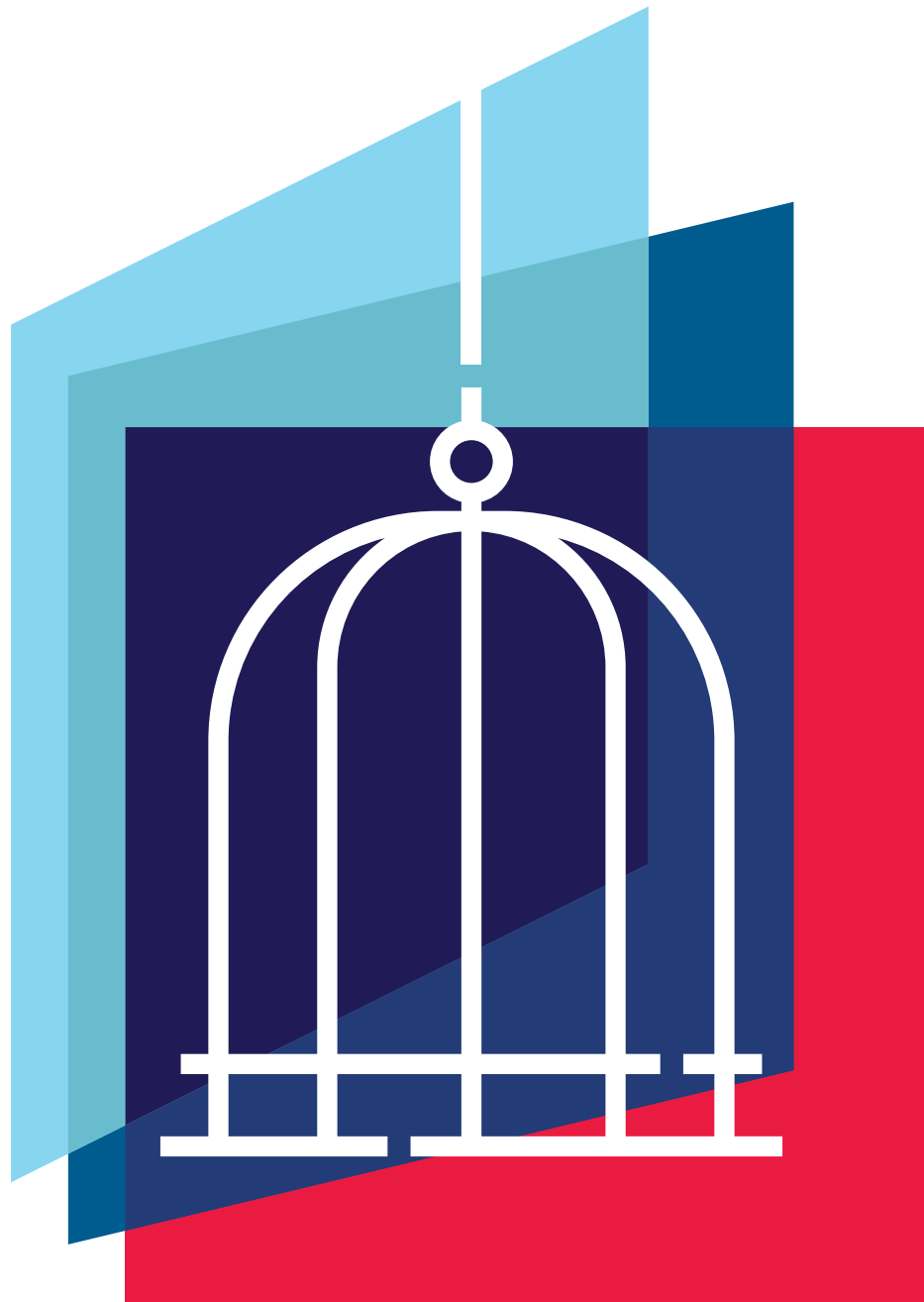


# BANNING THE CAGED BIRD: **PRISON CENSORSHIP** ACROSS AMERICA



Thurgood Marshall  
Civil Rights Center  
School of Law

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# BANNING THE CAGED BIRD: **PRISON CENSORSHIP** ACROSS AMERICA



Thurgood Marshall  
Civil Rights Center  
School of Law

Howard University School of Law  
2021

# ABOUT THE THURGOOD MARSHALL CIVIL RIGHTS CENTER

The Thurgood Marshall Civil Rights Center is the flagship setting for the study and practice of civil rights law at Howard University, the leading historically Black university in the United States. The Center seeks to expand civil rights, human rights, freedom, and equal justice under the law by integrating legal advocacy, grassroots organizing, and academic study.

Housed under the Center are Howard's Human and Civil Rights Clinic, as well as Howard's Movement Lawyering Clinic.

Howard's Human and Civil Rights Clinic undertakes projects on behalf of civil and human rights organizations and victims of civil rights abuses. The goals of the Human and Civil Rights Clinic are to advance civil and human rights across the United States, working in partnership with directly impacted individuals and communities, as well as civil society organizations and to provide students with meaningful and practical experience in the fields of civil and human rights. The Human and Civil Rights Clinic conducts litigation, fact-finding investigations, legal and policy analysis, congressional testimony and congressional advocacy, amicus briefs, report-writing, and submissions to international human rights bodies.

The Movement Lawyering Clinic advocates on behalf of clients and communities fighting for the realization of the civil and human rights guarantees promised by the United States Constitution and International Human Rights treaties. Students in the clinic will work in the context of federal and state litigation, advocate before international human rights tribunals, and utilize these mechanisms to support movements for social change. Cases include a range of matters, including police brutality, racial justice, mass incarceration and unconstitutional prison conditions, and other concerns that implicate core constitutional and human rights.

For more information about the Thurgood Marshall Civil Rights Center, please visit its website at <https://thurgoodmarshallcenter.howard.edu/about-us>.

“

When prison gates slam behind an inmate he does not lose his human quality; his mind does not close to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor his quest for self-realization conclude. If anything, the need for identity and self-respect are more compelling in the dehumanizing prison environment.

– Justice Thurgood Marshall

”

## ACKNOWLEDGEMENTS

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The impetus for this report was borne from discussions with Mireille Fanon, daughter of renowned anti-colonial philosopher, Frantz Fanon. When she learned that her father’s book, *Black Skin, White Masks*,<sup>1</sup> was banned in Michigan prisons, Ms. Fanon approached the Human and Civil Rights Clinic to work to remove her father’s book from Michigan’s banned book list. In examining other states that banned Frantz Fanon’s writings, the Human and Civil Rights Clinic observed widespread prison censorship nationwide. More troublingly, the banning of books calling for racial equality and justice is not an isolated incident—rather throughout the country, U.S. prisons have banned significant pieces of literature and publications on spurious grounds.

We were also inspired by critical legal scholarship engaging in criminal justice reform, including an article in the Howard Law Journal entitled “Black Power in a Prison Library” by Alfred Brophy.<sup>2</sup> At the Thurgood Marshall Civil Rights Center and the Howard Human and Civil Rights Clinic, we believe that real, lasting social change requires collaboration between organizing, advocacy, and scholarship in service of community-led movements.

This report builds on the work of countless organizations and individuals that have been tirelessly advocating with and on behalf of those behind bars and providing them with both access to education and avenues to express themselves. In that vein, we would like to give special thanks to Howard University Assistant Professor Dr. Bahiyyah Muhammad, creator of Howard University’s “Policing Inside-Out Program,” UCLA African American Studies Professor Professor Bryonn Bain, creator of “Lyrics on Lockdown,” and the advocates at Prison Legal News and the Human Rights Defense Center.

“

I have often reflected upon the new vistas that reading opened to me. I knew right there in prison that reading had changed forever the course of my life. As I see it today, the ability to read awoke inside me some long dormant craving to be mentally alive.

– Malcolm X

”

1 *Black Skin, White Masks* is an account of the dehumanizing effects of racism on the human psyche. The book largely focuses on the Black Subject and the inferiority complex resulting from colonialism.

2 Alfred L. Brophy, *Black Power in a Prison Library* 61 Howard L. J. 1 (2017)

# EXECUTIVE SUMMARY

We read to connect with our humanity and reaffirm our dignity. Books open the doors to new experiences, emotions, and ways of thinking and seeing the world. Books are endless sources of knowledge, training, and guidance. Books shape our lives.

Books play an important role in society, but access to books is especially crucial to incarcerated individuals. Every state in America censors books in prisons and for those behind bars, these prohibitions against books can have devastating consequences.

Incarcerated individuals have limited access, if any, to the internet or the outside world. Reading is the primary way that many incarcerated individuals feel connected to society. These connections are crucial to the rehabilitation of those behind bars. In depriving the incarcerated of books, prisons are depriving them of the ability to grow intellectually, flourish emotionally and mentally, and the opportunity to prepare themselves for the outside world.

Access to books and education reduces recidivism, but equally valuable is the ability of the incarcerated to learn about and challenge the systems to which they are subjected. One of this report's major findings was that throughout the country, prisons are censoring books related to the prison industrial complex, prison conditions, and the criminal justice system. When prisons ban books of this kind, they are purposefully cutting off the tools the incarcerated need to realize their civil and human rights.

This report also found a nationwide trend of prisons banning books relating to racial equality. In a prison system that disproportionately incarcerates African Americans relative to their population in the country, it is especially vital that those behind bars have access to books that affirm their racial identity and provide tools for coping with and challenging racist systems of oppression.<sup>3</sup>

The Thurgood Marshall Civil Rights Center found that across the country, prison censorship policies lacked transparency and were oftentimes inconsistently or unfairly implemented. Additionally, prison policies, by design or application, made books inaccessible to incarcerated individuals. And in many prisons, books relating to racial equality, social justice, and even black history have received the ire of many Department of Corrections.

The banning of books implicates the First Amendment rights of those incarcerated, as well as publishers and vendors of banned books. By placing limitations on the publications made available to incarcerated individuals through single-vendor policies, state prisons also violate the equal protection clause of the Fourteenth Amendment. Banning books in prison also violates international human rights obligations, including the right to expression and the guarantee that incarceration serves a rehabilitative purpose.

The Thurgood Marshall Civil Rights Center found that state prisons ban books in two ways: **(1) content bans and (2) content neutral bans**. Prisons sometimes ban books in a combination of these two ways.

Generally, content-based bans prohibit books that the prison deems a potential threat to the safety and security of the prison facility, but each state sets forth its own specific categories of prohibited materials. Content may be banned on narrow grounds, such as any content that provides instructions on martial arts, or broader reasons that are open to interpretation, such as content that may incite violence.

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<sup>3</sup> Alfred L. Brophy, *Black Power in a Prison Library*, Howard Law Journal (2017), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2901475](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2901475), “[Books on Black power identity] invite some speculation on how books might be used to shape and sustain a sense of black identity and in particular how those books might be helpful in a prison”

Content-based bans can be and often are unfairly or inconsistently applied, resulting in the censorship of important publications. For example, the North Carolina Department of Public Safety once banned Maya Angelou’s *I Know Why the Caged Bird Sings* because they determined that the book’s depiction of sexual assault was a security threat.<sup>4</sup> Other states have attempted to ban Michelle Alexander’s bestselling book, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*, for similarly amorphous reasons.<sup>5</sup> States use facially neutral policies, but in many cases, prison officials arbitrarily apply these policies, resulting in the banning of books relating to black identity, as well as books that are purely educational (such as dictionaries, science books, and medical encyclopedias). In some states, because of the discretion that facilities and prison officials have to enforce the censorship policies, an incarcerated individual might have access to a specific book in one facility, but that same book might off limits to that individual in the event that he or she is transferred to a different facility *in that same state*.

States also ban books in prisons through restrictive vendor policies. Restrictive vendor policies deny incarcerated individuals access to books by limiting the vendors through which incarcerated individuals or third parties may order publications and have them sent to the prison facility. Oftentimes, vendors have limited titles available or in limited quantity, which can prevent the incarcerated from accessing important books of historical, political, or social relevance. Additionally, some vendors price books at exorbitant rates, making it difficult for the incarcerated to afford them. For example, in Maryland, a former policy restricted book purchases to two vendors and prevented donations from outside organizations. As a result, incarcerated individuals were not able to access major pieces of literature, such as *To Kill a Mockingbird*, all of Martin Luther King’s writings, and *The Autobiography of Malcolm X*.<sup>6</sup>

Additionally, some states maintain lists of banned books in its prison facilities, with varying levels of transparency and detail. Twenty-one states and the District of Columbia do not maintain a list of all books banned in their correctional facilities.<sup>7</sup> Twenty-six states maintain a list of banned books either across the state or in specific facilities.<sup>8</sup> Three states Alabama, Alaska, and South Dakota were both unresponsive to Public Records Requests and had no information online regarding whether they maintain a list of banned books.

The Thurgood Marshall Civil Rights Center fully and vehemently supports the right to read for all those incarcerated and advocates, with no exceptions, for a complete end to the nation’s largest book ban that exists throughout the United States’ carceral system under the guise of addressing security concerns. Moreover, the Center envisions a future where our current prison institutions are rendered obsolete—a future where the caging of bodies *and minds* is no longer normalized—and is committed to working towards actualizing this vision.



Nobody is going to teach you your true history, teach you your true heroes, if they know that that knowledge will help set you free.

– Assata Shakur



4 N.C. Dep’t of Pub. Safety, *Disapproved Publications Report (Bulletin Board Posting)* (Jan. 23, 2018), <http://media2.newsobserver.com/media/2018/1/23/BannedBookList.pdf>.

5 For example, until February 2018, *The New Jim Crow* was banned in Florida. A spokeswoman for Florida’s DOC informed the New York Times that the book was banned because it “presented a security threat” and was filled with “racial overtures.” Jonah Engel Bromwich, *Why Are American Prisons So Afraid of This Book?*, NY Times (Jan. 18, 2018), <https://www.nytimes.com/2018/01/18/us/new-jim-crow-book-ban-prison.html>.

6 ACLU of Maryland, *ACLU Calls on Prison System to Reverse Rule Severely Limiting Access to Books in Violation of the First Amendment* (May 31, 2018), <https://www.aclu-md.org/en/press-releases/aclu-calls-prison-system-reverse-rule-severely-limiting-access-books-violation-first>.

7 Arizona, Arkansas, Colorado, Delaware, Hawaii, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Oklahoma, Rhode Island, and Tennessee.

