

## GENERAL DISTRIBUTION

WEST VIRGINIA  
DIVISION OF CORRECTIONS  
& REHABILITATION

NUMBER: 503.03

EFFECTIVE DATE: 15 June 2022

SUBJECT: INCOMING PUBLICATIONS

# POLICY DIRECTIVE

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## PURPOSE:

To establish guidelines for the receipt and possession of incoming publications by inmates.

## REFERENCE:

*Thornburg v. Abbott*, 490 U.S. 401 (1989); *Montcalm Publishing v. Beck*, 80 F.3d 105 (1996); *Turner v. Safley*, 482 U.S. 78 (1987); and *Dixon v. Kirby*, 210 F. Supp. 2d 792 (S.D.W.Va. 2002).

## RESPONSIBILITY:

No additional written instructions on this subject are required.

## CANCELLATION:

Any previous written instruction on the subject including DOC Policy Directive 503.03, dated 01 November 2009.

## APPLICABILITY:

All facilities within the Division of Corrections and Rehabilitation (DCR) that have custody of adult inmates. This Policy is available for general distribution and is to be made available for inmate review upon the effective date.

## DEFINITIONS:

**Publication:** For the purpose of this Policy Directive, this includes a book, booklet, pamphlet, or similar document or a single issue of a magazine, periodical, newsletter, or newspaper. Catalogs shall not be considered permissible publications; and, therefore, shall not be permitted to be received by inmates.

**POLICY:**

- I. The Division of Corrections and Rehabilitation (DCR) shall permit an inmate to subscribe to, receive, and retain publications without prior approval, which do not threaten security, good order, or discipline of the facility or that may facilitate criminal activity or are otherwise prohibited by law.
  - A. Inmates may receive hard cover and soft cover publications, magazines, and newspapers only from the publisher or book retailer. The sender's address shall be clearly identified on the outside of the package.
  - B. The Superintendent may, but is by no means required to, make an exception to the above if the publication is no longer available from the publisher or book retailer. The Superintendent may require that the inmate provide written documentation of such. The approval for an exception is to be documented in writing.
  - C. The Superintendent may reject a publication only if it is determined detrimental to the security, good order, or discipline of the facility or if it might facilitate criminal activity. The Superintendent may not reject a publication solely because its content is religious, philosophical, political, social, sexual, or because its content is unpopular or repugnant. Publications which may be rejected by a Superintendent include, but are not limited to, publications which meet one of the following criteria:
    1. It depicts or describes procedures for the construction or use of weapons, ammunition, bombs, or incendiary devices.
    2. It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawing(s), or similar descriptions of DCR facilities.
    3. It depicts or describes procedures for the brewing of alcoholic beverages or the manufacturing of drugs.
    4. It is written in code or otherwise encrypted.
    5. It depicts, describes, or encourages activity that may lead to the use of physical violence or group disruption.
    6. It gives encouragement to and instruction in the commission of criminal activity.
    7. It is sexually explicit material, which by nature or content, poses a threat to the security, good order, or discipline of the facility or facilitates criminal activity.
  - D. Only the Superintendent may reject an incoming publication. However, the Superintendent may designate staff to review incoming publications.
  - E. In order to assist staff in determining which materials may pose the type of threat that warrants exclusion, the below-noted guidelines are hereby stipulated.

