

July 29, 2016

TO: ALL CONCERNED

FROM:   
Nolan P. Espinda, Director

SUBJECT: **AMENDMENTS TO COR.15.02: CORRESPONDENCE**

The following are the significant changes to COR.15.02, effective July 29, 2016:

- 1) In Section 5.2, changed from 7 working days to 4 working days.
- 2) In Section 6.1.a., deleted reference to attorney's bar number.
- 3) Other minor grammar and format changes.

If you require any clarification, please contact Shelley Nobriga at 808-587-1415 or [shelley.d.nobriga@hawaii.gov](mailto:shelley.d.nobriga@hawaii.gov).

	<b>DEPARTMENT OF PUBLIC SAFETY</b>	<b>EFFECTIVE DATE:</b> July 29, 2016	<b>POLICY NO.:</b> COR.15.02
	<b>CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES</b>	<b>SUPERSEDES (Policy No. &amp; Date):</b> COR.15.02 (11/30/11, 2/1/16)	
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## 1.0 PURPOSE

To provide guidelines for the monitoring/delivery of inmate correspondence to individuals and organizations outside of the facility. The sending and receiving of correspondence will only be restricted to the extent necessary to prevent a threat to the safety, security, and good government of the facility, the safety or well-being of any individual, or for other legitimate penological purposes.

## 2.0 REFERENCES AND FORMS

### .1 References

- a. *Averhart v. Shuler*, 652 F.Supp. 1504 (N.D. Ind. 1987).
- b. *Bell v. Wolfish*, 441 U.S. 520 (1979).
- c. *Blaisdell v. Department of Public Safety*, United States District Court for the District of Hawaii, Civ. No. 14-00433 (2014).
- d. *Covell v. Arpaio*, 662 F.Supp.2d 1146 (D. Ariz. 2009).
- e. Department of Public Safety (PSD), Policy and Procedures (P & P) COR.02.13, Monetary Donations to Inmate Trust Fund.
- f. PSD, P & P ADM.08.08, Prison Rape Elimination Act.
- g. PSD, P & P COR.11.01, Administrative Segregation and Disciplinary Segregation.
- h. Hawaii Revised Statutes (HRS), Section 353.30, Others by Permission.
- i. *Keenan v. Hall*, 83 F.3d 1083, 1094 (9<sup>th</sup> Cir. 1996).
- j. *Samonte v. Maglinti, et al.*, United States District Court for the District of Hawaii, Civ. No. 05-00598 SOM-BMK (2007).
- k. *Turner v. Safley*, 482 U.S. 78, 93 (1987).
- l. *Wolff v. McDonnell*, 418 U.S. 539, 576-77 (1974).

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.2 Forms

- a. PSD 8322, Prohibited Correspondence form (attached).
- b. PSD 8323, Prohibited Items form (attached).

**3.0 DEFINITIONS**

- .1 Censoring Mail – The act of monitoring and withholding personal correspondence, periodicals, and publications that are found to be detrimental to the security, good order, or discipline of the facility or that might incite violence or facilitate criminal activity.
- .2 First Class Mail – A class of mail that includes all matter wholly or partly in writing or typewriting, all actual and personal, official, privileged correspondence to include postcards, letters and sealed parcels.
- .3 Indigent – An inmate with less than ten dollars (\$10.00) of income in his/her spendable or restricted account.
- .4 Inmate Contraband – Anything not specifically authorized for possession by the facility Warden, or which inmates are prohibited from obtaining or possessing by statute, rule, regulation, or order.
- .5 Mail Watch – Identification of an inmate or inmates for whom it is deemed necessary to read all of their personal correspondence to protect safety and security issues of the facility and public.
- .6 Official Correspondence – Mail, incoming and outgoing, between an inmate and the courts (State of Hawaii or the United States), Ombudsman Office, Attorney General, Hawaii Paroling Authority, Elected state or federal officials to include the Governor’s Office, Director of the Department of Public Safety and Corrections Division Administrators).
- .7 Personal Correspondence – Mail, incoming and outgoing, between an inmate and individual other than those approved for privileged correspondence.
- .8 Privileged Correspondence – Mail, incoming and outgoing, between an inmate and his/her attorney.

