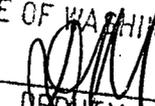


FILED
COURT OF APPEALS
DIVISION II

2015 JUN 29 AM 9:09

STATE OF WASHINGTON

BY  DEPUTY

NO. 47299-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

DAVID ALLEN TROUPE, JR.,

Petitioner.

RESPONSE OF THE
DEPARTMENT OF
CORRECTIONS

The Respondent, Department of Corrections (DOC), through its attorneys, ROBERT W. FERGUSON, Attorney General, and AARON WILLIAMS, Assistant Attorney General, hereby responds to the Personal Restraint Petition (PRP) of David Allen Troupe.

I. BASIS FOR INCARCERATION

The Petitioner, David Allen Troupe, DOC #765714, is currently in the custody of DOC at the Washington State Penitentiary (WSP), pursuant to a valid judgment and sentence for first degree robbery, second degree robbery, unlawful possession of a firearm, and possession of a machine gun or short barreled rifle/shotgun. Exhibit 1, Declaration of Cherrie Melby, Attachment A, Offender Management Network Information (OMNI), excerpts of Legal Face Sheet, pp. 1, 6-7. Mr. Troupe's potential early release date of January 18, 2020. Exhibit 1, Attachment A, p. 1. Petitioner is not directly challenging his underlying conviction in this petition.

II. STATEMENT OF FACTS

Mr. Troupe filed this PRP presenting five grounds for relief. After the Petition was filed, the Respondent moved to revoke the waiver of Petitioner's filing fee pursuant to RCW 4.24.430. In his "Reply" to that Motion, Mr. Troupe withdrew the first and third grounds for relief in his Petition. Petitioner's Reply to Respondent's Motion to Waive Fee at 2.

Mr. Troupe is not challenging unlawful restraint as a result of disciplinary hearing. Instead, he challenges the conditions of his confinement in three respects. Mr. Troupe's second ground for relief is that he believes the sprinkler systems in his cell at WSP are unsafe because they are prone to going off on their own and are sometimes turned off creating a water danger to Mr. Troupe's property and a potential future fire danger to Mr. Troupe at some future unknown date and time. Petition at 4-5. The sole relief Mr. Troupe seeks for Ground II is injunctive relief in the form of a Court Order requiring DOC to install functioning sprinkler heads that are on at all times yet do not pose a significant threat to destroy Petitioner's property or physically assault him. Petition at 5.

Mr. Troupe's fourth ground for relief is that he believes DOC indigent mail policy hinders his access to the Court's and violates his First Amendment Rights. Petition at 8. DOC Policy 450.100 governs the number of envelopes indigent inmates such as Mr. Troupe are permitted to

receive free of charge. Specifically, DOC Policy 450.100 (XII)(I) states, “[i]ndigent offenders may receive 10 first class pre-franked envelopes per month”. Exhibit 2, Declaration of Dell-Autumn Witten, Attachment A, DOC Policy 450.100. DOC Policy 450.100 (XII)(I)(2) states, “[i]ndigent offenders may request additional postage from the Law Librarian or assigned Counselor to send legal mail to a court, the Washington State Bar Association, the Indeterminate Sentence Review Board (ISRB), the Washington State Office of Financial Management’s Tort Claims Division, and/or the Prison Rape Elimination Act Coordinator at Headquarters. Exhibit 2, Attachment A. DOC Policy 450.100 (XII)(I)(3) states, “[i]ndigent offenders whose mail requires postage which exceeds the first pre-franked envelope may be allowed additional postage with Superintendent/designee approval”. Exhibit 2, Attachment A. The sole relief Mr. Troupe seeks for Ground IV is injunctive relief in the form of a Court Order requiring DOC to rewrite its policy to allow indigent offenders to obtain up to 15 pre-franked envelopes per week once they have used their 10 pre-franked envelope monthly allotment. Petition at 8-9.

Mr. Troupe’s fifth ground for relief is that he believes WSP’s policy of only permitting him to file his legal documents one day a week interferes with his ability to meet Court deadlines. Petition at 10. Mr.

Troupe states that he was ‘lucky’ in one instance because a U.S. Magistrates’ Report and Recommendation came on the day before he was permitted to file his legal mail by depositing it into the inmate legal mail system pursuant to GR 3.1. Petition at 10-11. The sole relief Mr. Troupe seeks for Ground V is injunctive relief in the form of a Court Order requiring DOC to permit Mr. Troupe to mail legal mail seven days per week. Petition at 11.

III. STATEMENT OF ISSUES

1. Whether Mr. Troupe’s petition should be dismissed because he has failed to show that he is being unlawfully restrained?

2. Whether Mr. Troupe’s petition should be dismissed because the injunctive relief he seeks is not available to him in the context of a PRP?

3. Whether Mr. Troupe’s petition should be dismissed because he has other adequate remedies at law?

IV. EVIDENCE RELIED UPON

Exhibit 1: Declaration of Cherrie Melby

Attachment A: Offender Management Network Information (OMNI), *excerpts* of Legal Face Sheet

Exhibit 2: Declaration of Dell-Autumn Witten

Attachment A: DOC Policy 450.100

V. STANDARD OF REVIEW

A prisoner seeking relief from discipline imposed as the result of a prison disciplinary hearing must demonstrate that he is being unlawfully restrained. RAP 16.4; *In re Gentry*, 170 Wn.2d 711, 715, 245 P.3d 766, 768 (2010). A petitioner is under a "restraint" if the petitioner has limited freedom because of a court decision in a civil or criminal proceeding, the petitioner is confined, the petitioner is subject to imminent confinement, or the petitioner is under some other disability resulting from a judgment or sentence in a criminal case. RAP 16.4(b). Where, as here, a petitioner contests the conditions or manner of confinement, he or she must demonstrate the unlawful nature of restraint by showing "[t]he conditions or manner of the restraint are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington" RAP 16.4(c)(6). Conclusory allegations of constitutional violations are insufficient to support a personal restraint petition. *In re Cook*, 114 Wn.2d 802, 813, 792 P.2d 506 (1990).

