



THE COMMONWEALTH OF MASSACHUSETTS
House of Representatives
24 Beacon Street
State House, Boston 02113 - 1054

LINDSAY N. SABADOSA
STATE REPRESENTATIVE
1ST HAMPSHIRE DISTRICT

Commissioner Carol Mici
Department of Correction
50 Maple Street
Milford, MA 01757
September 23, 2022

Dear Commissioner Mici,

I am writing in absolute horror to have read that the DOC is considering photocopying legal mail in addition to the personal mail that inmates receive as covered by GBH on September 21, 2022. The article claims that public comment is being taken on this matter; unfortunately, my office has been unable to find information on where those comments should be submitted so we are writing to you directly.

In the last few years, I have gone on record during a previous public comment period expressing my opposition to the practice of photocopying mail. Despite that opposition from myself and many others, the practice has gone into effect, purportedly to stop drugs from being transmitted by mail. In fact, the article I've cited claims this as the Department's reasoning.

However, in December 2021, a Superior Court judge issued a scathing ruling on the way the DOC conducts tests of inmates' mail. The testing is unreliable and faulty. As such, it is mind-boggling that the response may now be to just photocopy all mail, including legal mail.

I very much hope that the reporting is inaccurate and the DOC is in no way contemplating this policy. To break the sacred bond of attorney-client privilege seems like a lawsuit waiting to happen and reeks of a violation of constitutional rights. We both know that inmates are often involved in litigation that involves the DOC itself. For the DOC to open or otherwise tamper with legal mail would make a mockery of the judicial system.

I very much hope that I am misinformed by this reporting and look forward to an explanation as to what the DOC is truly attempting to do. If, however, this reporting is accurate, I have to reiterate my most ardent opposition to what would be a clearly unconstitutional policy.

Respectfully,

Lindsay N. Sabadosa
State Representative, 1st Hampshire



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

TERRENCE M. REIDY
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety & Security

Department of Correction
50 Maple Street, Suite 3
Milford, MA 01757
Tel: (508) 422-3300
www.mass.gov/doc



CAROL A. MICI
Commissioner

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

October 13, 2022

The Honorable Lindsay N. Sabadosa
Massachusetts House
State House, Room 160
24 Beacon Street
Boston, MA 02113-1053

RE: September 23, 2022 electronic mail communication regarding photocopying

Dear Representative Sabadosa:

Thank you for your letter stating your concerns regarding the Department of Correction's photocopying practices, which I received via electronic mail on September 23, 2022.

On Wednesday, September 21, 2022, the Department held a virtual public hearing on proposed amendments to 103 CMR 481, Inmate Mail. We will include your letter as your official comments regarding the Department's proposed changes to its Inmate Mail regulation. Your written comments, along with all other comments, will be carefully reviewed and considered before the Department promulgates a final version of 103 CMR 481, Inmate Mail.

I would like to personally assure you that the Department of Correction is not photocopying all incoming privileged mail. Before holding a public hearing on proposed amendments to 103 CMR 481, Inmate Mail, the Executive Office of Public Safety and Security and the Department of Correction worked with the Committee for Public Counsel Services and other interested prisoner advocacy groups, to formalize procedures for processing privileged mail, and implemented the Legal Mail Standard Operating Procedure (SOP) on July 19, 2022. The Legal Mail SOP is a public document and remains in effect. I have enclosed a copy for your convenience.

I look forward to working with you in the future on issues of mutual concern.

Sincerely,



Carol A. Mici
Commissioner of Correction

Enc.

cc: Shawn P. Jenkins, Chief of Staff
Timothy Gotovich, Policy Development & Compliance Unit
Thomas B. Ashe, Legislative Manager of Constituency Services

User	Activity	Activity Date	Revision Date
Carol Mici	Approved	7/19/2022 13:00	7/19/2022 0:00

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
STANDARD OPERATING PROCEDURE (SOP) FOR PRIVILEGED MAIL
103 CMR 481 – Inmate Mail**

PURPOSE: This Standard Operating Procedure (SOP) establishes guidelines for the internal management and processing of privileged mail consistent with 103 CMR 481.11, *Identification and Processing of Privileged Mail*. This SOP is applicable to all employees and inmates of the Department of Correction (DOC).

I. PROCESSING OF OUTGOING PRIVILEGED MAIL

- a. All outgoing privileged mail shall be collected from each housing unit's lockbox once daily, excluding Sundays and holidays, and processed through the institutional mailroom, where indigent inmate mail shall be re-directed to the institution Treasurer.
- b. The institution Treasurer shall prioritize the processing of postage for indigent inmates sending privileged mail.

II. PROCESSING OF INCOMING PRIVILEGED MAIL IN THE MAILROOM

- a. Privileged mail shall be sorted by the Mailroom Officer daily, excluding Sundays and holidays, and privileged mail shall be set aside in a designated area for delivery by an Inner Perimeter Security (IPS) Officer.
- b. Privileged mail shall not be opened by a mailroom officer. Any inadvertent opening of privileged mail shall be documented in a confidential incident report.
- c. In accordance with 103 CMR 481.11(3), incoming privileged mail may be required to successfully pass a fluoroscope examination for contraband material before being given to an inmate. The mailroom officer may complete this examination but shall not open the privileged mail at any point.
- d. The IPS Officer who picks up the privileged mail from the mailroom shall log the privileged mail in the Privileged Mail Logbook prior to delivery to the inmate, noting the name of the inmate, number of envelopes, and sender information. After the envelope is opened in the inmate's presence, the number of pages per envelope shall also be documented in the Privileged Mail Logbook.

III. DELIVERY OF PRIVILEGED MAIL TO INMATE

- a. Opening of Privileged Mail - Incoming privileged mail shall only be opened by an IPS Officer in the presence of the addressee inmate.
- b. Location – Whenever possible, privileged mail will be delivered and opened in a central location with the Director of Security (DOS) or designee present. If a central location is not possible, then the DOS or designee shall be available whenever possible at the time the mail is delivered.

- c. Gloves – IPS Officers shall wear gloves throughout the entire mail delivery process, and change gloves in between delivery of separate pieces of mail, to include any photocopy process, as explained below.
- d. Viewing Before Delivery - Before any privileged mail is inspected by an IPS Officer, the inmate shall be permitted to view and confirm the identity of the sender of the privileged mail. If the inmate declines to view and/or confirm the identity of the sender, the privileged mail shall still be delivered to the inmate but the IPS Officer shall document the inmate's decision not to view and/or confirm the identity of the sender in a confidential incident report.
- e. Inspection - The IPS Officer shall open the privileged mail in the presence of the inmate and shall conduct an inspection in accordance with 103 CMR 481.11(3).
- f. Privileged Mail Logbook -The inmate shall sign the Privileged Mail Logbook to acknowledge receipt of the privileged mail.
- g. Refusal to sign -If the inmate declines to sign the Privileged Mail Logbook, the inmate shall still receive the original mail, or photocopy as set forth below, and the IPS Officer shall document the inmate's decision not to sign in the Privileged Mail Logbook and in a confidential incident report.

IV. SUSPICIOUS PRIVILEGED MAIL

- a. If an IPS Officer determines that the privileged mail appears suspicious due to an unexplained odor, stain, distinct variation in texture or color, a substance on or between the papers, or other obvious signs of tampering, the mail shall be presented to the DOS or designee whenever possible. The DOS or designee shall conduct an independent review and render a second opinion as to whether the mail appears suspicious. Common features of professional correspondence on privileged mail, such as the use of heavier or off-white letterhead paper, or the use of colored ink, shall not without more be considered suspicious.
- b. If the DOS or designee renders a second opinion that the mail is suspicious, the IPS Officer shall immediately provide the inmate with a photocopy of the privileged mail item in the manner set forth in Section V below.
- c. Prior to the end of their tour of duty, the IPS Officer and the DOS or designee shall each write a confidential incident report detailing the facts which render the mail suspicious. The report shall include information as to which pages, if not all, appear suspicious.
- d. The IPS Officer shall take a color photograph of the suspicious piece of mail as it appears after opening.

V. PHOTOCOPIES OF INCOMING PRIVILEGED MAIL

- a. Photocopies of privileged mail may be made only after the DOS or designee renders a second opinion that the mail appears suspicious.
- b. All photocopies must be made in the presence of the inmate. If a photocopier is not present in the area where the privileged mail is delivered, the inmate shall be

- permitted to accompany the IPS Officer to another area to allow for photocopying of the suspicious mail.
- c. The IPS Officer shall photocopy each page of suspicious mail individually by hand and may not use the feeder to make copies. The IPS Officer shall wear gloves throughout this entire process and change gloves in between photocopying separate pieces of mail.
 - d. The IPS Officer shall use disinfectant to clean the glass on the copier before and after making copies.
 - e. The inmate shall be present while copies are being made.
 - f. The IPS Officer shall inspect, but not read, the photocopy for clarity and ensure that all pages are present before presenting the photocopy to the inmate.
 - g. The inmate shall inspect the copy to ensure that all pages are present, and that each page is legible. In cases where the copy cannot be read, a new copy of the page in question shall be made.
 - h. The IPS Officer shall follow evidence chain of custody when packaging the suspicious privileged mail for delivery to the outside laboratory for testing.
 - 1. The suspicious privileged mail shall be properly documented and logged into the drug control evidence locker (pursuant to 103 DOC 506, *Search Policy*) while awaiting shipment to the outside laboratory for testing.

VI. INVESTIGATION, DISCIPLINE, AND HOUSING OF INMATE

- a. No inmate may be sanctioned pursuant to 103 CMR 430, *Inmate Discipline* or removed from general population on suspicion of sending or receiving mail falsely marked or labeled as privileged mail until a) a test from an outside laboratory is conducted and returns a positive result indicating the presence of an illicit substance, and b) sufficient evidence exists that the inmate attempted to introduce contraband.
- b. No inmate may be issued a disciplinary report for introduction of contraband until a test from an outside laboratory is conducted and returns a positive result regarding the privileged mail, and sufficient evidence exists that the inmate attempted to introduce contraband.
- c. An inmate's decision to decline to sign for, or decision to accept, privileged mail, standing alone, shall not constitute sufficient evidence that the inmate attempted to introduce contraband.
- d. Between the time the suspicious mail is received, and the outside test is completed, the Department may investigate the legitimacy of the suspicious mail.
- e. If the outside laboratory test does not indicate the presence of an illicit substance(s) that would preclude the mail's entrance into the correctional institution, the original mail will be retrieved from the laboratory and delivered to the inmate. An incident report shall be written by the IPS Officer delivering the return of the original privileged mail to the inmate to document such delivery.

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:28 AM
To: Lisa Berland
Subject: RE: Comments relating to 103 CMR 481

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III Massachusetts Department of Correction Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

-----Original Message-----

From: Lisa B [REDACTED] >
Sent: Monday, September 19, 2022 3:32 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: Comments relating to 103 CMR 481

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

Dear Ms. Michele Dupuis-Clarke:

I am opposed to the proposed policy on inmate mail. I currently correspond with two individuals who are incarcerated for life. A copy of an original card, letter, drawing, etc is a poor substitute for the original when your interactions with loved ones are so restricted. It's another step toward further dehumanizing the incarcerated.

Furthermore, introducing another profit-driven enterprise that makes money from the incarcerated population is very problematic. As it is, there are currently far too many companies invested in incarceration.

In addition, what will happen to the originals? Will they be kept indefinitely-- to be used against an incarcerated person at any time?

Moreover, there is evidence that this mail policy will lead to delays in the delivery of mail, which is cruel.

And lastly, surely there is a better way to keep drugs out of prisons. Is there data that shows the extent of the problem with drugs brought in on paper? Start by searching your COs on a regular basis.

The DOC should invest in drug programming that treats drug use as a medical issue, rather than spending limited [REDACTED] further dehumanizing the incarcerated.

Sincerely,

Lisa Berland

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:29 AM
To: christina Cardillo
Subject: Comments re: 103 CMR 481 - Inmate Mail Public Hearing

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

From: christina Cardillo [REDACTED]
Sent: Wednesday, September 14, 2022 6:29 AM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: In regards to 103 CMR 481: Inmate Mail

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

To whom it may concern

I am writing this to contest 103 CMR 481: Inmate mail. The fact of the matter is they are trying to stop drug flow into the prisons by photo copying all mail. Everyone is suffering consequences for [REDACTED] to their definitely suffering change but not to add more to the photo copying of mail, but an alternative route to help our loved ones to receive the respect and dignity that they deserve. They are already dealing with being incarcerated missing every moment with family, and Covid 19 has made it even harder. It is bad enough that they can not receive an actual card for a holiday or birthday. As of now Children can't even send a drawing without the sentimental value being ripped away because it is copied. We are all human and humans make mistakes however, just because someone is incarcerated does not mean they don't deserve to have normalcy. Imagine someone telling you that you can't have the drawing your child made for you but here's a copy or sorry you can't get a birthday card but here is a piece of paper. That is humiliating and degrading. I am hoping to see a change for the better regarding this matter. Thank you in advance for taking the time to read and understand my concern.

Sincerely,
Christina Cardillo

[REDACTED] feel free to contact me with any questions or concerns

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:28 AM
To: Jim
Subject: RE: Public Hearing

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III Massachusetts Department of Correction Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

-----Original Message-----

From: Jim <[REDACTED]>
Sent: Wednesday, August 31, 2022 8:44 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: Re: Public Hearing

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Good Day Michele,

I am writing regarding the proposed changes to 103 CMR 481 scheduled on 9/21/22. I am a former inmate both of NCCI Gardner, and the MTC (Mass Treatment Center). While at Gardner, they did enforce the policy changes that the current proposal is looking to implement system wide. They Prevent families from sending photos and hand drawn cards from children to their loved ones. As well as not giving any of the original mail to the inmate, but just photocopies (which half the time were hard to read). This further isolates the inmate from their families and support systems. Gardner explained to us the reason was to keep contraband out of the prisons. From word of mouth within the inmate population, I believe more contraband is brought in by employees of the facility than ever got in through the mail (but I have no proof of that).

My other concern is that a friend of mine is on the "Civil" side of the Mass Treatment Center having been civilly committed recently. I keep in contact with him, speaking on the phone almost daily. He was the one that informed me of this upcoming public hearing on this issue. He was told that if it is approved, it will be implemented throughout the entire facility. According to the Mass.gov website, the purpose of this hearing is:

"This hearing is being held to ensure proper notification regarding proposed amendments to 103 CMR 481.00 including, but not limited to, amendments relating to mail monitoring, attorney verification systems, and the photocopying of incoming, non-privileged, inmate mail."

