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**Minutes of Department of Correction
Public Hearing held via Zoom
January 29, 2021
103 CMR 481 *Inmate Mail***

Meeting was opened to the public at 10:04 am

Good Morning. My name is Heidi Handler, and I am the regulations counsel at the Department of the Correction. Welcome to this virtual public hearing of 103 CMR 481, *Inmate Mail*. Also present virtually and listening is Timothy Gotovich, Director of Policy Development and Compliance Unit for the Department. Mr. Gotovich is also the reviewing authority for this regulation. Kathleen Richard, Program coordinator will be assisting me in conducting this virtual meeting. Briana Donahue-Martens, Paralegal will be virtually present taking minutes of this meeting.

For those of you who are not aware, in in Massachusetts pursuant to the Administrative Procedures Act, whenever an agency promulgates or changes to an existing regulation, it is required to first submit the regulation with proposed changes to a public comment period. Pursuant to this requirement, the Department began accepting public comments to *Inmate Mail* regulation since January 5, 2021. We will continue to accept any written comments that you may wish to submit until 5:00 pm today, January 29, 2021. Today, we will accept oral comments from those of you who wish to offer them.

Just a few housekeeping issues: Please mute your audio for the duration of the hearing, unless it is your turn to speak. Ms. Richard will unmute individuals when it is their time to offer comments. We will begin by calling individuals who notified the Department prior to this hearing that they wish to comment today. We will then call on anybody who wishes to provide oral comments on the proposed changes and had not previously notified the department. I request that you provide your full name utilizing the chat function. We will add these names to a list of individuals who have already requested speaking time. After we have exhausted these lists, we will accept further comments from anybody on the telephone, or who have not yet had an opportunity to speak.

Please limit your comments to less than five minutes so that all who wish to be heard may have an opportunity to speak. For those wishing to comment and need technical assistance using Zoom, let us know and we will be happy to offer assistance.

Pursuant to Department policy, each DOC regulation has a senior level manager assigned to it. This manager is the regulation's reviewing authority and it is his or her responsibility to monitor the application of the regulation. Reviewing Authorities are also responsible for annual reviews of the regulations under his or her charge in order to assess their effectiveness and to determine whether the particular regulation is meeting its purpose.

The Reviewing Authority for 103 CMR 481, *Inmate Mail*, is Timothy Gotovich, Director of the Policy Development and Compliance Unit for the Department. Mr. Gotovich has held his current position since January 6, 2020. Before becoming Director of PDCU, he held the position of Deputy Director of PDCU from 2012 to January 2020, and auditor within PDCU from 2000 to 2012. Before his assignment to the PDCU, he held various positions within the Department, including Director of Security at MCI Framingham and Correctional Program Officer A/B.

Mr. Gotovich is virtually present to listen to your oral statements and will read and accept whatever written submissions you may wish to provide, but no one from the Department will be answering any questions today.

Before we begin accepting public comments, I would like to address one issue that some of you have addressed or may be planning to address in your comments here today, the photocopying of incoming inmate mail. The Department began photocopying incoming inmate non-privileged mail at some of its institutions in 2018 because illicit substance introduction, distribution, and use are major problems within the Department's institutions. On August 16, 2018, the Department implemented a Standard Operating Procedure (SOP) of photocopying all incoming non-privileged inmate mail at facilities authorized by the Commissioner.

The Department has collected data regarding the effects of the SOP at various points in time, which evidences that the photocopying SOP reduced the introduction of illicit substances through inmate non-privileged mail dramatically. Unfortunately, it also led to a dramatic increase in incidents attempts to introduce contraband through items ostensibly marked as legal mail.

For example, from August 2017 to August 2018, field tests related to non-legal mail incidents decreased by as much as 90%, and confirmatory tests for non-legal mail incidents decreased by as much as 80%, however, positive field tests for mail ostensibly marked legal mail increased by 84%, and confirmatory tests by 79% during the same time period.

Thank each of you on behalf of the Department of Correction for participating in the regulation process. The public comment period is integral to the establishment of effective regulations. Following the conclusion of this hearing, DOC will take the comments we have gathered in the process back to Commissioner of Correction, Carol Mici. After considering them, the Department will make any further revisions to these regulations as appropriate and will publish the final version of the regulation into the Massachusetts Register, where it will be promulgated and become effective.

In closing, I want to thank you all for your continued practice of safe social distancing, mask wearing, and hand washing to keep us all safe from COVID at this time.

In order to call the list and accept the public's comments on proposed regulation 103, CMR 481, I turn this over to Ms. Kathleen Richard.

Kathleen Richard – Good Morning, I will now call out the names on the list of those who requested to speak at this public hearing. Please type your name in the chat if you would like to speak. Please unmute yourself when it is your turn to speak. I am letting you unmute yourselves.

Steve Owens, Representative (no response)

Russell Holmes, State Representative – I would like the Department to drop the proposed regulations in the chat so that people can speak factually on what is being proposed.

Steve Owens, Representative (recalled) – I would like the Department to take into account the public testimony in a real and meaningful way. I want to see the results of that.

Randy Gioia – I am the Deputy Chief Counsel at CPCS. I appreciate the opportunity to comment on this important proposal to change how inmate mail is processed. I want to focus on the changes to the processing of privileged mail. We oppose the processing of privileged mail pursuant to the newly added language of 103 CMR. 481.11 (3) that requires the photocopying of privileged mail. The proposed process infringes the constitutional rights of our clients and compromises the confidentiality of attorney-client communications. A photocopier works by taking a photo of an original document and printing a copy from the photo – the photo image is retained in digital form on the copier hard driver Photocopier machines retain digitized copies of the original document. The retention of a digitized copy of privileged mail that is at the core of the problem. Although not directly identified in the proposed regulation, I am assuming the DOC intends to use Smart Communications MailGuard system. The use of the MailGuard system for privileged mail is not an effective solution to the DOC efforts to prevent the introduction of illegal drugs into DOC facilities. We are not aware of any known instances in which bona fide legal mail has been the source of illegal drugs. The use of a MailGuard system to process privileged mail is an exaggerated response to a nonexistent risk, i.e., that licensed attorneys are using privileged mail to smuggle drugs to their clients. The Massachusetts Rules of Professional Conduct require a lawyer to “act competently to safeguard confidential information relating to the representation of a client against unauthorized access by third parties.

Confidentiality has been described as the cornerstone of the attorney-client relationship. If attorneys are aware that their privileged mail is being photocopied and digitized copies of the photograph are under the control of a third party, confidentiality would be compromised and attorneys would likely not be able to ethically communicate with their clients by mail. Attorneys may be ethically prohibited from communicating by mail with their client, which would amount to a First and Sixth Amendment violation. MailGuard is not a system that should be used for privileged mail. The Federal DOC does not use MailGuard for privileged mail. Federal regulations prohibit the copying of attorney-client mail 28 CFR s. 540.18 (1994). We are not aware of any statewide DOC that uses MailGuard for privileged mail. The Pennsylvania DOC purchased MailGuard machines but never used them because they were sued by prisoner advocacy groups and entered into a settlement agreement that did not use the MailGuard system. PADOC still does not use MailGuard. It is not clear whether there will be an inspection of the privileged mail for signs of drugs before the privileged mail is copied. The implementation of this policy for privileged mail may ethically prohibit attorneys from using the mail to engage in privileged communications with their clients. We have another proposal that addresses the issue in a more focused way that does not infringe constitutional rights and confidentiality.

Joshua Dohan – Good morning. I am the Deputy Chief Counsel at CPCS. Thank you for taking our perspective into account as you amend these important regulations. We appreciate that it is the responsibility of the Department to take reasonable measures to prevent the introduction of dangerous contraband into the prisons. Our purpose in speaking this morning is to urge you to make sure that the

