

December 1, 2023

Ms. Michele Dupuis-Clarke
Program Coordinator
Department of Correction
Legal Division
70 Franklin St. - Suite 600
Boston, MA 02110-1327

Dear Ms. Dupuis-Clarke,

Thank you for the notice dated November 27, 2023 which I received this morning. You informed me that the Department of Correction "intends to proceed to public hearing in connection with promulgation of a new version of 103 CMR 405, Inmate Funds." And, that the Department of Correction notified the "Local Government Advisory Committee" of its intent.

Could you please enlighten me as to who or what the Local Government Advisory Committee is and what is its function?

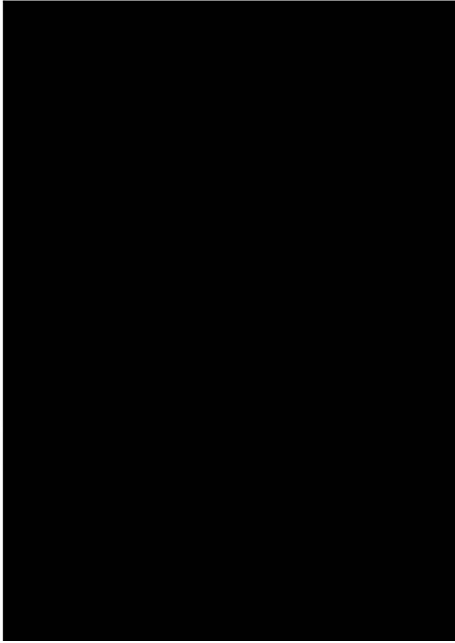
Thank you for your time and consideration of this matter. I look forward to hearing from you.

Sincerely,

[REDACTED]

[REDACTED]





PROVIDENCE RI 028

2 DEC 2023 PM 5 1

Ms. Michele Dupuis-Clarke
Program Coordinator
Department of Correction
Legal Division
70 ~~Franklin~~ Franklin St - Suite 600
Boston, MA 02110-1327

32110-132759

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Ms. Michele Dupuis-Clarke
Program Coordinator III
Department of Correction
Legal division - Suite 600
70 Franklin Street
Boston, MA 02110

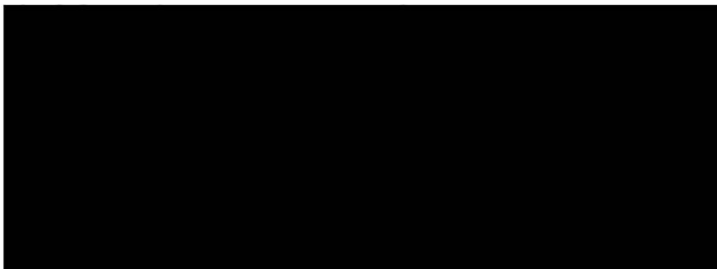
December 12, 2023

Re: Notice of Public Hearing, January 5th 2024; 103 CMR 405 "Inmate Fund Account".

Dear Ms. Dupuis-Clarke:

Enclosed please find my "Testimony" in opposition to proposed amendment to 103CMR405: Fund Accounts.

I do authorize your office, or whomever is chair of this hearing to add to the official record, you may also use this testimony on all websites or other public record which may be favorable to the opposition of any proposal that would codify or enable the DOC to demand a Bill or Invoice as a condition for sending funds from correction facilities in the Commonwealth.



Cc: Attorney Harvey A. Silverglate/w encl.
Attorney John S. Day w/ encl.
Deborah Becker, c/o WBUR Boston Public Radio
Jenifer McKim , c/o WGBH Boston Public Radio
Rebecca Jacobstein, CPCS
PLS
ACLU

w/attachments & enclosures

Original sent via: Certified Mail: R.R.R.

Testimony: OPPOSITION TO PROPOSED AMENDMENTS TO: 103 CMR 405: FUND ACCOUNTS

Since 2019, I've been fighting the Standard Operating Procedure Department of Correction officials have been using to demand a bill or invoice before prisoner funds may be sent from Commonwealth correction facilities: 103 CMR 405.

My lawsuit: Charles N. Diorio vs. Carol A. Mici, Commissioner of DOC has been in Middlesex Superior Court, and now Appeals Court ever since: Middlesex Superior Court 1981 cv 03090.

Prison officials have been using a crisis to take important rights and essential privileges from incarcerated people. This proposed amendment to "Inmate Fund Accounts" is an excuse to strip away the ability to send money to publishers, or anyone giving voice to incarcerated individuals.

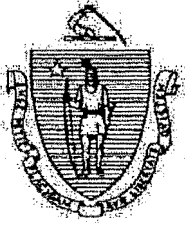
Demanding a "Bill or Invoice" as a condition before sending money from correction facilities is at the heart of this proposed amendment. This demand damages incarcerated people who try to improve themselves; it damages prisoner's relationships with family; it keeps prisoner's from sending money to religious groups or even to make political donations.

Simply put, we live in a modern era where individuals, businesses and organizations simply do not send a "bill or invoice" as in the past. I know. I am a published incarcerated author who find it impossible to receive a bill or invoice be sent from publishers and social media gig workers and so on.

This proposed amendment to 103 CMR 405 is an attack on First Amendment Rights. An attack on Freedom of Speech, Religion and Expression.

The Department of Correction is using as an excuse a drug crisis behind bars; a crisis created by their own years of neglect. Don't believe the lie. Prison officials have plenty of tools, rules and regulations to manage and confront addiction and introduction of drugs behind their prison walls without taking fundamental civil rights of prisoners.

I urge you, I beg you, to see beyond the DOC self serving proposal to amend 103 CMR 405; recognize it for what it is: an unconstitutional power grab.



*The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
Legal Division*

70 Franklin St., Suite 600

Boston, Massachusetts 02110-1327

Tel: (617-727-3300 Ext. 1124)

www.mass.gov/doc



MAURA T. HEALEY
Governor

CAROL A. MICI
Commissioner

SHAWN P. JENKINS
Chief of Staff

KIMBERLEY DRISCOLL
Lieutenant Governor

KELLEY J. CORREIRA
ROBERT P. HIGGINS
MITZI S. PETERSON
THOMAS J. PRESTON
Deputy Commissioners

TERRENCE M. REIDY
Secretary

NANCY ANKERS WHITE
General Counsel

**NOTICE OF PUBLIC HEARING TO BE HELD VIRTUALLY AT 10:00 A.M. ON FRIDAY,
JANUARY 5, 2024**

Notice is hereby given that, pursuant to M.G.L. c. 30A, §2, the Department of Correction will hold a public hearing on proposed amendments to the following regulation:

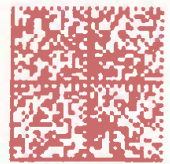
103 CMR 405: Fund Accounts

This hearing is being held in connection with proposed amendments to 103 CMR 405.00 including, but not limited to, the receipt of funds procedures, disbursement of funds procedures, new definitions, and other changes necessary to update the regulation and ensure the regulation reflects current Department practices.

The public hearing on this regulation shall be held virtually at **10:00 a.m. on Friday, January 5, 2024.**

All interested parties are encouraged to submit written comments relating to 103 CMR 405 to Michele Dupuis-Clarke, Program Coordinator III, Department of Correction, 70 Franklin Street, Suite 600, Boston, MA 02110. All comments submitted to the Department will be posted on the Department's website and released in response to a request for public records. All written testimony and comments must be submitted by 5:00 p.m. on Friday, January 5, 2024, in order to be taken under advisement.

Copies of the proposed regulations are available for review in each institution's law library.



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Confidential

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DEC 18 2023

DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

Ms. Michelle Dupuis-Clarke
Program Coordinator III
Department of Cor/ Legal Div.
70 Franklin Street, Suite 600
Boston, MA 02110

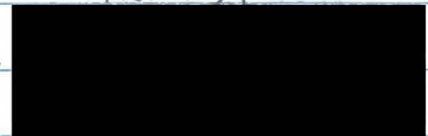
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Dear Michele Dupis Clarke,

12/10/23

For 2 years myself and other incarcerated individuals have been in court fighting the D.O.C because they've been violating 103 CMR 405 and the Commissioner has been slow to respond at every turn and now the D.O.C is proposing a change to 103 CMR 405 without acknowledging that we were right and the D.O.C was violating 103 CMR 405 by making us show a bill before we send money out of our accounts. I know we are incarcerated and our voice in society has been diminished but when do we stop getting harmed. The D.O.C moves around as if it is made of teflon. Rules are broken and nobody gets punished. People die in the D.O.C custody because of negligence and nobody gets punished. The D.O.C violates 103 CMR 405 and they don't get punished. Systems are created by people for people. The D.O.C is a part of the criminal justice system. The people in the D.O.C are harming the people that have been taken out of society and something must change!

Sincerely,



BROCKTON MA 023

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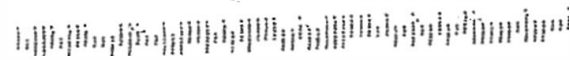
Regarding: 103 CMR 405
Michele Dupuis Clarke
Program Coordinator III
Department of Correction
70 Franklin St. Suite 600
Boston, MA 02110

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DEC 18 2023

DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

02110-132799



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this inmate call 1-866-684-2846 to stop future
correspondence

MICHELE DUPUIS-CLARKE
Program Coordinator III
Department of Corrections
70 Franklin Street, Suite 600
Boston, MA 02110



December 13, 2023

RE: PUBLIC HEARING TO BE HELD ON JANUARY 5, 2024
103 CMR 405: FUND ACCOUNTS

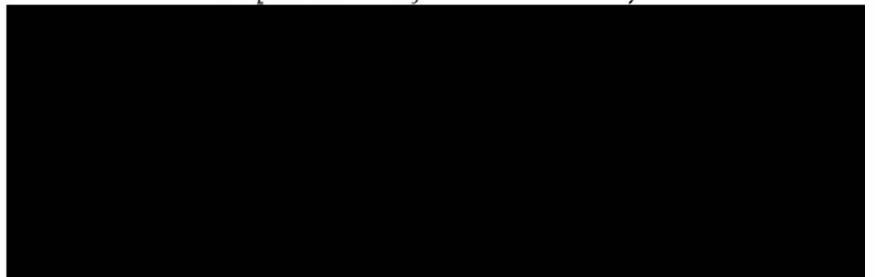
To Whom it may concern:

This letter is to express my concern with the new amendment to CMR 405. FUND ACCOUNTS. I will like the people of Massachusetts to know that any proposed change in the 103 CMR 405 will further restrict the inmates in the Massachusetts Penal Institution from controlling or sending funds to the incarcerated individuals families.

Some incarcerated individuals would like to send the little that is earned to their loved ones.

Thank you for your attention.

Respectfully submitted,

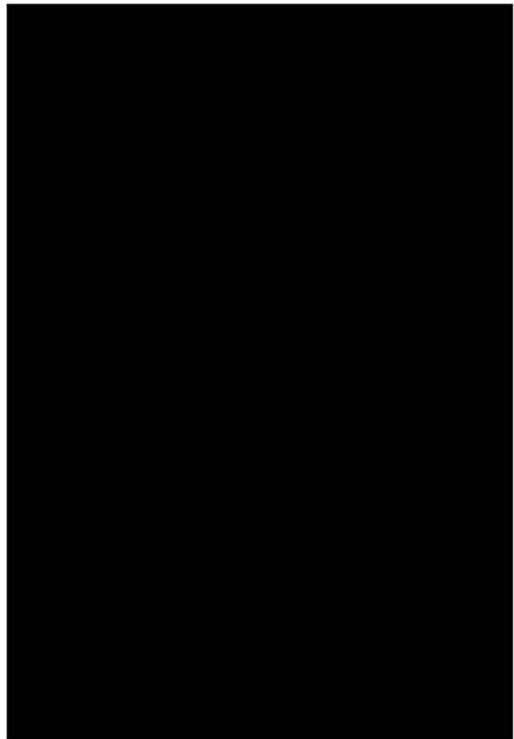


BOSTON MA 020



Michele Dupuis - Clarke
Program Coordinator III
Department of Corrections
70 Franklin Street, Suite #600
Boston, MA 02110
Attn: Suite # 600

02110-132798



To: Program Coordinator Michelle Dupuis-Clarke

From: [REDACTED]

Date: 12/12/2023

Cause: Notice of Public Hearing to New Rules for 103 CMR 405 in the Office of Inmate Funds for Massachusetts Department of Correction.

Dear Program Coordinator Michelle Dupuis-Clarke;

1) My name is [REDACTED]. I am a [REDACTED] year Old Black Man in Boston. My community is the African-Americans on [REDACTED]. My 3 friends on [REDACTED] are: [REDACTED]. They are african [REDACTED] is a community that focuses on support from black people needing enhanced solutions to deal with poverty, low-income, safety issue. I have known [REDACTED] for 30 years since 1993 til 1997 daily.

2) Currently I am housed in [REDACTED]

3) I am a student enrolled in Spectrum Graduate Maintenance Program. The Educational program meets weekly on [REDACTED] weekly. The spectrum class meets on a tablet device which is a hand-held laptop that looks like a hand-held computer. The Tablet is named as a company titled as: American Prison Data Systems Tablet. The new name of the true Educational tablet is: Orijin. The Orijin tablet allows viewers and the speakers to see each other and to communicate at any scheduled time. The tablet is for [REDACTED].

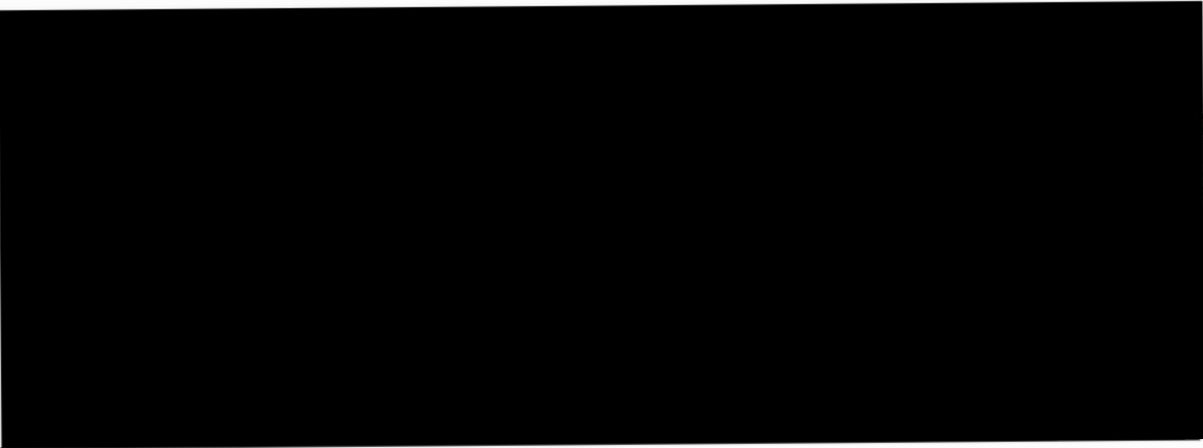
4) My reason for writing you is that the new policy for inmate funds, should reflect the urgency of students in Spectrum class having funds and money to purchase canteen, grocery, food, paper, pens, stamps, books, fan, television, juice, rice, cookies, cakes, fish, cheese, shoes, pants, shirts, hat. A student in school needs funds for scholarship and study guides as a method of improving schools funding & money needs to be increased for student personal accounts in state correctional institutions daily.

