



OREGON DEPARTMENT OF CORRECTIONS

OAR 291-131 Summary of Comments and Suggestions

Opposition:

Proposed legal arguments

- *Lawson v. Cain*, (2023) (affirming that Article I, section 13 imposes an objective standard on prisons to show that any indignity it imposes on people in custody must be justified by necessity).
- Oregon Constitution's prohibition on treating confined people with "unnecessary rigor." See Or. Const. Art. I, section 13.
- Inconsistent with state and federal laws, specifically the First Amendment to the United States Constitution and ORS 423.160, Bill of rights of children of incarcerated parents
- First Amendment to the United States Constitution - "Prisoners retain their First Amendment right to receive information while incarcerated." *Clement v. Cal. Dep't of Corr.*, 364 F.3d 1148, 1151 (9th Cir. 2004).
- "The Supreme Court has repeatedly recognized that restrictions on the delivery of mail burden an inmate's ability to exercise his or her First Amendment rights." *Morrison v. Hall*, 261 F.3d 896, 906 (9th Cir. 2001).
- Similar cases (unreasonable restrictions): See *Prison Legal News v. Cook*, 238 F.3d 1145 (9th Cir. 2001); *Ashker v. Cal. Dep't of Corr.*, 350 F.3d 917 (9th Cir. 2003); *Prison Legal News v. Columbia Cty*, 942 F.Supp.2d 1068 (D. Or. 2013).

Increased barriers to support networks (such as family, friends, ministry)

- Many AICs are confined to mail as their only means of communication (onerous phone validation policy)
- More difficult to stay in touch
- Greater impacts on aging parent who cannot drive or navigate technology for video visits
- Undermine bonds and valuable connections
 - Colorful letters, cards, and drawings play an indispensable role in preserving bonds
 - Impacts on re-entry (stable housing, employment)
- One way to communicate feelings

Impacts on children

- Can no longer send colorful drawings to cheer parents – emotional connection
- Hinder their ability to connect with their incarcerated parents
- Denying children this form of connection will compromise their mental and emotional wellbeing as well as their ability to maintain a close relationship with their incarcerated parent. (Oregon's Bill of Rights of Children of Incarcerated Parents)

Negative impacts on Black Oregonians

- Restricting communication between AICs and their loved ones will disproportionately impact families of color in Oregon since Black Oregonians are incarcerated at a rate four times higher than white Oregonians.

Challenges for low-income families

- Disproportionate impacts to low-income families who cannot afford prison phone calls, live far from the prison, or lack digital access
- Challenging to track down the right materials
- Limiting mail materials will only make mail, the most affordable and most used means of communication, more expensive and less accessible
- Strain and stress on the families
 - Phone calls and video visits are extremely overpriced and most families are unable to have regular contact because of this

Impact on rehabilitation and mental health

- Emotional support
- Staying on the right path
- Colorful cards lift mood
 - Proven by researchers that colors have a major impact on behavior and mood
 - Hearing about and seeing outside life helps heal a man
- Vital to the emotional/mental health and rehabilitation
- Emotional significance of personal touch
- Contradicts rehabilitation goals

Lack of evidence that mail is the problem

- Drugs are still making it into the correctional facilities through the other ways – COs, staff, visitors
- Root of the problem is the influx of drugs by the guards manning the prisons. Clamp down on this activity and you will have taken care of the major pathway of drugs
- Where's the data?
- By volume, introduction is primarily from staff, contractors

Ineffectiveness of digitizing mail

- States that have switched to digitizing mail, like Virginia, Missouri, New Mexico, and Texas, have not seen a decrease in drug use among incarcerated individuals

Infringement on rights and Constitutional protections

- Violates First Amendment by placing unjust limitations on free expression and communication
- The ability to receive personal mail and access reading materials is a fundamental right

Harm to Community Organizations

- Undermining their efforts to help AICs
- Community organizations, community services, schools, agencies, etc., which commonly print forms and information on paper of various colors and weight

Legal Correspondence Challenges

- The limitation to white paper and envelopes could hinder the ability to send important legal documents, which may require different formats, thus affecting inmates' rights and access to justice.
- Defense attorney: I regularly mail my clients paper on yellow legal pad paper which would be banned under the proposed rule changes
- Some legal documents require manila envelopes or other formats to properly organize and protect the contents

Unfair

- Infringement on human dignity
- Cruel/impersonal
- Dehumanizing
- Penalize all inmates for the actions of a few
- Prioritize humane treatment and understanding over strict regulations that could harm inmates' mental health and familial relationships.

Staff issues

- Poorly trained staff
- Lack of adequate staffing
- If you allowed packages, then adequate staff would be needed

Support:

- Abate the flow of drugs into prison
- Keep both our employees and inmates safer by making this change
- Keeping drugs out of our prisons is one of the most humane and important things you can do
- Do whatever you need to do to keep drugs out of prison
- Step in the right direction
- Those who have been providing contraband and those receiving should be prosecuted

Alternative Solutions:

- Every effort should be made to find the least restrictive solution that protects public safety while minimizing harm to AICs and their families
- More avenues for treatment (for staff and AICs)
- Use the “common” envelope size range 20-28#
- If there is concern about hidden space in “complicated” greeting cards being used for illicit purposes, these specific types of cards could easily be excluded by alternative wording. (make a rule to restrict these particular cards)
- Investigation role of staff on interdiction
- Track results so everyone can know the outcome
- Scan mail
 - Give AICs access to scanned cards/colorful drawings
 - AICs in good behavior standing are able to request some of them being printed in color
- More education
- ALL mail should be scrutinized – even legal mail
- Don’t pre warn an inmate of a pending in-person visitation
- Keep current rules
- Explore alternative security measures
 - Improved scanning technology
 - Drone detection technologies
 - Use of K-9 units to prevent entry contraband

Follow up?

Mill Creek and you have some major issues with interference in the handling of legal mail both incoming and outgoing that should be addressed.

Estimates (written comments only):

Total number of comments: approx. 670

Ratio supportive vs. opposed: 98% opposed by volume (Note: Many opponents support stopping the introduction of drugs into prison, but oppose restricting mail)

AIC (including former AIC and non-Oregon AIC) comments: approx. 10

Citizen/community organization responses: 140

Template letter comments: 561 (265 duplicates + 250 late to Director + 46 with unique comments added)

Late comments (not reviewed): 253

Number of presenters at public hearing: 12

Off-topic points:

- Third party vendors offer a wide selection of affordable and easily accessible materials such as self-help, spiritual, and educational literature.
- Allow nudity, graphic materials
- Can understand banning home-made cards and cards with glitter

Wrong Assumptions

- Restrict the use of handwritten letters
- Basically banning mail that is visually interesting for AICs
- The drug excuse is just that, *an excuse* to further dehumanize inmates who are simply trying to maintain relationships through mail
- Kids cannot engage with incarcerated parents or loved ones through pictures or drawings