procedures you put in place are in fact reasonable. In considering what is reasonable in this situation, we think you need to balance the extremely low risk that an attorney will mail drugs to a client, with the State's obligation to safeguard the constitutional right of incarcerated people to have confidential communication with their attorneys. To this end I would like to offer 4 points for consideration: 1) Lawyers do not send in drugs. The D.O.C. has been closely monitoring mail for years. We have yet to hear of a single confirmed instance of an actual attorney mailing in drugs. I would guess that attorneys mail thousands of documents a year. So, if there is any problem at all, it is infinitesimal. A problem this small does not warrant any intrusion into the attorney client privilege. 2) The anecdotes communicated to us from the D.O.C. involve individuals who send in fake legal mail. This mail does not come from the lawyers themselves. The process we are proposing addresses this problem. By providing each attorney with individualized stickers it becomes almost impossible to send in fake mail. We did not dream up this approach. This is the process successfully adopted in Pittsburgh, PA. The details are in our written submission and are taken almost verbatim from the PA regulations. It is worth noting that the PA process was adopted after a lawsuit precipitated by the PA DOC attempting to implement a Mail Guard system for legal mail. It is our understanding that the expensive Mail Guard equipment is now sitting there unused, while this simple and cheap system is working flawlessly. In the PA DOC, they implemented a system using a number code. Each attorney gets a number that they write on the envelope. They also receive a number from the DOC that changes weekly. The Pittsburgh adaption was created by a former DOC employee who moved over to the county facility and developed an even easier and more effective system. 3) Because real legal mail never has drugs in it, there is no reason to field test. We acknowledge that there is no way to know if there has ever been a time where a lawyer sent drugs. What is clear is that if it has happened it is so rare as to not warrant a testing procedure that unnecessarily violates the constitutional right to counsel. This problem is compounded by the nature of the field test. First of all, Narc 2 is not designed to work on paper and has an unacceptably high false positive rate. That means that the test is worthless without sending the mail to an outside lab. This puts confidential mail into the hands of an outside party. Given how rare it is that legal mail has drugs in it, this is an unjustified violation of the constitutional right to counsel. This is a classic case of the treatment being worse than the illness it is intended to cure. 4) The collateral consequences of the current and proposed DOC procedures are similarly unacceptable. Three in particular come to mind. First of all, prisoners to whom the suspect legal mail is addressed are immediately punished based on the unreliable field tests. This would be unacceptable even if the field tests were reliable, absent some additional evidence that the incarcerated person played some role in arranging for the delivery of the contraband. I have heard it argued that they are not punished, but merely placed in administrative segregation. Let's be real. Segregation is punishment and involves the loss of access to programming and a host of other privileges. Second, prisoners are required to pay for the outside lab to do the testing. We all know how little money incarcerated people have. Not only is this profoundly unfair, but whether it is intended for the purpose or not, is a strongly coercive incentive for prisoners not to contest the allegations. And third, perhaps the most important, but also hardest to quantify, is the chilling effect that this procedure has on attorney client communication. Because it is so arbitrary and unpredictable what mail will be flagged (we have a colleague who had documents printed and mailed by UPS that resulted in a positive field test) lawyers are afraid to send clients important documents. They fear harming their clients, they don't want the stress of being investigated themselves, and they don't want the documents floating around in the DOC and the drug lab. None of this is justified by an effort to eradicate a problem which for all intents and purposes does not exist. In summary, we have offered you an alternative to Mail Guard that is cheaper, that has been successfully implemented in at least one other jurisdiction, and which protects the constitutional right to counsel. By using this system not only do you avoid the cost of mail guard and the hassles of implementing it, but you are able avoid the pitfalls of using an ineffective field test and unfairly punishing prisoners.

Kathleen Richard: Before I call the next speaker, I would like to ask that people use the chat function strictly to request to speak. I want to make sure that everybody has a chance to speak and don't want to miss names by distractions in the chat function.

At this point, meeting was interrupted by a Zoom hacker who displayed an illicit video with loud music during the presentation. Host removed hacker, and the hearing continued. Shortly after commencement, hacker reentered and the meeting was paused to remove the offender. Meeting was restarted and speakers were permitted into the meeting one at a time to speak to ensure no further interruptions.

Elizabeth Matos-Prisoners' Legal Services of Massachusetts concurs with the many advocates, incarcerated individuals, family members, and community members who have urged the Department of Correction to reconsider their proposed changes to the mail regulations. The obvious infringement on the constitutionally safeguarded right to confidentiality between a client and their lawyer is just one aspect of the proposed regulatory changes that will do more harm than good. These changes will undoubtedly hurt the Department and tens of thousands of Commonwealth residents who are committed to the well-being of their incarcerated loved ones.

Prisoners' Legal Services sends and receives mail from incarcerated individuals every day. The thousands of pieces of paper sent to and from our office are multiplied by that from criminal defense attorneys and other civil rights attorneys throughout the state. Yet, because of a few instances (49 incidents reported in 2018) of imposter legal mail allegedly carrying contraband, the Department's response is to photocopy every single piece of paper coming into its 16 prisons and dispossess the recipient of the original mail intended for them. In addition, ostensibly to comply with confidentiality, the Department plans to purchase an army of mobile copy machines so that it can photocopy the mail in the presence of the recipient.

The majority of those incarcerated do not engage in efforts to introduce contraband, nor do their loved ones, or their attorneys, who are officers of the court. This approach to what is mostly a discrete problem has already been proven to be ineffective in other states in substantially reducing the introduction of contraband in prisons. It is also an enormous administrative burden on the Department and an irresponsible use of millions of dollars of taxpayer money (as indicated by the DOC's May 2020 Notice of Intent to Purchase).

DOC's proposal to manually copy every single piece of legal correspondence threatens attorney-client privilege, the oldest and most revered of the common law privileges. Perhaps highest among the principles undergirding this privilege is the necessity of full and frank communication for effective representation. As the Supreme Court has stated, attorney-client privilege recognizes that "sound legal advice or advocacy ... depends on the lawyer's being fully informed by the client." Nowhere is this more vital than in the carceral context, where effective representation may determine whether an individual will face criminal charges or incarceration, or whether prison abuses will come to light. Attorney-client privilege is clearly jeopardized where each page of legal correspondence must pass through the hands of a Department employee or a third-party contractor before reaching the individual for whom it is meant.

Unlike most criminal defense cases, when PLS must file lawsuits to aggrieve violations of law on behalf of its clients (there are currently over 20 active cases on our litigation docket), the DOC and individuals who work for the DOC are named as defendants. While it would be convenient to trust that the handling and copying of all legal mail is no more intrusive than opening an envelope, conducting a simple contraband search, and handing it over to the recipient, that is simply not an assumption that any ethical lawyer or officer of the court can or should make.

PLS receives hundreds of reports every year of abuses in prisons across the Commonwealth, including inadequate medical and mental health care, guard assaults, and unconstitutional conditions of confinement. These reports unearth unlawful practices that would otherwise be hidden from public scrutiny, especially in light of the heightened restrictions on prison access during the COVID-19 pandemic. Many incarcerated individuals already fear retaliation for reporting violations; DOC's proposed solution would have a further chilling effect on their willingness to seek out help for themselves or others, or to report unlawful actions. Scholars, advocates, and courts – including every single federal court of appeals that has addressed the issue – have recognized that it is a violation of an incarcerated individual's First Amendment rights for prison officials to read legal mail. DOC's proposal will discourage individuals from exercising their constitutional right to expression, further isolating them and creating opportunities for unchecked abuse.

The DOC has also failed to consider the fact that nearly every digital copier on the market contains a hard drive that stores images of copied documents. Shredding originals, as the Department proposes, does not guarantee that they cannot be pieced together and read later. Further, we already know that under the current system of opening legal mail in the presence of the incarcerated person, inspecting the contents and handing the letter over, legal mail is illegally read by those who should not be privy to its contents. We also know that clients have suffered retaliation and abuse as a direct result of the contents being read by staff. Under the proposed changes, the propensity for such abuse is far greater and inevitable. Therefore, PLS strongly opposes these proposed changes to the legal mail regulations.

Perhaps what is most unconscionable about this proposal, however, is that it illustrates a long-standing problem with how the Department regards substance use behind the wall. Those who understand that substance use disorder is a mental health issue and a disease understand that, to eradicate substance use, the root causes of it must be treated and addressed. However, substance use treatment is still largely unavailable to those incarcerated, aside from some minimal access to medication assisted treatment for opioid use disorder for a tiny number of people in the DOC. Black and Brown prisoners are disproportionately cut off from substance use treatment, especially if it involved something other than opioid use disorder. Given that over 70% of the incarcerated population is known to have substance use and mental health issues that are largely untreated, it is no wonder there is such a desire to self-medicate.

Instead of providing treatment, programming, education and therapy – all of the basic things providers know are necessary to succeed in overcoming addiction – the focus is on supply of contraband coming into the DOC. This is why the proposed changes to the regulations are doomed to fail. As long as the Department continues to ignore the causes and demand for contraband, there will be a supply. Cracking down on visitation and now censoring mail is just adding insult to injury, and will not address the reason some people are self-medicating. There have been countless examples of staff introducing contraband into prisons and jails across the Commonwealth and that will surely continue.

Last legislative session, a bill was introduced calling for the establishment of a Commission to study substance use and contraband in prisons and jails. That bill is being refiled again this session. As the Department has often done in the past in situations like this, before we drastically change regulations that so seriously infringe upon confidentiality and restrict contact with loved ones, we should allow this Commission to study the contraband and substance use issues in the DOC and make evidence-based recommendations to address the root cause of the problem, rather than a symptom.

We also urge the DOC to bring its procedures in line with modern communication practices by making it possible for all incarcerated individuals to access electronic mail, a practice that has been successfully implemented in several states, many county jails, and by the Federal Bureau of Prisons. The DOC should provide individuals with tablets through which they can access electronic mail, including privileged legal

mail. As with paper mail, access to tablets should be available to everyone free of charge and should not be contingent upon the individual's disciplinary record. While electronic mail cannot replace all paper mail, its availability would likely drastically reduce the enormous volume of paper mail coming into the DOC. This kind of system would not only narrow the scope of potential contraband, making it easier to detect, but would also avoid unfairly penalizing the vast majority of individuals who have not abused the mail system. Electronic mail also satisfies the expediency that is necessary for communication regarding legal proceedings, where time is often of the essence, DOC's proposed system will likely impair individuals' communication with counsel in a timely manner. Worse yet, delayed receipt of legal mail is likely to jeopardize the ability of incarcerated individuals to comply with court deadlines and rules. In contrast, electronic mail is nearly instantaneous.

In addition to avoiding the heavy administrative burden of copying, shredding, logging, and (in some cases) storing thousands of pages of documents, electronic access would also improve access to mail for individuals with visual impairments who rely on screen readers. Electronic mail would also allow individuals to send and receive legal correspondence through a system that protects privilege and confidentiality. Existing email technology would allow the DOC to sort legal and non-legal mail, and relatively low-cost encryption tools would help preserve attorney-client privilege.