Re: the "Civil" side of the treatment center:

[REDACTED] courts have repeatedly stressed that the residents at the Treatment Center are there for treatment, not [REDACTED] that they were sent there as civilly committed individuals, not as convicted criminals. ...

So my question is: if these proposals are for "... non-privileged, inmate mail" then those changes should NOT affect [REDACTED] ter, is that correct?

Thank you for your time.

James Casey
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:28 AM
To: Thompson, Joel
Subject: Re: Harvard PLAP testimony -- amendments to 103 CMR 481

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

From: Thompson, Joel <[REDACTED]>
Sent: Tuesday, September 20, 2022 9:36 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Cc: Reno, Annika-HLSCLINICS <[REDACTED]>; Evans, Riley-HLSCLINICS <[REDACTED]>
Subject: Harvard PLAP testimony -- amendments to 103 CMR 481

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Hello Ms. Dupuis-Clarke: I wanted to let you know that we will be attending the Zoom public hearing and that a student attorney from PLAP, Annika Reno, will be offering oral testimony. We will have written testimony to you by day's end.

Thank you,
Joel Thompson

Joel Thompson (he/him/his)
Managing Attorney and Clinical Instructor
Prison Legal Assistance Project
6 Everett Street, Suite 5107
Harvard Law School

Cambridge, MA 02138

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:29 AM
To: Aimee Montgomery
Subject: Comments re: 103 CMR 481 - Inmate Mail Public Hearing

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

From: Aimee Montgomery [REDACTED] >
Sent: Tuesday, September 20, 2022 2:57 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: Regarding: 103 CMR 481

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

To whom this may concern,

I'm writing this to contest 103 CMR 481. Photo copying prints and pictures is dehumanizing to inmates. It's the last thing they can have physical copies from there loved o [REDACTED] brother [REDACTED] from a federal p [REDACTED] yed all the letters and envelopes. It ment so much to me. I would have been heartbroken to know that the jail photo copied my letters, pictures and or drawings. They should be able to have some normalcy. So it's easier to intrograte back into society. Have a blessed day!

Thank you for your time

[REDACTED]

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:28 AM
To: Stephanie Hartung
Subject: Re: New England Innocence Project -- Objection to proposed changes to 103 CMR 481 (written statement attached)

Follow Up Flag: Flag for follow up
Flag Status: Flagged

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

From: Stephanie Hartung <[REDACTED]>
Sent: Wednesday, September 21, 2022 8:13 AM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Cc: Radha Natarajan <[REDACTED]>
Subject: New England Innocence Project -- Objection to proposed changes to 103 CMR 481 (written statement attached)

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

Dear Ms. Dupuis-Clarke,

In advance of the public hearing on inmate mail scheduled for today at 10 am, attached please find written comments submitted by the New England Innocence Project in opposition to the proposed changes to 103 CMR 481. We are not available to give oral testimony at the hearing but would like our written comments to be made part of the record. Please acknowledge receipt of this email and let me know if you have any questions.

Best regards,

Stephanie Roberts Hartung
Senior Staff Attorney
Pronouns: she/her/hers

[New England Innocence Project](#)

1035 Cambridge St., Suite 28A

02141

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Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Wednesday, September 21, 2022 11:29 AM
To: Mary Ann Silva
Subject: Comments re: 103 CMR 481 - Inmate Mail Public Hearing

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III

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

From: Mary Ann Silva <[REDACTED]>
Sent: Wednesday, September 14, 2022 1:59 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: Changing mail delivery at Old Colony Correctional Center

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Dear Ms. Dupuis-Clarke,

After having a conversation with my son, [REDACTED], d.o.b. [REDACTED], Commitment # [REDACTED], I felt it was necessary to reach out to you.

At my age, it absolutely astonishes me how this wonderful country treats our incarcerated men. These inmates have lost everything, depending on why they are in prison. I sat through two trials for my son and fourteen years later, I still doubt our legal system. I have no faith in the Department of Corrections and their treatment of these inmates. We treat animals better than these individuals. Now they want to take away the one thing that keeps many of them hoping for some type of access to their families and the real world. It is bad enough that my husband and I are treated as though we are criminals by some of the DOC staff, now any mail my family or myself send might be lost in some abyss. There is no guarantee that changing the system will assure that inmates' mail will be stored safely somewhere. We are not so uneducated to realize that the DOC has problems with storage, but will make promises to the inmates that their mail will be available to them. How many inmates across the Commonwealth will be affected by this change?

My name is Mary Ann Silva. I have lived in Wareham, Massachusetts all my life. My Husband, Jack M. Silva, and I have been married for 51 years. We have owned a home and paid taxes since 1978. During my career I worked for the Department of Social Services, Mass Welfare Office and the Town of Wareham. I spent 24 1/2 years with the Town, with the last 21 years as the elected Town Clerk. We have passed every CORI given to us. We are registered voters since the age of 18. We are not perfect but do consider ourselves as upstanding citizens. In the fourteen years we have visited our incarcerated son, at no time have we attempted to transport drugs into whatever prison he was held. We have never mailed anything illegal to him in that time. Yet, based on a handful of people, we are all grouped as criminals. We both feel offended by this grouping.

Due to my lack of faith in the DOC system, I hesitated to even contact you regarding this situation. But my son reminded me that if people like my husband and I do not speak up, inmates like him get stepped on and their voices minimized.

I am not sure where to obtain a copy of the proposed regulations, but would like to read them before your public hearing on September 21, 2022.

I hope to hear from you soon.

Sincerely,

Mary Ann Silva

 Reply all   Delete  Junk Block ...

Re: 103 CMR - Inmate Mail

Dupuis-Clarke, Michele A. (DOC)

     ...

To: Laura B.Wyman <[REDACTED]>

Thu 9/22/2022 9:46 AM

Good morning,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

From: Laura B.Wyman <[REDACTED]>

Sent: Wednesday, September 21, 2022 4:08 PM

To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>

Subject: Re: 103 CMR - Inmate Mail

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

Dear Ms. Dupuis Clark,

I would like to submit to the following testimony re proposed amendments to 103 CMR regarding inmate mail.

I am writing to voice my objection to the photocopying of inmate mail.

As a prison volunteer, I am aware that mail represents an emotional lifeline for many incarcerated individuals. Mail often consists of children's drawings, handwritten letters and cards. It is simply not the same for incarcerated individuals to receive photocopies as it is to receive the originals. Just imagine a photocopy of a handmade child's card substituted for the original -- it is a very poor substitute particularly for those struggling to maintain connections with the outside world.

The photocopying of mail represents a poor use of DOC resources and further punishes individuals for substance use disorders. A much better use of resources would be to provide substance use disorder treatment

Dupuis-Clarke, Michele A. (DOC)

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Thursday, September 29, 2022 4:51 PM
To: Lin, Ada
Subject: RE: Public Hearing - Mail Regulations

Ada,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110

From: Lin, Ada <[REDACTED]>
Sent: Saturday, September 24, 2022 10:56 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: RE: Public Hearing - Mail Regulations

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Dear Ms. Dupuis-Clarke,

Thank you for helping to facilitate the hearing on Wednesday. I have attached PLS' written comments on the proposed regulations. Please feel free to reach out with any questions.

Many thanks,
Ada

From: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Sent: Monday, September 19, 2022 3:03 PM
To: Lin, Ada <[REDACTED]>
Subject: Re: Public Hearing - Mail Regulations

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Perfect, thank you for confirming.

Michele

From: Lin, Ada <[REDACTED]>
Sent: Monday, September 19, 2022 2:30 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: RE: Public Hearing - Mail Regulations

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Hi Ms. Dupuis-Clark, I will be speaking. I am a legal fellow at PLS. Thanks so much.

From: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Sent: Monday, September 19, 2022 12:02 PM
To: Lin, Ada <[REDACTED]>
Subject: Re: Public Hearing - Mail Regulations

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Good afternoon Ms. Lin,

Please advise who will be speaking on behalf of Prisoners' Legal Services at the September 21, 2022 public hearing re: 103 CMR 481 - Inmate Mail so that I may draft the list of speakers accordingly.

Thank you in advance for your prompt reply.
Best,

Michele Dupuis-Clarke, Regulations Paralegal / Program Coordinator III

Massachusetts Department of Correction

Legal Division
70 Franklin Street

Boston, MA 02110

From: Dupuis-Clarke, Michele A. (DOC)
Sent: Friday, September 16, 2022 5:29 PM
To: Lin, Ada <[REDACTED]>
Subject: RE: Public Hearing - Mail Regulations

Ms. Lin,

Thank you for your email regarding the September 21, 2022 public hearing re: 103 CMR 481 - Inmate Mail.

I am pleased to schedule PLS to speak first in effort to help with your scheduling conflict. While there isn't an established time-limit per se, we do ask that participants try to keep their comments under five-minutes, so that everyone wishing to speak can do so. If you feel your comments may exceed the suggested timeframe, you may always submit a longer, written comment.

Best,

Michele Dupuis-Clarke, Regulations Paralegal / Program Coordinator III
Massachusetts Department of Correction
Legal Division
70 Franklin Street
Boston, MA 02110

From: Lin, Ada <[REDACTED]>
Sent: Tuesday, September 13, 2022 3:50 PM
To: Dupuis-Clarke, Michele A. (DOC) <Michele.Dupuis-Clarke@doc.state.ma.us>
Subject: Public Hearing - Mail Regulations

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Dear Ms. Dupuis-Clarke,

I hope you are well. I have two quick questions about the EOPSS public hearing regarding the revised mail regulations scheduled for next Wednesday starting at 10am. Prisoners' Legal Services of Massachusetts would like to testify, but we have an office-wide prescheduled meeting starting at the same time. I was wondering if it would be possible for us to speak first, or early on in the hearing.

We were also wondering if there is a time limit for oral statements.

Thanks so much for your consideration,

Ada

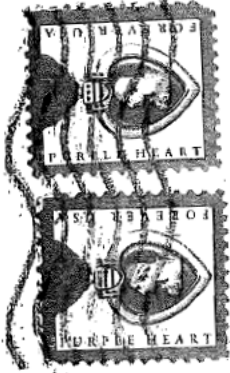
Ada Lin
Legal Fellow
Prisoners' Legal Services of Massachusetts

Christopher Piantadosi,
Paralegal



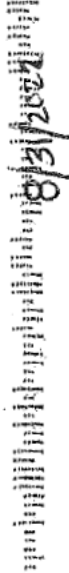
BROCKTON MA 023

2 SEP 2022 PM 2 L



Michele Dupuis - Clark
Program Coordinator III
Department of Correction
70 Franklin St., Suite 600
Boston, MA 02110

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SEP 13/2022

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DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

CHRISTOPHER PIANTEDOSI, [REDACTED]
PARALEGAL
[REDACTED]

August 31, 2022

MICHELE DUPUIS-CLARK,
PROGRAM COORDINATOR III
DEPARTMENT OF CORRECTION
70 FRANKLIN ST., SUITE 600
BOSTON, MA 02110

RE: 103 CMR 481: INMATE MAIL

Dear Michele;

Hello. I am writing to you to ask if you would consider an amendment to the above matter. When an inmate receives copied non-privileged mail and decides to have it sent back to the sender or to his home the D.O.C. SHOULD pay all costs, i.e., manilla and white envelopes and postage stamps, especially when that inmate has had no accusations, arrests or convictions of drugs. This is why mail started to be copied. The senders also are included in the no accusations, arrests or convictions.

I am serving a life sentence without the possibility of parole, as of today, and I have no issue with drugs before or during my incarceration. I am being punished for the actions of some inmates and some staff members for bringing drugs into prison. I receive mail from allot of organizations and they send me pre-paid postage envelopes, but when they are photocopied they are no longer useable; SEE enclosure. I use these to send donations, letters and prayers and know I have to use my own funds to mail back to these organizations that are not sending me drugs. As of today's date I have spent \$103.75 since this illegal procedure started. I should be refunded and the D.o.c. should have a budget or a fund for inmates to send their non-privileged original mail back out.

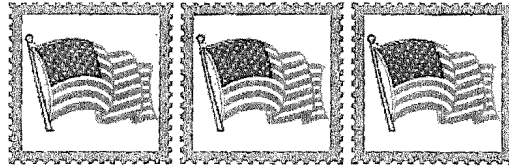
I believe our mail should be sent through the machine and have dogs inspect it, but when our mail sits in storage, i.e., photo's, letters, important paperwork, etc., this is a violation of our rights. Anybody can be reading or looking at inmates private photos and letters. The post office can't do it. Please consider stopping this procedure, if not then please consider that the D.O.C. pays for all expenses when an inmate wants his mail to be sent back out. Thank you for your time in this matter.

Respectively submitted,

Christopher Piantedosi /paralegal
Christopher Piantedosi, [REDACTED]

Encl.

From:



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is not sending me drugs.

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of the United States
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and to the Republic
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Christopher Piantedosi

☐ Make my gift monthly

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tax-deductible donation payable to DAV or
donate online at www.dav.org/pp, or call
1-877-647-VETS (8387).

If you would like to donate by credit card,
please see back of form.

37488164



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The more stamps and envelopes
an inmate purchases, the more
the D.O.C. receives a kickback (center profits).

The D.O.C. should pay for any postage and
envelopes that an inmate uses to mail out their original
mail...

Mail is also not being
Copied fully

← Cut off?

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Dear fellow worker of the Christian Worship Hour:

"There is a Friend who sticketh closer than a brother."

