with his daughter. And the two denials do not foreclose Desper’s ability to maintain his



father-daughter relationship with Emma through other means, as they can still communicate over the phone and through the mail. These methods similarly permit Desper to show Emma “that she’s loved” and to “participate in her care to help [his] mother make decisions regarding [his] daughter.” In short, we find no support for Desper’s claim that the Constitution required any further consideration or action from the VDOC than Desper received.

Alternatively, Desper seeks to locate a protected liberty interest in Operating Procedure 851.1 itself. To do so, however, he must show that the Operating Procedure creates an “objective expectation” in the liberty interest “in such a way that an inmate could reasonably expect to enforce [it] against prison officials.” *Thompson*, 490 U.S. at 465. That objective expectation can be created by “substantive predicates” that “guide” or “limit” official discretion and that use “explicitly mandatory language” such that “a particular outcome must follow” if those predicates are satisfied. *Id.* at 462–63 (cleaned up). Moreover, if the regulation is shown to be sufficiently mandatory, Desper would also have to show that deviating from that procedure “imposes atypical and significant hardship on [him] in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also Prieto v. Clarke*, 780 F.3d 246, 248–57 (4th Cir. 2015). Satisfying these requirements is a difficult task, and intentionally so. *See Prieto*, 780 F.3d at 255.

Our review of Operating Procedure 851.1 leads us to conclude that its provisions do not confer a liberty interest on any inmate. First, it lacks the necessary substantive predicates that guide official discretion, as it treats visitation as “a privilege” and

establishes as a default policy for sex offenders that they “will *not* be allowed to visit with any minor *until* granted a sex offender visitation *exemption*.” (Emphasis added). Moreover, the Operating Procedure does not specify “substantive predicates” in granting an exemption from the default policy, nor does it mandate an exemption in defined circumstances. In short, the Operating Procedure does not give a reasonable inmate an objective expectation that he would *be entitled* to visitation “absent the occurrence of one of the listed conditions.” *Thompson*, 490 U.S. at 465.

Thus, we conclude that Desper has not plausibly alleged a procedural violation of the Due Process Clause as the process he received was adequate for any protectable liberty interest he may have had.

Additionally, Desper claims a substantive due process violation, which imposes yet a greater burden on him. He is required to show that the VDOC’s denial of visitation “was, under the circumstances, so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Hawkins v. Freeman*, 195 F.3d 732, 741 (4th Cir. 1999) (cleaned up). In the context of executive action such as that of the VDOC in following Operating Procedure 851.1, he must show that the violation involved “abusing executive power or employing it as an instrument of oppression.” *Id.* (cleaned up). The conduct must go beyond “simple negligence” and “must be intended to injure in some way unjustifiable by any government interest.” *Id.* (cleaned up). Clearly, these requirements create a “stringent test.” *Id.*

Desper’s complaint satisfies almost none of the requirements necessary to establish a substantive due process violation. In making this claim, he simply points to a VDOC

official's statement that there was "no specific reason" for the denial of his application for an exemption even though his daughter had visited him for six years without incident.\* He argues further that this conduct was particularly egregious in view of the VDOC's dissimilar treatment of inmates whose visitations were suspended because of a visitation-related infraction or an escape-related offense. For those inmates, he claims, suspension could not exceed two years; yet he has been denied visitation with his daughter for well over two years while having no history of prison misbehavior. We conclude, however, that the VDOC's conduct in failing to provide Desper a reason was not so arbitrary and irrational as to rise to the level of a substantive due process violation. The oversight or even negligence in failing to give Desper reasons for the denial was not alleged to be an action that was "intended to injure" Desper in any way. *Hawkins*, 195 F.3d at 742. Indeed, the entire scenario as alleged in the complaint does not shock the conscience, the stringent test required to show a substantive due process violation.

#### IV

Finally, Desper contends that the VDOC, in denying him an exemption, treated him differently from other similarly situated inmates, in violation of the Equal Protection Clause. In asserting this claim, Desper alleged, without more, that he "was denied

\* While we consider only Desper's complaint in reviewing the district court's dismissal order, the record in this case created in response to Desper's motion for summary judgment and motion for a preliminary injunction provides Desper with the reasons for denying his applications for an exemption. Moreover, the reasons were based on his mental health evaluations, which are maintained in his medical file and, as the VDOC has represented, are accordingly available to him at any time.

visitation with his daughter because he is a convicted sex offender, while other sex offenders get to visit with their minor children and, on information and belief[,], some have [a] similar or worse criminal history than Mr. Desper.” In reviewing the district court’s order granting the VDOC’s motion to dismiss, we accept as true the allegation that other sex offenders with similar or worse *criminal histories* than Desper were granted an exemption allowing visitation with their minor children.

To state a claim for a violation of the Equal Protection Clause, “a plaintiff must plausibly allege first that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination.” *Fauconier v. Clarke*, 966 F.3d 265, 277 (4th Cir. 2020) (cleaned up). He must also plausibly allege that “the disparity was not justified under the appropriate level of scrutiny,” which, in the prison context, means that he “must allege that the disparate treatment was not reasonably related to any legitimate penological interests.” *Id.* (cleaned up).

The complaint shows that Operating Procedure 851.1, which is attached to and incorporated into the complaint, prohibits registered sex offenders from visiting with minors. But it also allows for a discretionary exemption based on an assessment of, among other things, the inmate’s “sexual history” and his current mental health. In furtherance of these criteria, as the complaint alleges, Desper underwent a mental status evaluation on two different occasions, and following both, the VDOC denied him an exemption to visit with Emma. While an inmate’s criminal history or prison conduct, on which Desper based his equal protection claim, might be part of the inmate’s assessment for an exemption — a

criterion not explicitly noted in Operating Procedure 851.1 — that two inmates have similar criminal histories and prison conduct does not suggest that they will receive the same decision under the Operating Procedure for visitation. The Operating Procedure appears to be more focused on an inmate’s current mental status and sexual history, and with respect to those criteria, the complaint shows that Desper was unwilling to accept the criminality of his sexual conduct. Yet Desper’s complaint does not purport to allege that he was treated differently from any other inmate *with a similar sexual history and mental status*. In short, he has not alleged that the VDOC “treat[ed] differently persons who are in *all relevant respects* alike.” *Nordlinger v. Hahn*, 501 U.S. 1, 10 (1992) (emphasis added).

Desper asserts that he is unable to allege such facts because he lacks access to information about other inmates’ sexual history and mental status absent discovery. But the Federal Rules of Civil Procedure “do not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions.” *Iqbal*, 556 U.S. at 678–79 (citing Fed. R. Civ. P. 8). “Insofar as [Desper] is unaware of adequate facts to support a plausible claim for relief, his inability to marshal additional facts absent discovery cannot save his conclusory and speculative allegations from dismissal.” *Tickles v. Johnson*, 805 F. App’x 204, 208 (4th Cir. 2020) (per curiam). Accordingly, we agree with the district court that Desper failed to plead a plausible equal protection claim.

\* \* \*

The judgment of the district court dismissing Desper’s complaint is

AFFIRMED.

FILED: June 15, 2021

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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No. 19-7346  
(7:17-cv-00549-GEC-PMS)

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JAMES PAUL DESPER

Plaintiff - Appellant

v.

HAROLD CLARKE, Director of the Department of Corrections; A. DAVID ROBINSON, Chief of Operations; JANE/JOHN DOE, for each member of the Sex Offender Visitation Committee and the Sex Offender Program Director; JANE/JOHN DOE, Corrections Operations Administrator; MARIA STRANSKY; MARIE VARGO

Defendants - Appellees

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J U D G M E N T

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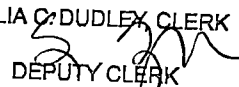
In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

JAN 29 2019

JULIA C. DUDLEY, CLERK  
BY:  DEPUTY CLERKIN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JAMES PAUL DESPER,	)	CASE NO. 7:17CV00549
	)	
Plaintiff,	)	
v.	)	MEMORANDUM OPINION
	)	
HAROLD CLARKE, <u>ET AL.</u> ,	)	By: Glen E. Conrad
	)	Senior United States District Judge
Defendants.	)	

James Paul Desper, a Virginia inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that prison officials have denied him visitation with his minor daughter, in violation of his constitutional rights. Upon review of the record, the court finds that Desper has failed to state a claim upon which relief can be granted.

## I. BACKGROUND

Desper has been in prison since September 2009 and is currently confined at Augusta Correctional Center.<sup>1</sup> He is incarcerated for three convictions of forcible rape through the mental incapacity or helplessness of the victim, involving an 18-year-old woman, who was determined to have the overall mental capacity of an eight-year-old child. See Desper v. Commonwealth, No. 2116-10-3, 2011 WL 5346030 (Ct. App. Nov. 8, 2011). He has also been convicted for indecent liberties with a child, failing to register as a violent sex offender, probation violations, and credit card larceny and forgery.

Desper's mother, Glenda Desper ("Glenda"), has legal and physical custody of his minor daughter, K.D., who was not the victim of Desper's sexual offenses. Between September 2009 and December 2015, Desper was allowed prison visitation with KD.

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<sup>1</sup> The facts summarized herein are based on online court records and Desper's amended complaint and other documentation he has submitted and incorporated by reference into his claims.

On March 1, 2014, amendments to Virginia Department of Corrections (“VDOC”) visitation regulations in Operating Procedure (“OP”) 851.1 took effect. Section IV(C)(12) of OP 851.1 provided that

[o]ffenders with any conviction requiring registration in the *Sex Offender and Crimes against Minors Registry* will not be allowed to visit with any minor until granted a sex offender visitation exemption. (Minors currently approved for such visits on the effective date of this operating procedure may be allowed to continue visiting pending review for an exemption.)

Compl. Ex. 2, ECF No. 1-2. The procedure only allowed exemptions for a sex offender inmate to visit with his biological child, legally adopted child, or step-child, if that child was not a victim of his crimes. To be eligible for an exemption, a sex offender must have been free of disciplinary charges for six months, with no court order in effect prohibiting or restricting visitation.

The process to apply for an exemption under OP 851.1(IV)(C)(12), in 2014 and currently, requires the inmate to complete a questionnaire about his offenses and steps he has taken toward being accountable for his offense conduct, and about his child, their relationship, and how visitation will be beneficial to the child. The parent or guardian of the minor child must also complete and mail a questionnaire to the inmate’s counselor, to provide, among other things, information about the adult’s knowledge of the offender’s crimes, the child’s relationship to the inmate, their prior visits, the child’s interest in future visitation and potential benefits from it, and the adult’s concerns if any. These submissions are then reviewed by an evaluator, who conducts an assessment of the inmate, including a Mental Status Evaluation (“MSE”), review of the inmate’s personal, social, and sexual history, and an “actuarial assessment.” *Id.* The evaluator then forwards the completed assessment of the inmate’s visitation exemption request, and the questionnaires completed by the inmate and the child’s guardian for review by the Sex Offender



Visitation Committee (“Committee”). This Committee meets quarterly to consider visitation exemption requests and accompanying documentation, and to decide whether to recommend the exemption. Final approval of these recommendations comes from a designated prison administrator. If the inmate’s application for a visitation exemption is denied, there is no appeal. After one year, however, the inmate may reapply for a sex offender visitation exemption.

After these visitation procedures first took effect in March 2014, Desper failed to file a visitation exemption request as the policy required. Nevertheless, for almost two years, officials allowed him discretionary visitation with K.D. to give him an opportunity to apply for an exemption. Desper first learned in February 2016 that officials had removed K.D. from his list of approved visitors. In March 2016, Desper and Glenda submitted the required paperwork for a sex offender visitation exemption application. A mental health professional evaluated Desper a few weeks later. Desper submits evidence indicating that he has had extensive mental health issues.

Ultimately, in February 2017, Glenda learned that the visitation exemption request had been denied more than six months earlier. Desper and Glenda completed the paperwork for a second visitation exemption application in June 2017. A different mental health professional evaluated Desper in August. The visitation exemption was denied in September 2017. Neither Desper nor Glenda as K.D.’s legal guardian was notified of the denial or was provided any specific reason that Desper’s visitation exemption requests were denied. A letter from K.D. indicates that in March 2018, she was twelve years old.

Desper then filed this § 1983 action, naming as defendants VDOC Director Harold Clarke, Chief of Operations A. David Robinson, and several Jane/John Doe defendants. Plaintiff also filed a motion for summary judgment and a motion for preliminary injunctive relief, and the

defendants responded to these motions. Defendants Clarke and Robinson have also filed a motion to dismiss. Desper has responded by filing two motions for leave to file an amended complaint, which the court will grant.

Desper's amended complaint sues Clarke and Robinson ("defendants"); Maria Stransky, Sex Offender Program Director; Marie Vargo, Corrections Operations Administrator; and Jane/John Does—unnamed members of the Committee. Desper contends that these individuals' actions, depriving him of visitation with K.D. since December 2015, have violated his constitutional rights under the Association Clause of the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.<sup>2</sup> As relief, Desper seeks declaratory and injunctive relief, and punitive damages.

## II. DISCUSSION

### A. The Motion to Dismiss

A district court should dismiss a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure if, accepting all well-pleaded allegations in the complaint as true and drawing all reasonable factual inferences in the plaintiff's favor, the complaint does not allege "enough facts to state a claim to relief that is plausible on its face."<sup>3</sup> Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action

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<sup>2</sup> The initial complaint also raised an ex post facto claim, but Desper does not pursue this claim in his amended complaint.

<sup>3</sup> The defendants' responses in opposition to Desper's motion for summary judgment and motion for interlocutory injunctive relief include sworn affidavits and other documentation. In considering the motion to dismiss filed by defendants Clarke and Robinson, however, the court has not considered any of these matters outside the pleadings. On that basis, the court has also denied Desper's motion to compel discovery.

will not do.” Id. at 555.<sup>4</sup> To state a claim under § 1983, a plaintiff must allege “the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” West v. Atkins, 487 U.S. 42, 48 (1988).

#### 1. First Amendment

Neither the Supreme Court nor the United States Court of Appeals for the Fourth Circuit has recognized a clearly established constitutional right to visitation while in prison. Williams v. Ozmint, 716 F.3d 801, 806 (4th Cir. 2013) (citing Overton v. Bazzetta, 539 U.S. 126, 131 (2003)). In fact, controlling case law in the Fourth Circuit holds that “there is no constitutional right to prison visitation, either for prisoners or visitors” under the Freedom of Association Clause of the First Amendment. White v. Keller, 438 F. Supp. 110, 115 (D. Md. 1977), aff’d, 588 F.2d 913 (4th Cir. 1978); Oxendine v. Williams, 509 F.2d 1405, 1407 (4th Cir. 1975) holding that “[prisoner] has no constitutional right to physical contact with his family”). “Freedom of physical association is inconsistent with an incarcerative penal system. Accordingly, this court believes that prisoners have no associational right to receive visitors. This right is lost in accordance with due process at the time of criminal judgment.” White, 438 F. Supp. at 117.

[F]our factors are relevant in deciding whether a prison regulation affecting a constitutional right that survives incarceration withstands constitutional challenge: whether the regulation has a “valid, rational connection” to a legitimate governmental interest; whether alternative means are open to inmates to exercise the asserted right; what impact an accommodation of the right would have on guards and inmates and prison resources; and whether there are “ready alternatives” to the regulation.

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<sup>4</sup> The court has omitted internal quotation marks, alterations, and citations here and throughout this opinion, unless otherwise noted.

Overton, 539 U.S. at 132 (quoting Turner v. Safley, 482 U.S. 78, 89-91 (1987)). Applying the Turner factors, the Court upheld the visitation restrictions at issue in Overton and expressly held that they furthered legitimate penological interests in maintaining internal security and protecting child visitors from sexual misconduct.

Even if Desper retains some constitutional right to visit with his daughter, the VDOC visitation regulation similarly withstands his § 1983 challenge under the Turner factors. First, the regulation and its requirements bear a clear and reasonable relationship to the state's interest in protecting children from sexual misconduct and in promoting sex offender treatment success. See Overton, 539 U.S. at 133 ("Protecting children from harm is also a legitimate goal."); Alex v. Beard, No. CIV. 1:CV-09-1711, 2010 WL 1416837, at \*4 (M.D. Pa. Apr. 6, 2010) ("[I]t is logical that where prison officials believe a sex offender's contact with any particular individual would not promote treatment or rehabilitation efforts, visitation with particular individuals should be prohibited."). To continue visitation after the regulation took effect, Desper had to apply for an exemption and undergo an assessment to ensure that visitation with K.D. was safe for her. Only after he failed to do so after many months did officials disapprove continued visits unless he obtained an exemption. The assessment did not reach the result Desper and his mother desired. Nevertheless, that assessment requirement was reasonably related to K.D.'s safety, given Desper's admitted history of mental health problems and sex offenses with teenagers. Furthermore, the denials of visitation were not permanent. Desper may reapply for a visitation exemption every year. Over time in his treatment program, the safety assessment may change.

Second, Desper retains other means of communicating with K.D. and maintaining his relationship with her. He may speak with her on the telephone, correspond with her through letters, and convey messages to her through Glenda or other family members who visit him. See

Overton, 539 U.S. at 135 (noting that sex offenders “can communicate with those who may not visit by sending messages through those who are allowed to visit,” and “[t]hey . . . may communicate with persons outside the prison by letter and telephone,” in satisfaction of second Turner factor). “[T]he fact that [Desper] may maintain contact with [K.D.] through means other than visitation supports the reasonableness of the [prison visitation] policy.” Wirsching v. Colorado, 360 F.3d 1191, 1201 (10th Cir. 2004).

Third, allowing Desper to resume visitation with K.D. without the safety assessment process the visitation procedure requires would “impair the ability of corrections officers to protect all who are inside a prison’s walls.” Overton 539 U.S. at 131.. In such circumstances, the court “must accord substantial deference to the professional judgment of prison administrators, who bear a significant responsibility for defining the legitimate goals of a corrections system and for determining the most appropriate means to accomplish them.” Id. at 132.

Fourth, Desper has not proposed any ready alternative to the existing regulation that would further the same interests to the same extent. He simply insists that he should be granted an exemption, based on his past visitation with K.D. and his desire to resume it. As discussed, the amended visitation regulation does not end Desper’s ability to maintain a relationship with K.D. It merely limits sex offenders’ physical visitation with their minor children to those who obtain the exemption—after a personalized assessment determines that such visits do not pose a safety risk to the child or undermine the offender’s treatment program.

For the stated reasons, the court concludes that Desper's allegations fail to state a claim upon which relief can be granted. Accordingly, the court will grant the motion to dismiss, and deny Desper's motion for summary judgment,<sup>5</sup> as to his claims under the First Amendment.

## 2. Due Process

The Due Process Clause of the Fourteenth Amendment prohibits a state from depriving "any person of life, liberty, or property without due process of law." U.S. Const. amend. XIV, § 1. To state a claim that officials have deprived him of a constitutionally protected liberty interest without due process, "a plaintiff must (1) identify a protected liberty or property interest and (2) demonstrate deprivation of that interest without due process of law." Prieto v. Clarke, 780 F.3d 245, 248 (4th Cir. 2015). The Supreme Court has rejected the argument that "unfettered visitation is guaranteed directly by the Due Process Clause." Ky. Dep't of Corr. v. Thompson, 490 U.S. 454, 460 (1989). "The denial of prison access to a particular visitor is well within the terms of confinement ordinarily contemplated by a prison sentence, and therefore is not independently protected by the Due Process Clause." Id. at 461. Therefore, to prove that he has a protected liberty interest at stake here, Desper must (a) point to "a basis for an interest or expectation in state regulations" in visitation, Prieto, 780 F.3d at 250; and (b) show that denial of that interest imposed on him an "atypical and significant hardship . . . in relation to the ordinary incidents of prison life."<sup>6</sup> Sandin v. Connor, 515 U.S. 472, 484 (1995).

First, the VDOC's decision to change its visitation policies did not implicate Desper's constitutional rights. It is well established that state official's failure to abide by procedural rules

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<sup>5</sup> A court can grant summary judgment only "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Because the court herein determines that Desper fails to state any claim upon which relief can be granted, the court also concludes that he cannot be entitled to judgment as a matter of law, and denies his motion accordingly.

<sup>6</sup> Only if Desper makes both of these showings does the Due Process Clause require a particular measure of procedural protection before his visitation status changes. Sandin, 515 U.S. at 487.

and regulations does not, in and of itself, state a federal due process issue. Riccio v. Cty. of Fairfax, Va., 907 F.2d 1459, 1469 (4th Cir. 1990).

Second, Desper cannot make either of the required showings to establish a protected liberty interest arising from the VDOC's procedure as amended in 2014. Certainly, the policy does not create an expectation that Desper, as a sex offender, can continue visitation with K.D. while she is a minor. Rather, the policy prohibits sex offenders from visitation with their minor children until they undergo the safety assessment and obtain an exemption. The lack of any policy-created expectation that Desper and K.D. can continue visitation is fatal to his procedural due process claim. See, e.g., Ky. Dep't of Corr., 490 U.S. at 462-63. Moreover, the court cannot find that the visitation policy changes imposed an atypical and significant hardship on Desper compared to ordinary prison circumstances. Id. at 461 (finding "denial of prison access to a particular visitor" to be "well within the terms of confinement ordinarily contemplated by a prison sentence"). As discussed, Desper can maintain his relationship with K.D. while she is a minor through other available means of communication and can reapply every year for an exemption.

For the stated reasons, the court concludes that Desper fails to state a due process claim upon which relief can be granted. Therefore, the court will grant the motion to dismiss, and deny Desper's motion for summary judgment, as to this claim.

### 3. Equal Protection

The Equal Protection Clause of the Fourteenth Amendment declares that "[n]o State shall . . . deny to any person . . . the equal protection of the laws." U.S. Const., amend. XIV, § 1. This provision does not altogether forbid states from classifying individuals; rather it "keeps

governmental decisionmakers from treating differently persons who are in all relevant respects alike.” Nordlinger v. Hahn, 505 U.S. 1, 10 (1992).

To succeed on an equal protection claim, a plaintiff must first demonstrate that he has been treated differently from others with whom he is similarly situated and that the unequal treatment was the result of intentional or purposeful discrimination. Once this showing is made, the court proceeds to determine whether the disparity in treatment can be justified under the requisite level of scrutiny.

Kerr v. Marshall Univ. Bd. of Governors, 824 F.3d 62, 82 (4th Cir. 2016) (quoting Morrison v. Garraghty, 239 F.3d 648, 654 (4th Cir. 2001)). When an inmate brings an equal protection claim, his allegations of unequal treatment must be analyzed in light of the prison’s special security and management concerns. Morrison, 239 F.3d at 655. “The burden, moreover, is not on the State to prove the validity of prison regulations but on the prisoner to disprove it.” Overton, 539 U.S. at 132. The court cannot find that Desper has met, or could meet, his burden to state an equal protection claim here.

First, Desper has not shown that he was treated differently than other sex offenders confined in VDOC prisons. Under the 2014 amendments to the visitation policy, all sex offenders were required to apply for an exemption and undergo the same type of assessment that Desper underwent. Second, he cannot show that he is similarly situated in all relevant respects to other sex offenders who have been granted exemptions to visit with their minor children. As a prerequisite for this exemption, evaluators must have determined that the inmate’s criminal and mental health history and other factors did not create risks of potential harm to children’s safety. Evaluators did not reach this conclusion about Desper, however, during the assessment of these same factors.



The court concludes that Desper fails to state any equal protection claim on which relief could be granted. Accordingly, the court will grant the motion to dismiss, and deny Desper's motion for summary judgment, on this claim.

#### B. Other Matters

##### 1. The Motion for Interlocutory Injunctive Relief

Because preliminary injunctive relief is an extraordinary remedy, the party seeking such relief must make a clear showing "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). Given the court's finding that Desper states no constitutional claim upon which relief can be granted under § 1983, he has not made a clear showing of a likelihood of success on the merits of his underlying claims in this lawsuit. Accordingly, he cannot meet all four Winter requirements for interlocutory relief. The court will deny his motion accordingly.

##### 2. Unserved and Unnamed Defendants

In his amended complaint, Desper adds two additional VDOC officials—Stransky and Vargo. These defendants are not yet parties to this action, because the court has not accomplished service upon them. Before doing so, however, the court is required to dismiss any action or claim filed by a prisoner against a governmental entity or officer if the court determines the action or claim is frivolous, malicious, or fails to state a claim on which relief may be granted. 28 U.S.C. § 1915A(b)(1). Given the court's finding herein that Desper fails to state any § 1983 claims, for that reason, the court must also summarily dismiss his claims against Stransky and Vargo, pursuant to § 1915A(b)(1).