5) I have a state employment contract at this correctional facility. I am contracted to work 6 days a week, Monday thru Saturday each week. My work schedule is: [REDACTED] I am assigned to sweep, mop, shine, the Floor of lower left tier of [REDACTED] inside of [REDACTED]

6) Inmate paychecks of \$16.20 a week are granted to [REDACTED]. Paychecks are printed on Wednesday in Inmate Management System computer and viewed on Thursday at 7:am on Edge Services portal inside of the Score 7 Secure Music Player Device a function of Show Balance section inside of Edge Services portal in Inmate Canteen Kiosk Computer on the [REDACTED]. Paychecks are weekly split as \$8.10 in inmate personal account. The split is also \$8.10 in savings. On each Thursday a inmate worker views \$8.10 added to account balance.

7) At [REDACTED] each inmate students is allowed to receive \$100 money-orders & personal checks from family & friends to be deposited in there personal accounts thru inmate mail which is forwarded to inmate accounts office and then the Deposit of \$100 is immediately added to current account balance of inmate personal account located in Edge Services portal, Music Player, Kiosk device, and the true screen of Inmate Management System computer all account forums are to read the same account balance each day, to keep accurate account records. I ask that you include these contracted guidelines in new funds rules.

Truly,
[REDACTED]



BOSTON MA 023

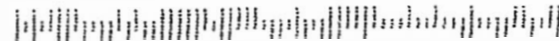
2023 PM 2 L



To: PROGRAM COORDINATOR MICHELLE CLARKE
Department of Correction
70 FRANKLIN STREET
Suite # 600
Boston, Massachusetts 02110



02110-132799





THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT

December 9th 2023



Michelle Dupuis Clarke
Coord.III
Department of Correction
70 Franklin Street, Ste.600
Boston, Mass.02110

RE:Opposition and objection into Propose State Regulation 103
CMR section 405.11(6),(a),(b),(d) Disbursement of Funds
Procedures and 103 CMR 405.13 Donation exclusion.

To whom it May Concern

I'am submitting in accordance with administrative
Procedure Act, and G.L.ch.30A sec.2,4,5,6 my objection into
the record by party of interest implicating a liberty interest and
protection.

The following section is hereby oppose under state regulation
103 CMR 405.11(6)(a),(b),(d), 103 CMR 405.13 Donation.

It reads that the Deputy Superintendent/ADA Coordinator shall
approve or deny the request disbursement unless the Superintendent
advises the I/I in writting that additional time is required
to make a determination

If the request is denied by the Deputy Superintendent or designee
the I/I may request review by the superintendent.. 103 CMR 405.11
(6),(b)..

The language inserted into the proposal state regulation is in
contradicting to the fairness, and impartiality of the whole
procedural of the administration department, and I/I rights.

Section 405.11(6),(a) Reads in Part, that the department shall
approve or deny the request for disbursement, unless the
Superintendent advises the I/I in writting that additional time is
required to make a determination.

Both languages inserted are contradicting the fairness of having
Compelling request of disbursement of funds linger beyond the

the incarcerated individual needs from utilizing his own funds for compelling needs. See M.G.L.ch.127 sec.48 and 48A

Such as cosmetic lotion, shampoo, Q-tips, colgate toothpaste and stamps envelopes for legal mail are denied by the (DOC) to those I/I, under their custody and control.

The only (DOC) state cosmetic supplies that the I/I may receive are state soap, state/china toothpaste and 2 inch toothbrush, unbranded cosmetics, through an long administrative process by the supervisor's.

The (DOC) has utilize the following state regulation 103 CMR 481.05(a),(b), to determine the I/I indigent, status.

Any I/I with no more than \$10 dollars for a period of (60) days in his/her account without any type of transaction, or any I/I with less than \$2.00 dollars for free legal mail postage.

The language withing the mail of indigent conflict with the State Indigent law M.G.L.ch.261 sec.27 and Poverty Freshold rule 3:10 sec.1, sec.9(b) and sec.1(F),(ii) a party is indigent if annual after tax income of 125% or less of then current Poverty see M.G.L.ch.261 subsection 26A(b), February 1st, 2021, Volume 86, No. 19, at page 7732-7734 Poverty Guidelines Chief Kymberly Budd (SJC). This language has derived from the Federal/State Register of the U.S. Department of Health Human Services and entwine withing the State Law of Massachusetts. See 2021 Chief Justice Kymberly Budd newly Guidelines of Poverty withing the Commonwealth Citizen. The (DOC) has not implement coexist state laws languages withing the Funds State Regulation defining I/I Indigent.

The language must, and shall be incorporated withing the Propose State Regulation to give an harmonous interpretation of those state laws altogether. See (DOC) M.G.L.ch.127 sec.3 Safekeeping of I/I Funds and Property.

Money interest shall not become the (DOC) motive of creating or re-adopting any state regulation with any language that implicate upon a liberty interest, and protection without any penological interest of denying the I/I from utilizing his/her money received under donation/gift. from families, Religious Groups and Salvation Army or others friends.

I oppose, and object to the exclusion/preclusion of 103 CMR 405.11(6),(a),(b),(d). The language sound meaningless to the I/I State Constitutional Right, and Declaration Articles 12, 14, 114 of the Massachusetts.

For an I/I to be denied access to his/her money under any compelling reason, and to force the I/I to file any grievance to no avail, sound meaningless to the compelling needs, otherwise being deprive and denied by the (DOC) to those I/I today. incarcerated.

hygiene is a compelling need 24/7, no I/I shall have to await (6) months to receive a grievance response. Citing Jose L.Negron v Carol A.Mici et al Suffolk Sup.Ct. Civil Action Number #2284CV02429, challenging the (SOP) and State Regulation language in conflict and violation of I/I rights under the A.P.A.

OBJECTION AND OPPOSE 405.13

I oppose, and object to section 103 CMR 405.13 Exclusion/Preclusion of donation withing the porposed state regulation under G.L.ch. 30A sec.2,4,5,5A, 950 CMR 20.00 and G.l.ch.30A(agency) state regulation.

Elizabeth Smith v. Comm'r of Transitional Assistance, 431 Mass. 638, 729 N.E.2d 627, 2000 Mass.Lexis 346 SJC#08169(3/7/2000).

The review of the validity of a regulation promulgated byaa state agency is guided by the established principle that "regulations are not to be declare void unless their provision cannot by any reasonable construction be interpreted in harmony with legislative mandates.

Section 103 CMR 405.13 must be rejected from adoption and pre-requisites, because the language conflict with M.G.L.ch.127 sec.3 Safekeeping and Receiving any property that is sent to Incarcerated Individual while in custody, under the (DOC).

The (DOC) action of adopting such language also violates article 30 of the Massachusetts Declaration of Rights, exceeding authority and abuse of power to stop any I/I from receiving donation/gift such (money) into his/her fund account, as part of reentry.

Such (DOC) scheme envision the use of disregard I/I reentry, and adequate shelter, food, living, condition, of confinement, especially when the (DOC) has, and is denying I/I these free supplies under indigent status through out his/her incarcerated period, and is implementing a condition for free supplies under the loaner program for indigent I/I withing the (DOC).

Citing Hoffer v Comm'r of Corr., 397 Mass.152(1986), (the order of the single justice barring the Commissioner of Correction withdrawing the erights of attorney, paralegal organization).

Citing Blaney v Comm'r of Corr., 374 Mass.337(1978), (judicial order mandating department measures to comply with statutory provision).

The Commissioner of Correction obligation is to maintain security safety, and order, while managing the offenders rehabilitation and preperation for reentry back to society with financial aid and support for adequate shelter, food, transportation, clothing and medical cost expenses.

The proposed section 103 CMR 405.13 exclusion of donation/gift from any group or class of protected people incarcerated, Professional or religious does not serve the public interest.

The exclusion of donation/gift from groups/class of people protected under the State Constitution rise to another lawsuit, and more litigation before the courts.

The (DOC) must reject such proposal in state regulation and be reminded that no agency has the force of law to re-adopt any state regulation that conflict with conferred statutes enacted by legislatives and that any/all state regulation for re-adoption, revision, shall be thoroughly screen and review in accordance with G.L.ch.30A sec.2,4,5,6, before becoming adopted by the Secretary of the Commonwealth or register.

I oppose and object to the propose state regulation 103 CMR 405. Fund Account of I/I and C/C.




signed under the pain and penalty of perjury



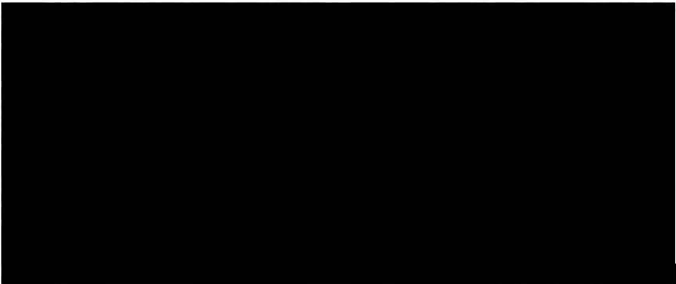
Cc file

Michelle Dupuis Clarke Coor.III(DOC) Legal Div.
Prison Legal Service Jessica White/
lc

certificate of service

I  hereby certify that on this 9th day of December 20  aused aforementioned document to be serve too:
Michelle Dupuis Clarke Coordinator III Legal Division(DOC)
70 Frankling Street, Suite 600 Boston, Mass. 02110 and Jessica
White Prison Legal Service 50 Federal Street, Boston
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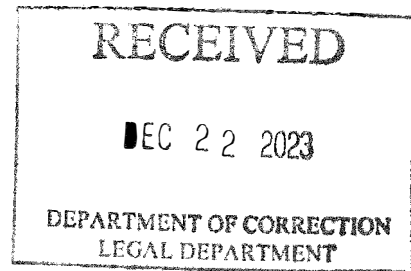
To Michelle Dupuis Clarke
Coordinator III
Department of Correction
Legal Division
70 Franklin Street, Ste-600
Boston, Mass. 02110

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Michelle Dupuis-Clarke Program Coordinator LIZ
Department of Correction
Legal Division
70 Franklin Street Suite 600
Boston MA 02110-1327



Re: 103 CMR 405.00 Inmate Funds

Dear Michelle Dupuis-Clarke Program Coordinator LIZ
Salutations,

Please consider opening an E-Mail account so I could send typed comments in the future. Emails are free now. An account is opened at website www.CorrLinks.com. I see in your November 27, 2023 letter that you can use email address on record with DOC to send out notices.

I hereby extend comments to educate the DOC.

... "A hearing is intended to educate an agency to approaches different from its own; in shaping the final rule it may and should draw on the comments tendered." South Terminal Corp. v. Environmental Protection Agency, 504 F.2d 646, 659 (1st Cir. 1974), re Grocery MFRS. of AM, v. Dept. of Public Health, 393 N.E.2d 881, 888, 379 Mass. 70 (Mass 1979).

Comment 1

At 103 CMR 405.04 Access to Regulations adopting this sentence.
The regulation shall be made available as free download on Inmate Tablets.

There maybe times that an inmate needs access to 103 CMR 405.00 Inmate Funds to resolve a complaint, and to make informed decisions. However, access to Inmate law computer, law library or regulation may not be available, at that time. Adopting the above wording would give inmates free access to the regulation as a free download on inmate tablets.

Said regulation is already in electronic format at www.mass.gov/doc, so in a format that could be provided to Keefe Commissary Network (KCAN) (aka: Access Corrections) to make available free on tablets.

The App Media Store has "Agency" allowing the DOC to put messages on. "Understanding the COVID-19 Vaccine" by Wellpath is written message provided by MA DOC. That Agency App should be able to be used for downloading the Regulation.

Another App that could be used is "Books". Books have free downloads that are from <https://www.gutenberg.net> or a similar "Regulation" App designed, programmed. A know that such Apps can be added or deleted by KCV. KCV at first provided a Music App, catalog to purchase songs. KCV since has deleted that App, so I am unable to purchase songs. Instead KCV has a Subscription App. (Music Subscription)

Clearly the technology is available to get a regulation downloaded free.

Comment 2

The 1032MR 405.00 Inmate Funds (6/30/17) is being considered for Inmate Wage Scale change. I ask to amend the regulation at 103 CMR 405.07(6) to provide pay increases.

Basic Rate

Inmate Wage Scale

- I- \$3.70 per day
- II- \$3.03 per day
- III- \$2.35 per day

The current wording has Inmate Wage Scale by week. I hereby break it down to six and/or five day week.

Inmate Wage Scale	Six day	Five day
-I- \$10.00 per week	\$1.66 per day	\$2.00 per day
-II- \$7.50 per week	\$1.25 per day	\$1.50 per day
-III- \$5.00 per week	\$0.83 per day	\$1.00 per day

In comparison the Draft has these wages per day.

Basic Rate

Inmate Wage Scale

- I- \$2.70 per day
- II- \$2.03 per day
- III- \$1.35 per day

Back in 1968-1969 in Algebra, when we got behind, [redacted] would go "Let's make like French Fries and Catch-Up!" The class laughed. It was a good play on words, a joke.

Inflation is no joke, though. I think when I came into prison a one ounce stamp was around twenty cents. Now its sixty-six cents. An inmate that has institutional job may have Medical co-payments, Hair Cut fee, along with need to purchase necessities of life, e.g. toothpaste, shampoo, Electric Razor, etc.

My proposed change would give a pay increase, the Federal Government increase minimum wage. That shows the need for wage increase.

I do like the draft in that a daily wage rate is given. Those rates are like current, recent, SBCC procedure, August 2022, etc.

page 19 Inmate Job Description

Upper Common Area Inmate Worker

Rates of pay: \$1.35 to \$2.70 per-day

page 21 Show/Rec Deck Inmate Worker

Rates of Pay: \$1.35 to \$2.70 per-day.

wherefore, I pray that my comments be adopted.

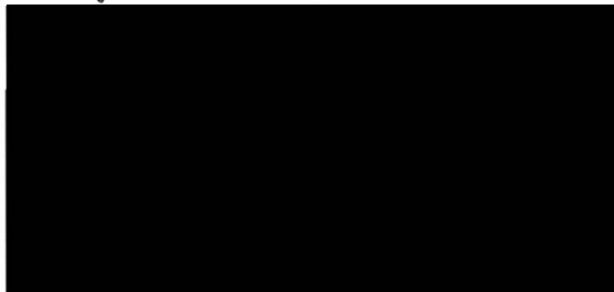
Regards

Date: 12-19-2023

p.c. h.b.b.

P.L.S.

C.P.C.S.



Prisoners' Legal Services
of Massachusetts
50 Federal St 4th Floor
Boston MA 02110

Dear PLS Attorney

Salutations.

I would like PLS to open an account for Emails, so that I may use that free service.

Website www.CorrLinks.com is for becoming a Contact.

I enclose a copy of my comments regarding 103 CMR 405.00 Inmate Funds. I wanted to share these.

Merry Christmas!

Regards

12-19-2023

proCo habob.

C.P.C.S.

enclosure



Kathleen O'Connell Staff Counsel
Criminal Appeals Unit
Private Counsel Division
Committee for Public Counsel Services
25 Federal St 6th Floor
Boston MA 02110

Dear Kathleen O'Connell Staff Counsel
Criminal Appeals Unit
Private Counsel Division

Greetings

I would like to open an account for emails, so that I may use that free service.