Proverbs 18:24b

Here Solomon is writing about a Friend---and you know what, I know that Friend! Personally, intimately, since I was 10 years old, if you can believe it! He is the One who said, "No longer do I call you servants...I have called you friends." (John 15:15). Let me tell you about my Friend:

- ❖ **MY FRIEND LOVES ME.** Can you imagine it? He loves me so much He gave His life for me on a cruel, Roman cross. I have had a lot of friends, but none that loved me that much. There are a lot of things in the Bible that surprise me, but the one that surprises me the most, is that Jesus loves me! In spite of all my sin and waywardness, He loves me. He's my friend! (John 3:16; Romans 5:10).
- ❖ **MY FRIEND IS FAITHFUL TO ME.** He has never failed me a single time in my life. Oh, sad to say, I have failed over and over but my wonderful Friend never fails me. I can always count on Him, lean on Him, depend on Him. Sometimes when I wonder if He hears my prayers, or if He knows how I hurt---well, I don't wonder long because in my heart of hearts I know He is beside me, better yet, within me. What a faithful friend He is! (Hebrews 13:5).
- ❖ **MY FRIEND IS ALWAYS TRUE TO ME.** Many friends just tell me what I want to hear—but not my Friend, He tells me like it is. If there is something I want to do, and I know it is wrong—my Friend tells me right out, it is not pleasing to Him. And, you know something else, He keeps telling me that, keeps convicting me, until I change my way. He is honest and true to me. And something else, when I listen to Him, He quietly says, "well done". (Acts 9:5; Matthew 25:23).
- ❖ **MY FRIEND IS EVER SO TENDER.** He cares for me and never gives me more than I can bear. Sometimes it seems I can hear Him whisper, "I have yet many things to say unto you, but ye cannot bear them now." (John 16:12). Oh, He allows me to have some burdens and trials and sorrows, but He never gives me too many! He knows me better than I know myself so He gives me only what I can bear. Tenderly He adjusts my load so it is just right. (Matthew 11:28-30).
- ❖ **MY FRIEND IS STRONG.** You know what? He is stronger than Satan! And Satan is strong, believe you me, but Satan is no match for my Friend Jesus! My Friend said, "All power is given unto Me in heaven and in earth" (Matthew 28:18). Jesus is going to demonstrate that power when He casts Satan into the lake of fire and brimstone! (Revelation 20:10). Today it looks like the devil is in the saddle, but fear not, my Friend is going to have the last word! (Revelation 20:7-9).
- ❖ **MY FRIEND IS GENEROUS!** He gives me all that I need, and much, much more---more than I deserve! He shares with me ALL of His riches in glory, that is, the unsearchable riches in Christ reserved for us in heaven. (1 Peter 1:4,5). Generous? I should say so. (Ephesians 1:3; Philippians 4:19).

I wonder if you know this Friend of mine. Not know ABOUT Him, but know Him personally, experimentally. If not, just tell Him you are a sinner and ask Him to come into your heart and life---and He will. (Revelation 3:20).

In our Savior's love,
Pastor Salem

Cut off 3??
↓

SEPTEMBER 25

THE UNPARDONABLE SIN

MATTHEW 12:22-32

SEPTEMBER 30 MINUTE SERMONS

SEPTEMBER 04
SEPTEMBER 11
SEPTEMBER 18
SEPTEMBER 25

"A CHECKLIST FOR GODLINESS"
"WHAT A DIFFERENCE A DAY MAKES"
"WHEN ISAIAH SAID 'YES' TO GOD"
"THE UNPARDONABLE SIN"

ROMANS 12:14-21
JOHN 21:9-17
ISAIAH 6:1-8
MATTHEW 12:22-32

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Department of Correction
Legal Division
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Boston, Massachusetts 02110-1327
Tel: (617-727-3300 Ext. 1124)
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THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

Christopher Piantedosi [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Piantedosi,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

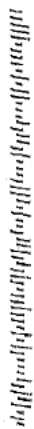
Michele Dupuis-Clarke, Program Coordinator III
Legal Division

Luis Perez



Michelle Dupuis-Clarke
Program Coordinator (Legal Dept.)
Department of Correction (Legal Dept.)
70 Franklin St, Suite 600
Boston, Massachusetts 02110

0211061927 0021



September 3, 2022

Michelle Dupuis-Clarke
Program Coordinator III, Dept. of Correction
70 Franklin Street, Suite 600
Boston, Massachusetts 02110

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DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

In Re: 103 CMR 481: Inmate Mail Changes

I am writing this letter as a form of testimony to address issues that deal with our mail system.

103 CMR 481: Inmate Mail Changes on the present version created on Oct. 29, 2018, and like the visiting privileges being restricted on 2/22/19 as a result of security personnel indicating that those are the only avenues being the only way drugs enter the institutions.

The evidence that supports that security claims are connected to drug abuse and individuals in possession of contraband, linked to the mail and visiting activities.

It is important that the public be aware that the drug culture in prison is relatively small in comparison to the prison population which has been clean of drugs without abusing of our prison privileges.

I have been in prison for more than 51 years and in my personal experience, State, Federal and County Jails, I can honestly tell you that a drug culture is sort of the prison subculture no matter how much security or restrictions may be. - But I also can tell you that, as always, the security personnel in their careers pushed the envelope against programs and privileges and because it is security they go along with them without question.

Let me further explain that the mail restrictions as well as the visiting restrictions have been a reaction of Correctional facilities operating under the influence and political power of 4 different Unions with the approval of the stateholders.

The restriction in question began before the pandemic. During the medical lock-up and the periods of that we were outside the cells - 90 days after the lock-up without visits and the mail being restricted, we have had just as much drugs present as the visiting process before the Pandemic.

Over the years, Corrections has been penalizing everyone based on Mass-Punishment. Instead of penalizing those individuals who have been the abusers, or create residential drug programs inside the prison capable to address those issues of concern.

In Conclusion,

I do not expect that my testimony will carry any weight or being published at all. The Legal Department of D.C. has been very successful in making the changes they want regardless of what transpire at the public hearings.

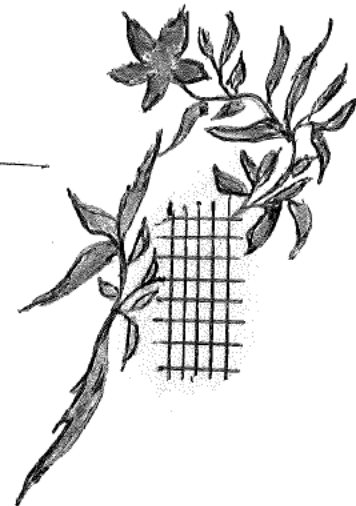
Respectfully Yours,

Luis D. Perez

Luis Perez [REDACTED]

MEMORANDUM

PS// Please note that the Commission on Safety and Abuse in America's Prisons have made several recommendations including "As administrators, we cannot be stripped of our ability to manage and protect inmates by unions".





CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

THOMAS A. TURCO III
Secretary

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CAROL A. MICI
Commissioner

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JENNIFER A. GAFFNEY
MICHAEL G. GRANT
PAUL J. HENDERSON
THOMAS J. PRESTON
Deputy Commissioners
NANCY ANKERS WHITE
General Counsel

February 10, 2021

Luis Perez, [REDACTED]

RE: Comments on Proposed Changes to 103 CMR 481.00 Inmate Mail

Dear Mr. Perez:

Thank you for your participation in the Public Hearing process for the proposed changes to 103 CMR 481, *Inmate Mail*. Comments such as yours provide a valuable perspective to the Department as it seeks to promulgate effective regulations.

Your comments were insightful and thought provoking, and we will take them into consideration while the regulation continues to undergo a more extensive review prior to any changes being made.

Again, thank you for your insightful comments.

Sincerely,

Kathleen J. Richard
Program Coordinator

EDWARD G. WRIGHT vs. MASSACHUSETTS DEPARTMENT OF CORRECTION and STEVEN SILVA
SUPERIOR COURT OF MASSACHUSETTS, AT SUFFOLK
2020 Mass. Super. LEXIS 120
CIVIL ACTION No. 1884CV03232
September 22, 2020, Decided

Judges: Debra A. Squires-Lee, Justice of the Superior Court.

Opinion

Opinion by: Debra A. Squires-Lee

Opinion

MEMORANDUM OF DECISION AND ORDER ON CROSS MOTIONS FOR SUMMARY JUDGMENT

Edward G. Wright (Wright), an inmate in the custody of the Massachusetts Department of Correction (DOC), filed this civil action against the DOC and Steven Silva (Silva), the former Superintendent at Souza-Baranowski Correctional Center (SBCC). Wright alleges that a new DOC policy of seizing all of his non-privileged incoming mail, photocopying it, and delivering to Wright the photocopies violates his Constitutional rights. Wright also argues that the DOC implemented the Policy in violation of the governing regulations, 103 Code Mass. Regs. §§ 481 and 403, and that the Policy effectively constituted an amendment to those regulations in violation of the Massachusetts Administrative Procedures Act (APA). Wright seeks declaratory and injunctive relief. Before the Court are cross Motions for Summary Judgment. For the following reasons, the Defendants' Motion for Summary Judgment is **DENIED**; Plaintiff's Motion for Summary Judgment is **ALLOWED**.

BACKGROUND

The following factual summary comes from the admissible evidence in the summary judgment record with certain details reserved for later discussion. See Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 674, 680 (2016). Because Wright is incarcerated and appears *pro se*, I do not have a consolidated statement of material undisputed facts. The following, therefore, is taken from the record as a whole and, where there appear to be disputes of fact, I have so indicated.

A. The Parties

When he filed this Complaint for declaratory and injunctive relief, Wright was incarcerated at SBCC. He is now held in DOC custody at the Massachusetts Correctional Institution at Norfolk (MCI-Norfolk). Wright has been in prison for more than 34 years and is serving a life sentence without the possibility of parole. His incoming mail, letters and photographs from family and friends are an essential part of his life.

Silva was the Superintendent of SBCC and is currently the Superintendent at MCI-Norfolk. The DOC, an agency of the Commonwealth, is responsible for the policies, practices and customs at correctional facilities as well as the hiring, training, instruction, discipline and control of all employees at SBCC, including Silva.

B. Drugs in DOC Facilities

The introduction of drugs into prisons is a major problem for the DOC. Concerned about the introduction of drugs through the United States mail, the DOC's Office of Investigative Services (OIS) obtained statistics from January 1, 2016 to June 5, 2017 about attempted drug introductions through the mail. According to OIS, eight facilities reported attempted and completed drug introductions through the mail in that period: Massachusetts Correctional Institution (MCI)-Cedar Junction reported 35 incidents; MCI-Concord reported 34 incidents; MCI-Framingham reported 28 incidents; MCI-Norfolk reported 21 incidents; MCI-Shirley reported 35 incidents; North Central Correctional Institution (NCCI) reported 7 incidents; Old Colony Correctional Center (OCCC) reported 18 incidents; and SBCC reported 130 incidents. According to a memorandum written by Patrick DePalo (DePalo), Chief of OIS, the vast majority of the inmates involved at the facilities that reported those drug incidents involving the mail pled guilty after having been issued disciplinary reports. Wright correctly notes, however, that DePalo indicated that only 29 of the incidents involved "confirmed" drugs, including K2, a synthetic cannabinoid, and suboxone.

According to Wright, beginning in 2014, mailroom officers at SBCC removed all stamps from the envelopes of all incoming non-privileged mail. In 2015 and through February 20, 2018, mailroom officers removed all envelope flaps as well as stamps from incoming non-privileged mail.¹ Wright further avers that the DOC has always had a de facto policy of inspection and that, in his 34 years in Massachusetts' DOC facilities, the DOC inspected all of his incoming mail prior to production to him. Although the DOC asserts that there are more drugs being introduced into prisons through the mail than is shown by the OIS data, it has produced no additional evidence of drug introduction through the mail other than the data discussed above,² and Wright avers that DOC staff introduces illicit drugs and contraband into DOC facilities.³ Finally, according to DePalo, techniques to conceal drugs on or within paper and envelopes are constantly evolving and it has become more difficult to identify drug-related contraband through a "quick" visual inspection of incoming non-privileged mail.

C. The DOC's Regulations Governing Inmate Mail

In May 2017, in response to concerns about drugs in prisons and the data obtained by OIS, the DOC, consistent with the APA, promulgated changes to 103 Code Mass. Regs. §§ 481 et seq., Inmate Mail.⁴ Included among those changes was an amendment to 103 Code Mass. Regs. § 481.12(2) as follows:

All incoming non-privileged correspondence and packages may be required to successfully pass a fluoroscope examination for contraband materials, and shall be opened and inspected before delivery to the inmate. The purpose of inspection will be to receive and receipt any funds enclosed for the inmate; to verify and record the receipt of permitted personal property; *and to prevent the transmission of contraband to the inmate. If there is reason to believe contraband is being introduced through the mail based on the paper color, texture, etc.*, a photocopy of the original correspondence rather than the original correspondence may be forwarded to the inmate. . . .

(Emphasis added).

Another subsection of that regulation, 103 Code Mass. Regs. § 481.15(1), provides that, when "any correspondence, or portion thereof, addressed to an inmate, is received at the institution, but is not delivered to the inmate for any reason set forth in 103 CMR 481.14, the inmate, and the sender when identifiable, shall be promptly notified, in writing, of ... the reason(s) for refusing to deliver the

correspondence or a portion thereof to an inmate" One of the reasons provided under 103 Code Mass. Regs. § 481.14 to withhold correspondence from an inmate is if the "correspondence contains cash, drugs, jewelry or other contraband" 103 Code Mass. Regs. § 481.14(2)(g).

D. Adoption of the Standard Operating Procedure At Issue

In early 2018, the DOC began a pilot program at SBCC and other facilities where inmate drug use was particularly problematic. The program involved photocopying all incoming non-privileged mail to inmates. On August 16, 2018, the DOC Commissioner formalized that program and issued a new Standard Operating Procedure (SOP). The SOP provides that, for facilities authorized by the Commissioner, "all incoming non-privileged inmate mail shall be photocopied prior to distribution to the inmate." The SOP further provides that inmates will receive photocopies of the envelope and all authorized photographs and that non-privileged mail will be stored for three months and then shredded unless the inmate "choos[es] to have the original mail sent to a designated person at the inmate's expense." The Commissioner authorized the use of that SOP at seven medium and maximum-security prisons.⁵ At those facilities, the DOC photocopies all incoming, non-privileged mail and only the photocopies are provide to inmates.

Wright alleges that, since the implantation of the SOP, he has received copies of correspondence from friends and family on non-durable photocopy paper prone to ripping, tearing, and destruction. Thus, because original correspondence is subject to destruction unless the prisoner pays to have it sent to a designee, prisoners run the risk of losing their correspondence. According to Wright, color copies of photographs are particularly vulnerable on the relatively' delicate photocopy paper. If photocopied photographs were to be torn or destroyed, and if the prisoner had not sent the photographs to a designee, the images would be lost forever. The costs to the prisoner to forward original mail is fifty-five cents per piece of mail. Since the implementation of the SOP, none of Wright's mail correspondents received written notice that their original correspondence was not delivered. At medium security and pre-release facilities, the DOC visually inspects all individual pieces of mail and photocopies only those items that appear suspicious.