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.9 Prohibited Correspondence – Mail, incoming and outgoing, between an inmate and individual containing malicious, false, inflammatory, or other types of statements or information, the purpose of which is reasonably intended to harm, or intimidate an employee, visitor, or member of the general public is prohibited. Any correspondence that falls within Section 5.4 is considered prohibited.

.10 STG – Security Threat Group

#### **4.0 POLICY**

Inmates shall retain their right of free expression and communication. Access to the public is an integral part of rehabilitation. Inmates shall be permitted to communicate with their families and friends as well as with public officials, the courts, individual members of the news media, and their attorneys. Correspondence shall be subject only to the limitations necessary to maintain safety, security, order, discipline, or treatment interests of the correctional institution.

#### **5.0 PROCEDURES FOR PERSONAL CORRESPONDENCE**

- .1 There shall be no limit on the volume of personal correspondence an inmate may send or receive, except when there is a reasonable belief that a limitation is necessary to protect public safety or institutional order and security.
- .2 A small facility (less than 500 inmates) may adopt a priority processing **postcard personal mail system**. This is in addition to the standard legal/letter size envelopes for personal correspondence.. Postcards will be screened for delivery first, and standard legal/letter size envelopes will be screened for delivery within 4 working days. All privileged mail and official mail shall be exempt from the postcard requirements.
  - a. Postcards should be no smaller than 3 ½" x 5" nor larger than 6 ½" x 11 ½" in size.
- .3 Personal correspondence shall be in English or Hawaiian unless authorized in accordance to the following:
  - a. Reasonable accommodations may be made for any inmate who is unable to write in English or Hawaiian, or if the recipient of the correspondence does not read English or Hawaiian. Under these conditions, the inmate shall make a request to the Warden for approval to correspond and receive mail in a different language.

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- b. Inmates who are authorized to correspond in a language other than English may have their personal correspondence delayed in sending and/or receiving the document due to the review process by translators.
- .4 Personal incoming or outgoing correspondence to and from inmates may be inspected, censored and/or read for the following:
- a. Plans to escape;
  - b. Plans for criminal activity;
  - c. Plans to introduce contraband into or out of the facility (i.e. drugs, weapons, other contraband);
  - d. Plans for activities in violation of facility rules;
  - e. Information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;
  - f. Correspondence which attempts to forward unauthorized correspondence to a third party;
  - g. Suspicious correspondence (i.e. oily stains, discoloration, crystallization, excessive wrapping/taping, deformed letters, etc.);
  - h. STG or gang-related activities and plans; or
  - i. Any threat or factor that would undermine safety, security, order, discipline, control, or other legitimate penological interests.
- .5 Postcards may be inspected/censored to ensure that they have not been adulterated or split and glued back together in an attempt to smuggle contraband.
- .6 Facility Wardens shall publish and make available to inmates and staff information indicating authorized items for inmates which are not restricted as contraband.
- .7 Without prior written approval by the Warden/designee of the relevant facilities, inmates are prohibited from writing to other inmates.

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- .8 Facility Wardens have the discretion to place an inmate on mail watch to screen all personal correspondence of a particular inmate or inmates when officials have reason to suspect that the targeted inmates may be using the mail for illicit or illegitimate purposes.
- .9 Reference P & P COR.02.13 "Monetary Donations to Inmate Trust Account" for guidelines on receiving monetary donations for inmates by mail.

**6.0 PROCEDURES FOR PRIVILEGED CORRESPONDENCE**

- .1 In order for mail to be considered privileged, it must be contained in envelope with the following information:
  - a. Envelopes from an inmate's attorney should show in the upper left-hand corner the name of the attorney and/or the law firm, and address of the law firm; and
  - b. Envelopes from an inmate's attorney shall be marked "privileged" or "confidential".
- .2 Privileged correspondence is extended to an inmate's attorney(s) and any prospective attorney only. The U.S. Supreme Court has ruled that mail from government agencies (Attorney General, Hawaii Paroling Authority, and Ombudsman Office), officials, and courts is not considered protected legal mail.
- .3 Privileged correspondence shall be subject only to inspection for contraband in the presence of the inmate. The U.S. Supreme Court has ruled that the inmate must be present when privileged correspondence is opened.
- .4 Privileged correspondence shall not be subject to censorship, unless there is sufficient cause to believe mail is in fact private or threatening under the pretense of legal mail. In such cases, reason for censorship will be documented and authorized by the facility Warden or his designee.
- .5 Facilities are no longer required to provide notary public services to inmates filing claims/documents with the courts or other agencies. Inmates who are preparing their pleadings/petitions challenging their criminal convictions, their custody or the condition of their confinement only need to include a signed declaration in lieu of an affidavit in federal court and state court.

