

Hearing Officer Hughes:

Ok, good morning, today is Friday, May 9th, 2025, and the time is now 10:01. My name is Lindsey Hughes, I am the Chief of the Policy and Auditing Unit at the Rhode Island Department of Corrections. Joining me today from the Department of Corrections is Jessica Harrold, Principal Management and Methods Analyst in the Policy and Auditing Unit, Nicole DiLibero, Administrative and Legal Support Services Administrator and Brenda Baum, Deputy Chief of Legal Services.

(Pause)

This hearing is being conducted in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws of Rhode Island. In accordance with these requirements, a public notice of this hearing was posted on the Secretary of States, and the Rhode Island Department of Corrections websites. We are here to receive public comment or public input with respect to the proposed changes to the Inmate Mail regulation that the Rhode Island Department of Corrections has promulgated for notice and comment. This hearing is not intended as a means of providing a forum for discussing, debating, or otherwise having any dialogue at this time. This meeting is being recorded.

(Pause)

Jessica Harrold, from the Rhode Island Department of Corrections, will be serving as the moderator for this session, which means she will be responsible for the proceedings orderly and efficient operation so that attendees have a full and fair opportunity to offer such comments, as they desire, regarding the Inmate policy, Inmate Mail policy.

(Pause)

Here are some ground rules for the proceedings: First, we will hear comments, in the order that people signed up; there is a sign-up sheet located on the table near the entrance. Each speaker will be limited to five (5) minutes, unless the number of speakers allows for additional time. If you are approaching the five (5) minute mark, Jessica will give you a warning. All interested parties are invited to submit written comments concerning the proposed amendment until May 27th, 2025, by contacting the appropriate party listed on the public notice of proposed rulemaking. Copies of the public notice are available on the table near the sign-up sheet. For your oral testimony, we remind everyone to please speak clearly, and loudly, so that your comments can be heard. When your name is called, we ask that all attendees please take a seat at the table in front and identify themselves for the record stating their full names and whether they are speaking on behalf of any organization or entity. Lastly, we ask that your comments be limited to the proposed changes to the Inmate Mail policy as that is the sole purpose of today's meeting.

Discussions not related to this topic will not be permitted and may result in the forfeiture of your time to speak. Any disrespectful or inappropriate behavior will not be permitted and will result in your removal from the meeting. If anyone has any questions about the proceedings, please ask them at this time.

Hearing Officer Hughes:

Yes.

Speaker One, Stephen Brown:

In light of the small crowd here. I'm wondering in testifying, whether testimony could cover both of the rules that are being considered this morning?

Nicole DiLibero:

So, I think the problem with that might be that if someone wanted to come for the second and not the first, and they're planning to come at eleven (11:00). I mean I guess we could take what you've got to say under advisement to add to the meeting when we do it at all, so if that's ok with you, I'm sure we could do that.

Speaker One, Stephen Brown:

I'm only suggesting that we be able to leave.

(laughter)

Nicole DiLibero:

Just making sure that's what you were saying.

Hearing Officer Hughes:

If it's okay with you, if it's okay with you when we are done receiving your comment for inmate mail, I'd like to go over my spiel for that for that, for the public record. If that's okay and then we'll accept those and then I'll do it again, at eleven (11:00). Okay, no further questions at this time, I'll turn it over to Jessica to call on attendees to offer comment.

Moderator Harrold:

Okay, good morning, thank you again for joining us. As a reminder, we ask that all speakers, please state their full name for the record and whether they are speaking on behalf of any organization or entity. We will now hear remarks from registered speakers: Stephen Brown.

Speaker One, Stephen Brown:

