

APPROVED FOR INMATE VIEWING

STATE OF WEST VIRGINIA
DIVISION OF CORRECTIONS
POLICY DIRECTIVE

NUMBER: 503.03
DATE: 01 November 2009
SUBJECT: Incoming Publications
AUTHORITY: WV Code 25-1-5 and 62-13-4;
ACA Standard 4-4490

I. POLICY: It is the policy of the West Virginia Division of Corrections to maintain a mechanism that ensures guidelines for the receipt and possession of incoming publications by inmates.

Except when precluded by statute, the West Virginia Division of Corrections shall permit an inmate to subscribe to and to receive publications without prior approval; and (through established procedures within this Policy Directive) to determine if an incoming publication is detrimental to the security, discipline, and good order of the institution/facility/center or if it might facilitate criminal activity. The term publication, as used in this Policy Directive, means a book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, or newspaper. For the purposes of this Policy Directive, catalogs shall not be considered permissible publications; and, therefore, shall not be permitted to be received by inmates.

In addition to the above-referenced State Codes and Standard in the Authority Section of this Policy Directive, the following additional authorities are hereby referenced: *Thornburg v. Abbott* 490 U. S. 401 (1989); *Montclam Publishing v. Beck*, 80 F.3d 105 (1996); *Turner v. Safley*, 107 F. Ct 254 (1987); and *Dixon v. Kirby*, 210 F. Supp. 2d 792 (2002).

II. CANCELLATION: Policy Directive 503.03, dated 01 October 2009

III. DEFINITIONS: None

IV. APPLICABILITY: All units within the Division of Corrections, except parolees and electronically monitored inmates.

V. PROCEDURE:

A. Inmates will be permitted to receive and retain publications, which do not threaten security, good order, or discipline of the institution/facility/center or that may facilitate criminal activity, or are otherwise prohibited by law.

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- B. Publications determined to be detrimental to the security, good order, or discipline of the institution/facility/center or that may facilitate criminal activity, or are otherwise prohibited by law, will be excluded from Division of Corrections' institutions/facilities/centers.
- C. A safer environment for staff and inmates will be provided by strengthening procedures designed to prevent the introduction of contraband.
- D. Inmates being housed at any Division of Corrections' institution/facility/center 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.
- E. The Warden/Administrator may, but is by no means required to, make an exception to the provisions of Section V, D of this Policy Directive if the publication is no longer available from the publisher or book retailer. The Warden/Administrator may require that the inmate provide written documentation that the publication is no longer available from these sources. The approval of any requests for an exception is to be documented, in writing, on an authorization to receive a package, which will be used to secure the item.
- F. The Warden/Administrator may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution/facility/center or if it might facilitate criminal activity. The Warden/Administrator 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 Warden/Administrator 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 institutions/facilities/centers, or contains blueprints, drawing(s), or similar descriptions of Division of Corrections' institutions/facilities/centers.
 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.

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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 institution/facility/center, or facilitates criminal activity.
- G. Only the Warden/Administrator may reject an incoming publication. However, the Warden/Administrator may designate staff to review incoming publications.
- H. 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 Warden/Administrator 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 institution/facility/center, 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 Warden/Administrator must prohibit a sexually explicit publication if it is determined to pose a threat to the institution/facility/center 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 does 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 institution/facility/center interests.
 - c. Literary publications should not be excluded solely because of the homosexual/heterosexual themes or references, if they are not

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sexually explicit in a manner, which threatens legitimate institution/facility/center interests.

- d. Sexually explicit material may nonetheless be admitted if it has scholarly value, social value, or literary value.
3. The Warden/Administrator may not establish an exclusion list of publications. This means the Warden/Administrator 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 Warden/Administrator 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 Warden/Administrator shall permit the inmate an opportunity to review the material for the purpose of filing a grievance to the rejection under the inmate grievance procedures 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 institution/facility/center, or to encourage or instruct in a criminal activity.
 5. In questionable cases, the institution/facility/center staff shall consult with legal counsel.
 6. The Warden/Administrator shall provide the publisher or sender of the unacceptable publication with a copy of the rejection letter (Attachment #1). The Warden/Administrator 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 within fifteen (15) days of the receipt of the rejection letter. The Warden/Administrator shall return the rejected publication to the publisher or sender of the material unless the inmate files a grievance under Policy Directive 335.00, in which case, the Warden/Administrator shall retain the rejected material at the institution/facility/center 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 Warden/Administrator 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 under Policy Directive 335.00. If the inmate does not file a grievance under the time limitations of Policy

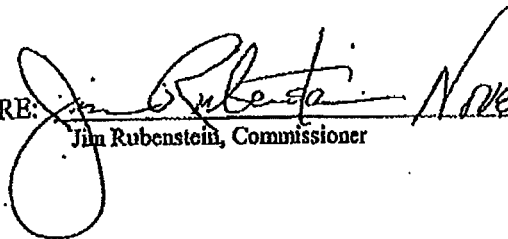
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Directive 335.00, the rejected publication may be returned to the publisher/sender thereafter.

- c. If the inmate does file a grievance, the Warden/Administrator must retain the rejected publication at the institution/facility/center.
 - 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 institution/facility/center.
7. 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.
- I. The Warden/Administrator, subject to the provisions of Policy Directive 400.03, may set limits at his/her institution/facility/center (for fire, sanitation, house-keeping reasons) on the number of volumes of publications an inmate may receive or retain in his/her quarters. The Warden/Administrator may authorize an inmate additional storage space for storage of legal materials in accordance with the Division of Corrections' procedure on personal property of inmates.

APPROVED SIGNATURE:



Jim Rubenstein, Commissioner

November 4, 2009

Date

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Attachment #1

NOTIFICATION TO INMATE AND PUBLISHER/SENDER OF REJECTED PUBLICATION (TO BE USED WHEN REJECTING A PUBLICATION)

INMATE: _____

DOC #: _____

INSTITUTION/FACILITY/CENTER: _____

RE: _____ ISSUE: _____

The above named publication/material from _____
(Publisher/Sender Name)

has been rejected in accordance with the Division of Corrections' Policy Directive 503.03 - Incoming Publications - which provides in part:

A publication may be rejected only if it determined detrimental to the security, good order, or discipline of the institution 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 objectionable and he reason(s) for the decision to reject].

You may grieve this rejection under Division of Corrections' 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 Division of Corrections at 1409 Greenbrier Street, Charleston, WV-25311 within fifteen (15) days of receipt of that copy.

Warden/Administrator/Designee

Date

cc: _____
Publisher/Sender Name and Address