



ISSN 1935-0007

*Cite as:* 2007 (10) AELE Mo. L. J. 301

Jail & Prisoner Law Section – October, 2007

## **Prisoner Marriage**

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### **1. Introduction**

Prisons and jails nationwide often confront issues concerning prisoners' requests to marry, including requests to have marriage ceremonies at correctional facilities, or to be granted furloughs for the purpose of marriage ceremonies elsewhere.

This article attempts to briefly examine some of the important court decisions on these issues, especially from the perspective of federal constitutional law. No attempt has been made to be exhaustive, or to summarize many particular wrinkles that may arise under applicable state law. The article also does not attempt to fully examine issues concerning inmate divorce, conjugal visits, or visitation in general.

Additionally, while at least one state [Massachusetts, see [Goodridge v. Dep't of Pub. Health](#), 440 Mass. 309, 798 N.E.2d 941 (2003)] and a number of foreign countries have now sanctioned same-sex marriage, and a growing number of states have recognized same sex civil unions which have many of the characteristics of marriage, the article does not attempt to address special questions that may arise out of same-sex marriage and civil unions, given the current dearth of case law on the subject as it relates to prisoners.

In the final section of the article, there are links to a number of useful resources, including some sample policies or regulations.

### **2. Prisoner Marriage**

The U.S. Supreme Court, in [Turner v. Safley](#), No. 85-1384. 4872 U.S. 78 (1987) ruled that prisoners have a right, under the U.S. Constitution, to marry. In

that case, the Court addressed, among other issues, a challenge by inmates to a regulation of the Missouri Division of Corrections which allowed an inmate to marry only with the prison superintendent's permission, which could be given only when there were "compelling reasons" to do so.

Evidence in the case indicated that, as a practical matter, only a pregnancy or the birth of an illegitimate child was considered "compelling" enough to grant such permission. The U.S. Supreme Court upheld decisions by the trial court and U.S. Court of Appeals for the Eighth Circuit which struck down this regulation as unconstitutional.

The Court found that the constitutional right of prisoners to marry was impermissibly burdened by the regulation. It stated that prisoners have a constitutionally protected right to marry under [Zablocki v. Redhail](#), No. 76-879, 434 U.S. 374 (1978) (stating that the right to marry is a fundamental right), while acknowledging that inmate marriages can be subject to "substantial restrictions" as a result of incarceration.

Still, the Court found, despite incarceration, "sufficient important attributes of marriage" remain to form a constitutionally protected relationship. Prisoners retain constitutional rights not inconsistent with status as a prisoner, or with legitimate penological objectives of a corrections system.

The right to marry, the Court noted, like many other rights, is subject to substantial restrictions as a result of incarceration. The Court held that prison regulations that impinge on an inmates' constitutional rights must be "reasonably related" to legitimate penological interests.

To determine whether it is reasonable, a court must examine whether there is a "valid, rational connection" between the regulation and a legitimate and neutral governmental interest put forward to justify it, which connection "cannot be so remote" that the regulation is "arbitrary or irrational," whether there are alternative means of exercising the asserted constitutional right that remain open to inmates (on which alternatives, a court must utilize a measure of judicial deference to the expertise of correctional officials), and whether and the extent to which accommodation of the asserted right will have an impact on prison staff, on inmates' liberty, and on the allocation of limited prison resources. Finally, a court must consider whether the regulation represents an "exaggerated response" to prison concerns.

The Supreme Court found that, under this "reasonable relationship" test, the Missouri marriage regulation was "facially invalid." While prison officials can regulate the time and circumstances under which a marriage takes place, the Court

stated, and may require prior approval of the marriage by a warden, the “almost complete ban” on marriage actually imposed was not reasonably related to legitimate penological objectives.

The court reasoned that the argument that the regulation served security concerns by preventing “love triangles” that might lead to violent prisoner confrontations was without merit, because such inmate rivalries were likely to develop with or without a formal marriage ceremony.

The Court also found that the broad prohibition on marriage imposed was not justified by security concerns for prison staff and fellow inmates, who were not affected when a prisoner makes a “private decision” to marry a civilian. In conclusion, the Court found that the regulation represented an “exaggerated response” to the claimed security concerns, and that allowing marriages unless the warden found a threat to security, order, or public safety represented an obvious and easy alternative that would accommodate the right to marry while imposing a minimal burden.

