

FORM OF ORDER AND TRANSMITTAL BY AGENCY HAVING SINGLE HEAD

State of Washington

DEPARTMENT OF CORRECTIONS
(agent name)

Administrative Order No. 83-04

(1) I, Amos E. Reed, director of the Department of Corrections do promulgate and adopt at Olympia, Washington (place)

the annexed rules relating to:

- Adoption - Chapters 137-48 and 137-36 WAC
Repeal - Chapters 275-96 and 275-87 WAC

(2) ALTERNATIVE A. Use only for Adoption of Permanent Rules.

This action is taken pursuant to Notice No. filed with the code reviser on. These rules shall take effect:
[] thirty days after they are filed with the code reviser pursuant to RCW 34.04.040(2).
[] at a later date, such date being.

(2) ALTERNATIVE B. Use only for Adoption of Emergency Rules.

I, Amos E. Reed, find that an emergency exists and that this order is necessary for the preservation of the public health, safety, or general welfare and that observance of the requirements of notice and opportunity to present views on the proposed action would be contrary to public interest. A statement of the facts constituting the emergency is:
Previous emergency adoption will soon expire. These rules have been revised based on public comment. Further comment is desired before final adoption.

These rules are therefore adopted as emergency rules to take effect upon filing with the code reviser.

(3) Pursuant to the requirements of RCW 34.04.026 that every agency shall incorporate the most specific, but in no case omit all, of the following language alternatives when adopting or amending rules fill in statement (a), (b), or (c) as appropriate:

- [] (a) This rule is promulgated pursuant to RCW and is intended to administratively implement that statute.
[] (b) This rule is promulgated pursuant to RCW which directs that the

(agency) has authority to implement the provisions of (name of act or RCW citation)

[X] (c) This rule is promulgated under the general rule-making authority of the Department of Corrections (agency)

as authorized in RCW 72.09.050, 72.08.103, 72.13.080, 72.15.040

(4) The undersigned hereby declares that the agency has complied with the provisions of the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.04 RCW) and the State Register Act (chapter 34.08 RCW) in the adoption of these rules.

(5) This order, after being first recorded in the order register of this agency, is herewith transmitted to the Code Reviser for filing pursuant to chapter 34.04 RCW and chapter 1-12 WAC.

STATE OF WASHINGTON APPROVED AND ADOPTED FILED

April 5

19 83

APR 5 1983

By Amos E. Reed

Amos E. Reed, Secretary Title

CODE REVISER'S OFFICE WSR 83-08-063

REPEALER

The following sections of the Washington Administrative Code are repealed:

- (1) WAC 275-96-005 DEFINITIONS.
- (2) WAC 275-96-010 COMMUNICATION--PURPOSE.
- (3) WAC 275-96-015 COMMUNICATION--GENERAL LIMITATIONS.
- (4) WAC 275-96-021 OUTGOING MAIL.
- (5) WAC 275-96-022 INCOMING MAIL.
- (6) WAC 275-96-025 SPECIAL RULES--INCOMING PUBLICATION
LIMITATIONS AND CONTROLS.
- (7) WAC 275-96-030 SPECIAL RULES REGARDING PACKAGES--LIMITATIONS
AND CONTROLS.
- (8) WAC 275-96-045 HANDLING OF MAIL.
- (9) WAC 275-96-050 TREATMENT OF CASH AND CHECKS.
- (10) WAC 275-96-055 LEGAL MAIL.
- (11) WAC 275-96-060 STATIONERY AND POSTAGE.
- (12) WAC 275-96-065 USE OF TELEPHONE.
- (13) WAC 275-96-070 PROCEDURE FOR DISAPPROVAL OF RESIDENT MAIL.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- (1) WAC 275-87-005 CONTRABAND--DEFINITIONS.
- (2) WAC 275-87-010 CONFISCATION.
- (3) WAC 275-87-015 DISPOSITION OF ILLEGAL ITEMS.
- (4) WAC 275-87-020 DISPOSITION OF OTHER ITEMS.
- (5) WAC 275-87-025 RECORDS.

Chapter 137-36 WAC

ADULT CORRECTIONAL INSTITUTIONS--INMATE PERSONAL PROPERTY

NEW SECTION

WAC 137-36-010 PURPOSE. The purpose of these rules is to maintain the safety, security, and discipline of adult correctional facilities operated under the jurisdiction of the department of corrections in accordance with Title 72 RCW et al., by establishing guidelines for the development of department and institution level policies and rules governing the retention of personal property by inmates to prevent the possession of illegal items and contraband within the institution.