8 California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Michigan, Minnesota, Missouri, Montana, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Until the right to read is fully recognized, and there is an end to protocols that restrict what individuals are allowed to read while incarcerated, and create unnecessary hurdles towards accessing books while imprisoned, the Center proposes the following recommendations to mitigate the harm caused by prison censorship:

- 1) **Establish clear statewide policies for book censorship that are enforced at the state level, rather than the facility level;**
- 2) **Require prison officials to publish, on a regular basis, updated banned book lists explaining why each book is banned, and where appropriate, citing specific parts of a book at issue;**
- 3) **Establish a committee comprised of experts in prison administration and prison reform to review book banning policies and decisions;**
- 4) **Remove restrictions on publications that deal with race, religion, philosophy, or political, legal or social content;**
- 5) **Remove single-vendor or restricted-vendor policies that limit incarcerated persons' access to books;**
- 6) **End exploitative paywalling practices that allow for the profiting off incarcerated individuals' access to books and that often involve per-minute costs and upcharged pricing to increase profits at the expense of the incarcerated population;**
- 7) **Train prison officials, particularly mailroom monitors, about the First Amendment rights of incarcerated persons, as well as how to comply with prison book censorship policies; and**
- 8) **Reverse measures taken to end physical mail throughout prisons and reject private corporations' efforts to turn prison mail into a profit opportunity through providing electronic scanning services, which, among many other concerns, poses a threat to incarcerated individuals' access to books.**

Lastly, the report outlines state-specific censorship policies and procedures, as well as the practical effects of arbitrary enforcement of censorship rules and past or ongoing litigation over policies and procedures within each state. We encourage readers to turn to the Appendix to see the status of prison censorship in their home state.

## METHODOLOGY

The Thurgood Marshall Civil Rights Center examined the prison censorship policies in all fifty states by consulting publicly available materials located on Department of Corrections' websites, court filings, and secondary news sources. Additionally, the Center also contacted several non-profit organizations that provide books to incarcerated individuals, as well as reached out to formerly and currently incarcerated individuals, in order to obtain a full picture of how incarcerated individuals may access books.

The Center also submitted public information requests to all fifty states and the District of Columbia requesting a list of all books banned.

The compilation of state-specific policies can be found in the Appendix.

The book banning policies in several states are the subject of ongoing litigation and could possibly change as a result of a court order or settlement.



# IMPORTANCE OF BOOKS

## A. SELF DEVELOPMENT

Reading is vital to educational, emotional, and mental development and books provide an essential medium through which this development can occur. For incarcerated individuals, books are especially important. Depriving incarcerated individuals of books deprives them of opportunities to learn new crafts and skills, engage in self-reflection and pass their time behind bars in a meaningful and beneficial way.

The deprivation of books has particularly grievous results for incarcerated populations. Incarcerated individuals are physically removed from society and have little or no meaningful ways to socialize or engage with other human beings. Those behind bars need productive activities to cope with the hardships of incarceration. Books play a crucial role in their socialization and allow them to connect to the outside world. Maintaining connections to the outside world and developing emotionally and intellectually, despite the restraints of prison, is crucial to incarcerated individuals' adaptation and reentry to society.

Sarah Turvey, a lecturer in English literature at Roehampton University, who runs prison education programs, emphasized the particular importance of books in prison to emotional development, "Reading and talking about books does help develop empathy. I think many people in prisons have found themselves isolated, alienated, cut off from a larger culture. Things that make people feel connected are very important."<sup>9</sup>

In a letter to the Center, one incarcerated individual described how he and other inmates enjoy partaking in bookclubs, where a friend from the "free world" buys two copies of the same book and mails one to the incarcerated individual to read together and discuss over the phone. "It's something to look forward to and it makes me feel relevant, giving me a sense of still being connected to humanity. I'm happy to report that I'm not the only one who does this."<sup>10</sup>

For some incarcerated individuals, prison is the first time that they have access to literature and non-fiction books. While incarcerated in Maryland, Charles Robin Woods, who did not complete high school, began reading the classics.<sup>11</sup> Jimmy Baca was introduced to poetry when he was in an Arizona prison— "those poems, they blew me away. I couldn't believe that people could use language in a way that would transport me into their mind." Once Baca was released, he published dozens of books of poetry.<sup>12</sup>

Moreover, many prisons do not have adequate libraries and thus incarcerated individuals are wholly dependent on outside books for their learning. Amy Peterson from Books Through Bars, an organization that promotes literacy in prisons, has expressed, "we get letters from people in solitary who have no access to the library, from indigent prisoners and people who don't have anyone on the outside to send them anything asking us for books."<sup>13</sup> Books are sometimes the only way for incarcerated individuals to gain access to these important vocational and intellectual tools.

Access to books is an essential part of an individual's development. For incarcerated persons in particular, books provide hope, education, mental escape, legal defense, religious guidance, and training for life in a free society. As Justice Marshall stated in *Procunier v. Martinez*, "[w]hen the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions."<sup>14</sup>

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9 Orla Ryan, *How reading can change prisoners' lives*, Financial Times (Apr. 17, 2015), <https://www.ft.com/content/d89b643c-df70-11e4-b6da-00144feab7de>.

10 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

11 Daniel A. Gross *The book that changed my life . . . in prison*, The Guardian (Jan. 19, 2018), <https://www.theguardian.com/culture/2018/jan/19/the-book-that-changed-my-life-in-prison>.

12 *Id.*

13 Tariro Mzezewa, *To make prisons 'safer,' some are banning . . . books*, New York Times (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/opinion/books-prison-packages-new-york.html>.

14 *Procunier v. Martinez*, 416 U.S. 396, 428 (1974).

In the words of one formerly incarcerated individual,

“Before I got incarcerated I read for pleasure and I read because it was a duty, I just loved books. When I got locked up, I think, books became magic. Books weren’t really magic when I was a child, they were just something that I [enjoyed] reading. I thought it was important, but when I got locked up it became magic, it became a means to an end. ... It became the way in which I experienced the world, but more importantly, I think, it became the way in which I learned about what it means to be human, and to be flawed and to want things that you can’t have.”<sup>15</sup>

## B. REDUCING RECIDIVISM

Incarcerated individuals have one of the lowest literacy rates in the country, a contributing factor to their difficulties when reentering society.<sup>16</sup> Recidivism is defined as “a return to criminal behavior after release,” and the effectiveness of prison sentences is usually measured by recidivism rates.<sup>17</sup> Approximately 60-percent of incarcerated persons cannot read above the sixth-grade level.<sup>18</sup> Steven Klein of the U.S. Department of Education found that American incarcerated individuals have the “lowest level of educational achievement and the highest illiteracy and education disability of any segment in our society.”<sup>19</sup> Lack of employment opportunities, support, and education contribute to recidivism. Klein concluded that it was not surprising that incarcerated individuals did not have the basic social and education skills to function in outside society due to their illiteracy rate.<sup>20</sup>

Reading books in prison helps reduce recidivism, in part, because it increases education among incarcerated persons and teaches them basic vocational and educational skills needed to succeed in our society.<sup>21</sup> Additionally, reading has been statistically proven to help prisoners in many different ways such as increased intelligence and empathy. A program called Changing Lives Through Literature has been working for several decades to reduce the rates of recidivism through the introduction of literature and reading programs in Massachusetts prisons. The first round of program participants showed a 19 percent recidivism rate compared to 45 percent in a different control group. These results were reproduced in other states as well.<sup>22</sup> According to Bob Waxler, an English professor at the University of Massachusetts as well as the creator of the Changing Lives Through Literature program, reading “teaches empathy, complexity, how to face shame, and how to build personal dignity.”<sup>23</sup>

In 2015, the Obama administration launched the pilot Second Chance Pell Grant Program (SCP) as a limited means of offering higher education to incarcerated persons after considering extensive research on reforms that reduce recidivism.<sup>24</sup> The program allows individuals in select carceral institutions to obtain need-based federal Pell Grant as a means of funding their education, as many would not have access to the necessary resources otherwise.<sup>25</sup> As of 2017, the SCP has provided over 4,900 students the opportunity to receive a post-secondary education through partnerships with 65 colleges in 27 states. On average, those who have participated in the program have seen reductions in recidivism rates. Further, the program has granted “578 Certificates, Associates, and Bachelors

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15 ‘Bastards Of The Reagan Era’ A Poet Says His Generation Was ‘Just Lost’, NPR (Dec. 8, 2015), <https://www.npr.org/2015/12/08/458901392/in-bastards-of-the-reagan-era-a-poet-says-his-generation-was-just-lost>

16 John H. Esperian, *The Effect of Prison Education Programs On Recidivism*, 61 J. of Correctional Educ., 316 (2010).

17 *Id.* at 320.

18 *Id.*

19 *Id.*

20 *Id.*

21 Christia Mercer, *Reading gives people in prison hope. But some states want to take their books away.* (Jan 25, 2018), <https://www.nbcnews.com/think/opinion/reading-gives-people-prison-hope-some-states-want-take-their-ncna840806>

22 Livni, Ephrat, *To Reduce Recidivism Rates, Give Prisoners More Books*, Quartz, Quartz, [qz.com/796369/to-decrease-recidivism-rates-give-prisoners-more-books/](http://qz.com/796369/to-decrease-recidivism-rates-give-prisoners-more-books/)

23 *Id.*

24 Obama Whitehouse Archives, *President Obama Announces New Actions to Promote Rehabilitation and Reintegration for the Formerly- Incarcerated*, <https://obamawhitehouse.archives.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>

25 Vera Institute of Justice, *Second Chance Pell Experimental Sites Initiative Update*, (June 2018) <https://www.vera.org/downloads/publications/Second-Chance-Pell-Fact-Sheet-June-2018.pdf>

graduates in prison, 34 graduates post incarceration, and 954 credentials awarded in the past three years.”<sup>26</sup> In 2020, Congress reinstated access to Pell Grants for all incarcerated students seeking higher education, reversing the 1994 “tough on crime” legislation that stripped incarcerated students of Pell Grant eligibility, making a college education practically unattainable.<sup>27</sup> Following the 1994 crime bill, education programs throughout prisons were reduced over time from 772 programs to only 8, despite research showing that participants in such programs are 48% less likely to return to prison.<sup>28</sup>

The grim future that awaits most incarcerated persons upon release reiterates the necessity of educational programs and access to a wide range of ideas and books for those in prison. Without these opportunities, incarcerated individuals are less likely to thrive in a free society. Aisha Elliot, who was incarcerated for 25 years, explained that restricting access to books for the incarcerated undermines the goal of preparing them to reenter society:

The incarcerated people I’ve taught over the years have been striving to become functioning members of our economy, contributors to their communities and examples to their children and friends. Books can only help with that; it’s counterproductive to restrict access to books for any of the 2.2 million incarcerated Americans who want them.<sup>29</sup>

If one of the ostensible purposes of prison is to rehabilitate the incarcerated and prepare them for life as productive members of society, restricting access to books hinders that goal.

Moreover, the United States Supreme Court has recognized “freedom to correspond with outsiders advances...the goal of rehabilitation.”<sup>30</sup> In Supreme Court acknowledged that,

“Constructive, wholesome contact with the community is a valuable therapeutic tool in the overall correctional process . . . . Correspondence with members of an inmate’s family, close friends, associates and organizations is beneficial to the morale of all confined persons and may form the basis for good adjustment in the institution and the community.”

Communication through reading literature, and receiving literature from the organizations and individuals of one’s choosing, is a meaningful and important method for incarcerated individuals to connect with the world outside the prison walls.

“

You think your pain and your heartbreak are unprecedented in the history of the world, but then you read. It was books that taught me that the things that tormented me most were the very things that connected me with all the people who were alive, who had ever been alive.

– James Baldwin

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26 Vera Institute of Justice, *Second Chance Pell Experimental Sites Initiative Update*, (June 2018) <https://www.vera.org/downloads/publications/Second-Chance-Pell-Fact-Sheet-June-2018.pdf>.

27 Vera Institute of Justice, *Incarcerated Students Will Have Access to Pell Grants Again. What Happens Now?*, <https://www.vera.org/blog/incarcerated-students-will-have-access-to-pell-grants-again-what-happens-now>

28 Vera Institute of Justice, *A Monumental Shift: Restoring Access to Pell Grants for Incarcerated Students*, <https://www.vera.org/publications/restoring-access-to-pell-grants-for-incarcerated-students>

29 Christia Mercer, *Reading gives people in prison hope. But some states want to take their books away*, NBC News (Jan 25, 2018), <https://www.nbcnews.com/think/opinion/reading-gives-people-prison-hope-some-states-want-take-their-ncna840806>

30 *Procunier v. Martinez*, 416 U.S. 396, 412 – 13 (1974)

# PRISON BOOK CENSORSHIP IN PRACTICE

State prisons in the United States generally ban books in one of two ways: content-based and content-neutral banning. (Some prisons use a combination of these two methods to ban books.) This section explores each in turn.

## CONTENT-BASED BANS: THE BOOK SCREENING PROCESS

Across the United States, content-based bans generally follow a multi-step process, although there are variations from state to state. First, prison officials screen incoming mail and publications to determine if the content of the materials violates the prison's policies. As described in the Appendix in greater detail, most prisons have policies banning books that are *deemed* to contain violent or sexual content. Other prisons have similarly broad policies prohibiting books that will "incite violence." What constitutes violent or sexual content is sometimes a subjective decision, resulting in inconsistencies both between and within states.

Second, following a screening officer's determination that the publication violates the prison's policy, the publication is often sent to a hearing officer for review (For some states, there is no additional review and the intended recipient is informed that their correspondence was denied). The prison also sends the intended recipient of the book a notice to inform him or her that their publication is under review. If the hearing officer finds that the material violates the prison's restrictions on content, the publication will then be sent to a higher-ranking authority, usually a Warden or a specific committee tasked with examining incoming publications, to review the hearing officer's determination. Finally, if the material under review is a publication, and the Warden or reviewing committee confirms the hearing officer's finding that the publication violates the prison's content-based restrictions, the publication is then placed on the prison's list of rejected publications. The intended recipient of the publication can appeal the final decision, generally within a specified number of days of receiving notice. Incarcerated individuals do not always have counsel to represent them in their appeal.

## CONTENT-NEUTRAL BOOK BANNING

### *Restrictive Vendor and Publisher Policies*

While some states ban books through content-based policies, other states have adopted more neutral, but expansive means of banning books through single-vendor or limited-vendor models. Single-vendor systems with access to only select titles effectively serve as a ban on all books that are not provided by that vendor.