DISCUSSION

A. Introduction

The DOC argues that a facility wide ban on prisoner receipt of original mail is necessary at medium and maximum-security prisons because those facilities are larger and receive more mail, making a visual inspection impossible. Further, the DOC argues that, without a complete ban on the receipt of original mail at higher security prisons, drug-involved inmates would threaten and coerce other inmates to receive incoming Mail on their behalf. Thus, the DOC determined that "all incoming non-privileged inmate mail at medium security and maximum security facilities [other than MCI-Framingham and the Massachusetts Treatment Center] is reasonably suspected of including drug-related contraband."

Wright argues that the seizure of his non-privileged mail violates his rights under the First, Fourth and Fourteenth Amendments to the Unites States Constitution. He also argues that a complete ban on the receipt of original mail violates 103 Code Mass. Regs. §§ 481 et seq. Finally, Wright argues that the implantation of the SOP violates the APA.

After hearing and review, and for the reasons stated below, I agree that the SOP violates the regulation and that the SOP meets the definition of a regulation under the APA. Therefore, continued

implementation of the SOP absent compliance with the required notice and public comment period and / or hearing violates the APA. The DOC may well be correct that a complete ban on incoming mail is necessary to prevent the introduction of drugs into higher security facilities. Nevertheless, before it can implement that policy, it must comply with the APA. Because courts should hesitate to reach Constitutional issues where "there is a readily available statutory ground that renders such a decision unnecessary," I decline to address Wright's Constitutional arguments. Commonwealth v. Vega, 449 Mass. 227, 234 (2007).⁶

B. Massachusetts Administrative Procedures Act

The APA's purpose is to "establish a set of minimum standards of fair procedure below which no agency should be allowed to fall" and to create uniformity in agency proceedings. Carey v. Commissioner of Correction, 479 Mass. 367, 371 (2018), citing Curran & Sacks, The Massachusetts Administrative Procedure Act, 37 B.U. L. Rev. 70, 76-77 (1957); Reid v. Acting Commissioner of Dep't of Community Affairs, 362 Mass. 136, 144 (1972); Palmer v. Rent Control Bd. of Brookline, 7 Mass. App. Ct. 110, 115 (1979). "The APA details procedures that State agencies, including the [DOC], must follow when adopting new regulations (as defined in the statute)." Id.

The APA defines a "regulation" as "the whole or any part of every rule, regulation, standard or other requirement of general application and future effect, including the amendment or repeal thereof, adopted by an agency to implement or interpret the law enforced or administered by it" G. L. c. 30A, § 1. "[P]rior to promulgating a regulation (as defined by the APA), a State agency must 'give notice and afford interested persons an opportunity to present data, views, or arguments.'" Carey, 479 Mass. at 371, citing G. L. c. 30A, § 3.7 "The notice and comment period provides an 'opportunity for 'input' and debate by the persons affected, and deliberate resolution of issues.'" Id., citing Massachusetts Gen. Hosp. v. Rate Setting Comm'n, 371 Mass. 705, 707 (1977). The DOC complied with the APA when it enacted 103 Code Mass. Regs., § 481. 481.12(2) in May 2017.⁸

A properly promulgated regulation "has the force of law . . . and must be accorded all the deference due to a statute." Borden, Inc. v. Commissioner of Pub. Health, 388 Mass. 707, 723, cert. denied sub nom. Formaldehyde Inst., Inc. v. Frechette, 464 U.S. 936 (1983); see also New England Power Generators Assn, Inc. v. Department of Env'tl. Prot., 480 Mass. 398; 407-408 (2018) (same); Larrabee v. Massachusetts Comm'n Against Discrimination, 96 Mass. App. Ct. 516, 524 (2019) (same). "The interpretation of a regulation is a question of law" and courts apply the "traditional rules of statutory construction." Ivey v. Commissioner of Corr., 88 Mass. App. Ct. 18, 23-24 (2015), quoting Commonwealth v. Hourican, 85 Mass. App. Ct. 408, 410 (2014) and Young v. Patukonis, 24 Mass. App. Ct. 907, 908 (1987). "As with statutes, regulations must be interpreted as promulgated [and] [w]ords are to be accorded their ordinary meaning and approved usage . . . when the language used constitutes the principal source of insight into regulatory purpose." Ivey, 88 Mass. App. Ct. at 23-24 (internal citations and quotation marks omitted).

Courts ordinarily give an agency deference in the interpretation of its own regulations. Carey, 479 Mass. at 369-370 ("Unless an agency's interpretation of its own regulation is 'arbitrary, unreasonable, or inconsistent with the plain terms of the rule,' such interpretation is entitled to deference.") However, the "principles of deference . . . are not principles of abdication." Duarte v. Commissioner of Revenue, 451 Mass. 399, 411 (2008), quoting Nuclear Metals, Inc. v. Low-Level Radioactive Waste Mgmt. Bd., 421 Mass. 196, 211 (1995).

Notwithstanding the deference afforded an agency's interpretation of its own regulations, Courts "do

not defer to [an Agency's] interpretation of the APA." Carey, 479 Mass. at 371. Finally, a failure to comply with the APA can be challenged via a claim for declaratory relief. G. L. c. 231A, § 2 (claim for a declaratory judgment "may be used in the superior court to enjoin and to obtain a determination of the legality of the administrative practices and procedures of any municipal, county or state agency or official"); see also Royce v. Commissioner of Corr., 390 Mass. 425, 430 (1983) (reversing dismissal of prisoner pro se complaint for declaratory relief based on Commissioner of Correction's violation of regulation); Kenney v. Commissioner of Corr., 393 Mass. 28, 31 n.6 (1984) ("[T]he legality of the administrative practices and procedures of a State agency may be determined in a declaratory judgment action . . .").

C. Analysis

The first issue is whether the SOP is consistent with the regulation. It is not. The regulation provides that all incoming mail *may* be subject to a fluoroscope examination and *will* be "opened and inspected before delivery to the inmate." 103 Code Mass. Regs., § 481.12(2). It then-states, "*If there is reason to believe contraband is being introduced through the mail based on the paper color, texture, etc., a photocopy of the original correspondence rather than the original correspondence may be forwarded to the inmate.*" Id.

The DOC interprets 103 Code Mass. Regs., § 481.12(2) to authorize the photocopying of all incoming, non-privileged mail at higher security facilities without exception. According to the DOC: "As the Department's goal in adding language permitting photocopying to 103 CMR 481.12 was to allow photocopying in instances where it suspected incoming non-privileged inmate mail was being used to further drug introduction, the Department interprets [the regulation] to permit facility-wide photocopying when it suspects *any and all* incoming non-privileged inmate mail is suspected to contain drug-related contraband." The problems with that argument are manifold.

First, the DOC's interpretation contradicts the words of the regulation. The regulation discusses the possibility of photocopying mail *after* it provides that all mail will be inspected. It therefore permits photocopying only if, after inspection, something about the correspondence gives rise to a suspicion that the mail contains drugs. That much is clear where the sentence permitting photocopying begins with the word "*if*." The use of that word has meaning. Few would dispute the ordinary and common Meaning of the word "if" which is: "in the event that" or "allowing that" or "on the assumption that" or "on condition that." See Merriam-Webster, <https://www.merriam-webster.com/dictionary/if> (last visited Sept. 21, 2020). Here, the regulation provides that non-privileged mail will be inspected and, if the color or texture of the mail gives rise to a suspicion that it contains contraband, namely, drugs, permits the mail to be photocopied before being provided to the inmate. The DOC may engage in the conduct - photocopying - only "on the condition" or "in the event" that the mail is found to be suspicious after inspection. See Cook-Littman v. Board of Selectmen, 184 A.3d 253, 263 (Conn. 2018) (the word "if" introduces a "condition or contingency that immediately follows it"). The DOC's interpretation of the regulation, that it can skip inspection and jump to photocopying all incoming, non-privileged mail, contradicts the plain meaning of the regulation and therefore is "inconsistent with the plain terms of the rule." Carey, 479 Mass. at 369-370.

The DOC nonetheless argues that the term "etc." permits it to infer that a piece of mail contains contraband based solely on the fact that it is a piece of mail. That argument also fails. Etcetera is ordinarily understood to refer to "unspecified additional items" and, in the context of a listing of items, items "especially of the same kind." Merriam-Webster, <https://www.merriam-webster.com/dictionary/etcetera> (last visited Sept. 21, 2020). Here, the term

"etc." follows two items relating to the mail itself, paper color and texture. Etcetera in the regulation, therefore, reasonably refers to other similar indicia from the correspondence itself. See In re Schouler, 134 Mass. 426, 427 (1883) ("The abbreviation . . . 'et cetera,' imports other purposes of a like character to those which have been named."); Safeco Ins. Co. of Am. v. Rehabilitation Specialists, 1994 U.S. App. LEXIS 42164 at *22 (5th Cir. 1994) ("[E]tc. is not open-ended or unlimited in reach; it is limited by the specific examples in the list that it modifies."); Geer v. Birmingham, 88 F. Supp. 189, 226-227 (N.D. Iowa 1950), rev'd on other grounds 185 F.2d 82 (8th Cir. 1950) ("The abbreviation 'etc.' ordinarily refers to others of the like kind and is used to point out that other things which could be mentioned are to be understood . . . When the term is used following things particularly named it means other things of like kind.") (internal citations omitted). One could postulate, for example, that "etc." refers to other visual indicia or odors evident from the mail that give rise to a suspicion it contains drugs. But, it is both arbitrary and unreasonable to conclude that the term "etc." means that the DOC can photocopy all mail of any sort without inspection and whether or not the piece of mail gives rise to an individualized suspicion. See Carey, 479 Mass. at 369-370.

Finally, the evidence presented simply does not support the DOC's assertion that all incoming mail at high security facilities is suspect. The data presented shows that most facilities had drugs introduced via the mail less than 50 times in an 18-month period. The DOC concedes that the facilities impacted by the SOP have a large volume of mail on a daily basis. The data, therefore, does not support the conclusion that every piece of mail received at high security prisons is suspect. To the contrary, based on the data presented here, the vast majority of mail delivered to DOC facilities, even high security facilities, is not suspect.

The DOC argues next that the regulation does not prohibit the SOP. That may well be true - but even so, the SOP amends the regulation such that it must comply with the APA. The recent SJC decision in Carey v. Commissioner, see *supra*, compels this outcome. In Carey, the SJC addressed a new DOC policy of subjecting prison visitors to search by drug-detecting dogs." Id. at 368. The regulation at issue required each superintendent of a DOC facility to "establish a search procedure that is effective in preventing the smuggling of articles into the visiting area of the institution." Id. at 369. The regulation further provided that "the search procedure may include as a prerequisite to admission that visitors successfully pass through a metal detector and/or scanner, and/or a personal search, and that any articles they are carrying be thoroughly searched." Id. The SJC first held that the regulation did not preclude a canine search. Id. at 370.

However, the SJC next considered whether, "[a]part from the question whether the canine search policy is permissible under the department's current regulations . . . the [DOC] was required to follow the procedures set forth in the APA for promulgating or amending regulations." Carey, 479 Mass. at 371-372. Applying the APA's definition of regulation "broadly," the SJC concluded that the canine search policy was subject to the APA because it "substantially affected the procedures available to the public because, prior to the implementation of the policy, visitors to correctional facilities were not subject to dog sniff searches, but now they are." Carey, 479 Mass. at 371-372.

The DOC argues here, as it did in Carey, that the SOP does not constitute a regulation because it concerns only the internal management of the DOC. "Rules or regulations that concern 'only the internal management' of an agency are those that concern the organizational structure of that agency, or those that are directed toward agency employees, instructing them on how they should perform their duties." Id. at 372. The SOP's ban on the receipt of original mail by inmates does not relate only to the DOC's structure or how its employees should perform their duties. At a minimum, it affects all

persons who write to and communicate with prisoners, most of whom would have no idea their handwritten missives reach their recipient only on photocopied paper. See id. ("policy is not exempt from APA requirements as it is not one that concerns internal management alone, and, at a minimum, it substantially affects the procedures available to visitors to correctional facilities"). The SOP also affects all inmates in that it limits the type of mail inmates can receive and keep in their possession. That the DOC amended 103 Code Mass. Regs. § 481(12)(2) in 2017 in accordance with the APA is "a strong indicator" that the DOC understood that limitations on inmate mail "would be of substantial concern to those affected." Id. at 372.9 Further, other DOC regulations provide that members of the public who send mail to inmates that is not delivered because it contains contraband are given notice. E.g., 103 Code Mass. Regs. § 481.15. Those regulations further indicate that the DOC understands that persons who send mail to inmates have concerns about the delivery of their mail.

As noted, the DOC may be correct that a complete ban on the receipt of original non-privileged mail in higher security prisons is required to curb the introduction of drugs into DOC facilities through the mail. The DOC may be correct that it can promulgate a regulation to that effect consistent with the United States Constitution and the Massachusetts Declaration of Rights. But the DOC may not ignore the APA and the requirement that it proceed through the appropriate procedures to promulgate such a regulation. See Carey, 479 Mass. at 373, quoting Electronic Privacy Info. Ctr. v. United States Dep't of Homeland Sec., 653 F.3d 1, 7 (D.C. Cir. 2011) ("the purpose of the APA would be disserved if an agency with a broad statutory command . . . could avoid notice-and-comment rulemaking simply by . . . invoking its power to interpret that statute and regulation in binding the public to a strict and specific set of obligations").

ORDER

For the foregoing reasons, Plaintiff's Motion for Summary Judgment is **ALLOWED** and Defendants' Motion for Summary Judgment is **DENIED**. Declaratory Judgment shall enter for Plaintiff on his Amended Verified Complaint as follows:

The Court hereby **DECLARES** that the implementation of the Standard Operating Procedure related to 103 Code Mass. Regs., § 481 requiring the photocopying of all non-privileged inmate mail prior to distribution to the inmate at facilities as directed by the Commissioner violates 103 Code Mass. Regs., § 481.