Desper's amended complaint also names Jane and John Doe defendants. The court notified him by order entered March 8, 2018, that if he failed to provide the names of the Doe defendants, his claims against them would be dismissed without prejudice. He has failed to do so. Accordingly, all claims against the Doe defendants will be dismissed without prejudice, pursuant to Rule 4(m). In any event, for reasons already explained, Desper fails to state any actionable § 1983 claim against anyone. Thus, any amendment to name the Doe defendants now would be denied as futile.

### III. CONCLUSION

For the reasons stated, the court will grant Desper's motions to file an amended complaint; grant the motion to dismiss filed by defendants Clarke and Robinson; deny Desper's motions for summary judgment and interlocutory injunctive relief; and summarily dismiss all claims against other defendants, pursuant to § 1915A(b)(1) or Rule 4(m). An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to the parties.

ENTER: This 29<sup>th</sup> day of January, 2019.

  
\_\_\_\_\_  
Senior United States District Judge



Judge C	Rec'd Date	Grv.
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For use by inmates in filing a complaint under **CIVIL RIGHTS ACT, 42 USC § 1983**

INMATE NAME: James Paul Desper  
 PRISONER NO.: 1204039  
 PLACE OF CONFINEMENT: Augusta Correctional Center

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE WESTERN DISTRICT OF VIRGINIA  
 ROANOKE DIVISION**

CLERK'S OFFICE U.S. DIST. COURT  
 AT ROANOKE, VA  
 FILED

DEC 11 2017

JULIA C. DUDLEY, CLERK  
 BY: [Signature]  
 DEPUTY CLERK

James Paul Desper  
 Enter Full Name Plaintiff

VS.

CIVIL ACTION NO. 717cv00549

Harold Clarke, Director of the Department  
 of Corrections; A. David Robinson Chief  
 of Operations; Jane/John Doe for each  
 member of the Sex offender visitation  
 committee and The sex offender program  
 director; Jane/John Doe for Corrections  
 Operations Administrator. All defendants  
 are sued in their official and individual capacities.

Enter Full name(s) Defendant(s)

A. Have you begun other actions in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

X Yes        No

B. If your answer to A is Yes, describe the action in the space below.

1. Parties to the Action: Desper V. Ponton
2. Court: United States District Court For the Eastern District of Virginia
3. Docket No.: Can't remember
4. Judge: Can't remember
5. Disposition: Dismissed and appealed

(For example, is the case still pending? If not, what was the ruling? Was the case appealed?)

C. Have you filed any grievances regarding the facts of your complaint?

Yes        No X

1. If your answer is Yes, complete the enclosed verified statement, indicating the result. Please attach evidence of your exhaustion of all available grievance procedures.

2. If your answer is No, indicate the reason for failure to exhaust on the verified statement. You may be required to exhaust your claims through any applicable grievance procedures. Your complaint may be dismissed if you fail to exhaust all avenues of the grievance process in a timely fashion.

D. Statement of Claim – State here briefly the facts of your case. Describe what action(s) each defendant took in violation of your constitutional rights. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of different claims, number and set forth each claim in a separate paragraph. Use as much space as needed. You may attach extra paper if necessary.

Claim #1 – Supporting Facts – Tell your story briefly without citing cases or law.

Defendant's denied Mr. Desper visitation with his daughter while other sex offenders are able to visit with their minor children. (All facts is set out in further detail in the full complaint attached hereto).

Claim #2 – Supporting Facts – Tell your story briefly without citing cases or law.

Claim #3 – Supporting Facts – Tell your story briefly without citing cases or law.

E. State what relief you seek from the Court. Make no legal arguments, cite no cases or statutes.

Declaratory judgment; permanent injunction; punitive damages and the cost of this action.

SIGNED THIS 6th DAY OF December, 2017.

James Paul Desper

(Signature of Each Plaintiff)

**VERIFICATION:**

I, James Paul Desper, state that I am the plaintiff in this action and I know the content of the above complaint; that it is true of my own knowledge, except as to those matters that are stated to be based on information and belief, and as to those matters, I believe them to be true. I further state that I believe the factual assertions are sufficient to support a claim of violation of constitutional rights. Further, I verify that I am aware of the provisions set forth in 28 USC § 1915 that prohibit an inmate from filing a civil action or appeal, if the prisoner has three or more occasions, while incarcerated, brought an action or appeal in federal court that are dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the prisoner is in imminent danger of serious physical injury. I understand that if this complaint is dismissed on any of the above grounds, I may be prohibited from filing any future actions without the pre-payment of filing fees.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: 12/6/17

SIGNED: James Paul Desper

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**James Paul Desper,**

**Plaintiff,**

**Civil Action No.**

**V.**

**Harold Clarke, Director of the  
Department of Corrections; A.  
David Robinson, Chief of Operations;  
Jane/John Doe for each member of  
the Sex offender Committee and the  
Sex Offender Program Director; Jane/John  
Doe for Corrections Operations Administrator,  
sued in their official and individual capacities,**

**JURY TRIAL  
DEMANDED**

**Defendants.**

**CIVIL RIGHTS COMPLAINT**

**Introduction**

1. This is a civil rights action filed by James Paul Desper, a state prisoner, for damages, declaratory judgment, and injunctive relief under 42 U.S.C. §1983, alleging denial of his rights and privileges to visit with his daughter in violation of the Association Clause of the First Amendment, ex post facto clause under Article I, Section 10 and the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution, and the deprivation of privileges clause under §1983.

**Jurisdiction**

2. The court has jurisdiction over the plaintiff's claims of violation of federal constitutional rights and privileges under 42 U.S.C. §§1331(1) and 1343.

**Exhaustion of Administrative Remedies**

3. There were no available administrative remedies because the issues complained of herein are nongrievable pursuant to Operating Procedure 866.1 (Exhibit 1, p. 5).

**Parties**

4. The plaintiff, James Paul Desper, was incarcerated at the Augusta Correctional Center during the events described in this complaint and still resides there.

5. Defendant Harold W. Clarke is the Director of the Virginia Department of Corrections. He was responsible for overseeing the day-to-day operations of the Department of Corrections when the violations occurred.

6. Defendant A. David Robinson is the chief of Corrections Operations of the Virginia Department of Corrections. He implemented the policy that resulted in the violations. He was responsible for selecting members of the Sex Offender Visitation Committee.

7. Defendant(s) Jane/John Doe for each member of the Sex Offender Visitation Committee. They are responsible for reviewing offenders for a sex offender exemption and then recommending whether or not to approve or deny visitation. Their names are unknown to Mr. Desper. He hopes to obtain that information through discovery.

8. Defendant Jane/John Doe for the Sex Offender Program Director. According to policy a copy of the assignment to an evaluator was forwarded to the Sex Offender Program Director who had a part in the violations. The name is unknown to Mr. Desper. He hopes to obtain that information through discovery.

9. Defendant Jane/John Doe for Corrections Operation Administrator. He is responsible for actually approving or denying visitation. The name is unknown to Mr. Desper. He hopes to obtain that information through discovery.

#### **Facts**

10. Around December 2015 Mr. Desper's daughter, [REDACTED] was removed from his approved visitors list. Operating Procedure 851.1 states that "Offenders with any conviction requiring registration in the Sex Offender and Crimes against Minors Registry will not be allowed to visit with any minor until granted a Sex Offender visitation exemption. (Minors currently approved for such visits on the effective date of this operating procedure may be allowed to continue visiting pending review for an exemption.) (Exhibit 2, p. 6). His daughter was removed from his visitors list without notice and before he even started the exemption process.



11. On March 2, 2016 Mr. Desper filled out a Sex Offender Minor Visitation Questionnaire and gave it to his counselor and on April 10, 2016 Mr. Desper's mother, Glenda Desper filled out a Sex Offender Minor Visitation Questionnaire and mailed it to Mr. Desper's counselor. (Exhibit 3). His counselor then submitted both forms to the Department of Corrections. Mr. Desper was evaluated by a mental health professional around April or May 2016.

12. By an order dated March 12, 2007 the court awarded Mr. Desper reasonable visitation. The protective order that was entered on March 8, 2007 only lasted 12 months which terminated on March 8, 2008. On August 28, 2007 legal and physical custody was transferred to Mr. Desper's mother, Glenda Desper. (Exhibit 4). Through this whole process the court never took away his visitation rights nor did they terminate his parental rights.

13. Glenda Desper stated in a sworn affidavit, (Exhibit 5), the following:

- Jamie Paul Desper is my son [REDACTED] is his daughter and my granddaughter. [REDACTED] is 11 years old. She has been asking to see her father. (¶1).
- [REDACTED] has been going to see her father ever since he got locked up in September 2009. The last time she was able to visit him was around December 2015, after that she was taken off his visitation list until he applied for and is approved for a Sex Offender exemption to visit with her. (¶2).
- On April 10, 2016 I filled out a Sex Offender Minor Visitation Questionnaire and sent it to his counselor. I continuously contacted the Department of Corrections regarding the visitation to no avail. They would not tell me anything no matter who I talked to. (¶3).
- [REDACTED] was denied visitation with her father on June 10, 2016. Me nor no one else was notified of that decision. Finally on February 24, 2017 I got an email from the Department of Corrections saying that she was denied. (Exhibit 10). So from June 10, 2016 through February 24, 2017 no one knew she was denied. (¶4).
- I have noticed a drastic change in her demeanor and attitude for the worse since she has not been allowed to visit her father. (¶5).
- I called the Department of Corrections again on June 16, 2017 to ask the names of the people who are members of the Sex Offender Visitation Committee. They would not tell me. Furthermore, their names are not listed on the Department of Corrections website. (¶6).

14. The alleged victim from the indecent liberties charge that occurred in 2007 was not my daughter. She was about 16 or 17 years of age as the transcript shows. (Exhibit 6, pgs. 4 & 9).



15. Mr. Desper sent a letter to the Department of Corrections about his daughter's visitor's application on January 7, 2017. (Exhibit 7). No response was provided. Mr. Desper sent another letter to the Department of Corrections on May 2, 2017 regarding his daughter's visitation. (Exhibit 8). No response was provided for the second letter. Mr. Desper sent a third letter to the Department of Corrections on June 18, 2017. This time he sent it through certified mail return receipt requested. (Exhibit 9). Again, he received no response. He didn't even get the signed return receipt back where they received it.

16. On or around June 10, 2017 Mr. Desper started the whole process again to have his daughter approved to visit him. He was evaluated by a different mental health professional in August 2017. The visitation was disapproved again in September 2017. Again no notice was provided to Mr. Desper. Mr. Desper's mother, Glenda Desper called the Department of Corrections. The person she talked to said that there was no specific reason why the visitation was disapproved.

### **CONCLUSION**

17. WHEREFORE, plaintiff requests that the court grant the following relief:

A. Issue a declaratory judgment explaining that defendants violated plaintiff's constitutional rights under the First Amendment association clause, ex post facto under Article I Section 10, and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and deprived Mr. Desper of the privilege of visiting with his daughter for no legitimate reason.

B. Issue an injunction ordering defendants to allow Mr. Desper to visit with his daughter as he was previously doing since 2009.

C. Punitive damages for the violation of Mr. Desper's constitutional rights and the deprivation of the privilege to visit with his daughter in the amount that this court deems appropriate and the costs of this action.

Dated: 12/6/17

Respectfully submitted,

James Paul Desper  
James Paul Desper #1204039  
1821 Estaline Valley Rd.  
Craigsville, VA 24430

**CERTIFICATE OF SERVICE**

I hereby certify that on this 6<sup>th</sup> day of December, 2017 that I sent three true and correct copies of this civil rights complaint and exhibits to the United States District Court for the Western District of Virginia, 210 Franklin Rd, SW, Suite 540, Roanoke, VA 24011; one true and correct copy of this civil rights complaint and exhibits to Harold Clarke, Virginia Department of Corrections, PO Box 26963, Richmond, VA 23261; and one true and correct copy of this civil rights complaint and exhibits to A. David Robinson, Virginia Department of Corrections, PO Box 26963, Richmond, VA 23261 by first class mail.


James Paul Desper  
James Paul Desper #1204039

**INDEX TO EXHIBITS**

<b><u>Exhibit #</u></b>	<b><u>Exhibit Description</u></b>
1	Operating Procedure 866.1 – Offender Grievance Procedure
2	Operating Procedure 851.1 – Visiting Privileges
3	Sex Offender Minor Visitation Questionnaires
4	Order granting reasonable visitation
5	Affidavit of Glenda Desper
6	Transcript of indecent liberties charge
7	Inquiry letter dated 1/7/17
8	Inquiry letter dated 5/2/17
9	Inquiry letter dated 6/18/17 and certified mail receipt
10	Visitation disapproval notice

# Exhibit 1

Operating Procedure 966.1 - Offender  
Grievance Procedure

 <h1 style="text-align: center;">Operating Procedure</h1>		Effective Date July 1, 2013	Number 866.1
		Amended	Operating Level Department
Subject <b>OFFENDER GRIEVANCE PROCEDURE</b>		Supersedes Operating Procedure 866.1 (12/1/10)	
		Authority COV §8.01-243.2, §53.1-10	
ACA/PREA Standards 4-4284, 4-4344, 4-4394; 2-CO-3C-01; §115.51, §115.52		Office of Primary Responsibility Ombudsman Services Unit	
Incarcerated Offender Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	FOIA Exempt Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Attachments Yes <input checked="" type="checkbox"/> #3 No <input type="checkbox"/>		
<p><b>I. PURPOSE</b></p> <p>This operating procedure provides an administrative process for resolving offender issues and complaints through fair, prompt decisions and actions in response to complaints and grievances from offenders incarcerated in Department of Corrections institutions.</p> <p><b>II. COMPLIANCE</b></p> <p>This operating procedure applies to all institutions operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.</p> <p><b>III. DEFINITIONS</b></p> <p><b>Abuse</b> - The use of these procedures in a manner other than in good faith for resolution of grievances</p> <p><b>Appeal</b> - The submission of a response to a grievance from the lower level to the next available level detailing the reason(s) the grievant is not satisfied with the lower level response or remedy provided.</p> <p><b>Calendar Day</b> - Any 24-hour day regardless of weekends or state holidays</p> <p><b>Day</b> - A 24-hour period</p> <p><b>Emergency</b> - A situation or condition which may subject the offender to immediate risk of serious personal injury or irreparable harm</p> <p><b>Founded</b> - When a determination has been made that a remedy is required</p> <p><b>Grievance</b> - An unresolved issue filed and signed by an individual offender on his/her own behalf concerning an issue which has affected him/her personally and meets intake criteria</p> <p><b>Grievance Coordinator</b> - The employee designated for coordination and monitoring of the facility's <i>Offender Grievance Procedure</i> at facilities that do not have an established Human Rights Advocate position</p> <p><b>Informal Procedure</b> - Those processes, practices, or procedures available to offenders to secure facility services or resolve complaints</p> <p><b>Institutional Ombudsman</b> - The working title of the Human Rights Advocate position designated for the coordination and monitoring of the facility's Grievance Procedure.</p> <p><b>Misuse</b> - Using the grievance procedure other than in accordance with the procedures defined herein</p> <p><b>Regional Ombudsman</b> - The working title for the Human Rights Advocate Senior employed by the Office of Ombudsman Services responsible for monitoring facility grievance procedures, and providing investigative services for offender grievance appeals</p> <p><b>Repetitive Grievance</b> - An issue that has been previously grieved through the regular grievance procedure</p>			

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**Reprisal** - Any action or threat of action against anyone for good faith use of or good faith participation in the grievance procedure

**Remedies** - Actions taken as result of founded grievances

**Threatening Language** - Language written within a grievance expressing the intent to physically injure or kill another person

**Unfounded** - When a determination is made of compliance with properly established procedures

**Vulgar, Insolent Language** - The use of language that is offensive to a reasonable person

**Working Day** - Weekdays, Monday through Friday, except official state holidays

#### IV. OFFENDER GRIEVANCE PROCEDURE

##### A. Facility Compliance with this Operating Procedure

1. Each facility will prepare an Implementation Memorandum in accordance with Operating Procedure 001.1, *Operating Procedure Development*, which will provide facility-specific information designating staff responsibilities and facility processes under this operating procedure.
2. This Operating Procedure and the facility's Implementation Memorandum will be known as the *Offender Grievance Procedure*.
3. All attached forms associated with this operating procedure will be used as designed and shall not be customized by facilities.
4. Each facility shall notify each offender upon arrival and during orientation how to access the *Offender Grievance Procedure* including sources of *Informal Complaint*, *Emergency Grievance*, and *Grievance* forms and directions for submitting each document. (4-4344)

##### B. Provision for Institutional Ombudsman/Grievance Coordinator

1. Each facility will have an Institutional Ombudsman/Grievance Coordinator and a designated alternate to ensure procedural compliance in the absence of the Institutional Ombudsman/ Grievance Coordinator. An Institutional Hearings Officer should not serve as an alternate Institutional Ombudsman; exceptions must be specially approved by the Chief of Corrections Operations.
2. The Institutional Ombudsman/Grievance Coordinator and designated alternate should complete any training requirements set by the Chief of Corrections Operations.
3. The Institutional Ombudsman/Grievance Coordinator will be responsible for monitoring for compliance, coordination of the day-to-day operation, conducting investigations of grievances, and preparing proposed responses as needed.
4. The Institutional Ombudsman/Grievance Coordinator will arrange a method of communication with other facility departments (e.g., Personal Property, Mailroom) so that information about pending grievances can be shared prior to making final disposition.

##### C. Grievances Regarding Sexual Abuse and Sexual Harassment

1. The *Offender Grievance Procedure* is one of multiple internal ways for offenders to privately report sexual abuse and sexual harassment, retaliation by other offenders or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents. See Operating Procedure 038.3, *Prison Rape Elimination Act (PREA)*, for additional reporting information. (§115.51[a])
2. Staff shall accept any report of PREA related issues made through the *Offender Grievance Procedure* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[b])
3. Each institution shall ensure in its Implementation Memorandum that: (§115.52[c])



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- a. An offender who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint.
- b. Such grievance is not referred to a staff member who is the subject of the complaint.

D. Communication of Procedures

1. All employees and offenders in DOC institutions shall be advised of the *Offender Grievance Procedure*, which shall be available for review in locations accessible to both employees and offenders. (4-4284; 2-CO-3C-01)
2. Initial Notification at Reception Centers/Parole Violators Unit
  - a. The standardized initial *Offender Grievance Procedure Notification* (see Attachment 1) should be given to each offender during orientation at all reception centers and all parole violator units. Offenders with special needs (i.e., visually or hearing impaired, non-English speaking, non-readers) should be identified and the Institutional Ombudsman/Grievance Coordinator notified of the special need so that necessary services can be obtained prior to the facility's formal orientation.
  - b. If an offender wishes to file a grievance prior to participation in the formal orientation, provisions should be made for staff to provide assistance so that the offender's ability to grieve an issue is in no way hindered.
3. Facility Operation - An explanation of the facility's offender grievance procedure should be provided to all new employees and incoming offenders during orientation. Provisions should be made prior to orientation for those offenders not speaking English, as well as for the impaired, handicapped, and non-readers.
4. The Institutional Ombudsman/Grievance Coordinator will monitor to ensure that appropriate information on the *Offender Grievance Procedure* is provided.

E. Accessibility

1. Each offender will be entitled to use the grievance procedure.
2. When an offender is adjudged by the Facility Unit Head as abusing that usage, his/her filings may be limited in accordance with the *Limiting as a Result of Abuse* Section of this operating procedure.
3. In the event of a widespread facility disruption, natural disaster, or other unusual occurrence which requires emergency action, any or all portions of the *Offender Grievance Procedure* may be temporarily suspended. Once order has been restored, the processing of grievances will resume. The Facility Unit Head shall make the emergency determination in accordance with procedures governing facility emergencies.

F. Reprisals

1. Offenders shall not suffer reprisals for filing grievances in good faith. Neither employees nor offenders participating in the resolution of grievances should be subject to reprisal in any form.
2. An offender may pursue a complaint of reprisal through the Offender Grievance Procedure.
3. Allegations by employees of reprisals should be reported through their chain-of-command.

G. Written Responses with Reasons

1. At each level of the procedure, responses to each grievance will be made in writing, with reasons for the decision stated clearly.
2. Dispositions
  - a. Founded or Substantiated (PREA related grievances only) - an investigation determines that the offender's claim is true or that an alleged incident did occur.
  - b. Unsubstantiated (PREA related grievances only) - an investigation produced insufficient evidence to make a final determination as to whether or not the event occurred.

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- c. Unfounded - an investigation determines that the offender's claim is untrue or that an alleged incident did not occur.
3. Employees who are the subject of the issue being grieved will not be the respondent to a grievance, but may offer information during the investigation of the complaint. (§115.52[c(2)])
4. Employees who are the subject of the issue may respond to an *Informal Complaint*.

#### H. Appeals

1. Administrators or employees of the facility shall not interfere with an offender's right to submit appeals.
2. An offender who is dissatisfied with the response to a grievance may appeal by signing, dating, and indicating in the designated area reasons why he/she is dissatisfied with the prior response.
3. Any issue not addressed in the original grievance complaint will not be considered in an appeal.
4. Appeals not submitted in accordance with procedures should be returned to the offender with specific reasons for the return.

#### I. Time Limits

Prompt and reasonable time limits will be set for all levels of the procedure with provisions for emergencies.

#### J. Disciplinary Action

1. Offenders are instructed to use the grievance process in good faith for problem resolution. An offender's use of the grievance procedure should not ordinarily be cause to take disciplinary measures.
2. Except when the following statements or claims are made in written *Informal Complaints* or grievances, offenders will not be charged under Operating Procedure 861.1, *Offender Discipline, Institutions*, for use of the grievance procedure.
  - a. Threaten bodily harm to any person (Offense Code 212)
  - b. Use vulgar or insolent language toward an employee (Offense Code 222)
  - c. False claim of medical emergency resulting in unnecessary off-site testing or treatment (Offense Code 141)
3. Disciplinary charges may be brought against an offender for filing a grievance related to alleged sexual abuse only where the institution demonstrates that the offender filed the grievance in bad faith. (§115.52[g])

#### K. Limiting as a Result of Abuse

1. It is imperative that all offenders be able to utilize their available administrative remedies in a timely manner. All offenders should use the grievance procedure in good faith for problem resolution.
2. Offenders who abuse the grievance procedure by excessive filings or habitual misuse of the procedure hinder other offenders' access and impede staff's ability to investigate and resolve complaints within specified time limits.
3. Where an offender is adjudged to be abusing the offender grievance process, it is the responsibility of the Facility Unit Head to regulate that offender's usage of the informal process and of the regular and emergency grievance procedures.
  - a. On a case-by-case basis, the Facility Unit Head should review the offender's usage of the informal process and the grievance procedure to determine whether restriction of informal, regular, and/or emergency filings is needed.
  - b. A face to face interview should be conducted prior to initially placing an offender on a limitation status.



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4. An offender may be restricted to no less than one informal complaint and one grievance per week. The Facility Unit Head will notify the offender in writing of the reason for the limitation, the number of informal complaints and grievances he/she is limited to, and the period of the limitation. Limitations shall not exceed 90 days (per occurrence). A copy of the notice will be provided to the Regional Administrator.
5. Any informal complaint, regular, or emergency grievance submitted in excess of the limitation will be returned to the offender without a response.
6. The offender may grieve the limitation decision to the Facility Unit Head using the limitation notice as the informal resolution attempt. The offender may appeal application of the limiting procedure to the Regional Administrator at Level II.
7. If an offender transfers to another DOC facility while on limitation, the limitation shall continue until the scheduled expiration date. The Institutional Ombudsman/Grievance Coordinator should inform the new facility that the offender is under limitation.

#### L. Withdrawal of Grievances by Offender

1. An offender may voluntarily withdraw a complaint or grievance at any time, from any level of the procedure by completing the *Withdrawal* section on the *Informal Complaint* (see Attachment 2) or *Regular Grievance* 866\_F1 (see page 2).
2. No other withdrawal forms may be created.
3. Subsequent complaints/grievances on the same issue should be determined as repetitive and should not normally be accepted if the offender has formally withdrawn the initial complaint or grievance.