### *Restrictions on Physical Mail*

Recently, in 2021, The Biden Administration has begun to end physical mail altogether for federal incarcerated individuals through a pilot program called MailGuard that was initiated under The Trump Administration. In 2020, the federal Bureau of Prisons (BOP) entered into a contract with Smart Communications to initiate the MailGuard program which converts non-legal physical mail to electronic scans. Using MailGuard, inmates must view the PDFs of their mail remotely from a tablet or kiosk. After 30 days, the mail is destroyed and there is no way for incarcerated people to ever physically hold or recover their mail.<sup>31</sup> Despite a lack of data that suggest physical mail is the primary colporate for bringing contraband into prisons and that the vast majority is introduced through visitors and staff, prisons and jails are increasingly opting into contracts similar to the BOP's contract with Smart Communications in an effort to increase profit opportunities while burdening the incarcerated population.<sup>32</sup> The shift to electronic mail has often been accompanied by efforts to limit access to physical books for supposed security concerns, with jails and prisons pointing to access to e-books as an alternative.<sup>33</sup>

Multiple carceral facilities have already begun using MailGuard to convert physical mail to electronic scans, including at least two federal prisons—Federal Correctional Institution (FCI) Beckley in West Virginia and United States Penitentiary (USP) Canaan in Pennsylvania.

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31 The American Prospect, *Physical Mail Could Be Eliminated at Federal Prisons* (2021), <https://prospect.org/justice/physical-mail-could-be-eliminated-at-federal-prisons/>

32 Workers World, *End privatization of prison mail*, <https://www.workers.org/2021/06/56838/>

33 Public Source, *'I'm going to be lost now': ACJ limits inmates' access to books, raising mental health concerns amid pandemic restrictions*, <https://www.publicsource.org/allegeny-county-jail-book-restricted-inmate-mental-health-pandemic/>

## Paywalling Access to Books for Profit

Increasingly, prisons have been entering into harmful contracts with companies either selling tablets to incarcerated individuals at an egregious cost or, more recently, offering free tablets to prisoners while charging those incarcerated for using the tablets at every turn. The price for accessing books within the tablet are upcharged above market prices and often these contracts provide The Department of Corrections with a portion of the revenue collected from these tablets. As of 2021, at least 12 states have signed contracts with private companies to provide “free” tablets to incarcerated individuals. Most recently, California entered into such a contract at the end of 2020 with the corporation GTL—one of the predominant tablet providers.<sup>34</sup>

In concurrence with the implementation of these predatory tablet contracts, prisons throughout different states have attempted to do away with law libraries, end physical book donations, and do away with physical mail in favor of electronically scanned mail.<sup>35</sup> It is vitally important that the public remain vigilant in tracking prisons that are opting into contracts to provide prisoners with these tablets and continue to pushback against the tablets being used in replacement of prison libraries, book donations, and physical mail that allow prisoners, who are already subjected to unconscionably low wages in exchange for their labor, free alternatives for access to literature.

The Pennsylvania Department of Corrections (“DOC”) provides a particularly egregious example of correctional facilities placing restrictions that allow corporations to upcharge and profit off incarcerated individuals’ access to books. The Pennsylvania DOC contracted with a company to supply tablets to incarcerated individuals, which can be used to purchase eBooks from the vendor’s repository of only 8,500 Department of Corrections-approved books. In addition to the small number of books available, the tablets and the additional costs of eBooks are cost-prohibitive to many of those behind bars. Tablets cost \$147 plus tax and eBooks range from \$2.99-\$24.99.<sup>36</sup> To put this exorbitant cost in perspective, Pennsylvania’s DOC pays incarcerated individuals between \$0.19 and \$0.51 per hour.<sup>37</sup> The Federal Bureau of Prisons similarly attempted to restrict the vendors from which those incarcerated in three federal facilities could order books. The policy resulted in a thirty percent markup in costs of books.<sup>38</sup> The federal government withdrew these policies after congressional outcries.<sup>39</sup>

In May 2017, South Dakota state prisons began to roll out tablets through a contract with GTL. The tablets replaced the state prison’s law libraries since the tablets purportedly provided incarcerated individuals with a new means for access to the courts, despite costs and technical difficulties associated with the tablets. Incarcerated individuals brought two separate complaints against SDDOC, challenging the loss of their right to accessing the courts as a result of the introduction of tablets. As is the case all too often with prisoners’ rights concerns brought before the courts, both cases were brought by *pro se* litigants and were dismissed on procedural grounds.<sup>40</sup>

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34 Prison Policy Initiative, *More states are signing harmful “free prison tablet” contracts*, <https://www.prisonpolicy.org/blog/2019/03/07/free-tablets/>

35 *Id.*

36 *Id.*

37 Pa. Dep’t of Corr., DC-ADM 816, *Inmate Compensation Manual*, §1-B (2012).

38 The Washington Post, [https://www.washingtonpost.com/local/public-safety/federal-prisons-abruptly-cancel-policy-that-made-it-harder-costlier-for-inmates-to-get-books/2018/05/03/1b3efcde-4ed8-11e8-b725-92c89fe3ca4c\\_story.html](https://www.washingtonpost.com/local/public-safety/federal-prisons-abruptly-cancel-policy-that-made-it-harder-costlier-for-inmates-to-get-books/2018/05/03/1b3efcde-4ed8-11e8-b725-92c89fe3ca4c_story.html)

39 *Id.*

40 *Gard v. Fluke*, 2019 U.S. Dist. LEXIS 113512, at \*4 (D.S.D. July 9, 2019) *certificate of appealability denied*, No. 19-2486, 2020 U.S. App. LEXIS 1421 (8th Cir. Jan. 13, 2020); See also *Brakeall v. Stanwick-Klemik*, No. 4:17-CV-04101-LLP, 2017 WL 6278872, at \*8 (D.S.D. Dec. 8, 2017)

# PROBLEMS WITH PRISON BOOK CENSORSHIP POLICIES

## A. BOOK BANNING POLICIES ARE OPAQUE

Many states' prison book censorship policies lack transparency both in their process and implementation.

In a letter to the Center, an incarcerated individual in North Carolina described the arbitrariness of the process for censoring books and detailed how the “mailroom lady” denied him access to literature that an incarcerated individual who transferred in from a different unit was allowed to possess.<sup>41</sup>

While 26 states maintain lists of banned books, few states publicize their banned book lists on their websites, leaving the public with little understanding of what policies are in place in prisons. Some states were only responsive to inquiries about banned books after the Clinic submitted public information requests. Even then, a number of states were still unresponsive. For family members of the incarcerated and civil society organizations interested in sending books to those in prison, this lack of transparency is especially frustrating. These stakeholders are often left in the dark about whether the books they have sent to loved ones are ever received.

The burden of the lack of transparency also falls on the incarcerated. Although many prison policies require that prison officials inform both the incarcerated and the sender of books that a particular book is rejected, this policy is not always followed.<sup>42</sup> In some states, such as Georgia, there is no requirement that the intended recipient of a publication be informed that a book sent to him or her was rejected.<sup>43</sup>

Even when the list of banned books is publicly available, states often do not provide an explanation for why certain books appear on the list. Fourteen states do not provide any justification for a book's banning.<sup>44</sup> In the rare cases where states offer supporting policies for banning certain books in their prisons, it is often vague and in the form of classifying books as a “security threat,”<sup>45</sup> “disorder-related text,”<sup>46</sup> or “material that threatens.”<sup>47</sup>

For example, in July 2018, the Louisiana DOC released its banned book list in response to a public information request.<sup>48</sup> The 950 publications-long list includes *Game of Thrones*, *Black Panther*, several books by Elijah Muhammad, *Native American Crafts & Skills*, *The Complete Idiot's Guide to Linux-Software*, and *100 Years of Lynching*.<sup>49</sup> Specific issues of *The Economist*, *Newsweek*, *Vanity Fair*, *New Yorker*, *National Geographic*, and *ESPN Magazine*.<sup>50</sup> Frantz Fanon's classic text *Black Skin, White Masks*, one of the most important anti-colonial works of the post-war period is also banned.<sup>51</sup> Notably, Louisiana's rejected publications list does not contain any justification for why the 950 publications ended up on the list.

Louisiana's banned book list is emblematic of troubling patterns among a significant number of states. First, states maintain covert lists of prohibited books in its prisons, and do not publicize them unless pressured by public information requests. It is important that states publicize lists of prohibited books to increase transparency and accountability over censorship decisions. Second, banning books without justification opens the doors to abuse. Prison officials can ban books without having to offer any explanation behind their choices, leaving incarcerated individuals, authors, and the public with little understanding of why a particular book was banned and thus making it difficult to challenge the censorship.

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41 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

42 See, e.g. *Prison Legal News v. Stole* 2:13cv424 (E.D. Va 2015) (rejecting Virginia Beach Correctional Center's motion for summary judgment, finding that PLN adequately pled that VBCC failed to notify publisher of rejection of its publication and provide publisher with opportunity to be heard).

43 See *infra*, Appendix for Georgia

44 California, Illinois, Indiana, Iowa, Louisiana, Missouri, New Jersey, Ohio, Pennsylvania, South Carolina, Texas, Utah, West Virginia, and Wyoming.

45 See, e.g. Montana Banned Book List, Wisconsin Banned Book List

46 See, e.g. North Carolina Banned Book List

47 See, e.g. Oregon Banned Book List

48 Julia O'Donoghue, *At Louisiana Prisons, There's Some Mystery n What Gets a Book Banned* Nola (Nov. 28, 2018) available at <https://www.nola.com/expo/news/erry-2018/11/ced87bf3338591/at-louisiana-prisons-theres-so.html>.

49 Louisiana Department of Corrections List of Books and Publications Rejection List available at [https://www.scribd.com/document/394398095/Louisiana-Department-of-Corrections-list-of-banned-books-and-publications#from\\_embed](https://www.scribd.com/document/394398095/Louisiana-Department-of-Corrections-list-of-banned-books-and-publications#from_embed) (last accessed Feb. 13, 2019).

50 *Id.*

51 *Id.*



Additionally, educational books, news publications, and books relating to racial justice appear on the list. When asked to explain why certain books ended up on the banned publications list, Louisiana DOC's spokesperson Ken Pastorick stated that some, “[b]ooks that could be seen as divisive or provocative” and “those are the kinds of things we don’t want in our institutions.”<sup>52</sup> Few would take issue with prison officials seeking to maintain order in their institutions, but the content of the banned publications make clear that safety and order are not advanced by their prohibition.

Additionally, 21 states and the District of Columbia reject books based on their content, but do not maintain a central list of all banned publications. By failing to maintain a list of banned publications, states allow DOC officials to make a case-by-case determination of whether a publication can be allowed. This creates the opportunity for inconsistent decisions across different facilities and between different Corrections Officers. Additionally, when states do not publicize their decisions, it is easier for abuse to occur unnoticed, as well as to challenge these determinations.

Washington DOC's book censorship procedures, in contrast to Louisiana's, are among the most transparent in the United States. The Washington DOC keeps an updated list of rejected publications on its website, which includes the reasoning behind the rejection.<sup>53</sup> Other states, like Texas, require that the banned book lists are updated on a monthly basis and made available to incarcerated individuals in the prison's library.<sup>54</sup> This demonstrates that transparency is not an impossible feat for these institutions if the political will exists.

## BOOKS ARE OFTEN BANNED FOR RACIST, SEXIST, OR IRRATIONAL REASONS, OR TO PREVENT INCARCERATED PEOPLE FROM LEARNING ABOUT THEIR CIVIL AND HUMAN RIGHTS

Most policies examined in this report are fairly similar—they allow for censorship of books that threaten the safety and security of prisons, as well as books that might contain nudity or pornography. However, the application of these seemingly neutral policies is inconsistent, erratic, and subject to the biases of the prison officials. As a result, books that have no bearing on the safety and security of the correctional facility are sometimes banned.

### *Irrational reasons*

Some prison officials have banned publications that objectively pose no threat to the safety and security of prisons, claiming that the publications in fact endanger the safety and security of the facility. Some notable examples are books such as *How to Draw Dragons in Simple Steps*, *How to Draw a Flower*, and *How to Draw Looney Tunes*, all of which appear on the banned book list in Florida.<sup>55</sup> In 2012, an incarcerated individual in an Arizona prison was denied access to the book *Grey's Anatomy* because prison officials thought that that incarcerated person “might request more health care,” after reading the medical textbook.<sup>56</sup> But the extent of the irrationality in Arizona's book banning policies does not end there. Other books banned in Arizona include *Sketching Basics*, *Batman: Eye of the Beholder*, *Simple Physics*, and *Mythology of Greece and Rome*.<sup>57</sup>

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52 O'Donoghue, *supra* 63.

53 Wash. Dep't. Of Corr., *Publications Report*, <https://www.doc.wa.gov/docs/publications/reports/400-RE003.pdf>. [hereinafter Washington Publications Report].

54 Tex. Dep't of Criminal Justice, BP-03.91 (rev. 3), Uniform Offender Correspondence Rules, 8 (Aug. 23, 2013), <https://www.tdcj.texas.gov/documents/policy/BP0391.pdf>.

55 Email from Dianne Houpt, Public Information Specialist, Fla. Dep't of Corr. to author (Nov. 14, 2018 12:12 PM EST) (on file with the Thurgood Marshall Civil Rights Center).

56 Brief for Prison Books Club for Amicus Curiae in Support of Petitioner, p. 10 *Prison Legal News v. Fla. Dep't of Corr.*, No. 18-355 (2018) [hereinafter Brief for Prison Books Clubs].

57 Corrina Regnier, *What Do Batman and The Onion Book of Known Knowledge Have in Common? Censorship, the ACLU, and Arizona Prisons*. Read in., ACLU (Sept. 30, 2015), <https://www.aclu.org/blog/prisoners-rights/what-do-batman-and-onion-book-known-knowledge-have-common-censorship-aclu-and?redirect=blog/speak-freely/what-do-batman-and-onion-book-known-knowledge-have-common-censorship-aclu-and>.

