I. PURPOSE

This Memorandum Circular prescribes the Policy on Conjugal Visit as part of the visitation privilege which shall be accorded to persons deprived of liberty (PDL), both male and female, under the jurisdiction of the Bureau of Jail Management and Penology (BJMP).

II. REFERENCES

A. The 1987 Constitution which was ratified on February 2, 1987;

B. Republic Act No. 386 otherwise known as the "Civil Code of the Philippines", as amended;

C. Executive Order No. 209 dated July 6, 1987 otherwise known as the "Family Code of the Philippines";

D. The 2015 NELSON MANDELA RULES also known as the "United Nations Standard Minimum Rules for the Treatment of Prisoners";

E. BJMP Comprehensive Operations Manual, 2015 Edition; and


III. DEFINITION OF TERMS

For purposes of this Memorandum Circular:

A. Common-law Spouses – shall refer to a man and a woman who are capacitated to marry each other but living exclusively with each other as husband and wife without the benefit of marriage.

B. Conjugal Room – refers to a separate room measuring 2.5m x 3.5m equipped with a bed, ceiling fan and comfort room.

C. Conjugal Visitation – refers to the visit by the wife/husband for a short period, usually an hour, more or less, to her/his incarcerated husband/wife during which they are allowed privacy and are generally understood to have sexual contact.
D. Depot Medroxyprogesterone Acetate (DMPA) – refers to a long-acting progestogen-only injectable contraceptive to prevent pregnancy in women. It is given by intramuscular or subcutaneous injection and forms a long-lasting depot, from which it is slowly released over a period of several months. It takes one week to take effect if given after the first five days of the menstrual period cycle, and is effective immediately if given during the first five days of the period cycle. It works as a form of birth control by preventing ovulation.

E. Implant – also called “Nexplanon”, refers to a tiny, thin rod about the size of a matchstick which is inserted under the skin of the woman’s upper arm. It releases progesterin, a hormone that keeps the ovary from releasing eggs and thickens the cervical mucus which helps block sperm from getting to the egg.

F. Legal Spouses – refers to a man and a woman who got married, satisfying all the essential and formal requisites of a valid marriage as evidenced by a marriage certificate.

G. Reproductive Tract Infection (RTI) – refers to sexually transmitted infections (STIs) and other types of infections affecting the reproductive system.

H. Sexually Transmitted Infection (STI) – refers to any infection that may be acquired or passed on through sexual contact, use of “intravenous” (IV), intravenous drug needles, childbirth and breastfeeding.

I. Sterilization – refers to a permanent form of birth control that is extremely effective at preventing pregnancy but it is difficult to reverse. Both men and women can be sterilized. For women, a tubal ligation is performed, whereas, for men, a vasectomy is performed.

J. Strip Search – refers to a search which involves the visual inspection of disrobed or partially disrobed subject.

K. Tubal ligation – refers to a permanent form of birth control where the fallopian tubes of the woman are cut, tied, clamped, banded or sealed shut.

L. Vasectomy – refers to a simple, permanent sterilization procedure for men. It is generally safer and less painful than sterilization in women. The operation, usually done in a doctor’s office, requires cutting and sealing or blocking the “vas deferens” or the tubes in the male reproductive system that carry sperm. A vasectomy prevents the transport of sperm out of the testes. This surgery does not affect the man’s ability...
to achieve orgasm or ejaculate. There will still be a fluid ejaculate, but there will be no sperm in the fluid.

M. Visual Body Cavity Search – refers to a search which involves the inspection of the anus and vaginal area, generally requiring the subject to bend over and spread the cheeks of the buttocks, to squat and/or otherwise expose body cavity orifices.

IV. BACKGROUND/RATIONALE

On May 4, 2012, the BJMP has issued a Memorandum re: Policy on Conjugal Visit. The purposes of which are as follows: (1) to have a uniform policy in the conduct of conjugal visits in all jails under the BJMP; (2) to provide guidelines to be followed by the jail authorities in allowing the practice of conjugal visitation; and (3) to set conditions as well as exceptions in identifying PDL who can avail of the privilege of conjugal visit. However, this policy is of limited application. Generally, female PDL were not accorded this privilege due to lack of decent facility and possibility of pregnancy which would engender multiple problems in jail.