However, for the following categories, inmates must make arrangements through the facility to schedule outside visits of private notaries (at inmate's expense):

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- a. Personal real estate transactions;
- b. Legal guardianship;
- c. Power of Attorney; and
- d. Other civil matters requiring a notarized signature.

**7.0 PROCEDURES FOR OFFICIAL CORRESPONDENCE**

- .1 There shall be no limit on the volume of official correspondence an inmate may send or receive, except when there is a reasonable belief that a limitation is necessary to protect public safety or institutional order and security.
- .2 All incoming/outgoing official correspondence must be received in a standard legal or letter size envelope with adequate postage and must include the following information:
  - a. Inmate name;
  - b. Inmate identification number or SID;
  - c. Facility name and address; and
  - d. Name and full address of the sender/receiver
- .3 Official incoming or outgoing correspondence to and from inmates may be inspected/censored and/or read for the following:
  - a. Plans to escape;
  - b. Plans for criminal activity;
  - c. Plans to introduce contraband into or out of the facility (i.e. drugs, weapons, other contraband);
  - d. Plans for activities in violation of facility rules;
  - e. Information which, if communicated, would create a clear and present danger of violence and physical harm to a human being;

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- f. Correspondence which attempts to forward unauthorized correspondence to a third party;
- g. Suspicious correspondence (i.e. oily stains, discoloration, crystallization, excessive wrapping/taping, deformed letters, etc.);
- h. STG or gang-related activities and plans; or
- i. Any threat or factor that would undermine safety, security, order, discipline, control, or other legitimate penological interests.

### **8.0 PROCEDURES FOR PACKAGES/ITEMS**

- .1 The U.S. Supreme Court has ruled that disallowing packages does not violate inmates' rights.
- .2 Facilities may have the discretion to permit or prohibit receipt of packages for inmates as set forth in their facility policies.
- .3 Refer to Section 13.0 for process of rejecting /denial of prohibited items.

### **9.0 PROCEDURES FOR INMATES IN SEGREGATION**

- .1 Inmates in segregation shall be provided the same opportunities for writing and receipt of personal, official, and privileged mail as are available to the general population unless there is a problematic basis for restriction as determined by the Adjustment Hearings Officer or Program Committee. Suspension of correspondence shall never be for punishment purpose.
  - a. Factors that may warrant a restriction on correspondence include an offense involving the mail; threatening a State or Federal government official or other person, attempting to solicit funds or samples and subscribing to a publication without paying for the subscription, planning an escape, and planning or introducing contraband; i.e., weapons, drugs, drug paraphernalia, alcohol, etc.
  - b. Privileged correspondence shall not be subject to censorship, unless there is sufficient cause to believe mail is in fact private or threatening under the pretense of legal mail. In such cases, reason for censorship will be documented and authorized by the facility Warden or his designee.

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- c. The inmate shall be advised in writing of any correspondence restriction and given the opportunity to appeal to administration.
- d. Reference P & P COR.11.01, Administrative Segregation and Disciplinary Segregation, for further guidelines concerning inmate/ward correspondence while in segregation.

**10.0 PROCEDURES FOR INMATES REPORTING PRA**

- .1 In reference to P & P ADM.08.08, Prison Rape Elimination Act (PREA), an inmate may report incidents of sexual abuse, sexual harassment, and retaliation in writing to the following agencies and individuals:
  - a. Office of the Ombudsman;
  - b. Office of the Attorney General;
  - c. Legislator or Political Representative;
  - d. Legislator or Political Representative;
  - e. Sex Abuse Treatment Center;
  - f. Department of Public Safety Offices & staff;
  - g. A family member; or
  - h. Relevant law enforcement agency.