Other states like North Carolina, California, Wisconsin, and Michigan have similarly random book banning policies. In January 2018, North Carolina's banned books list included the *Encyclopedia of North Carolina*, *Marvel: Avengers*, *The Complete Guide to Writing*, and *Webster's Large Print Dictionary*.<sup>58</sup> As of August 2017, California's banned books list includes *A Guide to Drawing*, *Color for Painters*, *Encyclopedia of Science*, *Frida Kahlo The Paintings*, *Great Empires: An Illustrated Atlas*, *Kaiser Permanente: Healthwise Handbook*, *The Encyclopedia of Demons and Demonology*, *The Handy Chemistry Answer Book*, *The Math Book*, and *Your Child's Development from Birth to Adolescence*.<sup>59</sup> In Wisconsin, *Orchard Beach: The Bronx Riviera*, a series of portraits celebrating the diversity of Bronx's Orchard Beach, is also banned because "it poses a threat to security."<sup>60</sup> While in Michigan, the list of books that are banned in prisons includes *Form Your Own Limited Liability* ("Threat to custody and security; contains IRS tax forms"), *Grant Writing for Dummies* ("mail providing instruction in the commission of criminal activity"), *How to Form a Nonprofit* ("the book includes tax forms which may be used to facilitate the filing of false or fraudulent tax documents"), and *Law of Contracts and the Uniform Commercial Code* ("Uniform commercial code book facilitates criminal activity") are also banned.<sup>61</sup>

## Race

Prisons commonly isolate books that focus on the development of African American identity for inclusion on banned books lists. For example, North Carolina prohibited many acclaimed books by black authors, including *Kindred* by Octavia Butler, *The Bluest Eye* by Toni Morrison, *I am Not Your Negro* by James Baldwin, and *The Color Purple* by Alice Walker.<sup>62</sup> The book *Black Skin, White Masks* by Frantz Fanon has been banned in Louisiana and Michigan. When asked why her father's book was banned on the grounds that it advocated "racial supremacy," Mireille Fanon, daughter of Frantz Fanon and a long time human rights activist in France, responded:

This type of argument is very often used by those who are afraid that their White privileges will be questioned by those they racialize and exclude. This prohibition [actually] shows how Fannon's thought is liberating, even emancipatory.<sup>63</sup>

## Denial of Access to Civil and Human Rights Literature

Prisons across the country have banned publications relating to prison reform and prison conditions. Florida's DOC has banned several magazines that report on prison conditions like *Abolitionist*, *Coalition for Prisoner's Rights Newsletter*, *Prison Health Network*, and *Prisoners Revolutionary Literature*. *Abolish all Prisons*, *How to Survive Prison for the First Time Inmate*, *Life in Prisons*, *Lockdown on Rikers*, *Lynching in America* by Equal Justice Initiative, *Malcolm X Speaks*, *New Jim Crow Study Guide and Call to Action*, *Chokehold* by Paul Butler, *The Making of a Slave*, *Papillon* by Henri Charriere, *Police Brutality* by Elijah Muhammad, *Political Prisoners*, *Prison and Black Liberation* by Angela Davis, *Prison Industrial Complex for Beginners*, and *Tails from a Jail Cell* are also prohibited in Florida prisons.<sup>64</sup> Illinois banned the Pulitzer prize-winning book, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*, a decision that resulted in a lawsuit.<sup>65</sup> In Arizona, the DOC banned issues of *Prison Legal News*, a newsletter that focuses on protecting the human rights of incarcerated individuals,<sup>66</sup>

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58 N.C. Dep't of Pub. Safety, *Disapproved Publications Report (Bulletin Board Posting)* (Jan. 23, 2018), <http://media2.newsobserver.com/content/media/2018/1/23/BannedBookList.pdf>.

59 See Alec Shea, *California Prohibited Publications*, Muckrock (Aug. 15, 2017), <https://www.muckrock.com/foi/california-52/california-prohibited-publications-42016/#file-147713>.

60 Email from Bambi Dolphin, Office Operations Assoc., Wisc. Dep't. of Corr., to author (Feb. 21, 2019 02:05 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

61 Email from Barbara Brown, FOIA Analyst, Mich. Dep't. of Corr. to author (Feb. 25, 2019 12:37 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

62 "NC Disapproved Publications List as of 9-18-19," *Prison Legal News*, (Sept. 26, 2019), <https://www.prisonlegalnews.org/news/publications/nc-disapproved-publications-list-9-18-19/>

63 Sharda Sekeran, *Frantz Fanon's Daughter to Michigan Prisons: Take 'Black Skin, White Masks' Off the Banned Book List*, Colorlines (July 26, 2019), <https://www.colorlines.com/articles/frantz-fanons-daughter-michigan-prisons-take-black-skin-white-masks-banned-book-list>.

64 Email from Dianne Houpt, Public Information Specialist, Fla. Dep't of Corr. to author (Nov. 14, 2018 12:12 PM EST) (on file with the Thurgood Marshall Civil Rights Center).

65 Answer to Amended Complaint, par. 19, *Thompson v. Baldwin*, No. 18-cv-3230 (C.D. Ill. 2018).

66 Alan Yuhas, *Arizona lawsuit says prisons denied and censored inmates' access to news*, *The Guardian* (Nov. 11, 2015), <https://www.theguardian.com/us-news/2015/nov/11/arizona-prisons-lawsuit-denying-censoring-inmates-news>.



because they included stories with titles like “New York Jail Guard Sentenced for Sexually Abusing Seven Prisoners” and “Kitchen Supervisor Gets Prison Time for Sexually Abusing Two Prisoners”.<sup>67</sup> A spokesperson from the Arizona DOC stated that the articles not only violated the prison rules on sexual content, but also had a propensity to incite riots.<sup>68</sup> In Connecticut, the DOC has banned nine issues of *Coalition for Prisoner’s Rights Newsletter* due to “safety and security” concerns.<sup>69</sup>

## Gender & Sexuality

Prison censors often run afoul on bans on nudity. A Maryland prison prohibited an incarcerated individual from receiving *Don’t Call Us Dead*, a book of poetry by Danez Smith that covers topics like police brutality and the complexity of queer sexuality due to the depiction of nudity in its cover photo.<sup>70</sup> In Texas, incarcerated individuals are prohibited from receiving publications that contain images of nude children. This rule resulted in prohibition of National Geographic issues and publications like *Anatomic: The Complete Home Medical Reference* and *A Child is Born*, both of which primarily feature in-vitro images.<sup>71</sup> Commenting on the Texas ban, Howard University Professor Dr. Bahiyyah Muhammad has stated:

special populations include incarcerated women/incarcerated pregnant women - in courses offered inside facilities that educate pregnant women developmentally on what to expect during and after childbirth, this would be an important book for them in a learning environment. Thus, some books may not be fitting for one population, but this should not deem them to be unfit for all populations of incarcerated persons. Allowing such books on sex offender units is something totally different than having such educational information available on female reentry units.<sup>72</sup>

## C. BOOKS IN PRISONS ARE OVERPRICED

Some states’ DOC prohibit book donations from non-profit organizations. For incarcerated persons, many of whom cannot afford to buy new books, donated books from non-profits (or elsewhere) are a crucial lifeline. Banning books from non-profits stifles outside efforts to ensure the incarcerated are provided with services to support their rehabilitation. Prison libraries are often underfunded, understaffed, or inaccessible to the incarcerated. Some prisons even lack prison libraries or limit each incarcerated person’s access to the library. Washington State DOC, for example, recently implemented a policy providing that people incarcerated in the state’s prisons can only access books that are pre-approved by one library and limits used books to those available at another.

However, Books to Prisoners, a nonprofit organization that donates books to incarcerated individuals, believes that this is not the case. Prison libraries tend to have limited staff and are incredibly underfunded.<sup>73</sup> Books to Prisoners believes that Washington State DOC is using the library as a “scapegoat” because it has not received additional staff, procedure, or funding to help facilitate the inspection of books going to incarcerated individuals.<sup>74</sup> This means that the library staff will soon face the same problems the staff in the mail rooms face, and run the risk of making inconsistent and arbitrary decisions in banning books because of a lack of funding, guidance, and personnel.

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> Matt Berman, *The Banned Books and Censored Magazines of Connecticut’s State Prisons*, *The Atlantic* (Aug. 30, 2013), <https://www.theatlantic.com/national/archive/2013/08/the-banned-books-and-censored-magazines-of-connecticuts-state-prisons/279207/>.

<sup>70</sup> Interview with Reginald Dwayne Betts (Apr. 9, 2019).

<sup>71</sup> Eric Dexheimer, *Banned in Texas prisons: books and magazines that many would consider classics*, *Statesman* (Sept. 26, 2018), <https://www.statesman.com/article/20120901/news/309017594>.

<sup>72</sup> Interview with Dr. Bahiyyah Muhammad (Sept. 24, 2019).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

# LEGAL CONCERNS INVOLVED IN PRISON BOOK CENSORSHIP

## A. THE FIRST AMENDMENT

The First Amendment protects fundamental freedoms of expression, thought, conscience, and religion. The government cannot infringe on these rights, absent a narrowly tailored policy that serves a compelling government interest. Because prisons have unique security challenges, U.S. courts make room for the curtailment of some First Amendment rights in prisons. However, prisons do not have unfettered discretion to censor publications. As the Supreme Court articulated in *Turner v. Safley*, “prison walls do not form a barrier separating prison inmates from the protections of the Constitution,”<sup>75</sup> including the First Amendment’s requirement that the government not “abridge the freedom of speech.”<sup>76</sup> As noted by the 7th Circuit, “Freedom of speech is not merely freedom to speak; it is also freedom to read. Forbid a person to read and you shut him out of the marketplace of ideas and opinions that it is the purpose of the free speech clause to protect.”<sup>77</sup>

In *Turner*, the Supreme Court articulated a standard governing the validity of regulations that interfere with an incarcerated person’s constitutional rights. *Turner* held that for a regulation (like a complete ban on a book) to be upheld as constitutional, there must be a “valid, rational connection between a prison regulation and the legitimate governmental interest put forward to justify it.”<sup>78</sup> The legitimate governmental interest must also “operate in a neutral fashion, without regard to the content of the expression.”<sup>79</sup> If a court determines that there is a rational connection between the legitimate interest and the regulation at issue, it must then apply a three-part “reasonableness” test factors: (1) “whether there are alternative means of exercising the right;” (2) “the impact accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally;” and (3) whether there are “obvious, easy alternatives”, demonstrating that the “regulation is not reasonable, but is an ‘exaggerated response’ to prison concerns.”<sup>80</sup>

Even if a prison policy satisfies the *Turner* reasonableness test, the Court has held that prison officials must still assert a tangible, logical, and justifiable penological purpose for abridging the constitutional rights of the incarcerated.<sup>81</sup> The ban must be reasonable and there should be a connection between the ban and the security concerns. For example, prison officials might justifiably censor publications that include maps of the prison facility or explain how to make a bomb.

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75 *Turner v. Safley*, 482 U.S. 78, 84 (1987); *Everson v. Mich. Dep’t of Corr.*, 391 F.3d 737, 756 (6th Cir. 2004).

76 U.S. Const. Amend. I; *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). The First Amendment has “far greater significance in the total isolation of prison life,” *Nichols v. Nix*, 810 F. Supp. 1448, 1462 (S.D. Iowa 1993), and the First Amendment includes protecting a citizen’s right to read, and an individual’s right to freedom of inquiry and thought. *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965) (citing *Martin v. Struthers*, 319 U.S. 141, 143 (1943)). See also *Procunier v. Martinez*, 416 U.S. 396, 428 (1974) (Marshall, J., concurring) (“... [an incarcerated individual] [does] not lose [their] human quality; [their] mind does not become closed to ideas; ... [T]he needs for identity and self-respect are more compelling in the dehumanizing prison environment.”).

77 *King v. Fed. Bureau of Prisons*, 415 F.3d 634, 637 (7th Cir. 2005) (citations omitted) (reversing dismissal of incarcerated person’s claim that he was denied a book in violation of the First Amendment).

78 *Turner*, 482 U.S. 78, 89 citing *Block v. Rutherford*, 468 U.S. 576 (1984).

79 *Id.* at 90.

80 *Id.*

81 *Johnson v. California*, 543 U.S. 499, 547 (2005) (Thomas, J., dissenting) (“[W]e have never treated *Turner* as a blank check to prison officials. Quite to the contrary, this Court has long had ‘confidence that . . . a reasonableness standard is not toothless.’”) (quoting *Thornburgh v. Abbott*, 490 U.S. 401, 414).

## B. BANNING BOOKS RELATED TO RACIAL JUSTICE

Prisons throughout the country have banned books relating to racial justice, prisoner rights, and civil rights. Banning books such as *The New Jim Crow*, *The Autobiography of Malcolm X*, and *To Kill a Mockingbird* are unlikely to withstand the *Turner* test. Courts have consistently struck down prison bans on books touching upon racial topics, including texts advocating racial supremacy, as long as they do not advocate violence. For example, a district court in the Seventh Circuit concluded that a ban of a text that referenced the American Indian Movement, characterized as a “race group,” was unconstitutional because there was no evidence to demonstrate the text promoted animosity.<sup>82</sup> In *McCabe v. Arave*, the Ninth Circuit Court of Appeals stated that “literature advocating racial purity, but not advocating violence or illegal activity as a means of achieving this goal, and not so racially inflammatory as to be reasonably likely to cause violence at the prison, cannot be constitutionally banned as rationally related to rehabilitation.”<sup>83</sup> Similarly, the Third Circuit has held that banning of authoritative texts of a religious sect considered to espouse racial separatist beliefs because “mere antipathy caused by statements . . . offensive to the white race is not sufficient to justify the suppression.”<sup>84</sup> Further a federal court has found that a ban on text from a religious group that advocated racial supremacy was unconstitutional because prison officials failed to show it would cause violence, making the ban an exaggerated response that was “based on speculation . . . unsupported by a reasonable basis.”<sup>85</sup>

The banning of these books also speak to a troubling attempt by prisons to control the incarcerated’s access to information and restrict their ability to think critically about the structures of oppression that they are experiencing. The Supreme Court has opined on the particular urgency of providing the incarcerated access to a breadth of publications. In *Beard v. Banks*, Justice John Paul Stevens described a prison policy that prevented those in administrative segregation access to books, newspapers, and magazines as “perilously close to a state-sponsored effort at mind control. The State may not “invad[e] the sphere of intellect and spirit which it is the purpose of the First Amendment of our Constitution to reserve from all official control.”<sup>86</sup> He further noted that access to newsletters, magazines, and books was essential to experiencing other social, political, aesthetic, and moral ideas, which in turn are “central to the development and preservation of individual identity, and are clearly protected by the First Amendment.”<sup>87</sup>

Moreover, the need to protect First Amendment rights of incarcerated individuals, a population subject to the oftentimes arbitrary regulations and whims of prison officials, is arguably higher than non-incarcerated individuals. As the Supreme Court articulated in *Griswold v. Connecticut*, “[T]he State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or print, but the right to distribute, the right to receive, the right to read and freedom of inquiry, freedom of thought . . .”<sup>88</sup> Given the all-encompassing nature of the U.S. prison system and the restrictions on contact with the outside world, it is even more important that those in prison have access to a wide “spectrum of available knowledge.”

