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Comments of

the Prison Policy Initiative

OPPOSING CHANGES TO 103 CMR 481 (Inmate Mail)

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The Prison Policy Initiative is a nationally-focused non-profit based in Easthampton, Massachusetts that is deeply concerned about the proposed revisions to 103 CMR 481 (Inmate Mail). We have considerable national expertise on communications policies in correctional facilities, including the publication this May of *Protecting Written Family Communication in Jails: A 50-State Survey*.¹

The changes to the handling of privileged mail and the change in definition of ‘publication’ are particularly problematic.

481.11(a): Privileged Mail – The proposed modification, which specifies that ‘government attorneys’ are permitted to send and receive privileged mail, may unintentionally subject the correspondence of private attorneys and their incarcerated clients to unconstitutional search and review.

The confidentiality afforded by the privileged mail designation should be maintained not just for officers of a court or the Commonwealth but also for all attorneys admitted to the bar. We ask that this amendment either be clarified to include both ‘government attorneys and private attorneys’ or that the section be not amended.

481.06 Definitions – The proposed definition of ‘Publication’ would include a restriction on inmate mail wherein ‘an inmate may receive a maximum of five (5) pages per day, except Sundays and postal holidays,

¹ In a 2013 report, *Return to Sender: Postcard-Only Mail Policies in Jail*, we wrote about how postcard-only policies in jails restricted written communication and also went against correctional best practices. In 2015, our report *Screening Out Family Time* showed how replacing written communication with video visitation is exploitative and punishes incarcerated people’s loved ones. In 2016, we released two additional reports. *Protecting Written Family Communication in Jails: A 50-State Survey* provided a national take on policies that restrict written communication and *You’ve Got Mail: The Promise of Cyber Communication in Prisons and Need for Regulation* documented how replacing postal communication with cyber communication limits incarcerated people’s ability to stay connected to people on the outside.

of a portion extracted, photocopied, or clipped from such items as an attachment to personal correspondence.’ This amendment would seriously restrict incarcerated people’s ability to access information and unduly limit outside parties’ ability to distribute publications to people behind bars.

By limiting inmates’ access to publications, which increasingly are only published online and therefore often must be ‘extracted, photocopied, or clipped’, this amendment creates an arbitrary obstacle for incarcerated people connecting with the outside world and an arbitrary obstacle to taxpayer communication with incarcerated people. Publications often serve as a way for incarcerated people to remain connected to the news in their communities, to world events, and to information regarding their rights as incarcerated people.

Our reports have repeatedly shown that written communication—including publications—play an essential role in incarcerated people maintaining ties with their communities. Restricting incarcerated people’s access to published materials creates an unnecessary hurdle that serves to only further isolate people who are incarcerated.

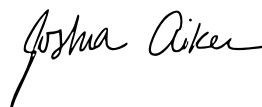
For example, if I wanted to send a family member who is behind bars the *Jailhouse Lawyer’s Manual*—a publication used to help incarcerated people navigate the legal system—one could technically still mail this resource. However, under the proposed regulation, I would have to split the almost 1,100 page electronic book across 183 mailings.

Additionally, the proposed amendment to the CMR is unclear as to whether multiple pages printed on a single sheet of paper would be counted as individual pages of text. Depending on how one defines the ‘page’, and mailing just 5 ‘pages’ per postal day it would take almost eight months to transmit this one essential book. And even this cumbersome process would not work flawlessly, as whenever an envelope is delivered late by the post office it might conflict with my mailing of the next day or the correspondence sent by another family member.

This proposed amendment to the CMR would make the mailing of newsletters, pamphlets, news articles, and other publications such an onerous task, discourages people from even trying to stay in touch. Limiting incarcerated people’s access to information and limiting outside parties way of communicating with incarcerated people does not, simply based on the number of pages, constitute a legitimate government interest.

The DOC, in the same statute of the CMR as the proposed amendment, explains that the rejection of publications is to be used ‘to prevent inference with institutional goals of security, order, rehabilitation, or if it might facilitate, encourage, or instruct in criminal activity.’ This

amendment does nothing to further these goals. This regressive policy instead creates an unnecessary barrier between incarcerated people and their communities. Taking away the ability to receive more than five pages of published materials a day would be strictly punitive and would further isolate people who are incarcerated. We ask that this section of the CMR be left unchanged.



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