VI. ARGUMENT

A. **Mr. Troupe's Petition Should Be Dismissed Because He Has Failed To Show That He Is Being Unlawfully Restrained**

The Respondent will not address the first and third grounds for relief in Mr. Troupe's Petition because he has withdrawn those grounds. Petitioner's Reply to Respondent's Motion to Waive Fee at 2. None of

Mr. Troupe's remaining grounds for relief involve the length of his confinement. Therefore, he is only seeking relief pursuant to RAP 16.4(c)(6), which permits his restraint to be found unlawful if, "[t]he conditions or manner of the restraint of petitioner are in violation of the Constitution of the United States or the Constitution or laws of the State of Washington".

Here, Mr. Troupe cannot establish that his restraint is unlawful. For instance, in Ground II, Mr. Troupe speculates that at some future time, he might be harmed in a cell fire or that his property may be harmed by water damage if the sprinkler system in his cell is not replaced. Petition at 4-5. However, Mr. Troupe must present evidence that is more than speculation, conjecture or inadmissible hearsay to support his contentions. *In re Gronquist*, 138 Wn.2d at 395. Because Mr. Troupe is only speculating that the sprinkler systems at WSP may malfunction on some future date, this claim should be dismissed.

Likewise, Mr. Troupe's fourth ground for relief is that he believes the DOC indigent mail policy, which limits indigent offenders to 10 free pre-franked envelopes per month, hinders his access to the Courts. Petition at 8. This claim fails because DOC Policy 450.100 (XII)(I) states, "[i]ndigent offenders may request additional postage from the 10 first class pre-franked envelopes per month from the Law Librarian or assigned Counselor to send legal mail to a *court*, the Washington State Bar Association, the Indeterminate Sentence Review Board (ISRB), the Washington State Office of Financial Management's Tort Claims

Division, and/or the Prison Rape Elimination Act Coordinator at Headquarters”. Exhibit 2, Attachment A (emphasis supplied). Consequently, Mr. Troupe does have a means of obtaining additional pre-franked envelopes to send to the court. Therefore, Mr. Troupe cannot show that his restraint was unlawful regarding Count IV.

Mr. Troupe’s fifth ground for relief is equally without merit. To establish a violation of the right of access to the courts, a prisoner must establish that he or she has suffered an actual injury, a jurisdictional requirement that flows from the standing doctrine and may not be waived. *See Lewis v. Casey*, 518 U.S. 343, 349, 116 S. Ct. 2174, 2179, 135 L. Ed. 2d 606 (1996). An “actual injury” is “actual prejudice with respect to contemplated or existing litigation, such as the inability to meet a filing deadline or to present a claim.” *Id.* at 348 (citation and internal quotations omitted).

Here, Mr. Troupe’s only allegation of actual harm is that he was ‘lucky’ in one instance because a U.S. Magistrates’ Report and Recommendation came on the day before he was permitted to file his legal mail by depositing it into the inmate legal mail system pursuant to GR 3.1. Petition at 10-11. This fortuitous incident, however, does not show an actual injury with prejudice as required by *Lewis*. Consequently, Mr. Troupe has failed to show his restraint was unlawful and his Petition should be dismissed.

B. Mr. Troupe's Petition Should Be Dismissed Because He Is Not Entitled To The Injunctive Relief He Seeks In A Personal Restraint Petition

Mr. Troupe only requests injunctive relief from this Court. The sole relief Mr. Troupe seeks for Ground II is injunctive relief in the form of a Court Order requiring DOC to install functioning sprinkler heads that are on at all times yet do not pose a significant threat to destroy Petitioner's property or physically assault him. Petition at 5. The sole relief Mr. Troupe seeks for Ground IV is injunctive relief in the form of a Court Order requiring DOC to rewrite its policy to allow indigent offenders to obtain up to 15 pre-franked envelopes per week once they have used their 10 pre-franked envelope monthly allotment. Petition at 8-9. The sole relief Mr. Troupe seeks for Ground V is injunctive relief in the form of a Court Order requiring DOC to permit Mr. Troupe to mail legal mail seven days per week. Petition at 11.

In *Sappenfield*, the Washington Supreme Court considered a Petition requesting injunctive relief. *In re Sappenfield*, 138 Wn.2d 588, 595, 980 P.2d 1271, 1275 (1999). Ruling that the Court may only order removal of unlawful restraint, the Court determined that the requested remedy was beyond the scope of relief for a Personal Restraint Petition and that Sappenfield would have to resort to a civil action for further relief. *Id.* Here, Mr. Troupe has likewise only requested injunctive relief and his Petition should be dismissed accordingly.

C. Mr. Troupe's Petition Should be Dismissed Because He Has Other Adequate Remedies At Law

RAP 16.4(d) states that, "The appellate court will only grant relief by personal restraint petition if other remedies which may be available are inadequate under the circumstances, and if such relief may be granted under RCW 10.73.090, .100, and .130...."

RCW 10.73.090, .100, and .130 deal with the time frames within which an inmate must initiate collateral attack on his underlying conviction, one year. However, Mr. Troupe is not collaterally attacking his underlying conviction, therefore, that portion of RAP 16.4(d) is inapplicable to him.

