

Vermont Department of Corrections APA Rule #10-029
Inmate Possession of Printed Materials
Final Adopted Rule
August 4, 2010

1. AUTHORITY

28 V.S.A. §§101(1) & (5), 102(c)(1), 802(a).

2. PURPOSE

The Vermont Department of Corrections permits an inmate in its custody to subscribe to or to receive printed materials, including publications. The Department recognizes the necessity of limits on offenders' access to printed materials that are reasonably related to the advancement of legitimate penological interests such as security, discipline, rehabilitation, public safety, or good order of the institution. This administrative rule establishes standards and procedures, parallel to those in 28 CFR §540.70, *et seq.* (2007), which the Department will use in determining whether offenders may possess printed materials received from sources outside a correctional facility. This proposed rule amends current Department Rule #79-25, *Mail (Policy #965)*, which was adopted 01/10/79.

3. APPLICABILITY/ACCESSIBILITY

All individuals and groups affected by the operations of the Vermont Department of Corrections may have access to this administrative rule.

4. DEFINITIONS

Commercially Published Information or Material: Any book, booklet, pamphlet, magazine, periodical, newsletter, photograph or other pictorial depiction, or similar document, including stationery and greeting cards, published by any individual, organization, company, or corporation, which is distributed or made available through any means or media for a commercial purpose. This definition includes any portion extracted, photocopied, or clipped from such items.

Contraband: An item used by an inmate in an unauthorized or prohibited manner or altered in any way; property in excess of allowable property limits; any item that an inmate, staff person, volunteer, or contractor is not specifically authorized to have in their possession in a correctional facility, and/or anything that can pose a danger or risk to the safety and security of staff, the facility, or public.

Department: The Department of Corrections.

Features:

- 1) In the case of an individually produced drawing or picture, the material contains depictions of nudity or sexually explicit conduct as a primary element; or
- 2) In the case of a commercial publication, the material contains depictions of nudity or sexually explicit conduct on a routine or regular basis, or promotes itself based upon such depictions in the case of individual one-time issues. Printed materials containing nudity

illustrative of medical, educational, or anthropological content may be excluded from this definition.

Nudity: A pictorial depiction where buttocks, genitalia, or female breasts are exposed.

Printed Materials: Written materials containing words and/or pictorial representations, regardless of the medium on which the information is recorded or how the information is recorded, whether manually or mechanically.

Publication: A book, booklet, pamphlet, or similar document, or a single issue of a magazine, periodical, newsletter, newspaper, plus such other materials addressed to a specific inmate such as advertising brochures, flyers, and catalogs.

Sexually Explicit: A pictorial depiction of actual or simulated sexual acts, including sexual intercourse, oral sex, or masturbation.

5. POLICY

a. Sexually Explicit Materials

Printed material that features nudity or sexually explicit pictures is contraband. Inmates may not possess printed material which is sexually explicit or features nudity. When such material enters a facility, staff shall provide the inmate recipient with written notice that the material is contraband. After the inmate has exhausted his/her administrative remedies, the Facilities Executive, or designee, shall return the information or material to the publisher or sender, if reasonably possible. The Facilities Executive, or designee, shall advise the publisher or sender that an independent review of the decision may be obtained by writing to the Facilities Executive within 20 calendar days of receipt of the notification letter.

If printed material featuring nudity or sexually explicit pictures is found inside a facility, the Facilities Executive, or designee, shall confiscate the material. When possible, such printed material shall be returned to the publisher or sender with an explanation of the procedure for obtaining an independent review as described above. When such printed material is found inside a facility, written notice of the confiscation shall be provided to the inmate, unless the rightful owner of the material cannot be determined through reasonable means.

Inmates may grieve the rejection or confiscation of material pursuant to this section through the Department grievance process. Staff shall dispose of confiscated material in a manner that ensures it will not reenter the facility

b. Restriction on Inmate Access To Publications

i. Access to Publications

At all facilities, an inmate may receive publications and newspapers only from the publisher, from a book club, or from a bookstore, except that an inmate may directly receive:

- a) Educational materials as authorized by a teacher assigned to the facility Education Department in relation to a course or coursework in which the inmate is enrolled;
- b) Religious publications provided by an approved Religious Volunteer or an approved Faith Representative (see *Administrative Directive on Religious Observance, #380.01*);
- c) Legal texts and publications approved by request to the Facilities Executive or designee;
- d) Legal materials as authorized by the Director of Legal Education.

ii. Receipt of Publications

Requests for orders of books, magazines, newspapers, or periodicals will be made through a supervisor or caseworker designated by the Facility Superintendent.

Before approving a specific request, the designated staff person will determine:

- a) That the inmate is able to pay for the desired materials;
- b) That the inmate will be at the facility long enough to receive the publication; and
- c) That the requested materials otherwise meet the requirements of this administrative rule.

Family members and friends of an inmate may order publications for a specific inmate provided that:

- a) The publication is mailed directly from the publisher or commercial distributor;
- b) The publication meets the requirements of this rule;
- c) Publications are not ordered as “Cash on Delivery (COD)” or “Bill Me Later” and charged to the inmate; and
- d) The publication has not been banned pursuant to Section 5.B.iii. of this rule.