NEW SECTION

WAC 137-36-020 DEFINITIONS. (1) "Contraband" consists of all illegal items, alcoholic beverages, and other items which a resident of a correctional institution may not have in his possession, as defined in regulations adopted by the superintendent of an institution and approved by the secretary.

(2) "Illegal items" are controlled substances as defined and listed in chapter 69.50 RCW or any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another.

(3) "Inmate" shall refer to those persons committed to the custody of the department of corrections and inmates transferred from other states or the federal government.

(4) "Secretary" is the secretary of the department of corrections or his/her designee(s).

(5) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

NEW SECTION

WAC 137-36-030 AUTHORIZED ITEMS. (1) Only authorized items may be retained by an inmate in the custody of the department. All authorized items shall be retained at the owner's risk. The state of Washington shall not be liable for any loss or damage.

(2) Authorized items may be limited in quantity and value when necessary to provide accountability, contraband control, safety or sanitary conditions, storage space, inmate morale or to meet the unique needs of each institution.

(3) Each superintendent shall establish regulations setting forth specific authorized items and levels of personal property for those inmates confined to that institution. Specific personal property authorizations may be suspended to ensure the safety, medical or mental health treatment objectives of any inmate or the general population and to ensure proper maintenance of order and security of the institution.

(4) All authorized items in excess or in noncompliance with the levels established by the superintendent of each institution shall be considered contraband and shall be disposed of as provided in WAC 137-36-040.

NEW SECTION

WAC 137-36-040 DISPOSITION OF PERSONAL PROPERTY. (1) Contraband items will be confiscated by the superintendent and disposed of in the following manner:

(a) Items which are determined to be owned by an inmate will be mailed or transferred to a person designated by the inmate at the inmate's expense. If the inmate is without funds, refuses to pay the required postage or refuses to designate an individual to receive the property, such items shall be donated to a charitable organization.

(b) Items for which ownership cannot be determined shall be held by the superintendent for six months and then donated to a charitable organization or destroyed.

(c) Money such as currency, personal checks, and money orders, is contraband within adult correctional institutions. If money or other negotiable instrument is found in the unauthorized possession of an inmate and he/she claims or disclaims ownership or, if ownership is unknown, the money or negotiable instrument shall be confiscated immediately and shall be deposited in the inmate welfare fund at the expiration of any appeal or hearing.

The inmate shall be advised in writing of his/her right to seek review of the decision to place the money in the inmate welfare fund. The review shall be sought by writing directly to the director of the division of prisons or his/her designee(s) within ten calendar days.

(2) Illegal items will be confiscated by the superintendent and disposed of in the following manner:

(a) Illegal items shall be held by the superintendent as required for evidence for law enforcement authorities.

(b) Illegal items not retained for evidence shall be destroyed.

NEW SECTION

WAC 137-36-050 INVENTORY OF PERSONAL PROPERTY. All personal property, whether confiscated, in the possession of the inmates or maintained by the institution shall be inventoried on forms established and approved by the secretary.

A continuous log will be maintained at each holding area designated for inmate personal property. The log shall identify the property contained therein as well as the custodial personnel who have access to the personal property area.

NEW SECTION

WAC 137-36-060 RETURN OF PERSONAL PROPERTY. Upon formal release from the institution, all personal property in the custody of the superintendent shall be returned to the inmate. If the inmate believes that property of value belonging to him/her has been lost or damaged due to staff negligence, he/she may file a claim pursuant to RCW 4.92.100.

NEW SECTION

WAC 137-36-070 IMPLEMENTATION. The secretary may adopt rules and regulations implementing this chapter.

Chapter 137-48 WAC

INMATE MAIL AND COMMUNICATIONS

NEW SECTION

WAC 137-48-010 PURPOSE. The purpose of these rules is to maintain the safety, security, and discipline of adult correctional facilities operated under the jurisdiction of the department of corrections in accordance with Title 72 RCW et al., by establishing guidelines for the development of department and institution level policies and rules governing the receipt and sending of mail by inmates to prevent the transmission of illegal items or contraband into or out of an institution.

NEW SECTION

WAC 137-48-020 DEFINITIONS. (1) "Contraband" consists of all illegal items, alcoholic beverages, and other items which a resident of a correctional institution may not have in his/her possession, as defined in regulations adopted by the superintendent of an institution and approved by the secretary.