#### M. Grievability

1. Grievable - The following matters are grievable by offenders:
  - a. Procedures of the facility, region, division, and department **which affect the grievant personally**
  - b. Actions of individual employees and/or offenders **which affect the grievant personally**, including any denial of access to the grievance procedure
  - c. Reprisals against the grievant for filing a grievance or grievance appeal
  - d. Issues concerning the DOC's administration of the Interstate Compact Agreement **which affect the grievant personally**
  - e. Any other matters relating to conditions of care or supervision within the authority of the DOC which affect the grievant personally
2. Non-Grievable - The following matters are not grievable.
  - a. Disciplinary hearing decisions, penalties and/or procedural errors, which may be appealed in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions*
  - b. State and Federal court decisions, laws, and regulations
  - c. Policies, procedures, and decisions of the Parole Board, Board of Corrections, Virginia Department of Transportation (VDOT), and other agencies
  - d. Other matters beyond the control of the DOC

#### N. Remedies

The grievance procedure should afford a successful grievant a meaningful remedy when applicable. Although available remedies may vary among facilities, a reasonable range of meaningful remedies in each facility is necessary. All grievances determined as founded will be provided an administrative remedy and should, if necessary, include an offender remedy. Remedies should include, but are not limited to, the following:

1. Administrative Remedies
  - a. Substance of procedure: Written change communicated effectively, promptly, as extensively as

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necessary, and with instructions including time limits for effecting the change.

- b. Interpretation of procedure: Written explanation of revised interpretation communicated effectively, promptly, as extensively as necessary, and with instructions for effecting the change.
  - c. Application of procedure: Written direction to the relevant employee or employees to apply the procedure correctly, and, if necessary, with instructions for accomplishing the change. Disciplinary actions against employees, if appropriate, will not be communicated to the offender, but should be documented.
2. Individual Offender Remedies
- a. Redress to the grievant as appropriate (protection of the grievant, return or reimbursement of property, appropriate, prompt classification action, re-computation of time, timely medical attention or treatment, improvement of living conditions, etc.).
  - b. The redress should be made in a timely manner.

## V. INFORMAL COMPLAINT PROCEDURE

### A. Informal Complaints Related to Sexual Abuse or Sexual Harassment

- 1. An offender is not required to use the informal complaint process, or to otherwise attempt to resolve with staff, an alleged incident of sexual abuse. (§115.52[b(3)])
  - 2. Staff shall accept any report of PREA related issues made through an *Informal Complaint* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[b])
  - 3. The facility PREA Compliance Manager shall notify the Regional PREA Analyst.
- B. Prior to submitting a formal grievance, the offender should demonstrate that he/she has made a good faith effort to resolve the issue informally.
- 1. This good faith effort shall be documented using an *Informal Complaint* (see Attachment 2 for a sample), except where operating procedures specifically state that other documentation may be used for the informal process, such as for classification hearings, disapproved correspondence/publications, or confiscated property.
  - 2. The offender is responsible for submitting the *Informal Complaint* in a timely manner to allow time for staff response within the time period allowed to file a *Grievance*. If 15 calendar days have expired from the date the *Informal Complaint* was logged without the offender receiving a response, the offender may submit a *Grievance* on the issue and attach the *Informal Complaint* receipt as documentation of the attempt to resolve the issue informally.
  - 3. Upon facility staff review, each *Informal Complaint* will be logged in VACORIS and the receipt returned to the offender.
  - 4. The facility Implementation Memorandum should specify the following:
    - a. Where offenders can obtain *Informal Complaint* forms
    - b. How and where to submit an *Informal Complaint*
    - c. Staff position(s) designated to log *Informal Complaints*
    - d. The staff positions responsible for responding to *Informal Complaints*
    - e. The time period allowed for staff responses.
  - C. The time frame for staff response to an offender's informal complaint shall be no longer than 15 calendar days to ensure responses are provided prior to the expiration of the 30-day time requirement for an offender to file his/her grievance.
- D. Informal complaints must be addressed at the facility level and may not be referred to departments outside the facility. Facility staff may contact various departmental staff to ascertain information to

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respond to the complaint if necessary.

- E. Responses will be made in writing on the *Informal Complaint* form with reasons for the response stated clearly. The *Informal Complaint* response should be returned to the office that logged it and the response forwarded to the offender.
- F. An offender may withdraw an *Informal Complaint* at any time by completing the *Withdrawal* section with a staff witness and submitting it to the person designated to log *Informal Complaints*. Once an *Informal Complaint* is withdrawn, the offender will not receive a response nor may the offender submit a *Grievance* or another *Informal Complaint* on the same issue.

## VI. REGULAR GRIEVANCE PROCEDURE

### A. Initiation of Regular Grievance

1. Grievances are to be submitted within 30 calendar days from the date of occurrence/incident or discovery of the occurrence/incident, except in instances:
  - a. Beyond the offender's control
  - b. Where a more restrictive time frame has been established in operating procedures to prevent loss of remedy or the issue from becoming moot
  - c. There is no time limit on when an offender may submit a grievance regarding an allegation of sexual abuse. (§115.52[b])
    - i. Otherwise-applicable time limits shall apply to any portion of a grievance that does not allege an incident of sexual abuse.
    - ii. Nothing in this section shall restrict DOC ability to defend against an offender lawsuit on the ground that the applicable statute of limitations has expired.
2. Offenders are to use the *Regular Grievance* 866 F1 to submit their own grievances. *Regular Grievances* should be available to all offenders during waking hours. Assistance should be made available for offenders who are unable to complete the forms.
  - a. Only one issue per grievance form will be addressed. The offender is to write the issue in the space provided on the *Regular Grievance*, preferably in ink. The offender must attach any required documentation (*Informal Complaint*, *Notification of Confiscation of Property*, *Notice of Unauthorized Correspondence*, *Notification of Publication Disapproval*, ICA documents and/or other appropriate documents), of his/her attempt to informally resolve the issue.
  - b. The original *Regular Grievance* (no photocopies or carbon copies) should be submitted by the offender through the facility mail system to the Facility Unit Head's Office for processing by the Institutional Ombudsman/Grievance Coordinator. If the offender has been transferred, the offender should submit the informal complaint and subsequent grievance to the facility where the issue originated.
  - c. Grievances repetitive of a complaint previously filed through the regular grievance procedure or which contain threatening or vulgar language will not be accepted.
3. Third parties, including fellow offenders, staff members, family members, attorneys, and outside advocates, shall be permitted to assist offenders in filing offender grievances relating to allegations of sexual abuse, and shall also be permitted to file such requests on behalf of offenders. (§115.52[e])
  - a. Third party filing of a request for administrative remedies relating to allegations of sexual abuse should be submitted through the facility PREA Compliance Manager.
  - b. If a third party files such a request on behalf of an offender, the institution will require as a condition of processing the request that the alleged victim agree to have the request filed on his or her behalf, and will also require the alleged victim to personally pursue any subsequent steps in the grievance process.
  - c. If the offender declines to have the request processed on his or her behalf, the institution shall document the offender's decision.



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#### B. Intake

1. Incoming grievances are to be dated/date stamped on the working day received in the space provided on Page 1 of the *Regular Grievance* 866\_F1.
2. Staff shall accept any report of PREA related issues made through a *Regular Grievance* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[b]) The facility PREA Compliance Manager shall notify the Regional PREA Analyst.
3. If the grievance meets the criteria for acceptance, the grievance should be logged into VACORIS using the working day received. A *Grievance Receipt* will be issued within two working days from the date of receipt.
4. If the grievance does not meet the criteria for acceptance, the grievance should be returned to the offender within two working days from date received by completing the *Intake* section of the *Regular Grievance* (see page 2) on the back of the *Regular Grievance*. A copy of all returned grievances shall be maintained for documentation purposes in the offender's individual grievance file.
5. If an offender wishes a review of the intake decision on any grievance, he/she may send the *Regular Grievance* form within five calendar days of receipt to the appropriate Regional Ombudsman for a determination. There is no further review of intake decisions.
6. In the event of abusive filings or misuse by an offender, the Institutional Ombudsman/Grievance Coordinator should contact the Facility Unit Head for a determination if the limiting procedure should be instituted prior to initiating any intake action. If the Facility Unit Head decides to limit the offender, all filings in question will be returned to the offender with the written notification from the Facility Unit Head of the initiation of the limiting procedure in accordance with the *Limiting as a Result of Abuse* Section of this operating procedure.
7. Special Concerns during the Intake Process
  - a. Allegations of Sexual Abuse, Physical Assault, or Criminal Activity
    - i. Grievances alleging sexual abuse, physical assault, or criminal activity by employees or offenders should be brought to the attention of the Facility Unit Head when received.
    - ii. The grievance should be logged and receipted according to the intake criteria and time limits.
  - b. Disciplinary Action
    - i. If a grievance is received which threatens harm to any person or contains vulgar and/or insolent language toward an employee, the offender may be charged under Operating Procedure 861.1, *Offender Discipline, Institutions*.
    - ii. The original grievance is forwarded to designated staff for review and possible disciplinary charge.
    - iii. The offender is to be advised of this action by a copy of the *Regular Grievance* and referral notice on the back of the *Regular Grievance* form.

#### C. Levels of Review

There are three possible levels of review available for regular grievances. Each level of response should state if an appeal is available and provide the title and address of the respondent for the next available level of review, if applicable.

##### 1. Level I, Facility Unit Head

- a. The Facility Unit Head maintains the primary responsibility for providing responses to grievances at this level within the time limits specified. The Facility Unit Head may delegate authority to provide Level I responses to the Assistant Facility Unit Head.
- b. Once the grievance is logged and receipted, the Institutional Ombudsman/Grievance Coordinator should review the content and determine the course of investigation. A face-to-face interview with offenders is not required for all Level I investigations. A face-to-face interview should not

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- be held on issues that have been resolved.
- c. Once a grievance is submitted, all records necessary to address the complaint should be made available to the designated person conducting the investigation.
  - d. The response will include the following:
    - The results of the informal process
    - The facts (who, what, where, why)
    - The procedure and content which govern the issue
    - A determination of one of the following:
      - Whether the complaint was founded or unfounded and, if founded, what remedy was taken, or will be taken within what time limit
      - Whether the procedure being challenged needs revision
    - The reason for the determination
    - Instructions on the appeal process
  - e. The Facility Unit Head or designee should ensure that an appropriate investigation has occurred and any required remedy action has been taken, or will be taken within a specified time limit, prior to issuing the Level 1 response.
2. Level II - Regional Administrator, Health Services Director, Superintendent for Education, or Chief of Operations for Offender Management Services
- a. Grievance issues which the Regional Administrator has authority over are forwarded to the appropriate Regional Office for a response.
  - b. Grievances regarding actions or decisions of Offender Management Services (including Central Classification Services decisions, time computation, Court and Legal actions, detainees, etc.) are reviewed and responded to by the Chief of Operations, Office of Offender Management Services.
  - c. Grievances regarding Health Services procedures and issues of medical, dental, and mental health care are reviewed and responded to by the Director of the Health Services Unit. (4-4394)
  - d. Grievances regarding Educational issues and procedures are reviewed and responded to by the Superintendent for Education or the Assistant Superintendent for Education Operations in the Superintendent's absence.
  - e. If the Level I response does not contain sufficient information to arrive at a decision at Level II, the Level II respondent or designee should request the information from the Facility Unit Head or designee who will ensure that the information is provided within the time frame established by Level II.
  - f. If the review at Level II supports the Level I response, the response should indicate such. If the Level I response is not supported, the response will indicate the results of any additional investigation and any action to be taken within a specified time period.
  - g. The response at this level should indicate whether the issue qualifies for an appeal to the next level, and provide the name and address of respondent at the next level of appeal, if applicable. If there is no further appeal, the offender should be advised that he/she has exhausted all administrative remedies.
3. Level III, Chief of Corrections Operations or Director
- a. Appeals to this level shall be mailed directly (Bulk Mail available) to Offender Ombudsman Services, Post Office Box 26963, Richmond, Virginia 23261
  - b. Grievances challenging the substance or interpretation of any DOC Procedures are appealable to the Chief of Corrections Operations.
  - c. Grievances regarding decisions of the Publication Review Committee are appealable to the Chief of Corrections Operations directly from Level I.
  - d. Grievances regarding decisions of the Faith Review Committee are appealable to the Chief of Corrections Operations directly from Level I.

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- e. Grievances appealed to the Chief of Corrections Operations or Director's Office will be reviewed to determine if they qualify for a response by this level. Grievances, which do not qualify, will be returned to the offender indicating such. Grievances, which qualify for a Level III decision, will be responded to by either the Chief of Corrections Operations or the Director, as appropriate. The offender will be advised that this is the last level of appeal and that he/she has exhausted all administrative remedies.
  4. Those grievances concerning the Interstate Compact Agreement from Virginia offenders housed in states participating in the Agreement are to be submitted to the Manager of Central Classification Services in the Office of Offender Management Services for a Level I response. These grievances may be appealed to the Chief of Operations, Office of Offender Management Services for a Level II response. These grievances are not appealable to Level III.
- D. Time Limits
1. The total time allowed from initial submission of the regular grievance to the last level of review will not exceed one hundred and eighty calendar days, including any authorized continuances.
  2. Responses - Responses should be made within specified time limits at each level of decision. Expeditious processing of grievances at each level of decision is essential to prevent grievances from becoming moot. Time limits will be considered as beginning on the day the grievance is received at each level. The grievance form will indicate the date the response is signed. The time between the date received and mailed to the offender should not exceed the time allotted for each level.
  3. Specified Time Limits - Time limits for responses at each level for regular grievances are as follows: (§115.52[d])
    - Level I 30 calendar days
    - Level II 20 calendar days
    - Level III 20 calendar days
  4. Authorized Continuances - A regular grievance may be continued up to 30 calendar days beyond the specified time limits at any level of the procedure for good reason(s). (§115.52[d(3)])
    - a. The offender must be notified in writing of the continuance prior to the expiration of the specified time limit at any level and provided a date by which a decision will be made..
    - b. Grievances should be completed as soon as the reason justifying the continuance has ended or is no longer applicable.
    - c. Total continuances on a grievance that alleges sexual abuse will not exceed 70 days.
    - d. Continuances must be printed from VACORIS. Authorized continuances may be justified for the following reasons:
      - The principal(s) involved is unavailable to provide the information essential to the issue being grieved
      - Awaiting results of Special Investigation Unit or information from other facilities, divisions, or agencies
      - Unavailability of key staff due to escape, disturbance, or natural disasters
  5. Expiration of a time limit (to include any authorized continuance) at any stage of the process shall be considered a denial and shall qualify the grievance for appeal to the next level of review. (§115.52[d(4)])
    - a. The grievance will be returned promptly to the offender.
    - b. The respondent will advise the offender on the grievance form of the option to advance the grievance and the appeal information (name/ address for the next level of review).
  6. The offender should be allowed 5 calendar days upon receipt of a response to appeal to the next level, if such appeal is available.

E. Distribution and Recordkeeping



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1. The original grievance with response(s) should be returned to the offender and a copy of the grievance with responses from all appeals routed to the Institutional Ombudsman/Grievance Coordinator for filing in the offender's grievance folder.
2. The facility maintains the official record of the offender grievance with copies of each level's response.

## VII. EMERGENCY GRIEVANCES

- A. *Emergency Grievances* are provided for offender reporting and expedited staff responses to allegations that an offender is subject to a substantial risk of imminent sexual abuse and to situations or conditions which may subject the offender to immediate risk of serious personal injury or irreparable harm. It is the duty of all corrections employees to be responsive to emergency grievances. (§115.52[f(1)])
- B. The facility's implementation memorandum and offender orientation handbook shall indicate how offenders can obtain and submit *Emergency Grievances*. The facility's implementation memorandum shall provide instructions for proper handling of *Emergency Grievances* including designation of staff persons responsible for receiving and responding to *Emergency Grievances*.
- C. Initiation - *Emergency Grievance* forms should be available on a 24-hour basis for all offenders regardless of housing status. Offenders are to write their grievances on the pre-printed multipart *Emergency Grievance* form (Attachment 3 is provided as a sample) and submit the completed *Emergency Grievance* to a staff person. Use of threatening, vulgar or insolent language, or false allegations against staff, may subject the offender to disciplinary charges as outlined in the *Disciplinary Action* Section of this operating procedure.
- D. Intake
  1. The staff person who received the *Emergency Grievance* will determine what action needs to be taken in accordance with specific instructions in the implementation memorandum.
  2. Staff shall accept any report of PREA related issues made through an *Emergency Grievance* and immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment to the Facility Unit Head and facility PREA Compliance Manager. (§115.51[b]) The facility PREA Compliance Manager shall notify the Regional PREA Analyst.
  3. If the *Emergency Grievance* must leave the presence of the offender, the receipt at the bottom of the *Emergency Grievance* form should be completed by the staff person and provided to the offender when the offender submits the *Emergency Grievance*. If a determination is made and the form is completed in the offender's presence, the receipt section of the form should be struck through and the "File" copy retained prior to returning the *Emergency Grievance* form to the offender.
- E. Response
  1. The implementation memorandum will designate who may serve as respondents to *Emergency Grievances*. The respondent should review the issue, determine the course of action, and provide an appropriate response with reasons.
  2. If the issue does not subject the offender to immediate risk of serious personal injury or irreparable harm, it is so indicated on the *Emergency Grievance*, signed with date and time of response by the designated staff person.
  3. If the issue subjects the offender to immediate risk of serious personal injury or irreparable harm, the designated staff person should determine if he/she can address the issue or if the *Emergency Grievance* should be forwarded to a higher authority for resolution. The *Emergency Grievance* should receive response from the level at which corrective action can be taken.
  4. After receiving an *Emergency Grievance* alleging an offender is subject to a substantial risk of imminent sexual abuse, the employee receiving it shall immediately forward the grievance (or any portion thereof that alleges the substantial risk of imminent sexual abuse) to the Administrative Duty

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Officer or Shift Commander to provide the response within 8 hours. (§115.52[f(2)]) The initial response and final agency decision shall document the institution's determination whether the offender is in substantial risk of imminent sexual abuse and the action taken in response to the *Emergency Grievance*.

5. If an offender receives a medical or dental assessment based on an *Emergency Grievance* and the Health Care staff determines that the condition is clearly not an emergency, the offender will be subject to medical co-pay charges in accordance with Operating Procedure 720.4, *Co-payment for Health Care Services*.
- F. Time limits - An *Emergency Grievance* should be responded to within eight hours. An *Emergency Grievance* that will be mooted by the passage of the time limit should receive immediate attention with appropriate action taken.
- G. Distribution and Recordkeeping
1. The original *Emergency Grievance* form with response goes to the offender and the copy is routed to the Institutional Ombudsman/Grievance Coordinator for retention.
  2. Those grievances, which are determined to be emergencies, are logged into VACORIS within two working days of response.
  3. Those grievances, which do not meet the definition for an emergency, are not logged.
  4. Copies of all *Emergency Grievance* forms submitted by an offender should be filed in the offender's grievance record for documentation.
- H. Monitoring - The Institutional Ombudsman/Grievance Coordinator should review the copies of *Emergency Grievance* and bring problem areas (including any allegations of criminal activity or physical assault) to the attention of the Facility Unit Head.

## VIII. GRIEVANCE ADMINISTRATION

### A. Records

1. The Institutional Ombudsman/Grievance Coordinator will maintain records of all regular and emergency grievances submitted at the facility, both logged and un-logged. VACORIS should contain the official information of all logged grievances at each level of review.
2. Retention - Copies of grievances, both regular and emergency, will be maintained at the unit for a minimum of three years following final disposition of the grievance. Grievances concerning matters known to be under investigation or litigation will be maintained until completion of the investigation or litigation if that event exceeds the 3-year timeframe.
3. Disposal of Records - Permission for disposal of grievance records must be secured in accordance with Operating Procedure 025.3, *Public Records Retention and Disposition*.
4. Record Content - The facility maintains the official copy of any grievance. Grievances or copies of grievances will not be placed in an offender's Central or Institutional files, except when the grievance has been used as evidence to substantiate a disciplinary action taken in accordance with the *Disciplinary Action* Section of this operating procedure.
5. Confidentiality - Grievance records will be maintained in accordance with Operating Procedure 050.1, *Offender Records Management*. Information on grievances should only be available to employees on a need-to-know basis, as determined by the Facility Unit Head.

### B. Monitoring and Evaluation

1. The *Offender Grievance Procedure* will be monitored by the Institutional Ombudsman/Grievance Coordinator at the facility level and by the Ombudsman Services Unit at the regional and central office levels on a regular basis.
2. The Institutional Ombudsman/Grievance Coordinator will regularly monitor the facility grievance



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procedure for compliance with this operating procedure and the facility's implementation memorandum.

3. The Offender Grievance Procedure will be monitored by the Ombudsman Services Unit through facility visits and the usage of information contained in VACORIS.

IX. REFERENCES

Operating Procedure 001.1, *Operating Procedure Development*  
Operating Procedure 025.3, *Public Records Retention and Disposition*  
Operating Procedure 038.3, *Prison Rape Elimination Act (PREA)*  
Operating Procedure 050.1, *Offender Records Management*  
Operating Procedure 720.4, *Co-payment for Health Care Services*  
Operating Procedure 861.1, *Offender Discipline, Institutions*  
Federal Prison Litigation Reform Act (PLRA)  
Federal Civil Rights of Institutionalized Persons Act (CRIPA)

X. FORM CITATIONS

Regular Grievance 866\_F1  
Monthly Grievance Report 866\_F2

XI. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than July 1, 2016.

*Signature Copy on File*

*5/6/13*

A. David Robinson, Chief of Corrections Operations

Date



## Offender Grievance Procedure Notification

This document serves to notify offenders of the grievance procedure which is available to address complaints within the Virginia Department of Corrections.

Operating Procedure 866.1 *Offender Grievance Procedure* outlines statewide provisions for grievance processes in the Department's Division of Operations. Each facility in the Division has an Implementation Memorandum which outlines how the grievance process operates at that facility. Each facility also employs an Institutional Ombudsman/Grievance Coordinator who is responsible for the day to day operation and overall monitoring of the facility's Offender Grievance Procedure.

Federal and state laws require offenders to exhaust available administrative processes prior to filing lawsuits concerning conditions of incarceration. An offender must complete the REGULAR grievance procedure prior to initiating such litigation; the filing of an emergency grievance does not satisfy the exhaustion requirement.

Each offender is entitled to use the Offender Grievance Procedure. All offenders are to receive an explanation of the facility's Offender Grievance Procedure during orientation.


Offenders are advised they are accountable for how they use the grievance process. Using threatening or vulgar/insolent language against employees may be dealt with under Operating Procedure 861.1, *Offender Discipline*. Additionally, offenders using the process other than in good faith may be limited by the Facility Unit Head.

In accordance with Operating Procedure 866.1 *Offender Grievance Procedure*:

- Grievable issues include:
  - Procedures of the facility, region, division and department which affect the grievant personally
  - Actions of individual employees and/or offenders which affect the grievant personally, including any denial of access to the grievance procedure
  - Reprisals against the grievant for filing a grievance or appeal
  - Issues concerning the Department's administration of the Interstate Compact Agreement which affect the grievant personally
  - Any other matters relating to the conditions of care or supervision within the authority of the Department which affect the grievant personally
- Non-grievable issues include:
  - Disciplinary hearing decisions, penalties, and/or procedural errors which may be appealed in accordance with Operating Procedure 861.1, *Offender Discipline*.
  - State and Federal court decisions, laws, and regulations
  - Policies, procedures and decisions of the Parole Board, Board of Corrections, Virginia Department of Transportation (VDOT), and other agencies
  - Other matters beyond the control of the Department
- An offender must try to informally resolve the issue prior to filing a regular grievance. The attempt at informal resolution must be documented by an *Informal Complaint* or other acceptable documentation submitted with the grievance.
- Regular grievance forms are available to all offenders during waking hours.
- An offender has 30 calendar days from the date of incident/occurrence to file a regular grievance with the facility where the incident occurred.
- All regular grievances should be submitted by the offender to the Facility Unit Head's Office in accordance with the facility's Implementation Memorandum.
- A grievance regarding an allegation of sexual abuse is exempt from informal resolution requirements, exempt from 30 day filing deadline, and may be initiated by a third party on the victim's behalf.
- There is an emergency grievance procedure for situations which may subject the offender to immediate risk of serious personal injury or irreparable harm. Emergency grievance forms are available on a 24 hour basis. There is an eight (8) hour time limit on this type of grievance due to the serious nature of the complaint.
- Operating Procedure 866.1 and the Implementation Memorandum are available for review in locations accessible to offenders. For details of the grievance process at any facility, please review the Implementation Memorandum and/or consult with the Institutional Ombudsman/Grievance Coordinator.