The Court rejected the argument, also, that the regulation was reasonably related to the articulated rehabilitation goal of encouraging self-reliance by female prisoners. It concluded that requiring refusal of permission to marry to all inmates in the absence of a compelling reason was a restriction more broad than necessary. This was particularly true, the Court noted, given correctional officials’ testimony that male inmates’ marriages had generally caused them “no” problems, and that they had no objections to prisoners marrying civilians.

The Supreme Court also rejected the contention that its decision was in contradiction with its prior ruling in Butler v. Wilson, #73-6081, 415 U.S. 953 (1974), summarily affirming Johnson v. Rockefeller, No. 72 Civ. 1699, 365 F. Supp. 377 (S.D.N.Y. 1973). That case involved a New York prohibition on marriage only for inmates sentenced to life imprisonment, and in which denial of the right was part of the punishment for the crime. In that case, the trial court had noted that, under New York state law, a person sentenced to life imprisonment was deemed “civilly dead,” and could only marry if granted parole or after being discharged from parole. See also, Ferris v. Dept. of Correctional Services, 517 N.E.2d 1370 (N.Y. 1987) (inmate serving life sentence can not enter valid marriage in New York; denied conjugal visits). To the contrary is Langone v. Coughlin, #84-CV-1177, 712 F. Supp. 1061 (N.D.N.Y.), in which the federal court stated the opinion that the right to marry is a fundamental right for persons serving life sentences, and enjoined enforcement of the rule disallowing such a marriage as a violation of equal protection).

One application of the principles set forth in Turner is found in Toms v. Taft,

No. 01-4035, 338 F.3d 519 (6th Cir. 2003). In that case, an Ohio prisoner became engaged to a woman while he was incarcerated. They were unable to obtain a marriage license, however, since he could not appear in person to apply for it, and a court declined to waive the requirement that he personally appear before a probate court to get one. (In Ohio, county probate courts issue marriage licenses). A state statute allows the waiving of the personal appearance requirement in cases involving illness or physical disability, but makes no exception for incarceration.

A judge did offer, however, to assist the couple to marry by appointing a correctional employee designated by the warden as a deputy clerk of the county probate court for the purpose of issuing the marriage license. The warden of the prison, however, declined the prisoner's request that he designate someone, stating that "I do not see myself or the institution being involved in this process," other than allowing a brief marriage ceremony during normal visiting hours if the couple obtained a marriage license.

The warden repeated this position in response to a request by an attorney that the couple hired, citing a policy of the Ohio Department of Rehabilitation and Correction that specifies that "all preparatory obligations, such as securing a marriage license, are the sole responsibility of the couple to wed."

The director of the Department made the same response, stating that obtaining a marriage license is the couple's responsibility, and that it is not the responsibility of the Department to obtain marriage licenses for inmates in its custody." The couple filed a federal civil rights lawsuit against the warden, the director, and a number of other defendants, claiming violations of their right to marry and right of access to the courts, seeking injunctive and monetary relief.

At a settlement conference, it was agreed that the county probate court would deputize an employee of the central office of the state correctional department as a clerk to issue the marriage license to the inmate at the prison. Approximately two weeks later, the plaintiffs were married. The claims for injunctive relief were then dismissed as moot.

A federal appeals court upheld a determination that the individual defendants were entitled to qualified immunity from the claims for money damages. While the prisoner had a clearly established constitutional right to marry, the court found, the right to the "affirmative assistance" of prison and judicial officials in doing so was not so clearly established that the defendants would have believed that declining to provide assistance in obtaining a marriage license was unconstitutional.

Similarly, in [Martin v. Snyder](#), No. 02-1135, 329 F.3d 919 (7<sup>th</sup> Cir. 2003), the

court found that prison officials were entitled to qualified immunity on a claim for damages for postponing a prisoner's marriage to his fiancée for twelve months, since it was not clearly established that a delay of that length was unconstitutional. The lawsuit's claims for injunctive relief were moot, since prior restrictions on the fiancée's visits were lifted and the couple had been allowed to marry.