**11.0 REQUESTS FOR INMATE INFORMATION FROM OUTSIDE AGENCIES**

- .1 All replies to requests for information concerning inmates from outside agencies, attorneys or individuals shall be in accordance with established policies and shall be routed through the appropriate administrative authority as follows:
  - a. Requests for inmate information addressed to the Director shall be routed through the Director's Office for signature.
  - b. Requests for inmate information addressed to the facility Warden shall be routed through the facility Warden's Office for signature.

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- c. Request for inmate information addressed to the Internal Affairs (IA) Office shall be routed through the IA Chief Investigator's Office.

## **12.0 CORRESPONDENCE DELIVERY SCHEDULE**

- .1 At least one (1) correspondence/mailbox/lockbox receptacle will be available for general population and segregation inmates to drop off mail daily.
- .2 Inmate incoming correspondence should be handled within 24 hours (Monday through Friday) without unreasonable delay, except:
  - a. On weekends and holidays;
  - b. When mail is delivered to the wrong facility (i.e. an inmate transferred to another facility or out-of-state facility);
  - c. When mail would present a threat to personal safety or facility security, order, discipline, control, or other legitimate corrections interest; and
  - d. When the mail must be held for investigation.
- .3 Inmate outgoing privileged correspondence should be ordinarily logged and posted on the same day (Monday through Friday) without unreasonable delay except:
  - a. When mail is received from inmates after the close of normal business hours or after last mail pick up of the day;
  - b. When mail is received from inmates on weekends or holidays; or
  - c. When the mail must be held for investigation.

## **13.0 PROHIBITED CORRESPONDENCE/ITEMS**

- .1 When mail is received for an inmate is rejected or denied, the sender (if known) and the inmate to whom the mail was addressed shall both be notified in writing of the following:
  - a. Notification of rejection or denial;
  - b. Reason for rejection or denial; and

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- c. Process for both the inmate and the outside person wishing to correspond with the inmate to appeal the rejection or denial to the Warden/designee.
- .2 Facility mailroom staff will document receipt of prohibited correspondence on PSD Form 8322, "Prohibited Correspondence."
- .3 Facility mailroom staff will document receipt of prohibited items discovered with an inmate correspondence on PSD Form 8323, "Prohibited Items."
- .4 Unless an investigation or legal/disciplinary action is necessary, prohibited correspondence will be returned to the sender along with a copy of PSD Form 8322. The sender has up to seven (7) calendar days from receipt to appeal. The Warden will provide a response to the appeal from the sender within thirty (30) days.
- .5 Where permitted, the cost of returning prohibited correspondence/items to the sender will be charged to the inmate addressee.
- .6 Inmate appeals should be made through the inmate grievance system.
- .7 In the event correspondence/items was deemed appropriate based on the outcome of an investigation and/or no legal/disciplinary charges are recommended, the correspondence will be forwarded to the inmate.

#### **14.0 WRITING SUPPLIES AND POSTAGE**

- .1 Writing paper, envelopes, postcards, and postage shall be made available for purchase in the facility commissary by inmates for written correspondence.
- .2 Upon request, **indigent inmates** will be provided with supplies and postage for privileged, official, and personal correspondence as follows:
  - a. For privileged correspondence, the facility will provide sufficient writing supplies and postage in an amount equal to three (3) one (1) ounce letters per week;
  - b. For official and personal correspondence, the facility may provide sufficient writing supplies and postage in an amount equal to one (1) one (1) ounce letters per week; and
  - c. The facility will not be responsible for providing additional postal services such as registered mail, certified mail, insured mail, etc.

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- d. The facility business office shall debit the amount on the inmate's accounts receivable in the spendable account of the inmate trust account for collection upon any deposits.
- .3 Inmates are prohibited from receiving writing supplies and postage in incoming correspondence. All writing supplies and postage must be purchased through the facility commissary.

**15.0 SCOPE**

This policy applies to all Department correctional facilities.

