County Technical Assistance Service
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Mail

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Reference Number: CTAS-1405

Pursuant to state regulations, the jail must have a written policy outlining the facility's procedures governing prisoner mail. Each jail must develop a written policy governing the censoring of mail. Any regulation for censorship must meet the following criteria:

1. The regulation must further an important and substantial governmental interest unrelated to the suppression of expression (e.g., detecting escape plans that constitute a threat to facility security or the well-being of employees and/or inmates); and
2. The limitation must be no greater than is necessary to protect the particular governmental interest involved.

Both incoming and outgoing mail shall be inspected for contraband items prior to delivery unless received from the courts, attorney of record, or public officials, where the mail must be opened in the presence of the prisoner. Outgoing mail must be collected and incoming mail must be delivered without unnecessary delay. An inmate and his/her correspondent must be notified if either person's letter is rejected and given a reasonable opportunity to protest the rejection to an impartial official prior to the facility returning the letter to its sender. Written policy and procedure must provide that the facility permits postage for two free personal letters per week for prisoners who have less than $2 in their account. They must also receive postage for all legal or official mail. Rules of the Tennessee Corrections Institute, Rule 1400-1-.11 (2)-(7).

Prisoners have a limited liberty interest in their mail under the First Amendment. Prison actions that affect an inmate's receipt of nonlegal mail must be "reasonably related to legitimate penological interests." Legitimate practices include inspection of inmate mail for contraband, escape plans or other threats to prison security. *Leslie v. Sullivan*, 2000 WL 34227530, *7 (W.D. Wis. 2000) (dismissing plaintiff's claim that delay in mail delivery violated the First Amendment) (citations omitted).

> A prisoner's right to receive mail is subject to prison policies and regulations that are "reasonably related to legitimate penological interests," Turner v. Safley, 482 U.S. 78, 89, 107 S.Ct. 2254, 96 L.Ed.2d 64 (1987), such as "security, good order, or discipline of the institution." Thornburgh v. Abbott, 490 U.S. 401, 404, 109 S.Ct. 1874, 104 L.Ed.2d 459 (1989). Courts generally afford great deference to prison policies, regulations, and practices relating to the preservation of these interests. Id. at 407-08, 109 S.Ct. 1874. In Turner, the Supreme Court set forth the following four factors to determine whether a prison's restriction on incoming publications was reasonably related to legitimate penological interests: (1) whether there is a valid, rational connection between the prison policy and the legitimate governmental interest asserted to justify it; (2) the existence of alternative means for inmates to exercise their constitutional rights; (3) the impact that accommodation of these constitutional rights may have on other guards and inmates, and on the allocation of prison resources; and (4) the absence of ready alternatives as evidence of the reasonableness of the regulation. Cornwell v. Dahlberg, 963 F.2d 912, 917 (6th Cir. 1992) (citing Turner, 482 U.S. at 89, 107 S.Ct. 2254).

Harbin-Bey v. Rutter, 420 F.3d 571, 578 (6th Cir. 2005) (upholding regulation prohibiting prisoners from receiving mail depicting gang symbols or signs finding that the prison's policy was reasonably related to the prison's goal of maintaining security and order). *See Thompson v. Campbell*, 81 Fed.Appx. 563, 567-568 (6th Cir. 2003) (upholding policy of withholding mail advocating "anarchy" or containing "obscenity" finding that the policy on its face does not violate the First Amendment).

Different standards apply to the evaluation of regulations governing incoming mail and outgoing mail. While a prisoner's right to receive mail is subject to prison policies and regulations that are "reasonably related to legitimate penological interests," *Turner v. Safley*, 482 U.S. 78, 89, 107 S.Ct. 2254, 2262, 96 L.Ed.2d 64 (1987), a prisoner's right to send mail is subject to prison regulations or practices that "further an important or substantial governmental interest unrelated to the suppression of expression," and that extend no further "than is necessary or essential to the protection of the particular governmental interest involved." *Procunier v. Martinez*, 416 U.S. 396, 413, 94 S.Ct. 1800, 1811, 40 L.Ed.2d 224 (1974). Prison officials must demonstrate that regulations authorizing the censorship of prisoners' mail furthers one or more of the substantial interests of security, order, and rehabilitation. *Id*.

In *Martucci v. Johnson*, 944 F.2d 291, 295-296 (6th Cir. 1991), the Sixth Circuit found that a jailer's decision to withhold both the incoming and outgoing mail of a pretrial detainee was legitimate under the dual standards enunciated in *Procunier* and *Turner v. Safley* where the jailer believed that the pretrial

detainee was planning an escape. *See also Burton v. Nault*, 902 F.2d 4 (6th Cir.), *cert. denied,*498 U.S. 873, 111 S.Ct. 198, 112 L.Ed.2d 160 (1990). In exercising their authority to monitor inmate correspondence, prison officials justifiably may refuse to send "letters concerning escape[ ] plans or containing other information concerning proposed criminal activity, whether within or without the prison. Similarly, prison officials may properly refuse to transmit encoded messages." *Koutnik v. Brown*, 351 F.Supp.2d 871, 879 (W.D. Wis. 2004) (citation omitted).

The Seventh Circuit has held that "a jail is allowed to screen and intercept non-privileged mail that contains threats or seeks to facilitate criminal activity." *Grissette v. Ramsey*, 81 Fed.Appx. 67, 68 (7th Cir. 2003) (citation omitted). "[B]ecause of their reasonable concern for prison security and inmates' diminished expectations of privacy, prison officials do not violate the constitution when they read inmates' outgoing letters." *United States v. Whalen*, 940 F.2d 1027, 1035 (7th Cir. 1991) (citation omitted). "In short, it is well established that prisons have sound reasons for reading the outgoing mail of their inmates." *Id*.

In *Martin v. Kelley*, 803 F.2d 236 (6th Cir. 1986) the Sixth Circuit delineated the "minimum procedural safeguards" referred to in *Procunier v. Martinez,* 416 U.S. 396, 94 S.Ct. 1800, 40 L.Ed.2d 224 (1974) that must be in place before inmates' letters are withheld or censored. First, an incoming mail censorship regulation must provide that notice of rejection be given to the inmate-recipient. Second, the mail censorship regulation must require that notice and an opportunity to protest the decision be given to the author of the rejected letter. Finally, the mail censorship regulation must provide for an appeal of the rejection decision to an impartial third party prior to the letter being returned. *Id*. at 243-244. *See Rogers v. Martin*, 84 Fed.Appx. 577, 579 (6th Cir. 2003) (upholding prison mail policy that prohibited photographs depicting actual or simulated sexual acts by one or more persons finding that the policy was reasonably related to legitimate penological interests. The inmate was given notice of the rejections, hearings were held to determine whether the magazines violated the policy, and the inmate was given an appeal.).

An indigent inmate has no constitutional right to free postage for nonlegal mail. *Argue v. Hofmeyer*, 80 Fed.Appx. 427, 429 (6th Cir. 2003) *citing Moore v. Chavez*, 36 Fed.Appx. 169, 171 (6th Cir. 2002) and *Hershberger v. Scaletta,* 33 F.3d 955, 957 (8th Cir. 1994).