Exhibit 2

Operating Procedure 951.1 - Visiting  
Privileges

 <h1 style="text-align: center;">Operating Procedure</h1>		<b>Effective Date</b> March 1, 2014	<b>Number</b> 851.1
		<b>Amended</b> Effective 5/1/14, 7/16/14, 3/1/15, 3/12/15, 7/29/15, 11/23/15, 8/19/16	<b>Operating Level</b> Department
		<b>Supersedes</b> Operating Procedure 851.1 (1/2/14)	
		<b>Authority</b> COV §53.1-30, §18.2-431.1, §53.1-473, §18.2-474, §18.2-474.1	
<b>Subject</b>  <h2 style="text-align: center;">VISITING PRIVILEGES</h2>		<b>ACA/PREA Standards</b> 4-4156, 4-4275, 4-4280, 4-4285, 4-4429, 4-4498, 4-4499, 4-4499-1, 4-4500, 4-4501, 4-4503, 4-4504; 4-ACRS 2A-02, 4-ACRS 5A-16, 4-ACRS-5A-17, 4-ACRS 5A-18, 4-ACRS 6A-01; 2-CO-5D-01, 2-CO-5E-01	
<b>Incarcerated Offender Access</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	<b>FOIA Exempt</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <b>Attachments</b> Yes <input checked="" type="checkbox"/> #3 No <input type="checkbox"/>	<b>Office of Primary Responsibility</b> Chief of Corrections Operations	
<b>I. PURPOSE</b> <p>This operating procedure provides guidelines for the provision and management of offender visiting privileges at facilities operated by the Department of Corrections. The DOC encourages visiting by family, friends, clergy, and other community representatives when visits do not pose a threat to others or violate any state or federal law. Offender visitation is a privilege, and the Facility Unit Head may restrict visiting privileges when necessary to ensure the security and good order of the facility. (2-CO-5D-01)</p>			
<b>II. COMPLIANCE</b> <p>This operating procedure applies to all facilities operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.</p>			
<b>III. DEFINITIONS</b> <p><b>Emancipated Minor</b> - A minor who has received an order from a Court declaring that he or she is released from parental care through marriage, is on active duty with the armed forces of the United States, or has a willful, consensual separation from parents or guardian and is capable of self-support.</p> <p><b>Former Offender</b> - Any person convicted of a felony in any jurisdiction (State or Federal) who is not currently incarcerated or under any type of probation, parole, or post release supervision.</p> <p><b>Immediate Family</b> - Offenders' parents, step parents, <u>grandparents</u>, lawful spouse, biological, step or legally adopted children, and biological, step, or legally adopted siblings (added 7/29/15)</p> <p><b>Offender</b> - An inmate, probationer, parolee, or post release supervisee or other person placed under the supervision or investigation of the Department of Corrections.</p> <p><b>Privilege Package</b> - Offenders assigned to institutions will be permitted visitation in accordance with Operating Procedure 440.4, <i>Offender Privileges by Security Level</i>. Detention and Diversion Centers are exempted from the privilege package.</p> <p><b>Qualified Clergy</b> - A member of the community who is commissioned, licensed, ordained, endorsed, or otherwise accepted as a religious authority or leader by the individual's religious organization. For purposes of this operating procedure, this individual shall not be a family member or relative of the offender.</p> <p><b>Re-entry Supporters</b> - Persons with whom the offender is not biologically related, but who will provide post-release support; this includes persons serving as mentors and representatives of community organizations that are supporting the offender's re-entry.</p>			



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**Security Level** - Facilities within the DOC are tiered for supervision and classification of offenders on a six level system. Community facilities are operated under low security requirements.

**Special Visit** - A visit that occurs when the regular visiting schedule cannot accommodate it, or a visit that is an exception to the normal visiting rules; special visits require prior authorization by the Facility Unit Head or designee. These visitors may include, but are not limited to, attorneys, clergy, former or prospective employers, sponsors, parole advisors, re-entry supporters, or business representatives.

**VACORIS Visiting Module** - A database utilized to track visitation approvals and histories for offenders and visitors, track visitation bans and restrictions, and record visitor data for security purposes

**Visitor** - Adult family, friend, or associate who enters a correctional facility to visit with an offender; visitors may be accompanied by minors if certain conditions are met. Regular visits are for predominately social purposes (see also Special Visits).

**Visitor Ban** - A prohibition of an individual's visiting privileges, either for a set time period or permanently.

**Visitor Registration Unit** - A unit in DOC Headquarters under the office of the ~~Operations Manager~~ ~~Support Corrections Operations Administrator~~ that has responsibility to receive applications for offender visitors, review visitor criminal and other records, and approve visitors before they may enter DOC facilities. (changed 8/19/16)

**Visitor Restriction** - A limitation on an individual's visiting privileges, such as non-contact visiting.

#### IV. PROCEDURE

##### A. Visitation Program

1. All regular visitors must be pre-approved and listed in the VACORIS Visiting Module as approved visitors before being allowed to visit with an offender.
  - a. Exceptions to the pre-approval requirement may be granted only by the Facility Unit Head or Administrative Duty Officer and should be granted only in exceptional circumstances such as family members who have unexpectedly traveled long distances.
    - i. Each visitor who is allowed to visit without pre-approval must complete a Adult Visitor Application and Background Investigation Authorization 851 F1, Spanish 851 F1S, Minor Visitor Application and Background Investigation Authorization 851 F6, or Spanish 851 F6S.
    - ii. Facility staff shall scan or fax a copy of the Visitor Application to the Visitor Registration Unit and enter the visitor in the VACORIS Visiting Module by scanning the visitor's identification card, entering the application information, and associating the visitor with the offender to be visited. (revised 7/16/14)
    - iii. Visitor Registration Unit staff shall enter the application information, conduct a criminal record check, and associate the visitor with the offender. (added 7/16/14)
    - iv. A criminal record check should shall be conducted by the Visitor Registration Unit before the visitor is admitted, if available. (revised 7/16/14)
    - v. ~~If the criminal record check is available, The Visitor Application information and visit shall be recorded in the VACORIS Visiting Module; if not the facility shall email documentation of the date and times of the visit to the Visitor Registration Unit in DOC Headquarters on the next working day after the visit.~~ (revised 7/16/14)
  - b. Participants in special visits need not be pre-approved through the Visitor Registration Unit in DOC Headquarters, but must be approved by the Facility Unit Head or designee. ~~These visitors should be entered in the VACORIS Visiting Module.~~ (changed 8/19/16)
2. Sufficient space is provided for a visiting room or area for contact visiting and, if necessary, non-contact visiting.
  - a. There is adequately designed space to permit screening and searching of both offenders and visitors.

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- b. Space is provided for the proper storage of visitors' coats, handbags, and other personal items not allowed into the visiting area. (4-4156)
  - c. Visitation provides offenders with opportunities for involvement with family and participation in community activities before final release. (4-ACRS-5A-16)
- 3. Offenders receive approved visitors except where there is substantial evidence that the visitor poses a threat to the safety of the offender or the security of the program. (4-ACRS-5A-17)
- 4. Procedures for visiting privileges in special housing units are covered in Operating Procedure 861.3, *Special Housing*.
- 5. Written policy, procedure, and practice prohibit discrimination on the basis of disability in the provision of services, programs, and activities administered for program beneficiaries and participants. (4-4429)
- 6. Written policy, procedure, and practice provide that offender visiting facilities permit informal communication, including opportunity for physical contact. Devices that preclude physical contact are not used except in instances of substantiated security risk. (4-4499-1)
- 7. Written policy, procedure, and practice provide that visitors register upon entry into the institution and specify the circumstances under which visitors may be searched. (4-4503)
- 8. Each facility shall develop an *Offender Visiting Information Brochure*. At a minimum, the information will include, but not be limited to, the following:
  - a. Instructions for obtaining approval to visit an offender
    - i. Instructions to complete an on-line visitor application, and instructions to obtain and submit paper ~~Adult Visitor Application and Background Investigation Authorization 851-F1, Spanish 851-F1S, Minor Visitor Application and Background Investigation Authorization 851-F6, or Spanish 851-F6S, if not able to apply on-line~~ (changed 3/1/15)
    - ii. Information pertaining to the requirement to authorize a criminal background check
  - b. Facility address/phone number, and directions to the facility
  - c. Information regarding any known transportation services to the facility (4-4504)
  - d. Days and hours of visitation including any visitation allocation system (alphabetical or numerical) in use
  - e. Approved dress code for visitors and offenders, and identification /admission requirements for visitors
  - f. Special rules for minors including restrictions from visiting certain offenders and requirements for permission from parent or legal guardian of minors entering a facility with adult visitors
  - g. Search procedures
  - h. Items authorized in the visiting room
  - i. Authorized items (if any) that visitors may bring to give to offender
  - j. Rules for permissible behavior of visitors and offenders and consequences for rule violations
  - k. Rules prohibiting visitors and offenders from cross visiting with other offenders or offenders' visitors
  - l. Rules prohibiting visitors of one offender sending funds to or receiving funds from another offender unless they are documented members of the immediate family and have prior approval from the Facility Unit Head
  - m. Supervision of children
  - n. Special visits (for example: family emergencies)
  - o. Unauthorized visits or visits requiring prior approval
  - p. Number of visitors allowed based on space requirements, maximum number of visitors allowed for each offender visit (specifying adult and child if so restricted), minimum number of hours per visit if capacity is met, and procedure for how visits are terminated. (4-4498)

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- q. Visitors requiring the use of service or guide animals in the visitation area should request prior approval from the Facility Unit Head by submitting the following:
  - i. Any available documentation of the need for the service animal
  - ii. Brief description of the services that the animal provides
  - iii. Brief description of the size and type of animal
- r. Visitors shall not bring weapons, alcohol, illicit substances, or any other illegal or prohibited items onto facility property.
- s. Visitors who give or attempt to give drugs, firearms, or explosives to any incarcerated offender may be charged with a felony under COV §18.2-474.1. The Facility Unit Head or designee will report any such occurrence to the DOC Special Investigations Unit or local police authorities. Any visitor found to have given or attempted to give drugs, firearms, or explosives to an incarcerated offender will lose the privilege of visitation and will be subject to prosecution.
- t. Visitors attempting to give or found to have given to any offender any items that have not been specifically approved or processed may be charged with a Class I misdemeanor in accordance with COV §18.2-474. The Facility Unit Head or designee will report any such occurrence to the DOC Special Investigations Unit or local police authorities. Any visitor found to have given or attempted to have given any item that has not been specifically approved or processed to an incarcerated offender will lose the privilege of visitation and will be subject to prosecution.
- u. Visitors who attempt to give or convey any item to an incarcerated offender to help him escape, or in any manner attempt to aid an offender in escape, either with force or otherwise, may be charged with a felony under COV §18.2-473. The Facility Unit Head or designee will report any such occurrence to the DOC Special Investigations Unit or local police authorities. Any visitor found to have aided, or attempted to aid, an incarcerated offender in any escape or escape attempt will lose the privilege of visitation and will be subject to prosecution.
- v. Visitors who give or attempt to give a cellular telephone to any incarcerated offender may be charged with a felony under COV §18.2-431.1. The Facility Unit Head or designee will report any such occurrence to the DOC Special Investigations Unit or local police authorities. Any visitor found to have given or attempted to give a cellular telephone to an incarcerated offender will lose the privilege of visitation and will be subject to prosecution.

#### B. Notification Procedures

- 1. Offender Notification - All offenders housed in DOC facilities will be provided written information regarding offender visitation at that facility within twenty-four hours after arrival at the facility. The information provided should include all information required for the *Offender Visiting Information Brochure*. (4-4285, 4-4499)
- 2. Visitor Notification - Facilities will make available to visitors copies of the facility's *Offender Visiting Information Brochure*. The *Brochure* should be available to visitors at ~~visiting the facility~~, and to offenders to send to visitors. The *Brochure* should refer visitors to the DOC Public Website for on-line visitor application and general visiting information. (changed 8/19/16)

#### C. Visitor Application - Institutions only, not applicable for Detention and Diversion Centers

- 1. All regular visitors shall apply and receive approval before coming to an institution for their first visit.
  - a. Visitor applications ~~should must~~ be completed on-line through the DOC Public Web site (<https://visitationform.vadoc.virginia.gov/> ~~http://www.vadoc.virginia.gov/~~). (changed 3/1/15, changed 8/19/16)
  - b. Visitors who ~~do not have access to a computer or are unable to apply on-line due to age or disability~~ may contact *Assisting Family of Inmates (AFOI)* for assistance with submitting an online visitation application or print the forms from the DOC Public Web site (<http://www.vadoc.virginia.gov/>) should ask the offender to mail forms to be completed and mailed back to *Visitor Registration*. (changed 3/1/15, changed 8/19/16)



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- ~~c. All adult and emancipated minor visitors will complete the *Adult Visitor Application and Background Investigation Authorization* 851\_F1, Spanish 851\_F1S. Minor visitors will complete the *Minor Visitor Application and Background Investigation Authorization* 851\_F6, Spanish 851\_F6S. (deleted 3/1/15)~~
- d. Any visitor entering false information on a visitor application will not be approved for visiting.
2. The Visitor Registration Unit in DOC Headquarters will receive and review all visitor applications. Review should include but not be limited to:
- a. VCIN background checks on all visitors over the age of ~~14~~ ~~16~~ ~~15~~ (changed 7/16/14, changed 8/19/16)
  - b. Check of banned visitors
  - c. Check of VACORIS offender database
  - d. Check of gang/security threat group databases
  - e. Check of employee databases
  - f. At the discretion of the Visitor Registration Unit, review by Facility Unit Head or designee where the offender is currently housed
3. Visitors should allow at least 30 days after submitting a visitor application for the review and approval process before making the first visit. Additional time may be required to review certain applications such as out-of-state visitors ~~and applications submitted on paper forms.~~ (changed 3/1/15)
4. Visitors ~~applying on-line~~ will receive an email informing them when they are approved to visit or explaining the reason(s) for disapproval. (changed 3/1/15)
- ~~a. Visitors applying by mail will receive a letter informing them when they are approved to visit or explaining the reason(s) for disapproval. (deleted 3/1/15)~~
5. Minor visitors must be accompanied by the minor's ~~adult~~ parent or legal guardian ~~unless the minor is the offender's natural, step, or adopted child.~~ For a minor to visit with an adult other than a parent or guardian, permission must be documented on a *Notarized Statement – Minor Visitor* 851\_F4 signed by the parent/legal guardian and notarized unless there is a valid Court order directing that the child be allowed to visit the offender without the parent/legal guardian's permission. (changed 8/19/16)
6. The *Visitor Application and Background Investigation Authorization* will expire three years from the date it is approved in the VACORIS Visiting Module. A new, updated *Visitor Application and Background Investigation Authorization* must be submitted on-line ~~if possible,~~ prior to that time for continued visitation. (changed 3/1/15)
7. Adult visitors refusing to complete the *Visitor Application and Background Investigation Authorization* and have a valid government picture identification card scanned into the VACORIS Visiting Module will be denied a visit. If the name of the visitor has been obtained, the refusal will be documented and submitted to the Facility Unit Head.
8. Visitors will not be approved to visit more than one offender who is not an immediate family member.
- a. Visitors who wish to visit immediate family members shall submit a *Visitor Application and Background Investigation Authorization* to the Visitor Registration Unit indicating each offender and listing the family relationship.
  - ~~b. Visitors that are approved to visit more than one offender on the effective date of this operating procedure will be required to select only one non-immediate family offender to continue visiting and visitors must notify the Visitor Registration Unit of each immediate family offender they wish to continue visiting by listing the relationship to the offender. (deleted 8/19/16)~~
  - c. Visitors will not be allowed to visit more than one offender at a facility unless each offender is an immediate family member.
  - ~~d. Non-immediate family member visits can only be changed once every twelve months. (added 8/19/16)~~



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9. A former offender may be permitted to visit only with prior approval of the ~~Operations Manager~~ ~~Support Corrections Operations Administrator~~ after consultation with the Facility Unit Head if necessary. (changed 8/19/16)
  - a. Non-violent former offenders should be approved to visit after completion of parole, probation, or post release supervision if there are no pending charges.
  - b. Violent former offenders should be approved to visit five years after completion of parole, probation, or post release supervision if there are no pending charges.
  - c. All former offenders, including those under supervision in the community, who are immediate family members should be considered for visiting approval after at least six months on supervision.
  - d. The ~~Operations Manager~~ ~~Support Corrections Operations Administrator~~ will review requests on a case-by-case basis and may disapprove any former offender for a valid security reason. (changed 8/19/16)
  - e. The Visitor Registration Unit shall check VACORIS to determine if the former offender is on community supervision; offenders on active probation, parole, or post release supervision must receive advance approval to visit from the ~~Operations Manager~~ ~~Support Corrections Operations Administrator~~ after consultation with both the Facility Unit Head and the Chief P&P Officer. (changed 8/19/16)
  - f. A person currently under ~~felony~~ ~~any pending indictment or active pending charge~~ may be restricted from visiting pending resolution of the ~~felony~~ charges. (changed 8/19/16)
10. Regardless of accompanying adult, minors will not be permitted to visit if any of the following circumstances exist:
  - a. The DOC is notified of a Court Order prohibiting visits between the child and the offender.
  - b. The DOC is notified that parental rights of the offender for the child have been terminated.
  - c. ~~The minor is a direct victim of a violent crime committed by the offender.~~ (added 11/23/15)
  - d. Restrictions of this nature should be documented as an alert on the VACORIS Visiting Module in advance of any visit if at all possible.
- ~~11. Visitors who have an existing protective order CPS/APS ruling or other no contact order prohibiting contact with the offender will not be approved to visit.~~ (added 11/23/15)
12. Offenders with any conviction requiring registration in the *Sex Offender and Crimes against Minors Registry* will not be allowed to visit with any minor until granted a sex offender visitation exemption. (Minors currently approved for such visits on the effective date of this operating procedure may be allowed to continue visiting pending review for an exemption.) Exemptions may be requested by this process:
  - a. Eligibility
    - i. Offenders with any conviction for a sexual offense that requires registration will only be considered for an exemption to visit with their biological, legally adopted, or step children. Offenders with convictions only for non-sexual offenses may be considered for an exemption to visit with any minor.
    - ii. Offenders must be at least six months charge free.
    - iii. There must not be a Court order restricting such visits.
  - b. Offenders requiring registration in the *Sex Offender and Crimes against Minors Registry* for conviction of a sexual offense may request an exemption by completing a *Sex Offender Minor Visitation Questionnaire (Offender)* 851 F10 available at the facility. The offender must request the sex offender questionnaire from their assigned counselor ~~must be submitted to the offender's assigned counselor.~~ (changed 8/19/16)
    - i. The potential visitor (non-offending parent/guardian of the minor) will also be required to complete a *Sex Offender Minor Visitation Questionnaire (Parent/ Guardian)* 851 F11. The offender ~~can~~ must obtain this form at the facility from their assigned counselor and should

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- provide it to the potential visitor. This form must be mailed directly to the offender's facility counselor after completion. (changed 8/19/16)
- ii. ~~The sex offender and parent/ guardian questionnaires must be submitted to the offender's assigned counselor upon completion. (added 8/19/16).~~
  - iii. The counselor shall forward the *Sex Offender Minor Visitation Questionnaire (Offender)* 851\_F10 and the *Sex Offender Minor Visitation Questionnaire (Parent/ Guardian)* 851\_F11 by email to [SexOffenderVisitation@vadoc.virginia.gov](mailto:SexOffenderVisitation@vadoc.virginia.gov) ~~the Sex Offender Visitation Mailbox.~~ (changed 8/19/16)
  - iv. The *Sex Offender Visitation Mailbox Administrator* should assign the exemption request to an evaluator who will complete an assessment (e.g., offender personal/social/sexual history, actuarial assessment, Mental Status Evaluation (MSE)).
  - v. A copy of the assignment will be forwarded via email to the Facility Unit Head and the Sex Offender Program Director (SOPD)
  - vi. The evaluator shall forward the completed assessment, the *Sex Offender Minor Visitation Questionnaire (Offender)* 851\_F10, and the *Sex Offender Minor Visitation Questionnaire (Parent/ Guardian)* 851\_F11 to the SOPD or designee
  - vii. A *Sex Offender Visitation Committee* composed of the members appointed by the Chief of Corrections Operations will meet at least quarterly to review requests for sex offender visitation exemptions. The committee will then forward its recommendation to the ~~Operations Manager - Support Corrections Operations Administrator~~ for approval. If denied a sex offender visitation exemption, an offender can reapply after one year. (changed 8/19/16)
- c. Offenders requiring registration in the *Sex Offender and Crimes against Minors Registry* for conviction of a non-sexual offense may request an exemption by completing a *Sex Offender Minor Visitation Questionnaire (Offender)* 851\_F10 available at the facility. ~~The offender must request the sex offender questionnaire from their counselor.~~ The questionnaire shall be submitted to their assigned counselor. (changed 8/19/16)
- i. The facility counselor will confirm the offense requiring registration in the *Sex Offender and Crimes against Minors Registry* is a non-sexual offense and notify the Visitor Registration Unit by emailing the questionnaire to [VisitationApplications@vadoc.virginia.gov](mailto:VisitationApplications@vadoc.virginia.gov).
  - ii. The counselor will instruct the offender to notify the parent or legal guardian of the minor to submit an online application for themselves and the minor ~~the Minor Visitor Application and Background Investigation Authorization~~ 851\_F6, ~~Spanish~~ 851\_F6S for processing in accordance with this operating procedure. (changed 8/19/16)
13. If the visitor is a former volunteer, employee, or contract employee of the Department of Corrections or a former employee of the Department of Correctional Education, visitation must be approved in writing by the ~~Operations Manager - Support Corrections Operations Administrator~~ after consultation with the Facility Unit Head. (changed 8/19/16)
- a. ~~Former employees will not be considered for visitation with non-immediate family members until at least one year after their employment with the department has ended. (added 3/12/15)~~
  - b. ~~Determination for visitation of non-immediate family members who were formerly employed by the Virginia Department of Corrections will be done on a case by case basis. (added 8/19/16)~~
  - c. Any such person who has been terminated, who has resigned in lieu of termination, or who has been permanently barred from a facility for fraternization with an offender will not be allowed to visit in any DOC facility for a minimum period of one two years. (changed 7/16/14)
  - d. After one two years, visiting privileges may be requested ~~by~~ through the regular visitor application process. (changed 7/16/14)
14. If the visitor is a current volunteer, employee, or contract employee of the Department of Corrections, visitation must be approved as indicated below.
- a. The volunteer or employee will submit a written request to the Unit Head (or supervisor if the employee is the Unit Head) of the volunteer or employee's work place requesting permission to



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visit.