(2) "Emergency situations" are critical illnesses, deaths, emotional crises, or similar situations experienced by members of the inmate's family or the inmate.

(3) "Illegal items" are controlled substances as defined and listed in chapter 69.50 RCW or any weapon, firearm, or any instrument which, if used, could produce serious bodily injury to the person of another.

(4) "Indigent inmate" means an inmate who has not been credited with more than ten dollars from any source for deposit to the inmate's trust fund during the thirty days preceding a mail request of postage to be paid by the institution or has less than a ten dollar balance in his/her trust fund account.

(5) "Inspection of mail" means the physical act of opening, touching, smelling, and/or reading of mail, the use of mechanical or chemical systems and/or the use of animals to determine the presence of contraband or illegal items.

(6) "Legal correspondence" consists of mail addressed to or from attorneys or government officials as listed in WAC 137-48-030(2).

(7) "Letters" consists of personal communications and enclosures to and from inmates including, but not limited to, handwritten or typed communications.

(8) "Mail" consists of letters, publications, or packages delivered by the United States Post Office or by other means.

(9) "Packages" means the immediate container or wrapping and the contents therein in which any item is contained for consumption, use or storage by inmates, and for purposes of this chapter, also means any shipping container or outer wrapping and the contents therein used by retailers to ship or deliver any item to inmates where it is the only such container or wrapping.

(10) "Publications" consists of reproduced handwritten or pictorial materials including books, periodicals, newspapers, and pamphlets.

(11) "Secretary" is the secretary of the department of corrections or his/her designee(s).

(12) "Superintendent" means the superintendent of a correctional facility or his/her designee(s).

(13) "Legal mail" is correspondence to or from courts and court staff (judges, clerks of the court, judicial law clerks, etc.), attorneys and persons working for attorneys and to established groups involved in the representation of inmates in judicial proceedings (ACLU, legal services groups, etc.), and government officials or agencies. To be considered "legal mail" the correspondence must clearly be marked "legal mail" on the outside of the envelope.

NEW SECTION

WAC 137-48-030 INSPECTION OF MAIL. (1) All mail received by or to be sent by an inmate, excluding legal mail discussed in subsection (2) of this section, may be inspected at any time by the superintendent or his/her designee(s). Mail may be ~~disappraised~~ ^{disapproved} for receipt or transmittal in accordance with WAC 137-48-040. No person who inspects, or participates in the inspection, of an inmates mail, shall disclose the contents except in the cause of his/her official duties.

(2) Mail which is clearly identified on the outside of the envelope as legal mail, as defined in WAC 137-48-020(13), shall be inspected only in the presence of the inmate. Legal mail shall not be read without a search warrant.

(3) Mail containing illegal items or contraband shall be held and disposed of in accordance with the procedures set forth in chapter 137-36 WAC or as otherwise stated in this chapter.

NEW SECTION

WAC 137-48-040 RESTRICTION OF INCOMING AND/OR OUTGOING MAIL. (1) Incoming mail to inmates may be disapproved for receipt for any one of the following reasons:

(a) The mail contains threats of physical harm against any person or threats of criminal activity.

(b) The mail threatens blackmail or extortion.

(c) The mail concerns sending contraband in or out of the institution.

(d) The mail contains plans to escape.

(e) The mail contains plans for activities in violation of institutional rules, such as riots.

(f) The mail concerns plans for criminal activity.

(g) The mail is in code or in a foreign language and its contents are not understood by the reader.

(h) The mail contains information which, if communicated, would create a risk of violence and/or physical harm.

(i) The mail contains contraband.

(j) The mail contains obscene material as defined in department policy directives.

(2) Outgoing mail from inmates of institutions may be disapproved for mailing for any one of the following reasons:

(a) For any one of the reasons set forth in WAC 137-48-040(1).

(b) The mail is addressed to a minor whose parents or guardian have objected in writing to such correspondence; an individual previously has been sent obscene or threatening mail by the inmate and has complained or has asked that such mail not be received; the mail solicits money or goods from persons other than the immediate family of the inmate.

(3) No letter is to be restricted for the reason that it contains critical opinions of departmental policy or departmental employees.