The Court further **DECLARES** that the Department of Correction was required to meet the requirements of G. L. c. 30A, the Administrative Procedures Act, when it adopted the Standard Operating Procedure related to 103 Code Mass. Regs., § 481 requiring the photocopying of all non-privileged inmate mail prior to distribution to the inmate at facilities as directed by the Commissioner.

Judgment shall enter for purposes of appeal. The Judgment thereafter shall be stayed for 180 days to permit the DOC to take such action as it may deem appropriate, including amending 103 Code Mass. Regs., § 481 in conformance with the APA. See Carey, 479 Mass. at 373-374 (staying entry of judgment to permit DOC action).

/s/ Debra A. Squires-Lee

Debra A. Squires-Lee

Justice of the Superior Court

September 22, 2020

Footnotes

1

It is unclear when Wright moved to MCI-Norfolk and whether the removal of stamps and envelope flaps was consistent across DOC facilities.

2

The DOC provided some data referencing an increase in drug introduction via purportedly privileged mail after implementation of the policy at issue here.

3

For its part, the DOC avers that it has taken additional measures to address the problem of drugs in prisons including: instituting a glitter ban; increasing the use of body scanners, fluoroscopes, white boards and black lights; increasing the use of canines to screen mail and visitors (which has been subject to judicial review, see Carey v. Commissioner, *infra*); the provision of additional training to staff; and increasing "shakedowns" in facilities.

4

The DOC held a public hearing prior to the amendment to permit members of the public to comment on the proposed changes to the regulation governing inmate mail. See G. L. c. 30A, § 2.

5

Those prisons are MCI-Cedar Junction, MCI-Concord, MCI-Norfolk, MCI-Shirley, NCCI, OCCC, and SBCC. Other than MCI-Framingham, those are the facilities the reported the introduction of drugs through the mail in the period from January 1, 2016 to June 5, 2017.

6

The DOC argues that there is no First Amendment violation because the inmate receives the content of his correspondence, that the Fourth Amendment is not implicated in connection with prisoner property, and that there is no due process violation because the inmate can have his mail forwarded to a designee. The wisdom of not deciding those issues based on a policy that was required to, but did not meet the requirements of the APA, is bolstered by the fact that, even if a validly promulgated regulation were found to violate Wright's Constitutional rights, the regulation may still be "valid if it is reasonably related to legitimate penological interests." Commonwealth v. Jessup, 471 Mass. 121, 130-131 (2015), citing Turner v. Salley, 482 U.S. 78, 89 (1987). Further, on that question, whether the regulation is rationally related to the government objective, evidence of alternative means other "obvious, easy alternatives" to the SOP might establish that the decision to photocopy *all* prison mail is an "exaggerated response to prison concerns." Jessup, 471 Mass. at 130-131. Requiring the DOC to craft a regulation in compliance with the APA would, arguably, flesh out those issues.

7

As noted, the DOC held a public hearing prior to amending 103 Code Mass. Regs. § 481 pursuant to G. L. c. 30A, § 2 ("A public hearing is required prior to the adoption, amendment, or repeal of any regulation if: (a) violation of the regulation is punishable by fine or imprisonment; or, (b) a public hearing is required by the enabling legislation of the agency or by any other law; or, (c) a public

hearing is required as a matter of constitutional right.")

8

There is no dispute that the DOC is subject to the APA's provisions governing the adoption of regulations. G. L. c. 30A, § 1A ("The department of correction shall be subject to sections one through eight, inclusive, and shall not otherwise be subject to this chapter, notwithstanding the exclusion of said department from the definition of the word 'agency' in section one.")

9

I am not one bit persuaded by the argument that the SOP "has little, if any, impact on the public or inmate population" as the DOC argues. Whether or not the limitation on receipt of original mail violates Wright's Constitutional rights, including under the First Amendment, the ban on the receipt of original mail certainly impacts prisoners as well as their family and friends and members of the public that correspond with them. Indeed, in this digital age, when most communication is electronic, the receipt of a handwritten message can bring great joy on happy occasions, and deep solace on somber ones.



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

TERRENCE M. REIDY
Secretary

The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
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MITZI S. PETERSON
THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

Luis Perez [REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Perez,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

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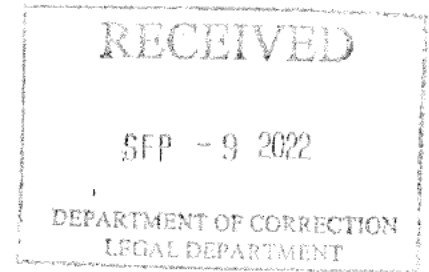
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Boston, MA 02110-1327

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D.O.C. Legal
70 Franklin St., Suite 600
Boston, MA 02110 - 1327

September 7, 2022



Dear D.O.C. Legal,

Enclosed is the letter in support to stop MCI - Norfolk prison illegally photocopying prisoners original mail. It addresses the violation of the 1st, 4th, and the 14th Amendmant to the United States Constitution, Corruption. within the MCI - Norfolk, Expansion of education for prisoners, Lowering recidivism, the hipocrasy of the Prison Administration, and how Correctional Officers introduce drugs to the prison and how the prison administration continue to NOT be held accountable for their actions.

Thank You!

Sincerely,

A handwritten signature in dark ink, appearing to read "Artem Vaskanyan". The signature is fluid and cursive, with a long horizontal stroke at the end.

ARTEM VASKANYAN

Three lines of blacked-out text, likely representing a return address or contact information that has been redacted for privacy.

Michele Dupuis - Clarke, Program Coordinator III
The Commonwealth of Massachusetts
Executive Office of Public Safety & Security
Department of Correction
Legal Division
70 Franklin St., Suite 600
Boston, MA 02110 - 1327

RE: Photocopying of Incoming Non-Privileged Inmate Mail: 103 CMR 481

September 7, 2022

Dear Michele Dupuis - Clarke,

I would like to bring to your attention that the photocopying of prisoners mail should Not only be illegal but it should be looked upon as a crime. Because photocopying of my original mail is in violation of my 1st, 4th, and 14th Amendment to the United States Constitution.

Every letter that I receive from the Mailroom is always photocopied incorrectly:
1.) Pages that has text on the front and the back, photocopied as one sided instead of two sided.

2.) The ends of the sentences are always cut off, and I have to guess the ending of those words.

3.) Mail that comes in in color is photocopied as black and white.

4.) Photographs are photocopied as a text, instead of a colored and a photo.

5.) Mail over five pages is contrabanded which leaves me receiving an incomplete letter, and I have to pay money to send it back.

Every morning I have to go and see a Mailroom Officer and explain that once again my mail has been photocopied incorrectly. Every letter that I receive from the Mailroom leaves me frustrated, depressed and I lose my sleep over it, because I have to wait the following morning to address my grievance to the Mailroom Officer about my mail being photocopied incorrectly. This creates animosity between the Mailroom Officer and me. It is my right to receive my original mail and not an incorrect photocopy that is black and white. (See - Attachment of the photocopied of the envelop by the Mailroom Officer.) The mail that is being sent to me by my family and friends is treated like it is some trash by the Prison Administration. And that is just morally wrong.

The MCI - Norfolk claims that drugs are coming in through the mail and this is why they have to make copies of prisoners original mail. First of all my family and friends are not drug dealers. It is the most deceitful, insulting and disrespectful and wicked accusation that I have ever heard. But what is not deceitful is that the Department of Correction employes Correctional Officers who introduce drugs to the facility of MCI - Norfolk. C.O. Vito A. Forlano, who was a Correctional Officer since 10/05/2008 and had a high ranking position at the D.O.C. as a Union Steward, and a well respected amongst the D.O.C. was arrested on the September 1, 2022 by the State Troopers at the MCI - Norfolk for introducing drugs to the prison.

The MCI - Norfolk is refusing to discuss this incident. Just as they have done so with many other incidents when Correctional Officers were arrested for introducing drugs and cellphones to the MCI-Norfolk prison. And yet, the prison administration continues to blame prisoners' families and friends, and successfully deceive and manipulate the public and the News Media as they restrict mail and the visitation hours for prisoners.

Every time an injustice occurs within the prison system the Prison Administration never takes responsibility for their actions. Instead they blame the prisoners, and the prisoners' families and friends, because there is no one who will defend them. And they are well aware of that and that is why they take advantage of it. Sadly, but, there is just no other way but to say this, that the MCI - Norfolk Prison Administration is corrupt beyond repairment. And it needs to be replaced by the individuals who care about rehabilitation, lowering recidivism, allowing vocational programs, education to expand and for volunteers to come in without being harassed.

The mail functions for me as the main source to expand further my education. I have Bachelor's degree in Liberal Arts from Boston University, and I have published two books: "Ruminating Years" and "ZEK" (The Convict). When the Mail-room photocopies my mail incorrectly and contrabands my mail when it exceeds over five pages then they prevent me from pursuing my education. For instance: the mail correspondence, internet research that I receive from the Law libraries, Universities, Colleges, Family and friends, all of it is no longer available for me, and that hinders my intellectual growth; and instead of encouraging education for prisoners the Prison Administration do everything in their power to suppress it and keep prisoners in an ignorant state of mind.

If you respect the United States Constitution, Support education for prisoners, and against the corruption and the hypocrisy that occurs within the Prison System. Then I ask of you to NOT allow the photocopying of prisoners' mail to continue by the MCI - Norfolk prison Department of Correction, and at 10:00 am on September 21, 2022 at the Public Hearing vote against it.

Thank You!

Sincerely,



ARTEM VASKANYAN



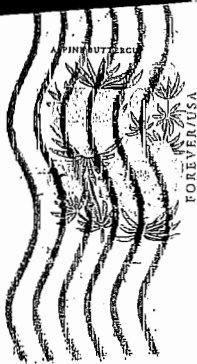
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Governor, Charlie Baker
U.S Department Of Justice
Commissioner Carol Mici
Department of Public Safety
Criminal Justice Policy Coalition

American Civil Liberties Union
DOC Legal
Prisoner's Legal Services
U.S. Department Of Justice
Federal Legal Assistance
Lindsay N. Sabadosa, State Rep.

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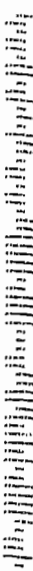


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Armen Vazkenyan
V. V. Razin

Boston, MA 02108

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Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

Artem Vaskanyan [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Vaskanyan,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division



"... Once an agency has seen fit to promulgate regulations, it must comply with those regulations. "[A]gency regulations have the force of law." *Purity Supreme, Inc. v. Attorney Gen.*, 380 Mass. 762, 768-769, 407 N.E. 2d 297 (1980), quoting *Dalomba's Case*, 352 Mass. 598, 603, 227 N.E. 2d 513 (1967). "... *Royce v. Commissioner of Correction*, 456 N.E. 2d 1127, 1128, 390 Mass. 425, 427 (1983).

That being so 103CMR 481.10(1) established a class of persons that shall be permitted to send "Privileged Mail" to inmates. Privileged mail shall be opened in the presence of the inmate.

"... Incoming privileged mail may be required to successfully pass a fluorescence examination for contraband material but shall not be opened by a DOC employee except in the presence of the addressee inmate." 103CMR 481.11(3).

There the entire class of persons that may send "Privileged Mail" to an inmate are treated equally.

However, at 103CMR 481.11(4) "... the DOC may implement an Attorney Verification System (AVS)." That treats an Attorney, a member of the "Privileged Mail" class differently. DOC has treated an Attorney differently than the other many members of the class at 103CMR 481.10(1)(a)-(e).

"... One indispensable element of a valid equal protection claim is that individuals who are similarly situated have been treated differently. ... To state an equal protection claim then, plaintiff must allege that they and the other service providers with whom they draws a comparison are similarly situated in all relevant aspects. ... The "relevant aspects" are those factual elements which determine whether reasoned analogy supports, or demands, a like result. Exact correlation is neither likely nor necessary, but the cases must be fair comparators. In other words, apples should be compared to apples." *Mechado v Leahy*, 17 Mass L Rep 263 (2004).

Regarding the class of persons that may send "Privileged Mail" to an inmate an attorney class member is treated differently than the rest of the class. An attorney is subjected to the Attorney Verification System (AVS) being denied "equal protection of the laws".

"... No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ... nor deny to any person within its jurisdiction the equal protection of the laws." (U.S. Const. Amend. XIV, Section 1).

Our Supreme Judicial Court of Massachusetts has spoken. "Words of the Constitution cannot be ignored as meaningless." In Re Opinion of the Justices, 126 N.E.2d 795, 800 (1955). Further, the Justices commented on the Fourteenth Amendment to the Constitution of the United States.

"That amendment provides in part that no State shall 'deny to any person within its jurisdiction the equal protection of the laws'. Equal protection of the laws requires of course that all persons in the same category and in the same circumstances be treated alike." Ibid. p. 801.

The following comparison shows how persons of the same class would be treated differently under AVS.

Cynthia Stone Creem, attorney at law, of Sugarman Rogers B & C, PC 101 Merrimac Street Boston MA 02114 maybe subjected to AVS.

Senator Cynthia Stone Creem, State Senator for Newton, State House Boston MA 02133 would not be subjected to AVS.

The current wording of 103 CMR 481.10(i) resulted from the draft for the Public Hearing scheduled January 29, 2021 deleting "to", e.g. "... (i) Inmates shall be permitted to mail ~~to~~ in". The wording otherwise went back to 5/5/17. It was well established by 103 CMR 481.10(i)(a) that an attorney is a member of the class of persons that may send "Privileged Mail" to inmates.

The DOC has no Judge Verification System, Court Clerk Verification System, Parole Board Member Verification System, nor Probation or Parole Officer Verification System, to name a few.

However, DOC has an Attorney Verification System (AVS) which treats an attorney different than other members of the class. Wherefore, an attorney is denied equal protection of the laws, so the Attorney Verification System violates Amendment XIV becoming unconstitutional.

WHEREFORE, these above suggested Amendments to 103 CMR 481 by deleting the Attorney Verification System (AVS) should be promulgated. I get mail from attorneys, so I am Interested Person.

Respectfully Submitted

Date: 09/13/2022
copy h.b.b.
PLS
CPCS

Howard B Brown
HOWARD B BROWN [REDACTED]

FOOTNOTES

n1/ It appears that an attorney could correspond to an inmate in confidence as Privileged Mail at least since 1983.