- b. After approving, the Unit Head of the volunteer or employee's work place will contact the Facility Unit Head of the facility housing the offender for his or her input.
  - c. Once both Unit Heads approve, the Unit Head who initiated the request will forward it to the ~~Operations Manager - Support Regional Operations Chief of the region (S)~~ involved for approval in accordance with Operating Procedure 130.1, *Rules of Conduct Governing Employee Relationships with Offenders*. (changed 7/16/14)
  - d. ~~The Operations Manager - Support Regional Operations Chief of the requesting Unit Head, after consultation with the Visitation Unit to ensure there is no additional relevant information, will issue the final written approval and copy the requesting Unit Head, and the housing Facility Unit Head, and the Visitor Registration Unit Visitation Unit supervisor.~~ (changed 7/16/14, changed 8/19/16)
  - e. When the person requesting visitation is a contract employee, the person's employer must also provide prior written approval.
  - f. ~~Employees not under the supervision of a Regional Operations Chief must be approved by their respective Chief of Corrections Operations, Deputy Director or the Superintendent for Education.~~ (added 7/16/14)
15. If the adult visitor is a crime victim/survivor of the offender and does not wish to participate in regular on-going visitation, the victim may request a one-time facilitated visit meeting with the offender must be arranged in accordance with Operating Procedure 021.2, *Victim/offender Dialogue*, unless the visit has been reviewed by the Victim/offender Visitation Committee and approved by the DOC Director in accordance with Operating Procedure 021.1, *Victim Services Unit*. (changed 11/23/15)

#### D. Identification

- 1. All visitors, excluding non-emancipated minors, are required to present a valid government picture identification card having an identification number, such as a driver's license, state identification card, military identification card, passport, or other bona fide government identification card.
  - a. The name and identification number on the identification card must match the approved visitor in the VACORIS Visiting Module.
    - i. If the VACORIS Visiting Module does not show an identification card associated with the visitor, the address must also match on the identification card that the visitor provides at the time of visitation must match the address recorded in their visitor profile. (changed 8/19/16)
    - ii. For an established visitor (identification card in VACORIS), if the identification card indicates a different address from the VACORIS Visiting Module, the address in the VACORIS Visiting Module will be automatically updated when the identification card is scanned.
    - iii. If the name and number on the identification card does not match a currently approved visitor in the VACORIS Visiting Module facility staff should give the visitor a *Visitor Registration Unit Decline Notification* (see Attachment 3).
  - b. The identification card will be scanned into VACORIS and maintained in a secure location until it is returned to the visitor at the conclusion of the visit; the visitor should be given a visitor pass in exchange for the visitor's Identification Card.
  - c. Emancipated minors must provide documentation of emancipation in addition to a valid picture identification card.
- 2. Non-emancipated minors must be accompanied by an adult who is an authorized visitor.
  - a. For a minor to visit accompanied by an adult other than a parent or guardian, permission must be documented on a *Notarized Statement - Minor Visitor* 851\_F4 signed by the parent/legal guardian and notarized unless there is a valid Court Order directing that the child be allowed to visit the offender without the parent/legal guardian's permission. The adult must present the completed *Notarized Statement - Minor Visitor* 851\_F4 or a copy of the Court Order each time the minor is brought to visit.
  - b. By signing the *Minor Visitor Application and Background Investigation Authorization* 851\_F6,

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~~Spanish 851\_F4S or the Notarized Statement - Minor Visitor 851\_F4~~, the parent/legal guardian is certifying their status and no confirmation should be required unless there is reasonable suspicion that person is not the minor's parent or legal guardian. (changed 3/1/15)

- c. ~~The Notarized Statement - Minor Visitor 851\_F4~~ will expire one year from the signature date of the parent/legal guardian, unless otherwise indicated on the *Notarized Statement*. (added 7/16/14)
- d. ~~The Notarized Statement - Minor Visitor 851\_F4~~ is not valid if the notary's certification has expired. (added 8/19/16)
- e. When available, identification cards or photographs of authorized minor visitors should be scanned into the VACORIS Visitation Module to aid in identification.

#### E. Visitor Attire

- 1. All visitors, to include children, must dress appropriately for visitation
  - a. Clothing must cover from the neck to the kneecaps.
  - b. ~~All visitors must wear appropriate underwear.~~ (effective 5/1/14)
- 2. All visitors shall be required to wear foot wear. No bare feet are allowed.
- 3. Watches and all wearable technology devices (i.e. google glasses) are prohibited.
- 4. Clothing that resembles offender clothing other than denim is prohibited.
- 5. The following types of clothing are not allowed to be worn:
  - a. Tube tops, tank tops, or halter tops
  - b. Clothes that expose a person's midriff, side, or back
  - c. Mini-skirts, mini-dresses, shorts, skorts, or culottes (at or above the kneecap)
  - d. Form-fitting clothes such as leotards, spandex, and leggings
  - e. See-through clothing
  - f. Tops or dresses that have revealing necklines and/or excessive splits
  - g. Clothing that contains symbols or signs with inappropriate language or graphics, including gang symbols, racist comments, inflammatory communications, etc.
  - h. Coats, jackets, shawls, and scarves will be placed in an appropriate area designated by the facility
- 6. At the discretion of the facility, smock type garments may be provided for first time visitors that would not be allowed to visit due to their attire.

#### F. General Rules for Visiting Room Operation

- 1. Each Facility Unit Head shall develop protocols for facility visiting room operation consistent with this operating procedure.
  - a. Protocols shall identify, in writing, general visiting information that each facility will make available to offenders and the general public.
  - b. Staff selected for visitation assignments should be carefully screened for their customer service skills and thoroughly orientated to visitation procedures and practices. Supervisors should monitor the visitation process and re-train or re-assign personnel as needed.
  - c. The facility may utilize the *Offender Visiting Information Brochure* for offenders and visitors. *Brochures* should be available in the visitor entry area.
  - d. Signs, video information boards, etc. should be utilized to provide information to visitors.
- 2. All visitors shall be treated courteously and assisted promptly. Within available resources, facilities should provide adequate waiting areas, chairs, and protection from inclement weather for visitors waiting to be processed into the visiting area.
- 3. An offender must be notified of the name of the person(s) visiting prior to entering the visiting room and the offender must agree to visit with that person(s).



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- a. When an offender refuses the visit, the visitor will be notified and will not be permitted to visit. This information should be documented.
- b. Under no circumstances will any private citizen be admitted for visitation or be permitted to visit an offender when the offender refused the visit, unless there is legal authority such as a Court order to compel the offender to do so.
4. Staff must monitor and control movement of visitors within the facility. (4-ACRS-2A-02)
5. Physical contact during contact visits is prohibited except for one brief kiss, a hand shake, and/or an embrace between an offender and each of his or her visitors at the beginning and end of each visit. Reasonable consideration should be given to allow parents to appropriately hold their infant, toddler, or preschool children.
- ~~6. A visitor who has visited with one offender at a DOC institution will not be approved to visit with any other offender at any DOC institution within twelve months without permission of the Operations Manager - Support. (deleted 8/19/16)~~
7. An offender shall be allowed to visit only with visitors who signed in for a visit with that offender.
  - a. A visitor shall be allowed to visit only with offenders who they have signed in to visit.
  - b. ~~The Operations Manager - Support~~ Corrections Operations Administrator in consultation with the Facility Unit Head may approve, on a case-by-case basis, immediate family members to visit at the same time with related offenders who are incarcerated at the same facility. (changed 8/19/16)
8. Offenders and visitors shall be closely monitored at all times to ensure contraband is not passed and inappropriate behavior does not occur among any individuals in the visiting room.
  - a. Neither visitors nor offenders may use any signs, signals, or other behaviors related to gang identification or gang activities.
  - b. An offender and visitor may be assigned to a seat or table closest to the officer's station to permit continuous monitoring.
  - ~~c. Visitors who need to use the restroom during visitation at Security Level 2 and above facilities will be required to exit the visiting area and access the restrooms designated for visitor use. (added 8/19/16)~~
    - ~~i. Any visitor who returns to the visiting area will be required to comply with the search requirements of Operating Procedure 445.1, Employee, Visitor, and Offender Searches and this operating procedure. Priority should be given to these visitors for re-entry.~~
    - ~~ii. Minor visitors who need to use the restroom during visitation must be accompanied by their adult parent or legal guardian.~~
  - ~~d. Offenders who need to use the restroom during visitation at Security Level 2 and above facilities shall be processed from the visiting room and returned to the housing unit.~~
    - ~~i. The offender will be allowed to return to the visitation area after the required search has been completed.~~
    - ~~ii. Offenders are only allowed to exit one time during their visit.~~
9. The adult responsible for minor visitors must maintain control and supervision of their children at all times.
  - a. Failure to maintain proper supervision of children may result in termination of visitation.
  - b. Physical discipline of any type is prohibited and will result in immediate termination of the visit.
10. Reasonable accommodation shall be provided to allow visitation by persons who are disabled.
- G. Special Visits (4-4500, 4-ACRS-5A-18)
  1. Each special visit requires prior authorization by the Facility Unit Head or designee. Special visits may include, but are not limited to attorneys, clergy, former or prospective employers, sponsors, or parole advisors. Media visits are governed by Operating Procedure 022.1, *Mass Media Relations*, and Operating Procedure 022.2, *Offender Access to the Media*.

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2. The following persons may be allowed special visiting privileges as deemed appropriate, except if the person is banned from visiting by this operating procedure.
  - a. Immediate family, based on special circumstance or need, such as infrequent visits and extreme travel distance
  - b. A member of the clergy may be required to provide written verification of his or her clergy status upon request of the Facility Unit Head or designee to qualify for a visit. (2-CO-5E-01)
  - c. ~~The official performing a marriage ceremony in accordance with Operating Procedure 801.5; Marriage Ceremonies for Offenders (added 3/12/15)~~
  - d. An attorney or representative acting on the attorney's behalf on official business may qualify for a special visit with the offender based on submission and approval of a Legal Representative Visit 851\_F3. Before entering the facility, the attorney will be required to present his or her State Bar Association card and a representative acting on the attorney's behalf will be required to present a letter on official letterhead signed by the attorney or law firm. In the absence of Court documents requiring the visit, the Facility Unit Head may restrict legal visits to attorneys and representatives of law firms with a current attorney-client relationship with the offender. Conditions for offender visits with an attorney or bona fide representative shall maintain the confidentiality of the attorney-client conversations while ensuring proper security and sight supervision. (4-4275, 4-ACRS-6A-01)
    - i. Conversations between attorneys and offenders will be monitored only by sight.
    - ii. Visits shall occur during normal working hours of the facility unless otherwise approved by the Facility Unit Head or designee.
    - iii. Attorneys or representatives shall not give any articles directly to the offender.
      - (a) Legal documents may be given to the offender after first being inspected, not read, by the officer supervising the visit who will then hand the documents to the offender.
      - (b) Legal documents must in paper format only, no CD's, DVD's, flash drives, or other data storage formats may be given to the offender.
    - iv. There shall be no photograph, audio, or video recording made at the facility without specific prior approval.
      - (a) The person requesting the Legal Visit is responsible to provide documentation of the specific legal necessity to make a photograph, audio, or video recording.
      - (b) This documentation should include the specific court case or other legal authorization and attach any Court orders.
      - (c) The facility may contact the Attorney General's office for guidance in individual cases.
  - e. An official of the legislative, judicial, or executive branch of the state or federal government on official business with the offender
  - f. Re-entry supporters if they do not participate in regular visitation with the offender
3. Offenders may not actively participate in a business.
  - a. Visits from business representatives may be permitted to enable the offender to protect personal resources or financial interests.
  - b. If there are excessive requests for business visits, or if criminal or illegal activity is suspected, the matter should be brought to the attention of the Regional Administrator.
4. Re-entry Visits are special extended visits by immediate family, extended family, or reentry supporters in preparation for offender re-entry.
  - a. These may include in-person or video visits that are supervised or mediated by DOC staff or professionals from other organizations approved by DOC to perform this function.
  - b. Re-entry Visits shall occur at the discretion of the Facility Unit Head and are dependent on the consistency of the visit with the offender's needs and the facility's mission.
5. Special visits shall not be counted toward an offender's regular visiting time allowance.
6. Special visits will usually be scheduled during normal working hours on business days. The Facility



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Unit Head or designee may make exceptions for special circumstances.

7. The Facility Unit Head will approve requests for visits with offenders from diplomatic representatives of their country of citizenship. The Director, Chief of Corrections Operations, and Regional Administrator will be notified of approval. (4-4280)

#### H. Visiting Schedule

1. Newly received offenders to the DOC will generally not be allowed visits in the first 60 days in a reception center.
2. The visiting schedule for general population offenders will be on Saturday, Sunday, and all recognized state holidays excluding any "extra" days given to state employees by the Governor. Facilities may use a visitation allocation system (alphabetical or numerical) which allows visits for a portion of the population on each visiting day if needed due to visitation demand routinely exceeding capacity.
3. Generally, visiting will be held at facilities a minimum of 6 hours each visiting day.
4. Each offender will be permitted a minimum of one hour per visiting day with visitors on those days designated for that offender to visit.
5. The length of each visit will be determined by visiting room staff depending on the number of visitors, space, and staffing.
6. Each Facility Unit Head will designate the number of visitors allowed to visit each offender at one time and the number of visits each offender may receive each visiting day.
7. The total number of hours an offender may visit per month will be in accordance with Operating Procedure 440.4, *Offender Privileges by Security Level*.
8. Visitors transported by non-profit service providers with which the DOC has a Memorandum of Understanding, such as *Assisting Families of Inmates*, will be allowed to visit on the day of the transportation service's approved scheduled arrival regardless of the visitation allocation system (alphabetical or numerical) in place at the facility. These visitors will be identified by name badges or lists of riders provided by the transportation services provider. When an offender receives a visit on a day that is not normally his or her visiting day, the visit will constitute the offender's weekly visit.

#### I. Admission and Search Procedures

1. Visitors must park in designated areas and secure and lock unattended vehicles.
  - a. Visitors may not have weapons, ammunition, alcohol, or un-prescribed drugs in their vehicles on DOC property.
  - b. Children shall not be left in a vehicle or parking area without adult supervision.
2. Each visitor must comply with identification and search requirements of Operating Procedure 445.1, *Employee, Visitor, and Offender Searches* (restricted access).
  - a. All visitors (excluding non-emancipated minors) are required to present a valid government picture identification card.
  - b. All visitors are subject to search by an electronic scanning and detection devices or by a pat-down frisk search, or both. (changed 8/19/16)
    - i. Visitors will be required to remove coats, jackets, and excess layers of outer clothing to allow an effective pat-down frisk search.
    - ii. Visitors will be required to turn all clothing pockets inside out, if the garment construction allows and remove their shoes, as approved by the Regional Operations Chief (added 8/19/16)
    - iii. If, after the initial search, it is believed that an additional search is necessary, a further consensual search may be conducted with the approval of the Administrative Duty Officer.
    - iv. If a visitor refuses a search, visitation will not be authorized for that day and approval for



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future visits may be revoked.

- c. Accessibility for mobility impaired visitors
  - i. Visitors with mobility impairments should contact the facility before visiting to ensure accommodations are in place.
  - ii. Due to the difficulty of thoroughly searching such devices, visitors requiring the use of walkers or wheelchairs to access the visiting area will be required to use a DOC-owned wheelchair for the visit. Search areas should be equipped with pull up bars meeting ADA standards to assist in transfer into and out of DOC-owned wheelchairs. DOC staff may assist in the transfer but should not lift the visitor.
  - iii. Specialized wheel chairs may be allowed after a reasonable search. These would include chairs that are medically required for a visitor without use of their extremities (e.g. quadriplegic) and or those who are unable to stand at all.
3. Visitors are not allowed to bring property, packages, food, cash money, checks, money orders, lottery tickets, negotiable items, or any other item through visitation, unless specified otherwise in this operating procedure. Visitors who attempt to give such items to offenders will have their visit terminated and may lose their visiting privileges.
4. Visitors may be permitted to bring in documents that require an offender's review and signature such as divorce papers, tax forms, etc., with prior approval of the Facility Unit Head or designee. (added 8/19/16)
5. Facilities may permit each adult visitor to bring a maximum of \$30.00 in coins (no paper money) into the visitation area for the purchase of items from vending machines. Such coins may only be in denominations that will be accepted by the vending machines at the facility. Change making machines should be provided for the convenience of staff and visitors.
6. Visitors will not give any coins directly to offenders. Upon their departure from a visiting area, visitors must take any coins not spent in the vending machines out of the visiting area. No offender will be permitted to take any item from the visiting room, including money or food items purchased during visitation.
7. Visitors will not take any items into the visiting area except the following:
  - a. Their visitor's pass
  - b. A maximum of \$30.00 in coins (no paper money) per adult visitor
  - c. Personal vehicle key only ("keyless" keys are not authorized)
  - d. DOC locker key (if applicable)
  - e. Essential items for infant feeding as applicable and defined by the facility *Offender Visiting Information Brochure*, and the clothing actually worn
  - f. All other property should be locked in the visitor's vehicle or a locker in a secure area if provided by the facility.
  - g. A check area for coats, umbrellas, and rain gear may be provided. A disclaimer of liability for loss, theft, or damage should be conspicuously posted if such an area is provided.
8. Visitors must dress appropriately to conform to the *Visitor Attire* Section of this operating procedure.
9. Visitors may wear hats, caps, scarves and other head coverings into the visiting area
  - a. All non religious headgear shall be subject to search prior to the visitor entering the visiting room.
  - b. Visitors who wear a head covering for religious purposes should be required to remove the covering for search and then be allowed to wear the covering in the visiting room.
  - c. Female visitors who wear scarves or veils as a face covering for religious reasons should be allowed to remove the veil in a private area in the presence of a female officer to positively identify the visitor prior to entry into the visiting room and prior to exiting the facility after visitation.

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- d. Visitors who wear wigs or other hair pieces shall not be required to remove the hair piece for search except when there is reasonable suspicion that a further search is necessary as authorized by the Shift Commander.

#### 10. Service or Guide Animals

- a. Visitors should request and receive prior approval for service or guide animals needed in the visitation area, but such animals may be admitted with the approval of the Administrative Duty Officer based on the specific circumstances.
- b. Service or guide animals should be attentive and "on guard" but should not be aggressive or barking excessively. The visitor may be barred from entering or removed from the visitation area if the animal's behavior is aggressive or disrupting. No animal may be left unattended in a vehicle.
- c. Service animals are working and should not be petted.
- d. Food or treats for the service animal should generally not be required or allowed during the visit.
- e. Search of service animals
  - i. The service animal and the person must not be separated during the search. The staff conducting the search should explain the search steps and request cooperation of the person in the search process.
  - ii. Any pockets, flaps, etc. on the harness or collar should be thoroughly searched.
  - iii. If the harness must be removed for the search, it should be replaced very quickly since removal indicates to the animal they are off duty.
  - iv. Visual inspection should be adequate for short-haired animals; a frisk search may be required for animals with long, fluffy coats.

#### J. Visits for Special Status Offenders

##### 1. Special Health Needs

- a. Offenders who are housed in infirmary or observation beds at the facility may receive visits if approved by the Facility Unit Head or designee in consultation with the Facility Health Authority. The location, length, and circumstances of the visit shall be decided on a case-by-case basis.
- b. Visits with offenders who are housed in off-site hospital beds shall be managed in accordance with Operating Procedure 425.2, *Hospital Security* (restricted access).
  - i. Visiting with offenders in DOC operated hospital security wards shall be managed by the security ward staff.
  - ii. Visiting with offenders in other hospitals shall be managed by the facility providing security at the hospital.
  - iii. In general, hospitalized offenders may receive visits from immediate family members only.
  - iv. All visits must be approved by the Facility Unit Head or designee, in consultation with the attending physician.
  - v. The location, length, and circumstances of the visit shall be determined on a case-by-case basis.
- c. Offenders housed in mental health residential or acute care beds may receive visits if approved by the Facility Unit Head or designee in consultation with the Mental Health Unit Director.

##### 2. Security Level S, Segregation, Death Row

- a. The following offenders shall be limited to non-contact visits, except for contact visits with an attorney at the request of the attorney:
  - i. Offenders classified as Security Level S
  - ii. Offenders classified to Special Housing (see Operating Procedure 861.3, *Special Housing*)
- b. Offenders housed in death row shall be limited to are authorized contact and non-contact visits with immediate family members and one non-family member (non-family member must be approved by the Director). ~~except for~~ (changed 8/19/16)

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- i. All visitors must submit an on line application and receive approval prior to coming for visitation.
- ii. Contact visitation will be conducted every Friday for one hour and 30 minutes. Visitors shall call the Office of the Assistant Facility Unit Head on Wednesdays for an available appointment for Friday.
- iii. Non-Contact Visitation will be conducted on Saturday, Sundays, and holidays. Scheduling of visitation during holiday periods is subject to change.
- iv. The Assistant Facility Unit Head may approve extended visitation periods on a case-by-case basis. Offenders must request extended visits.
- v. All visitors and offenders are expected to follow all rules in the *Offender Visiting Information Brochure* and this operating procedure.
- vi. Contact visits with an attorney at the request of the attorney
- vii. Immediate family members may submit a written request for a contact visit to the Facility Unit Head citing a reason for the visit. (deleted 8/19/16)
  - (a) Contact visits with immediate family generally will not be considered more often than once every six months.
  - (b) With the approval of the Facility Unit Head, requests for contact visits will be forwarded to the Regional Administrator, with final approval of the Chief of Corrections Operations.

### 3. Suspension of Visiting Privileges Due to Offender Conduct

- a. Loss of visiting privileges may be imposed as a penalty for disciplinary infractions. (see Operating Procedure 861.1, *Offender Discipline, Institutions*, and Operating Procedure 861.2, *Offender Discipline, Community Corrections*)
- b. Offenders who are assigned to disciplinary segregation as the result of a disciplinary offense may not have visits while serving the penalty. (see Operating Procedure 861.3, *Special Housing*) The offender should be provided the opportunity, with staff assistance if needed, to notify his visitors that his visiting privileges have been suspended.
- c. Attorney contact visits shall be allowed at the request of the attorney while an offender is serving a penalty restricting visiting privileges.
- d. The Facility Unit Head has the discretion to grant visiting privileges on a case-by-case basis in special circumstances during the period that the offender is serving the penalty.

### K. Non-Contact Visiting

1. Non-contact visiting may be scheduled according to the facility's needs and is not required to be held on regular visiting days.
2. The Facility Unit Head may limit an offender assigned to any security level to non-contact visits under the following circumstances:
  - a. The offender is visiting with any visitor who is subject to visitor restriction.
  - b. Non-contact visiting is determined to be in the offender's best interest due to health or mental health treatment needs as recommended by the Physician or Qualified Mental Health Provider. The Facility Unit Head will make the final decision.
  - c. Based on a review of a hearings officer's finding of guilt of a disciplinary offense that is related to contact visiting or the offender's contact (mail, phone, visiting) with certain visitors.
    - i. When an offender is found guilty of a disciplinary offense that is related to contact visiting, the Facility Unit Head may limit the offender to non-contact visiting for a period not to exceed 180 days.
    - ii. If an offender has been found guilty of a disciplinary offense related to mail or phone contact with a specific visitor, the Facility Unit Head may limit the offender to non-contact visiting with that visitor for a period not to exceed 180 days.
  - d. Approved programmatic purposes, such as Therapeutic Community program, Structured Living Units, transitional housing units, orientation, or Privilege Incentive Programs



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- e. The Facility Unit Head determines that safety and security of visitors, staff, and offenders cannot be maintained.
  - 3. Non-contact visiting is imposed as an enhanced penalty for repeated violations of Category I offenses in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions*.
  - 4. Facilities that do not have permanent non-contact visiting areas must have sufficient portable non-contact visiting booths to accommodate offenders limited to non-contact visiting, and should allocate a day, time, and location for non-contact visits as necessary. The facility should identify in the *Offender Visiting Information Brochure* maximum length of the visit, the number of visits, and visitors allowed per day.
  - 5. Non-contact visits may be conducted through video visitation.
- L. Restricted/Disallowed/Banned/Terminated Visits
- 1. Terminated Visits
    - a. Visits may be terminated based on visiting room overcrowding. If this occurs, the visit that began first shall be terminated first, provided the visit has lasted for at least one hour. Exceptions may be granted by the facility for individuals traveling great distances or having other extenuating circumstances. (4-4501)
    - b. A visit will not occur, or shall be terminated, for any of the following reasons:
      - i. The offender does not want to visit.
      - ii. The offender or visitor appears to be intoxicated or under the influence of a controlled substance.
      - iii. The offender or visitor fails to comply with all DOC and facility procedures and visiting standards.
      - iv. The visitor is verbally abusive towards staff, offenders, or other visitors.
      - v. The offender commits a disciplinary violation in the visiting room.
      - vi. Reliable information has been received indicating that the visitor or the offender is expected to commit an illegal act. The facility's Regional Administrator shall be advised whenever a visit is disallowed or terminated for this reason.
      - vii. The DOC is notified that parental rights of the offender for the child have been terminated.
      - viii. Anytime the visitor or offender imposes physical punishment to discipline a minor child.
    - c. If circumstances permit, supervisory staff shall verbally explain, at the time it occurs, the reason for terminating or disallowing a visit.
    - d. If the visitor is involved in conduct for which the visit is terminated or disallowed, the visitor shall not be allowed to visit for the remainder of that day/weekend and may be subject to a restriction of all visits. An appropriate Incident Report (see Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*) or internal incident report, depending on the type of misconduct, shall be completed to document the event.
    - e. If the offender is involved in conduct for which a visit is terminated or disallowed, he or she may be given a *Disciplinary Offense Report* for the violation(s) committed.
  - 2. Restrictions and Bans of a Visitor's Visiting Privileges
    - a. Visitors who fail to abide by the visiting rules and procedures may be refused admission to the facility or restricted to non-contact visits by the Facility Unit Head.
      - i. Generally, violations of a minor nature will result in a ban of visiting privilege for a period of from three to six months.
      - ii. Serious violations will result in the permanent ban of visiting privileges.
    - b. When a visitor's privileges are banned, the Facility Unit Head shall provide a written explanation to the visitor and offender involved, including notice of the length of ban.
      - i. Facility staff shall enter the ban in the VACORIS Visiting Module.
      - ii. If the visitor desires, he or she may submit a written request for reconsideration to the Facility

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Unit Head within thirty days providing additional information and extenuating circumstances if applicable. The Facility Unit Head may allow a meeting with the banned visitor to address the reconsideration issue.