## C. PRISON CENSORSHIP AND INTERNATIONAL HUMAN RIGHTS

The banning of certain books also violates international human rights law. It is well recognized under international law that the purpose of detention is reformation and social rehabilitation.<sup>89</sup> By banning books, prisons are infringing upon the aim of imprisonment. Education and cultural activities should be provided in prisons, including access to an adequate library.<sup>90</sup> In support of this notion, international courts have further upheld that books are not only items that incarcerated persons may want to read, but are essential to the rehabilitation process.<sup>91</sup>

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82 *Greybuffalo v. Kingston*, 581 F. Supp. 2d 1034, 1044-45 (W.D. Wisc. 2007).

83 *McCabe v. Arave*, 827 F.2d 634, 638 (9th Cir. 1987).

84 *Long v. Parker*, 390 F.2d 816, 822 (3d Cir. 1968).

85 *Nichols v. Nix*, 810 F. Supp. 1448, 1466-67 (S.D. Iowa 1993).

86 *Beard v. Banks*, citing *Wooley v. Maynard*, 430 U. S. 705, 715 (1977).

87 *Id.*

88 *Griswold v. Connecticut*, 381 U. S. 479, 482 (1965) (citation omitted).

89 International Covenant on Civil and Political Rights [hereinafter “ICCPR”], article 10, para. 3.

90 Universal Declaration of Human Rights [hereinafter “UDHR”], arts. 26-27.

91 Alan Travis, *Prison Book Ban is Unlawful, Court Rules*, (Dec. 5, 2014)

<https://www.theguardian.com/society/2014/dec/05/prison-book-ban-unlawful-court-chris-grayling>.

Additionally, under international law, all individuals, including those in prison, have the right to artistic freedom and creativity. The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds “in the form of art.”<sup>92</sup> Further, under article 15(3) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) parties to the treaty, including the United States, pledged to undertake the responsibility “to respect the freedom... of creative activity.” This artistic and cultural freedom encompasses the freedom to read, hear, view and otherwise experience works of art and literature. Thus, by banning books based on their unpopular views or racial content, states infringe upon the incarcerated’s rights to enjoy artistic freedom and creativity in violation of international human rights law.

International law allows for the limitation of incarcerated person’s liberty insofar as those restrictions are necessary in the maintenance of order.<sup>93</sup> There is no evidence to show that widespread banning of books is necessary in the maintenance of order in state prison facilities. Books such as *The New Jim Crow* or *Black Skin, White Masks* have no effect on the maintenance of order in state prison facilities. In light of these facts, the banning of books violates international human rights law by placing an unnecessary restriction on incarcerated individuals’ liberty.

The United States has accepted recommendations by other countries, like Sweden, to safeguard the full enjoyment of human rights by incarcerated individuals and ensure the treatment of individuals in maximum security prisons conforms with international law.<sup>94</sup> The United States has also accepted Algeria’s recommendation to review measures to improve the conditions of incarcerated individuals in prisons,<sup>95</sup> and Thailand’s recommendation to address prison conditions in a manner that aims to preserve the rights and dignity of all of those deprived of their liberty.<sup>96</sup> Finally, the United States has accepted Austria’s recommendation to take appropriate legislative and practical measures to improve the living conditions throughout its prison systems with regard to health care and education.<sup>97</sup>

## D. THE 14TH AMENDMENT

While content based bans are in some ways easier to challenge because they require prison officials to justify the reason behind banning specific books, prisons throughout the United States are now resorting to seemingly content-neutral ways of banning books — through approved vendor or single-vendor policies. Restrictive vendor policies are a de-facto ban on all books not offered by the vendor, thus implicating crucial First Amendment and Fourteenth Amendment rights.

In contrast to content-based restrictions, prisons that limit vendors or only allow a single or restrictive vendor leave those in prison with little or no other means to exercise their First Amendment rights. Essentially, under single-vendor policies, all books are per se excluded unless and until the permitted vendor has the publication in its inventory and it is approved by prison leadership. Therefore, these policies do not allow the incarcerated access to the “broad range” of publications required by the Supreme Court.<sup>98</sup> Moreover restrictions of this nature are not “individualized,” but rather function as a wholesale ban on all books not on the vendor list.

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92 ICCPR, article 19, para. 2.

93 UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules), Sept. 29, 2015, A/C.3/70/L.3, available at: <http://www.refworld.org/docid/56209cd14.html>.

94 Human Rights Council, Report of the Working Group on the Universal Periodic Review, United States of America, A/HRC/16/11, 4 January 2011, para. 92(177).

95 A/HRC/16/11, para. 92(179).

96 A/HRC/16/11, para. 92(62).

97 A/HRC/16/11, para. 92(70).

98 *Thornburgh v. Abbott*, 490 U.S. 401, 418, 109 S. Ct. 1874, 1884, 104 L. Ed. 2d 459 (1989).

## Rights of Those Attempting To Provide Access To Books To Incarcerated People

Further, publishers, authors, vendors, and distributors have constitutional rights to distribute their books, including to those in prisons. Prison walls do not bar parties “from exercising their own constitutional rights by reaching out to those on the ‘inside.’”<sup>99</sup> The Supreme Court has recognized that the “censorship of prisoner mail works a consequential restriction on the First and Fourteenth Amendment rights of those who are not prisoners” and that the interests of publishers and their intended recipients are “inextricably meshed.”<sup>100</sup>

In *Human Rights Defense Center v. Management & Training Corporation et al.*, the Human Rights Defense Center (“HRDC”) challenged the constitutionality of pre-approved vendor lists.<sup>101</sup> HRDC sued the Management & Training Corporation (“MTC”), a private prison firm, because it rejected 37 books shipped from HRDC to incarcerated individuals at two MTC facilities.<sup>102</sup> HRDC alleged that the books were rejected because they had not been pre-approved by MTC and/or because HRDC was not on a pre-approved vendor list.<sup>103</sup> As a result of the censorship, HRDC suffered “the suppression of HRDC’s speech; the impediment of HRDC’s ability to disseminate its political message; frustration of HRDC’s non-profit organizational mission; the loss of potential subscribers and customers; and the inability to recruit new subscribers and supporters[.]”<sup>104</sup> HRDC’s complaint relied upon three legal arguments:

- (1) That by preventing HRDC from sending their books to those in prison, MTC infringed upon HRDC’s right to free speech;
- (2) That the pre-approved vendor list allows some vendors and publishers to send books to those in prison, while excluding HRDC and other vendors, in violation of the Fourteenth Amendment right to equal protection;
- (3) And that the lack of notice and opportunity to appeal the rejections violated HRDC’s Fourteenth Amendment right to due process.

Ultimately, the parties settled, agreeing that MTC would modify its mail policy to permit the delivery of unsolicited publications, including paperback books, magazines and newspapers, regardless of the vendor, publisher or distributor, and would cease its use of an approved vendor list. The settlement also stipulated the implementation of a notice and appeals process for rejected publications. Notably, MTC agreed to comply with the settlement terms at all of its detention and correctional facilities nationwide—a first for a private prison corporation.

Though this case only challenged the constitutionality of approved-vendor policies and was settled out of court, it is instructive in identifying harms suffered by book suppliers and the constitutional freedoms at stake—issues which are only magnified within the context of even more restrictive single-vendor policies.



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Prisons do not disappear social problems, they disappear human beings.

– Angela Davis

Education is Freedom.

– Paulo Friere



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<sup>99</sup> *Id.* at 407.

<sup>100</sup> *Procunier v. Martinez*, 416 U.S. 396, 409 (1974) (overruled in part on other grounds by *Thornburgh*, 490 U.S. 401 (1989)).

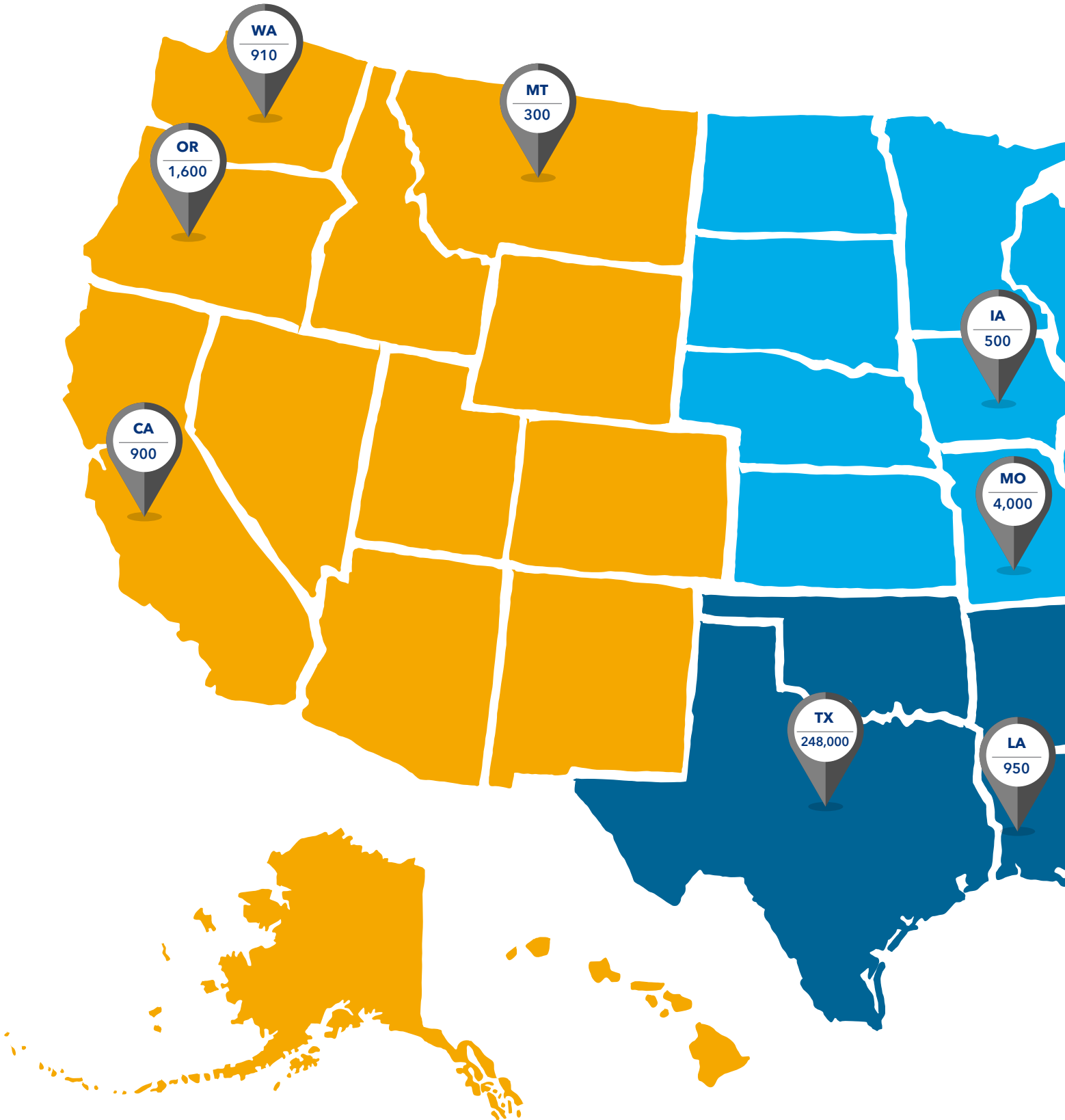
<sup>101</sup> Complaint at 6, *Human Rights Defense Center v. Management & Training Corporation et al.* 2017 WL 7789183 (N.D. Ohio 2017).

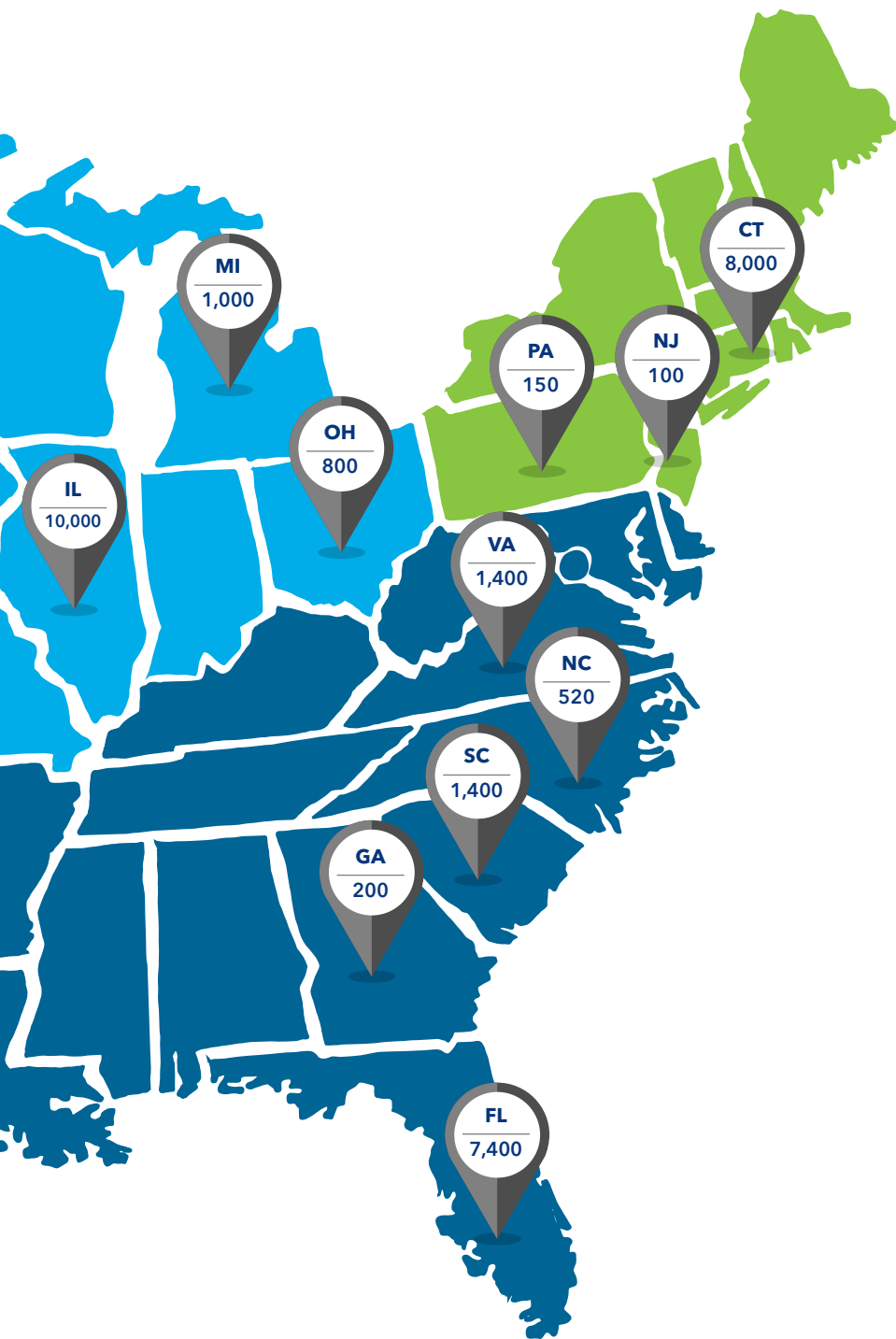
<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 7.