"... The Walpole (now Cedar Junction) regulations challenged by the plaintiff are promulgated by the Department of Correction and appear in essentially the same form at 103 Code Mass. Regs. 481 (1983). The applicable regulations state: 103 Wal. 481.11. All inmates shall be permitted to correspond in confidence regarding legal or official matters with the following persons: a) Any officer of a Court of the United States or of the Commonwealth of Massachusetts (Judge, Attorney, Clerk)." Champagne v. Commissioner of Correction, 480 N.E. 2d 609, 614, 395 Mass. 382, note 5 (Mass 1995).

n2/ 103 CMR 481.006 Inmate Mail is noted as having "Regulatory Authority 103 CMR 481.006 M.G.L. c. 124, § 1(b), 1(c), 1(q), and M.G.L. c. 127, § 87.

Ideally a regulation can be traced to specific statutory language. "Every inmate of a correctional institution or any other penal institution in the Commonwealth shall be allowed to send mail..." A.L.M. c. 127 § 87(a), (2017, 6 § 81). A.L.M. c. 127 § 87 has to do with outgoing inmate mail so is not an authority regarding incoming mail.

It was a DOC Commissioner that put incoming mail language in the regulation pursuant to M.G.L. c. 124 § 1. "... A regulation may be authorized even where it cannot be traced to specific statutory language." Grocery MFRS. of AM - v. Dept. of Public Health, 393 NE 2d 881, 886, 379 Mass 70 (Mass. 1979) (omitting cases cited).

Wherefore, Carol A. Mici, Commissioner is responsible for the AVS.

The 2021 Massachusetts Lawyers' Diary and Manual has green pages 764-1240 (471 pages) listing attorneys. By promulgating the AVS the Commissioner trampled on many of those attorney's constitutional right to equal protection of the laws in Amend. 14.

The administrative remedies available are: a) comment on the regulation; b) submit petition pursuant to M.G.L. c. 30A § 42B; and/or c) request Terrence M. Reidy, Secretary to ask the governor to approve the removal of the Commissioner pursuant to M.G.L. c. 27, § 1.

As to M.G.L. c. 30A § 4 Petition the DOC does not have the mandated regulation, as required by sentence 2. The Commissioner trampling on the rights of interested persons also.

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

RE: Comments on 103 CMR 481

Dear Michelle Dupuis-Clarke

Salutations.

Thank you for sending me public notice regarding proposed changes to 103 CMR 481.00 Inmate Mail. The law library provided a copy of the Draft, so I tender comments.

"...A hearing is intended to educate an agency to approaches different from its own; in shaping the final rule it may and should draw on the comments tendered." South Terminal Corp. v. Environmental Protection Agency, 504 F.2d 646, 659 (1st Cir. 1974).
Grocery MFRS. of Am. v. Dept. of Public Health, 393 NE2d 881, 888, 379 Mass. 70 (Mass. 1979).

i) Amend 103 CMR 481.05 Definitions, of Indigent Inmate by making these changes.

Amend subsection (a) by changing \$10.00 to \$100.00.

Amend subsection (b) by changing \$10.00 to \$100.00, as well as \$15.00 to \$105.00.

Data, views & arguments.

The \$10.00 amount has been there for numerous decades. The cost of one ounce stamp is now \$0.60 each. A two ounce Domestic Stamp is \$0.99. Hence, each additional ounce maybe \$0.39 cost.

Inmate wages are establish at 103 CMR 405.7(6), e.g. Basic Rate Inmate Wage Scale -I- \$10.00 per week, -II- \$7.50 per week, -III- \$5.00 per week -50% Forced Savings. Out of that wage an inmate may pay \$3.00 for sick call, pay for haircut, need to purchase basic hygiene items, and/or pay for postage.

This above changes addresses the inflation, cost of living increases. Therefore, these changes suggested should be promulgated.

2) Amend 103 cMR 481.05 Definitions, of Indigent Inmate by adding this as subsection (c).

(c) A court has deemed an inmate indigent, and/or granted In Forma Pauperis status.

In addition amend subsection (a) by deleting "and" at the end after the Semi-colon. Change subsection (b) by changing the last period to a Semi-colon and adding and, e.g. (j and).

Data, views & arguments

Currently an inmate can be indigent and/or In Forma Pauperis in court proceedings, yet might not be indigent regarding inmate mail at 103 cMR 481.05 and 103 cMR 481.09 Free Postage for Indigent Inmates.

"... It is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them..."
Bounds v. Smith, 475 Ct 1491, 1496, 430 US 817, 824-825 (1977).

In State Court Post Conviction Remedies the defendant must serve copies of filed motions upon the District Attorney. When filed Pro Se the defendant's shoulders the cost of service.

In State Court Civil Actions a plaintiff must serve a copy of the complaint and summons upon the Attorney General (when Commonwealth is real party of interest) and defendants, see Mass. R. Civ. P. 4 and S. C. R. 9A (b)(2) & (c)(2).

Such required service of process is part access to the courts. "A fundamental requirement of due process is 'the opportunity to be heard.'" Grannis v. Ordean, 234 US 385, 394, 34 S. Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner. " Armstrong v. Manzo, 855 Ct. 1187, 1191, 380 US 545, 552 (1965).

wherefore, to ensure that an inmate that is indigent and/or in forma pauperis in the eyes of a court has an opportunity to be heard at a meaningful time and in a meaningful manner the above suggested amendments to 103 cMR 481.05 should be promulgated. Such amendments shall make the regulation consistent with a court's ruling regarding an inmate's financial status.

3) Amend 103 cMR 481.12 (3)(a)(i) by deleting sentence two, which currently reads as follows.

• An electronic copy of the photocopy shall be sufficient if the inmate possesses an electronic tablet which permits the inmate to read and store the mail."

Data, views & arguments

The above wording is the current promulgated wording & numbering of 103 cMR 481.12(3)(a)(i) based on copy of 103 cMR 481 provide by Harvard PLRP March 23, 2022. The Draft of 103 cMR 481.12 has unmarked changes in the numbering of sections, or subsections. Since it is the regulation that is under review I ask to amend the promulgated regulation.

As I have pointed out before, correctional staff break tablets. I further note that tablets get lost, at times, when an inmate is removed from his property. Tablets have stopped working. Some of the loaner SCORE 7 tablets malfunction. The battery may fail.

Those problems being a reality, a tablet used to "store the mail" must have a means to retrieve the stored mail from a broken, malfunctioning, and/or lost tablet. Otherwise the inmate's stored mail shall be lost.

When an inmate owns a personal tablet, with purchased songs on the tablet, upon release the personal tablet may be sent to Keefe Commissary Network (KCN) (Access Corrections) for deinstitutionalization for \$25.00. Keefe puts the owned songs on the tablet. However, the DOC is responsible for storage of mail.

• h. Scanned Inmate Mail: DOC will have the option to scan non-privileged inmate mail to an inmate's tablet at no cost to the DOC and shall be responsible for storage and disposal of said mail pursuant to DOC policy. " (Fourth Amendment to the Contract Between the Department of Correction and Keefe Commissary Network LLC for Inmate Commissary and Related Items RFR# 17-DOC-Commissary, Section 4. Updates at h, signed by DOC 10/15/21 and by Keefe 10/18/21),

Loaner tablets are collected upon inmate's release and reset.

• a. New Tablets for All Inmates: KCN shall provide new SCORE 7 tablets to DOC sufficient for the entire inmate population, to disburse to any inmate who desires one. Tablets will be assigned to inmates and will be collected by staff and reset at the time of an inmate's release. Inmates who choose to keep their existing tablet will not receive a new SCORE 7 tablet." (Ibid, Section 4. Updates at a).

The loaner tablet system may prevent an inmate from having a means to maintain stored mail upon release. According to the Loaner SCORE 7 Secure Device User Guide an inmate that is released who has purchased (owned) songs on a loaner tablet, may purchase a SCORE 5 or SCORE 7 tablet from Keefe for \$145.00. The purchased songs get put on that purchased tablet. Keefe has records, via Kiosk System, Wi Fi, of the songs that had been purchased. Therefore said songs maybe put on the purchased tablet.

However, as noted above Doc "shall be responsible for storage and disposal of said mail pursuant to Doc policy".

Wherefore, the afore suggested amendments to 103 CMR 481.12 (3)(a)(i) should be promulgated.

4) Amend 103 CMR 481.04: Access to Regulation by adding the following as sentence 3.

An electronic copy of 103 CMR 481.00 Inmate Mail shall be assessable to all inmates as a free download onto a tablet possessed by the inmate.

Data, views & arguments

103 CMR 481.00 Inmate Mail is already in electronic format on the DOC website. DOC can have the electronic format copy made available to Keefe Commissary Network (KCN) (Access). A SCORE 5 and/or SCORE 7 tablet has "Agency" in the catalog for selecting Agency downloads, e.g. Understanding the Covid-19 Vaccine, A Conversation about Covid-19, where do we go from here? &c. Once purchased as a download, the item goes to "My Agency" for access. Hence, the means to have 103 CMR 481.00 Inmate Mail as free electronic download.

An inmate may have limited access to Law Library and/or inmate law computer. Being on a tablet increases the access.

In September 5, 2021 I wrote Kate Silvia, Director of Communications asking to have some basic DOC CMRs and/or policies made available for download on tablet. September 15, 2021 reply as follows.

This responds to your correspondence dated September 5, 2021

regarding adding a policy section to the catalog in the tablets.

Please be advised that I have forwarded your letter to Support Services as that is the Division who oversees the tablets, not this office.

That would be Gary Temple, Director Support Services. To date the CMRS and/or Doc policies are not available.

The Contract has a means.

Inc. Free Content: All inmates who receive a new SCORE 7 tablet will have access to certain free content including, but not limited to, the following:

- Agency Documents
- Gutenberg eBooks

(Fourth Amendment to the Contract Between the Department of Correction and Keefe Commissary Network LLC For Inmate Commissary and Related Items RFR #17-DOC-COMMISSARY, at 4. updates (c)).

Notice it has Agency Documents. A CMR should be able to be downloaded as easy as Gutenberg e Books. The books are in public domain, on www.gutenberg.net. I have 596 books downloaded. I notice Storage Files 0.58GB which maybe the books &c.

Wherefore, for these reasons the suggested Amendment to 103 CMR 481.04 should be promulgated. It would be a start to having the CMRS available on a tablet. Baby steps.

Respectfully Submitted

Howard B Brown

HOWARD B BROWN

Date: 09/13/2022

Copy h.b.b.
PLS
CPCS

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Office of the Comptroller (CTR), the Executive Office for Administration and Finance (ANF), and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. The Commonwealth deems void any changes made on or by attachment (in the form of addendum, engagement letters, contract forms or invoice terms) to the terms in this published form or to the Standard Contract Form Instructions and Contractor Certifications, the Commonwealth Terms and Conditions for Human and Social Services or the Commonwealth IT Terms and Conditions, which are incorporated by reference herein. Additional non-conflicting terms may be added by Attachment. Contractors are required to access published forms at CTR Forms: <https://www.masscomptroller.org/forms>. Forms are also posted at OSD Forms: <https://www.mass.gov/lists/osd-forms>.

CONTRACTOR LEGAL NAME: Keefe Commissary Network, LLC (and d/b/a):		COMMONWEALTH DEPARTMENT NAME : Massachusetts Department of Correction MMARS Department Code: DOC	
Legal Address: (W-9, W-4):		Business Mailing Address: 50 Maple Street, Suite 3, Milford, MA 01757	
Contract Manager: Jeffrey Harris	Phone:	Billing Address (if different):	
E-Mail:	Fax:	Contract Manager: Matthew M. Dailey	Phone:
Contractor Vendor Code:		E-Mail: Matthew.Dailey@doc.state.ma.us	Fax:
Vendor Code Address ID (e.g. "AD001"): AD		MMARS Doc ID(s):	
(Note: The Address ID must be set up for EFT payments.)		RFR/Procurement or Other ID Number: 2017-DOC-COMMISSARY	
NEW CONTRACT PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (Includes all Grants - 815 CMR 2.00) (Solidation Notice or RFR, and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach Employment Status Form, scope, budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language, legislation with specific exemption or remark, and exception justification, scope and budget)		X CONTRACT AMENDMENT Enter Current Contract End Date <u>Prior</u> to Amendment: 4/30/2023 Enter Amendment Amount: \$ _____ (or 'no change') AMENDMENT TYPE: (Check one option only. Attach details of amendment changes.) <input checked="" type="checkbox"/> Amendment to Date, Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Other Procurement Exception (Attach authorizing language/justification and updated scope and budget)	
The Standard Contract Form Instructions and Contractor Certifications and the following Commonwealth Terms and Conditions document are incorporated by reference into this Contract and are legally binding: (Check ONE option): <input checked="" type="checkbox"/> Commonwealth Terms and Conditions; <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services; <input type="checkbox"/> Commonwealth IT Terms and Conditions			
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00. <input checked="" type="checkbox"/> Rate Contract. (No Maximum Obligation) Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input type="checkbox"/> Maximum Obligation Contract. Enter total maximum obligation for total duration of this contract (or new total if Contract is being amended). \$ _____			
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___ % PPD; Payment issued within 15 days ___ % PPD; Payment issued within 20 days ___ % PPD; Payment issued within 30 days ___ % PPD. If PPD percentages are left blank, identify reason: <input checked="" type="checkbox"/> agree to standard 45 day cycle; <input type="checkbox"/> statutorily/legal or Ready Payments (M.G.L. c. 29, § 23A); <input type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See Prompt Pay Discounts Policy.)			
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) Exercising 2 nd of 3 options to extend contract, per 2017-DOC-COMMISSARY, for two years.			
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input checked="" type="checkbox"/> 1. may be incurred as of the Effective Date (latest signature date below) and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date LATER than the Effective Date below and no obligations have been incurred prior to the Effective Date. <input type="checkbox"/> 3. were incurred as of _____, 20____, a date PRIOR to the Effective Date below, and the parties agree that payments for any obligations incurred prior to the Effective Date are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.			
CONTRACT END DATE: Contract performance shall terminate as of <u>April 30, 2025</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.			
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor certifies that they have accessed and reviewed all documents incorporated by reference as electronically published and the Contractor makes all certifications required under the Standard Contract Form Instructions and Contractor Certifications under the pains and penalties of perjury, and further agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable Commonwealth Terms and Conditions, this Standard Contract Form, the Standard Contract Form Instructions and Contractor Certifications, the Request for Response (RFR) or other solicitation, the Contractor's Response (excluding any language stricken by a Department as unacceptable, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.			
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: <u>[Signature]</u> Date: <u>10/18/21</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>John Puricelli</u> Print Title: <u>Executive Vice President</u>		AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: <u>[Signature]</u> Date: <u>10/15/21</u> (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>Matthew Dailey</u> Print Title: <u>Director, Contract Services</u>	

**FOURTH AMENDMENT TO THE CONTRACT BETWEEN THE DEPARTMENT OF
CORRECTION AND KEEFE COMMISSARY NETWORK LLC FOR INMATE
COMMISSARY AND RELATED ITEMS
RFR#17-DOC-COMMISSARY**

WHEREAS, the Department of Correction ("DOC") has contracted with Keefe Commissary Network LLC ("KCN") (collectively "the parties") for inmate commissary, clothing, appliances, and religious property items to be provided in a secured delivery system (pre-bag) at all Department facilities; said Contract incorporates the provisions of the Request for Response ("RFR") #17-DOC-Commissary;

WHEREAS, the DOC and KCN wish to amend the Contract to specify the length of the renewal of the Contract and to set forth updates to the Contract for implementation;

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the DOC and KCN hereby agree to amend the Contract as follows:

1. Duration of Contract Renewal

The initial duration of the Contract was four (4) years from May 1, 2017 to April 30, 2021. There are a total of three renewal options of up to two years each, subtotalling six (6) years, with the total maximum contract duration being ten (10) years. One renewal option has been exercised, and the current Contract expires on April 30, 2023.