Website www.CorrLinks.com is for becoming a Contact.

I enclose a copy of my comments regarding 103 CMR 405.00 Zimrite Funds. I wanted to share these.

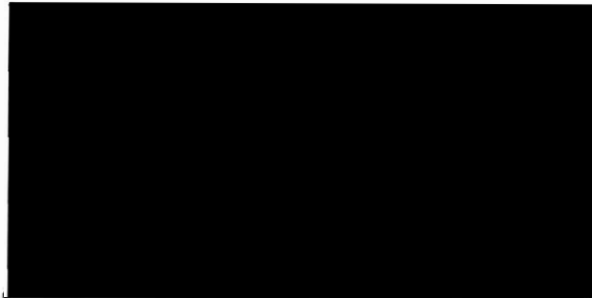
Merry Christmas!

Regards

Date: 12-19-2023

p.c. p.b. b.

P.L.S.





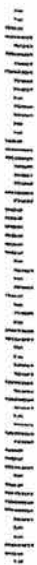
BOSTON MA 020

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MICHELLE DUPUIS-CLARKE PROGRAM COORDINATOR III
DEPARTMENT OF CORRECTIONS
LEGAL DIVISION
70 FRANKLIN ST SUITE 600
BOSTON MA 02110-1327

02110-1327SE

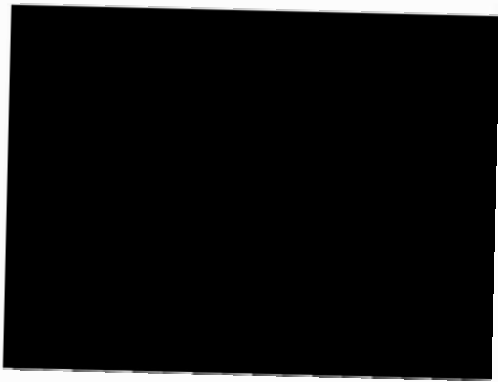


Dear Michele Dupis Clark,

My name is [REDACTED], I am writing to you in regards to the upcoming court date on January 5th, 2024 for the [REDACTED] prison. [REDACTED], has been incarcerated for the majority of my life and has been supporting my mother and I financially up until the year 2019. In 2019 [REDACTED] decided inmates could no longer have access to their financials. My mother was sick and could never work full time, she recently has passed away and it is just me. I am a 24 year old who also suffers from a medical condition [REDACTED] which makes it very difficult some days and interferes with my job from time to time. I work a full time job and like most people live pay check to pay check. The past couple years without his help financially has been extremely difficult. I'm writing to you in hopes that this reaches the right person and would like for you to consider changing the policy. He is the only person I have left and who I've counted on for the past few years. I look forward to hearing back from whom ever it may concern.

Best regards,

[REDACTED]



MASSACHUSETTS



Attn: Michele Dupis-Clark program coordinator III
70 Franklin street, suite 600
Boston MA 02110-1321

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DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

December 18, 2023

Ms. Michele Dupuis-Clarke
Program Coordinator III
Department of Correction
70 Franklin Street - Suite 600
Boston, MA 02110

RE: Comments and Questions on Proposed 103 CMR 405: Fund Accounts

Dear Ms. Dupuis-Clarke,

I am writing to you to submit the following comments and questions for consideration by the Department of Correction regarding the January 5, 2024 public hearing on 103 CMR 405: Funds Accounts.

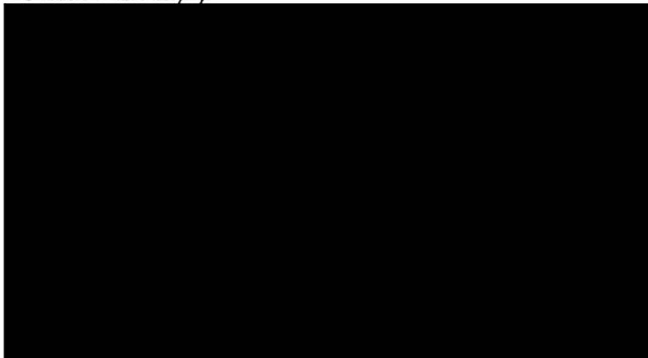
- 1) Under 103 CMR 405.11(6)(a), it is noted that the "Department may develop internal guidelines to assist ... in making the determination," i.e., whether or not a disbursement should be approved or denied. Is the Department planning to publish said "internal guidelines"? Whether the Department does or does not, those "internal guidelines" should be subject to the Administrative Procedures Act, i.e., a public hearing would be required since the guidelines would clearly affect prisoners and the members of the public to whom prisoners may seek to distribute funds.
- 2) 103 CMR 405.11, in citing M.G.L. c. 127, sec. 48A, puts into the hands of superintendents or their designees the authority to approve or deny a compelling need for a disbursement. What are the parameters or guidelines, which should be published to all stakeholders after undergoing a public hearing as per the ADA? The decision of what is a compelling need and what is not, is left to the whims of individual superintendents or their designees. A decision, therefore, to approve or deny a disbursement under the compelling need standard will inevitably vary from institution to institution and/or from superintendent to superintendent whenever staff changes occur. This borders on, if not crosses the line, of arbitrary and capricious decision making.
- 3) I note that under the proposed regulations, personal funds are to be split into Earned and Unearned Funds, those which are received by a prisoner but not payments for working. Under proposed 103 CMR 405.11(2), Earned Funds are to be distributed "in accordance with M.G.L. c. 127, sec. 48A, ..." Under what guidelines are Unearned Funds to be disbursed?
- 4) Referring to 103 CMR 405.10(3), if the Department does not implement an ADS or it is not possible to submit the funds through the

Comments and Questions sent to Ms. Michele Dupuis-Clarke (cont.)

ADS, the Department may create written guidelines to ensure the funds are not derived "from or used for illicit or suspicious activity, or any acts taken in contravention of any DOC regulation or policy. If the DEpartment determines that the funds cannot satisfy the established guidelines, the funds shall be deposited into the Commonwealth's General Fund via an FAS deposit only account." In effect, the Department will have authorized itself to seize funds under guidelines which were not subject to the APA and for which there would have been no findings of fact, other than by the Department, that the funds were illicit or suspicious or contravening some secret internal guideline without having to proceed under the ADA, including a public hearing for whatever guidelines the Department proposes. What gives the Department the authority to seize and then disburse the funds into the General Fund? Where is the due process?

Thank you for considering these questions and comments. Please let me know if you need any further information.

Sincerely,





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DEC 27 2009

DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

Ms. Michele Dupois - Clarke
Program Coordinator III
Department of Correction
70 Franklin St. - Suite 601
Boston, MA 02110



0211081527 0021



12/12/23

ATTN:

MICHELE DUPUIS-CLARKE COOR III
70 FRANKLIN ST. SUITE. 600
BOSTON, MA. 02110

RE: 103 CMR 405

REGARDING THE UNFAIR AND ARBITRARY POLICY (103 CMR 405) WHICH HINDERS AND PROHIBITS INMATES TO FREE ACCESS MONIES HELD IN D.O.C ACCOUNTS IS COUNTER PRODUCTIVE FOR THE FOLLOWING STATED REASONS:

- PERSONAL RESPONSIBILITY. WITH SO MANY YOUNG FATHERS OF THE BLACK AND BROWN COMMUNITIES BEING INCARCERATED THE ABOVE POLICY IS A DETRIMENT IN THAT THESE YOUNG MEN ARE NOW PROHIBITED TO PROVIDE WHAT LITTLE FINANCIAL SUPPORT TO CHILDREN LEFT BEHIND. THIS DIRECTLY IMPACTS THE NOW STRUGGLING SINGLE MOTHER AS WELL. CHILDREN WHO ARE AWARE THAT PHYSICALLY ABSENTEE FATHERS ARE STILL SUPPORTIVE FINANCIAL AFFECTS POSITIVITY ON FAMILY TIES AND ENCOURAGES FURTHER PERSONAL RESPONSIBILITY.

- AGEING FAMILY. FAMILY MEMBERS WHO OVER THE YEARS HAVE SUPPORTED LOVED ONES (INMATES) ARE NOW STRUGGLING TO PAY-BILLS, PUT FOOD ON TABLES AND/OR PAY FOR MEDICALS EXPENSES DUE TO THE EVER INCREASING PRICES. ARE UNJUSTLY BEING PUNISHED AND NEGATIVELY AFFECTED BY THESE RESTRICTIONS TO PROHIBIT INMATES WHO CAN AND WISH TO NOW RECIPROCATE FOR THE SUPPORT THEY ONCE RECEIVED BY PROVIDING FOR SUCH EXPENSES WITHOUT THE NEED TO DIVULGE PERSONAL INFORMATION OF THEIR NON-INCARCERATED FAMILY MEMBERS IN THE FORM OF SUBMITTING A BILL AND D.O.C INVASIVELY WRITING THE CHECK.

CONT. RE: 103 CMR 405

- DONATION(S). GROUPS, NON-PROFIT ORGANIZATIONS AND/OR FAITH BASE AFFILIATIONS ARE NEGATIVELY IMPACTED AS INMATES WHO RECEIVE, HAVE RECEIVED OR WISH TO CONTINUE TO RECEIVE LITERATURE FOR SELF IMPROVEMENT SPIRITUAL GROWTH AND EDUCATIONAL MATERIAL(S), CAN NO LONGER SUPPORT FINANCIALLY SAID GROUPS. WHICH ARE RELIANT ON THE CONTRIBUTIONS AND DONATIONS, OF THE PUBLIC.

IN SUMMATION: POLICY 103 CMR 405 WHICH WAS INTRODUCED ARBITRARILY TO DISCOURAGE ILLEGAL DRUG ACTIVITY, INTRODUCTION INTO D.O.C FACILITIES ETC. AS A SECURITY MEASURE HAS DONE NOTHING TO CURB SAID PROBLEM. AND IS DISCRIMINATIVE TO BLACK AND BROWN INMATES WHO WISH TO GIVE BACK TO FAMILIES AND COMMUNITIES. AS SAID POLICY ALSO DID NOT FACTOR IN THOSE WHO HAVE NO HISTORY OF DRUG ACTIVITY, DIRTY URINES, ILLEGAL MONEY SCHEMES, INTRODUCTION ETC. AND WHERE IN FACT EVIDENCE SUPPORTS THAT THERE ARE MANY INMATES WITH A LONG HISTORY OF PROPERLY SUPPORTING FINANCIALLY: CHILDREN, ELDERLY FAMILY MEMBERS, MULTIPLE SUPPORT GROUPS, ORGANIZATIONS, AND FAITH BASE AFFILIATIONS. SUCH AS SAINT JUDES, SHRINER'S DISABLE VETERANS, VICTIMS OF NATURAL DISASTERS ETC.

FURTHER, 103 CMR 405 IF LEFT TO STAND FLIES IN THE FACE AND DOES NOTHING TO PROMOTE THE PERSONAL GROWTH, THE ACCEPTING RESPONSIBILITY, REHABILITATION, REINTEGRATION AND ABILITY TO CONTRIBUTE TO FAMILIES AND COMMUNITIES AS WHAT IS BEING EXPECTED OF INMATES TO INDICATE BEFORE PAROLE BOARDS ETC. THAT THEY WILL BE PRODUCTIVE MEMBERS OF SOCIETY UPON RELEASE.

FOR THESE ABOVE STATED REASONS POLICY 103 CMR 405 SHOULD BE REMOVED/DISALLOWED IN ITS ENTIRETY.

RESPECTFULLY



BROCKTON MA 023
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LEGAL DEPARTMENT

ATTN: MICHELE DUPUIS-CLARKE COOR III
70 FRANKLIN ST. SUITE 600
BOSTON, MA. 02110

02110-131499



To Whom It May Concern:

I am writing this letter in opposition to the new proposed policy that is written. I am opposing the policy for the following reasons. 1) The policy puts too much restriction on inmates and is outside the norm of other correctional institutions around the United States; 2) The terms "compelling need" and "illegitimate purpose" needs to be defined in 103 CMR 405.05; and 3) 103 CMR 405.11(6), is inconsistent with M.G.L. c. 127 §48A.

The first item that I am going to address is that the policy puts too much unneeded restrictions on II (inmates), as most II who send money out are trying to do so for, religious purposes, to support family members, send gifts to families, or other responsible things. Most II who send money out have never been charged with any drug charges or have ever been put under suspicion of introducing drugs into a facility. Most II are just trying to do the right thing and take care of their love ones or to be apart of somebodys life.

Upon doing research for this topic, I discovered other agencies accross the United States that have place restrictions on II funds have done so with only allowing II to send money to people on their approved visiting list, or phone call list, or even making another approved list for sending funds to. This idea has curbed the influx of any fear of drugs, as a legal arguement put forth by this department has said that people on a visiting list will not attempt to bring drugs in as they do not want contact with thier love ones. This idea of a list is an idea that can have II send money to charitable organization and/or religious organizations. The above mention method has also been upheald by the courts, which the method that is being proposed, may have a battle to fight in the coust and my have to have this policy re-written again in 6 months due to court rulings.

The next thing that needs to be addressed is the wording of "compelling need(s)" and illegitimate purpose(s)". These words need to be defined in 103 CMR 405.05. The reasoning that these

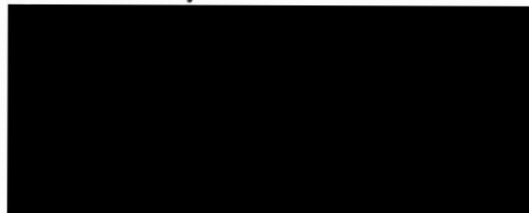
words need to be defined is because the interpretation of these can and will vary between institutions, Deputy Superintendents, and Superintendants. What one reviewing authority may believe is a compelling need, is not what another reviewing authority may determine is a compelling need. For example, if I want to send tithe to a church in Phoenix, AZ one Deputy may determine this is not a compelling need while a new deputy may determine it is a compelling need. I mention this because this is what occurred to me in a situation where for years I was able to send tithe to a church, but a new deputy then determined that I can not do this any more. If leaving the interpretation up to the reviewing authority that different interpretation could be allowed for one person and not another which sets up a violation of the Equal Protection Clause of the U.S. Constitution and the Massachusetts Declaration of Rights. Fixing this issue is of vital importance prior to approving the policy as written.

The last issue in that M.G.L. c. 127 §48A gives no authority to regulate "Unearned Income" as this policy is attempting to do. The law only allows the Superintendant to expend funds "on behalf of any inmate such further sums from money the inmate has EARNED upon written request..." (emphasis added). The DOC has no authority that has been given to them by the legislators to control any funds that II have received from family and friends. By doing this the CMR has become more restrictive than the law and therefore is in violation of the law. The Department can control EARNED income, but it cannot do the same for UNEARNED income as the policy is attempting to do in the proposed 103 CMR 405.11(6). Since this is the case, a new law would have to be passed to give the Department control of this money, and this would have to be done by the state house and not through a CMR.

It is for the reasons that is stated above that this policy should not be implemented by this department without changes made as suggested.

