COMMENTS ON PROPOSED DEPARTMENT OF CORRECTIONS REGULATIONS ON PUBLIC INFORMATION / MEDIA ACCESS AND PAROLEE ASSISTED LIVING

HEARING: SEPTEMBER 10, 2007

The RI ACLU appreciates the opportunity to review and submit comments on the Department of Corrections' proposed regulations. We respectfully submit several concerns we have with two of the proposed regulations that are being considered for promulgation at this time.

I. PUBLIC INFORMATION/MEDIA ACCESS

The ACLU considers the Department's proposed revised regulations governing media access to the ACI to be extremely problematic. In essence, the new rules allow for a regime of censorship over the news media in their efforts to interview inmates and inform the public. Some specific objections follow below.

1. Referring to members of the media, current regulations specify that "any work product prepared (notes, recordings, picture film, and/or videotapes) shall not be subject to review by any Officer or employee of this Department." Disturbingly, this guarantee is missing from the proposed regulations. In fact, other provisions in the proposed regulations suggest precisely the contrary of the current "hands-off" policy, by mandating a DOC employee's presence at interviews and limiting the scope of interviews with inmates. For the reasons expressed in points #3 and #5 below, we strongly urge the Department to preserve current policy in this area by maintaining the language of the current policy cited above.

2. The proposed regulations also appear to vary greatly from the current ones in regards to the media's use of cameras, recorders, etc. that have been called "tools of their trade" in the current regulations. The proposal requires advance permission to take videos or photographs of facilities "on state grounds" (Section III(D)), whereas current regulations allow much more freedom to the press stating that "[e]xcept when expressly denied…[the media] will be allowed to carry with them the tools of their trade." The proposal's repeated change in emphasis from the current regulations, by omitting specific protections for media, sends a troubling message.

3. We strongly oppose the addition of language that requires a DOC presence during the entirety of filming and/or interviewing by media representatives (Section III(I)(1)) ("Unless instructed otherwise…, the Chief of Information and Public Relations is present for the filming and/or interview and remains with the news media throughout the entire visit."). This is quite troubling. First, it makes it extremely difficult, if not impossible, for reporters to have candid conversations with inmates on any number of subjects if the Chief of Information and Public Relations is hovering over the reporter and inmate. For example, consider a reporter's investigation of prison guard brutality or of alleged indifference by administrators to inmates' medical needs. What inmate will be able to openly discuss such topics under these conditions? This provision is likely to stifle reporters' access to important information from inmates, and it is unrelated to any legitimate institutional goal.

In addition, an employee's presence could severely undercut reporters' statutory privilege of confidentiality, as well as an inmate's privilege against self-incrimination. There are far less restrictive means to address safety or other Departmental interests. In fact, this section of the policy specifically authorizes the "presence of security personnel as deemed necessary." We strongly urge deletion of the sentence quoted in the paragraph above.

4. The RI ACLU finds it problematic that "sensitiv[ity] to the feelings and needs of crime victims" is a criterion to be considered when the Department decides whether to approve or deny a media request for an interview with an inmate (Section III(J)(2)(c)(5)). For certain crime victims, just about any interview with the perpetrator could cause stress or be disturbing. How does the Department expect to make these determinations? Does the Department intend to consult the victim to determine their "feelings and needs" before approving an interview, or to demand the censorship of inmate responses that are deemed "insensitive"? What of an interview with an inmate who claims he or she is innocent of the crime for which he or she is imprisoned? Surely any such story will seem insensitive to the "feelings and needs" of the victim, but that simply should not serve as a basis for denying an interview. In short, it is not for the victim, or for the Department acting as his/her surrogate, to dictate what information may be asked inmates by the media or to be making determinations about the propriety of a story's impact on victims.

5. The proposed regulations also attempt to limit the content of an interview to an approved purpose (Section III(J)(2)(e)). This too strikes us as an inappropriate attempt to hamper reporters' interviews. The fact that a discussion veers off into an unexpected topic is no reason to halt an interview unless the inmate him/herself objects.

6. In keeping with existing regulations, the proposed regulations appropriately require the permission of an attorney-of-record before an inmate either awaiting trial or with pending court charges may be interviewed. (Section III(J)(2)(g)). However, as worded, it is unclear whether this same policy would apply to convicted inmates whose convictions or sentences are on appeal. The RI ACLU would suggest adding this class of inmate to those requiring the permission of the attorney-of-record before an interview may be granted.

7. Also in regards to which inmates may be interviewed, the proposed regulations bar *any* interviews with out-of-state inmates. (Section III(J)(2)(g)(6)). No rationale is offered for this ban, nor can we conceive of one. This prohibition should be deleted.

8. Lastly, we feel it necessary to point out that the posting of these regulations was not in full compliance with the Administrative Procedures Act (APA). During the 2007 legislative session, the General Assembly passed an amendment to the APA requiring that "[i]f an agency proposes adoption of a new rule to supersede an existing rule, the agency shall make available a summary of all non-technical differences between the existing and proposed rules." P.L. 2007, ch. 293, §1. Given the sizable difference between these proposed regulations (which are 10 pages long) and the current regulation it is designed to supersede (3 pages long), a summary was no doubt in order and would have saved a significant amount of time in reviewing and discerning the changes and, in turn, preparing testimony. The APA amendment was enacted for this very reason, in order to allow members of the public wishing to comment on changed rules to do so with the greatest ease possible. Failure to summarize these significant changes greatly limits the ability of interested parties to understand exactly what changes are being made from current policy. We urge the Department to review these statutory amendments in order to be in compliance with them for all future rule-making proceedings.

II. PAROLEE ASSISTED LIVING

Because these proposed regulations are in response to legislation passed during the 2006 legislative session, we believe that they require a few additions to ensure that they are fully in compliance with R.I.G.L. §42-56-10(23).

First and foremost, we strongly urge that the scope of these regulations be tightened so that they apply only to parolees of certain offenses as listed in §42-56-10(23)(a). The way the policy is currently worded, notification of parole status would be undertaken for any parolee, regardless of the offense, and this certainly was not the intent of the General Assembly. In fact, although the legislation establishing this notification process was twice revised before passage, one section that remained and, indeed, was strengthened by the revisions was the intent of the law to apply only to a select group of parolee offenders.

Secondly, we believe it is necessary to include a provision explicitly stating that the parolee will be provided a copy of the written notice sent to the nursing/assisted living/elderly housing facility as stipulated by R.I.G.L. §42-56-10(23)(c). Section III(5)(a) alludes to this disclosure, but it is imperative that this provision be a clear part of any established policy.

We appreciate your attention to our views, and trust that you will give them your careful consideration. If the suggestions we have made are not adopted, we request that, pursuant to R.I.G.L. §42-35-3(a)(2), you provide us with a statement of the principal reasons for and against adoption of these rules, incorporating therein your reasons for overruling the suggestions urged by us. Thank you.