# BANNED BOOK LISTS BY THE NUMBERS\*\*





- Texas - 248,000
- Illinois - 10,000
- Connecticut - 8,000
- Florida - 7,410
- Missouri - 4,000
- Oregon - 1,600
- South Carolina - 1,400
- Virginia - 1,400
- Michigan - 1000
- Louisiana - 950
- Washington - 910
- California - 900
- Ohio - 800
- North Carolina - 520
- Iowa - 500
- Montana - 300
- Georgia - 200
- Pennsylvania - 150
- New Jersey - 100

\*\*Numbers are approximate. Additionally, as this report notes, several states do not maintain banned book lists, but still enact content-based restrictions. Moreover, some states, such as Pennsylvania, have adopted restrictive vendor policies that severely restrict incarcerated individuals' access to books that are not otherwise on a banned book list.

## RECOMMENDATIONS

The Thurgood Marshall Civil Rights Center fully and vehemently supports the right to read for all those incarcerated and advocates, with no exceptions, for a complete end to the nation's largest book ban that exists throughout the United States' carceral system under the guise of addressing security concerns. Moreover, the Center envisions a future where our current prison institutions are rendered obsolete—a future where the caging of bodies *and minds* is no longer normalized—and is committed to working towards actualizing this vision.

Until the right to read is fully recognized, and there is an end to protocols that restrict what individuals are allowed to read while incarcerated and create unnecessary hurdles towards accessing books while imprisoned, the Center proposes the following recommendations to mitigate the harm caused by prison censorship:

- 1. Establish clear statewide policies for book censorship that are enforced at the state, rather than the facility level.** Ensuring that these censorship decisions are made on the state, rather than facility level ensures equal enforcement among all facilities and helps reduce the chances of individual correctional officers wielding undue power over the First Amendment rights of incarcerated individuals.
- 2. Require prison officials to publish on a regular basis updated banned book lists explaining why each book is banned, and where appropriate, citing specific parts of a book at issue.** This requirement, which should be satisfied *at least* once a year, would help hold prison officials accountable and reduce the likelihood that prison officials are randomly denying the incarcerated access to books. The public, especially authors and publishers, have a right to know which of their books are purposefully censored. This transparency would also benefit prison officials and the incarcerated, allowing each to more easily conform their behavior to prison policy, reducing confusion and administrative waste.
- 3. Establish a committee comprised of experts in prison administration and prison reform to review book banning policies and decisions.** This committee would review all book banning policies before they are implemented and all booking banning decisions before they become final. The committee should include voices from experts in prison administration and prison reform in the deliberation process would ameliorate concerns that the interests of the incarcerated would be advanced at the expense of prison safety and security, and vice-versa. This could even be a national committee composed by a non profit organization, which could provide a list to prisons around the nation.



4. **Remove restrictions on publications that deal with race, religion, philosophy, or political or social content.** As previous sections have shown, prison policies banning books due to their racial content are too often abused to ban seminal works of literature and nonfiction that relate to racial justice. Moreover, the First Amendment protects even the most unpopular opinions. Unless a book genuinely poses a certain threat to the safety and security of an institution, it should not be banned.
5. **Remove single-vendor or restricted-vendor policies that limit incarcerated persons' access to books.** In addition to the financial burden that these policies impose on incarcerated individuals, they also restrict access to the universe of books that support the rehabilitation and education of incarcerated individuals.
6. **End exploitative paywalling practices that allow for the profiting off incarcerated individuals' access to books and that often involve per-minute costs and upcharged pricing to increase profits at the expense of the incarcerated population.** These practices, such as charging incarcerated people for tablets or providing free tablets with other associated costs at every turn, places a financial burden on the incarcerated population for accessing books and is often accompanied by new policies that remove the options incarcerated individuals have for accessing free books.
7. **Train prison officials, particularly mailroom monitors, about the First Amendment rights of incarcerated persons, as well as how to comply with prison book censorship policies.** Mailroom monitors are the initial gatekeepers of prison publications. It is especially crucial that they receive proper training, so that they can successfully distinguish between publications that should be banned for legitimate reasons and publications that they might personally dislike, but have no bearing on the safety and security of the prison. With adequate knowledge of the First Amendment rights of incarcerated persons and a general understanding of prison book censorship policies, mailroom monitors can play a key role in ensuring that the constitutional rights of the incarcerated are not violated.
8. **Reverse measures taken to end physical mail throughout prisons and reject private corporations' efforts to turn prison mail into a profit opportunity through providing electronic scanning services, which, among many other concerns, poses a threat to incarcerated individuals' access to books.** The recent shift to allow corporations such as Smart Communications to profit off electronically scanning prison mail, at both the state level and federal level under the Biden administration, raises many civil rights concerns, including electronic mail limiting incarcerated people's access to books.

## CONCLUSION

The novelist Fyodor Dostoevsky famously remarked that, “*The degree of civilization in a society can be judged by entering its prisons.*” Our nation needs to come to terms with the understanding that no human being is disposable, nor is anyone defined solely by the worst action that they have committed, and our criminal justice system must reflect these truths. Who we are as a nation will be defined by the vision we adopt for our most powerful institutions, including prisons and jails, which house over one million of our fellow citizens each year. That vision must include recognizing the First Amendment rights of incarcerated individuals and their right to read.

In *Procunier v. Martinez*, Justice Thurgood Marshall stated,

*Information and ideas available outside the prison are essential to prisoners for a successful transition to freedom. Learning to be free requires access to a wide range of knowledge, and suppression of ideas does not prepare the incarcerated of any age for life in a free society.*

We encourage state correctional institutions to review, revise and enhance their policies to uphold First Amendment rights of incarcerated individuals, publishers and vendors, along with the human dignity of those behind bars.



**APPENDIX:  
STATE-SPECIFIC CHART**

# APPENDIX: FEDERAL AND STATE-SPECIFIC CHART

## THE FEDERAL PRISON SYSTEM:

The Federal Bureau of Prisons (BOP) regulations state that publications can only be rejected if they are found to be “detrimental to the security, good order, or discipline of the institution or if it might facilitate criminal activity.” Additionally, in the past, the BOP federal prisons have implemented controversial policies that effectively limit incarcerated persons’ access to books.

The arbitrary standard for censoring books leads to wide abuse throughout federal prisons and often leaves the fate of an incarcerated person’s access to a chosen book to the discretion of federal officials. In 2008, a federal prison twice rejected an incarcerated individual’s request to read two books by President Barack Obama—*Dreams From My Father* and *The Audacity of Hope*. The federal facility argued that the former president’s memoirs were potentially detrimental to national security. The BOP later reversed course and allowed the inmate to read the two books.<sup>105</sup>

In 2018, federal officials sent memos to federal prisons describing a new policy that would have imposed a seven-step process with a 30% price markup for the purchase of books and would have allowed purchases only through a private vendor while effectively banning books from publishers, book clubs, and bookstores. Federal officials cited concerns of contraband as justification of the policy. After concern from incarcerated individuals and their advocates, the memo was rescinded.<sup>106</sup>

Most recently, the BOP has entered into a contract with a private company to transition to electronic mail and ending physical mail throughout federal prisons, posing a serious threat to incarcerated persons’ access to books.<sup>107</sup>

## ALABAMA:

The Alabama Department of Corrections Administrative Regulation (“ADOC Regulations”) establishes responsibilities, policies, and procedures for incarcerated individuals’ mail. According to the ADOC Regulations, wardens of each individual facility have the discretionary authority to reject incoming publications that threaten institutional security.<sup>108</sup> The ADOC Regulations state that publications that are threats to institutional security may include, but are not limited to: incitement of violence based on race, religion, sex, or nationality; disobedience towards law enforcement officers; information relating to security threat group activity; or obscenities.<sup>109</sup> Before an incarcerated individual is denied a publication, the Warden must review the publication in question and make a specific, factual determination that the publication is detrimental to incarcerated individuals’ rehabilitation.<sup>110</sup> Banning a specific magazine issue does not result in the banning of all subsequent issues; rather, each issue must be reviewed on a case by case basis.<sup>111</sup>

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105 Mother Jones, *Books Have the Power to Rehabilitate. But Prisons Are Blocking Access to Them*, <https://www.motherjones.com/crime-justice/2019/11/prison-libraries-book-bans-california-sacramento-reading-rehabilitation/>.

106 Reuters, *U.S. prison officials rescind policy restricting books behind bars*, <https://www.reuters.com/article/us-usa-prisons-books/us-prison-officials-rescind-policy-restricting-books-behind-bars-idUSKBN1I51O8>.

107 The American Prospect, *Physical Mail Could Be Eliminated at Federal Prisons*, <https://prospect.org/justice/physical-mail-could-be-eliminated-at-federal-prisons/>.

108 A.D.O.C. A.R. 448 § V, subsec. H(4) (2008). (“The Warden / designee shall personally inspect each issue of a publication when a reasonable expectation that the particular issue violates the standards of this regulation. If it is determined that the issue of the publication violates these standards, then they will temporarily exclude the publication.”)

109 *Id.* § V, subsec. G(4).

110 *Id.* § V, subsec. G(5).

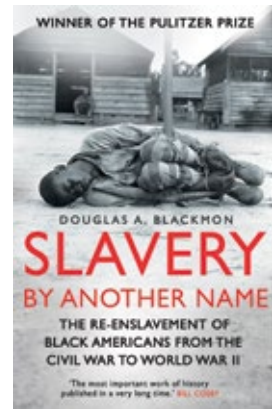
111 *Id.* § V, subsec. H(8).

If the Warden determines that the publication violates these standards, then the Warden will temporarily exclude the publication and notify the relevant incarcerated individual of the temporary ban.<sup>112</sup> The incarcerated individual may appeal the temporary ban, in which case, the Warden must provide to the Commissioner of Corrections a copy of documentation of the material that has been identified as violating the restrictions.<sup>113</sup> The Commissioner will then review the appeal and documentation, rendering a decision.<sup>114</sup> If the temporary ban is upheld, notice will be provided to both the incarcerated individual and publisher that the publication is permanently banned and that the matter is closed.<sup>115</sup>

While on its face, the policy seems straightforward, in application the policy has arbitrarily denied prisoners access to books that address racial discrimination, specifically within the context of prisons. In 2010, Warden John Cummins and Captain Victor Napier, pursuant to ADOC Regulation 448, denied Mark Melvin, who was incarcerated in an Alabama facility, *Slavery by Another Name* on grounds that the book incited “violence based on race.”<sup>116</sup> *Slavery by Another Name* is a Pulitzer Prize-winning historical account of racial oppression and bias in the South.<sup>117</sup> The book details the history of emancipated African Americans, who were targeted and branded as criminals through the passage of sham laws, leasing them back into slavery. While *Slavery by Another Name* does have a racial component, it does not advocate violence or attempt to incite violence in violation of ADOC(V)(G)(4)(a). In actuality, the book is a factual account of American history and some critics of the ban were concerned that the rejection of the book was invidiously based on prison officials not liking the title and the idea it conveyed.<sup>118</sup>

The Equal Justice Initiative filed a lawsuit with Melvin challenging the banning of *Slavery by Another Name* on the grounds that the censorship violated the First and Fourteenth Amendments. The Alabama DOC justified their ban by stating that the book posed a security threat because it was “too provocative.”<sup>119</sup> The lawsuit against the Alabama DOC created a media storm.<sup>120</sup> Less than four months after the filing of the lawsuit, the Alabama DOC agreed to allow incarcerated individuals access to *Slavery by Another Name*.

Both public outrage and a pending lawsuit pushed the Alabama DOC to change course. However, the ADOC Regulations remain unchanged, allowing for similar censorship to occur in the future.



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112 *Id.* § V, subsec. H(4).

113 *Id.* § V, subsec. H(6).

114 *Id.* § V, subsec. § H(7).

115 *Id.*

116 Equal Justice Initiative, *Melvin v. Thomas*, EJI, <https://eji.org/melvin-v-thomas> (last visited Oct. 22, 2018).

117 *Id.*

118 *Id.*

119 *Id.*; See generally Complaint, *Melvin v. Thomas*, No. 2:11-cv-00796 (M.D. Ala. Sept 23, 2011).

120 See e.g., Leonard Pitts Jr., *Black history and the Art of Denial*, The Miami Herald (Feb. 28, 2012); see also Equal Justice Initiative (“From the Salem, Oregon *Statesman Journal*, which observed, ‘America never reconciled its racial history’ and Tacoma, Washington’s *News Tribune*,” “We can’t come to terms with our sordid past if we’re in denial about it,” to the *Omaha World-Herald*, ‘Don’t try to ignore history of Jim Crow horrors’ and *The Hutchinson News* (Kansas), ‘Learn the truth and share it’, to *The Tennessean*, ‘Those embarrassed by our history try to suppress it’ and South Carolina’s *Beaufort Gazette*, ‘Facing truth of past only way to build better future,’ media across the country condemned Alabama’s attempt to suppress its shameful history.”)