Respondent has found no cases directly on point as to what constitutes the adequacy of other remedies referred to in RAP 16.4(d).¹ However, it contends the personal restraint petition process was intended solely for situations where an inmate is under some form of restraint, or will be imminently restrained, therefore personal restraint petitions are designed to be decided quickly. But Mr. Troupe is not under any current or imminent unlawful restraint in this Petition, therefore the personal restraint petition process is inappropriate.

¹ In *In re Arseneau*, 98 Wn. App. 368, 989 P.2d 1197 (1999), the court held the petitioner was not required to exhaust his civil remedies before filing a personal restraint petition. 98 Wn. App. at 374. Respondent is not contending RAP 16.4(d) requires exhaustion of civil remedies before filing a petition just that if a petitioner has other adequate remedies, and those remedies are better suited to petitioner's claims, he should be required to avail himself of such remedies.

Rather, Mr. Troupe's claim raises some allegations of constitutional violations unrelated to his restraint. In this case, Mr. Troupe clearly has other adequate remedies available to him to secure the relief he seeks in the form of a 42 U.S.C § 1983 action for violation of his First and Eight Amendment rights. Such issues are more appropriately addressed in a civil litigation where time is needed to investigate the claims, retain experts, interview witnesses and conduct discovery. Because this matter is more appropriately litigated in a civil rights lawsuit, Mr. Troupe has another adequate legal remedy and RAP 16.4(d) mandates dismissal of his petition.

VII. CONCLUSION

For the reasons stated above, the Respondent respectfully requests that Mr. Troupe's Personal Restraint Petition be denied.

RESPECTFULLY SUBMITTED this 26th day of June, 2015.

ROBERT W. FERGUSON
Attorney General



AARON WILLIAMS, WSBA #46044
Assistant Attorney General
Corrections Division, OID #91025
PO Box 40116
Olympia WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

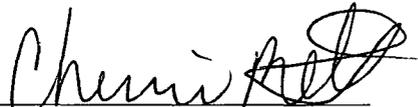
I certify that I served a copy of the foregoing document on all parties or their counsel of record as follows:

US Mail Postage Prepaid

DAVID TROUPE, DOC #765714
WASHINGTON STATE PENITENTIARY
1313 N 13TH AVENUE
WALLA WALLA WA 99362

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 26th day of June, 2015, at Olympia, WA.



CHERRIE MELBY
Legal Assistant

EXHIBIT 1

NO. 47299-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

DAVID ALLEN TROUPE, JR.,

Petitioner.

DECLARATION OF
CHERRIE MELBY

I, CHERRIE MELBY, make the following declaration:

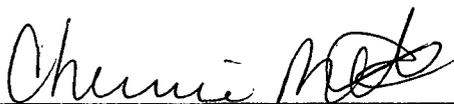
1. I am a legal secretary with the Corrections division of the Attorney General's Office in Olympia, Washington. I have knowledge of the facts stated herein and am competent to testify.

2. I am familiar with the Offender Management Network Information system (OMNI) used by the Department of Corrections (DOC). I am authorized by the DOC to retrieve information from OMNI. Among other things, information regarding an offender's location, custody, birth date, sentence, infractions and grievances are entered and tracked on OMNI. Attached to this declaration is a true and correct copy of a document which I obtained from OMNI

Attachment A. OMNI Legal Face Sheet, *excerpts*

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 24th day of June, 2015, at Olympia,
Washington.



CHERRIE MELBY

ATTACHMENT A

Inmate: TROUPE, David Allen (765714)

Gender: Male	DOB:	Age: 36	Category: Regular Inmate	Body Status: Active Inmate
RLC: HV	Wrap-Around: No	Comm. Concern: Yes	Custody Level: Maximum	Location: WSP-IMU — IMS / MSE11
ERD: 01/18/2020	CC/CCO: Mckinney, David A			

Offender Information (Combined)

Prison Max Expiration Date:	02/13/2020	Last Static Risk Assessment Date:	09/03/2014	DOSA:
Planned Release Date:		Last Offender Need Assessment Date:	02/06/2015	ISRB? No
Earned Release Date:	01/18/2020	RLC Override Reason:		CCB? No
ESR Sex Offender Level:				SOSSA? No
ESR Sex Offender Level Date:		Offender Release Plan:	Unknown	WEP? No
County Sex Offender Level:		Victim Witness Eligible?	Yes	
Registration Required?		County Of First Felony Conviction:	Pierce	
ORCS?	No	P U L H E S D X T 2 3 1 1 1 2 3 1 1		
DD?	No			
SMICNF?	No			

Personal Characteristics

Aliases, Dates of Birth and Places of Birth			
Aliases			
*Last Name:	First Name:	Middle Name or Initial:	Suffix:
TROUPE	David	A	Jr.
TROUPE	David	A	
TROUPE	David		
Dates of Birth		Places of Birth	
*Dates of Birth:	Use for Age Calculation?	City:	State / Province: Country:
	Yes	Panama	Central America
Education			
Last School Attended			
State:	City:	School:	School District: Other School in Washington:
Identifications			
General			
FBI Number:	FBI Fingerprint Code:	WA State ID Number:	ICE Registration Number:
566180EB8	POAA0313040563011615	WA16603374	

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
01/17/2021	0Y, 12M, 0D	365	01/17/2022	08/19/2027
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	N			

Sentence Structure (Inmate)

Cause: AA - 971017116 - Pierce

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	David Troupe	05/19/1997	
Time Start Date:	Confinement Length:	Earned Release Date:	
05/20/1997	1Y, 5M, 0D	04/08/1998	