Sincerely,





BROCKTON MA 023

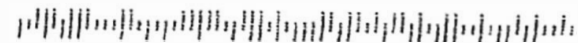
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LEGAL DEPARTMENT

Department of Correction Legal
Attn: Michele Dupuis-Clarke
70 Franklin Street, Suite 600
Boston, MA 02110

02110-132799



To: Program Coordinator Michelle Clarke

From: Inmate [REDACTED]

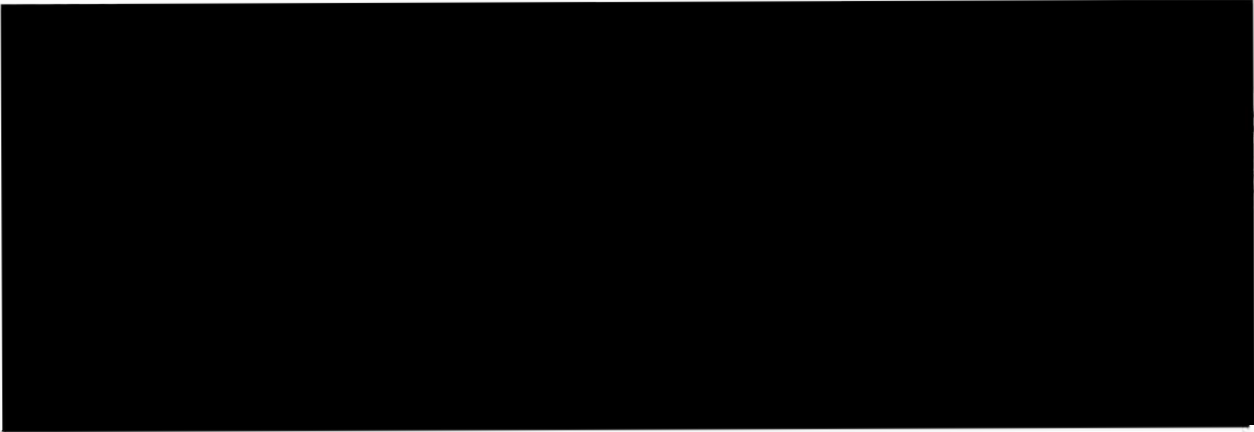
Date: 12/26/2023

Cause: Notice of Public Hearing for New Regulations in Policy Number
Title 103 CMR 405 Inmate Funds for Department of Correction.

Dear Program Coordinator Michelle Clarke:

- 1) My name is [REDACTED]. I am a 36 year old black man in Boston. My community is the African Americans on [REDACTED]. My 3 friends on [REDACTED] are named [REDACTED] honestly. I have known [REDACTED] for 30 years since 1995 till 2003 truly. Those 3 men [REDACTED] voted for me to talk in public, travel, tour the city, enjoy fresh air, walk the streets, participate in parks. With those votes in mind: I am a Community Organizer on [REDACTED].
- 2) Currently I am housed in [REDACTED].
- 3) On 12/20/2023 at 3:30pm I received a \$135 personal check thru the inmate mail from a family member of mine. The \$135 check came with an inmate income receipt from inmate account office. The \$135 check has a receipt number: 41948897. The receipt says that the \$135 check is Frozen. It appears that the treasurer Kerry Sutton at [REDACTED] has wrongly instructed the inmate accounts office to freeze the \$135 personal check. The freeze needs to be lifted because a freeze will present an inaccurate account balance with a wrong amount of money.
- 4) My personal account balance is \$1,234.35 in Inmate Management System computer of Department of Correction. However my personal account balance on Edge Services portal of Score 7 secure Music Player is \$1,099.24. The missing \$135 is the frozen \$135. Treasurer Kerry Sutton is freezing \$135 personal check to prevent the \$135 from being added to the existing personal account balance in Edge services portal of Score 7 Secure Music player device a function of inmate canteen kiosk computer on A-4 unit. The freeze needs to be lifted on \$135 check so that the \$135 deposit will be added to existing personal account balance on Edge services in portal on music player and Show balance section of kiosk computer.
- 5) Here is the Law treasurer Kerry Sutton is violating:
5th amendment of U.S. Constitution it says:
"life, liberty, property will not be taken without due process of Law".
- 6) I request that in the public hearing on 1/5/2024 at 10:am for the creation of new regulations for 103 CMR 405 Inmate Funds Policy, that you would recommend that all freezes be lifted off \$135 personal checks or money orders deposited to inmate accounts from family thru the mail. Because the freeze wrongly delays the process of adding a \$135 deposit to existing personal account balance on Edge Services portal of the Score 7 Secure Music Player device a function of inmate canteen kiosk computer on A-4 unit in Old Colony Correctional Center in Bridgewater.
- 7) The new policy for Inmate Funds should reflect the reality that the family & friends of inmates may deposit \$100 personal check & money order each month of the year into inmate personal account for canteen purchase. Those monthly deposits should be immediately added to existing personal account balance on Edge services portal of Score 7 Secure Music Player. To freeze \$135 check is to take property without due process of Law.
- 8) I ask that you write me back in 5 days with a response.

Truly
[REDACTED]



ON MA 023
23 PM 2 L



To: PROGRAM COORDINATOR MICHELLE
Department of Correction
70 FRANKLIN STREET
Suite # 600
Boston, Massachusetts 02110

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CLARKE
JAN -2 2023
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LEGAL DEPARTMENT

02110-132799



Michele Dupuis-Clarke
Program Coordinator III
Legal Division
Mass. DOC Suite 600
70 Franklin Street
Boston, MA 02110-1327

December 29th 2023

Re: SUPPLEMENTAL TESTIMONY, Public Hearing 103 CMR 405 et seq. Inmate Funds

Dear Ms. Dupuis-Clarke:

Enclosed please find supplemental testimony, which I do hope you will attach to my testimony sent to you dated: December 12, 2023.

It is important for the commission and public to know this proceeding is being rushed, and the public and many prisoner's impacted by this amendment proposal have not received or been provided any meaningful or adequate information regarding the "language" of the proposed changes being considered.

Thank you for your prompt attention to this matter.



December 29, 2023

SUPPLEMENTAL TESTIMONY OF
[REDACTED]

SUPPLEMENTAL TESTIMONY: Opposition to Proposed Amendments to 103CMR405 et seq.

On December 29th 2023 I was provided, at the eleventh hour, the proposed changes to 103CMR405.11: "Disbursement of Funds Procedures" from the Special Litigation Unit of the Committee for Public Counsel Services.

It is clear these proposals are being rushed by the Massachusetts Department of Correction, and that the public and those most impacted by these changes have not been adequately or meaningfully informed.

It is essential for this committee and public know I am the plaintiff in a lawsuit challenging the rule change outlined in 103 CMR 405.11 et seq. And this is why I know about the proposed changes, although those incarcerated individuals, Prisoner's, who are most impacted have been purposely kept in the dark about the language of the proposed change to: 103 CMR 405.11 (6): Verification Process for Disbursement of Funds.

"If possible, the I/I or C/C shall provide documentation (i.e. Bill or order form), along with the Disbursement Slip, to demonstrate the stated purpose for the requested disbursement is not illegitimate."

This language is vague, and prison authorities further conflate the language of 103CMR405.11(2) "[if] an I/I or C/C indicates that they wish to disburse funds from EARNED FUNDS, regardless of whether the Earned Funds are in a savings or personal account, that funds SHALL ONLY BE ELIGIBLE for for potential disbursement if the Superintendent, in the Superintendent's discretion, makes a determination of a COMPELLING NEED..." (All Emphasis added by Witness).

The "Inmate Trust Fund" account does not separate "Earned Funds" from Unearned money sent to prisoner's from family, friends and gifts, grants, etc.

Prison officials, Superintendent's treat ALL money in an inmate trust account as "Earned Money" there is no distinction. And, for years, at least since I filed suit in Middlesex Superior Court Diorio v. Mici, et al. (1981 CV03090), prison authorities have demanded a "Bill or Invoice" be presented for All disbursement, whether attempting to send money (comingled) as earned or gifts from family, friends or otherwise.

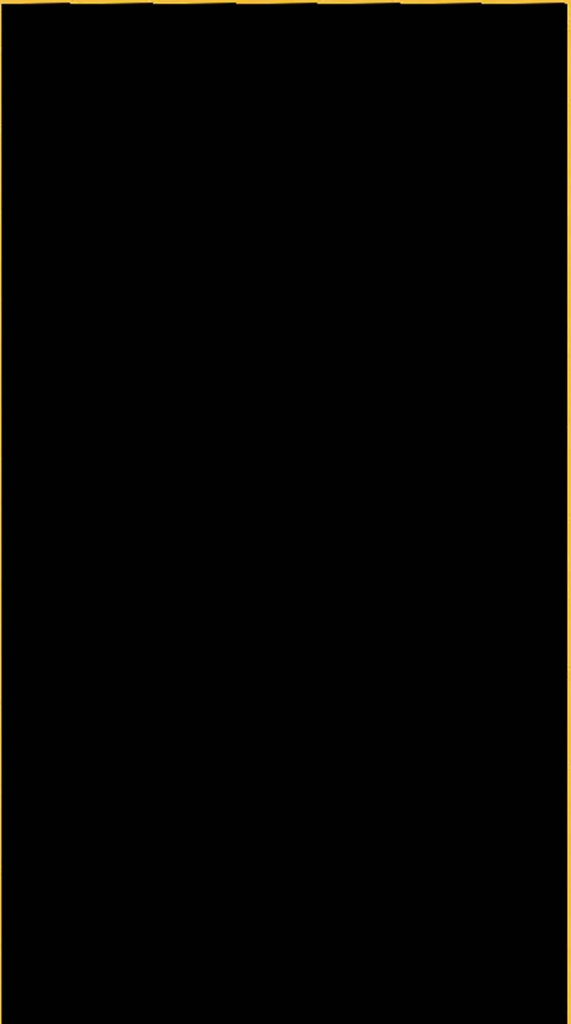
The Commission and Public must postpone these hearings and provide Incarcerated Individuals a copy of the "Proposed Changes For Public Comment". These unconstitutional and heavy handed tactics by the Department of Correction must be given careful consideration and informed consideration.

(End: Supplemental; Testimony of [REDACTED])

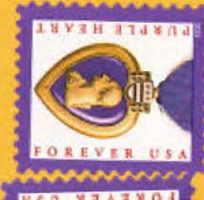
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Michele Dupuis-Clarke
Program Coordinator III
Mass Legal Division
70 Franklin St, Ste 1000
Boston, MA 02110-1234



1-800-833-8333

Testimonial in relation to Proposal for the amending of 103 CMR 405.00 Fund Accounts procedure

To whom it may concern

After reviewing the most recent proposal for the amending of 103 CMR 405.00 Fund Accounts procedure, I request to know what the need is for these amendments. Transparency is vital for such a drastic proposal as this.

With the misappropriation of funds for the last several years, decreased populations and increased budgets, what is the reason for DOC acquiring the extra funds when the labor from incarcerated individuals is already dirt cheap as is?

And for pre-release c/c's to lose an additional 10% above the 15% DOC already takes for room and board, is only going to increase recidivism as inmates will end up with less savings on release and less able to sustain a free life. This only increases costs in the long run and does not help taxpayers. Where are these expected funds from these acts of fundraising going? Are they going back to the taxpayers? What will taking more from the little that inmates earn, do for the DOC? What purpose of the DOC greater outweighs boosting the potential rehabilitation, recovery and success of returning citizens, who may later offend again because of acts like these?

Is it coincidental that this proposal takes place right after legislature passes a bill that affords inmates free communication with their support systems, or the decreased rate of DOC's profit from overpriced canteen items? What's granted for incarcerated individuals always makes optics, but then DOC often comes in with a counter to any gains made, and things like THIS should easily be recognized.

Decreasing all incarcerated individuals job assignments from the current \$10.00 a day cap to \$2.70 a day (≈70% less) doesn't create much of a gap between those who choose to work and do more taxing work assignments, compared to those who do less taxing assignments.

Also, not many people ever achieve a \$10.00 a day job assignment because there are very few jobs that provide that wage. DOC is proposing to take those away. Also, there are currently many more jobs that pay over \$2.70 a day than there are that pay that or less. A reason has not been provided for this amendment. It comes off as retaliatory.

There are so many men and women who work to provide for themselves in prison, saving their families from expense and liability. There are also many who have zero support from people outside. And there are many who wish to save and accumulate as much funds as they possibly can to come home with something that can assist them, even a little bit, in today's economy.

Hundreds of inmates have job assignments that currently provide wages above \$2.70 a day, and that wage STILL can't sustain their responsibilities to themselves in prison. That's not including one's responsibility to prepare and come home with some funds to help themselves get situated.

This regulation being amended exhibits the Department of "Corrections" incessant failure to aid it's incarcerated population, and instead it simply creates a contradictory system that effects every individual negatively.

Testimonial in relation to Proposal for the amending of 103 CMR 405.00 Fund Accounts procedure

This amendment puts burden back on incarcerated individuals' support systems, it takes away the need for many to keep a job, and this effects incarcerated individuals' rehabilitation, re-entry and human rights. A bill is in legislation for acts related to issues like these right now as we speak. Please refer to S.1493/H.2325 and see that this act is merely the retaliation and resistance of where prison reforms are headed in the upcoming years.

I urge the members considering this proposal to review the language of this very regulation. Specifically, 103 CMR 405.07 Wages and Stipends. In this very language, "The primary purpose for Savings Funds is to ensure that I/Is and C/Cs shall be released with enough funds to aid in acquiring a residence and to be able to afford the expenses related to reintegrating in a community upon discharge or parole." In today's economy, this act is completely counterintuitive to what's necessary for a "correctional" system. Approving this proposal means having to change this language as well, because it does not promote what it states. The change in this regulation contradicts the language of this regulation. In fact, this amendment encourages many issues to arise in the future and valuable time to inevitably be spent reversing it given the direction of politics and justice/prison reforms in upcoming bills.

I also urge against this proposal and this amendment due to the fact that it's completely unnecessary, because it is a ploy, and also because it's opposing the direction that legislation itself has been taking with prison reforms in these last few years. DOC can continue to do what's been indoctrinated in their system for the last millennia treating prisons as a business, but legislation must deny this proposal and force DOC to try again some other way. This amendment will only create another fight to reverse later which contributes to this revolving door of issues that never end in our DOC, and hinder our progress as a collective.

Thank you for your consideration.



January 2, 2024

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Doc/ Legal Division
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LABEL 11-B, MAY 2021

PSN 780-02-000-000



Testimonial in relation to Proposal for the amending of 103 CMR 405.00 Fund Accounts procedure

Hi, I would like to throw my thoughts into this matter for consideration.

I feel that reducing the maximum daily wage for prisoners from a maximum of \$10 a day to \$2.70 a day is just ludicrous. To be honest, I have to shake my head even just writing that...**\$2.70 a day**...with which they are supposed to support themselves as well as save for their release. That's something I feel is not even easily achievable on \$10 a day. There are a lot of expenses that inmates have to pay for in prison.

I am a concerned advocate for prisoners and every day I see the struggle they have to endure to try and make money balance, to try and do the best they can for their families and not to be a financial drain on their loved ones. I see the immense pressure they feel to succeed when they get out and not go back into the system. I see how strong their desire is to remain out once they get out and how much stress all of this puts on them.

I personally thought the change to make phone calls, emails and video visits free recently was recognition of this very point. Most of the prisoners didn't pay for their own communications, their families did. So while making the communication free is great, it really has not reduced expenses for most inmates.

Inmates already can't get by. I thought the idea of prison etc was that they "pay their debt to society" this proposal not only makes their time inside more difficult but also spills over into their release. This is continuing that punishment after release. Where is the notion of letting people have a fresh start and giving them a chance to live a better life? How does it help them to be so poor on release that they will consider reoffending because it's the only way they can see to get by?