## ALASKA:

Alaska conducts a restrictive vendor policy, while also screening publications that incite violence, theft, or destruction of property or illustrations of weapon or obscene material.<sup>121</sup> All publications must be ordered and delivered directly from an approved vendor before it is passed on to the designated incarcerated individual.<sup>122</sup> Donated or used books are not permitted.<sup>123</sup> Some facilities prohibit all magazines and hardcover books and require that all books have soft covers.<sup>124</sup> The Alaska DOC's policy and procedures does not publicly disclose which vendors are approved.<sup>125</sup> Designated mail staff conduct content reviews on all incoming publications. In the event that a publication is censored, prison staff must give notice to the designated incarcerated individual that explains why the publication has been withheld and informs them of how to challenge the decision by filing a grievance. The notice must be given to the incarcerated individual within 30 days.<sup>126</sup>

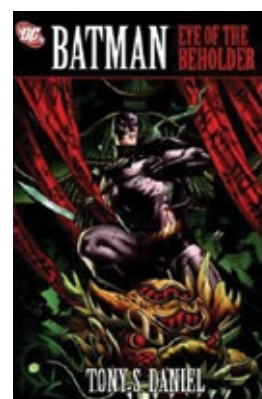
Phone calls, messages, and emails to Alaska's DOC to inquire about specific book censorship policies were left unanswered. Nor did the state of Alaska respond to the Clinic's public information requests.

## ARIZONA:

The Arizona DOC regulates publications through Department Order 914, which governs incoming communications to incarcerated individuals.<sup>127</sup> Pursuant to the Order, all publications are subject to screening and review.<sup>128</sup> If there is a legitimate correctional concern relating to security, safety, criminal activity or a threat to the order of the institution, the Publications Review Staff will review the incoming publication and redact any violative content.<sup>129</sup> This language is used to commonly ban books that would facilitate resistance or work stoppages.

No publication can be excluded solely on the basis of its appeal to a particular ethnic, racial, or religious group.<sup>130</sup> The Order seemingly allows some nuance in its application—publications containing nudity, sexual behaviors, or violent acts are not automatically withheld if the content is within a “commonly considered to constitute a religious or literary work.”<sup>131</sup> Complex mailroom supervisors are the first level of review on all incoming publications,<sup>132</sup> and if there is a determination that the publication should be excluded, then within 14 days, notice should be provided to the incarcerated individual and the publisher.<sup>133</sup>

Both publishers and incarcerated individuals may request for an appeal within 30 calendar days of receipt of exclusion.<sup>134</sup> Appeal decisions made by the Office of Publication Review are final and incarcerated individuals must exhaust administrative remedies before filing suit to challenge the censorship.<sup>135</sup>



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121 Alaska DOC P&P 810.03 § VIII(A), (C)(1) (2013).

122 *Id.* § VIII(A).

123 CITE (“Magazines, books, and newspapers must be unaltered, in the original condition as the publisher intended them to be sold. Home made items or cards are not authorized.”)

124 Alaska Department of Corrections, <http://www.correct.state.ak.us/institutions/goose-creek-vendors>.

125 *Id.*

126 *Id.* § VIII(D)(1).

127 *See* Ariz. Dep’t Corr. 914 (2017).

128 Ariz. Dep’t Corr. 914.06 § 1.2.

129 *Id.* § 1.11.

130 *Id.* § 1.12.

131 *Id.* § 1.19.

132 Ariz. Dep’t Corr. 914.08 § 1.1.

133 *Id.* § 1.2.

134 *Id.*

135 *Id.* § 1.2.2.5.

Arizona also conducts a restrictive vendor policy that only permits publications from authorized vendors.<sup>136</sup> Although publications that are in good condition can be donated to incarcerated individuals in Arizona prisons, publications from “Third Party Vendors” are not permitted.<sup>137</sup> Third Party Vendors include, but are not limited to Amazon, Barnes and Noble Marketplace, and Craig’s List.<sup>138</sup> Moreover, incarcerated individuals cannot request specific books from non-profit organizations. Rather, organizations such as Books Behind Bars may send all donated books to the main prison library, but they cannot direct books to a specific individual, providing no guarantee that an individual in need of a specific book will be able to access it.<sup>139</sup>

Although wardens may reject only publications that are detrimental to the security of the institution, wardens have exercised wide discretion to prohibit materials.<sup>140</sup> This discretion has resulted in books such as, *Mythology of Greece and Rome*, *Batman: Eye of the Beholder*, and *Sketching Basics* being banned.<sup>141</sup>

Although Arizona arbitrarily bans books based on content, the state does not maintain a centralized list of prohibited books in all facilities.<sup>142</sup>

A recent amicus brief to the Supreme Court regarding book banning in prisons highlights some of the absurdities in Arizona DOC’s attempts at censorship. In 2012, a prison in Arizona attempted to ban an incarcerated individual from receiving *Grey’s Anatomy* because he or she “might request more health care,” as a result of reading the medical textbook.<sup>143</sup> Moreover, a prison in Arizona allowed incarcerated individuals access to *Maxim* and *Playboy* but prohibited John Updike novels because they were too salacious.<sup>144</sup>

In 2015, the Human Rights Defense Center sued the Arizona DOC alleging that prison officials arbitrarily refused to give incarcerated individuals certain issues of Prison Legal News (“PLN”), a newsletter focusing on incarcerated individuals’ rights, because the newsletter included articles about sexual abuse by prison employees, including stories such as “New York Jail Guard Sentenced for Sexually Abusing Seven Prisoners” and “Kitchen Supervisor Gets Prison Time for Sexually Abusing Two Prisoners.”<sup>145</sup> The prison spokesperson pointed to the prudent nature of the articles and their propensity to incite riots due to the sexual content.<sup>146</sup> However, Paul Wright, founder and executive director of the Human Rights Defense Center and editor of Prison Legal News, maintained that the publication was targeted because it focuses on jail conditions, corruption, and brutality in prisons.<sup>147</sup> “It makes them look bad,” he said. “It gives readers the tools to stop these things.”<sup>148</sup> As of 2020, the state of Arizona is appealing a judge’s decision to award Prison Legal News injunctive relief in the lawsuit.<sup>149</sup>

In 2019 the Arizona DOC banned *Chokehold: The Policing of Black Men*, a book that details the racism in the United State’s criminal justice system. The Arizona DOC claimed that the book was “detrimental to the safe, secure, and orderly operation” of the state’s penitentiaries. After broad concern was raised, including a letter from the ACLU encouraging the corrections department to rescind the ban, the DOC reversed its decision.

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136 Ariz. DO 914.03 § 1.3 (2017).

137 *Id.*

138 *Id.*

139 See Alexa Liacko, *Non-profit sending books to inmates working to change DOC rules*, KGUN9 (Apr. 3, 2018), <https://www.kgun9.com/news/local-news/non-profit-sending-books-to-inmates-working-to-change-doc-rules>.

140 Alan Yuhas, *Arizona lawsuit says prisons denied and censored inmates’ access to news*, The Guardian (Nov. 11, 2015), <https://www.theguardian.com/us-news/2015/nov/11/arizona-prisons-lawsuit-denying-censoring-inmates-news>.

141 Corrina Regnier, *What Do Batman and The Onion Book of Known Knowledge Have in Common? Censorship, the ACLU, and Arizona Prisons.*, ACLU (Sept. 30, 2015), <https://www.aclu.org/blog/prisoners-rights/what-do-batman-and-onion-book-known-knowledge-have-common-censorship-aclu-and?redirect=blog/speak-freely/what-do-batman-and-onion-book-known-knowledge-have-common-censorship-aclu-and>.

142 Email from Ariz. Dep’t. Of Corr. to author (Mar. 18, 2019 04:35 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

143 Brief for Prison Books Club for Amicus Curiae in Support of Petitioner, P. 10 Prison Legal News v. Fla. Dep’t of Corr., No. 18-355 (2018) [hereinafter Brief for Prison Books Clubs].

144 *Id.*

145 Yuhas, *supra* note 45.

146 *Id.*

147 Camille Fassett, *Prisons are censoring publications that challenge state power*, Freedom of the Press (Apr. 28, 2018) <https://freedom.press/news/prisons-are-censoring-publications-challenge-state-power/>.

148 *Id.*

149 Prison Legal News, *PLN Awarded Injunction in Arizona Prison Censorship Suit*, <https://www.prisonlegalnews.org/news/2020/mar/4/pln-awarded-injunction-arizona-prison-censorship-suit/>

## ARKANSAS:

Arkansas conducts a restrictive vendor policy that only permits publications that are received from recognized commercial, religious, or charitable outlets.<sup>150</sup> Publications are also subject to inspection on the basis of its content to determine if it contains any material that is “detrimental to the security, discipline or good order of the institution.”<sup>151</sup>

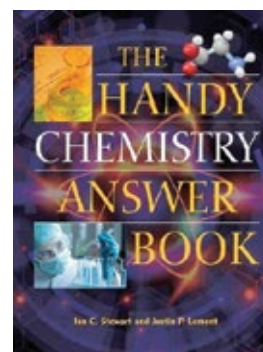
Arkansas DOC also excludes publications that are “harmful to the goal of rehabilitation,” or informs or invites criminal activity.<sup>152</sup> Additionally, a publication that “incites, encourages, advocates, or promotes racism or any other illegal discrimination, or that is likely to be disruptive, produce violence, or cause a threat to the offender population or staff” is likely to be banned.<sup>153</sup>

According to Arkansas’ Constituent Services Officer, Arkansas does not keep a list of books that are prohibited in all of Arkansas’ correctional institutions.<sup>154</sup> Moreover, others have attempted to find out which books are banned in Arkansas prisons and have come against Administrative Regulation 804, that bans the release of such information for the protection of incarcerated individuals’ privacy.<sup>155</sup> According to Arkansas’ DOC, when a prison rejects an incoming book, that rejection goes into the incarcerated individual’s file. Since this rejection belongs to one specific individual, it would violate his or her privacy to release it.<sup>156</sup> Arkansas, in essence, uses Administrative Regulation 804 as a shield against public scrutiny for its censorship decisions.

## CALIFORNIA:

California accepts publications that are sent directly from a book store, book distributor, or publisher, but does not maintain an “Approved Vendors List.”<sup>157</sup> Third parties are not permitted to send publications to incarcerated individuals as a donation; however, third parties may mail publications to the recipient directly from a book store, book distributor, or publisher.<sup>158</sup>

Upon receiving the publication, prison staff review it for compliance with California Code of Regulations.<sup>159</sup> In respect to periodicals, individual issues can be disallowed.<sup>160</sup> However, a periodical can be placed on the Centralized List of Disapproved Publications if the issues are denied for 12 consecutive months.<sup>161</sup> If the staff determines that the publication is inconsistent with Regulations, the publication is withheld and the Division of Adult Institutions for Disapproval of Publication (“DAI”) is notified to affirm or deny the withholding of the publication.<sup>162</sup> The DAI must provide a decision within 30 days of receiving the request.<sup>163</sup> If the withholding is denied, the publication is delivered to the recipient within 15 days of the DAI’s decision.<sup>164</sup> If the withholding is affirmed, the publication becomes permanently disallowed.<sup>165</sup> Only the DAI can place publications on the Centralized List of Disapproved



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150 A.B.O.C. A.R. 864 § IV (2007).

151 *Id.*

152 *Id.*

153 Email from Tameca Giles, Const. Serv. Off., Ar. Dept. of Corr., to author (Feb. 15, 2019 12:33 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

154 Email from Tameca Giles, Const. Serv. Off., Ar. Dept. of Corr., to author (Feb. 19, 2019 12:10 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

155 Jacob Rosenberg, *Wondering what books are banned in Arkansas's prisons? It's confidential*, Arkansas Times (Dec. 14, 2017), <https://www.arktimes.com/ArkansasBlog/archives/2017/12/14/wondering-what-books-are-banned-in-arkansas-prisons-its-confidential>.

156 *Id.*

157 15 CCR § 3134.1(a).

158 *Id.*

159 *Id.* at § 3134.1(c).

160 *Id.* at § 3134.1(d).

161 *Id.*

162 *See* 15 CCR § 3134.1(d).

163 *Id.*

164 *Id.*

165 *Id.*



Publications, local institutions are not permitted to do so.<sup>166</sup> In compliance with Regulations, publications that contain obscene or sexually explicit images, warfare or weaponry, or appear on the Centralized List are not permitted.<sup>167</sup> Upon denying a publication, a letter is sent to the publisher informing them of the reason for the denial and their right to appeal.<sup>168</sup>

As of 2019, California's list of banned publications includes approximately 900 books. The DOC also maintains a separate list of banned periodicals. Both lists include the page numbers that violate California's incoming publications policy, but do not explain how or why these publications are violative. The book list includes *Color for Painters*, *Frida Kahlo The Paintings*, *The Handy Chemistry Answer Book*, *The Kite Runner*, *Trans Bodies*, *Trans Selves: A Resource for the Transgender Community* *Urban Art: The World as a Canvas*, *V for Vendetta*, *Who Are You: 100 Ways of Seeing Yourself*, and *Your Child's Development from Birth to Adolescence*.<sup>169</sup> Although California does not appear to censor books related to racial equality and criminal justice, it does show a troubling indifference for incarcerated individuals' need for artistic and intellectual pursuits.



## COLORADO:

Colorado's prison mailroom staff conduct a content review of all incoming publications, which are then reviewed by a facility reading committee.<sup>170</sup> The committee gives notice to all mailrooms and libraries within the DOC if it finds a publication impermissible and Colorado's DOC will hold the publication until a final decision is made on the publication.<sup>171</sup> The DOC is then required to notify the designated incarcerated individual of the hold within 48 hours of the initial censorship decision.<sup>172</sup> If the mailroom receives a publication that has been previously permitted, there would be no need to repeat this process.<sup>173</sup> However, if a publication that has previously been found to be impermissible, the designated incarcerated individual will be notified of the rejection and receive a copy of the previous decision.<sup>174</sup>

Colorado DOC censors: publications that depict or describe the design of firearms, explosives, or other weapons; content that incites hatred or violence towards another race, religion, sex, sexual orientation, nationality, disability or age; sexually explicit materials; encouraging or soliciting illegal activities; or presents a potential threat to the safety and security of incarcerated individuals, DOC employees, among others.<sup>175</sup>

Colorado does not maintain a list of books banned in all prisons.<sup>176</sup>

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166 *Id.* at § 3134.1(e).

167 *Id.*

168 *Id.* at § 3134.1(d).

169 Email from Michelle Mraule, Cal. Dep't. Of Corr. and Rehab., Off. of Pub. and Empl. Comms. To author (Mar. 19, 2019 12:52 PM ET) (on file with the Thurgood Marshall Civil Rights Center); *See also* Alec Shea, *California Prohibited Publications*, Muckrock (Aug. 15, 2017), <https://www.muckrock.com/foi/california-52/california-prohibited-publications-42016/#file-147713> (California's August 2017 banned publication list, prohibiting, *A Guide to Drawing*, *Color for Painters*, *Encyclopedia of Science*, *Frida Kahlo The Paintings*, *Great Empires: An Illustrated Atlas*, *Kaiser Permanente: Healthwise Handbook*, *The Encyclopedia of Demons and Demonology*, *The Handy Chemistry Answer Book*, *The Math Book*, and *Your Child's Development from Birth to Adolescence* among others).