Finally, mail is a deeply important source of connection to loved ones and a lifeline for many of our clients. Electronic mail, which is readily accessible for most outside of prison, would enable incarcerated individuals to remain in more frequent contact with the friends and family who will ultimately support their return home. The Federal Bureau of Prisons has recognized that electronic communication can support rehabilitation, noting that "maintaining family ties will improve the likelihood of a successful reentry into the community, thus reducing the potential for recidivism." We reiterate that electronic mail can only supplement, but not replace, paper mail. Handwritten letters, cards, and drawings bear the imprint of loved ones, including children, and are an irreplaceable source of emotional connection. In addition, paper mail may be the only accessible means of communication for family members who lack access to email, computers, and internet, or who might be hindered by age and disability barriers. However, as a supplementary system, electronic mail is a cost-effective solution that would target the discrete and limited problem of contraband, while preserving attorney-client privilege and constitutional protections, lowering DOC's administrative burden, improving equal access to communication, and ensuring that individuals remain connected to the community.

Brandon Scheck – I am from the New England Innocence Project. We rely heavily on mail to communicate with our incarcerated clients throughout the state. As a law practice, those communications are privileged and confidential. The sanctity of that privilege, and the consequences of its violation, cannot be overstated. In order to represent people, we and our clients must be assured that our privileged communications are safeguarded. The proposed changes to 103 CMR 481 hamper the attorney-client relationship and may violate the attorney-client privilege. Furthermore, the changes are overly broad and are not tailored to the stated concerns. Finally, implementation of the proposed changes will have additional consequences to the wellbeing of those who are incarcerated and their families, presenting significant obstacles to successful reentry. For these reasons, the New England Innocence Project opposes the changes and urges you to abandon them. We rely heavily on mail to communicate with our incarcerated clients throughout the state. As a law practice, those communications are privileged and confidential. The sanctity of that privilege, and the consequences of its violation, cannot be overstated. In order to represent people, we and our clients must be assured that our privileged communications are safeguarded. The proposed changes to 103 CMR 481 hamper the attorney-client relationship and may violate the attorney-client privilege. Furthermore, the changes are overly broad and are not tailored to the stated concerns. Finally, implementation of the proposed changes will have additional consequences to the wellbeing of those who are incarcerated and their families, presenting significant obstacles to

successful reentry. For these reasons, the New England Innocence Project opposes the changes and urges you to abandon them. Where a chorus of attorneys and incarcerated individuals stand together opposed to these changes, they should be reconsidered. With the stakes so high, any changes to the rules that may implicate the attorney-client relationship must be narrowly tailored to achieve its goals. The proposed regulation is far too broad and far too vague. These rules punish the vast majority of the prison population who do not have contraband in their mail in order to attempt to stop the very few who might receive it through the mail. There is no data accompanying the proposed changes, demonstrating that (a) a significant percentage of the contraband (with confirmatory tests, not unreliable field tests) coming into the prison is delivered through mail, including privileged mail, and (b) implementing these changes would reduce the amount of contraband in the prison despite evidence that contraband is most often introduced through staff. Before overhauling the mail process for this stated reason, with the corresponding impact on attorney-client relationships and significant additional consequences, there should be evidence demonstrating both the need and that this proposal is narrowly tailored for that purpose. If attorneys are unable to be assured that their privileged communications will be safe if sent by mail, attorneys will have to make significantly more in-person visits to the prisons and will have to bring their privileged documents with them to share and review with clients. An exponential increase in visits, based on an inability to trust the mail, will overwhelm the current infrastructure at DOC that relies on only periodic attorney visits. Further, during the pandemic, when it is not safe for attorneys to visit in such numbers, attorneys deprived of the ability to have privileged communications will need to seek relief from the court to adequately represent their clients.

The proposed changes are at odds with recognition of the importance of mail as a means for incarcerated people to maintain connections with the community. Those connections are essential to a successful reentry upon release, a responsibility squarely on the shoulders of the Department of Correction. These proposed changes will negatively impact incarcerated peoples' physical and mental health, their relationships with loved ones, and their dignity. A photocopy is simply not a substitute for a letter or photo sent by a loved one or friend. Additionally, we have seen – especially during this pandemic – that physical mail builds trust and connections between us and our clients. We know that these connections help our clients to be more responsive, engaged, and involved in their families and communities as well as with their legal cases. This connection is a critical component of a healthy and productive reentry. Indeed, anything that strains or severs connections between incarcerated people and their advocates, including their loved ones, sabotages their future success and should be considered a last resort. For all of these reasons, we strongly object to the proposed changes, without reservation or qualification.

At this point, another virtual attacker took over the screen for a moment with a cartoon person and audio stating “do you like drugs?” The zoom host quickly removed offender, and the meeting resumed without further issues or delays.

Heidi Handler – Due to the disruptions during this meeting today, there will be an extension until February 5, 2021 for written submissions.

Rufus Friday – For the record, my name is Rufus Friday, I am a resident of the Commonwealth of Kentucky a former news media president and publisher and currently working in higher education. I have a relative who is an inmate at the Department of Correction that I stay in close contact with. I am here to address my concerns to the specific changes that are being proposed primarily in Section 481.11, Paragraph 3 and Section 481.12 items in A, B and C. I am here to stand up for the most sacred of the civil liberties we have in the First Amendment to the United States Constitution.

Back in May of 2012, the Massachusetts Supreme Court in *Champagne v. Commissioner of Correction* ruled that the items that the Department of Correction is proposing to change yet again are placing undue burdens on inmates. The Massachusetts Department of Correction has tried to address the issues that were

outlined as “Vague and Broad” in the last ruling by the court, but again I do not see why these proposed changes to Section 481.11, Paragraph 3 and Section 481.12 items in A, B and C. are necessary as pertaining to destroying original mail that is sent to inmates and replacing it with “Photocopies”. Absent some reason or research and documentation (including that the current process of fluoroscope scanning of all original mail has failed to detect contraband) has not been shared with the public, there is no reason to believe that these harsher restrictions to inmate’s mail is necessary. The mental hardship, the lack of any visitation by family and others to inmates since March of 2020 in my opinion has been incredibly difficult and stressful. I know it has for me and many others in this country since COVID-19 gripped our world almost one year ago. These proposed changes to the inmate’s mail is saying that photocopies of pictures of family members are better than real pictures, the same goes for handwritten letters. That photocopies of pictures crayoned by children are better than the real pictures to hold and cherish while in prison. That something your uncle has held and then sent to you in prison is more meaningful as a photocopy than having the real thing to have and hold and cherish. If these changes are all about addressing an increase in contraband, where is the data that shows that contraband has increased? Also, if there is data on this, why impose blanket changes to the Inmate Mail regulations and not address the individual inmate and restrict his privilege? Also, I have read stories related to corrections staff overworked and underpaid as budgets continue to be reduced. Making these changes to the Inmate Mail regulations, requiring all incoming mail to be photocopied and then processed is going to add more expense to the government’s correction budget and I am not sure how Massachusetts legislators will see this as being a great use of taxpayer dollars in the commonwealth. And I do not think that they really need to be paying someone six figures to sit around xeroxing Christmas cards, birthday cards, if they could spend funds in drug counseling and reentry staff and parole preparation, which would yield a greater reduction in criminal conduct per spent corrections dollar.

If this body is determined to make these unnecessary changes, I would sincerely recommend another review and narrowly tailor these changes to those that violate the currently written Inmate Mail regulations. Please consider the infringement on the free, timely flow of original speech that the First Amendment of the US Constitution protects those that provide written communication to those that are incarcerated. And that any changes address offenders who are violating any contraband rules and not have these broad changes that will impact the inmates that are not in violation here. This pandemic has placed an incredible amount of hardship, isolation and mental anguish on all of us; those that are free and those that are in your care. I implore you to consider the added anguish these changes will place on inmates. Lastly, I encourage this body to again review what the Massachusetts Supreme Court ruled in *Champagne v. Commissioner of Correction*, regarding first amendment infringement and in showing specific proof and data on contraband concerns.

Alyssa Lee – My name is Alyssa Lee and I'm a resident of Medford, MA living on Winchester Street. I have 2 close friends at MCI Shirley and MCI Framingham. My letters to them have been critically important sources of friendship, connection, and support during their incarceration. I have been angry and upset to hear that since 2017, it has been a 'standard practice' of the prisons to photocopy all incoming mail by default, even though this is not the way the photocopying guideline is supposed to be applied by 103-CMR-481.

Now that the Department of Corrections is attempting to enshrine this photocopying practice into its new proposed guidelines, I have to speak up. It is an outrage and unethical, let alone potentially unconstitutional, to give this much authority to the DOC with incarcerated people's mail. As we've seen so far, the DOC will use this authority to photocopy all mail – including privileged mail - and to make it increasingly difficult and costly for incarcerated people to have the necessary originals of their legal mail. Even though they are only supposed to do so when there is suspicion of contraband, it has definitely NOT been the case that prison superintendents provide any explanation or verifiable reason for such suspicion.

Instead, they open all personal mail by default. Giving them the authority to be able to do so with impunity for legal mail is extremely dangerous. This violates incarcerated people's protected right to attorney-client confidentiality.