Thank you, my name is Stephen Brown I'm the Executive Director of the American Civil Liberties Union of Rhode Island. I appreciate the opportunity to provide some commentary on, on the proposed regulations of the department. I will, I will be submitting written testimony as well, but I'll be covering, a few particular issues in my verbal testimony. Regarding the Inmate Mail policy, first we want to express our appreciation for the fact that, use of the new electronic scanners do not require opening the mail, and the regulations continue to provide that the department will not read non-privileged mail except for reasons of safety and security. However, we do note that there is a significant difference between the way that privileged and non-privileged mail are treated when the mail initially fails the scanner. For privileged mail procedures are in place to require that further testing be done with a specified period of time and generally within forty-eight (48) hours. But we know that that safeguard is missing for non-privileged mail. We believe this may have been an oversight, in light of the fact that the department's cost-benefit analysis of the rules refers favorably to that time frame without differentiating between the two (2) types of mail. Instead, the analysis notes the importance of the forty-eight (48) hour time frame for secondary review, quote to ensure that incarcerated individuals receive timely access to their mail where it's appropriate. We agree with that and therefore believe a similar time limit should be in effect for all mail, both privileged and non-privileged, to prevent undue delays in the delivery of mail. Another difference between the privileged and non-privileged mail rules is that the rules for privileged mail required with the secondary review of a failed scan attempt be conducted in the presence of the prisoner, and that safeguard is not included for non-privileged mail. Again, we believe that the reasons the cost analysis provides for having prisoners be present during the initial testing, such as minimizing accusations and tampering, and attempting to build procedural integrity, among other reasons that apply equally as well to secondary review for non-privileged mail. We think these, those rationales for prisoners presence, particularly make sense, for the further reviews since if we understand correctly, the information provided in the cost analysis during 2024 and I quote, the scanners flagged at least thirty (30) instances of abnormalities, and three (3) pieces of mail tested positive for illicit substances, close quote. This potentially suggests a rather large false positive rate, providing all the more reason to have the prisoner present when, when the secondary reviews take place. So we're therefore urging that both the timing of secondary review in the prisoner's presence, which were included in the privileged mail section of the regulations, also be added to apply to the non-privileged mail. A second thing we just want to suggest is that, as you know, in order to allow mail to be passed through the scanner without the necessity of opening it and the proposed rules prohibit more than twenty-five (25) pages in an envelope. We don't question that limitation, we understand that that's how the scanner works. We would simply urge the addition of a provision in the regulations that would require the department to specifically notify a certain obvious entities, like the courts, the bar association, the association of criminal defense lawyers, of this limitation and of any changes that may get made to it during the course of the use of these scanners. We recognize that the Department may have already made notifications to

some of these agencies, but we believe in the codification of the notice requirement would be helpful. Those are my, those are our initial comments on the Inmate Mail regulations, we do have one comment also on the second one, which I don't, hold off for the moment?

Hearing Officer Hughes:

Ok, thank you.

Speaker One, Stephen Brown:

Thank you.

Hearing Officer Hughes:

Do we want to do the waiting period, or um, just do?

Nicole DiLibero:

I think we have to.

Hearing Officer Hughes:

I think we can still keep this hearing open, and just go through the next motion.

Nicole DiLibero:

Mhm.

Hearing Officer Hughes:

Okay, I just, I do want to go, like I said I'm going to go through, if that's ok with you?

Nicole DiLibero:

Just explain what you're doing.

Hearing Officer Hughes:

Okay, so we're going to leave this hearing open to allow time for more

Nicole DiLibero:

Is this person not wanting to speak?

Hearing Officer Hughes:

They're not on the speaker list, you do not want to speak at this time, correct?

Unknown Attendee:

No.

Hearing Officer Hughes:

Okay.

(Pause)

Hearing Officer Hughes:

So we are going to leave this hearing open to allow for more attendees to come and receive comment, but I am going to go over the next opening statement so to allow you to comment on the Access to Facilities regulation as well. So, today is Friday May 9th and the time is now 10:10 AM. My name is Lindsey Hughes I am the Chief of the Policy and Auditing Unit at the Rhode Island Department of Corrections. Joining me today from the Department of Corrections is Jessica Harrold, Principal Management and Methods Analyst in the Policy and Auditing Unit, Nicole DiLibero, Administrative and Legal Support Services Administrator and Brenda Baum, Deputy Chief of Legal Services. This hearing is being conducted in accordance with the Administrative Procedures Act, Chapter 42-35 of the General Laws of Rhode Island. In accordance with these requirements, a public notice of this hearing was posted on the Secretary of States and the Rhode Island Department of Corrections websites. We are here to receive public comment or public input with respect to the proposed changes to Access to Institutional Facilities by Attorneys and Their Agents regulation that the Rhode Island Department of Corrections has promulgated for notice and comment. This hearing is not intended as a means of providing a forum for discussing, debating, or otherwise having any dialogue at this time. This meeting is being recorded. Jessica Harrold, from the Rhode Island Department of Corrections, will be serving as the moderator of this session, which means she will be responsible for the proceedings orderly and efficient operation so that attendees have a full and fair opportunity to offer such comments, as they desire, regarding the Access to Institutional Facilities by Attorneys and Their Agents policy. Here are some ground rules for

the proceedings: First, we will hear comments, in the order that people signed up; there is a sign-up sheet located on the table near the entrance. Each speaker will be limited to five (5) minutes, unless the number of speakers allows for additional time. If you are approaching the five (5) minute mark, Jessica will give you a warning. All interested parties are invited to submit written comments concerning the proposed amendment until May 27th, 2025, by contacting the appropriate party listed on the public notice of proposed rulemaking. Copies of the public notice are available on the table near the sign-up sheet. For your oral testimony, we remind everyone to please speak clearly, and loudly, so that your comments can be heard. When your voice, when your name is called, we ask that all attendees please take a seat at the table in front and identify themselves for the record stating their full names and whether they are speaking on behalf of any organization or entity. Lastly, we ask that your comments be limited to the proposed changes to the Access to Institutional Facilities by Attorneys and Their Agents policy as that is the sole purpose of today's meeting. Discussions not related to this topic will be permitted, will not be permitted, and may result in the forfeiture of your time to speak. Any disrespectful or inappropriate behavior will not be permitted and will result in your removal from this meeting. If anyone has any questions about the proceedings, please ask them at this time.