- iii. If the visitor is not satisfied with the Facility Unit Head's response, the visitor may request a review of the decision by the Regional Administrator within 30 days of the Facility Unit Head's response. The Regional Administrator's decision will be final.
- c. Non-contact visits may be required at the discretion of the Facility Unit Head upon re-instatement of visiting privileges.
- d. A visitor's privilege to visit shall be banned if any of the following occur: (This does not have to occur in connection with a visit i.e., a person who leaves illegal contraband in another area of the facility grounds for an offender to pick up, mails contraband to an offender, or discusses escape plans or other criminal activity with an offender over the telephone may be subject to non-contact visits or to a visitor suspension)
  - i. The visitor smuggles, conspires to smuggle, or attempts to smuggle any item in or out of the facility. Staff will ensure that the Special Investigations Unit is notified if the item is proved to be illegal contraband.
  - ii. The visitor assaults staff or others, or threatens them with physical harm.
  - iii. The visitor assists, conspires to assist, or attempts to assist an offender to escape.
  - iv. The visitor has a pending felony or misdemeanor charge or has been found guilty of a felony or misdemeanor that occurred in connection with a visit. The ban may, at the discretion of the Facility Unit Head or designee, be removed if the visitor provides written documentation that the charge has been dismissed or that the charge has resulted in a non-guilty finding.
  - v. The visitor provides false information related to visiting rules or procedures.
  - vi. The visitor damages or attempts to damage DOC property or engages in disruptive behavior while on DOC property.
  - vii. The visitor removes or attempts to remove any item from the facility that is not authorized by the facility.
  - viii. The offender or visitor touches or exposes the breast, buttocks, or genital area during a visit, or engages in any other inappropriate physical or obscene behavior during a visit, including signs, signals, or other behaviors related to gang identification or gang activities.
  - ix. The visitor falsifies any information on the *Visitor Application and Background Investigation Authorization*.
- e. A visitor's visiting privileges will be permanently banned in the following circumstances:
  - i. Smuggling, conspiracy to smuggle, or attempt to smuggle a controlled substance or a firearm into a facility
  - ii. Assault on staff or others resulting in serious physical injury
  - iii. Assisting or conspiring or attempting to assist an offender to escape
  - iv. A felony conviction for the behavior by the offender or visitor that resulted in the visitor ban
  - v. A visitor banned under this section cannot request that visiting privileges be restored for at least five years from the date of the ban.
- f. Visitor restrictions and bans are data-entered in the VACORIS Visiting Module.
  - i. Bans are entered based on the visitor or the offender and marked as permanent or temporary (with start and end dates) with a reason selected and comments entered to document the reason for the ban.
  - ii. Restrictions i.e., non-contact visits, should be entered as a visitation alert with an end date selected for the restriction.
- g. Regional or Central office units may initiate a visitor ban based on visitor activities affecting more than one facility.
  - i. When a visitor's privileges are banned, the unit initiating the ban shall provide a written explanation to the visitor, including notice of the length of suspension.



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- ii. If the visitor desires, he or she may request a review of the decision by the DOC Operations Manager - Field within 30 days of the written notice. The Operations Manager's decision will be final.
3. Once a visitation ban or the required waiting period has expired, the visitor may apply through the regular visitation application process to have visitation privileges restored.
  - a. ~~The Operations Manager - Support Corrections Operations Administrator~~ shall review each application from a visitor requesting restoration of visitation privileges and consult with relevant institutional staff as needed before approving the visitor application. (changed 8/19/16)
  - ~~b. When restoration of visitation privileges is not approved, the visitor must wait at least one year before re-applying. (deleted 8/19/16)~~
4. Restrictions/Suspensions of an Offender's Visiting Privileges
  - a. The Regional Administrator, upon request of the Facility Unit Head, may restrict visits to non-contact for a specified period of time not to exceed 2 years for an offender who is convicted or found guilty of any of the following:
    - i. A felony or misdemeanor that occurred during a visit
    - ii. Escape, attempted escape, or conspiracy to escape
  - b. The Regional Administrator may, upon request of the Facility Unit Head, permanently restrict visits to non-contact for an offender who is:
    - i. Convicted of a felony that occurred during a visit
    - ii. Committed an escape, attempted escape, or conspiracy to escape associated with a visit
  - c. The Regional Administrator shall ensure that the Facility Unit Head is notified of the determination, and that a restriction Alert is entered into the VACORIS Visiting Module.
  - d. The Facility Unit Head shall ensure the offender is notified of the Regional Administrator's determination.
  - e. If an offender's visits have been restricted to non-contact, contact visits may be allowed with attorneys, authorized attorney representatives, or approved and qualified clergy.
  - f. The Regional Administrator may remove a visitation restriction upon written request of the Facility Unit Head or the restricted offender, subject to the following:
    - i. A restriction shall not be considered for removal until at least five years after imposition of the restriction by the Regional Administrator, if it is based on a felony that occurred during a visit, or if it is based on an escape, attempted escape, or conspiracy to escape associated with a visit.
    - ii. A restriction shall not be considered for removal until at least two years after imposition of the restriction by the Regional Administrator, if it is based on convictions for two or more drug related disciplinary offenses.
5. Legal Penalties - In addition to visiting restrictions specified above, possible Court proceedings may be initiated against a visitor who violates the law. Some such violations are as follows:
  - a. Visitors who attempt to give or convey any item to an offender to help him escape, or in any manner attempt to aid an offender in escape, either with force or otherwise, may be charged with a felony as specified in COV §18.2-473.
  - b. Visitors attempting to give or found to have given to any offender any items that have not been specifically approved or processed may be charged with a Class I misdemeanor in accordance with COV §18.2-474.
  - c. Visitors who give, attempt to give or conspire to give drugs, firearms or explosives to any offender may be charged with a felony as specified in COV §18.2-474.1.
  - d. Visitors who give or attempt to give a cellular telephone to any incarcerated offender may be charged with a felony under COV §18.2-431.1.
6. Appeals and Complaints
  - a. Offenders housed at institutions may address complaints related to visitation through the

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Operating Procedure 866.1, *Offender Grievance Procedure*.

- b. Visitors may address complaints related to visitation to the ~~Operations Manager Support~~ ~~Corrections Operations Administrator~~ and may appeal the ~~Operations Manager Support's~~ ~~Corrections Operations Administrator's~~ decision to the Chief of Corrections Operations. (changed 8/19/16)

#### M. Privilege Package Allowances

1. Visiting privileges and conditions vary based on the facility's security level designation in accordance with Operating Procedure 440.4, *Offender Privileges by Security Level*.
2. The Chief of Corrections Operations has granted selected institutions the authority to restrict and grant visiting privileges as incentives for appropriate offender behaviors.

#### N. Records Documentation

1. Every facility must maintain a record of each visit, showing offender name, number, visitor name(s), date, and time of every visit. Institutions shall utilize the VACORIS Visiting Module.
2. Once *Visitor Applications* are scanned into VACORIS, VACORIS becomes the official record and the original *Visitor Applications* need not be retained.

#### O. Video Visitation Program

1. The DOC has entered into an agreement with several Visitor Centers (see Attachment 1 for current list) to make long distance video visitation available with selected facilities.
2. Eligible offenders at participating facilities may contact their counselor or facility designee to obtain video visitation application materials. Offender eligibility requirements:
  - a. Security Level 1, 2, 3 - No restrictions
  - b. Security Level 4 and 5 - 6 months infraction free
  - c. Security Level 6 - 12 months infraction free
  - d. Security Level S, Segregation - 18 months infraction free
3. Visitor eligibility requirements for video visitation:
  - a. Must be currently registered in the VACORIS Visiting Module
  - b. Visitors that are not currently registered in the VACORIS Visiting Module must ~~apply on line, submit an Adult Visitor Application and Background Investigation Authorization 851\_F1, Spanish 851\_F1S or Minor Visitor Application and Background Investigation Authorization 851\_F6, Spanish 851\_F6S on line or using paper forms submitted to the Visitor Registration Unit before being considered for video visitation~~ (changed 3/1/15)
  - c. With the approval of the Facility Unit Head and the Visitor Center staff, certain persons not allowed to visit in person (i.e. prior felony convictions, visitor ban/restriction, etc.) may be allowed to participate in video visitation.
4. The offender must complete a *Video Visiting List* 851\_F5 and submit it to the Institutional Program Manager (IPM) or designee.
  - a. Facility staff shall confirm that each requested visitor is currently registered in the VACORIS Visiting Module.
  - b. Once all visitors are registered and approved, the Institutional Program Manager (IPM) or designee should sign the *Video Visiting List* and return it to the offender.
5. The offender shall complete and sign the *Video Visitation Rules and Dress Code* (see Attachment 2) and mail it (at offender expense) with the approved *Video Visiting List* to their visitor. Note that each Visitor Center requires a separate *Video Visiting List* and *Video Visitation Rules and Dress Code*.
6. The visitor must complete and sign the *Video Visitation Rules and Dress Code* and mail it with the



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*Video Visiting List* and appropriate fee to the applicable Visitor Center to schedule a visit. The fee covers expenses at the Visitor Center (none of the fee comes to DOC). The visitor may arrange subsequent video visits by submitting the necessary fee to the Visitor Center.

7. The Visitor Center will contact the facility and the visitor to confirm information, date, and time of the video visit.
8. The Facility Unit Head may restrict offender access to video visits and regular visits on the same day.

#### V. COMMUNITY CORRECTIONS FACILITY PROCEDURES

Due to the structured and short-term nature of community facility programs, certain variances are authorized. The following provisions apply only to Detention and Diversion Centers.

- A. Visitors are defined as immediate family members who have been approved to visit a specific offender participating in the detention or diversion programs.
  1. Within three days of arrival at a Community Corrections facility, offenders are required to submit for approval to their assigned Counselor, Probation Officer, or to Security Staff a listing of those persons whom the offender requests to have approved for visitation privileges.
  2. Each Community Corrections facility may place additional limits on authorized visitors based on the facility mission and visiting space limitations.
  3. Community Corrections facilities do not use the Visitor Application forms or the VACORIS visiting module.
- B. Visiting should be held, at a minimum period of up to four hours per month at Detention Centers and a maximum of sixteen hours per month may be held at Diversion Centers. Visiting will occur on Saturdays or Sundays. Each facility may devise those visiting management procedures which aid in the effective management of offender visiting to include, but not limited to, alternating weekend schedules of visitation to reduce overcrowding in the assigned visiting area. Each offender should be permitted a minimum of one hour of visiting per scheduled visiting day. Each facility will establish procedures for the hours of visiting.
- C. The Facility Unit Head or designee may authorize special visits. Special visits may include clergy, former or prospective employers, sponsors, attorneys, or individuals not on an approved visiting list. The approving authority should set times for these special visits at the time of the request's approval.
- D. Offenders may not actively participate in a business while housed at a community corrections facility. Visits from an offender's business representative may be permitted in order to enable the offender to protect his or her resources or financial interests. These visits will be treated as special visits and approved by the Facility Unit Head or designee.
- E. Offenders and visitors who want to appeal any adverse decision or render a complaint regarding visitation at Detention and Diversion Centers may appeal to the Facility Unit Head who will be the final level of appeal. Offenders housed at community facilities may address complaints through Operating Procedure 866.2, *Offender Complaints, Community Corrections*.

#### VI. REFERENCES

~~Operating Procedure 021.1, *Victim Services Unit*~~ (deleted 11/23/15)

Operating Procedure 021.2, *Victim/offender Dialogue*

Operating Procedure 022.1, *Mass Media Relations*

Operating Procedure 022.2, *Offender Access to the Media*

Operating Procedure 038.1, *Reporting Serious or Unusual Incidents*

Operating Procedure 130.1, *Rules of Conduct Governing Employee Relationships with Offenders*

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Operating Procedure 425.2, *Hospital Security*  
Operating Procedure 440.4, *Offender Privileges by Security Level*  
Operating Procedure 445.1, *Employee, Visitor, and Offender Searches*  
~~Operating Procedure 801.5, *Marriage Ceremonies for Offenders*~~ (added 3/12/15)  
Operating Procedure 861.1, *Offender Discipline, Institutions*  
Operating Procedure 861.2, *Offender Discipline, Community Corrections*  
Operating Procedure 861.3, *Special Housing*  
Operating Procedure 866.1, *Offender Grievance Procedure*  
Operating Procedure 866.2, *Offender Complaints, Community Corrections*

VII. FORM CITATIONS

*Adult Visitor Application and Background Investigation Authorization* 851\_F1, *Spanish* 851\_F1S  
*Legal Representative Visit* 851\_F3  
*Notarized Statement – Minor Visitor* 851\_F4  
*Video Visiting List* 851\_F5  
*Minor Visitor Application and Background Investigation Authorization* 851\_F6, *Spanish* 851\_F6S  
*Sex Offender Minor Visitation Questionnaire (Offender)* 851\_F10  
*Sex Offender Minor Visitation Questionnaire (Parent/ Guardian)* 851\_F11

VIII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*The office of primary responsibility reviewed this operating procedure in March 2015 and determined a rewrite is necessary.*

*Signature Copy on File*

*2/10/14*

A. David Robinson, Chief of Corrections Operations

Date

Exhibit 3

Sex Offender Minor Visitation Questionnaires



VIRGINIA  
DEPARTMENT OF CORRECTIONS

Sex Offender Minor Visitation Questionnaire (Offender) 851\_F10\_1-14

### Sex Offender Minor Visitation Questionnaire (Offender)

Offenders with a conviction requiring registration in the *Sex Offender and Crimes against Minors Registry* will not be allowed to visit with any minor until granted a sex offender visitation exemption. In order to receive approval to visit with any minor this questionnaire must be completed and submitted to your assigned counselor. A separate Questionnaire must be completed for each minor.

Offender Name: <u>Samie Desper</u>		Offender Number: <u>1204039</u>
Facility: <u>Augusta Correctional Center</u>		
Conviction(s) requiring registration: <u>Rape through Samplaining witness' mental incapacity and Indecent Liberties</u>		
Registration is required for a Conviction that is <input checked="" type="checkbox"/> Current <input checked="" type="checkbox"/> Prior <input type="checkbox"/> Current and Prior <input type="checkbox"/> Non-Sexual		
Date of Last Disciplinary Offense Conviction: <u>February, 2015</u>		
MINOR INFORMATION: (Must provide the name and relationship)		
Name: <u>Desper</u>		
Legal Relationship to minor <input checked="" type="checkbox"/> Biological Child <input type="checkbox"/> Legally Adopted Child <input type="checkbox"/> Step Child <input type="checkbox"/> None		
Is the minor the victim of the offense <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is there a court order restricting visits <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Parental Rights have been terminated <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>Explain the facts related to your conviction requiring registration in the <i>Sex Offender and Crimes against Minor Registry</i>:</p> <p>In 2007 on my indecent liberties charge, I was just playing around with this girl who was 16 years old and she took it seriously. I had no intention of harming her. My current offense was with someone who was 18 years, of legal age. I was accused of raping her by use of her mental incapacity. Even though I was convicted all the evidence shows that I did not commit a crime. Her grade point average was higher than mine. So mentally me and this girl is the same.</p> <p>List and describe the steps taken to be accountable for your behavior (Ex: programming completed, restitution paid, etc.):</p> <p>I've been signed to take thinking for a charge for a couple year but they haven't put me in there yet. I have inquired about the sex offender awareness program but I was told that they don't have that here. The institution sends money to the court + once a year out of what comes out of my pay for restitution.</p> <p>Explain the benefit of visitation for the child:</p> <p>For the child to maintain Father/daughter relationship. For the child to know that she's loved. Also so I can participate in her care to help my mother make decisions regarding my daughter.</p>		

Samie Desper  
Offender Signature:

3/2/16  
Date:

Gene Way  
Counselor Name:

3/29/16  
Date Received:

Gene Way  
Counselor Signature:

☐ Yes ☒ No Prior Conviction  
☐ Yes ☐ No Conviction is Non-sexual

\*Questionnaires for offenders required to register in the *Sex Offender and Crimes against Minors Registry* due only to a non-sexual conviction shall be emailed by the counselor to the [VisitationApplications@vadoc.virginia.gov](mailto:VisitationApplications@vadoc.virginia.gov) and the offender instructed to notify the parent or legal guardian to submit the Minor Visitor Application and Background Investigation Authorization 851\_F6, Spanish 851\_FS for processing.

Revision Date: 1/31/14





VIRGINIA

DEPARTMENT OF CORRECTIONS

## Sex Offender Minor Visitation Questionnaire (Parent/ Guardian)

851\_F11\_1-14

Sex Offender Minor Visitation Questionnaire (Parent/ Guardian)

Offenders with a conviction requiring registration in the *Sex Offender and Crimes against Minors Registry* will not be allowed to visit with any minor until granted a sex offender visitation exemption. In order for the offender to request an exemption, this questionnaire must be completed and mailed directly to the offender's facility counselor. A separate questionnaire must be completed for each minor.

Name: <u>Glenda Desper</u>	Legal Relationship to Minor: <u>Grandmother</u>
Offenders Name: <u>JAMIE Desper</u>	Number: <u>1204039</u>
Facility: <u>Augusta Correctional</u>	

MINOR INFORMATION: (Must provide the name and relationship of the minor to the offender)

Name: <u>Desper</u>	Minor Legal Relationship to offender <input checked="" type="checkbox"/> Biological Child <input type="checkbox"/> Legally Adopted Child <input type="checkbox"/> Step Child <input type="checkbox"/> None
Is the minor the victim of the offense <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Is there a court order restricting visits <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Parental Rights have been terminated <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	

Name and Relationship of other visitors who are permitted to bring the minor to visit the offender

Visitors Name:	Relationship to Minor (If none, state none)
<u>Greg Desper</u>	<u>Father</u>
<u>Glenda Desper</u>	<u>Mother</u>

Describe your knowledge of the offender's sex offense history: I know everyone of his charges

Describe other visits the child had with the offender at any correctional facility: Very good visits with her father 3 other facility no problems

Explain the benefit of visitation for the child: She needs to see her father. Doesn't have mother in her life and she likes coming to see him

List your concerns, if any:

To your knowledge, is the child interested in visitation: ☒ yes ☐ No

Signature: Glenda Desper

Date: 4-10-16

Revision Date: 1/8/14

Exhibit 4

Order granting reasonable visitation



ORDER: Commonwealth of Virginia  
Waynesboro Juvenile and Domestic Relations District Court  
Custody/Visitation/Support order

Case No. JJ010265-02-01, -02-02, 04 and -05  
Case No. JA

Petitioner: Ann Marie Desper  
Angela Dove Beverage  
In re: [REDACTED]

v. Barbara Absher (-02-01 and -02-02)  
v. Ann M. Desper and Jamie Desper and Barbara Abshire (-04 and -05)

The following parties were present and served (or not) as indicated:

☐ Juvenile  
☐ Father  
☐ Mother  
☐ Petitioner  
☐ Respondent  
☐ Custodian

☐ Attorney  
☐ Attorney  
☐ Attorney  
☐ Attorney  
☐ Attorney  
☐ Attorney

☐ Guardian ad litem Rebecca Belew  
☐ Guardian ad litem  
☐ Guardian ad litem  
☐ Guardian ad litem  
☐ Guardian ad litem  
☐ Guardian ad litem

Type of case: Custody and visitation  
Type of hearing: Original disposition and motions for visitation.

**SUMMARY OF THE EVIDENCE AND FINDINGS OF THE COURT** (generally not proofed or edited): By order of November 2, 2006, by agreement of the parties (and to avoid a removal), the Court awarded custody of the child to Absher. However, shortly thereafter, Absher concluded that she could not deal with the responsibility, so she, *de facto*, ceded custody of the child to Beverage. Absher is not resisting either the motion or the petition as she no longer wants custody of the child.

The GAL noted that the child became an issue in this Court because of some unexplained injuries, and the child went to Absher in lieu of the Department's removing the child (as noted above). When it became clear that Absher could not care for the child, she turned to Beverage, and Beverage undertook the responsibility. The GAL noted that the Despers had completed all of the requirements of the earlier entered protective order except the completion of a parenting class, and that was not their fault. The protective order remains in place for a year from today.

Beverage said that she was involved with the Despers and has known them for a while. She got the child when the Despers called her in January to ask that she help Absher. She said that she is concerned about whether or not the Despers are sufficiently familiar to know about what the child's abilities and limitations are at her age.

While it is the case that the Despers have completed most of the requirements of the protective order, the facts of the matter are that (a) one of the requirements (participation in psychological evaluations) yielded results not entirely helpful to the Despers (as it did not offer a particularly optimistic prognosis of their ability effectively to parent this child) and (b) the Despers have not (not through their own fault) completed the parenting class, which is the one requirement that would (or might) significantly (if not dispositively) address the issues which gave rise to the entry of the protective order (and might have given rise to a removal order but for the intervention of Absher and subsequently, Beverage).

Have not completed the class; same issue; send to Augusta, join the department, and order that put the case on the docket within 60 to 90 days.

**IT IS ORDERED:** On a temporary basis, Beverage is awarded custody of the child, the Despers are awarded liberal and reasonable visitation, and the case is transferred to Augusta County for further proceedings. The -02 cases are continued.

The Department is to be joined as a party to the proceeding, recognizing that it is already involved in the case because of the protective order (which was continued by separate order).

Without presuming to meddle with the calendar of the Augusta County Court, I told the parties that I would recommend that the case be put on the docket within 60 to 90 days to review the Despers' progress in completing the parenting class and otherwise positioning themselves for custody of the child.

Pursuant to Section 20-124.5 of the Code, the parties shall give 30 days advanced written notice to the Court and to the other party of such party's intention to relocate or of any intended change of address.

This is a temporary order.

Date: March 12, 2007 *Handwritten signature*

*Handwritten signature*  
Judge

This case is continued to: within 60 to 90 days on a date to be determined by the clerk in conjunction with the GAL and the Department. The Despers and Beverage will need to be summonsed.

**CHILD PROTECTIVE ORDER**

Commonwealth of Virginia Va. Code §§ 16.1-253, 16.1-277.02, 16.1-278.2, 16.1-278.3

Juvenile Case No. JJ010265-01-00

03/08/2007

DATE OF HEARING

WAYNESBORO J &amp; D RELATIONS DISTRICT COURT

Juvenile and Domestic Relations District Court

In re [REDACTED] NAME OF CHILD [REDACTED]

Present: ☒ Mother ANN MARIE DESPER

☒ Mother's attorney PAUL TITUS

☒ Father JAMIE DESPER

☒ Father's attorney SIMON PAINTER, JR

☐ Child [REDACTED]

☒ Guardian *ad litem* REBECCA BELEW

☒ Agency Representative AMBER M. MARTINO

☒ Agency Attorney JAMES GLICK

☐ Other [REDACTED]

☐ CASA [REDACTED]

DATE OF BIRTH

COMPLETE DATA BELOW IF KNOWN  
DESCRIPTION OF PERSON (No. 1) SUBJECT TO THIS ORDER

NAME: ANN MARIE DESPER

RACE	SEX	BORN			HT.		WGT.	EYES	HAIR
		MO.	DAY	YR.	FT.	IN.			

SSN

COMPLETE DATA BELOW IF KNOWN  
DESCRIPTION OF PERSON (No. 2) SUBJECT TO THIS ORDER

NAME: JAMIE DESPER

RACE	SEX	BORN			HT.		WGT.	EYES	HAIR
		MO.	DAY	YR.	FT.	IN.			

SSN

It appearing that the above-named child is within the purview of the Juvenile and Domestic Relations District Court law, and upon

☒ a petition of [ ] a motion of SHENANDOAH VALLEY SOCIAL SERVICES or [ ] the Court's own motion, a hearing has been held, notice has been given as prescribed by law, and the Court has found it necessary to protect the child's life, health, safety or normal development. Therefore, the Court orders that:

ANN MARIE DESPER

NAME OF PERSON (No. 1) SUBJECT TO ORDER (PARENT, GUARDIAN, LEGAL CUSTODIAN OR OTHER FAMILY OR HOUSEHOLD MEMBER)

JAMIE DESPER

NAME OF PERSON (No. 2) SUBJECT TO ORDER (PARENT, GUARDIAN, LEGAL CUSTODIAN OR OTHER FAMILY OR HOUSEHOLD MEMBER)

is required to observe reasonable conditions of behavior as set forth below:

- ☒ 1. To abstain from offensive conduct against the child or against a family or household member of the child or against any person to whom custody of the child is awarded.
- ☒ 2. To cooperate in the provision of the following reasonable services or programs designed to protect the child's life, health or normal development: SEE ATTACHMENT TO ORDER OF 1/4/2007
- ☐ 3. To allow [ ] COURT-SELECTED INVESTIGATORY ENTITY to come into the child's home
- ☐ at reasonable times selected by the investigatory entity
- ☐ DATES AND TIMES
- to visit the child and to inspect the fitness of the home and to determine the physical and emotional health of the child.
- ☐ 4. To allow visitation with the child by the following persons:
- ☒ 5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development.
- ☐ 6. To refrain from the following contacts with the child:
- ☐ 7. To leave the residence of the above-named child because the petitioner proved by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of the child; and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health. This condition shall be in effect from
- to and shall be reviewed by the Court on DATE/TIME
- ☒ 8. THIS ORDER WILL TERMINATE 12 MONTHS FROM TODAY.