Some other decisions upholding various restrictions and procedures concerning the marriage of inmates include: *Hanselman v. Fiedler*, #92-C-130, 822 F. Supp. 1342 (E.D. Wis. 1993) (prison could require inmates who wished to get married to attend six premarital counseling sessions without violating prisoner rights, *Leach [State Ex Rel.] v. Schotten*, #94-1594, 653 N.E.2d 356 (Ohio 1995) (inmate was not entitled to judicial order requiring warden to transport him to court clerk's office to sign marriage license, or requiring warden to allow clerk to visit prison to get inmate's signature), and *In re Appeal of Coats*, #334-MDA-2003, 849 A.2d 254 (Pa. Super. 2004) (while a prisoner had a fundamental constitutional right to marry, there was no duty on the part of a court clerk to travel to the prison to conduct a required oral examination to enable the prisoner to obtain a marriage license without personally appearing at the clerk's office, or to implement video conferencing so that the interview could be remotely conducted).

Officials do not have to allow prisoners, or even parolees, to use their exercise of their fundamental right to marry as a device to escape custody altogether. In *Williams v. Wisconsin*, No. 02-4233, 336 F.3d 576 (7<sup>th</sup> Cir. 2003), for example, a court found that a parole rule which absolutely prohibited the parolee traveling internationally to the Philippines to marry a woman with whom he had been corresponding did not violate his constitutionally protected right to marry or to travel, and was justified by the state's desire to avoid losing all right to supervise the parolee once he was outside the country. The rule did not absolutely prohibit him from marrying, but merely affected the timing or place of his marriage plans.

What about a marriage to a prison employee? In *Wolford v. Angelone*, #98-0055, 38 F. Supp. 2d 452 (W.D. Va. 1999), the court held that a policy of discharging a prison employee for her intimate association with a state prison inmate was rationally related to a legitimate interest in prison security.

Current federal prison regulations on [prison marriages](#), 28 C.F.R. Secs. 551.10-551.16 and 551.111, mandate that prisoners seeking to be married must meet all the requirements of the state's marriage law, must be mentally competent, must obtain a written verification, by their intended spouse, of their intention to marry them, and must file a formal application for approval of the marriage, which may only be denied because legal requirements are not met, the marriage presents a threat to the security or good order of the institution, or the marriage presents a threat to public safety.

Once approved, a request must be submitted to the warden if the prisoner wants to have a ceremony in the institution, which may be granted or denied on the basis of security considerations. Prisoners are responsible for all ceremony expenses, and may be considered for a furlough for the purpose of getting married—if they are otherwise eligible for a furlough.

In some instances, federal prisoners who have a detainer or pending charges against them may also face a review by prison staff of the legal effects, if any, of the marriage on the charges against them. In those cases, the prison staff is allowed to look to the court, the U.S. Attorney, and the immigration authorities (in the case of aliens) for advice on the marriage requests of pretrial prisoners.

### **3. Relevant Resources**

The federal [Bureau of Prisons](#) (BOP) has regulations which govern the topics of prisoner marriage, including authority to approve a marriage, eligibility to marry, special circumstances, furloughs for the purpose of marriage, marriage ceremony in the institution, birth control, pregnancy, abortion, and child placement of a female inmate's new born child. [28 C.F.R. Secs. 551.10-551.551.24](#).

Some sample policies or regulations of interest available online include inmate marriage policies or regulations of correctional departments in [Alaska](#), [Arkansas](#), [New Hampshire](#), [New Mexico](#), [New York](#), [Oklahoma](#), and [Tennessee](#). No attempt has been made to be exhaustive, and the policies listed are provided purely for informational purposes. As always, any policy developed for a particular department or facility should be developed in consultation with local legal counsel.

An Interesting article available online is a chapter of Columbia University Human Rights Law Review's [A Jailhouse Lawyers' Manual](#), (Seventh Edition 2007) entitled [Prison Marriage and Divorce](#).

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#### **AELE Monthly Law Journal**

Bernard J. Farber  
Jail & Prisoner Law Editor  
841 W. Touhy Ave.  
Park Ridge IL 60068-3351 USA  
E-mail: [bernfarber@aol.com](mailto:bernfarber@aol.com)  
Tel. 1-800-763-2802

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