Section 12, Article II of the 1987 Constitution provides that, it is the policy of the State to “recognize the sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.” Section 1, Article XV likewise provides that, “the State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.” Finally, Section 2, Article XV mandates that, “marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.”

Additionally, Rule 58 (2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) categorically provides that “where conjugal visits are allowed, this right shall be applied without discrimination, and women prisoners shall be able to exercise this right on an equal basis with men. Procedures shall be in place and premises shall be made available to ensure fair and equal access with due regard to safety and dignity.”

In view of these constitutional provisions and UN Conventions, the policy needs to be reviewed and aligned with the generally accepted State policies and agreements. Likewise, there is need to adapt to the changing needs of time and formulate a new policy which will offer the privilege to all qualified PDL under the jurisdiction of the BJMP. Section 20 (2), Chapter 4, Book IV of the Administrative Code of 1987 vests unto the Director of a line bureau, the power to “establish policies and standards for the operations of the bureau” and “promulgate rules and regulations necessary to carry out bureau objectives, policies and functions.”
V. GUIDELINES

A. General Guidelines

1. A conjugal room shall be provided in every jail, both male and female dormitories. For this purpose, Wardens shall lobby for the construction of rooms specifically for conjugal visitation purposes only and in accordance with the specifications herein provided.

2. Jails which have existing conjugal rooms may continue to use such rooms for the purpose. Provided, however, that the Warden shall endeavor to work out for their improvement in order to meet the specifications of a conjugal room as herein defined.

3. Concerned Wardens shall coordinate with the nearest government hospital so that all interested female PDL may receive an “implant” or “depot medroxyprogesterone acetate (DMPA)”, or their variants, free of charge. They may likewise lobby with the Local Chief Executives through the City or Municipal Health Offices for the same purpose. The Warden shall request a certification that indeed, the subject PDL received an “implant” or “DMPA”.

4. The privilege of availing conjugal visitation shall be accorded to all qualified PDL. **No fees or charges in whatever form shall be collected in the availing of this privilege.**

5. All interested female PDL shall receive an “implant” or “depot medroxyprogesterone acetate (DMPA)”, or their variants, to prevent the occurrence of pregnancy and to qualify in availing the privilege.

6. Female PDL who have undergone “sterilization” shall likewise be qualified to avail the privilege. Provided, however, that a female PDL shall still be qualified to avail such privilege if her legal or common-law spouse has undergone sterilization. Provided, further, that in case of claim of sterilization, they shall be required to present a certification from the Medical Doctor that such procedure was conducted.

7. The privilege of availing conjugal visitation shall only be available to those who are legally married. Provided, that a male and a female who are living together as husband and wife without a valid marriage but without legal impediment to marry each other, regardless of the period of cohabitation, can avail of this privilege.
8. Conjugal visitation shall be on a scheduled basis and shall only be availed of once a month. Every PDL who would wish to avail of the privilege shall signify his/her intention to the Welfare and Development Officer of the jail who shall be responsible in the scheduling of conjugal visitation. The PDL shall submit original or certified true copy of marriage certificate prior to scheduling. In case of common-law spouses, they shall submit certificate of cohabitation from barangay of last residence. The Welfare and Development Officer of the jail shall keep a record of marriage certificates and certificates of cohabitation to include the list of female PDL who received an “implant”, “DMPA” or otherwise sterilized. Further, he/she shall maintain a logbook of the scheduled conjugal visitations.

9. The legal or common-law spouse of the PDL who is scheduled for conjugal visitation shall subject himself/herself to Strip Search and Visual Body Cavity Search without need of a written consent, otherwise, he/she shall be refused entry. The conduct of Strip Search and Visual Body Cavity Search without need of a written consent shall only apply in cases of conjugal visitation.

10. The conjugal visitation shall be from Tuesday to Sunday only. The visitor and her/his spouse shall only be allowed a maximum period of two (2) hours. From Tuesday to Friday, the scheduling shall be from 1:00 pm to 5:00 pm. During Saturdays and Sundays, conjugal visitation shall be from 8:00 am to 12:00 noon and from 1:00 pm to 5:00 pm. The visitor shall be allowed entry one (1) hour prior to schedule. There shall be no overnight conjugal visitation except in meritorious cases such as when a competent court has issued an order specifically allowing the PDL to receive overnight conjugal visitation.