NOTICE: This order will be entered on the Virginia Criminal Information Network. A motion may be filed with the court at any time requesting a hearing to dissolve or modify this order. However, this order remains in full force and effect unless and until a subsequent order is entered by the Court.

[ ] This ORDER is set for review on DATE at TIME

03/08/2007

DATE

JUDGE

ORDER FOR CUSTODY/VISITATION  
GRANTED TO INDIVIDUAL(S)

Commonwealth of Virginia VA. CODE §§ 16.1-278.15, 20-124.2

JJ028144-01-01 JJ028144-01-02  
JJ028144-02-00 JJ028144-03-00  
Case No. JJ028144-05-00 JJ028144-06-00

08/22/2007

DATE OF HEARING

AUGUSTA CO. J&DR DISTRICT COURT

Juvenile and Domestic Relations District Court

In re: [REDACTED]

NAME OF CHILD

DATE OF BIRTH

Present: ☒ Father JAMIE DESPER ☒ Father's attorney PAINTER  
☐ Mother ANN M. DESPER ☒ Mother's attorney TITUS  
☐ Child [REDACTED] ☒ Guardian ad litem BELEW  
☒ Other GLENDA DESPER ☐ Attorney  
☒ Other AMBER M. MARTINO ☐ Attorney

The above-named child has been brought before this Court upon the filing of a written petition or motion concerning custody or visitation or for which transfer of custody is a dispositional alternative. Legal notice has been given to all proper and necessary parties. All provisions of the Juvenile and Domestic Relations District Court Law have been duly complied with in assuming jurisdiction over the child, and all determinations have been made in accordance with the standards set forth in Virginia Code § 16.1-278.4, § 16.1-278.5, § 16.1-278.6 or § 16.1-278.8 or § 16.1-278.15 and §§ 20-124.1 through 20-124.6.

HAVING CONSIDERED ALL RELEVANT AND MATERIAL EVIDENCE PRESENTED AND THE BEST INTEREST OF THE CHILD, THE COURT FINDS THAT THE CHILD IS WITHIN THE JURISDICTION OF THIS COURT AND FURTHER FINDS AND ORDERS THAT:

1. ☒ The parties are in agreement on the arrangement for the child's custody and visitation:
  - ☐ as set forth in the attached document, which is incorporated.
  - ☐ as set forth below.
2. Custody/Visitation  
LEGAL AND PHYSICAL CUSTODY OF [REDACTED] IS GRANTED TO THE PATERNAL GRANDMOTHER, GLENDA DESPER.

The basis for the decision determining custody or visitation has been communicated to the parties orally or in writing.

3. ☐ A supplemental sheet with additional findings and/or orders is attached and incorporated.
4. Relocation. Each party intending a change of address shall give 30 days advance written notice of such change of address to the court and other party, pursuant to Virginia Code § 20-124.5. Unless otherwise provided in this order, this notice shall contain the child's full name, the case number of this case, the party's new telephone number and new street address and, if different, the party's new mailing address. Unless otherwise provided in this order, the notice shall be mailed by first-class or delivered to this court and to the other party.
5. Access to Records. In accordance with Virginia Code § 20-124.6, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records of that parent's minor child, unless otherwise provided in this order or, in the case of health records, if the minor's treating physician or clinical psychologist has made a part of the child's health record a written statement that furnishing to or review by the parent of such health records would be reasonably likely to cause substantial harm to the minor or another person.
6. This Order is ☒ FINAL ☐ TEMPORARY and a final hearing on this matter will be held on

8-28-07 at [REDACTED]  
DATE JUDGE

Exhibit 5

Affidavit of Glenda Desper



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**James Paul Desper,**

**Plaintiff,**

**Civil Action No.**

**V.**

**Harold Clarke, et al.,**

**Defendants.**

**AFFIDAVIT OF GLENDA DESPER**

I, Glenda Desper, swear or affirm that the following facts are true and correct:

1. James Paul Desper is my son. [REDACTED] is his daughter and my granddaughter [REDACTED] is 11 years old. She has been asking to see her father.
2. [REDACTED] has been going to see her father ever since he got locked up in September 2009. The last time she was able to visit him was around December 2015, after that she was taken off his visitation list until he applied for and is approved for a sex offender exemption to visit with her.
3. On April 10, 2016 I filled out a Sex Offender Minor Visitation Questionnaire and sent it to his counselor. I continuously contacted the Department of Corrections regarding the visitation to no avail. They would not tell me anything no matter who I talked to.
4. [REDACTED] was denied visitation with her father on June 10, 2016. Me nor no one else was notified of that decision. Finally on February 24, 2017 I got an email from the Department of Corrections saying that she was denied. So from June 10, 2016 through February 24, 2017 no one knew she was denied.
5. I have noticed a drastic change in her demeanor and attitude for the worse since she has not been allowed to visit her father.
6. I called the Department of Corrections again on June 16, 2017 to ask the names of the people who are members of the Sex Offender Visitation Committee. They would not tell me. Furthermore, their names are not listed on the Department of Corrections website.

COMMONWEALTH OF VIRGINIA:

COUNTY OF AUGUSTA:

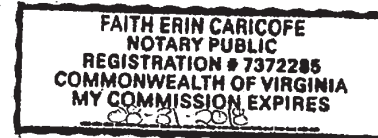
Subscribed and sworn to before me this 25<sup>th</sup> day of August, 2017.

Glenda Desper  
Glenda Desper

Faith Caricofe  
NOTARY PUBLIC

Registration No.: 7372285

My commission expires: August 31, 2018





# Exhibit 6

Transcript of indecent liberties charge

VIRGINIA: IN THE CIRCUIT COURT OF AUGUSTA COUNTY

COMMONWEALTH OF VIRGINIA

v.

JAMES PAUL DESPER

File No. CR07000264-00

TRANSCRIPT OF

TRIAL

HELD ON

SEPTEMBER 10, 2007

BEFORE

THE HONORABLE THOMAS H. WOOD

AT

STAUNTON, VIRGINIA

APPEARANCES:

FOR THE COMMONWEALTH:

FOR THE DEFENDANT:

THE ACCUSED:

THE HON. THOMAS KNOLL, JR.

SCOTT BAKER, ESQUIRE

JAMES PAUL DESPER

 COPY

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Views of Counsel.....	10
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PRELIMINARY MATTERS:

1 COURT: Mr. Knoll, are you ready to proceed  
2 in the case of Commonwealth of Virginia against James Paul Desper?  
3 MR. KNOLL: Yes, Your Honor.  
4 COURT: Mr. Baker, are you ready to  
5 proceed?  
6 MR. BAKER: Yes, Your Honor.  
7 COURT: Mr. Baker, do you have all the  
8 witnesses here today that you desire to have here?  
9 MR. BAKER: I do, Your Honor.  
10 COURT: Any guidelines involved in this  
11 case?  
12 MR. KNOLL: Yes, Judge.  
13 COURT: What are the sentencing  
14 parameters for this?  
15 MR. KNOLL: The parameter is seven months up  
16 to one year...  
17 COURT: No. Ten years?  
18 MR. KNOLL: Let me look.  
19 COURT: Mr. Baker, what are penalty limits  
20 for this Code Section, do you know?  
21 MR. BAKER: Ten.  
22 COURT: Ten years?  
23 MR. BAKER: Yes, sir.  
24 COURT: Mr. Desper?

DEFENDANT ARRAIGNED/QUESTIONED BY COURT:

1 MR. DESPER: Yes, sir.

2 COURT: Have you conferred with your  
3 attorney concerning your plea to the charge?

4 MR. DESPER: Yes, sir.

5 COURT: At this time I want you to step over  
6 to the Clerk's desk and be arraigned.

7 DEPUTY COURT CLERK: In the Circuit Court of the said  
8 County, the jurors of the Commonwealth of Virginia in and for the body of the County  
9 of Augusta and now attending the said Court, upon their oath present, that on or  
10 about the 14th day of May, 2007, in the said County of Augusta, Virginia, James  
11 Paul Desper, a person being eighteen years of age or over, who maintained a  
12 supervisory relationship over [REDACTED] a child under the age of eighteen  
13 years, did knowingly and intentionally, with lascivious intent, expose his sexual or  
14 genital parts to such child, in violation of Virginia Code Section 18.2-370.1.

15 What is your plea to this charge?

16 MR. DESPER: Guilty.

17 DEPUTY COURT CLERK: The plea is guilty, Your Honor.  
18 Could you raise your right hand? Do you make oath that you will answer truthfully  
19 and honestly the questions propounded to you by this Court?

20 MR. DESPER: I do.

21 DEPUTY COURT CLERK: Okay, if you would have a seat  
22 please.

23 COURT: Mr. Desper, before I accept your  
24 plea of guilty to this charge, I'll ask you certain questions. If you do not understand



DEFENDANT ARRAIGNED/QUESTIONED BY COURT:

1 any question, please ask me to explain it to you.  
2 What is your full name?  
3 MR. DESPER: Jamie Paul Desper.  
4 COURT: What is your date of birth?  
5 MR. DESPER: [REDACTED]  
6 COURT: What was the last grade in school  
7 you completed?  
8 MR. DESPER: Twelfth.  
9 COURT: Where did you go to school?  
10 MR. DESPER: Stuarts Draft.  
11 COURT: Have you had any education since  
12 high school?  
13 MR. DESPER: No, sir.  
14 COURT: Are you the person charged in the  
15 indictment with taking indecent liberties with a child?  
16 MR. DESPER: Yes, sir.  
17 COURT: Do you fully understand the charge  
18 against you?  
19 MR. DESPER: Yes, sir.  
20 COURT: Have you discussed this charge  
21 and the elements of this charge with your lawyer and do you understand what the  
22 Commonwealth must prove before you can be found guilty?  
23 MR. DESPER: Yes, sir.  
24 COURT: Have you had enough time to

DEFENDANT ARRAIGNED/QUESTIONED BY COURT:

1 discuss with your lawyer any possible defense you may have to this charge?

2 MR. DESPER: Yes, sir.

3 COURT: Have you discussed with your  
4 lawyer whether you should plead not guilty or guilty?

5 MR. DESPER: Yes, sir.

6 COURT: After this discussion, did you  
7 decide for yourself that you should plead guilty?

8 MR. DESPER: Yes, sir.

9 COURT: Are you entering your plea of guilty  
10 freely and voluntarily?

11 MR. DESPER: Yes, sir.

12 COURT: Are you entering your plea of  
13 guilty, Mr. Desper, because you are guilty?

14 MR. DESPER: Yes, sir.

15 COURT: Do you understand that by  
16 pleading guilty you are not entitled to a trial by jury?

17 MR. DESPER: Yes, sir.

18 COURT: Do you understand that by  
19 pleading guilty you waive your right not to incriminate yourself?

20 MR. DESPER: Yes, sir.

21 COURT: Do you understand that by  
22 pleading guilty you waive your right to confront and cross-examine your accuser?

23 MR. DESPER: Yes, sir.

24 COURT: Do you understand that by

DEFENDANT ARRAIGNED/QUESTIONED BY COURT:

1 pleading guilty you waive your right to defend yourself?

2 MR. DESPER: Yes, sir.

3 COURT: Do you understand that if you are  
4 on parole or probation at this time a conviction in this case may effect your parole or  
5 probation?

6 MR. DESPER: Yes, sir.

7 COURT: Has anyone connected with your  
8 arrest and prosecution, such as the police, the Commonwealth's Attorney, or any  
9 other person in any manner threatened you or forced you to enter your plea of  
10 guilty?

11 MR. DESPER: No, sir.

12 COURT: Has anyone made any promises to  
13 you?

14 MR. DESPER: No, sir.

15 COURT: Do you understand the maximum  
16 punishment for this offense is, what is it, ten years?

17 MR. KNOLL: Ten.

18 COURT: Ten years in the penitentiary?

19 MR. DESPER: Yes, sir.

20 COURT: Do you understand this Court could  
21 impose that maximum in this case?

22 MR. DESPER: Yes, sir.

23 COURT: Have you reviewed the sentencing  
24 guidelines with your lawyer?

DEFENDANT ARRAIGNED/QUESTIONED BY COURT:

1 MR. DESPER: Yes, sir.

2 COURT: Do you understand that in Virginia  
3 the Judge is not required to follow those guidelines?

4 MR. DESPER: Yes, sir.

5 COURT: Up until this point, Mr. Desper, are  
6 you entirely satisfied with the services of Mr. Baker?

7 MR. DESPER: Yes, sir.

8 COURT: Do you understand that by  
9 pleading guilty you may effectively waive any right that you have to appeal the  
10 decision of this Court?

11 MR. DESPER: Yes, sir.

12 COURT: Have you entered into a plea  
13 agreement with the Commonwealth's Attorney in this case?

14 MR. DESPER: No, sir.

15 COURT: Mr. Desper, do you understand all  
16 the questions I have asked you?

17 MR. DESPER: Yes, sir.

18 COURT: Do you have any questions you  
19 want to ask me at this time before we go any further?

20 MR. DESPER: No, sir.

21 COURT: All right. Considering the answers  
22 that Mr. Desper has given to the questions propounded to him by the Court, the  
23 Court will accept his plea of guilty. The Court finds that plea is voluntary and  
24 intelligently entered by him after the advice of counsel. The Court further finds that

STIPULATED EVIDENCE:

1 Mr. Desper understands the nature of the charge against him and is aware of the  
2 consequences of his guilty plea.

3 Mr. Knoll?

4 MR. KNOLL: Your Honor, if we were to try this  
5 case, our evidence would show that on May 14, 2007, the defendant took an  
6 eighteen-year-old girl and -- took an eighteen-year-old girl over to his home and, I'm  
7 sorry -- on May 14 the defendant, who was over the age of eighteen years of age,  
8 and Ann Desper, his wife, took a victim, [REDACTED], who was 16 years of age,  
9 to their residence in Augusta County. Once they arrived, they, the defendant and his  
10 wife, proceeded to partially undress the child, the 16-year-old, and then the  
11 defendant removed his penis from his pants and put it up against the 16-year-old's  
12 face. She resisted and screamed at which point another man from another room in  
13 the house came and made both the defendant and his wife stop what they were  
14 doing to the 16-year-old child. That would be our evidence in this case, Judge.

15 COURT: Is this their house?

16 MR. KNOLL: Yes. Wait a second. Wait a  
17 second. It says a residence. It might not be the Desper home, Judge. It says a  
18 residence, not their residence. It happened at [REDACTED] Fishersville,  
19 Virginia.

20 COURT: [REDACTED]

21 MR. KNOLL: Yeah. [REDACTED] Let me look here.  
22 That's right, it is not, definitely not their residence, because the warrant says Desper,  
23 James Desper is [REDACTED]

24 COURT: Mr. Baker, do you stipulate the



VIEWS OF COUNSEL/JUDGMENT OF THE COURT:

1 statement by the Commonwealth's Attorney be the Commonwealth's evidence?

2 MR. BAKER: Yes, Your Honor.

3 COURT: Do you wish to offer any evidence?

4 MR. BAKER: No, Your Honor.

5 COURT: All right. What are your views?

6 MR. KNOLL: Judge, this would be a joint

7 recommendation and that recommendation would be that the defendant be found

8 guilty as charged, that he receive five years with three years and six months

9 suspended for a period of five years. That leaves an active sentence of eighteen

10 months. That after his release, the defendant be placed on supervised probation for

11 three years and that as a condition of that probation is that he is to have no

12 unsupervised contact with any child under the age of eighteen years of age while on

13 probation.

14 COURT: Mr. Baker?

15 MR. BAKER: Your Honor, we would join in that

16 recommendation.

17 COURT: Mr. Desper would you like to make

18 any further statement at this time?

19 MR. DESPER: No, sir.

20 COURT: Do you know of any reason that

21 the Court should not pronounce judgment at this time?

22 MR. DESPER: No, sir.

23 COURT: Mr. Desper on your plea of guilty

24 and on the stipulated evidence the Court will find you guilty of taking indecent

JUDGMENT OF THE COURT:

1 liberties with a child. I will sentence you to a term of five years in the penitentiary, I  
2 will suspend three years and six months of that, which gives you a year and a half --  
3 eighteen months to serve. I will place you on active supervised probation with the  
4 Court for a period of three years beginning with the date of your release from  
5 incarceration. The terms and conditions of your probation are that you will obey all  
6 state, federal and local laws, that you be of good behavior and keep the peace, that  
7 you pay your Court costs, that you have no contact of any kind unsupervised with  
8 any child under the age of eighteen years, male or female, that you obey any  
9 additional term or condition of your probation that may be given to you by your  
10 probation officer. And Mr. Desper, if you comply with all the terms and conditions of  
11 your probation, in three years after it begins this case will be over with as far as this  
12 Court is concerned. You violate any of the terms of your probation, you will be  
13 arrested and you will be brought back before the Court and you will be required to  
14 serve all or whatever part of the suspended sentence as would appear appropriate to  
15 the Court at that time. Do you have any question about any of that?

16 MR. DESPER: No, sir.

17 COURT: At this time I want to advise you  
18 that you have a right to appeal the judgment of the Court to the Virginia Court of  
19 Appeals. If you cannot afford to appeal, the Court will provide you with a lawyer and  
20 a transcript and whatever else you need to perfect that appeal.

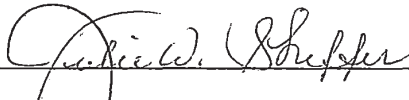
21 I want the record to reflect that the defendant has been present in all stages  
22 of the proceeding against him with his attorney and capably represented by his  
23 attorney. That will be all.

24 \*\*\*\*\*

COMMONWEALTH OF VIRGINIA, to-wit:

I, Julie W. Sheffer, a Court-Appointed Court Transcriptionist for the County of Augusta, do hereby certify as follows: That the foregoing is a transcript of the Trial in the matter of Commonwealth of Virginia v. James Paul Desper, held on the 10th day of September, 2007, in the Circuit Court of Augusta County, at Staunton, Virginia, The Honorable Thomas H. Wood presiding; That said transcript was prepared by the undersigned from a digitally recorded compact disc, recorded by the Clerk of said Court, which disc was returned to their Office, and that said writing is a true and correct transcript of the trial, according to the best of my knowledge and belief; That I am not related to or associated in any way with counsel or the parties to this proceeding, nor financially interested in the outcome hereof.

Given under my hand this 30th day of January, 2012, at Staunton, Virginia.

  
Julie W. Sheffer,  
Deputy Clerk



Filed in the Clerk's Office of the  
Circuit Court of Augusta County

Time 3:30 PM Date: 1-30-12

TESTE:

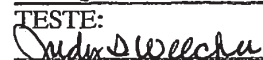
 Dep. Clk.  
Date: Jan 30, 2012

Exhibit 7

Inquiry letter dated 1/7/17

11/7/17

To: Visitation Inquiries  
Department of Corrections  
PO Box 26963  
Richmond, VA 23261

To whom it may concern:

I have not heard anything about my daughter's  
visitor application yet. Her name is [REDACTED]  
I haven't seen her in over a year. When I completed  
the sex offender evaluation they told me that it  
wouldn't take no more than 6 months and that I  
would be contacted directly. I need to know what  
is going on with that. Please respond as soon  
as possible. Thank you.

Sincerely,

Jamie Desper



Exhibit 8

Inquiry letter dated 5/2/17

5/2/17

TO: Sex Offender Visitation Committee  
Virginia Department of Corrections  
Central Visitation Unit  
PO Box 26963  
Richmond, VA 23261

To whom it may concern:

I am writing in regards to the email you sent to my mother, Glenda Desper on February 24, 2017, regarding my daughter [REDACTED]'s visitation disapproval. It looks like she was disapproved on 6/10/2016. NO notification was sent out. I didn't she was disapproved until February 24, 2017. According to operation procedure 951.1 "if an applicant is approved a notification shall be sent. IF an applicant is disapproved a notification shall be sent stating the reasons for such decision." Please respond to this letter stating the reasons why she was disapproved. Thank you. L

Sincerely,  
Jamie Desper

Exhibit 9

Inquiry letter dated 6/19/17 and certified  
mail receipt

6/18/17

To: Sex offender visitation committee  
Virginia Department of Corrections  
Central visitation unit  
PO Box 26963  
Richmond, VA 23261

To whom it may concern:

I have written two letters regarding visitation with my daughter, [REDACTED] and got no response. One on January 7, 2017 and one on May 2, 2017. Per D.O.C. policy 951.1 anytime a visitation applicant is denied I'm suppose to be notified of that decision and the reasons why they were denied. I never got anything like that when my daughter was denied. Also I need to know the names and titles of each member of the sex offender visitation committee and the sex offender Program Director. Thank you.

Sincerely,

Jamie Desper

Exhibit 10

visitation disapproval notice



[Click here to enable desktop notifications for Virginia's Con](#)

More

Mail

COMPOSE

Fwd: Visitation Status

Inbox x

Inbox (7,982)

Starred

Important

Chats

Sent Mail

Drafts (2)

All Mail



Search people...

Candace Moomau

Deborah Baker

Faison Dana

Fretwell, Jonathan...

Gloria McDonaldson

gmcdonaldson6001

hardinc

harris

klid2682



glendadesper@yahoo.com

to me

Sent from my iPad

Begin forwarded message:

**From:** "Visitation Applications (VADOC)" <VisitationApplications@vadoc.virgin

**Date:** February 24, 2017 at 2:45:45 PM EST

**To:** "glendadesper@yahoo.com" <glendadesper@yahoo.com>

**Subject:** Visitation Status

Glenda Kay Desper,

The Sex Offender Visitation Committee has reviewed your request for Desper # 1204039. Unfortunately, the minor's visitation has been disapproved, you may re-submit evaluation forms after 6/10/2017.

Thank you,

Virginia Department of Corrections

Central Visitation Unit

**SEX OFFENDER DISAPPROVAL**



Click here to [Reply](#) or [Forward](#)

TO: United States District Court  
210 Franklin Rd., SW, Suite 540  
Roanoke, VA 24011

Date: March 19, 2018

RE: James Paul Desper v. Harold Clarke, et al.  
Civil Action No. 7:17-cv-00549

Dear Clerk of Court,

My mother sent the original of this letter from my daughter expressing her upset over not being able to visit me. The letter was sent back to her for some reason. I have enclosed a copy of that letter and labeled it as Exhibit 11, and would like it to become part of the records. Thank you.

Sincerely,

James Desper

James Desper #1204039

March 16, 2018

James Paul Desper

v.

Harold Clarke, Et AL.

Civil ACTION NO. 7:17-CV-00549

to Whom it may concern

My name is [REDACTED] Desper  
My father is Jamie Paul Desper  
I have not seen my father in over 2 years  
and i am very upset and i am almost 12  
years old. I have seen him for the first  
5 years. And i was told that i  
could no longer see him. I miss my dad  
i do not have a mother in my life.  
My GrandParents are taking care of me  
So please let me see him please. And  
My dad is very very important to me  
and he is important in my life. Can't you  
see i love him soooooo much.

Thanks

[REDACTED] Desper

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division**

JAMES P. DESPER,

Plaintiff,

v.

CASE NO. 7:17-cv-549

HAROLD CLARKE, *et al.*,

Defendant.

**MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**

COME NOW Defendants Clarke and Robinson, by counsel, and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully move this Honorable Court to dismiss the claims against them, for the reasons set forth in the Memorandum accompanying this Motion.

Respectfully submitted,

HAROLD CLARKE and A. DAVID ROBINSON,  
Defendants.

