

Children's Law Center of Indiana



CUSTODY AND PARENTING TIME

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In **Indiana v. Gick**, 106 N.E.3d 1052 (Ind. Ct. App. 2018), the Court held that the trial court exceeded its authority by issuing an order requiring the Indiana Department of Corrections (DOC) to allow visitation between Mother and her child while Mother was in custody of the DOC for sex crimes against a minor. The Court reversed the trial court's order and remanded the matter with instructions.

Mother pled guilty to Level 4 felony sexual misconduct with a minor, and was sentenced to six years of incarceration, with four years executed and two years suspended. The DOC has a general policy that sex offenders who have committed crimes against minors must seek permission from the DOC unit team to have visitation with a minor. If this request is denied, the inmate can request a review of the decision by the Director of the Sex Offender Management and Monitoring Program (SOMM). A decision from the SOMM is final and binding. In certain situations, an offender might be granted visitation outside of this process. A warden may, at the warden's discretion, allow visitation with a minor in three circumstances: "(1) The offender is in the last stages of a terminal illness and it appears that the offender's death is imminent. (2) The facility receives a court order instructing it to allow the offender to visit with a specific minor... (3) A therapeutic visit is requested by the victim's licensed therapist". *Id.* at 1053. Mother wanted visitation with her three year old son during her incarceration, but the DOC unit and the SOMM denied the request. Mother then wrote to her criminal trial court asking for a visitation order. The trial court issued an order providing that visitation was up to the DOC, and that there were no conditions in Mother's sentence which would prevent visitation. Mother then filed a motion to compel the DOC to allow visitation, alleging that the "current facility rules permit parent and child visitation only by authorization of the sentencing Court." *Id.* at 1054. The trial court then ordered the DOC to allow visitation between Mother and her son. The DOC intervened and filed a motion to correct error, which the trial court denied.

Mother had no statutory or administrative right to judicial review of her the DOC's denial of visitation, and the denial was not a violation of her constitutional rights. *Id.* at 1054-55. The State argued that the trial court had no legal authority to order the DOC to allow visitation between Mother and her son. *Id.* at 1054. The Court noted it would review the matter *de novo*, as it was a question of law. *Id.* The Court cited prior case law and said that trial courts generally have no jurisdiction over a prisoner after the prisoner has been convicted, sentenced, and delivered to the DOC, and as such, there is a long standing principle that trial courts do not interfere with internal procedures and policies of the DOC. *Id.* (internal citations omitted). Indiana statutory law empowers the DOC to control and regulate visitation for incarcerated

persons. Id. IC 11-11-3-9 provides that the DOC may prevent inmates convicted of a sex offense against minors from having visitation with a minor, though if visitation is denied, the DOC must provide the inmate with written notice and the inmate has the ability to challenge this decision through internal DOC procedures. The Administrative Orders and Procedures Act does not give incarcerated persons with the ability to have judicial review of DOC action. Id. at 1054, citing IC 4-21.5-2-5(6). Furthermore, IC 11-11-3-9 does not provide for a private cause of action. Id., citing Medley v. Lemmon, 994 N.E.2d 1177, 1184-85 (Ind. Ct. App. 2013). Finally, the DOC's denial of visitation between an incarcerated person who committed a sex offense against a minor and a minor child is not a violation of the incarcerated person's constitutional rights. Id., citing Doe v. Donahue, 829 N.E.2d 99, 108-11 (Ind. Ct. App. 2005). The Court opined that if the trial court believed visitation was appropriate, it should have issued an order recommending and authorizing visitation, not ordering the DOC to allow visitation to occur, which was outside the trial court's authority. Id. at 1055.