Department staff members, other than as identified under *Access to Publications*, are prohibited from providing inmates with publications of any type.

iii. Disapproved Publications

The Facilities Executive, or designee, may reject a publication only if it is determined detrimental to the security, good order, or discipline of the institution, or if it might facilitate criminal activity. The Facilities Executive may not reject a publication solely because its content is religious, philosophical, political, social, or sexual, or because its content is unpopular or repugnant. Publications which may be rejected include, but are not limited to, publications which meet one of the following criteria:

- a) It depicts or describes procedures for the construction or use of weapons, ammunition, bombs, or incendiary devices;
- b) It depicts, encourages, or describes methods of escape from correctional facilities, or contains blueprints, drawings, or similar descriptions of correctional facilities;

- c) It depicts or describes procedures for the brewing of alcoholic beverages or the manufacture of drugs;
- d) It is written in code;
- e) It depicts, describes or encourages activities which may lead to the use of physical violence or group disruption;
- f) It encourages or instructs in the commission of criminal activity;
- g) It is defined as contraband under Section 5a of this rule.

The Facilities Executive, or designee, may not establish an excluded list of publications that is not based on individual review of each publication. This means the Facilities Executive 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.

Any publication that contains one (1) or more sections meeting the above criteria must be disapproved in its entirety. Facility staff may not alter the publication by removing the prohibited section(s).

Where a publication is found unacceptable, the Facilities Executive, or designee, shall promptly advise the inmate in writing of the decision and the reasons for it. The notice must contain reference to the specific article(s) or material(s) considered objectionable. The Facilities Executive, or designee, shall permit the inmate an opportunity to review this material for purposes of filing a grievance unless such review may provide the inmate with information of a nature which is deemed to pose a threat or detriment to the security of the institution or to encourage or instruct in criminal activity.

The Facilities Executive, or designee, shall provide the publisher or sender of an unacceptable publication a copy of the rejection form/letter, when reasonably possible. The Facilities Executive, or designee, shall advise the publisher or sender that they may obtain an independent review of the rejection by writing to the Facilities Executive within 20 calendar days of receipt of the rejection form/letter. The Facilities Executive, or designee, shall dispose of the publication in accordance with applicable Department policies at the expiration of the review period or upon final adjudication.

6. AMENDMENT

The language in the APA Rule #79-25 *MAIL* is amended.

INTRODUCTION

~~Open mail practices are essential if residents are to establish and maintain positive supports in the community. In addition the law has with certain circumscribed limits, recognized the free flow of mail communications between residents and the open community as an important right. The Department accepts and promotes this position within the limits of sound security practices.~~

OBJECTIVES

~~To promote the free flow of correspondence to and from residents while at the same time maintaining an acceptable level of security, order and discipline.~~

~~GROUP SERVED~~

~~All residents and staff of correctional facilities.~~

~~POLICY DESCRIPTION~~

~~Each Superintendent shall develop and implement procedures in accordance with the provisions of this policy, to include:~~

- ~~1. Postage allowance~~
- ~~2. Forwarding of mail~~
- ~~3. Mail distribution daily~~
- ~~4. Disposition of contraband.~~

~~These procedures are to be filed with the Central Office and reviewed annually by the Superintendent and if necessary updated. Residents shall be informed of the mail procedures through the use of the resident guidebook.~~

~~Under normal circumstances, all mail may be opened and inspected for the purpose of contraband control. Residents' mail should not be read or censored, except where there is clear and convincing evidence to justify such actions, or when the correspondence poses a threat to the security, order or discipline of the facility and the safety of public officials or the general public. If it is suspected that the mail contains items of contraband, or writings which pose a threat as indicated above, the mail may be withheld, censored, or other steps taken to prevent its transmission. Inspections for contraband will not take longer than 24 hours to complete, so that incoming mail may be distributed to residents and outgoing mail sent to the post office within 24 hours of receipt. When mail is opened, it must be done in the presence of the sending or receiving resident. Responsibility for decisions to read mail or open outgoing mail rests with the Superintendent or in his absence the officer in charge.~~

~~Packages will be routinely opened and inspected for contraband. Where contraband is discovered in mail or packages it shall be removed, according to facility procedures.~~

~~All correspondence from a resident to any public official in the State of Vermont or the United States, including attorneys and the court shall not be inspected, opened, copied, duplicated, photographed, examined, or impeded in any way. (See also Policy 466 Detentioners/"Safekeepers".)~~

~~Provisions shall be made to ensure that indigent residents are able to send a maximum of 7 letters per week. In such cases, letters shall be stamped by the facility. In no event are stamps to be given directly to residents.~~

~~Provisions shall be made to ensure that forwardable mail is forwarded to residents upon transfer or release for a reasonable period of time. In such cases, any additional postage cost for forwardable mail will be absorbed by the resident upon receipt of mail, or returned to sender.~~

~~28 V.S.A., Sec. 802~~

~~28 V.S.A., Sec. 601(2)~~

~~28 V.S.A., Sec. 102(1)~~