The parties hereby agree to exercise a second renewal option and extend the Contract for two (2) additional years, expiring on April 30, 2025.

2. Current Terms and Conditions

This Amendment is effective as of October 15, 2021, following execution by authorized representatives of each party. Except as expressly stated in this Amendment, the terms and conditions of the Contract will otherwise continue in all respects unchanged and will remain in full force and effect. The terms and conditions of the initial contract and any amendments shall continue to be adhered to.

3. Improvements

On or around October 31, 2021, KCN shall upgrade the network infrastructure at KCN's expense, of every DOC facility, to support additional devices and expand broadband capacity needed for new and future services.

4. Updates

Upon completion of installation of the network upgrades, the following shall occur:

- a. **New Tablets for All Inmates:** KCN shall provide new SCORE7 tablets to DOC sufficient for the entire Inmate population, to disburse to any inmate who desires one. Tablets will be assigned to inmates and will be collected by staff and reset at the time of an inmate's release. Inmates who choose to keep their existing tablet will not receive a new SCORE7 tablet.
- b. **Subscription Model:** KCN will move from a "Purchase" model to a "Subscription" model for all digital media.
 - Inmates who choose to receive a new KCN SCORE7 tablet can choose to pay the subscription price of \$16.00 per month and have access to SCORE7 tablet content made available by the tablet provider, which will include select music, news websites, podcasts, and games. Inmates must deactivate and turn in their old tablets in order to have access to previously purchased content on new tablets;
 - Inmates who wish to keep their existing tablet have the option to pay a discounted subscription price of \$13.00 per month; however, this option is only available to owners of existing Edge7, SCORE5 or SCORE7 tablets;
 - Movie rentals will remain the same, with a price of \$3.00 per movie;
 - Magazine subscriptions will be added by KCN when available, at an agreed upon price.
- c. **Free Content:** All inmates who receive a new SCORE7 tablet will have access to certain free content including, but not limited to, the following:
 - Account Information;
 - Public Messaging (a rate of \$0.25 per message will be charged to send messages);
 - Agency Documents;
 - Previously Purchased Content;
 - Khan Lite Videos;
 - Gutenberg eBooks;
 - FM Radio;
 - Life Skills Videos
 - Commissary Ordering; and
 - Digitized non-privileged mail addressed to the inmate which is received at the institution and processed per DOC policy (after the Department's digitized mail program for non-privileged mail is implemented).
- d. **Previously Purchased Content:** Inmates will still have access to all previously purchased content from KCN on their tablet.
- e. **Older Models:** Inmates who own a Maxx Pro player or an Edge Mini will not be eligible for a subscription plan as these devices do not meet the minimum technological requirements to support the new services.

- f. **Replacement tablets:** KCN shall provide up to five percent (5%) additional tablets per year as replacements for inoperable tablets. Replacement tablets in addition to the five percent (5%) provided by KCN will be at the sole cost of the DOC. DOC is responsible for charging inmates for damaged tablets.
- g. **Commission to DOC:** Commissions to the DOC shall total 17% of all inmate subscription purchases, movie rentals and messages.
- h. **Scanned Inmate Mail:** DOC will have the option to scan non-privileged inmate mail to an inmate's tablet at no cost to the DOC and shall be responsible for storage or disposal of said mail pursuant to DOC policy.
- i. **Kiosk Services:** Once every inmate has been provided a KCN SCORE7 tablet pursuant to this Amendment, the DOC will reassess the number of kiosks in its institutions which are necessary to allow inmates to access their mail and perform necessary functions should an inmate incur temporary loss of a tablet. DOC will advise KCN of its assessment and KCN will continue to provide a minimum number of kiosks, as determined by DOC, to allow for such access. KCN agrees to use best efforts to service and repair all remaining kiosks within 24 hours of any emergency service request.

5. Provisional Menu Changes

KCN will make every attempt to ensure commissary menu items remain available. In the event of supply interruption, KCN may seek permission to sell substitute items, as similar to the original item including size, packaging and cost as possible, where necessary to augment the original menu, in order to maintain a diverse commissary menu. Such supplemental items are only allowed with advance DOC approval on an item-by-item basis.

Due to drastic increases in the costs of products supplied to KCN brought on by the ongoing COVID-19 pandemic, KCN may negotiate increases in the prices of limited items in a given year, for so long as said extenuating circumstances persist and said price increase requests must be supported by copies of KCN's acquisition invoices or other documentation from the supplier showing the increase in costs to KCN. All price increases must have the written approval of the DOC prior to taking effect.

This provision may expire once the DOC has determined that the supply chain functionality has returned to pre-pandemic levels.

6. Release Card Services

The DOC and KCN agree that DOC may utilize the release card program offered by KCN, contingent upon the terms to be negotiated by the parties.

7. Commissary Machine Services

The DOC will consider implementing a commissary machine program to allow KCN to install commissary machines in its facilities.

8. Revisions to Contract

Any current and future changes to this Contract shall be determined by mutual agreement between the DOC and KCN.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and represent that they are authorized to bind their respective organizations.


Keefe Commissary Network, LLC.


Name: John Puricelli

Title: Executive Vice President

Date: 10/18/21

The Massachusetts Department of
Correction


Name: Matthew Dailey

Title: Director, Contract Services

Date: 10/15/21



CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

TERRENCE M. REIDY
Secretary

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Executive Office of Public Safety & Security
Department of Correction
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CAROL A. MICI
Commissioner

SHAWN P. JENKINS
Chief of Staff

KELLEY J. CORREIRA
PATRICK T. DEPALO, JR.
ROBERT P. HIGGINS
MITZI S. PETERSON
THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

Howard Br [REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Brown,

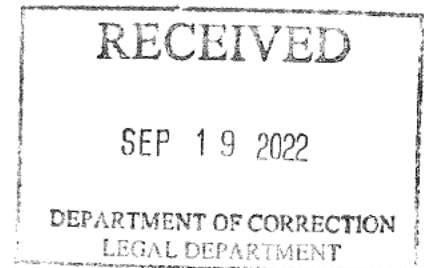
Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

Department of Corrections
Program Coordinator
Michele Dupuis Clarke
Boston, Ma. 02110



James William O'Neill,


DT:
RE: Photocopying:

Dear Ms. Dupuis-Clarke

I have read the recent posting for Photocopying. Does this also include personal Photocopying , i.e. and TV Celebrities female Stars. Under the Non-Privileged correspondence/publications, does this also include family members sending in Bathing Suit or semi-naked photo's, that 103 CMR 481.00 would not be sexual explicit, because she's my girlfreind and isn't shared with anyone but me! Nor are the TV Celeb's that I have been sent either. there some of my favorite stars, on the shows that I watch and again do not share with other inmates There not Naked Photo's either. Can I get a reply; Thanks

Sincerely

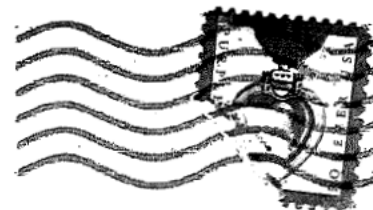
James William O'Neill

A handwritten signature in cursive script, written in dark ink. The signature is written over a horizontal line.

James William O'Neill,
[REDACTED]

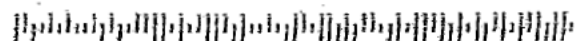
BOSTON MA 020

15 SEP 2022 PM 9 L



Michele Dupuis Clarke
Program Coordinator III.
Department of Corrections
70 Franklin St. Suite-600
Boston, Ma. 02110

02110-132799





CHARLES D. BAKER
Governor

KARYN E. POLITO
Lieutenant Governor

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MITZI S. PETERSON
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Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

James Will [REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. O'Neill,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

COVER letter

9-11-22

AS FAR AS INCOMING MAIL Department of
correction is doing the right thing ~~But~~ AS FAR AS ^(Photo) Coping
Coping ALL MAIL is the right thing to do Because of the
introduction of K-2 & other DANGEROUS DRUGS; the only problem
with incoming mail is that I HAVE NOT gotten ANY Respond
to ANY certified mail I've sent out AND these are MAJOR
HOSPITALS AND ORGANIZATIONS; SO I find it VERY STRANGE THAT
NO HOSPITALS, BOARD OF REGISTRATION in medicine, Department of
Justice, Department of the treasury internal revenue service,
BOARD of REGISTRATION of Allied mental Health AND Human services
PROFESSIONALS, AND OVER internal revenue service, WRITE A
PRISONER, AND ect.

I HAVE NOT gotten ANY Respond BACK FROM NONE OF those
places AND that is STRANGE

I've taken extra steps to pay more for my outgoing
mail (certified; knowing outgoing mail WAS AN ISSUE) NOT
Realizing that my incoming mail HAS ALSO BEEN A MAJOR
problem.

there isn't ANY Inmate in Department of correction
that HAS spent more money on certified mail than me (in the past
year)

unprofessionalism

MAIL ISSUES ARE Happening Because medical is medically
neglecting me so BAD that I'm at a point of dying Because of
the medical malpractice.

So monitoring the mail is A strong point For Shirley

incoming & outgoing

~~especially~~ especially the places I've mentioned.

Outgoing & Incoming NON-privileged mail

#1.) my Recommendation For incoming mail NON-privileged is that At least we be notify of the correspondent From personnel ON our tablet which is an old ^{School} Department of Correction log keeping only notifying the receiving inmate of correspondent of sending party (Name of party) ^{Senders}

this should be done ON Both of NON privileged incoming AND outgoing

#2.) the mail should at all times be kept on camera NO exception

#3.) once is ready for pick-up it should be pick-up By post office in a secure box ON LOBBY of institution By a post office staff personnel, ALSO DROP-off By postal officer when pick up ACCORDS

#4.) please place A secure box on unit wall where it takes away responsibility from officers that have only A security vision of inmates on unit.

#5.) For the ^{Post office staff personnel} ~~mail officer~~ to pick-up mail From this secure box ON lobby

#6.) For officers on unit not to be ASK to pick up mail From inmates cells & place mail in that secure box on unit
(takes ^{away} responsibility)

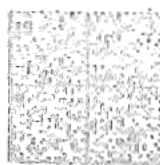
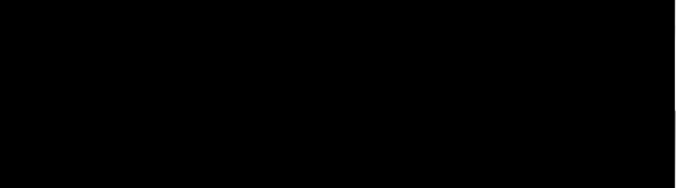
#7.) certified mail: inmates should have the same access as the community * PRIORITY mail express * 24-48 Hours

Attorney/client privileged mail Incoming & outgoing

- #1.) Attorneys should be notify of ^{Sending} ~~Receiving~~ party. (to assure sending inmate is a excepting client and/or if attorney is comfortable excepting mail from inmates
✕✕ this is a practice from incoming attorney mail it should also be a practice for outgoing ✕✕
- #2.) All other suggestion PARAGRAPH ONE(1) through seven(7) ON INCOMING & OUTGOING NON-privileged mail should be applied
- #3.) When mail is being pick up from PO Box please have officer wear a body camera (if post office is not willing to deliver to a p.o. Box in ^{institutional} LOBBY ON CAMERA)

Sincerely
Janice Perez

JANEA PEREZ



U.S. POSTAGE
ZIP 01464 \$007.82⁰
02 4W
0000363493 SEP. 14. 2022

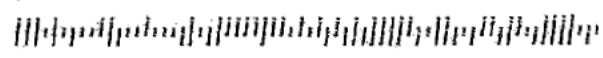


7021 2720 0000 7994 6264

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SEP 19 2022
DEPARTMENT OF CORRECTIONS
LEGAL DEPARTMENT

MICHELE DUPUIS-CLARKE
PROGRAM COORDINATOR III
DEPARTMENT OF CORRECTIONS
70 FRANKLIN ST Suite 600
BOSTON, MASSACHUSETTS 02110

0211031327 C021





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Governor

KARYN E. POLITO
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TERRENCE M. REIDY
Secretary

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THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

Janleer Povez [REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Povez,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

Stephen John Casey, Sr.