Count: 1 - RCW 9A.52.020 - Burglary 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				1Y, 5M, 0D	33.33%	04/08/1998	09/21/1998	Life	Yes
Supervision Type:	Supervision Length:	Consecutive Count:					Hold To Stat Max Expiration:		
MON	0Y, 0M, 0D								

Cause: AB - 991000450 - Lewis

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	David Troupe	03/05/1999	
Time Start Date:	Confinement Length:	Earned Release Date:	
03/11/1999	0Y, 200M, 0D	08/20/2015	

Count: 1 - RCW 9A.56.200 - Robbery 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 60M, 0D		08/20/2015	02/13/2020	Life	Yes
Supervision Type:	Supervision Length:	Consecutive Count:					Hold To Stat Max Expiration:		
CP	0Y, 12M, 0D								

Count: 2 - RCW 9.41.040(1)(a) - Unlawful Possession of a Firearm 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 54M, 0D	33.33%	06/20/2008	02/13/2020	08/14/2027	No
Supervision Type:	Supervision Length:	Consecutive Count:					Hold To Stat Max Expiration:		
CP	0Y, 12M, 0D								

Count: 3 - RCW 9.41.190 - Possession of a Machine Gun or Short-barreled Shotgun/Rifle

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 12M, 0D	33.33%	12/20/2004	02/13/2020	02/11/2026	No

Supervision Type: CP
 Supervision Length: 0Y, 12M, 0D
 Consecutive Count:
 Hold To Stat Max Expiration:

Count: 5 – RCW 9A.56.210 – Robbery 2

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 70M, 0D
 ERT %: 33.33%
 ERD: 10/20/2009
 MaxEx: 02/13/2020
 Stat Max: 04/14/2026
 Violent Offense? Yes

Supervision Type: CP
 Supervision Length: 0Y, 0M, 0D
 Consecutive Count:
 Hold To Stat Max Expiration:

Cause: AC – 991024984 – Pierce

State: Washington
 Convicted Name: David Troupe
 Date Of Sentence: 09/02/1999
 Consecutive Cause: AB – 991000450 – Lewis
 Time Start Date: 08/20/2015
 Confinement Length: 0Y, 53M, 0D
 Earned Release Date: 01/18/2020

Count: 1 – RCW 9A.56.210 – Robbery 2

Anticipatory: Modifier: Enhancement: Mandatory: Confinement Length: 0Y, 53M, 0D
 ERT %: 33.33%
 ERD: 01/18/2020
 MaxEx: 02/13/2020
 Stat Max: 08/19/2027
 Violent Offense? Yes

Supervision Type: CP
 Supervision Length: 0Y, 12M, 0D
 Consecutive Count:
 Hold To Stat Max Expiration:

Conditions

Cause: AB – 991000450 – Lewis

Condition Name	Narrative	Imposing Authority	Effective Date	End Date
Abide By DOC Conditions	You Shall Abide By DOC Conditions Per The Direction Of The CCO.	Court Ordered	03/11/1999	
Advise CCO-Change/Address	You Shall Advise Your CCO Of Change Of Address.	Court Ordered	03/11/1999	
Advise CCO-Change/Employment	Your Employment Locations And Arrangements Shall Be Subject To Prior Approval Of Your CCO And Shall Not Be Changed Without Their Prior Knowledge And Permission.	Court Ordered	03/11/1999	
Advise CCO-Court Ordered Treatment	You Shall Inform The Department Of Court Ordered Treatment Upon Request By The Department.	Court Ordered	03/11/1999	
Advise CCO-Prescribed Meds		Court Ordered	03/11/1999	
Alcohol-Consume	You Shall Not Consume Alcohol.	Court Ordered	03/11/1999	
Alcohol-Possession	You Shall Not Possess Alcohol.	Court Ordered	03/11/1999	
Breathalyzer		Court Ordered	03/11/1999	
CCO-Report		Court Ordered	03/11/1999	
Comply-Affirmative Acts		Court Ordered	03/05/1999	

EXHIBIT 2

NO. 47299-6-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

In re the Personal Restraint Petition of:

DAVID ALLEN TROUPE, JR.,

Petitioner.

DECLARATION OF
DELL-AUTUMN
WITTEN

I, DELL-AUTUMN WITTEN, make the following declaration:

1. I have knowledge of the facts herein, am over eighteen years of age, and am competent to testify to such facts. I am not a party to this lawsuit.

2. I am employed as the Policy Program Manager for the Department of Corrections (DOC). In this position, I have access to and am familiar with DOC Policies related to offender legal access and the reasons those policies are in place, including the policies in place at the Washington State Penitentiary (WSP).

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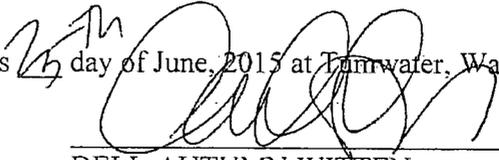
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3. DOC Policy 450.100 governs the number of envelopes indigent inmates are permitted to receive free of charge. Attachment A is a true and correct copy of DOC Policy 450.100.

I declare under the penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

EXECUTED this 25th day of June, 2015 at Timwaver, Washington.