Prisoners are already unable to save enough to prepare for release, and this reduction, together with the proposed room and board charge being increased, just takes being well prepared for release from being something really difficult, to downright impossible.

I understand that inmates have committed crimes but if they are not helped, or even really allowed to help themselves, how is the cycle ever going to stop? Unless things like this proposal, and extending the already overly harsh punishment system ceases, life will continue as it is. The list of things prisoners can't afford is long. Unless inmates are allowed to save some funds for when they get released, to be able to have funds for the study and education that many of them want to do and cannot because the opportunities are not there for them, the door will continue to revolve and society will continue to live in an increasingly scary world. Whilst many view prisoners being kept in a state beyond "poverty" as appropriate punishment, it in fact serves no-one because whilst this remains the attitude of people on the outside, the divide simply widens and issues escalate.

I ask you to please look below the surface and to see that this proposal is simply another unjust action that makes change even harder for many whose first choice is to live a different and better life, as contributing members of society, but are not being given a real chance.

Thank you for your consideration.

██████████

January 4 2023



From: Shannon Dale <sdale@publiccounsel.net>
Sent: Friday, January 5, 2024 4:42 PM
To: Dupuis-Clarke, Michele A. (DOC)
Cc: Michael Ryan; Hewit, Lisa (CPC)
Subject: CPCS Comments: 103 CMR 405
Attachments: CPCS Comments on 103 CMR 405- Final.pdf

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon Michele,

Please find enclosed comments on behalf of CPCS regarding 103 CMR 405.

Thank you,
Attorney Shannon Dale



Committee for Public Counsel Services

75 Federal Street, 6th Floor, Boston, MA 02110

Tel: (617) 482-6212 – Fax: (617) 988-8495

ANTHONY J. BENEDETTI
CHIEF COUNSEL

LISA M. HEWITT
GENERAL COUNSEL

January 5, 2024

**COMMENTS OF THE COMMITTEE FOR PUBLIC COUNSEL SERVICES (CPCS)
ON PROPOSED AMENDMENTS TO 103 CMR 405: FUND ACCOUNTS**

The Committee for Public Counsel Services shares the concerns submitted by Prisoners' Legal Services with regard to the undervaluing of labor of incarcerated people, the likelihood of unauthorized takings, and the need to reform the institutional response to substance use. The following comments focus on the various ways this regulation, as currently drafted, violates a prisoner's constitutional right to counsel and access to the courts.

To start, this regulation purports to empower the Department of Correction (DOC) to exercise unfettered discretion in the determination as to whether an incarcerated individual may send earned funds. Specifically, the draft regulation at 103 CMR 450.11(2) states that "the funds shall only be eligible for potential disbursement if the Superintendent, in the Superintendent's discretion, makes a determination of a compelling need in accordance with M.G.L. c. 127, §48A." When it comes to legal proceedings, it is inappropriate and unlawful for DOC to appoint itself the arbiter of compelling need. Incarcerated individuals may wish to hire an attorney to assist them in a legal proceeding, employ an investigator to explore a possible defense, or send payment for a public records request that is necessary to present their case. Yet this proposal allows DOC to unilaterally abrogate prisoners' ability to vindicate important rights, such as the right to counsel, the right to present a defense, and the right to access the courts, by denying disbursement of funds in these circumstances because DOC deems them not "compelling." Under this provision, DOC could decide not permit payment for a filing fee, even in a case against DOC itself. A prisoner's only recourse would be an arduous, labyrinthine appeals process (including multiple layers of review at the DOC with ultimate recourse to the courts) which would, at minimum, introduce substantial delay. See 103 CMR 405.11(6)(a) & (d). In an instance where a statute of limitations is in play, that delay could be dispositive. Moreover, because this subsection applies only to "Earned Funds," indigent prisoners are especially impacted by this proposal because they may not have any other source of funds beyond that which they can earn working at the facility.

Committing the finding of compelling need to the discretion of the Superintendent on a case-by-case basis has the constitutional burden backwards. Under the Massachusetts Declaration of Rights, all people have "natural, essential, and unalienable rights ... [including] that of acquiring, possessing, and protecting property." art. 1 of the Massachusetts Declaration of Rights. Likewise, prisoners retain the right to access the courts, the right to retain counsel, and the right to have "recourse to the laws, for all injuries or wrongs which [they] may receive in

[their] person, property, or character.” art. 11, of the Massachusetts Declaration of Rights. The prerogative to exercise these long-established property rights, right to access the courts, and right to retain counsel, must be the constitutional starting point. It is the department that must be made to show a sufficiently compelling need to infringe upon them, and only in specific instances where that need is appropriately tailored to a specified and valid penological interest. Absent such a showing, incarcerated individuals ought to retain the right to possess, enjoy, and dispose of their property freely, especially for court and case related disbursements.

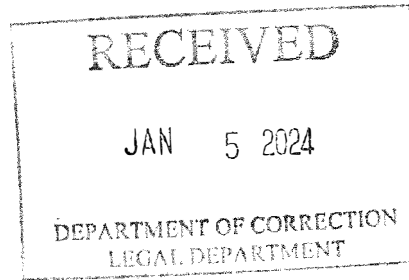
The verification process pursuant to 103 CMR 450.11(6), which requires incarcerated individuals to prove that the request is not for an illegitimate purpose, precisely illustrates these concerns. The incarcerated individual must not be forced, in the first instance, “to demonstrate the stated purpose for the requested disbursement is not illegitimate.” 103 CMR 450.11(6). Rather, there should be a presumption that all requests are for a legitimate purpose. Only if DOC can show a specific reason to believe, based on documented reliable information, that the disbursement is for a purpose contrary to a specified and compelling penological interest of the department, should the burden shift to the incarcerated individual. Revised regulations should also make it abundantly clear that any disbursement related to hiring or contacting an attorney, to the investigation or pursuit of a legal claim, to public records requests, or to voluntary court costs are protected and legitimate. The current proposal, which permits DOC, again, to exercise near unfettered discretion as to whether it believes the purpose is legitimate, creates a system that is likely to result in unconstitutional infringement of individual rights.

In addition to the rights discussed above, the proposed regulations could lead to serious infringement of First Amendment rights. While the regulations provide that incarcerated individuals “shall be permitted” to make donations to persons, entities, or political causes, these donations remain subject to the Superintendent’s approval, determination of compelling need, and judgment as to whether the prisoner has met a burden to show the donation is “not illegitimate.” See 103 CMR 405.13 (6). This review raises substantial concerns under both the First Amendment and art. 16, of the Massachusetts Declarations of Rights, as amended by art. 77. The regulations should be rewritten to make clear that prisoners may donate their money freely, unless the Department can meet the constitutional burdens that justify restraint in specific, narrow circumstances.

It is also concerning that the DOC is granting itself 10 full business days to make a determination as to whether to make the requested disbursement. Legal proceedings often have deadlines that are immutable. Two full weeks, and more if there are holidays, is too long. This delay is an unnecessary and unjustified interference with prisoners’ rights to access the courts and counsel, as well their constitutionally protected property and speech rights. The provision surrounding court assessments, 103 CMR 405.15, which permits DOC to take funds without consent to pay court judgments, such as restitution or court costs, is also problematic. Money should not be taken to pay for restitution or court costs for cases that are still on appeal. Those judgments are not final. Moreover, in the interest of ensuring that indigent incarcerated people are not unfairly deprived of necessities, the Department should establish a base amount of funds that will remain untouched in spite of court assessments.

Lastly, the fee structure for those who have failed drug tests within the Department of Correction continues to cause great concern. While only referenced in the instant draft in 405.14,

the practice set forth by 103 DOC 525 egregiously penalizes and dehumanizes those struggling with substance use disorder, charging exponential, overlapping sanctions that appear to have no relation to the cost actually borne by the Department. The financial impact on the individual is so significant that a person can be deprived of their ability to use their funds for necessities and services, including legal services. We are hopeful that the absence of information or reference to the policy will allow for a future change to the drug screening penalty system that aligns with societal norms and best practices. Until that time, we request language that clearly allows for due process in disputing the fee escalation.



From: Schaber, Lucas (HOU) <Lucas.Schaber@mahouse.gov>
Sent: Friday, January 5, 2024 4:55 PM
To: Dupuis-Clarke, Michele A. (DOC)
Subject: Written testimony on changes to 103 CMR 405 – Fund Accounts
Attachments: Mac Hudson testimony.pdf; Rep. Uyterhoeven written testimony 103 CMR 405 – Fund Accounts.pdf

Hi Michele,
Attached please find the written testimony for Rep. Uyterhoeven as well as the written testimony from Mac Hudson from Prisoners' Legal Services.

If you have any questions, please let me know.

Have a great weekend!

Best,
Lucas

Lucas Schaber
Legislative Aide
Office of Rep. Erika Uyterhoeven
27th Middlesex District
He/him/his

January 5, 2024

Department of Correction - Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

Subject: 103 CMR 405: Fund Account

To whom it may concern,

My name is Mac Hudson and I served 33 years within the Department of Corrections for mostly a crime that I did not commit. While confined therein, I became a student of both policy and practice of the Department of Corrections, while also advocating for meaningful rehabilitation on behalf of myself and others. I offer my testimony today as someone who was directly impacted, and on behalf of those that cannot speak. I believe it is important for the department to consider those closest to the problem.

I would like first to object to the disbursement section of the proposed 405 regulations. First I want to be mindful to caution the department about what the original intent of the omnibus rehabilitation bill passed in 1972 was designed to do. The intent was to rehabilitate, promote and sustain family and community ties. The proposed changes in the regulations would work against that very statute in several ways. The first way is that this change serves to separate families in depriving myself and others the ability to provide gifts to our children or loved ones on holidays, birthdays, to serve as tooth fairy for the very first tooth and in ways that generally keep us connected. There is a great difference between the department paying a bill and me sending money for a bill to be paid to my loved one. Also, it potentially hinders my ability to give charity in the ways that I desire. Because it is subjected to the reviewing person's own biases of that specific charity. I would contend that it creates an invasion of first amendment principles.

Secondly, it subjects me and others who are acting responsibly with our funds to be subject to a system wide punishment for the actions of a few. This fundamentally goes against and violates the spirit of M.G.L. 127, Section 32, which states that all inmates be treated with kindness and has been interpreted to mean fairness and equal protection under the law. The CMR in question would treat me disproportionately on equal footing to those who were displaying irresponsible conduct, which hampers my, and others, rehabilitation efforts.

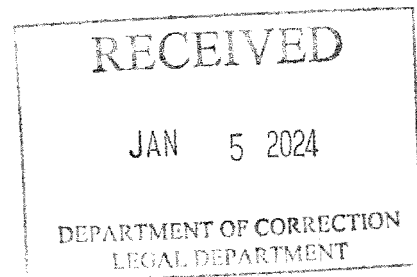
Thirdly, it creates a dependency in areas where I am given autonomy as part of my rehabilitation which is consistent with the DOC step down process. In a high security facility, one is watched more closely because he has displayed the inability to observe the rules and regulations. When transferred to a medium, that incarcerated person is watched indirectly because he has displayed the ability to observe the rules and regulations. A minimum, which has no walls, allows for greater autonomy which is part of being acclimated back into society. This proposed change would act against that very autonomy and self responsibility.

Finally, the department has in place, mechanisms to discipline and investigate those individual acts of wrongdoing; it has an inner perimeter investigative teams, it records and monitors telephone calls, it screens all outgoing and incoming mail and emails. The proposed additional screenings would create staff intensive conflicts in an already demanding job including the deputy superintendent, director of treatment, correctional program officer, and IPS. This creates a longer delay in the approval of any requests. I would urge the department to not pass this revision and to allow the individual the self autonomy displayed by responsible incarcerated people as a means to prepare them to live responsible lives outside the wall and to remain connected in all the small and big ways to their family and community.

My other objection is the wage scale. While I commend the department of corrections for enlarging the wage scale, it is clearly not enough to keep on par with inflation, nor preparation for release. The way we earn money is divided; if I earn ten dollars, five dollars goes into my personal, while five dollars goes into my savings. There is nothing I can buy with five dollars a week from the canteen. Likewise, if I'm saving five dollars a week over the course of fifteen years, or serving three to five, a short sentence, this amount would not help me adjust into society. It would not allow me to afford housing and other necessities. I am speaking from personal experience after having been released and having been deprived the opportunity to participate in pre-release despite being qualified. I was released with nothing. I was placed in transition housing, which allowed me to save for six months, at a living wage. This afforded me the ability to achieve housing and clothing, but not furniture which required me to save additional money. Keeping this in mind, the department should be cognizant of what the real expense of transition means, especially to someone that has been incarcerated for over ten years. I would urge that the department provide living wages to as many as they can or to allow advocations under CMR 466 to return where incarcerated people can employ themselves at a living wage.

Thank you for your consideration and for taking the time to consider public comment. Please do not hesitate to contact me directly via email mHUDSON@PLSMA.ORG with any questions.

Sincerely,
Mac Hudson



[Proposed Public Comments for New Inmate Funds Policy 103 CMR 405]

Article # 1: [REDACTED] is Chief Inmate Worker at [REDACTED].

As inmate worker [REDACTED] cleans, sweeps, mops, shines the tiles on lower left tier of [REDACTED] weekly.

[REDACTED] is paid \$16.20 a week, to work 6 days a week, cleaning floors [REDACTED] daily.

Paychecks are printed on Wednesday and then viewed on Thursday at Edge services portal of Score 7 Secure Music player device a function of Inmate canteen kiosk computer on [REDACTED]

[REDACTED]. The initial weekly paycheck of \$16.20 is printed on Wednesday at Inmate Management System computer of Massachusetts Department of Correction, and then the \$16.20 paycheck is forwarded to account balance in personal account on Edge services portal of the Score 7 Secure Music player device on Thursday mornings at 7:am, weekly.

Article # 2: Spectrum Health Systems is [REDACTED].

[REDACTED] \$.
Spectrum is a health class named Graduate Maintenance Program, The class meets [REDACTED] on Educational Tablet, The Educational Tablet is American Prison Data System Tablet today. The Symbol of the education tablet is: Orijin a education computer. The hand-held computer named Orijin has health classes weekly.

[REDACTED] is a student enrolled in Spectrum Health Systems.

Article # 3: Program Coordinator Michelle Clarke works at the address 70 Franklin Street, Suite 600, Boston-Mass 02110. It is at that address that public hearings are coordinated on date of 1/5/2024 honestly. The upcoming hearing for Inmate Funds 103 CMR 405 is for proposed public comments on new policy and new comments for regulation 103 CMR 405. Inmate Funds is the process of filing & mailing money-orders, cash, personal checks, pay-checks into state correctional centers daily.

Article # 4: The Inmate Worker [REDACTED] advocates for a Policy that allows family & friends of inmates to mail money-orders and also personal checks of \$100 each month into inmate personal accounts that are located at [REDACTED]. The deposits of \$100 money-orders & personal checks should be added to existing inmate personal account balance upon receipt of the deposit. There should be no account freezes to prevent inmates from viewing a accurate account balance of the funds in personal accounts. The aim of inmate accounts is for prisoners housed as students to purchase canteen, grocery, clothes, hair-cuts, photos, hygiene products, music, property items. These canteen purchase are done weekly on Wednesday ay kiosk computer.