11. Spouses who are both detainees may be granted the privilege of availing conjugal visitation, provided that the Male Dormitory is adjacent or adjoining to the Female Dormitory and a Court Order is secured allowing either of them to be sent out of the jail facility for purposes of conjugal visitation.

12. The privilege of availing conjugal visitation may be suspended by the Warden, as a disciplinary penalty to PDL who violate jail rules and regulations. Provided, however, that when there is an issue on the security of the jail, the Warden may exercise his/her sound discretion and temporarily suspend the privilege of conjugal visitation until such time that the threat to security ceases.

13. Concerned Wardens shall coordinate with the Local Chief Executives through the City or Municipal Health Offices, or with the nearest government hospital for the conduct of quarterly medical evaluation to each and every female PDL. Aside from the quarterly medical evaluation, the Warden, through the Chief, Welfare and Development Section, shall conduct a monthly dialogue and evaluation on the...
adverse effects of the birth control received by the female PDL for proper referral. During the conduct of quarterly medical evaluation, the Warden shall also lobby that pregnancy, reproductive tract infections (RTIs), HIV and AIDS, and other sexually transmittable infections (STIs) tests, shall be performed to all female PDL.

14. Within thirty (30) days from the effectivity of this Memorandum Circular, the Health Service Office (HSO) shall formulate a policy on the management of adverse effects of the birth control received by the PDL including the prevention, treatment and management of RTIs, HIV and AIDS, and other STIs. A separate policy governing the management of pregnant PDL shall likewise be formulated by the HSO.

15. It is an admitted fact that NO birth control method is perfectly accurate, hence, in case of positive findings of pregnancy, the PDL shall NOT be subjected to grievance machinery or any other form of disciplinary action on account of her getting pregnant despite receiving a birth control method.

16. The HSO, through the Regional Offices, shall monitor proper compliance with this Memorandum Circular which may be through ocular inspection, dialogue and submission of reports.

B. Specific Guidelines

1. The visitor shall enter the jail one (1) hour prior to his/her scheduled time for conjugal visitation.

2. Upon entry in jail, the visitor shall present a valid identification card.

3. The visitor shall be informed that he/she must abide by the jail rules and regulations during his/her stay in the jail facility.

4. The Officer of the Day or Desk Officer shall cause the verification from the logbook of conjugal visitation whether the visitor is on schedule.

5. The Officer of the Day or Desk Officer shall likewise cause the verification from the records of the Welfare and Development Officer whether the female PDL visited has received an "implant" or "DMPA", or their variants, or otherwise sterilized.

6. The visitor shall voluntarily submit his/her belongings for thorough inspection by the duty searchers.
7. He/she shall subject himself/herself to Strip Search and Visual Body Cavity Search without need of a written consent, otherwise, he/she shall be refused entry.

8. The visitor shall be issued a visitor’s tag which must be worn at all times while inside the jail facility.

9. The visitor shall then be advised to proceed to a holding area and wait for advice to proceed to the conjugal room.

10. While in the holding area, the Welfare and Development Officer shall inform the visitor of the limitations of the privilege and instruct the visitor to go out on the lapse of two (2) hours. In case the spouses do not go out of the room after the lapse of the time period for their conjugal visitation, duty personnel shall be duty-bound to verify.

11. After the time period of scheduled conjugal visitation has lapsed, the PDL shall be instructed to return to his/her cell and his/her visitor to leave the jail facility.

VI. SEPARABILITY CLAUSE

If any provision or part hereof is held invalid or unconstitutional, the remainder or the provision not otherwise affected shall remain valid and subsisting.

VII. REPEALING CLAUSE

The Memorandum dated May 4, 2012 re: Policy on Conjugal Visit and all other existing BJMP issuances which are inconsistent herewith are hereby repealed or modified accordingly.

VIII. EFFECTIVITY

This Memorandum Circular shall take effect fifteen (15) days from filing thereof with the Office of the National Administrative Register (ONAR), University of the Philippines Law Center (UPLC) in accordance with Sections 3 and 4, Chapter II, Book VII of Executive Order No. 292 otherwise known as the “Administrative Code of 1987”.

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