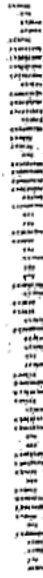
BROCKTON MA 023

9 SEP 2022 PM 2 L



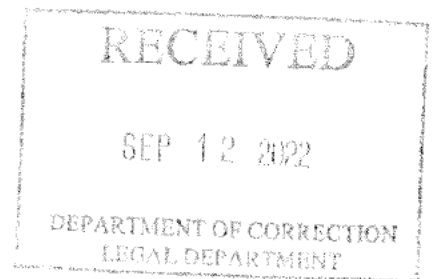
Michele Dupuis-Clarke
Program Coordinator
Department of Correction
70 Franklin Street, Suite 600
Boston, MA 02110

02110-132799



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

September 3, 2022



RE: Proposed Amendments/ 103 CMR 481

Dear Sir;

Myself, and undersigned Civil and Temp. Civil residents ~~have~~ submitted ~~and~~ comments, and legal views to object to said proposal relating to 'mail monitoring, and Photocopying of incoming non-privileged mail, as any intent to include Civil Residents.

First, Civil Residents are not serving a 'prison sentence', and are by Federal Law kept separate from all State Inmates. Civil Residents have the right to vote, 'inmates' do not. M.G.L.c.123A states that all Civilly Committed Residents can petition for release once every twelfth months. This, by legislative action does suggest Civilly Committed Residents, can be no longer dangerous in the period of a year, and by law can petition the Court for release.

Procedural vs. Substantive Due process provides rights guaranteed every citizen; We as a class are Civilly Committed citizens. The Supreme Court protects from punitive action by the Dep't of correction. Mass. G.L. c123A legislative action has been ruled by The Supreme Court, and state High Court that custody, and care is given to the Department of Correction, and only for a narrowly drawn intent to express only the state interest at stake.

The PLRA does not include within the definition of 'prisoner' an individual who is Civilly Committed, confined to a state hospital as a sexually dangerous citizen. If Congress intended a civilly committed to be a prisoner, it could have easily done so. Prison is defined as any Federal, State, or local facility that incarcerates, ... adults accused of, convicted of, ... violations of criminal law. Civilly committed patients are not 'prisoners', nor is the Treatment Center a prison.

We argue that the Department of Correction has no legitimate reason to photo copy civil's mail, and thus be able to store a copy that can be used against them, when there is no reason first to do

so that would justify such a intrusion and illegal search. To take personal letters, cards, etc. and remove there family touch is cruel to do to citizens that can be released as soon as one year. Family and friends provide a emotional bond that supports residents, and are not written, nor intended to be scrutinized by a goverment agency intent on making a "one size fits all" pattern for all goverment runned prisons. The Massachusetts Legislator branch never stated that the Massachusetts Treatment Center to be a prison.

There is nothing on recent records that suggest that Civilly Committed Residents have been smuggling in ~~any~~ drugs, or failing drug test. In fact after civils have been on the Civil Resident side for a short while, testing for drugs cease. Therefor ther is no reason that justifiys such a "cross the board" intrusion. In conclusion the undersign object to the whole scheme, and protest against it.

Respectfully,

Stephen John Casey, Sr.
Stephen John Casey, Sr.

Wayne J. Chertoff
Anthony Aostrih
Richard George
Donald Gibson
David Lord
Oscar Sanchez
Freddy Drayton
Joseph Sanchez
Antonio Medeiros
Ronald Ballard
Paul St. Martin
Kevin Curlew
John D. Toria
Dean Mulliken
Eric Stevens
Robert Seppach
James Beaman

Wayne Chertoff
Anthony Aostrih
Richard George
Donald Gibson
David Lord
Oscar Sanchez
Freddy Drayton
Joseph Sanchez
Antonio Medeiros
Ronald Ballard
Paul St. Martin
Kevin Curlew
Jose Morales
JOHN D. TORIA
Dean Mulliken
Eric Stevens
Robert Seppach
James Beaman

MS. ESTUARINE CUEVA
Lori Lynn Davis

CUEVAS EAGLE EYES

Kennerly King

George M. Mendenhall

Paul L. Loughlin

DAVID KELLEY

Henry Julian

Brian Glover

Salvador Shaskan

Jamie Winston

PLATE 8000

Freddie Lee Hayton

James City

Michael Hampton

ANTONIO DADALTO

John M.

Christopher E. Carrasquillo

Michael Cate

Michael Cate

Thomas Dymov

Ron Franklin

Ron Franklin

Lance Porter

PAE

George Skinner

Phan Lam

Rthoulam Mounir

Scott J. Ralston



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KARYN E. POLITO
Lieutenant Governor

TERRENCE M. REIDY
Secretary

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THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

Stephen Jo [REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Casey,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

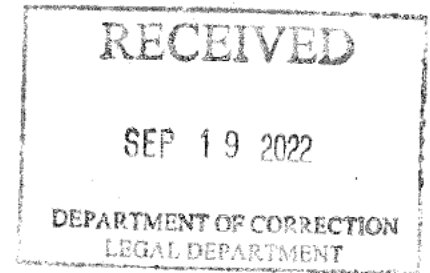
Dr. David Bobo Rexford

■■■

■■■■■■■■■■

■■■■■■■■■■■■■■■■■■■■

■■■■■■■■■■ ter ■■■■■■■■■■



9-14-22

Dear Ms. Dupuis-Clarke,

103 CMR 481: (1) states:

"It is the policy of the Massachusetts Department of Correction not to read, censor, or disapprove incoming correspondence."

Photocopying said correspondence violates that policy. It should not be allowed.

That said, if it is allowed, safeguards must be put in place that are not mentioned in the proposed policy.

1. Original documents must be shredded immediately after the photocopy of them is made.

2. No duplicate photocopies must be allowed.

3. Any violations to 1. or 2. above must result in a fine of one thousand US dollars per violation, to be promptly deposited in the account of the victim (addressee).

With those amendments, I would reluctantly concur.

Without them, privacy invasion is sure to occur on a widespread and abusive level.

The Best for All,

A large, stylized handwritten signature, likely "Dr. David Bobo Rexford", is written across the bottom of the page. To the left and right of the signature are two circles, each with a large 'X' drawn through it, possibly indicating cancellation or a placeholder.

David Rexford
[REDACTED]
[REDACTED]

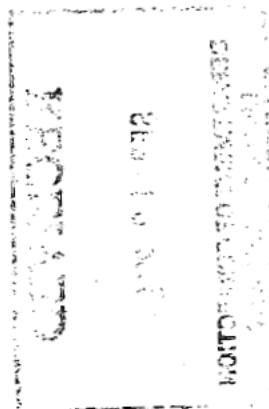
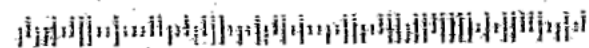
BROCKTON MA 023

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Michele Dupuis-Clarke
Program Coordinator III
MA Dept. of Correction
70 Franklin St. Suite 600
Boston, MA 02110

02110-132799





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Governor

KARYN E. POLITO
Lieutenant Governor

TERRENCE M. REIDY
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ROBERT P. HIGGINS
MITZI S. PETERSON
THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 21, 2022

David Rexford [REDACTED]
[REDACTED]

Re: 103 CMR 481 – Inmate Mail

Mr. Rexford,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

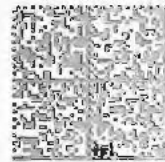
Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

Dartmouth Pledge



US POSTAGE



NOV 15 2012 12:43 PM

NOV 15 2012 12:43 PM

ZIP 01484 \$ 000.57
02 4M
0000383493 SEP 19 2022

Michele Dubois-Clark
Program Coord. III, Desc.
70 Franklin St. Suite 600
Boston, MA 02110

02110-191350





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Governor

KARYN E. POLITO
Lieutenant Governor

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Secretary

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Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 30, 2022

Re: 103 CMR 481 – Inmate Mail

Dartanyan Ple [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

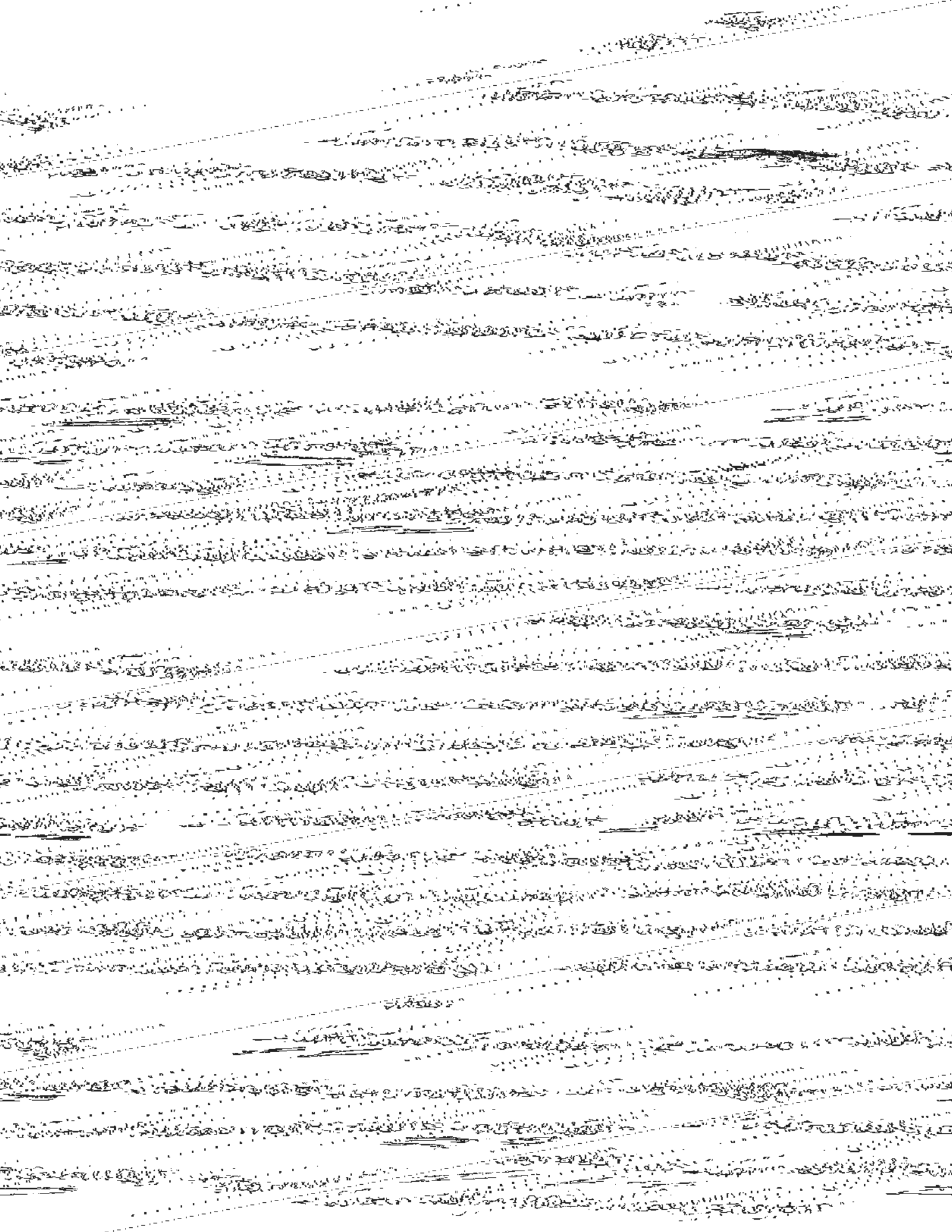
Mr. Pledger,

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Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division







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Lieutenant Governor

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THOMAS J. PRESTON
Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 30, 2022

Re: 103 CMR 481 – Inmate Mail

Justina Talbot [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Ms. Talbot,

Thank you for submitting comments regarding proposed changes to the Department of Correction 103 CMR 481 – Inmate Mail. This type of feedback provides valuable insight and perspective to the Department as it endeavors to promulgate effective regulations.

Your comments will be taken into consideration as the regulation continues to undergo review prior to promulgation.

Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division

RECEIVED

SEP 22 2022

DEPARTMENT OF CORRECTION
LEGAL DEPARTMENT

September 10, 2022

Wt 1 above request this written testimony be read in
the hearing, and taken under oath and seal.

Robert, Sean Mulligan, and Benjamin Juan Lopez, Sr. would all
 come to work, and not serving any sentence, and no civil case have the
 right provided.

The Threatened Center, Ground Underminers (G.U.) at 2724A-60
publicly, and the proposed idea to take our mail and send us phobos
copies to be used in future projects. Threatened Center is ignoring
a significant source of illegal goods (drugs, weapons, gold, and
pilgrims) - guns and cash. The our knowledge, the (G.U.) state of
the Threatened Center has not had problems with (G.U.) authority
regarding under the influence of illegal drugs, nor has any drugs
been used in the Threatened Center by ourselves, or friends.

[illegible][illegible]

Only the United, Pakistan, Iran, and Afghanistan have had time to get their
 account, we have doubt that the country has a story, they own
 people have been caught smuggling drugs, and others our other
 country and in the correctional institutions. We are also aware of
 several people that have been in jobs for smuggling drugs into
 North Vietnam, and other countries. It is important to direct the
 institutions. But, have not found any who have time to do the

Massachusetts Department of Corrections

Supreme Court, Case # 2020CV000253, the District Court throughly
understanding the facts of this case. The District Court has found that the
will be found in the future with respect to the community and the
peace and the punishment of the offender. The District Court has
found that the offender has not been a good person for 30% of the time.
The District Court has found that the offender has not been a good person for 30% of the time.
The District Court has found that the offender has not been a good person for 30% of the time.

MAJUL-01/2/2020 Answer regarding the ability of the offender to
commit the crime. And, the Supreme Court has found that the offender
is not a good person for 30% of the time, and is not a good person for 30% of the time.

In conclusion of this written testimony, the following sign
the name and will be found in the future with respect to the community and the
peace and the punishment of the offender. The District Court has
found that the offender has not been a good person for 30% of the time.
The District Court has found that the offender has not been a good person for 30% of the time.

respectfully,

Stephen John Casey, Sr.
Stephen John Casey, Sr.

Respectfully,

Sean Mulliken
Sean Mulliken

Respectfully,

Sean Mulliken
Sean Mulliken

Ananda Milliken

BOSTON MA 020

19 SEP 2022 PM 5 L



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

02110-132799





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Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 30, 2022

Re: 103 CMR 481 – Inmate Mail

Sean Milliken [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Mr. Milliken,

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Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division



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Deputy Commissioners

NANCY ANKERS WHITE
General Counsel

September 30, 2022

Re: 103 CMR 481 – Inmate Mail

Ananda Milliken
[REDACTED]
[REDACTED]

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Regards,

Michele Dupuis-Clarke, Program Coordinator III
Legal Division