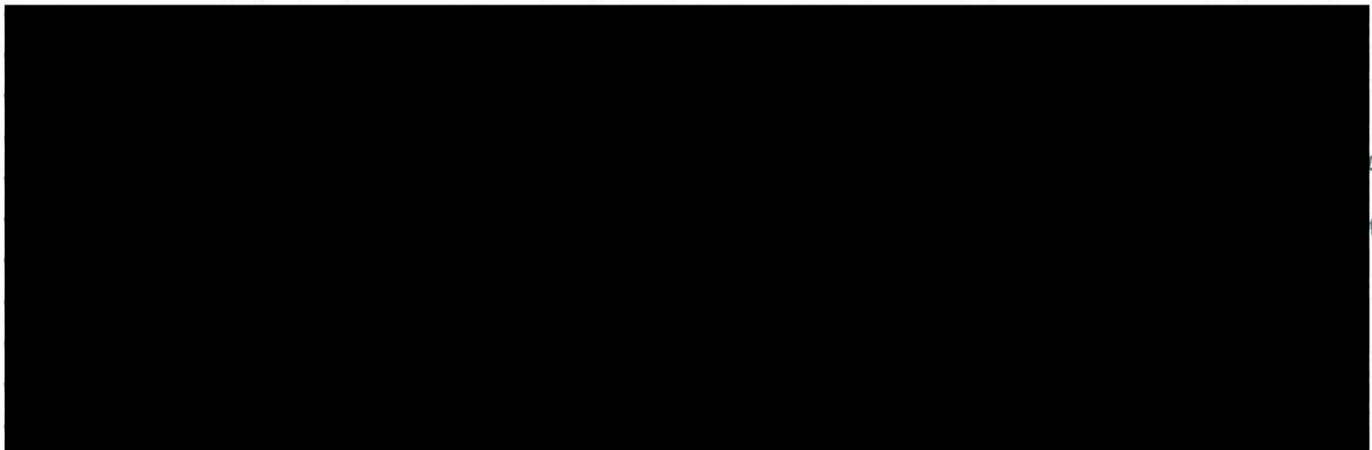
Article # 5: I have submitted these proposed public comments for the Notice of Public Hearing on Policy 103 CMR 405 inmate funds policy. These comments should be included in new Inmate Funds Regulations. All family & friends of inmate should be able to mail money-orders and personal check to accounts at Old Colony Correction Center.

*** I ask that Michelle Clarke write me back in 5 days with a response at this mail [REDACTED]

RECEIVED

JAN 5 2024
signed by: [REDACTED]

DEPARTMENT OF CORRECTIONS
LEGAL DEPARTMENT



A 023

M2 L



TO: PROGRAM COORDINATOR MICHELLE CLARKE
Department of Correction
70 FRANKLIN STREET
Suite # 600
Boston, Massachusetts 02110

02110-132799



From: Piper, Kate <kpiper@plsma.org>
Sent: Friday, January 5, 2024 11:19 AM
To: Dupuis-Clarke, Michele A. (DOC)
Subject: 103 CMR 405--Written testimony
Attachments: 103 CMR 405 written testimony-[REDACTED].pdf

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Good Morning Attorney Dupuis-Clarke,

Please accept the attached written testimony regarding the proposed regulations, 103 CMR 405 on behalf of [REDACTED]. Thank you in advance.

Best,

Kate

Kate Piper (she/her)
Paralegal
Prisoners' Legal Services
50 Federal St., 4th Floor
Boston, MA 02110
(617) 482-2773 ext. 6823
kpiper@plsma.org



MICHELE DUPUIS-CLARKE
COORDINATOR OF PROGRAM III
DEPARTMENT OF CORRECTION
LEGAL DIVISION
70 FRANKLIN ST, SUITE 600
BOSTON, MA 02110

RE: COMMENT ON PROPOSED INMATE FUNDS REGULATION 103 CMR 405.00
ET SEQ.

Dear Coordinator,

This proposal comes in response to recent litigation challenging disbursement of inmate funds. There is no substantial evidence as defined in G.L.c. 30A s.1(6) for this retaliatory act against private property rights. The words "any illegitimate purposes" found in 103 CMR 405.11 (6)(a) are too broad and carries with it the bias exhibited by staff that do not make administrative mechanisms available.. The bias towards my family and friends to deny disbursements is obvious when there is currently a SOP placing certain restrictions on staff discretion that has been disregarded. In the Balance of Harm - the DOC is required to do so on demonstrable facts, and not arbitrary and unlawful guesswork to deny disbursements. I cannot even have check securely placed in my inmate trust account without it becoming lost or stolen. You can't even protect consumer credit information and you want people to send personal bills to inmates. Its common sense if the inmate needs to send money from his inmate trust account to family, friend or associate to purchase legal materials there is no way a bill can be provided beforehand because they cannot purchase the materials without the funds to obtain a receipt of the bill.

The statute does not authorize prison officials to divide trust account and restrict withdrawals from one part. I have already reported fraud under the Reasonable Person Standard of the Sarbanes-Oxley Act of 2002. There is no Corporate accountability for financial records in violation of Section 302; Periodicals and other reports are not accurate in violation of Section 402; Destroying and falsifying records in violation of Section 802(A).

The restrictions placed on inmate accounts violates the Commerce Clause and the unjustifiable local entanglement by the DOC exceeds police power and regulation to misuse channels of interstate commerce to personally benefit from state monopoly created by false records. The corporate records would not stand scrutiny under audit of

Inspector General because claims have already been heard in proper forum but since the DOC and its staff do all the oversight there is a business logic and a profit motive to continue to have fraudulent claims against chartered purposes and my family estate as illegitimate purpose to cause damage to my collateral subject to creditor's security interest. See JULIO B. LEIVA v. MASSACHUSETTS DEPARTMENT OF CORRECTION, ET AL., Docket No.1984 CV02995-E in Suffolk county All claims have been preserved under Saving Clause and is a matter of public record. See Joinder of Claims - File Reference Number 42

Mere assertions are not enough administrative due process must be found in the record. You must provide proof of claim that any illegitimate purposes is specifically connected to a certain kind of activity that is not already handled by the Inner Perimeter Security (IPS). Due process has been denied to seizure of funds due to pattern of making administrative process not available to obtain some relief from action complained for. See Leiva v. Turco, 1198 Mass.App.Ct. standard for sanctions that include restitution and clearly established law enumerated in Wolff v. McDonnell.

Thank you for your time and attention to this matter.

Date:12/18/23.



RECEIVED
JAN 5 2024
DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

From: [REDACTED]
Sent: Friday, January 5, 2024 5:01 PM
To: Dupuis-Clarke, Michele A. (DOC)
Subject: Text comment

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Commissioner Mici and the Department of Corrections,

My name is [REDACTED], I am currently in a relationship with a civilly committed individual within the DOC. My life partner is serving a life without the possibility of parole sentence. This means that these policies will directly affect him for the rest of his life or until the CMR's are changed again. These policies also affect his family on the outside and his ability to support them. Together we have four minor children for whom we are responsible. Every day we work together to take care of our children, parents, grandparents, friends, and other family members. Much of this responsibility falls upon me because he is so restricted in his ability to support us. Rather than strengthening his ties to the community and creating policies to make it easier for incarcerated individuals to support their loved ones, the DOC has at every turn and every opportunity sought to make things more difficult for inmates and their families. This is extremely dehumanizing and wrong. The changes to 103 CMR 405: Inmate Funds is just one more example of the corruption of power in the DOC and their complete lack of regard for the lives of the people in their care. The Department of Corrections needs to keep their mission statement at the heart of every decision and every policy that they make "to promote public safety by managing offenders while providing care and appropriate Programs in preparation for successful reentry into the community". I do not believe that these policies have anything to do with the mission statement of the DOC. If the goal is to foster relationships with the community and loved ones on the outside; then the DOC needs to be working to enact policies which would make sending funds easier for those who are incarcerated. It is important to note that inmates have no other way to manage their money. They are unable to hold bank accounts as they are unable to get ID's from the RMV because the DOC will not allow it. The monies held in inmate accounts should be readily available to that inmate at any point in time and for any reason that inmate sees fit. If they choose to have a savings account, they should do that of their own accord and they should not need to ask for permission to spend it. These are not children in your care and custody. These are grown men and women. They were sentenced as adults and should not need to ask for permission to access their own money. Any and all fees should be voted on by a committee and published in the CMR's so that the inmate is fully aware of any fees before they make any decisions regarding their accounts. There should NOT be any fees for managing inmate funds. The DOC does not give any other way for inmates to manage their money and to charge them a fee to do what they are paid to do is unjust and criminal. The DOC is a public service entity. Inmate accounts should not be able to go negative for the purpose of collecting a monthly fee. The DOC is not a financial institution and is not required by Massachusetts laws to comply with regulations for a financial institution. If the DOC would like to act as a financial institution, they should get the proper licensing to do so and allow inmates to spend their money however they wish to do so. It is unjust to force inmates to put money into a savings account. They are HUMAN BEINGS and have the right to make decisions with their own money whether that money is given to them by their loved ones or earned by way of a job. Most inmates do not have access to jobs and rely on the money sent by their loved ones. Instead of restricting the way that inmates spend their money and creating more fees for them and more ways to burden them and make their life a living hell, the DOC should concentrate on creating more jobs for inmates.

This CMR is so ridiculously unfair and unjust and if the DOC enacts these policies, it will be met with lawsuits and complaints to legislators. The DOC forces inmates to buy products from third party vendors at a ridiculous mark up, they do not allow them to earn a wage which would give them enough money to be able to afford to live off these expensive

third-party products, and then to top it all off, they want to charge the inmates monthly maintenance fees to manage the tiny little bit of money they make. This is criminal but not in any way surprising as the DOC continually strives to oppress incarcerated people and add to the problem of mass incarceration by lining the pockets of the companies behind the prison industry. Who does these CMR's help? Are they in any way helpful to the inmates or their families? NO! They create unnecessary burdens and more hardship for families already struggling. There have been times when I needed a bill paid and he had the money in his account. He asked me to mail the bill to him so that he can pay it for me. I did not feel comfortable sending him the bill because of the lengthy process within the DOC. I was afraid that by the time I mailed him the bill and it went through the proper channels if it was approved, a money order would then be sent via U.S mail to the company to pay the bill. By the time all of this takes place, my bill would be past due, and I would incur a late charge. This would be on top of the processing fees that the DOC would charge. In conclusion, there is nothing positive about these changes besides the wage increase which only affects a select few inmates lucky enough to be allowed to hold jobs and earn a wage. As for the rest of the inmate population, the DOC is creating new ways to burden them and the families who support them.

Regards,

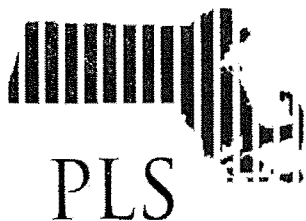


From: Petit, Lauren <lpetit@plisma.org>
Sent: Friday, January 5, 2024 12:11 PM
To: Dupuis-Clarke, Michele A. (DOC)
Subject: PLS comments on proposed 103 CMR 405 Funds Accounts
Attachments: 2023.01.05 Funds Accounts regulations comments.pdf

CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Attached, please find the PLS written comments on the proposed funds regulations, to supplement the oral testimony given at hearing this morning.

Thank you.
Lauren



PRISONERS' LEGAL SERVICES OF MASSACHUSETTS

✉ 50 Federal Street, 4th Floor • Boston, MA 02110

🌐 www.plsma.org

📱 fb.me/prisonerslegalservices

📧 @PLSMA

☎ Main: 617-482-2773

📠 Fax: 617-451-6383

State prisoner speed dial: 9004 • County prisoner collect calls: 617-482-4124

Testimony of Prisoners' Legal Services on Proposed Changes to 103 CMR 405 Department of Correction Fund Accounts

Prisoners' Legal Services of Massachusetts concurs with the many incarcerated people, advocates, family members, and community members who have expressed concerns that the Department of Correction's proposed regulations under 103 CMR 405 perpetuate systems of power and control that harm incarcerated people and their families and violate their due process and First Amendment rights. The fact that the current system of incarceration is rooted in chattel slavery is critical context for any analysis of this regulation and determination of what system the Department chooses to enshrine.

As general matters, the proposed changes to 103 CMR 405 result in regulations more opaque than clarifying. It is difficult to follow the contrived re-writing of the regulations which seem intended mainly to work around the recent court decisions finding that the Department's previous Standard Operating Procedures for this regulation were illegally implemented, while allowing for many of the same provisions the invalidated SOP included. We include some suggestions for clarifying language below.¹ Additionally, we urge DOC to invest in the provision of quality, evidence based, substance use disorder treatment and make such treatment available to all incarcerated people who need it. Treatment would be a much more effective way of alleviating the main problem these regulations seek to prevent- illicit transactions to support purchases of drugs inside the prison- in addition to supporting public safety by releasing healthier people to the community. PLS would also like to see a reduction in substance use in the prison system, and we know that supply-side solutions are outdated and ineffective. We support creating a decrease in the demand for substances by fostering humane conditions of confinement that support recovery.

I. PLS supports increased wages and advocates for additional increases and regular cost of living adjustments.

We are pleased to see that the Department has increased the wage scales set in 103 CMR 405.07(11). The increase, though marginal (working out to a *maximum* of less than \$10 a week increase if working a seven-day week), is the first in many years and is long overdue. That said, these scales, ranging from \$1.35 to \$2.70 per day for "unskilled" work inside the prison, are tangible remnants of the prison system's foundation in slavery. The meager earnings permitted send an implicit message that the person and their work are not valued and, frankly, discourage participation in prison employment. Because only a tiny percentage of incarcerated people are allowed to move through to lowest security levels and to work outside the prison at community wages before release, the prison wages are the main source of earned income for incarcerated

people to save up for release. As a result, these wages also make it nearly impossible to achieve the stated goal of the Wages and Stipends section of the regulation; that “[t]he primary purpose for institutional Savings Funds is to ensure that [incarcerated and civilly committed people] shall be released with enough funds to aid in acquiring a residence and to be able to afford the expenses related to reintegrating in a community upon discharge or parole.” 103 CMR 405.07(1). We strongly urge the Department to meaningfully improve the wage scales and implement a regular cost of living increase every two years to keep up with inflation in the canteen and in the community.

II. PLS supports clear accounting of earned and unearned funds and encourages implementation of a reliable definition of “compelling need” that ensures incarcerated people maintain appropriate control over their own money, also ensuring their due process and First Amendment rights are protected.

A positive proposed change appears to be that the Department will now maintain a clear distinction between a person’s funds that are earned and those that are unearned, whether in Personal or Savings Fund accounts.² Having a clear accounting of these separate funds will permit the Department to comply with the limited legal authority given to it under Massachusetts statutes to exert control over the money of incarcerated people. The Massachusetts Appeals Court recognized that “the ability to purchase an in-kind gift for a person, or to pay a bill on that person's behalf, is not the same as the ability to transfer money to that person to spend, or save, or invest, or donate, as and when that person wishes.” *Haas, et al., v. Commissioner, et al.*, 103 Mass. App. Ct. 1, 9 (2023). The proposed regulations appear to provide for an incarcerated person with unearned funds in their Personal Fund, such as money gifted/donated to them by family or others outside the prison, to spend or gift that money without needing to prove any compelling need, *Cf. Haas v. Commissioner*, 103 Mass. App. Ct. at 17 (finding no statutory authority for a compelling need analysis to expend donated funds), and will be able to do so as long as they follow the request process and pass the scrutiny of the internal review to ensure that there is no illegitimate purpose. If this is a correct reading, we support this with some suggested clarifications.³ However, we strongly encourage the Department to define and assess “compelling need” for expenditure of earned funds in a way that does not remove all control from the earner of the funds in favor of prison administration. It is a significant concern that the Department authorizes itself in these proposed regulations to create unspecified guidelines for determining the legitimacy of transactions as well as determining “compelling need” for expenditure of funds, thereby giving itself unfettered discretion in these key aspects of the regulation without an opportunity for public comment.