Civil rights groups in Pennsylvania successfully won 2 federal lawsuits overturning a similar policy by the PA DOC on the basis that "The revised screening procedures [must] respect the rights of prisoners to confidential and privileged attorney-client communications without compromising the department's efforts to prohibit drug use in the prisons." This practice is RARE among prisons and there is already precedent to deny this kind of photocopying authority.

And it's not just the legal mail. Photocopying personal, non-privileged mail and denying incarcerated people the originals deprives them of the necessary human connection to their mail. It is an unnecessary and cruel step that does not meaningfully make the prisons safer or substance-free, especially if this regulation is applied wholesale. Photocopies reduce the quality of written and drawn letters, which comes close to violating their constitutional right to receive their mail. Furthermore, opening the door for prisons to use third-party services to copy the mail will inevitably lead to huge delays, as we saw was the case in Pennsylvania, and is another source of financial. We should not let this happen. Instead, require that prison superintendents only photocopy when there's a verifiable reason to suspect contraband provided to the incarcerated recipient. Do not deny them their original mail

In order to ensure that incarcerated people's constitutional right to receive their mail (without delay and without reduction of quality), right to attorney-client confidentiality, and right to privacy is protected, please do the following: Do not give the DOC the authority to open, read, photocopy, and confiscate incoming mail, privileged and non-privileged. Incarcerated people and their loved ones have a right to privacy. Stop violating incarcerated people's right to attorney-client confidentiality and do not restrict original legal documents at incarcerated people's expense. Stop restricting original mail from loved ones. Require that photocopying mail can only be done if the superintendent provides verifiable suspicion of contraband and explanation every time.

Lois Ahrens – I am the Founding Director of The Real Cost of Prisons Project. Over the last twenty years, I have written hundreds of letters to people incarcerated in Massachusetts' prisons. I believe the proposed regulations will do little if anything to stop contraband from entering prisons. They will eliminate important connections between people who are incarcerated and their loved ones, increase surveillance of prisoners and significantly slow the timely receipt of mail which has been made even worse by the on-going crisis of the U.S. postal service. I am especially concerned about the proposed revisions concerning non-legal mail. I correspond with people incarcerated in Pennsylvania and so I am familiar with their privatized mail system, Smart Communications. Smart Communications is in St. Petersburg, FL. Mail must first be sent there where it is scanned or copied and then sent to prisoners in Pennsylvania. Mail is often lost. Now rather than a letter between MA and PA taking four or five days, it can take more than two weeks. Ostensibly, this was to stop contraband from PA prisons. Contraband, even with no visits due to COVID and with the costly Smart Communications mail system, is still in Pennsylvania's prisons brought in by guards and staff. I adamantly oppose the privatization of any mail delivery system. One has to wonder why the DOC is proposing these rule changes now. Does the DOC suspect or fear that incarcerated people are communicating more with their families and advocates about the conditions at Massachusetts' prisons? Are the proposed rules changes an attempt intimidate correspondents and control the flow of information? Friends, family and allies are in need of information more than ever when so many prisoners are infected with COVID. Being able to communicate now is especially crucial since loved ones are quarantined or hospitalized and some people as you know have been sent to die outside of the prisons without any information given to family members. Is this another misguided and punitive attempt by the DOC to control contraband? Has the amount of contraband

decreased now that only staff and guards can enter prisons? Or is the DOC working to ensure that incarcerated people use tablets rather than continuing to use letters. Tablets can be very costly with kickbacks going to the DOC. As we all know, an electronic tablet is no substitute for an actual letter. An actual letter keeps people connected. If the DOC is concerned, as it repeatedly says, in ensuring connections between incarcerated people and their loved ones, eliminating actual letters, undermines these connections. And, what will happen to “letters” if the tablet is lost or damaged? Does this mean that the DOC or a private mail company will electronically store letters for years, even decades with every digitized letter in a DOC cloud or a privatized cloud? How will someone re-read a letter ten years from now, as one can do with a letter? Still, another egregious rule change is digitizing magazines, and newspapers which will further curtail and restrict the amount of information that prisoners can receive. It appears that the proposed regulations reflect still more ways the DOC is attempting to further control and isolate the people in your care. I oppose the proposed damaging and costly rule changes.

Kira Bornemann – I am a friend of an incarcerated individual. This regulation harms incarcerated people’s mental health, damages their connections to loved ones, and violates attorney-client privilege. I met my friend through a letter. I sent a letter to him telling him that I support him after he experienced abuse in another prison. We developed a relationship through letters. I get his original letters. It is painful to me that he gets a ghost of my communication in a form of a photocopy. I want to deny the proposal to photocopy attorney-client mail.

Elijah Patterson – Hello, my name is Elijah Patterson and I am the Communications and Outreach Coordinator for Black and Pink Massachusetts, an organization working with LGBTQ people in prison. I am writing to express Black and Pink Massachusetts’s strong objection to the new mail rules proposed in 103 CMR 481.

There are several aspects of the “new” rules that we are concerned about but first, we want to note that these regulations are a response to a lawsuit about the ongoing practice of photocopying legal mail at Souza-Baranowski. As a representative from the DOC, Heidi Handler, stated in her beginning testimony at the Zoom hearing on January 29th, 2021, this practice has been going on for some prisoners since 2016. This and other very troubling regulations supposedly being introduced with this redline draft-- including the widespread photocopying of all non-legal mail in the majority of prisons-- are already in place. Therefore, Black and Pink Massachusetts is concerned about the appearance that the disastrous hearing held on January 25th and call for testimony is simply procedural and requests that regulations under discussion at this hearing be suspended until the DOC receives all new testimony and an official ruling on them. The DOC must stop operating outside the parameters in the current mail rules.

As organizers doing work around the prison industrial complex, Black and Pink MA’s volunteers have read letters from thousands of incarcerated LGBTQI people in Massachusetts and across the country. Something I personally have found from those prisoners is that paper mail is precious. For an isolated prisoner, the stack of mail in their locker means something. And for me, reading the letters I got back, the uneven handwriting, the painstaking script, the ripple of pressure, the smudge of tears, the gum paper dragons, the thank you cards colored with M&Ms. It’s all been precious, too. It means so much to me to touch the same paper as people suffering in prisons, and when I trace my hand and they place theirs over it, it means a lot for them, too. In that moment, we are together.

Photocopying or scanning mail needlessly removes this small human connection while doing nothing to increase safety. The DOC says these rules are a response to attempts to smuggle drugs into prisons. We must remind you that the vast majority of contraband is carried into prisons by guards and staff, not smuggled in in the wax of a child’s crayon drawing. In order to curtail the spread of contraband into prisons, the DOC must turn its focus to the people it employs.

Having participated in our local prison book program and watched years of censorship of material sent in, we know that a change to tablets is never good. With tablets, even when they are supplied for free to all prisoners, the DOC has a literally captive audience. Every e-mail, every song, every book benefits the prisons at the expense of the prisoner. And in some places the costs can be absurd: You may pay to buy a book available for free in the public domain, then have to pay by the minute and to re-read, plus you can't share tablets so you can't pass on a good book to a friend. This extortion of incarcerated people will have an affect on their mental health and education, as well as community connections.

Black and Pink has sent countless seriously depressed and suicidal people small distractions: sudoku, crosswords, a therapy worksheet. They need these in a form they can touch and fill in. A tablet takes this away, too. With the DOJ's recent finding of the violation of the Eighth Amendment rights of people in restrictive housing for mental health reasons, strengthening outside contact and care to support a person's mental health is even more important.

We also want to highlight that prisoners who are sent to segregation have their tablets taken away, effectively removing their access to legal and other mail. The new policies do not address this loss of access to legal and personal information, particularly for people who receive low-level tickets (level 4) for whom access to mail would not usually be infringed.

For the many reasons outlined above, a person simply does not get the full legal access or therapeutic effect of their mail when it is delivered through tablets or photocopies.

Black and Pink Massachusetts is further concerned about the surveillance system being codified in the new mail rule 481.12 (B) (3). Reading incoming and outgoing mail, recording the names and addresses of sender and addressee, and requiring the recording of "intelligence received" puts pressure on the guard reading the mail to find something wrong with all pieces of mail a surveilled person receives. It also puts in place conditions to create a huge security apparatus tracking what free and incarcerated people are saying to different people. By scanning prisoner mail, the DOC can convert handwritten letters to electronic text, making a searchable database of all letters entering all prisons.

Moreover, the photocopying or scanning of legal mail has a chilling effect on the communication between attorneys and their clients. We are also aware of many incarcerated people currently working on their cases from inside, including cases against the DOC. Allowing the Superintendent to enact surveillance of prisoners at their sole discretion is unacceptable and likely illegal because it requires such a low bar while collecting a very large amount of information on prisoners, as well as those who have not been convicted of any crime, are not incarcerated, and not under the DOC's supervision. This affects both party's First Amendment rights to freedom of speech and association, and criminalizes free people for their contact with an incarcerated person.

Finally, we understand that the DOC does not usually hold meetings on its regulations, but the failures of technology we saw in the Zoom hearing causes us to question how the DOC can possibly manage scanning all of the mail entering all prisons and keep accurate electronic surveillance logs when they cannot run a Zoom room. With the legal and personal mail of more than 10,200 people in their hands, 11 months into a pandemic that that moved everything online, the DOC shows a shocking lack of technical know-how that we fear impinges on their ability to accurately, quickly, deliver mail. The DOC seems to realize this itself, hoping to remove a clause requiring that mail is processed and mailed out within 24 hours. This will affect prisoners filing court documents (possibly against the DOC itself), sending money home for bills, or hoping to get a birthday card home in time.