Nicole DiLibero:

I'm just going to suggest that you give him the sign-up sheet for the second hearing so he can just sign in.

Hearing Officer Hughes:

Oh ok, yes good point, I will grab that when he starts his testimony. She didn't sign up, I did leave a spot for sign in. Would you be able to sign in for both as well, you just mark 'no' as a speaker.

Unknown Attendee:

Yeah, I can.

Hearing Officer Hughes:

Ok, I'll grab the other sign in sheet and I will also turn it over to Jessica to call the attendees for comment.

Speaker One, Stephen Brown:

I can sign in here again?

Moderator Harrold:

That's the first one

Hearing Officer Hughes:

That's the Mail one and here is the Access one, thank you very much.

Nicole DiLibero:

We were trying to get it right and you threw, threw a little curve ball at us.

(Laughter)

Hearing Officer Hughes:

We, we were nothing if not accommodating.

(Laughter)

Speaker One, Stephen Brown:

Sorry you can't leave with us.

(Laughter)

Nicole DiLibero:

It's all good, it's a great idea I mean, it makes perfect sense.

Hearing Officer Hughes:

Thank you very much.

(Pause)

Hearing Officer Hughes:

Ok Jess, you can start.

Moderator Harrold:

Okay. Good morning, thank you again for joining us today, as a reminder, we ask that you please state your full name for the record and whether you are speaking on behalf of an organization or entity, we will now hear remarks from registered speakers: Stephen Brown.

Speaker One, Stephen Brown:

Thank you, Stephen Brown from the American Civil Liberties Union of Rhode Island, here to make a few comments about the proposed rules, amendments to rules and regulations, governing access to inmates and/or RIDOC facilities. There's one concern in particular that we would just raise at this time. It's dealing with those regulations, that's section 8.4.B.10.a. Currently allows one item of removable storage unit get brought into the facility by attorneys, but it must be removed upon conclusion of the, of the meeting. A few attorneys that we work with have noted that as a result of this policy there is no provision for prisoners to be able to obtain or maintain them their selves, the storage devices such as thumb drives, which end up being seized as contraband according to the attorneys. As, as you may know, the discovery materials in a prisoner's pending case can often be hundreds of pages, something that the attorney wants the, wants the client to be able to review, they believe that the most feasible way for a prisoner to be able to pour through all of those documents from the attorney, is through the use of a flash drive. Especially in light of the limit on how much written materials the prisoners are allowed to maintain their selves. We believe the rule 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 only. We believe the rule should further make clear that the content of those devices would be protected from review by prison officials for obvious attorney-client privilege reasons if the device has been received directly from their attorneys. That is the, the one comment that we want to, wanted to make about those rules, as I mentioned previously we will be submitting more detailed written testimony for the end of the comment period. Thank you very much.

Moderator Harrold:

Thank you.

Moderator Harrold:

I'm doing this now, right?

Hearing Officer Hughes:

Uh, yes.

Moderator Harrold:

Okay, is there anyone else in the room who wishes to provide us with public comment today that has not had an opportunity to sign up or speak? Okay, we will leave this hearing open for another 15 minutes, until 10:31 to see if anybody joins us and would like to provide comment.

Speaker One, Stephen Brown:

Thank you.

Moderator Harrold:

Thank you.

Hearing Officer Hughes:

For the public record, we are going to leave the Inmate Mail regulation hearing open until the designated time of 10:31 AM, and then we will reopen the access to Institutional Facilities by Attorneys and Their Agent's regulation hearing at 11:00 AM.

Hearing Officer Hughes:

We're on recording, and we have five (5) minutes left until we close the hearing, just to loop you in on where we are now the first two (2) weeks.

Moderator Harrold:

The time is now 10:31 and we are going to go ahead and close this hearing. On behalf of the Rhode Island Department of Corrections, we would like to thank everyone who took time out of their schedules to offer up comments on the proposed changes to the Inmate Mail regulation. This public hearing is closed. At this time, we will take a brief recess and return at 11:00 AM for the proposed amendments to the Access to Institutional Facilities by Attorneys and Their Agent's regulations.