Incarcerated people retain due process rights to their property, including funds in prison accounts. *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974).⁴ The regulations and any guidelines should explicitly provide for gifting of money from earned and unearned funds alike to individuals (allowing for birthday or holiday gifts, helping financially support family or loved ones, contributing to travel expenses, and the like). They should also allow for donations by individual incarcerated or civilly committed people to organizations and political candidates they wish to support. Such provisions support the strengthening of family ties and community involvement during incarceration, which are shown to help with successful reentry. They also would ensure that the Department does not violate the First Amendment rights of incarcerated

and civilly committed people to contribute to political and charitable causes without government interference.

III. PLS opposes all proposed provisions that may create a default of denial of requests for disbursement, subject incarcerated people and their families to due process violations, unauthorized takings, and abuse of discretion in how they spend their own funds.

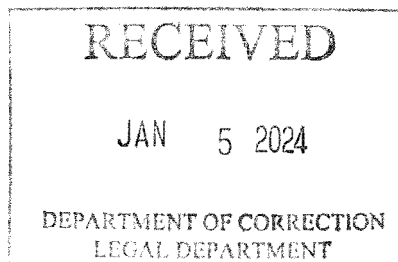
The Department has always investigated transactions that it deemed to be suspicious, but there is no justification for a blanket policy that punishes everyone by denying all or most disbursement requests for administrative convenience. The proposed changes to the regulations make all requests for disbursement of funds (presumably outside of canteen purchases) subject to a heavy burden of documentation in order to establish that they are NOT illegitimate. As the Department is aware, monetary gifts to family, loved ones and friends for very legitimate purposes often generate no receipts or bills. Though the proposed regulations state that lack of receipt cannot be the only reason for denial, we strongly urge the Department to abandon the unjustified practice of blanket denials of disbursement requests under the invalidated SOP.

There are several places throughout these proposed regulations where provisions raise due process and unauthorized takings concerns. Proposed 103 CMR 405.10(3) authorizes the DOC to divert funds sent to be deposited to an individual prisoner's account to the Commonwealth's General Fund if they cannot satisfy the unspecified DOC guidelines for legitimacy. Proposed 103 CMR 405.10(5) permits the taking of any cash presented for deposit to a person's Funds Account and diversion of it to the General Fund. The regulations, before and after the proposed changes, also improperly provide for the Department to take for itself a refund on the gate money given to prisoners upon release if any money is sent to a person's Funds Account after the person is released from custody. 103 CMR 405.17(2). The Department has no legal authority to charge incarcerated people or their families for this statutorily created expenditure, *see* G.L. c. 127, § 162, and doing so would conflict with their obligations under G.L. c. 127, § 3, (“[The department] shall keep a record of all money or other property found in possession of prisoners ... and shall be responsible for the safekeeping and delivery [of property when the prisoners are discharged]”), and due process rights.⁵

PLS supports those proposed changes that increase wages, segregate earned and unearned funds, and walk back the overly restrictive provisions of the invalidated SOP. As described above, we urge the Department to:

- commit to further increasing wages,
- implement in 103 CMR 405.05 a clear and reliable definition of “compelling need” that allows incarcerated and civilly committed people autonomy to make responsible decisions about how to spend or share their money, consistent with the law, while preparing for release,
- create a system of disbursement that investigates those requests that trigger suspicions of illegitimacy rather than forcing all individuals to prove that their request is NOT illegitimate, and
- ensure that no due process violations or illegal takings are baked into the regulation.

Thank you for the opportunity to submit these comments for consideration.





150 Federal Street | 4th Floor | Boston, MA 02110 | www.plsma.org
1077010101@plsmail.com | @PLSMA
Main: 617-482-2273 | Fax: 617-482-6888
State Prisoners: 617-500-1100 | County Prisoners: 617-482-4029

January 8, 2024

Heidi Handler, Esq.
Michelle Dupuis-Clarke
DOC Legal Division
70 Franklin Street
Boston, MA 02110

Re: Comments forwarded by PLS on Funds Accounts

Dear Attorney Handler and Ms. Dupuis-Clarke

Thank you for reaching out to PLS about your concerns relating to the comments on the proposed Funds regulations by three incarcerated people that were forwarded to DOC last week. I appreciate your efforts to ensure that you are able to consider these submissions. I apologize for the lack of a cover letter when they were dropped off at your office.

The cover letter in the material sent to PLS, which was not forwarded to DOC since it was attorney-client communication, indicated that the notice on the unit's board with the information about where to send the comments within DOC had been removed, so the individuals whose comments were forwarded sent them to PLS in hopes that we could direct them to the correct place in DOC. Rather than read the comments into the record, we forwarded them to your attention for consideration. Please accept these submissions, on their own or appended to PLS' submission if necessary.

I hope this addresses your concerns, and that you will be able to consider the comments, knowing that they were meant for forwarding to the DOC and are not confidential communications to PLS.

Thanks again.

Sincerely,


Lauren Petit
Staff attorney

December 26, 2023

PLS
Al Troisi
50 Federal St. 4th FL
Boston, MA 02110

RE: PUBLIC HEARING ON 103 CMR 405 FUNDS ACCOUNTS

Dear Mr. Troisi:

I am submitting this opposition to the D.O.C. proposed changes to 103 CMR 405 to be read or submitted:

In effect the D.O.C. wants to punish the vast majority of prisoners trying to do the right thing in order to help make their job easier in restricting the very few who are stuck in addictions of gambling or drug use. So the reformed man who is trying to be a father to his child and send money for a birthday, Christmas, school clothes, etc. is being denied for "no compelling reason" and not having a bill. Or reaching out to a family member in need (at the PRISONER'S discretion) to meet their financial responsibilities (many of which that do not come with a bill (i.e. rent, transportation, etc.) who will be part of the prisoner's support system upon release is prevented and damages that support system and the eventual successful reentry. Putting discretion in the hands of individual superintendents and taking control away from prisoners managing their unearned D.O.C. income is destructive.

Further, this laissez-faire policy also puts a risk to those who would go through the laborious procedure of mailing in bills to prove the need; risk of timely payment and risk of identity theft. The family member would have to find a way to make a copy of a bill, then mail it in, then have that personal information go through MANY hands (copy made of all incoming mail, sent to a housing officer, possibility of being delivered to wrong cell, then given to a Correctional Program Officer, then to Superintendent assigned person, then superintendent, then Treasurer's Office if approved). Too many eyes on personal data. Too laborious a process for the possibility of meeting an obligation on time. Who pre-plans financial distresses? And this certainly prevents gift giving to a love one as explained earlier.

Throughout this CMR proposal the policy leaves "discretion" to superintendent, so each institution basically has autonomy of operations. Although explanation for denials is required, past "explanations" have been "no compelling need" and that practice will continue to frustrate a prisoner from spending his/her non-earned income.


As long as an agency of the government wants to control an individuals income gained outside of that institution the hand of democracy is transformed into a dictatorship to control its subjects. This is no way to "help" someone return to society in a responsible, healthy way with a good support system.

The proposed FUNDS ACCOUNT 103 CMT 405 should not be implemented. A focus on rehabilitation, helping the incarcerated further develop empathy and consideration for those in their support system far exceeds the focus to frustrate those supporting addiction while incarcerated.

Respectfully submitted,



December 27, 2023



PLS
Al Troisi
50 Federal St., 4th FL
Boston, MA 02110

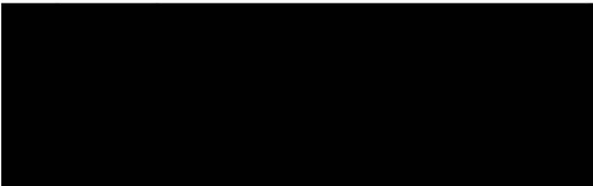
Dear Al:

I am apposed to the proposed changes to the CMR 405 D.O.C. Funds Account policy proposal that further secures superintendent discretion over how I spend my own funds that I received outside of my D.O.C. employment.

I have tried to send my son, who I have been seperated from for over 30 years because of my crime, some financial assistance and been denied. The fact I told him I would try to send him some financial help and then did not has hurt our relationship. He did not, nor do I, understand why money that has come to me over the years is not mine to do as I will. I have never been found guilty of nor investigated for using drugs or gambling debts throughout three decades of incarceration. Yet I am not trusted to manage my own money? I've also tried to send money to buy a gift for my granddaughter Savannah and been denied.

Having a superintendent making decisions for every inmate's financial transaction is out of line. If the objective is to put responsible returning citizens back in society then we should not be institutionalized to the point of not being able to make financial decisions and care for our loved ones.

Sincerely,



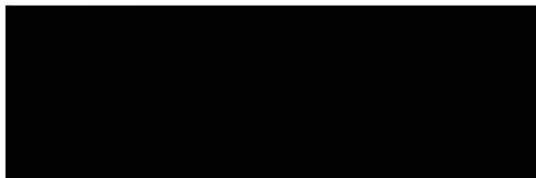
OPPOSITION TO THE PROPOSED CHANGES TO 103 DOC 405
PROPOSED CHANGES
(for January 5, 2024 hearing)

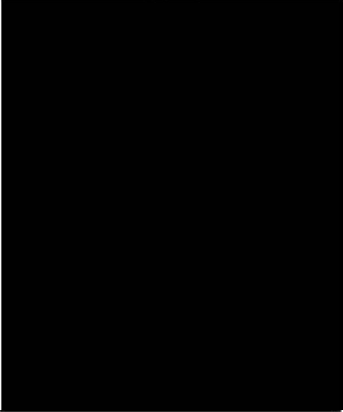
Giving superintendents discretion on deciding what a prisoner can and can't do with his own finances is not right and these proposed changes to 103 CMR 405 should not be adopted.

For many years I have been doing the right thing during my incarceration. In fact, I was moved to minimum security with five years before parole and remained d-report free in minimum and then work-release status. I was working full time for over a year. My wife informed me she was having financial problems meeting all her obligations, including rent for which there is no bill issued. When I requested sending her some of my money to help her I was denied. When I appealed to the superintendent I was denied. When I communicated this to my wife she was upset and could not believe I could not send the person I would soon be living with some of my employment savings to help her through her rough patch. She cut off communication with me because of it and then she had heart problems and was hospitalized. Not only was my support system compromised, but her health also failed.

When the stated purpose of the D.O.C. is to rehabilitate toward a successful reentry, the practices of the D.O.C. having discretion over my Fund Account did the opposite. An agency should not be making decisions for the individual when the individual has given them no reason to NOT be trusted in managing their own money.

Sincerely submitted for reading or spoken
at the January 5, 2024 hearing promulgating
103 CMR 405





BOSTON MA 020

2 JAN 2024 PM 2 11



PRISON LEGAL SERVICES
ATTN: AL TROISI
50 FEDERAL ST., 4th FL
BOSTON, MA 02110

02110-250904



Ms. Michele Dupuis-Clarke
DOC Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

RE: Rashad Rasheed, formerly know as Bobby R. Kines,
v. Thomas Olivera, et al United States
District Court District of Massachusetts
No. 82-444-G

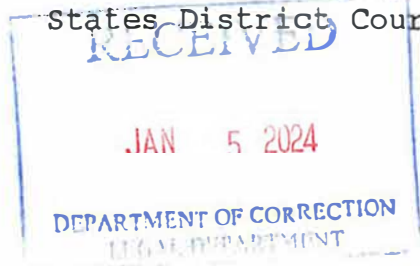
Dear Ms. Dupuis-Clarke:

I am the plaintiff in the above entitled matter, please find enclosed a copy of a permanent injunction in the above entitled matter. I write because this injunction enjoin the promulgation of the proposed 103 CMR 405.12, including placing or crediting money to inmates saving account. As you will see Judge Garrity, ordered that: "Said funds are to deposited in the plaintiff's personal account." (Attached judgment and permanent injunction at pages 1-2.(Exhibit 1-11 pages).

Judge Garrity further declared on April 17, 1984: "In the absence of explicit statutory authority provided by the legislature of the Commonwealth of Massachusetts, the permanent forfeiture by prison officials of currency found in the possession of prisoners of the Commonwealth of Massachusetts is unlawful and is prescribed by the Fourteenth Amendment to Constitution of the United States." (Exhibit 1-2). Where the Massachusetts Department of Correction did not appeal Judge Garrity April 17, 1984 decision, this permanent injunction are binding on the Massachusetts Department of Correction today.

Furthermore, where the legislature of the Commonwealth of Massachusetts have not give the Commissioner, Superintendent or the Massachusetts Department of Correction no explicit statutory authority since 1984, no new statutory authority regarding inmates money proposed 103 CMR 405.10(1)-(18); 103 CMR 405.11(1)-(6)(5)(6) violates the April 17, 1984 declaration. (Exhibit 1-11).

I will seek enforcement in the Massachusetts United States District Court.



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BOBBY R. KINES,

Plaintiff,

v.

THOMAS OLIVIERA, et al.,

Defendants.

CIVIL ACTION NO. 82-444-G

JUDGMENT

GARRITY, J.

In accordance with the Court's "Order for Entry of Final Judgment" entered on April 13, 1984, it is ORDERED: That Summary Judgment for the plaintiff be, and it is hereby, entered.

It is FURTHER ORDERED:

Plaintiff is awarded compensatory damages in the amount of \$160.00, plus interest charged at the rate of 12% from the date of entry of final judgment. Said funds are to be deposited in the plaintiff's personal account at MCI Walpole.

It is FURTHER ORDERED:

Plaintiff is awarded \$5,000 in attorney fees and expenses of \$421.82, for a total of \$5,421.82.

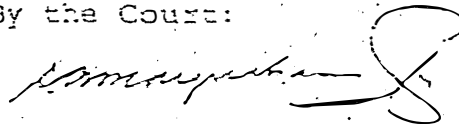
It is FURTHER ORDERED:

Until further legislative action on the subject, defendants, their agents, employees and successors in office are permanently enjoined from confiscating permanently any money found in the possession of inmates.

it is HEREBY DECLARED THAT:

~~In the absense of explicit statutory authority provided by the legislature of the Commonwealth of Massachusetts, the permanent forfeiture by prison officials of currency found in the possession of prisoners of the Commonwealth of Massachusetts is unlawful and is proscribed by the Fourteenth Amendment to the Constitution of the United States.~~

By the Court:



STEPHEN A. MOYNAHAN, JR.
Deputy Clerk

Dated: 04-17-84

000000

EXCERPT OF PROCEEDINGS.

THE CLERK: Civil Action 82-444-G, Bobby Kines versus Thomas Oliveira.