DELL-AUTUMN WITTEN

ATTACHMENT A



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

APPLICABILITY

PRISON
OFFENDER/SPANISH MANUALS

REVISION DATE
8/15/14

PAGE NUMBER
1 of 15

NUMBER
DOC 450.100

POLICY

TITLE

MAIL FOR PRISON OFFENDERS

REVIEW/REVISION HISTORY:

Effective: 2/1/83 DOC 450.020	Revised: 1/22/07
Revised: 9/1/83	Revised: 4/26/07 AB 07-013
Revised: 10/24/83	Revised: 6/7/07 AB 07-016
Revised: 2/20/84	Revised: 7/30/07 AB 07-022
Revised: 11/6/87	Revised: 9/12/07 AB 07-028
Revised: 1/1/92 DOC 450.100	Revised: 5/19/08
Revised: 11/1/92	Revised: 8/11/08 AB 08-022
Revised: 11/1/93	Revised: 10/1/09
Revised: 12/27/93	Revised: 12/31/09
Revised: 11/1/94	Revised: 9/1/10
Revised: 1/10/99	Revised: 7/25/11
Revised: 1/5/00	Revised: 8/15/14
Revised: 5/1/04	

SUMMARY OF REVISION/REVIEW:

Major changes, including policy title. Read carefully!

APPROVED:

Signature on file

BERNARD WARNER, Secretary
Department of Corrections

6/19/14

Date Signed

ATTACHMENT

A

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 8/15/14	PAGE NUMBER 2 of 15	NUMBER DOC 450.100
	TITLE MAIL FOR PRISON OFFENDERS		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 72.02.260; RCW 72.09.450; WAC 137-36; WAC 137-48; DOC 200.000 Trust Accounts for Offenders; DOC 200.200 Offender Betterment Fund (OBF); DOC 320.255 IMU/ITU/Segregation/Mental Health Segregation Operations; DOC 320.260 Secured Housing Units in Stand Alone Minimum Security Facilities; DOC 420.375 Contraband and Evidence Handling; DOC 440.000 Personal Property for Offenders; DOC 450.120 Packages for Offenders; DOC 450.300 Visits for Prison Offenders; DOC 460.000 Disciplinary Process for Prisons; DOC 590.500 Legal Access for Offenders

POLICY:

- I. The Department has established procedures governing mail to/from offenders that maintain safety and security.
- II. DOC 320.255 IMU/ITU/Segregation/Mental Health Segregation Operations and DOC 320.260 Secured Housing Units in Stand Alone Minimum Security Facilities place restrictions on the allowances and limits outlined in this policy for offenders in Intensive Management and other special housing assignments.

DIRECTIVE:

- I. General Requirements
 - A. Correspondence between offenders and their correspondents will be limited to the United States Postal Service (USPS) and the contracted eMessage service provider.
 - B. Offenders will be responsible for informing their correspondents of the rules governing offender mail.
 - C. Limits may be placed on volume, length, content, or source of mail when necessary to maintain safety and security.
 - D. Writing privileges to a person or group may be withdrawn when:
 1. Requested by the recipient in writing,
 2. The recipient is a minor and his/her parent or guardian has requested, in writing, that the privilege be terminated,
 3. Court ordered, or
 4. Specific cause exists as supported by criteria in this policy.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 8/15/14	PAGE NUMBER 3 of 15	NUMBER DOC 450.100
	TITLE MAIL FOR PRISON OFFENDERS		

- E. Excluding weekends, holidays, or emergency situations, approved mail will be processed in the following timeframes:
1. Outgoing first class mail will not be held for more than 48 hours.
 2. Incoming first class mail will be distributed to the offender within 2 working days, and all other incoming mail, including eMessages, will be made available to the offender within 5 working days.
- F. Offenders will not process and/or distribute another offender's mail.

II. Offender to Offender Correspondence

- A. Correspondence between offenders confined in any correctional facility will only be allowed when authorized by both Superintendents/facility administrators/designees. The offenders must meet at least one of the following requirements:
1. Are members of the same immediate family,
 2. Have a child together, as proven through a birth certificate and only if both offenders still have parental rights, and/or
 3. Are co-parties in an active legal case, or one offender is providing a witness statement in the other offender's active legal case.
- B. The requesting offender will complete and submit DOC 21-746 Request for Offender to Offender Correspondence Approval to his/her Counselor with any pertinent supporting documentation.
1. The Counselor/CCO will verify the request meets policy requirements and forward the request with any supporting documentation to the Superintendent/designee for a final decision.
 2. Approvals for legal-related correspondence will expire when confirmation is received from the Attorney General's Office that the case has been resolved/closed or witness statements have been received, or when either co-party releases from custody.
 3. Approvals may be accepted by any receiving facility upon an offender's transfer.
 4. Approval may be revoked at any time by either Superintendent/facility administrator/designee.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 8/15/14	PAGE NUMBER 4 of 15	NUMBER DOC 450.100
	TITLE MAIL FOR PRISON OFFENDERS		

III. Inspection

- A. Designated facility employees are authorized to inspect and read mail to prevent:
 - 1. Sending or receiving contraband or other material that threatens facility order or security, and/or
 - 2. Criminal activity.
- B. Mail will be rejected based on legitimate penological interests, including those outlined in Unauthorized Mail (Attachment 1).
- C. Contraband or illegal items uncovered during inspections will be handled per DOC 420.375 Contraband and Evidence Handling. The Mailroom Supervisor will ensure:
 - 1. The rejection process is initiated per the Rejecting/Returning Mail section of this policy.
 - 2. Photocopies of the original documents are placed in evidence.
 - 3. The disciplinary process is initiated per DOC 460.000 Disciplinary Process for Prisons, as appropriate.
- D. Mail will not be censored to eliminate opinions critical of Department policy or personnel.
- E. All authorized checks and money orders for offenders will be sent to the facility Business Office to be processed per DOC 200.000 Trust Accounts for Offenders, and must be marked with the offender's first and last name and DOC number.
- F. Mail must contain only correspondence/property for the addressed individual(s). Correspondence/property for or from a third party is not permitted.