(4) In addition to those reasons cited in this section, publications received by inmates may be restricted if:

(a) It advocates that any ethnic, racial, or religious group is inferior for any reason and makes such group an object of ridicule and scorn; or

(b) It may reasonably be thought to precipitate a violent confrontation between the recipient(s) and a member(s) of the target group. No publications will be withheld solely on the basis of their appeal to a particular ethnic, racial, or religious group.

(5) In addition to those reasons cited in this section, packages sent either to or from an inmate are subject to the following restrictions:

(a) An inmate may receive one gift package not to exceed fifteen pounds in weight on a quarterly basis. Quarterly periods shall consist of December through February, March through May, June through August, and September through November. Rules governing the contents of quarterly packages shall be developed specifically by each institutional superintendent and approved by the secretary. The superintendent may allow exceptions from the one gift package limitation and weight limitation provided that appropriate contraband controls are maintained.

(b) The contents of the quarterly package shall be restricted to those items that are otherwise not available to the inmate through the institutional store. A replacement package may be sent during the same quarter for damaged packages that are returned to the sender by the inmate. Packages containing contraband shall be refused delivery to the inmate and will be counted as the package for that quarter.

(c) Prepaid merchandise approved by the superintendent and ordered by the inmate from any wholesaler or retailer shall not be considered one of the quarterly packages.

(d) Inmates may mail packages containing materials which have been sent to him or her in the institution or gifts consisting of his or her own hobby craft or curio work. Packages must be made and mailed at the inmate's expense.

(e) Newly admitted inmates at the Washington Corrections Center will not receive packages while assigned to the reception center.

NEW SECTION

WAC 137-48-050 PROCEDURES FOR RESTRICTIONS OF INCOMING AND/OR OUTGOING MAIL. (1) If an inmates's incoming or outgoing mail is restricted, notification shall be provided to the inmate and the author of the mail in writing of the specific publication, letter, or package which has been censored and the reason for this action.

(2) The inmate and author shall be advised in writing of his/her right to seek review of the decision to restrict his/her mail. The review shall be sought by writing directly to the director of the division of prisons or his/her designee(s) within ten calendar days.

(3) Upon receipt of an inmate's and/or author's appeal, the director of prisons or his/her designee shall affirm or reverse the action taken at the institution level and shall advise the inmate and/or author in writing of this action within ten working days from the receipt of the inmate's or author's written request.

(4) When a decision is rendered regarding a particular issue of a publication, that decision shall be binding for all facilities in the division of prisons.

(5) If a package contains contraband and is subject to criminal prosecution, the entire package will be turned over to the appropriate law enforcement agency. Items of contraband not subject to criminal prosecution will be disposed of in accordance with those procedures set forth in chapter 137-36 WAC. Noncontraband items in the package will be forwarded to the inmate.

NEW SECTION

WAC 137-48-060 MAIL COSTS. (1) Except as otherwise stated in this section, mail costs shall be the responsibility of the inmate.

(2) Mail which arrives at the institution with postage due may, at the option of the superintendent, be delivered to the inmate. The institution may pay the postage due in accordance with subsection (3) of this section, or hold the mail for a reasonable period of time so as to allow the inmate to arrange for payment of the postage due. If such arrangements are not made within the time provided, the package may be donated to charity or discarded.

(3) Indigent inmates shall be authorized to receive postage for a maximum of five letters per week. This postage shall cover both legal and regular correspondence irrespective of the number of letters identified as legal mail. This shall also include costs advanced by the institution for postage due mail.

NEW SECTION

WAC 137-48-070 MAIL RECORDS. The institution superintendent or his/her designee(s) shall be responsible for the maintenance of a continuous record showing the source and destination of legal and official correspondence to and from government officials, packages and items of monetary value mailed by or mailed to an inmate. The secretary shall establish procedures for each institution governing the written mail record.

NEW SECTION

WAC 137-48-080 TELEPHONE USAGE. (1) Telephone facilities shall be provided in appropriate numbers and locations to permit reasonable and equitable access to all inmates, except inmates of the reception center and those inmates in disciplinary segregation.

(2) The superintendent shall promulgate written regulations providing for access of inmates to additional telephone facilities in emergency situations.

(3) The superintendent shall promulgate written regulations outlining the hours of telephone availability, maximum length of calls (not less than five minutes) and any limitations on telephone use, subject to approval by the secretary.

NEW SECTION

WAC 137-48-090 IMPLEMENTATION. The secretary may adopt rules and regulations implementing this chapter.