* * * * *

THE COURT: I will state the ruling and then the reasons. The ruling is that the plaintiff's motion for summary judgment is granted and the defendant's motion is denied, and the fundamental reason is that the Court believes that the decisions in Sell versus Parrett are correct. You have the Eighth Circuit Court of Appeals decision affirming the district judge's order. The Eighth Circuit decision is in 1977, 548 Federal 2d 753. The district court decision was unreported, but it was filed by the plaintiff as an attachment to the plaintiff's brief. I have since detached it, but it is in the file.

The circuit court in its opinion stated the proposition that I believe to be required by the Constitution, and I quote: "that an administrative agency has no right, without underlying statutory authority, to prescribe and enforce forfeitures for violations of administrative rules and regulations, and that when an agency does so, it violates the due process clause of the Fourteenth Amendment." Close the quotes.

In this case, the Court has followed the same analytical approach as followed by Judge Urham in the district

1 court in the Sell case, that is, asking first whether a
2 prison inmate under the law of Massachusetts has a property
3 right in currency in his possession, and the Massachusetts law
4 supports that conclusion.

5 The cases cited at pages 10 and 11 of the plaintiff's
6 brief so indicate. I will cite Odd Fellows Hall Association
7 versus McAlister, 1891, 153 Mass. 292; and the New England Box
8 Company versus C & R Construction Company, 1943, 313 Mass. 696.

9 It is important to note that ~~this case does not~~
10 ~~involve contraband per se.~~ That is a distinction made very
11 clearly toward the conclusion of the district court opinion in
12 the Sell case. ~~This money was contraband only because it was~~
13 ~~possessed by an inmate within the walls of a prison, and is~~
14 ~~not contraband per se. It is contraband only because of the~~
15 ~~particular circumstances in which it is possessed, so that~~
16 ~~distinguishes the case from both guns and narcotics, because~~
17 ~~under the Massachusetts law and the federal law, both a~~
18 ~~person convicted of a felony may not lawfully possess a fire~~
19 ~~arm, and narcotics possession is prohibited because of the~~
20 ~~essence of the contraband, distinguishing it from money.~~

21 The next point to be made is that the Court has not
22 ordered nor has the plaintiff sought an order restricting the
23 defendant warden from seizing the money and depriving the
24 plaintiff of the funds. The only issue here is not whether
25 the plaintiff may possess the money, because he may not, but

1 rather ~~whether~~ it can be forfeited permanently.

2 Parenthetically, there is no question whatever that
3 the court in the Lowery case was dealing with permanent for-
4 feiture. It is Lowery versus Cuyler, Eastern District of
5 Pennsylvania, 521 Federal Supplement 430. There the state had
6 done what Massachusetts has not, at least as yet, and provided
7 explicitly for permanent forfeiture and for the disposition of
8 money that was forfeited.

9 The Nolan case -- and could you kindly hand it up to
10 me, Miss Weissberg -- oh, is it outside? We looked at it
11 during the recess, and it is not, in my view, to the contrary.
12 Thank you.

13 That case is a First Circuit decision, Nolan versus
14 Fitzpatrick, 1971, 451 F. 2d 545, which is a First Amendment
15 case in which the plaintiff complained that he was forbidden
16 to send letters to the news media, and the proposition that
17 an inmate retains all rights except those either taken away
18 from him either explicitly or by necessary implication is a
19 sound general proposition, but, in my view, not applicable in
20 this case.

21 I do not mean to imply that this is an easy case,
22 that is, one in which the arguments are all one-sided. It is
23 a close case, but in my view, the combination of the super-
24 intendent's responsibility under Chapter 127 of the General
25 Laws, Section 33, to maintain order, and the provisions in

1 Section 103 of the Code of Massachusetts Regulations, 430.22,
2 subparagraph 24, which proscribes possession of currency, and
3 subsection 23, which sets forth the sanctions for violating
4 prison regulations, do not warrant rejection of the plain-
5 tiff's claim.

6 The most powerful support for the defendant's position
7 is the affidavit filed by the defendant, with which the Court
8 has no quarrel, and which makes such complete sense, namely,
9 that currency is second only to guns in causing problems and
10 other crimes in prisons.

11 Now, the warden has decided that to maintain order in
12 prisons, permanent forfeiture of contraband currency is neces-
13 sary, and the statute, Section 33, provides: A superintendent
14 shall cause all necessary means to be used to maintain order
15 in the institution under his supervision.

16 Where the Court believes that the warden has over-
17 stepped his authority in this case is in deciding upon perma-
18 nent forfeiture as distinguished from deprivation of posses-
19 sion. Clearly he can effect a seizure of the currency and
20 deprive the inmate of it, but, as explained so carefully in
21 the district court opinion in the Sell case, forfeiture is
22 not favored in the law, and generally requires specific
23 statutory authority, and this provision has been made appli-
24 cable to seizures of property from prison inmates.

25 Forfeitures are simply so different -- and I am ...

1 talking now about forfeitures of a permanent nature -- are no
2 different from the mere deprivation of possession that they
3 are not, in my view, authorized by the Legislature in
4 Section 33 of Chapter 237, nor can it be said that permanent
5 forfeiture, as distinguished from deprivation of possession,
6 as a punishment is notice to prisoners as a possible penalty
7 for their violating the regulation prohibiting the possession
8 of currency.

9 In this case, it is clear that the inmate was charged
10 and found guilty by the Disciplinary Board of possession of
11 contraband currency in violation of the regulations. The
12 punishment was deprivation of visiting privileges for an
13 indefinite period of time. The additional punishment imposed
14 by the warden of permanent forfeiture I find simply not to be
15 authorized.

16 Those are the reasons for the Court's allowance of the
17 plaintiff's motion for summary judgment. The relief sought in
18 the plaintiff's complaint is broader, I think, than what you
19 are seeking in your motion for summary judgment. I will not,
20 because I think it is unnecessary here, issue a broad declara-
21 tory judgment.

22 Do you seek an award of compensatory--- What the
23 order is here is to give-- is to put this money in the man's
24 account so that when he is released from prison, he will get
25 it. Do you seek compensatory and punitive damages?

1 MR. CONROY: Your Honor, we seek the restoration of
2 the \$160.

3 THE COURT: That is ordered.

4 MR. CONROY: With interest.

5 THE COURT: But that would be--- Yes. That is with
6 interest, in keeping with Section 3, which I agree with Mr.
7 Hickey is intended to apply to prisoners upon their original
8 admission or commitment. I don't think it applies in this
9 case, but the provision of interest is consistent with the
10 amendment in 1962 of that statute, and is also ordered.

11 MR. CONROY: Yes, your Honor. I appreciate that.
12 Beyond the restoration of the money, your Honor, I cannot
13 represent to the Court that there were any actual damages
14 here, and I would ask your Honor to make whatever award you
15 think fair in terms of financial compensation. I---

16 THE COURT: Well, I think interest fully compensates
17 the plaintiff for this loss, because it wasn't earning
18 interest while in his possession. It was currency.

19 I ask that you draft a form of order, simple order,
20 consistent with the Court's oral statements and rulings at
21 this time, and to submit it to Mr. Hickey so you can agree
22 upon the form of it. If you can't, write me a letter setting
23 out your respective positions, and give it to Mr. Moynahan
24 within a week if you can, and I will enter judgment, summary
25 judgment, for the plaintiff.

1 MR. CONROY: Thank you, your Honor. May I make one
2 other comment, sir?

3 THE COURT: Yes.

4 MR. CONROY: First of all, just to put it on the
5 record, it is our intention, pursuant to the federal statute,
6 to seek compensation for fees, as the prevailing party.

7 THE COURT: Well, that is anticipated.

8 MR. CONROY: Thank you, your Honor. Secondly, your
9 Honor -- and I don't want to take a lot of the Court's time,
10 but as counsel for my client, I feel obliged to raise this.
11 In his prayer for relief, he asks for an injunction barring
12 retaliatory actions, and I understand that these are more or
13 less---

14 THE COURT: I was told that that was mooted by you
15 yourself, I think, at the last hearing. Someone said that
16 that is no longer a problem.

17 MR. CONROY: Oh. Well, actually, your Honor, it was
18 orally, but months ago there was retaliation, according to my
19 client, threats against him. He moved at that time for an
20 order, and we resolved that incident.

21 THE COURT: Right.

22 MR. CONROY: Subsequent to that, sir, a few weeks ago,
23 he informed me that he feels he is again being retaliated
24 against as a result of this suit, and I didn't want to raise
25 it in the substantive part of the case, but now that you have

1 decided the case, I would like to present to your Honor his
2 affidavit in that regard, and I have given my brother a copy.

3 THE COURT: Well, here is what we will do there. I
4 have a three-judge court hearing at 3:30, but I want to give
5 Mr. Hickey an opportunity to respond to that affidavit, and
6 I will withhold entry of judgment, including and in particular
7 anything having to do with an injunction against retaliatory
8 conduct, until after I see Mr. Hickey's response.

9 MR. CONROY: I understand that, sir. May I submit it
10 to the Court for your review?

11 THE COURT: Oh, surely. File it with Mr. Moynahan.
12 And you don't need more than a week in which to
13 respond.

14 MR. HICKEY: No, your Honor.

15 THE COURT: And I will not enter judgment until a
16 week.

17 MR. CONROY: Thank you, your Honor. I understand
18 there is a disciplinary proceeding pending on this particular
19 incident, and I will be in contact with the authorities there
20 about it. They haven't scheduled---

21 THE COURT: Well, that sounds a little separate. But
22 we will now recess.

23 MR. CONROY: Thank you, your Honor.

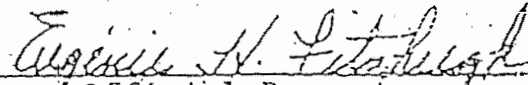
24 MR. HICKEY: Thank you very much, your Honor.

25 [Thereupon the hearing was concluded.]

1 UNITED STATES OF AMERICA)
DISTRICT OF MASSACHUSETTS) ss.
2 CITY OF BOSTON)
3
4

5 I, Eugenie H. Fitzhugh, CSR, RFR, Official Reporter,
6 do hereby certify that at the time and place aforesaid, I
7 reported stenographically the proceedings had in Civil Action
8 No. 82-444-G, Bobby Kines versus Thomas Oliveira, and that the
9 foregoing record is a correct transcript of the Court's
10 findings and rulings on cross motions for summary judgment.
11

12 In witness whereof I have hereunto set my hand this
13 14th day of November, 1983.
14
15

16 
17 Official Reporter
18
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22
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24
25



ERIKA UYTERHOEVEN
STATE REPRESENTATIVE
27TH MIDDLESEX DISTRICT

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES
STATE HOUSE, BOSTON, MA 02133-1054

Committees:
Revenue
Public Service
Elder Affairs
Intergovernmental Affairs

STATE HOUSE ROOM 473B
TEL: (617) 264-1096
Erika.Uyterhoeven@MAhouse.gov

January 5, 2024

Department of Correction - Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

Subject: 103 CMR 405: Fund Account

I am writing to testify on the proposed changes to CMR 405. My testimony will touch on three issues. First, I am testifying in strong opposition to section 11, subsection 2 and 6, which creates a new, onerous, and needlessly bureaucratic approval process for incarcerated individuals to disburse funds.

Prior to this proposed policy change, the practice of requiring incarcerated individuals to get approval from facility administration and show documentation of how their money will be spent was most recently started during the Covid pandemic. This was of utmost concern for the women at MCI-Framingham that I, and other legislators visited in 2021. The majority of the women are mothers and wished to send money to support their families and to send gifts to bond and remain connected to their children. As with almost all Department of Correction (DOC) approval processes, this practice was slow, frustrating, lacked a paper trail or clear accountability mechanisms for it to be implemented fairly or in an appropriately timely manner. As such, this will be yet another policy that burdens and punishes incarcerated individuals who are merely trying to do the right thing, stay connected to their family and community and rehabilitate themselves.

Allegedly, a very small number of individuals have disbursed money for illegitimate purposes. But this is not a justification for DOC to implement collective punishment on all incarcerated people based on individual conduct. The DOC has a robust disciplinary process to address individual conduct and hold bad behavior accountable. This includes disciplinary reports, removal from general population to segregated housing, and an annual to biannual classification review process. Collective punishment for individual conduct is an all too common practice in the DOC and runs afoul to the constitution, Massachusetts General Laws, and the DOC's core stated mission of rehabilitation.

Second, the wages outlined in section 7 subsection 11 are deplorable and dehumanizing. These wages reflect the historical and political context that prisons and mass incarceration are the continuing legacy of slavery in America. I believe we can do far better than paying incarcerated people \$1.35 to \$2.70 per day. This is equivalent to an annual salary of \$350 to \$700 a year

assuming 260 work days per year, which is an optimistic assumption because so often incarcerated individuals are put in modified lockdown preventing them from working. This wage is a meager 2% of the Massachusetts minimum wage of \$15 an hour or \$31,200 per year. I urge the DOC and Executive Office of Public Safety and Security to reconsider significantly raising these wages.

Third, I want to raise concern on bringing in an outside vendor to process simple transactions such as cashing checks as outlined in section 10. What is notable about these changes is the absence of clarity on the magnitude of fees that an outside vendor could incur. In addition, there is no transparency on the fees set by the Commissioner for maintenance and administration of Fund Accounts.

These changes are part of a larger context of the DOC's policies and practices that not only deviate from the DOC's core mission of rehabilitation but are continuing steps in the wrong direction that run afoul to the constitution and Massachusetts General Laws. This includes laws from the 1972 Correction Reform Act up to and including the No Cost Calls law, which was implemented a little over a month ago. The abysmally low wages coupled with potentially exploitative fees that lack any guardrails continues to make being incarcerated expensive and does not set people up for success upon re-entry. In the most recently passed legislation of No Cost Calls, the legislature intentionally included provisions to limit burdensome fees from canteen purchases. I urge the DOC to continue in the spirit of this legislation and include in these policy changes higher wages, guardrails, and transparency to administrative fees.

With respect to the first change, to put in place a new and onerous approval process for individuals to disburse funds is harmful to rehabilitation because it puts in place barriers for people to stay connected to their families and communities. It also undermines a fair and just accountability system within the DOC. As I stated earlier, there should not be collective punishment for individual conduct. This is a common practice in the DOC and this policy change codifies this deeply problematic practice. I believe this policy runs afoul to equal protection, and oftentimes results in litigation against the DOC as a violation of due process. It also runs afoul to the spirit, intention, and language of the Massachusetts General Laws, including the responsibility of the DOC commissioner to ensure rehabilitation and assist each such person to assume the responsibilities and exercise the rights of a citizen of the commonwealth. This requires a fair and consistent disciplinary and accountability process for individual conduct. However what this policy does and what I have witnessed repeatedly is that the DOC responds to individual conduct through collective, population-wide punishment or consequences.

With respect to whether these policy changes support rehabilitation, or center on the humanity, dignity, and wellbeing of incarcerated individuals and their families, this policy change is a clear step in the wrong direction. The only positive change from reviewing the entirety of this CMR is in replacing the term "inmate" with incarcerated individual and civil commitment. While language is important and I support this specific change, it pales in comparison to how this policy will negatively impact the material conditions of incarcerated people. It will add to the immense list

of concerns legislators hear from incarcerated individuals and continue to raise with the administration.

Thank you for your consideration and for taking the time to consider my testimony. I expect we will continue this discussion with the DOC and other legislators. Please feel free to contact me directly via email erika.uyterhoeven@mahouse.gov or via phone 857-264-1096 with any questions.

Sincerely,
Erika Uytterhoeven