IV. Incoming Mail

- A. All incoming mail must include the offender's full committed name and DOC number. An Also-Known-As (AKA) name may be included below the committed name.
 - 1. Mail from the Health Care Authority, the Washington Health Benefits Exchange, or a state approved managed care plan which does not include the offender's full committed name and/or DOC number will be held, and the Medical Disbursement Unit at Headquarters will be contacted for the necessary information or further direction.

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- B. The mail must have a return address as defined by the USPS, including an identifiable last name.
1. Mail with no return address will be processed per the Rejecting/Returning Mail section of this policy, and any negotiable instruments will be deposited in the Offender Betterment Fund per DOC 200.200 Offender Betterment Fund (OBF).
 2. Unopened mail returned to the sender does not require a rejection notice.
- C. Mailroom employees will remove enclosures such as social security cards, marriage/birth/death certificates, and visitor questionnaires and forward them to designated employees for processing/retention. The offender will receive a receipt for the removed item(s) and a notice of its disposition per local procedures.
- D. Offenders may receive up to 10 photographs in one mailing. Excess photographs will be rejected.
1. The offender's DOC number will be marked on the back center of each photograph, either written in ink by the offender or stamped by the mailroom.
 - a. Photographs found in the facility with no DOC number will be handled per DOC 420.375 Contraband and Evidence Handling.
- E. All incoming recorded electronic media must comply with DOC 440.000 Personal Property for Offenders.
- F. Address labels for incoming mail are allowed unless the facility can note or document an ongoing security concern.
- G. Batch/bulk mailings will be authorized when the items meet penological objectives and each item in the packet is individually labeled with the offender's name, DOC number, and cell/room assignment. Individual labeling may be waived for religious and non-profit organizations that send bulk mail pamphlets to offenders.
1. Batch/bulk mailings will be accepted or rejected in whole as one mailing.
- H. For incoming certified/return receipt/signature confirmation mail, mailroom employees will:
1. Sign and date the receipt when requested by the delivering agent,

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2. Inspect the mail per the Incoming Mail or Legal Mail section of this policy, as applicable,
3. Record the mail in the log,
4. Deliver the mail to the offender, and
5. Have the offender sign the log upon receipt.

V. Outgoing Mail

- A. Outgoing mail sent via the USPS must have a complete return address that includes the offender's full committed name, DOC number, and cell/room assignment, and the full name and address of the facility. The return address may include any other legal name below the committed name.
- B. Offenders are not permitted to mail out postcards.
- C. Envelopes will be stamped with the following or similar message: "This was mailed by an offender confined at a Washington State Department of Corrections facility. Its contents are uncensored."
- D. Offenders will use a kite, KIOSK, or the USPS to correspond with employees, contract staff, and volunteers.
- E. Non-deliverable and/or returned items do not require a rejection notice. Outgoing mail returned to an offender is not considered rejected and is returned to the offender to correct the issue.

VI. eMessages

- A. Offenders must agree to the terms of service to use the JPay eMessaging system, which is only available through the JPay kiosk.
- B. Offenders found to be using another offender's eMessaging account or allowing another to use their account will be subject to disciplinary action and the immediate suspension of all involved eMessaging accounts.

VII. Legal Mail

- A. Offenders have the ability to correspond by means of legal mail. Legal mail must meet all of the following requirements, and is subject to inspection to ensure the contents qualify as legal mail:
 1. Legal mail must be correspondence to or from, as indicated in the mailing address or return address on the front of the envelope:



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- a. Any court, the Washington State Bar Association, the Indeterminate Sentence Review Board (ISRB), the Washington State Office of Financial Management's Tort Claims Division, and/or the Prison Rape Elimination Act Coordinator at Headquarters.
 - b. The President or Vice President of the United States, members of the United States Congress, embassies and consulates, the United States Department of Justice, state attorneys general, governors, members of the state legislature, and law enforcement officers in their official capacity.
 - c. The attorney of record in court cases that have been filed in a local, state, or federal court.
 - d. An attorney corresponding with the offender concerning legal advice, including established groups of attorneys representing the offender (e.g., American Civil Liberties Union, Disability Rights Washington, legal service corporations, public defender associations).
2. The front of the envelope must be clearly marked "Legal Mail", "Attorney/Client", "Confidential", or similar designating the item as legal mail.
 - a. Incoming mail readily identifiable as being from a court will be handled as legal mail regardless of whether it has been marked legal mail.
- B. Legal mail may only contain paper documents. eMessages, including their attachments, will not be processed as legal mail.
- C. Offender to offender correspondence will not be handled as legal mail.
- D. Legal Mail Procedures
1. Incoming legal mail will be opened in the offender's presence by designated employees. Employees are authorized to inspect the contents to ensure they meet the policy requirements for legal mail and do not contain contraband or any other material that would threaten facility order or security.
 - a. Incoming legal mail may contain a postage paid, pre-addressed envelope for the offender to return documents/responses to the sender.

