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COMMENTS ON PROPOSED DEPARTMENT OF CORRECTIONS RULES AND REGULATIONS ON "INMATE MAIL" [240-RICR-10-00-1] and "ACCESS TO INMATES AND/OR RIDOC FACILITIES" [240-RICR-20-00-3]
May 23, 2025

The ACLU of Rhode Island appreciates the opportunity to provide testimony on these draft regulations which address issues that have recently arisen regarding the investigation of prisoner mail for contraband, and particularly drugs, from attorneys and others. Our comments follow below.

A. INMATE MAIL

1. We welcome and appreciate the fact that incoming mail, both privileged and non-privileged, is run through an electronic scanner that does not require opening the mail, and that the Department's policy of not reading non-privileged mail except for reasons of safety and security remains intact. Section 1.4.3(A)(2) and (3).

However, we note a significant – and, we believe, unwarranted – difference between the way that privileged and non-privileged mail is treated when the mail initially fails the scanner. For privileged mail, procedures are in place to require that further testing be done within a specified time period, generally within 48 hours. Section 1.4.2(B)(6)(e). That safeguard is missing for non-privileged mail. Section 1.4.3(A)(9). We believe this may have been an oversight, as the Department's "Cost Benefit Analysis" of the rules, dated April 16, 2025, refers favorably to that timeframe without differentiating between the two types of mail. Instead, the analysis notes the importance of a 48-hour timeframe for secondary review "to ensure that incarcerated individuals receive timely access to their

mail." We agree and therefore believe a similar time limit should be in effect for *all* mail to prevent undue delays in its delivery.

Another difference between the two types of mail is that the rules require that the secondary review of "failed" privileged mail be conducted in the presence of the prisoner, a safeguard that is not included for non-privileged mail. We believe that the reasons the cost analysis provides for having prisoners be present during the initial testing – minimizing accusations of tampering and building procedural integrity, among others – apply equally as well to secondary review for non-privileged mail.

The stated rationales for the prisoner's presence particularly make sense for the review since, if we are understanding correctly the information provided in the cost analysis, during 2024, "the scanners flagged at least thirty (30) instances of abnormalities, and three (3) pieces of mail tested positive for illicit substances." This potentially suggests a rather large false positive rate, providing all the more reason to have the prisoner present for the review, in order to help "build the procedural integrity" that the analysis refers to.

We therefore urge that the two specific cited protections offered for the examination of privileged mail, as provided in Section 1.4.2(B)(6)(e) [dealing with the timing of a secondary review and the prisoner's presence], be included in Section 1.4.3(A)(9) for non-privileged mail as well.

2. In order to allow mail to be passed through the scanner without needing to open it, the proposed rules prohibit more than twenty-five (25) pages in an envelope. Section 1.4.1(B)(4)(a). While we don't question this necessary limitation, the proposed regulations do not address how publications that exceed that page limit – such as books and magazines – are going to be handled. Prisoners have a constitutional right to obtain these materials, and the current regulations

acknowledge that fact. But if the scanner were to be used on these documents, many of those materials would either need to be mutilated in order to be scanned or else held up for distribution to the prisoner or returned to the publisher due to non-compliance with the scanning limitation. In order to prevent arbitrary denial of prisoner access to these reading materials, we believe the regulations need to explicitly exempt these publications from the scanning process.

3. Relatedly, we urge the addition of a provision that would require the Department to specifically notify other designated (non-publishing) entities most likely to be affected by this 25-page limit – such as the courts, the bar association, and the association of criminal defense lawyers – of this restriction and any changes made to it in the future. The Department may have already reached out to these groups with this information, but we believe a codification of a notice requirement to groups like those would be helpful.

B. ACCESS TO INMATES AND/OR RIDOC FACILITIES

We wish to raise one concern about the second set of regulations dealing with attorney access to the facilities. Section 3.4(D)(10)(a) currently allows "one item of removal storage media" to be brought into the facility, but it must be removed "upon conclusion of the interviews." Section 3.4(D)(10)(c).

Attorneys we work with have noted that, as a result of this policy, there is no provision for prisoners to obtain or maintain in their cells useful storage devices such as thumb drives. Instead, these devices are currently seized as contraband. But the discovery materials in a prisoner's pending case can be hundreds of pages, and the most feasible way for a prisoner to pore through those documents for their attorney is through the use of a flash drive.

Especially in light of the limits on how much written material that prisoners are allowed to maintain in their cells, we believe the rules should be amended to include and specify a process for them to be able to keep a specified number of storage media devices for their use for legal purposes. The rule should further make clear that the content of those devices is protected from review by prison officials, for attorney-client privilege reasons, if received directly from their attorney.

In conclusion, we recognize that these proposed changes are not the last word on the subject, as we understand that the Department is considering the implementation of other options for the delivery of mail. We look forward to providing further input if and when potential adoption of those new methods of delivery becomes more concrete. In the meantime, we urge the Department to adopt the specific revisions to these two rules that are proposed in this testimony.

If the suggestions we have made are not adopted, we request, pursuant to R.I.G.L. §42-35-2.6, a statement of the reasons for not accepting these arguments. Thank you for your consideration of our views.

Submitted by: Steven Brown, Executive Director

American Civil Liberties Union of Rhode Island