For the many legal reasons we have outlined, as well as the burden the redline regulations included in this draft will place on DOC staff, budget, prisoners, and prisoners' loved ones, Black and Pink Massachusetts strenuously opposes the proposed mail rules in 103 CMR 481.

Dr. Fran Roznowski – I have been a visitor to people incarcerated at Souza Baranowski, Shirley Medium, Norfolk, Gardner, Concord, Old Colony, Walpole and Framingham. In addition, through my job at the Cambridge School Dept. and as a resident in Chelsea, I know many children with parents in prison. I've read the proposed mail regulations which seem punitive to prisoners and their family members, a waste of taxpayers' money and an exaggerated response to an issue that the Department of Corrections has not yet provided sufficient evidence to identify. How are these proposed regulations punitive to family members and outside community members? Many incarcerated parents have described the connection that they feel when their child sends a handmade drawing perhaps with a spray of perfume. That impact is lost with a photocopy of a child's piece of artwork. Mail will take significantly longer to reach its destination if it has to be photocopied. What about those who plan on sending a birthday card, anniversary card or sympathy card in a timely manner? How are these regulations punitive to prisoners? Photocopied legal materials do not have the same quality as originals. In some instances, the courts may insist upon only original paperwork. In addition, the revisions abolish the time limits for mail to be delivered to prisoners and leave the institution which can easily interfere with legal matters. The new proposed regulations mention scanned legal documents on tablets which may not be admissible in court. If the tablet does not belong to the individual but is the property of the DOC, what happens if the prisoner is shipped within the state, out of state or to the federal system? How are these proposed regulations a waste of tax payer money? It is an immense expense for labor and copying costs to reproduce all legal mail and non-privileged mail for the entire prison population.

If the push for new mail regulations is to address the entry of drugs via the mail let's look at the number of drugs that have entered the prison and been stopped by security measures in the mail room. If these drugs never reached prisoners then the level of security is sufficient. At the public hearing, many less invasive measures will be proposed. I strongly urge you to take them into consideration and not revise the current mail regulations.

Beatrice Masters – I will submit written testimony. This is the testimony of Dwayne Diggs who is incarcerated at Shirley Max – “My name is Dwayne Diggs, inmate #W110921. I am being housed on N2 in SBCC Shirley Max. I'm writing about my mail issue. My pictures are always being taken away for numerous reasons, nudity, gang signs, bombs, etc. and I never get to see these pictures. I never get a fair chance to argue. I always tell family members about the rules, so I know the rules are being followed. Also, I received a ticket for K2 I sent it out for a test. I tried to call the lab where it got sent to numerous times and never got an answer. There is no way to follow up to see if reports were false. Thank you for your time. Sincerely, Dwayne Diggs.”

Phoebe Whitwell – This is the testimony of Rakeem Young – “The importance of prisoners receiving the original mail sent to them from family and loved ones cannot be overstated. The department of corrections gives lip service to that reality but falls far short in the actualization. Having already disenfranchised many prisoners from their loved ones by implementing their barriers to who can visit you, they now want to expand those barriers into the area of mail. Having a policy where prisoners can only receive photocopies of the mail sent to them renders the correspondence impersonal from the prospective of the prisoner. From the prospective of the Mother, Father, Brother, Sister, Son, Daughter, extended family members and friends it only serves to discourage them from taking the time to write a letter only to have the recipient receive a copy. My family members no longer sent greeting cards or general well wishes cards because they do not want to spend the money only to have me receive a photocopy. The same can be said for pictures. Who wants to take a picture and send to someone who is only going to

receive a photocopy? It may be argued that the photo can come in if it comes through a DOC vendor- a vendor from which the DOC will in all likelihood receive a kick back. One of the problems with that is that people are forced if they want to share personal moments with prisoners they must also share them with people they don't know and who don't have the same restrictions that the Department Of Correction has as far as releasing information. The purported reason for these new regulations are to prohibit the introduction of drugs into the institution. Since the inception of the regulations that have been invalidated by the Court's the flow of drugs into prison institutions have not been stopped, perhaps not even slowed. It's a failed policy. In the 90s the DOC erected barriers for prisoners wanting to stay in contact with family and friends via telephone. In 2019 the DOC implemented barriers to prisoners wishing to maintain ties with family and friends via contact visits. In 2019 the DOC erected barriers to prisoners wanting to maintain contact with family and friends via the mail. That having failed they now again attempt to erect barriers to prisoners maintaining contact with family and friends via mail. The common theme running through all of these erected Barriers is the flow of drugs into prisons or the need to monitor calls for the purpose of tracking drug conversations. Considering the fact that the drug flow has not stopped perhaps the policies should be designed to prevent the drug flow, if it really existed, at other entry points. As stated at the beginning of this opposition, the importance of prisoners cannot be overstated. Many studies have been conducted proving the connection between positive reintegration of prisoners back into society. Don't let overzealous officials blinded by non-existent, or over exaggerated security concerns, erect a barrier to that thing that would benefit the offender and the offended. Thank you for your time... "The argument to the legal mail has no merit, in short they will open it in front of you make a photocopy and shred the original document. You can request your original document be stored and they will. The I.P.S can come and shake you down and read your legal mail. Rakeem Young."

Daniel DeAngelis – I think that having everyone's names displayed publicly in this meeting is not appropriate for people not giving testimony. I am reading the testimony of Tony Gaskins W52145 – "This mail regulation is unconstitutional in many respects, whereas it clearly violates the First Amendment right of free speech, where the policy will censor the incoming mail due to an unproven event. They will be punishing the citizen and myself for the actions of someone else. The law says that this cannot be done. The First Circuit Court of Appeals said, "We see no reason why well-behaved inmates should have to suffer cruel and unusual punishment because of the actions of some disruptive ones." The DOC's rationale for the draconian policy is unsupported and done only to disrupt the prisoner's ability to communicate with the outside. And they want to include legal mail as well now. Against the law right now the DOC intentionally hold up our legal mail, where the mail will come to the facility on the 7th, however, I will not receive it until the 13th. Now let's add what they intend to do now, the important legal documents will not be received for "weeks." Now, the most important thing to know is that legal mail has a right of privacy, as well as regular mail. In order to be able to copy regular mail and read its material, there must be some sort of reasonable suspicion before such action can be taken. As far as legal mail goes, the DOC has no right to copy, read or store legal documents. All legal documents received by the facility must be opened in the presence of the receiver. This is the law of America, not only Massachusetts. It is embedded in our constitution. The citizen has a right that his or her mail sent to a loved one incarcerated, receives the exact mail sent, not a copy of it and for their mail to then be destroyed. The United States Supreme Court says this act would be unconstitutional in *Procunier v. Martinez*. Not only does this suppress speech, it also constitutes an illegal search or seizure in violation of the Fourth Amendment, and under our Massachusetts Constitution, Articles 12, 14 and 16. Our phone calls are limited to ten and can only be changed every three months; our visits are restricted to only 5 to 8 persons with the discretion of the DOC to limit it to none altogether. And now their focus is on limiting the mail arbitrarily. This is the trifecta! With this enactment, us prisoners will be silenced and at the complete mercy of our jailers."

Keyon Sprinkle – I was incarcerated for a while. Legal mail contains sensitive information. I do not trust that the Department is able to maintain sensitive information. I am worried about not just the copier

having legal mail but certain staff having access to legal mail and material that is sensitive to others. I have seen it happen when staff turn the computer and show what inmates are there and violence occurs. I did not go to prison for a crime against a woman, but things like that happen. Most drugs are not coming in from legal professionals. They do not decide to be in the “drug world.” That makes no sense. This is a scary situation because how else can a person communicate with their lawyer if all their mail is copied. The Department would have access to strategies discussed. Other people would have access to sensitive matters. In max they do, but in medium they do not. The SOP is put on a board and circumvents the whole system. If there are issues, we have to go through the whole grievance system. This will be really bad and a lot of people will be hurt. The legal system will be sent back. This is an over exaggerated response to drugs. Most drugs come in through guards. I lived there for 20 years and know how they get in. Drugs are not coming through the legal mail. This will have a lot of consequences that are far reaching.

Michael Cox – I am the Executive Director of Black and Pink Massachusetts. I am a former prisoner. I opposed to proposed regulations. The Department has shown a pattern of attacking three main sources of intimate contact with the free world – visitations, phone calls, and letter writing. The human cost of restrictions is lost on the Department. The DOJ report highlights multiple suicides and 24% who live in the Department have a Serious Mental Illness. The proposed regulations would impact those people. They have not been taken into account and it would further restrict their wellbeing to connect with people in the free world. I can only see SMI and suicide increasing if these proposals are accepted. The 24-hour turnaround time for inmates to get mail has been redlined, which means it is proposed that it be rescinded and no clear timeline is implemented in its place. I have pen pals in prison. The timeline is unclear, and I want a clear timeline. Photocopies and scans of mail are insufficient. They lack the tactile nature of a handwritten letter that can be held. Hardcopy letters arouse emotional and personal intimate connection which buoys those incarcerated to survive conditions that you create and that they need to live under. The proposal wants to shred legal mail in someone’s presence, but IPS is terrible and sneaky. IPS has shredded documents and pieced them back together. They have gone through people’s legal mail on purpose. They could read the legal mail. I have read emails where admins tell IPS to do so. The complete proposal should be scrapped. I want more humanity and compassions for incarcerated people. You should find other ways that imbue a sense of dignity and humanity on those incarcerated.