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- b. An employee who inadvertently opens a piece of legal mail will write his/her initials on the envelope.
 - c. If an offender refuses to sign and accept legal mail, a mailroom employee will note the refusal in the log with the time, date, sender's name, and offender's name. The mail will be stamped "Refused by Offender – Return to Sender".
2. Outgoing legal mail will be handled as follows:
- a. The offender will present the documents and envelope to the designated employee, who will confirm that the documents are legal mail and there is no contraband.
 - b. The offender will place the documents in the envelope and seal it in the employee's presence, who will sign or initial over the sealed flap of the envelope and log out the mail in the offender's presence.
 - c. When practical, the employee will observe the offender place the envelope in a legal mail container/drop box, or the offender will observe the employee place the envelope in the container/box. Otherwise, the employee will secure the legal mail until delivered to the mailroom.
3. If there is a question whether the mail qualifies as legal mail, it may be retained for no more than 24 hours, excluding weekends and holidays, to resolve the question.
- E. The use of state issued legal supplies for non-legal mail purposes is prohibited and will result in the mail being rejected.

VIII. Non-English Mail

- A. Correspondence to/from offenders must be written in English, unless mailroom employees determine the offender and/or recipient is unable to correspond in English.
- B. Each offender may submit up to 10 pages of correspondence, including eMessages, for translation by approved services per week. Additional pages require Superintendent/designee approval.

IX. Rejecting/Returning Mail

- A. When rejecting mail, mailroom employees will provide written notice to the offender and sender/recipient using DOC 05-525 Rejection Notice, or an



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equivalent automated notice through JPay for rejected eMessages. The notice will:

1. Include the name and address of the sender/recipient, and the reason for the rejection.
 2. Inform the offender that:
 - a. Rejection of incoming mail/eMessages can be appealed to the Superintendent/designee by submitting a written appeal request to the mailroom within 10 calendar days of the initial rejection.
 - b. Rejected outgoing mail/eMessages are automatically reviewed by the Superintendent/designee and do not require an appeal request. Rejections upheld by the Superintendent/designee are automatically reviewed by the Correctional Manager at Headquarters.
- B. If rejection of incoming mail is appealed, the Superintendent/designee will review the appeal within 10 calendar days of receipt and either uphold the rejection or allow delivery. If rejection is upheld, the Superintendent/designee will notify the requester using DOC 05-525 Rejection Notice, or an equivalent notice through JPay for eMessages.
- C. Mailroom employees will forward rejected mail upheld by the Superintendent/designee, along with the rejection notice and appeal request, if filed, to the Correctional Manager at Headquarters.
- D. The Correctional Manager at Headquarters will affirm or reverse the action taken at the facility. Mail sent for review will be returned to the facility, which will send the offender and/or sender/recipient a copy of the DOC 05-525 Rejection Notice or equivalent notice for eMessages with the decision.
1. If the rejection is overturned, the mail will be sent to the addresses within 10 days of receipt.
 2. If rejection is upheld for outgoing mail, the facility will retain the mail in a separate file for 2 years, after which it will be destroyed. Per RCW 72.02.260, the rejected mail will not be returned to the offender.
- E. Offenders will be responsible for arranging disposal for unauthorized incoming mail within 30 days of the final rejection decision.

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F. Incoming and outgoing tax-related correspondence will be screened by mailroom employees and forwarded to the Internal Revenue Service (IRS) for review.

1. Mailroom employees will provide the offender written notice for the intercepted mail using DOC 05-525 Rejection Notice. Appeal responses will be subject to IRS timeframes, and outcome responses will be provided per IRS directions to the offender.
2. Reviewed mail returned to the facility by the IRS will be distributed to the offender per the timeframes listed in this policy.

X. Publications

A. Offenders may receive publications as follows:

1. Offenders may receive new books, newspapers, certain catalogs and brochures, and other publications sent directly from the publisher(s) and/or approved vendor(s).
 - a. Catalogs and brochures will only be treated as publications if they contain a publisher name, publication date, volume/issue number or other identifier, copyright notice, and publisher address in the publication. All other catalogs/brochures will be handled as general incoming mail.
2. Offenders may receive used books from specific non-profit organizations as approved by the Superintendent. Offenders housed in stand alone minimum security facilities may also receive used books from a publisher or approved vendor.

B. Books will be marked with the offender's DOC number in the center of the inside front cover or along an unbound edge, either written in ink by the offender or stamped by the mailroom.

C. Only newspaper publications will be allowed for offenders housed in the Reception Diagnostic Centers.

D. Items such as product samples, CDs, DVDs, etc., on a perforated page will be removed if doing so will not alter the publication. Loose advertisement cards may be removed as staffing resources allow.

1. If the item cannot be removed without altering the publication (e.g., tearing a page from the publication), or if the item potentially has value (e.g., CDs included with books), the entire publication will be rejected.

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- a. Video CDs/DVDs will not be allowed. However, offenders will be allowed to send the video CD/DVD out at their own expense.
 2. If a CD/DVD is removed, DOC 05-525 Rejection Notice will be issued to the offender.
 3. Removal of loose advertisement cards and product samples does not require a rejection notice.
- E. No publications will be withheld solely on the basis of their appeal to a particular ethnic, racial, religious, or political group or sexual orientation.
- F. Offenders may not receive gift subscriptions and/or publications from another offender or the friends or family of another unrelated offender.
- G. Rejected publications will be handled in the following manner:
1. The offender will be issued DOC 05-525 Rejection Notice. The mailroom will forward the rejected publication, along with a copy of the DOC 05-525 Rejection Notice, to the Publication Review Committee at Headquarters.
 2. The committee will review the facility's decision and return the packet to the facility with its decision.
 - a. Publications initially rejected as sexually explicit material per WAC 137-48-020 may be approved by the Publication Review Committee for artistic, health/medical, and educational purposes.
 3. The offender/sender or Superintendent/designee may submit a written appeal request to the mailroom within 10 calendar days of the committee's decision.
 - a. The mailroom will forward the appeal request to the Correctional Manager at Headquarters, who will provide a response to the requester. The Correctional Manager's decision is final.
 4. The final decision made regarding a particular publication will be binding for all Prisons for at least 3 years.
 - a. The Assistant Secretary for Prisons/designee will maintain the decision in a database for at least 3 years.