APPROVAL RECOMMENDED:

*Andie Masalek-Huata*                      July 29, 2016  
Deputy Director for Corrections              Date

APPROVED:

*Jolan P. Espino*                              July 29, 2016  
Director                                              Date

## PROHIBITED CORRESPONDENCE

<b>Facility Name</b>			
<b>Inmate Name</b>		<b>SID</b>	

This is to inform you that correspondence to/from the following individual has been reviewed and denied due to the discovery of prohibited correspondence:

<b>Name</b>			
<b>Address</b>			
<b>City</b>	<b>State</b>	<b>Zip Code</b>	

Type of Correspondence (Check One):     Privileged                       Official                       Personal

**Reason for Denial (Check All That Apply):**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Plans to escape<br><input type="checkbox"/> Plans to introduce contraband into or out of the facility (i.e. drugs, weapons, other contraband)<br><input type="checkbox"/> Information which, if communicated, would create a clear and present danger of violence and physical harm to a human being<br><input type="checkbox"/> Suspicious correspondence (i.e. oily stains, discoloration, crystallization, excessive wrapping/tape/string, deformed packaging, etc.)<br><input type="checkbox"/> Other correspondence that may threaten or undermine safety, security, order, discipline, control, or a legitimate penological interest. | <input type="checkbox"/> Plans for criminal activities<br><input type="checkbox"/> Plans for activities in violation of facility rules<br><input type="checkbox"/> Correspondence which attempts to forward unauthorized correspondence to a third party<br><input type="checkbox"/> Engaging in STG or gang-related activities and plans |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Facility Disposition for Prohibited Correspondence (Check One):**

- |                                                                                                                                         |                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Returned to Sender (include PSD Form ## Appeal)<br><input type="checkbox"/> Retained for Further Investigation | <input type="checkbox"/> Referred for Disciplinary Proceedings<br><input type="checkbox"/> Forwarded to Law Enforcement Officials |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------|

**Form Completed By:**

<b>Printed Name</b>			
<b>Signature</b>		<b>DATE</b>	

Inmate appeals should be made through the facility grievance process within fifteen (15) calendar days of rejected correspondence. The sender has up to seven (7) calendar days from receipt to file appeal.

## CORRESPONDENCE APPEAL

**State Reason for Appeal (Attach additional pages if necessary):**


<b>Printed Name</b>			
<b>Signature</b>		<b>DATE</b>	

*This section to be completed by facility staff:*

**Warden /Designee Response (Attach additional pages if necessary):**


Disposition of Appeal:     Approved     Denied

<b>Signature</b>		<b>DATE</b>	
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## PROHIBITED ITEMS

<b>Facility Name</b>			
<b>Inmate Name</b>		<b>SID</b>	

This is to inform you that prohibited items to/from the following individual have been discovered with your correspondence:

<b>Name</b>			
<b>Address</b>			
<b>City</b>	<b>State</b>	<b>Zip Code</b>	

List of Prohibited Items Received:


Form Completed By:

<b>Printed Name</b>			
<b>Signature</b>		<b>Date</b>	

.....  
*This section to be completed by the inmate for prohibited items received:*

- I request the prohibited items to be returned to sender
- I request the prohibited items to be destroyed
- I request the prohibited items to be picked up by my visitor (I understand Warden or designee approval is required for this option)
- I request to pay for the prohibited items to be mailed to the following address:

<b>Name</b>			
<b>Address</b>			
<b>City</b>	<b>State</b>	<b>Zip Code</b>	

<b>Inmate Signature</b>		<b>Date</b>	
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NOTE: In the event a disposition has not been received within thirty (30) calendar days and no pending grievances or other hold notices exist, the prohibited items will be destroyed.

.....  
*This section to be completed by facility staff:*

For items requesting to be destroyed or for items where no disposition indicated within thirty (30) calendar days of notice:

Are there any pending appeals, grievances, or other hold notices for the prohibited item?  Yes  No  
 If yes, **do not** destroy the prohibited items until a final disposition has been reached.

**Destruction Information:**

<b>Date of Destruction</b>		<b>Time of Destruction</b>	
<b>Staff Signature</b>			

For items requesting to be picked up by visitor:

- Approved                       Disapproved

<b>Warden/Designee Signature</b>		<b>Date</b>	
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For items requesting to be mailed out:

<b>Mailed By</b>		<b>Date Mailed</b>	
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