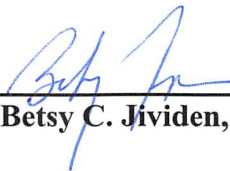
1. A Superintendent may determine that sexually explicit material of the following type is to be excluded as potentially detrimental to security and good order, or discipline of the facility, or as facilitating criminal activity.
  - a. Visually displays penetration of sexual organs, anus, or mouth by the sexual organ of another or visually displays penetration of sexual organs or anus by an object.
  - b. Sado-masochistic
  - c. Bestiality
  - d. Involving children
2. Additionally:
  - a. The Superintendent must prohibit a sexually explicit publication if it is determined to pose a threat to the facility or is contrary to law. Child pornography materials, which are prohibited by law, are examples, as are the above-noted examples.
  - b. Sexually explicit materials do not include materials of a news or information type. Publications concerning research or opinions on sexual, health, or reproductive issues or covering the activities of gay rights organizations or gay religious groups, for example, shall be admitted unless otherwise a threat to legitimate facility interests.
  - c. Literary publications should not be excluded solely because of the homosexual/heterosexual themes or references, if they are not sexually explicit in a manner, which threatens legitimate facility interests.
  - d. Sexually explicit material may nonetheless be admitted if it has scholarly value, social value, or literary value.
3. The Superintendent may not establish an exclusion list of publications. This means the Superintendent shall review the individual publication prior to the rejection of that publication. Rejection of several issues of a subscription publication is not sufficient reason to reject the subscription publication in its entirety.
4. When a publication is found unacceptable, the Superintendent shall promptly advise the inmate in writing (**Attachment #1**) of the decision and the reason for it. The notice must contain reference to a specific article(s) or material(s) considered objectionable. The Superintendent shall permit the inmate an opportunity to review the material for the purpose of filing a grievance to the rejection under the inmate grievance procedure unless such review may provide the inmate with information

of a nature which is deemed to pose a threat or detriment to the security, good order, or discipline of the facility, or to encourage or instruct in a criminal activity

5. In questionable cases, the Superintendent shall consult with his/her chain-of-command.
  6. The Superintendent shall provide the publisher or sender of the unacceptable publication with a copy of the rejection letter (**Attachment #1**). The Superintendent shall advise the publisher or sender that he/she may obtain an independent review of the rejection by writing the Commissioner of the Division of Corrections and Rehabilitation (DCR) within fifteen (15) days of the receipt of the rejection letter. The Superintendent shall return the rejected publication to the publisher or sender of the material unless the inmate files a grievance, in which case, the Superintendent shall retain the rejected material at the facility for review. In case of a grievance, if the objection is sustained, the rejected publication shall be returned upon completion of the appeal or legal use.
    - a. The Superintendent must retain the rejected publication for twenty (20) days from the date that the inmate is sent written notification of the rejection.
    - b. This twenty (20) day period is to allow the inmate the opportunity to file a grievance. If the inmate does not file a grievance under the time limitations, the rejected publication may be returned to the publisher/sender thereafter.
    - c. If the inmate does file a grievance, the Superintendent must retain the rejected publication at the facility.
    - d. The rejected publication or the offensive portion(s) of it must be reviewed prior to a staff response being prepared at any stage of the grievance procedure. A copy of the offensive portion(s) of the publication should be retained on file at the facility.
    - e. No staff member should respond to a grievance appeal of a rejected publication without first reviewing either the rejected publication or a copy of the offensive portion of it.
- II. The Superintendent, subject to the provisions of DCR Policy Directive 400.03, may set limits at his/her facility (for fire, sanitation, house-keeping reasons) on the number of volumes of publications an inmate may receive or retain in his/her living area.

**ATTACHMENT(S):** #1 Notification of Rejected Publication

**APPROVED SIGNATURE:** \_\_\_\_\_

  
Betsy C. Jividen, Commissioner

  
Date

NOTIFICATION TO INMATE AND PUBLISHER/SENDER OF  
REJECTED PUBLICATION

Inmate: \_\_\_\_\_ OID #: \_\_\_\_\_

Facility: \_\_\_\_\_

Re: \_\_\_\_\_ Issue: \_\_\_\_\_

The above-named publication/material from \_\_\_\_\_  
Publisher/Sender Name

Has been rejected in accordance with Division of Corrections and Rehabilitation (DCR) Policy Directive 503.03 Incoming Publications, which provides in part:

**A publication may be rejected only if it is determined  
detrimental to the security, good order, or discipline of the facility  
or if it might facilitate criminal activity.**

The above-named publication has been rejected because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Provide reference to the specific article(s) or material(s) considered objectional and the reason(s) for the decision to reject.)

You may grieve this rejection under DCR Policy Directive 335.00.

A copy of this notification has been sent to the publisher/sender who may obtain an independent review of this rejection by writing to the Commissioner of the West Virginia Division of Corrections and Rehabilitation at 1409 Greenbrier Street, Charleston, WV 25311 within fifteen (15) days of receipt of this notification.

\_\_\_\_\_  
Superintendent

\_\_\_\_\_  
Date

cc: \_\_\_\_\_  
Publisher/Sender Name and Address