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XI. Forwarding Mail

- A. Offenders will be responsible for informing their correspondents, including publishers, of any change of address.
- B. Facilities will forward first class mail for a period of 90 days, consistent with USPS regulations, if the offender provides a forwarding address.
 - 1. Legal mail will be forwarded daily. Mailroom employees will log the items forwarded and the addresses to which they were sent. Other mail will be forwarded at least weekly.
 - 2. Mail for offenders out to court will be forwarded to the jail where they are being held.
 - 3. Legal mail for offenders transferred to a community health care facility will be delivered if they are able to personally accept it. Otherwise, it will be returned to sender marked "OFFENDER UNABLE TO ACCEPT MAIL".
 - a. All other mail for offenders transferred to a community health care facility will be held in the Prison mailroom until they return.
 - 4. If first class mail is unopened, the new address will be noted on the envelope and returned to the USPS for forwarding. State funds will not be used to forward unopened mail.
 - 5. Opened first class mail will be placed in an envelope and mailed to the new address at the facility's expense.
- C. Periodicals may be forwarded via Address Change Service (ACS) per USPS regulations.
- D. Standard and non-profit mail cannot be forwarded per USPS regulations and will be discarded.
- E. eMessages will not be forwarded unless the offender has transferred to another facility with JPay services and is eligible to receive eMessages at the receiving facility. eMessages will be forwarded in electronic format.

XII. Mail Costs

- A. Offenders will use pre-franked envelopes purchased from the facility offender commissary or Correctional Industries. Offenders may not possess more than 40 pre-franked envelopes without advance written approval from a designated unit employee.

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1. Offenders will order enough pre-franked envelopes to meet their projected first class postage needs through the next ordering cycle.
 2. Upon receipt, offenders will write their full committed name and DOC number on the front of the envelope, in the top left corner. Envelopes found in an offender's possession that are unmarked, or marked as belonging to another offender, will be confiscated as contraband.
 3. Pre-franked envelopes may not be used as currency. Any attempts to use pre-franked envelopes in such a manner will result in the envelopes being confiscated as contraband.
- B. Non-indigent offenders will complete DOC 02-003 Postage Transfer to cover:
1. Postage for authorized greeting cards and oversized envelopes,
 2. Fees for certified receipt and other special services, and
 3. Shipping costs of packages, including shipping insurance up to \$300 in value. Insurance exceeding \$300 requires the Superintendent's written authorization.
- C. Blank envelopes with a postage transfer will not be allowed to mail first class letters.
- D. Offenders will purchase eStamps through the secured JPay kiosk to use the JPay eMessaging system.
- E. Offenders will be allowed to incur postage debt for outgoing legal mail.
- F. Offenders will not be allowed to incur a debt for USPS specialized services (e.g., certified, return receipt requested, international mail, etc.).
- G. Offenders will be permitted to receive and use pre-paid envelopes if they are received from vendors or public agencies for the purpose of direct return mail.
1. Direct return mail envelopes with altered addresses will be treated as contraband.
- H. Mail arriving at the facility with postage due may be delivered to the offender at the Superintendent's discretion.
1. The facility will either pay the postage due or hold the mail for up to 30 days to allow the offender make payment. If payment is not made within 30 days, the mail/package will be donated to charity or discarded.
- I. Indigent offenders may receive 10 first class pre-franked envelopes per month.

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1. Indigent postage will not include USPS specialized services (e.g., certified, return receipt requested, international mail, etc.) or eMessaging through the JPay system.
 2. Indigent offenders may request additional postage from the Law Librarian or assigned Counselor to send legal mail to a court, the Washington State Bar Association, the Indeterminate Sentence Review Board (ISRB), the Washington State Office of Financial Management's Tort Claims Division, and/or the Prison Rape Elimination Act Coordinator at Headquarters.
 3. Indigent offenders whose mail requires postage which exceeds the first class pre-franked envelope may be allowed additional postage with Superintendent/designee approval.
- J. The Department will recoup postage and all expenditures made by the facility for postage. Postage recoupment will occur at the time the Business Office posts withdrawals from the offender's account. Withdrawals and debts will be processed per DOC 200.000 Trust Accounts for Offenders.
- XIII. Mail Records
- A. The Superintendent/designee will be responsible for maintaining a continuous chronological written/electronic record of the following types of incoming and outgoing offender mail:
 1. Legal mail and certified/return receipt/signature confirmation mail,
 2. Packages, and
 3. Items of monetary value (e.g., money orders, cash, cashier's checks, etc.).
 - B. The continuous record will include:
 1. Source,
 2. Destination,
 3. Date received/sent,
 4. Description, and
 5. Printed name and initials of employee distributing.
 - C. The continuous record will be maintained in the mailroom, living unit office, or mail sorting area by the employees designated by the Superintendent to handle mail delivery, receipt, and control.

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DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Contraband, Immediate Family, Indigent, Legal Mail, Legal Pleadings, Letters, Mail, Packages, and Standard Mail. Other words/terms appearing in this policy may also be defined in the glossary section.

ATTACHMENTS:

Unauthorized Mail (Attachment 1)

DOC FORMS:

DOC 02-003 Postage Transfer

DOC 05-525 Rejection Notice

DOC 21-746 Request for Offender to Offender Correspondence Approval