By: s/ Margaret Hoehl O'Shea  
Margaret Hoehl O'Shea, AAG, VSB #66611  
Attorney for Defendants  
Criminal Justice & Public Safety Division  
Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, Virginia 23219  
(804) 225-2206  
(804) 786-4239 (Fax)  
Email: moshea@oag.state.va.us

**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of April, 2018, I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF participants: N/A, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: James P. Desper, #1204039, Augusta Correctional Center, 1821 Estaline Valley Road, Craigsville, VA 24430.

By: s/ Margaret Hoehl O'Shea  
Margaret Hoehl O'Shea, AAG, VSB #66611  
Attorney for Defendants  
Criminal Justice & Public Safety Division  
Office of the Attorney General  
202 North 9<sup>th</sup> Street  
Richmond, Virginia 23219  
(804) 225-2206  
(804) 786-4239 (Fax)  
Email: [moshea@oag.state.va.us](mailto:moshea@oag.state.va.us)



**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
Roanoke Division**

JAMES P. DESPER,

Plaintiff,

v.

CASE NO. 7:17-cv-549

HAROLD CLARKE, *et al.*,

Defendant.

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION TO DISMISS**

Plaintiff James Desper has filed suit under 42 U.S.C. § 1983, claiming that Defendant Clarke, Director of the Virginia Department of Corrections (“VDOC”), and Defendant Robinson, Chief of Corrections Operations for VDOC, violated his constitutional rights by enacting and enforcing policies limiting visitation between incarcerated sex offenders and minor children. Because the allegations against these Defendants fail to establish a plausible constitutional violation, the complaint should be dismissed.

**STATEMENT OF FACTS**

“[W]hen ruling on a defendant’s motion to dismiss, a [trial] judge must accept as true all of the factual allegations contained in the complaint.” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted). So viewed, and as pertinent to this motion, the essential allegations of the complaint are as follows:

1. Plaintiff James Desper is an inmate within the Virginia Department of Corrections (“VDOC”), currently incarcerated at Augusta Correctional Center. (Compl. ¶ 4.)

2. Defendant Harold Clarke is the Director of the Virginia Department of Corrections, and Defendant A. David Robinson is Chief of Corrections Operations for VDOC. (Compl. ¶¶ 5-6.)

3. Desper is a convicted sex offender (Virginia Sex Offender Registry ID 22010), who is required to comply with the provisions of VDOC Operating Procedure 851.1 in order to have visitation with minor children. (Compl. ¶ 10 & Exhibit 2.)

4. Section IV(C) of Operating Procedure 851.1 sets forth the policies pertaining to visitation for convicted sex offenders. Specifically, “[o]ffenders with any conviction requiring registration in the *Sex Offender and Crimes against Minors Registry* will not be allowed to visit with any minor until granted a sex offender visitation exemption.” OP 851.1(IV)(C), *Visiting Privileges* (attached as Exhibit 2 to the Complaint).

5. To obtain an exemption to permit visitation with biological children, an offender must have been charge-free for six months, and there cannot be a court order prohibiting or restricting the requested visitation. *Id.*

6. To apply for an exemption, an inmate sex offender must complete and submit a questionnaire to his case counselor. The parent or guardian of the minor must also complete a questionnaire and mail it directly to the case counselor. Upon receipt of both questionnaires, the exemption request is referred to an evaluator, who completes an assessment of the inmate. The assessment and both questionnaires are then forwarded to a committee, who will review the exemption request. The committee then makes a recommendation to the operations manager. An offender who is denied a sex-offender visitation exemption is allowed to re-apply after one year. *Id.*

7. Desper has filled out and submitted the paperwork required by Operating Procedure 851.1, but his requests for visitation with his daughter, a minor child, have been denied twice. (Compl. ¶¶ 11-13, 16.)

8. Desper was convicted of indecent liberties in 2007, but that “alleged victim” was “not [his] daughter,” and was instead “about 16 or 17 years of age.” (Compl. 14.)

9. Although not alleged in his complaint, public records reveal that Desper also has three rape convictions from 2010, involving sexual intercourse with a mentally incapacitated 18 year-old girl, who was determined to have an IQ of 60 and the overall mental capacity of an eight-year-old child. *See Desper v. Commonwealth*, No. 2116-10-3, 2011 Va. App. LEXIS 343 (Ct. App. Nov. 8, 2011).

#### **ARGUMENT AND AUTHORITIES**

“[T]he purpose of Rule 12(b)(6) is to test the legal sufficiency of the complaint.” *Randall v. United States*, 30 F.3d 518, 522 (4th Cir. 1994). “To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible if the complaint contains “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” and if there is “more than a sheer possibility that a defendant has acted unlawfully.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556); *see also* Fed. R. Civ. P. (8)(a)(2); *Francis v. Giacomelli*, 588 F.3d 186 (4th Cir. 2009). Also, although the Court must consider all of the factual allegations of the complaint as true, the Court is not bound to accept a legal conclusion couched as a factual assertion, *Iqbal*, 556 U.S. at 663-64, nor should the Court accept a plaintiff’s “unwarranted

deductions,” “rootless conclusions of law” or “sweeping legal conclusions cast in the form of factual allegations.” *Custer v. Sweeney*, 89 F.3d 1156, 1163 (4th Cir. 1996).

Desper alleges that VDOC’s continued denial of visitation with his minor child violates the association clause of the First Amendment, as well as the Due Process and Equal Protection clauses of the Fourteenth Amendment. Because an incarcerated inmate has no constitutional right to visitation, however, the denial of that privilege cannot stand as the basis for an action under 42 U.S.C. § 1983.

#### **A. First Amendment**

As the United States Supreme Court recognized in an analogous context, “[f]reedom of association is among the rights least compatible with incarceration. Some curtailment of that freedom must be expected in the prison context.” *Overton v. Bazzetta*, 539 U.S. 126, 131 (2003); *see also White v. Keller*, 438 F. Supp. 110, 117 (D. Md. 1977) (“Freedom of physical association is inconsistent with an incarcerative penal system.”). For this reason, “[m]atters of visitation are within the discretion of prison administrators and should only be subject to [] court supervision if a prison’s practice in this field interferes with the attorney-client relationship. Further, neither prisoners nor visitors have a constitutional right to prison visitation.” *Harris v. Murray*, 761 F. Supp. 409, 412 (E.D. Va. 1990); *see also Wright v. Vitale*, 1991 U.S. App. LEXIS 15230, at \*2 (4th Cir. July 16, 1991) (“[V]isitation is a privilege and not a constitutional right.”); *Mauldin v. Rice*, 1987 U.S. App. LEXIS 18967, at \*2 (4th Cir. Nov. 20, 1987) (“[I]t is clear that [the inmate] does not have a constitutional right to visitation, contact or otherwise.”); *Shrader v. White*, No. 82-0247-R, 1983 U.S. Dist. LEXIS 15888, at \*18 (E.D. Va. June 29, 1983) (“If the state grants visitation privileges, it may place restrictions, even harsh conditions, upon the exercise of that privilege.”).

Because an inmate does not have a constitutional right to physical visitation, it follows that the denial of visitation privileges does not implicate or violate the First Amendment. Accordingly, to the extent that Depser seeks to ground his constitutional claim on the association clause of the First Amendment, his complaint does not state a plausible claim to relief. *See, e.g., Howell v. Weisner*, 2006 U.S. Dist. LEXIS 56582, at \*2 (W.D.N.C. Aug. 1, 2006) (dismissing complaint where the inmate, a convicted sex offender, complained that he had been denied visitation with his minor children, reasoning that “neither prisoners nor would-be visitors possess a constitutional right to prison visitation,” and, because “no constitutional right to prison visitation exists,” the complaint failed to state a plausible claim to relief).

Moreover, even if there were some limited constitutional right to physical visitation between an inmate and his minor child, policies restricting “an inmate convicted of sexual offense[s] . . . from visitation for a period of time with his own children” are “rationally related to legitimate penological interests,” and therefore do not violate the federal constitution. *Howell*, 2006 U.S. Dist. LEXIS 56582, at \*2-3; *see also Turner v. Safely*, 482 U.S. 78 (1987).

First, a limitation on physical visitation between a convicted sex offender and minor children has a “valid, rational connection” to legitimate governmental interests—specifically, the protection of the children, themselves, and a desire to promote appropriate contacts for sex offender treatment programs. *See Overton*, 539 U.S. at 133 (“Protecting children from harm is also a legitimate goal.”); *Alex v. Beard*, 2010 U.S. Dist. LEXIS 33677, at \*13 (M.D. Pa. Apr. 6, 2010) (“[I]t is logical that where prison officials believe a sex offender’s contact with any particular individual would not promote treatment or rehabilitation efforts, visitation with particular individuals should be prohibited.”).

Second, although Desper has not been granted physical visitation with his minor child, he is not prohibited—and has not alleged that he is prohibited—from using alternative means to exercise his asserted right. For example, convicted sex offenders “can communicate with those who may not visit by sending messages through to those who are allowed to visit,” and “[t]hey and other inmates may communicate with persons outside the prison by letter and telephone.” *Overton*, 539 U.S. at 135; *cf. Tormasi v. Hayman*, 2011 U.S. Dist. LEXIS 25849 (D.N.J. Mar. 14, 2011) (nothing that a potentially viable First Amendment challenge may arise solely out of a factual pattern showing an inmate as barred from every and all contact with his family, regardless of the means of communication). Thus, “the fact that [Desper] may maintain contact with his children through means other than visitation supports the reasonableness of the [prison visitation] policy.” *Wirsching v. Colorado*, 360 F.3d 1191, 1201 (10th Cir. 2004).

Third, accommodating Depser’s desire for unhampered physical visitation with his minor child would upset the deferential judgment typically afforded the policy decisions of prison administrators, and would also “impair the ability of corrections officers to protect all who are inside a prison’s walls.” *Overton* 539 U.S. at 135. And fourth, Depser has not proposed any “ready alternatives” to the VDOC visitation policies—he simply seeks an exemption from them. Thus, based on the facts as alleged in this complaint, Desper cannot carry his burden of establishing the invalidity of the VDOC visitation policy. *See Overton*, 539 U.S. at 136.

In sum, because there is no constitutionally-protected right to physical visitation with a minor child, Desper has not stated a plausible First Amendment claim. And even if some limited right were recognized, the VDOC policy—which Desper has attached to his complaint—survives rational basis scrutiny under the four *Turner* factors. For these reasons, the First Amendment allegation fails to state a viable claim to relief. *See generally White v. Keller*, 438 F. Supp. 110,



114 (D. Md. 1977) (“The weight of authority is that there is no affirmative constitutional right to visitation; that is, constitutional challenges asserting a right to visitation fail even to state a claim.” (citation omitted)), *aff’d*, 588 F.2d 913 (4th Cir. 1978).

## **B. Due Process**

To the extent that Desper alleges a procedural due process violation, that claim also fails. As the Fourth Circuit has held, a state official’s failure to abide by procedural rules and regulations does not, in and of itself, state a federal due process issue. *Riccio v. County of Fairfax, Va.*, 907 F.2d 1459, 1469 (4th Cir. 1990). Rather, “[t]o state a procedural due process violation, a plaintiff must (1) identify a protected liberty or property interest and (2) demonstrate deprivation of that interest without due process of law.” *Prieto*, 780 F.3d at 248. If, and only if, the inmate can establish a protected liberty interest, is it necessary to examine the sufficiency-of-process surrounding deprivation of that interest. *See id.*; *see also Ky. Dep’t of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

As the Supreme Court has explicitly held, “[t]he denial of prison access to a particular visitor ‘is well within the terms of confinement ordinarily contemplated by a prison sentence,’ and therefore is not independently protected by the Due Process Clause.” *Ky. Dep’t of Corr.*, 490 U.S. at 461 (quoting *Hewitt v. Helms*, 459 U.S. 460, 468 (1983)). To establish a protected liberty interest, then, Desper must: “[1] point to a Virginia law or policy providing him with an expectation of avoiding the conditions of confinement and [2] demonstrate that those conditions are harsh and atypical in relation to the ordinary incidents of prison life.” *Prieto*, 780 F.3d at 252.

Desper’s due process claim fails on both fronts. Far from having an expectation of avoiding limitations on his visitation privileges, the VDOC policy at issue explicitly states that

“[o]ffender visitation is a privilege,” which may be restricted “to ensure the security and good order of the facility.” OP 851.1(I). And the policy plainly states that “[o]ffenders with any conviction requiring registration in the Sex Offender and Crimes against Minors Registry will not be allowed to visit with any minor until granted a sex offender exemption.” OP 851.1(IV)(C)(12). Far from creating an expectation or “right” to visitation privileges, VDOC policy creates an initial status quo that no visitation with minor children will be permitted. The lack of any policy or law creating a vested interest in physical visitation is fatal to Desper’s procedural due process claim. *See, e.g., Ky. Dep’t of Corr.*, 490 U.S. at 462-63.

Moreover, even if there were some vested interest in visitation created by the VDOC policy, that interest would only implicate the due process clause if its deprivation “imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life.” *Sandin v. Conner*, 515 U.S. 472, 484 (1995); *see also Wolff v. McDonnell*, 418 U.S. 539, 563-64 (1974). Considering, as discussed above, the alternative communication options available for VDOC inmates, the mere denial of face-to-face visitation does not impose an atypical and significant hardship in relation to the ordinary incidents of prison life. *See, e.g., Ozolina v. Durant*, 1996 U.S. Dist. LEXIS 2122, at \*1 (W.D. Pa. Feb. 26, 1996) (holding that, under *Sandin*, “there is not right to visitation protected by the Due Process Clause”).

For these reasons, Desper has not alleged a plausible due process claim, and Defendants request that any due process allegation be dismissed for failure to state a claim.

### **C. Equal Protection**

The equal protection clause requires that persons similarly situated be treated alike. *Plyer v. Doe*, 457 U.S. 202 (1982). However, this mandate “does not take from the States all power of classification,” *Personnel Adm’r v. Feeney*, 442 U.S. 256, 271 (1979), but “keeps governmental

decision-makers from treating differently persons who are in all relevant respects alike,” *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992). For this reason, in order to state a claim for an equal protection violation, a plaintiff must demonstrate that he has been treated differently from others who are similarly situated, and that the unequal treatment was the result of intentional discrimination. *Morrison v. Garraghty*, 239 F.3d 648 (4th Cir. 2001). If the plaintiff does not make this threshold showing, the Court need not determine whether the alleged disparate treatment was justified under the appropriate level of scrutiny. *Ephraim v. Angelone*, 313 F. Supp. 2d 569, 573-74 (E.D. Va. 2003). Also, when an equal protection claim is brought by an inmate, that allegation must be analyzed in light of a prison’s special security and management concerns. *Morrison*, 239 F.3d at 655.

Here, Desper fails to allege that he has been treated differently than other, similarly-situated individuals (*i.e.*, convicted sex offenders with a similar criminal history and visitation request), nor has he plausibly alleged that any disparate treatment was the result of intentional discrimination on the part of these named Defendants. Accordingly, any equal protection claim should be dismissed for failure to state a plausible claim to relief. *See generally Mauldin*, 1987 U.S. App. LEXIS 18967, at \*1-2 (holding that prison regulations restricting visitation for certain inmates “does not violate [the inmate’s] fourteenth amendment right to equal protection”).

#### **D. Ex Post Facto**

Desper briefly references the *ex post facto* clause, presumably intending to allege that the enactment of the VDOC sex offender policy in 2014 changed the status of permitted visitation with minors and, therefore, violated this constitutional provision. But “[a]s the text of the Clause makes clear, the *ex post facto* prohibition applies only to ‘laws.’” Accordingly, “the constitutional prohibition against *ex post facto* laws . . . is directed to the legislative branch of government

rather than to the other branches.’’ *United States v. Ellen*, 961 F.2d 462, 465 (4th Cir. 1992) (quoting *Prater v. U.S. Parole Comm’n*, 802 F.2d 948, 951 (7th Cir. 1986) (en banc)). VDOC policies do not have the force and effect of law; they are not legislative in nature. Administrative policies that simply provide a guide as to the exercise of executive discretion cannot violate the *ex post facto* clause. Because this VDOC policy does not increase the length of Desper’s sentence or otherwise prolong his incarceration, it neither implicates nor violates the *ex post facto* clause of the federal constitution.

### **CONCLUSION**

Because there is no First Amendment right to physical, face-to-face visitation between an inmate and a minor child, and because, regardless, VDOC’s visitation policy regarding sex offenders is rationally-related to legitimate government interests, the policy withstands judicial and constitutional scrutiny. Also, because an inmate does not have a vested liberty interest in physical visitation with a minor child, denial of that privilege does not violate the due process clause. And because Desper has not alleged disparate treatment as a result of intentional discrimination, he has not stated an equal protection claim.

For these reasons, Defendants Clarke and Robinson respectfully request that the complaint be dismissed for failure to state a claim upon which relief can be granted.

Respectfully submitted,

HAROLD CLARKE and A. DAVID ROBINSON,  
Defendants.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of April, 2018, I electronically filed the foregoing Memorandum in Support of Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following CM/ECF participants: N/A, and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant: James P. Desper, #1204039, Augusta Correctional Center, 1821 Estaline Valley Road, Craigsville, VA 24430.

By: s/ Margaret Hoehl O'Shea  
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CLERKS OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

APR 30 2018

JULIA O. DUDLEY, CLERK  
BY: *[Signature]*  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

James Paul Desper,

Plaintiff,

Civil Action No.

v.

7:17-cv-00549

Harold Clarke, Director of  
the Department of Corrections;

A. David Robinson, Chief of

Operations; Maria Stransky,  
Sex Offender Program Director;

Marie Vargo, Corrections Operations

Administrator; Jane/John Doe for

each member of the Sex Offender  
visitation committee, sued in their  
official and individual capacities,

Defendants.

JURY TRIAL  
DEMANDED

AMENDED COMPLAINT



## Introduction

1. Pursuant to Rule 15(a), Fed. R. Civ. P.

Mr. Desper files this amended civil rights complaint correcting the deficiencies in his initial complaint and adding 2 defendants. This is a civil rights action filed by James Paul Desper, a state prisoner, for damages, declaratory judgment, and injunctive relief under 42 U.S.C. section 1983, alleging denial of his rights and privileges to visit with his daughter in violation of the Association Clause of the First Amendment, and the due process and equal protection clauses of the Fourteenth Amendment to the United

States Constitution, and the deprivation of privileges under section 1983. He was denied visitation with his daughter because he is a convicted sex offender, while other sex offenders get to visit with their minor children and, on information and belief some have similar or worse criminal history than Mr. Desper. In this amended complaint Mr. Desper excludes the ex post facto claim.

### Jurisdiction

2. The court has jurisdiction over the plaintiff's claims of violation of federal constitutional rights and privileges



under 42 U.S.C. Sections 1331(1) and 1343.

### Exhaustion of Administrative Remedies

3. There were no available administrative remedies because the issues complained of herein are nongrievable pursuant to Operating Procedure 966.1 (Exhibit 1, p. 6).

### Parties

4. The plaintiff, James Paul Desper, was incarcerated at the Augusta Correctional Center during the events described in this Complaint and still resides there.

5. Defendant Harold W. Clarke is the Director of the Department of Corrections. He

was responsible for overseeing the day-to-day operations of the Department of Corrections when the violations occurred.

6. Defendant A. David Robinson is the Chief of Corrections operation of the Virginia Department of Corrections. He implemented the policy that resulted in the violations. He was responsible for selecting members of the Sex Offender Visitation Committee.

7. Defendant Maria Stransky is the Sex Offender Program Director. According to policy a copy of the assignment to an evaluator was forwarded to the sex offender program



Director who had a part in the violations.

8. Defendant Marie Vargo is the Corrections Operation Administrator. She is responsible for actually approving or denying visitation.

9. Defendant(s) Jane/John Doe for each member of the Sex Offender Visitation Committee. They are responsible for reviewing offenders for a sex offender exemption and then recommending whether or not to approve or deny visitation. Their names are unknown to Mr. Desper. He hopes to obtain that information through discovery.

Facts

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10. Around December 2015 Mr. Desper's daughter, K.D. was removed from his approved visitors list. At the time Operating Procedure 851.1 states that "Offenders with any conviction requiring registration in the Sex Offender and Crimes against Minors Registry will not be allowed to visit with any minor until granted a sex offender visitation exemption. (Minors currently approved for such visits on the effective date of this operating procedure may be allowed to continue visiting pending review for an exemption.) (Exhibit 2, p.6).

His daughter was removed from his visitors



list without notice and before he even started the exemption process.

11. On March 2, 2016 Mr. Desper filled out a Sex offender Minor Visitation Questionnaire and gave it to his counselor and on April 10, 2016 Mr. Desper's mother, Glenda Desper filled out a Sex offender Minor Visitation Questionnaire and mailed it to Mr. Desper's counselor. (Exhibit 3). His counselor then submitted both forms to the Department of Corrections. Mr. Desper was evaluated by a mental health professional around April or May 2016.

12. By an order dated March 12, 2007

the court awarded Mr. Desper reasonable visitation. The protective order that was entered on March 8, 2007 only lasted 12 months which terminated on March 8, 2008.

On August 28, 2007 legal and physical custody was transferred to Mr. Desper's mother, Glenda Desper. (Exhibit 4). Through this whole process the court never took away his visitation rights nor did they terminate his parental rights.

13. Glenda Desper stated in a sworn affidavit, (Exhibit 5), the following:

- Jamie Paul Desper is my son. K.D. is his daughter and my granddaughter. K.D. is 11 years old. She has been asking to see her



• Father. (Par. 1).

- K. D. has been going to see her father ever since he got locked up in September 2009. The last time she was able to visit him was around December 2015, after that she was taken off his visitation list until he applied for and is approved for a Sex offender exemption to visit with her. (Par. 2).
- On April 10, 2016 I filled out a Sex Offender Minor Visitation questionnaire and sent it to his counselor. I continuously contacted the Department of Corrections regarding the Visitation to no avail. They would not tell me anything no matter who I talked to. (Par. 3).
- K. D. was denied visitation with her father on June 10, 2016. Me nor no one else was notified of that decision. Finally on February 24, 2017 I got an email from the Department of Corrections saying that she was denied. (Exhibit 10). So from June 10, 2016 through February 24, 2017 no one knew she was denied. (Par. 4).
- I have noticed a drastic change in her demeanor and attitude for the worse since she has not been allowed to visit her father. (Par. 5).
- I called the Department of Corrections again

On June 16, 2017 to ask the names of the people who are members of the Sex Offender Visitation Committee. They would not tell me. Furthermore, their names are not listed on the Department of Corrections website. (Par. 6).

14. The alleged victim from the indecent liberties charge that occurred in 2007 was not his daughter. She was about 16 or 17 years of age as the transcript shows. (Exhibit 6, pgs. 4 & 9).

15. Mr. Desper sent a letter to the Department of Corrections about his daughter's visitor's application on January 7, 2017. (Exhibit 7). No response was provided. Mr. Desper sent another letter to the Department of Corrections on May 2, 2017



regarding his daughter's visitation. (Exhibit 9).

No response was provided for the second letter.

Mr. Desper sent a third letter to the Department

of Corrections on June 19, 2017. This time he sent

it through certified mail return receipt requested.

(Exhibit 9). Again, he received no response. He

didn't even get the signed return receipt back

where they received it. His daughter even wrote

a letter in her own words how much she wants

to visit her father. (Exhibit 11).

16. On or around June 10, 2017 Mr. Desper

started the whole process again to have his

daughter approved to visit him. He was



evaluated by a different mental health professional in August 2017. The visitation was disapproved again in September 2017. Again, no notice was provided to Mr. Desper. Mr. Desper's mother, Glenda Desper called the Department of Corrections. The person she talked to said that there was no specific reason why the visitation was disapproved.

### CONCLUSION

17. WHEREFORE, plaintiff requests that the court grant the following relief:

A. Issue a declaratory judgment explaining that defendants violated plaintiff's constitutional rights under the First Amendment

association clause, and the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution and deprived Mr. Desper of the privilege of visiting with his daughter for no legitimate reason.

B. Issue an injunction ordering defendants to allow Mr. Desper to visit with his daughter as he was previously doing since 2009.

C. Punitive damages for the violation of Mr. Desper's constitutional rights and the deprivation of the privilege to visit with his daughter in the amount that this court



deems appropriate and the costs of this action.

Date: 4/23/18

Respectfully submitted,

James Paul Desper

James Paul Desper #1204039

1821 Estaline Valley Rd.

Craigsville, VA 24430

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day  
of April, 2018 I placed this amended complaint  
in the institutional mailing system by first  
class mail to the United States District  
Court for the Western District of Virginia,  
210 Franklin Rd., SW, Suite 640, Roanoke,  
VA 24011.

James Desper  
James Desper #1204039