[BREAK from 11:57 a.m. to 12:19 p.m.]

Heidi Handler – We are starting the afternoon session of this public hearing. I want to make clear that we are not limiting participation in this public hearing. We are limiting people coming in all at once because of the disruptions we experienced earlier. Everybody will be let into this meeting to speak, a few people at a time.

Lauren Bellis – Incarcerated people should be involved in this process. You should have a separate hearing for them. I have personal incarcerated friends and loved ones. You should stop photocopying all mail, including mail from loved ones like holiday cards and children’s drawings. Instead, the Department should develop substance abuse programs to get at the source of the issue. SBCC has a program where they give suboxone which is not sustainable. There are ineffective programs available to the incarcerated. Outside the walls we are dealing with new ways to handle issues, like not prosecuting drug dealers, and instead we help loved ones get help. Funds should be rerouted from mail to instead get an outside consultant with no connection to the Department, to come up with a substance abuse program to address the issue at the source. Taking away a piece of paper mail and art from a daughter is inhumane. We are talking about loved ones and human beings who deserve access to their mail.

Emma Lathan – I am a member of the Prison Book Program where we give free books to prisoners in Quincy, Massachusetts. I am reading a portion of a testimony to abide by the two minute rule, but I will

submit my full testimony. “There is no excuse for the DOC and private companies to profit off the incarceration of our neighbors across the Commonwealth of Massachusetts. It is an irresponsible use of taxpayer money during an already challenging economic period to devote staffing and resources to photocopying and digitizing the mail in a supposed attempt to solve a problem that does not appear to exist. Throughout the COVID-19 lockdowns, drugs have not disappeared from prisons despite visits being suspended and prisoners already receiving photocopies of their personal mail. It is also disturbing that materials that are already in a prisoner’s possession will be taken away and copied. It is unacceptable that the DOC has already purchased equipment in order to implement these proposed mail restrictions well in advance of this public hearing. Prison Book Program has served tens of thousands of prisoners across the country for almost 50 years, and from this work we know how vitally important connections and communication with the outside world are for prisoners’ mental and emotional wellbeing. The vast majority of Massachusetts prisoners will return home, and personal mail communications with loved ones while incarcerated is critical to maintaining relationships for a successful return. Looking at a photocopy or reading from a tablet is just not the same as holding an original, handwritten letter. The texture and scent of a letter written by a spouse or a crayon drawing from a child add details that help with emotional impact and memory. Even a high-quality colored copy cannot compare to holding the same piece of paper that your child held. One of our recent book recipients wrote to us: ‘Being in prison is very hard. It is tougher than I have ever imagined. Being away from loved ones and locked away, sometimes forgotten with little to nothing to stimulate your mind can be depressing. The joy of having my own books is overwhelming. The library at our facility has been closed since March and to say that life has been slowly passing is an understatement. I’m going to truly enjoy these books. Your generous gift brought me to tears. It arrived with promise and hope that I will in fact survive because people do care.’”

Elizabeth Rucker – I am a resident of Roxbury. I volunteer with Showing Up for Racial Justice Boston and Deeper than Water Coalition. I strongly oppose these proposals and am against existing rules. Existing rules isolate people from loved ones. You need to roll it back. I am reading Wayland Coleman’s testimony who has been incarcerated for 24 years. “Having the ability to send and receive mail gives me the means to communicate with the outside world. This is the main means for me to connect with society. I can only communicate via phone with 10 loved ones. But I am not restricted by numbers through the mail. Now that I receive a photocopy of mail, I do not want to respond. The paper is bland rather than receiving a greeting card. It is not the same. I do not want greeting cards anymore. The quality of copied personal letters is hard to read and is cut off at the margins, so I have to guess at what people wrote. The Department abused regulations by copying all mail calling it suspicious. Everybody is considered criminals except for the guards. Stop violating rights to attorney-client communication.” These changes are inhumane and illegal. They are racist and criminalize relationships with the community. Decarceration will handle issues with drugs in prisons. Decriminalize sex work. Getting people out of prison will solve the drug problem.

Cassandra Bensahih – I am a part of the post-incarcerated community. I am a coordinator of Mass Against Solitary Confinement. In prison, when you sit in a cell all day, you get excited when you get mail. It is even more exciting than getting mail at home. You should not allow breaking constitutional rights. Tampering with mail is illegal. The Department cannot be allowed to break more rights. People just want to serve their time. This is the final straw. Leave the mail alone. Let people communicate with their attorneys. Give us privacy as you want privacy. I do not like reading magazines on tablets. Reading on tablets is not the same as touching and rereading a letter. I still have the Christmas card from my daughter when I was incarcerated in 2007. I cherish this card that I got in prison. I served 6 months but it took 3 years to get my children back from the system. I still have their cards. I do not know what I would do if the Department went through my legal mail. This needs to stop. Incarcerated lives matter whether or not the Department wants to recognize it or not.

Jurrell Laronal – Families for Justice as Healing is a statewide organization whose mission is to end the incarceration of women and girls. We are supporting people to be successful in their communities by working to address the root causes of arrests and incarceration through nurturing thriving communities where everyone has what they need. Our goals are real community safety and wellbeing. The women who are a part of Families for Justice as Healing are from communities that are heavily impacted by incarceration all across Massachusetts. Our members have to deal with the many intrusive, restrictive and degrading Department of Correction policies on a daily basis. My name is Jurrell Laronal. I am the Transform Harm organizer at Families for Justice as Healing. I am a formerly incarcerated man who has witnessed first-hand many regulation changes from within the DOC over the span of a decade. This testimony represents the many voices of Families for Justice as Healing including those of us who are formerly incarcerated, our incarcerated members, and families with incarcerated loved ones. First, we find it disrespectful and alarming that The DOC would allow Souza Baranowski to implement the proposed changes way before today's hearing even took place. A memo was passed out in the prison as if the proposed changes to 103 CMR 481 were already in effect including building of 70 tablet stations and installation of wiring at the correctional officers' desk in preparation for the copying of legal mail. This shows the blatant disregard for this public hearing process. The DOC has an established pattern of violating the civil and human rights of our incarcerated loved ones as they see fit under the guise of "security." There is a lack of effective oversight and accountability when it comes to the actions from correctional officers within the DOC toward incarcerated people and their property. Correctional officers use their own discretion when performing their duties. This can include but is not limited to: packing & delivery of property or not, bringing the phone to a person's cell or not, charging tablets or not, opening cells for recreation or not as well as how they approach handling food and medication. What these new changes will be doing is giving the DOC even more unchecked power and discretion, making our loved ones even more vulnerable to further mistreatment. Legal mail must be protected by attorney/client confidentiality, yet under the new regulations legal mail will be compromised. Personal mail is one of the staples of helping families not only stay connected, but helping people maintain mental stability for a successful re-entry back into communities. The elimination of time limits of delivering incoming mail and outgoing mail will further distrust among people incarcerated and officers while at the same time delaying time sensitive mail such as court filings and bills. We know from our inside members that personal mail is not getting properly copied. Pictures from peoples' kids and loved ones can be cut off, photocopied in black and white instead of color, and copied with such little care that the letters are unreadable. This is already unacceptable and we must not allow legal mail to be copied and destroyed, because who is to say every line of someone's' grand jury minutes will be clearly legible when copied. Families are already paying so much to support their loved ones with canteen, clothing, phone and video calls, and reading material. So now DOC proposes that families must pay for the legal mail to be shipped back from the prison, if they do not want originals shredded? Legal mail is often many pages, and this will be an expensive burden on those whose tax dollars are already paying for their loved one's incarceration. There is no way for the DOC to guarantee to incarcerated people, their attorneys, or the public that personal or legal mail will not be stored digitally nor can the DOC adequately prevent officers from reading that mail while copying it or while it's saved in the memory of the copier. Given the DOC's extensive record of mismanagement, even worse during COVID, we cannot assume that officers will handle life changing documents with the utmost care and timely manner since there is no adequate oversight or safe guards to protect legal mail or incarcerated people from being abused by retaliatory actions. From direct experience as well as the many families within Families for Justice as Healing who have a loved one in prison, property such as tablets that families pay for are constantly targeted by officers. We have accounts of officers causing water damage, breaking the charging port, and smashing screen. What is stopping an officer from this continued behavior and how will someone access their mail then? The proposed changes will create massive logistical issues and compromised legal mail while still not addressing the root causes of how drugs are being introduced into a facility. The NARK II testing kit used to test mail is dangerously

fallible that leads to countless false positives. The company's own website reads, "All test results must be confirmed by an approved analytical laboratory" and we do not believe DOC is properly verifying tests. These type of test have been the driving force of many "suspected" mail being seized which adds in more disciplinary actions. Given these new regulations, communication between incarcerated people and their attorneys about pending lawsuits against correctional officers and ongoing litigation against the DOC could be subjected to being compromised. It should also be noted that the DOC has presented no reliable or substantial evidence to the public that legal mail is creating such a substantial security risk that these regulatory changes are necessary. DOC has also failed to confront their own officers' role in introducing drugs into prisons. Families for Justice as Healing opposes the changes of 103 CMR 481 because such changes will only cause more harm to those in the custody of Department of Correction and many families in the Commonwealth. We need regulations that allow incarcerated people regular access to original mail from legal professionals, friends, and loved ones. The proposed changes compromise both legal and personal mail and will violate the rights and dignity of incarcerated people. Thank you for your consideration. Jurrell Laronal, Transform Harm Organizers, On behalf of Families for Justice as Healing.

Katie Omberg – My name is Katie Omberg and I am the pastor at First Congregational Church in Saugus, a member of black and pink Massachusetts, and have a loved one currently incarcerated in the MA DOC. I am here today to voice my concern, strong objection, and personal impact of the rules proposed in 103 CMR 481, the Department of Corrections mail rules, rules that as you have heard have already been in effect at some prisons since 2016. I am deeply concerned about the further disconnect between people serving time and those in the free world. If the goal of the DOC, as stated, is to prepare prisoners for safe and successful reentry into the community, there is no reason to further sever the tenuous connections prisoners have with their communities. There are many things I could write on today, but I will only speak to two of them. 481.11, subsection 3: Privileged mail should be treated as such: privileged. Opening it, even in the presence of the prisoner, denies that privilege. It already undergoes surveillance by a fluoroscope, there is no need to do anything else. Additionally, making a photocopy of the correspondence allows an extra opportunity for DOC employees to access this privileged mail, as anyone who has worked in an office knows; when photocopying something, you look at it. This is a gross issue of public funds, time and energy, to create additional breaches of confidentiality that cannot be seen as anything less than unlawful. The suggestion that lawyers are sending contraband to their clients is disgraceful, and a poor attempt to hide the fact that the majority of drugs entering prisons are through corrections officers and other staff. 481.12, the processing of non-privileged mail, specifically item C, regarding the photocopying of non-privilege correspondence. The idea that a parent may never receive a drawing by their child again, but just a series of pixels of it on their tablet is heart breaking, with no ability to put it in a mirror's frame or tape it to a wall, decorating their space with the presence of their loved ones and community members they hope to return to. I savor the indentations of the pen on the letters I receive from my dear friend Greg in MCI Norfolk, the fact that I cannot touch his hand, but can feel the shadow of his presence. I want him to feel the same connection to me, his friend who cares for him, and the support of the community he will return to. As a Christian, some of our earliest books of the New Testament were written from prison. Relationships across prison walls are healing today, and are part of what makes my faith, and I know the faith of many who worked to create these dehumanizing rules. I cannot believe that there is nothing else the DOC should be working on these days, such as the toxic water in multiple prisons and the COVID pandemic that every single incarcerated loved one of mine has fallen victim to. Everyone on the other side of the prison wall is a human, and deserves the right to privileged mail and actual letters that are afforded to all of us. It is a shame any of us need to spend time writing to tell you to uphold what is legally protected, and what should be granted to all through human decency. Thank you for your time, and I hope you are ashamed of yourselves.

Rev. Jill Cowie – I am a friend of Nigel Vaughn. This is his testimony – “I, Nigel Vaughn, am writing to address my concerns about what the DOC is doing with the mail. To begin with, I have been in prison nearly 16 years. A great part of my sanity has been preserved due to the support I’ve gotten from loved ones throughout the years, most of which has been letters, pictures, cards, an educational info sent to me via mail by loved ones. Not once have I committed an infraction through incoming mail that would warrant the illegal denial of my rights to receive mail. In cases where other prisoners may have committed such infractions, they only represent a very small percent of prisoners who receive mail and should not justify the blanket policy to deprive the majority of prisoners of privacy in their family affairs as well as the sentiment of their loved one’s written advice, words of inspiration, poems, cards of celebration and memorials etc. Additionally, the senders of all prisoners’ mail have a great percentage over those senders whom contributed to any mail infraction. I must have received letters etc. from over 100 different people and not one has mailed me any illegal substances via the mail. However, even if so, it is a sad day if just one of them is given the power to spoil it for everyone else. For, throughout my sentence, I’ve known of many vindictive people who have sent people contraband so that the inmate is punished for it. And I have been a victim of such vindictiveness. These tactics always work as the DOC’s practice is to punish first and hold a hearing on the charges later. While the DOC must maintain the safety of its staff and prisoners, these single acts should not be enough to justify an entire break in the support prisoners receive from their loved ones. Here we are in the middle of the prison reform era and despite the fact, the DOC has continuously sought to implement policies which make the conditions and incarceration term far more harsh than it has ever been. Although the DOC is “seeking” to be given authority to implement a new mail policy, the reality of it is that they have already spent large amounts of money to install the station/charging/uploading ports demonstrating that this policy will be enforced despite the results of the public hearing to promulgate its policy. As a prisoner of all these years, I can’t help but notice how, when it’s time to spend money and change policies for the benefit of prisoners or to conform to the prison reforms of the 2018 § 2371 Prison Reform Bill, the DOC’s action is to “appear” to be making the transition, however when it’s time to make matters worse for prisoners, their actions are premeditated and established overnight. We have been denied our very limited very limited recreation time here at S.B.C.C. while the DOC installed the stations where these new mail tablets will be operated through, prior to a public hearing and proper promulgation process. This to me demonstrates the DOC’s disdain for the process of law. Either that or somehow the DOC knows the outcome of the public hearing before it’s even held. Meanwhile, most of the reforms listed in the 2018 § 2371 Prison Reform Bill is completely undermined. What is most concerning is that the DOC seeks to implement this policy in direct response to the Court’s Order in *Edward Wright v. DOC*, Suffolk Superior Civil Action No. 1884CV03232 ruling against the DOC’s illegal implementation of photocopying all incoming mail in violation of their own policies. This is concerning because the Court already ruled against the illegal tampering with our mail and now the DOC disregards that ruling and will tamper with our mail a different way. Essentially, although we’ve waited over 3 years to get this ruling, the DOC will force us to litigate for an additional few years. DOC has no regard for the Court’s ruling. This policy is unfair for a number of reasons. The DOC is monopolizing on prisoners’ family and friends by forcing them to correspond through this policy and forcing prisoners to mail back the mail we receive. It also places information, words of sentiment etc. in the possession of DOC officers and vendors whereas such info is intended for only the prisoner it was mailed to. The DOC has already established electronic corresponding via Corrlinks and tablets. What isn’t clear about that policy however, is that the DOC often disables prisoners’ tablets and thus severely limiting prisoners’ communication with their loved ones. Even now during the pandemic I’m subjected to a disabled tablet despite the fact that this type of sanction shouldn’t be imposed during the pandemic. S.B.C.C. staff simply do not care. To put this policy into effect is to give the DOC more unchecked power to arbitrarily deny and capriciously limit prisoners’ contact with their loved ones. Additionally the Corrlinks option erases all correspondence after a maximum of 120 days. All prisoners and our correspondents would like to keep our correspondence as they are of sentimental value. This is how it has been my entire sentence for my loved ones as well as myself. Yet, the DOC has limited access to all our

correspondence. This policy is also not authorized by the Regulatory Authority G.L. c. 127 § 87. The photocopy our legal mail is illegal. It should never be done. However, it's still being done nonetheless through the former photocopying policy. It is in violation to the attorney/client privilege and privacy. The DOC has often made false reports of substances being sent in the mail and I ask you to investigate these incidents and make it known to all who attend the public hearing. Often prisoners have plead guilty to these "false positives" when the DOC has charged prisoners with claiming they have a "field test" which tests for substances as well as tests for urine of these substances. I ask that the truth of these tests are also investigated and the outcome also be reported publicly. Prisoners plead out most of the time simply to get out of the hole sooner and because they do not know how to defend themselves in disciplinary hearings. So believing that they will be found guilty regardless and sanctioned more harsh, they plea bargain. For all the above reasons I ask that the DOC proposal to implement such a policy is denied in accordance with the Court's recent Order in Edward Wright v. DOC. Sincerely, Nigel Vaughn"

Lauren Bard – I am reading an inmate's testimony but will also submit my own statement. This is the testimony of an incarcerated individual at SBCC named Chancellor Young – "My name is Chancellor Young I'm currently incarcerated at Souza-Barakowski correctional facility. I'm writing in regards to the current mail policy that to my knowledge was/has been enacted several years ago. I/we incarcerated peoples so not receive our physical mail in the fashion in which it was initially sent to us. In fact all of our incoming mail such as letters, pictures, drawings by kids etc. are all photocopied by S.B.CC personnel. Exactly what happens to the original copies of my mail that is sent to me is unbeknownst to me, I was never ever given an opportunity to send the original copies of my mail or pictures back out, so as far as I'm concerned my mail/personal pictures of my wife and kids could be in some administrative personnel's office. The IPS and the current administration currently copies all mail because they probably feel that although it's a more arduous fatiguing task to photocopy all prisoners mail, it's worth it in the long run because they are trying to get a handle on incoming drug activity. All prisoners are not involved in drug activity nor are we all conspiring to introduce any drugs into the facility, but we/all uninvolved prisoners must suffer the consequences of a rare few minority drug conspirers. The IPS as well as the administration all have jobs to do, nobody said that it's always gonna be an easy job but it's their job nonetheless as detailed in their job description, for which they get paid for. If the same standard of accountability was applied to the correctional officers as it is prejudicially imposed upon me an incarcerated prisoner, than all correctional officers would be held accountable for the actions of one or some rogue lawless officers. (It wouldn't be fair at that point would it?) But since the voice of the prisoners are not always loud enough to be heard than all of the wrongdoings bestowed upon us remain unheard and unseen. I am a son... I am a husband. I am a father... And I am a citizen of the U.S so I am afforded the same protections of the law as you and the person next to you! Thank you for your time and attention to this matter.

Amelie Ratliff – I agree with Katie Omberg; ditto what she said. I am reading the testimony of an incarcerated person, "My name is David Yarde W105085 and I'm writing to inform you of the constant violation of the Mass DOC surrounding personal mail and attorney-client privileged mail. All personal mail is still being copied which is in violation of a court order and my personal legal mail has been taken back to the IPS office after they opened it in front of me and had copies made of it and once before my legal mail came up to me opened. Both issues of which are in violation of the attorney client privilege right we are entitled to. However now the DOC are attempting to further violate said rights by trying to force use to receive our legal mail on tablets provided by the DOC which I highly doubt can guarantee will stay within the guidelines of the attorney client privilege rights. Sincerely innocent David Yarde W10585" As a private citizen, I just want to say that I am moved by the testimony of people who simply claim that those incarcerated have the same needs and aspirations as those on the outside have. There is no excuse for cruelty, and as Katie said, those who came up with these changes to the policy should be ashamed of themselves.

Tim Follow – I am a friend of a person currently incarcerated in the DOC. In addition to not implementing the new regulations, there needs to be a roll back of the old ones. These rules already infringe on my rights as well as friends and others. I could not get a copy of the constitution through to my friend because the Department said it violated some arcane rule. My friend sends creative art, but I cannot send anything comparable in return. My friend told me not to bother sending something for Christmas because it would not come through to him and would cause issues. Phone calls are outrageously expensive, videos is an expense, and messages are erased shortly after they are sent. The mail is the only outlet for connection and mental health. Writing letters is the only way my friend and I feel comfortable expressing our feelings and thoughts. I already thought it was shamefully bad and that it could not get worse. The Department needs to roll back the policies.

Corinne Espinoza – I live in Cambridge. I want to share with you how I am personally impacted by the mail rules. I have incarcerated loved ones. I am a concerned member of the community. A person's humanity is undeniable, whether inside or outside the walls. Monitoring mail has a negative impact on people. My privacy is violated as well as the privacy of those I write to. Holding something in your hands directly from a loved one is a precious right. A photocopy is not the same. There is isolation in the pandemic. I want to repeat again that we are human and incarcerated people are human beings. Human contact is so vital for our wellbeing and society. It is necessary to actively to participate in the legal system. The proposed changes do not increase safety for anyone, and in fact, they cost the taxpayers money. Regular communication with incarcerated people is essential to their mental health, re-entry & necessary to actively participate in the legal system. We need regulations that allow incarcerated people regular access to mail from legal professionals, friends and loved ones. The proposed changes present too many opportunities for legal mail to be compromised. My suggestions would be an effective improvement that I urge the Department of Correction to consider.

Diah Utami – I am calling from Indonesia. My English is not so good so please be patient. These are drawings from my children. (holds up stack of drawings). I have loved ones who are incarcerated. During the pandemic, he does not have any job. He gets letters from loved ones within one week, but it costs double and triple (\$50-\$60) to send them, which is almost 1 million dollars in my currency. I hope my loved ones would get the original because of this, and be able to see all the color. I always write 40 pages of long letters to him. He said that he spends all his time in his cell which makes him depressed. He is only happy because of his relationship with his family and loved ones. Please do not make a photocopy of my handwriting. It is hard to read these long letters when photocopied. Thank you.

Ash Trull – I live in Plymouth County in Lakeville. I am a volunteer of Showing Up for Facial Justice. I have four friends incarcerated who I correspond with by letter, email, and phone. It is crucial during the pandemic to communicate with loved ones. It is already hard because of the limitations put on by the Department. These are some experiences people have had. One had tablet access but it recently broke, so they could not communicate. There is insufficient communication when they rely on technology that is not reliable and can be broken by COs. These restrictions are inhumane, especially during the pandemic when visitation is limited and frozen. The Department is raising prices and charges, when it should be free and open. We do not need any more limitations; there needs to be a roll back. This is putting up barriers between people and the community. I have another friend who struggles with suicide, and the hardest time for them is when they are not connected to family and friends. It is hard to not be able to support her in the way she wants to be.

Kathleen Richard – I would like to call down the list of people who were logged on earlier and do not appear to be present: Elma Robinson, Alan Pope (will submit testimony), Colle Madox Abdego, Greg Abrams, and Lori Andrea Brizwala. There is no one in the waiting room. I am putting my email address in the chat if anyone wants to supplement their comments.

Jamielee Young – I am with Mass Incarcerated Youth Advocacy. I have a message from an incarcerated individual, (audio recording begins) “The Prison Justice Reform has made things worse. Many changes were supposed to be made...” This is a recording, not a live call. I do not know specifically whose testimony this was. My husband called and read someone else’s testimony. The voice is of my husband Chancellor Young, and he is reading someone else’s testimony.

Heidi Handler – This sounds like a live call, and we cannot have a live call where someone is reading testimony for someone else. The testimony will need to be sent in. Discussion takes place if it is a live call from prison or a recording.

Jamielee Young resumes – I will submit the recording. This is my own testimony. There is a huge disconnect in place between incarcerated people and their loved ones. I have not seen my loved one in years. My daughter likes to draw for her dad. The colors are photocopied and most of our phone calls are spent where he talks about the colors being all wrong. Daddy has to explain why the colors are different that the ones she sends. The pictures we send are also photocopied. The originals are put in the trash and the option is not given to send them back. The pictures are blurred and do not have details. It is discouraging on both ends that it has become so impersonal. Literally every connection has been taken from us. It is sad for us and our families. This feels like a loss of hope that is getting worse and worse. I hear it in my loved ones voices. There is no personal connection with loved ones who are incarcerated. There is no escape for them from their reality. I foresee this change causing a lot of emotional and mental health issues for those who are incarcerated.

Elizabeth Karnaukh – My name is Elizabeth Karnaukh and I come here as a close friend of someone who is currently incarcerated at Souza Baranowski Correctional Center and a concerned member of the community. These new mail rules, which have already been implemented at SBCC, have already created hardship for me and my incarcerated friend, and if codified they will continue to make our correspondence challenging. Photocopying and monitoring personal mail has a negative impact on me because it gives the DOC more access to my personal information, let alone the personal information of my incarcerated friend. Knowing that the DOC is likely reading all of our letters already, I’m less inclined to speak freely and communicate openly with my friend. My friend and I like to write to each other about our families, hobbies such as cooking and gardening, books we’re both reading, politics, his experiences while incarcerated, and more – normal topics of conversation between good friends. Yet the monitoring of our correspondences often limits how much we can or want to say on some of these topics. The restriction and surveillance of everyday personal communication hurts our friendship; it means we cannot always be honest with each other or share everything that we want to. I know that my pen-pal values our correspondence; our growing friendship, which has mostly evolved through the course of 12 months of letter writing, has greatly benefitted his mental health and overall happiness. I know he has held onto letters to reread them when conditions inside have been particularly bleak. To shred and take away letters from incarcerated people is a kind of violence; it limits their exposure to human connection and compassion, and demonstrates that the DOC does not value these connections. As my pen-pal recently said to me, destroying original copies and making all mail electronic also desensitizes incarcerated people from their loved ones. My friend and I have already negatively experienced these DOC mail regulations. There have been numerous times when parts of my letters have not made it to my pen-pals hands – either because he was moved to a different facility, or because the contents of my letters were presumably deemed “unsafe.” When they do go through, my friend also has a hard time reading my letters, since photocopied images often are blurry or missing parts of pages. I remember a specific instance when last summer, he received only parts of my letters because I was telling him about the Black Lives Matter actions happening locally. It’s hard to treat this as a coincidence; why would correspondence referencing movements for racial equality be censored, unless the DOC is actively reading our letters and deciding

that content is unsafe? Recently, I started sending printouts of Codes of Massachusetts Regulations (CMRs) as well, because he has told me he has limited access to the law library. Yet even as I send these codes to him, he will have limited access to legal procedures pertaining to his incarceration pending these new electronic mail rules. If the DOC really cares about the rehabilitation of incarcerated people, should they not allow for maximal contact with loved ones, friends, and legal aid? With these new regulations, the DOC is not only bridling communication; they are destroying networks of compassion, friendship, and support. My friend and I are both strongly opposed to the proposed changes to the regulations. Instead, I request that the following changes be made to DOC personal and legal mail policy. Allow incarcerated people to keep original copies of legal and personal mail sent to them. Stop reading, censoring, and limiting access to personal and legal correspondences Thank you for your time.

Heidi Handler – We have given everyone an opportunity to speak who has wanted to speak. Since the break, there has been no one in the waiting room. Everyone who has wanted to speak has spoken. Ms. Richard has confirmed that there are no callers waiting to speak or virtual attendees who have not already spoken. We will wait here for a few more minutes to ensure nobody wants to speak up and join in.

Meeting is open and silent for about five minutes to allow anybody else to join in. After several minutes, and again confirming that there are no additional speakers or callers, and nobody in the waiting room, Heidi Handler resumes:

Thank you all again for your participation, and at this time, we will close this hearing. Again, the date to submit testimony has been extended through February 5, 2021.

[Hearing ended at approximately 1:24 p.m.]