170 C.D.O.C. A.R. 300-26 § IV(B)(2) (2018); *see also* C.D.O.C. A.R. 300-26 § III(C) (defining a facility reading committee as a committee established by the administrative head of each facility, consisting of the facility general library technician, at least one representative from Programs, Custody/Control, Intelligence Office, Behavioral Health, and other persons deemed appropriate).

171 *Id.* 300-26 § B(4)(a).

172 *Id.* 300-26 § B(4)(b).

173 *Id.* 300-26 § B(5)(a).

174 *Id.* 300-26 § B(5)(b).

175 *Id.* 300-26 § B(2).

176 Email from Adrienne Jacobson, Pub. Info. Off., Colo. Dep't. Of Corr., to author (Feb. 25, 2019 11:46 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

## CONNECTICUT:

Connecticut DOC has a content-review policy for determining which books incarcerated individuals may access. Incarcerated individuals who want books must request for local orders through the school principal or other person designated by the Unit Administrator, who will determine whether the incarcerated individual is able to pay for the book.<sup>177</sup> Connecticut DOC only allows incarcerated individuals to purchase new books from a publisher, book club, or book store.<sup>178</sup> Donations or gifts not directly from the publisher are not allowed.

Incoming books that “adversely affect a valid penological interest” may be rejected. Books that depict weapons, methods of escape, maps of DOC facilities, methods of creating alcohol or drugs, secret codes, or sexually explicit material are prohibited. Additionally, any books that encourage activities that may lead to the use of physical violence or group disruption, or pose a threat to the security, good order, or discipline of the facility, facilitate criminal activity or harass staff are also prohibited.<sup>179</sup>

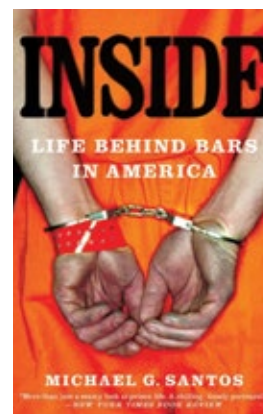
The Connecticut DOC cannot reject a book solely because it is religious, philosophical, political, social or sexual, repugnant, or unpopular.<sup>180</sup> The Unit Administrator or his/her designee is barred from establishing a list of excluded publications.<sup>181</sup> Additionally, each individual prison facility is required to establish a review process for all incoming publication in accordance with guidelines established by the Media Review Board.<sup>182</sup> Though it is possible that each prison may differ on which books it initially rejects, the Media Review Board’s final review of objections should act as a mechanism to create uniformity within the Connecticut prison system.

In response to a public information request, Connecticut sent the How. Civ. & Hum. Rts. Clinic a list of almost 8,000 books that are prohibited in Connecticut prisons. Banned publications in Connecticut prisons includes issues of *Prison Action*, *Inside Life Behind Bars*, *Nationality*, *Birthrights and Jurisprudence*, and *Corruption Officer*. Issues of *Atlantic*, *Wired*, and *New Yorker* have also been prohibited.<sup>183</sup>

## DELAWARE:

Delaware DOC requires that all publications come from a publisher, book club, or book store. In the event that a specific book is not available by any of these means, the Warden may allow publications to be sent from another source.<sup>184</sup>

Delaware DOC also enacts a content review of all incoming books, rejecting all publications that threatens or could reasonably pose a threat to the safety or security of the facility or any person or structure.<sup>185</sup> Examples of materials that might be rejected include, but are not limited to maps, sexually explicit photographs/pictures, and “oversized books.”<sup>186</sup> The policy also lays out the contours of the policy— for example, sexually explicit material may be allowed if it has scholarly or literary value.<sup>187</sup> Additionally, the policy notes that the Warden may not reject publications solely because its content is unpopular or repugnant.<sup>188</sup>



177 Conn. Dep't. Of Corr., *Inmate Communications* (June 19, 2012), <https://portal.ct.gov/-/media/DOC/Pdf/Ad/ad1007pdf.pdf?la=en>.

178 *Id.*

179 *Id.*

180 *Id.*

181 *Id.*

182 *Id.*

183 Email from FOI Unit, Conn. Dep't. Of Corr., to author (Feb. 25, 2019 03:08 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

184 Del. Dep't of Corr., *Policy Number 4.5 Incoming Publications for Level V and Level 4 Facilities* (Apr. 2, 2015), [http://www.doc.delaware.gov/assets/documents/policies/policy\\_4-5.pdf](http://www.doc.delaware.gov/assets/documents/policies/policy_4-5.pdf).

185 Del. Dep't of Corr., *Policy Number 4 Offender Mail* (Apr. 25, 2016), [http://www.doc.delaware.gov/assets/documents/policies/policy\\_4-0.pdf](http://www.doc.delaware.gov/assets/documents/policies/policy_4-0.pdf).

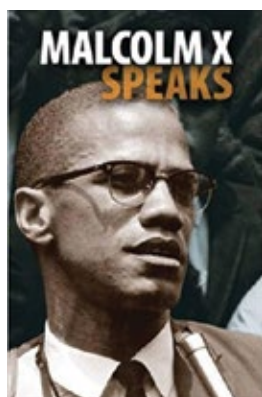
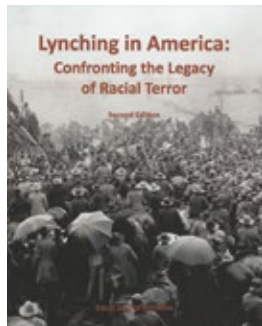
186 *Id.* at Sec. F.

187 Del. Dep't of Corr., *Policy Number 4.5 Incoming Publications for Level V and Level 4 Facilities* Sec. IV (Apr. 2, 2015), [http://www.doc.delaware.gov/assets/documents/policies/policy\\_4-5.pdf](http://www.doc.delaware.gov/assets/documents/policies/policy_4-5.pdf).

188 *Id.*

Decisions to prohibit books are made on a facility-wide basis. When a book is rejected, facilities send incarcerated individuals with a notice that the book has been denied, the reason for its denial, and the opportunity to appeal that decision. Neither the Delaware DOC, nor specific facilities, maintain a list of prohibited books.<sup>189</sup>

## FLORIDA:



Florida uses a content-review policy. Additionally, all publications must “be sent directly from the publishers, mail order distributors, or bookstores to the inmate unless otherwise authorized by the warden.”<sup>190</sup> Like many states, the Florida DOC rejects materials when they are “detrimental to the security, order or disciplinary or rehabilitative interests of any institution of the department.”<sup>191</sup> Specific criteria for rejection includes, but are not limited to: the book depicts or describes procedures for the construction of or use of weapons, ammunition, bombs, chemical agents, or incendiary devices; the book encourages or describes activities that may lead to the use of physical violence of group disruption; or the book encourages or instructs in the commission of criminal activity.<sup>192</sup> Any correctional staff member can review the content of an incoming publication.<sup>193</sup> The incarcerated individual receives notification within 15 days when an incoming publication is impounded or rejected.<sup>194</sup> Publications that have been previously rejected will not be eligible for review unless proof of revision is received from the publisher.<sup>195</sup> Incarcerated individuals may appeal impoundment and rejection of material pursuant to the Florida Administrative Code to the Literature Review Committee, or make arrangements to have items picked up or mailed to a previously approved person.<sup>196</sup>

The Literature Review Committee is responsible for reviewing publications for final determinations.<sup>197</sup> The Committee is made up of the Chief of Bureau of Security Operations, Chief of Bureau of Inmate Grievance Appeals, and the Chief of Bureau of Re-Entry Programs and Education.<sup>198</sup> The Florida DOC is required to maintain a list of publications that have been reviewed by the Literature Review Committee (“LRC”), which should be updated after every LRC meeting. Additionally, the most recent version should be kept in every institutional mailroom and at a place accessible by incarcerated individuals.<sup>199</sup>

From 2012 to 2019, Florida prison officials banned more than 8,000 books.<sup>200</sup> The Civil and Human Rights Clinic received electronic records from FDC listing the LRC decisions dating from 1991 to February 2019. The records list the name/title of the book, author or editor, whether it was accepted or rejected, the rule authorizing the rejection if applicable, and the meeting date on which the decision was made.<sup>201</sup>

189 Email from Kerri Bennett, Paralegal, Del. Dep’t of Corr., to author (Feb. 21, 2019 09:21 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

190 FLA. ADMIN. CODE ANN. r. 33-501.401(18).

191 *Id.* at r. 33-501.401 § 3.

192 *Id.*

193 *Id.* at § 9(b).

194 *Id.* § 7.

195 *Id.*

196 *Id.* § 10(f)(2).

197 *Id.* § 2.

198 *Id.* § 14.

199 *Id.* at §4.

200 Equal Justice Initiative, *Banning Books in Prisons*, <https://eji.org/news/banning-books-in-prisons/>

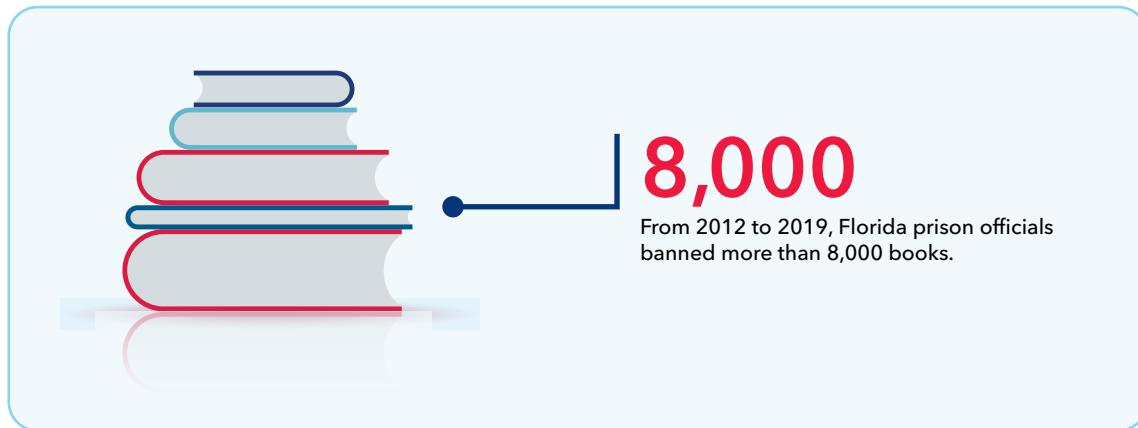
201 Email from Dianne Houpt, Public Information Specialist, Fla. Dep’t of Corr. to author (Nov. 14, 2018 12:12 PM EST) (on file with the Thurgood Marshall Civil Rights Center).

Florida has a pattern of rejecting books related to prison reform and racial equality. For example, *Abolish all Prisons*, *How to Survive Prison for the First Time Inmate*, *Life in Prisons*, *Lockdown on Rikers*, *Lynching in America* by Equal Justice Initiative, *Malcolm X Speaks*, *New Jim Crow Study Guide and Call to Action*, *The Making of a Slave*, *Papillon* by Henri Charriere, *Police Brutality* by Elijah Muhammad, *Political Prisoners*, *Prison and Black Liberation* by Angela Davis, *Prison Industrial Complex for Beginners*, and *Tails from a Jail Cell* are prohibited in Florida prisons. Additionally, magazines that relate to prison conditions, such as *Abolitionist*, *Coalition for Prisoner's Rights Newsletter*, *Criminal Legal News*, *Prison Action Network*, *Prison Activist Resource Center*, *Prison Focus*, *Prison Health Network*, and *Prisoners Revolutionary Literature* have been banned in Florida prisons.

A Florida book club attempted to send *The Cook Up*, a bestselling memoir about a former drug dealer who became an educator. Despite the book's theme of redemption and rehabilitation, the Hardee Correctional Institution banned the book because it "encourages or instructs in the commission of criminal activity."<sup>202</sup> Until February 2018, *The New Jim Crow* was banned in Florida. A spokeswoman for Florida's DOC informed the New York Times that the book was banned because it "presented a security threat" and was filled with "racial overtures."<sup>203</sup>

Florida does not just reject books that challenge America's carceral state. an American Sign Language dictionary, *How to Draw Dragons in Simple Steps*, *How to Draw Flower*, and *HOW to Draw Looney Tunes* are some of the more inane books banned in Florida. Several issues of *Atlantic*, *Bloomberg BusinessWeek*, *Economist GQ*, *Harpers*, *Men's Health*, *National Geographic*, *New Yorker*, *New Yorker*, *Popular Mechanics*, *Popular Science*, *Rolling Stone*, and *Time* have been banned in Florida.

In January 2019, the Supreme Court denied to hear an appeal of a blanket ban of Prison Legal News in Florida prisons. Florida banned the publication because its ARM policy prohibits advertisements for three-way calling; pen pal service; purchase of postage; or business and professional services.<sup>204</sup> Although the Florida DOC could not point to any evidence that PLN contributed to security problems in the prison, a lower court affirmed the banning of PLN. With the Supreme Court's denial of a review, PLN is banned in all Florida prisons.

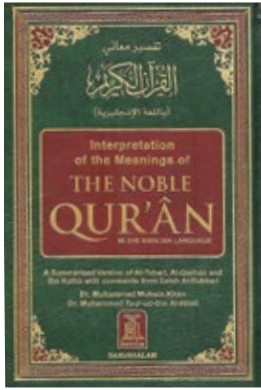


202 Brief for Prison Books Club for Amicus Curiae, p. 13 *Prison Legal News v. FDOC*, No. 18-355 (2018) citing Hardee Correctional Institution, Notice of Rejection or Impoundment of Publications (Aug. 8, 2017) (on file with counsel for amici).

203 Jonah Engel Bromwich, *Why Are American Prisons So Afraid of This Book?*, (Jan. 18, 2018), <https://www.nytimes.com/2018/01/18/us/new-jim-crow-book-ban-prison.html>.

204 FLA. ADMIN. CODE ANN. r. 33-501.401 § 3.

## GEORGIA:



The Georgia DOC restricts the books an incarcerated individual may receive based on content and vendor. Incarcerated individuals may only receive books from the publisher, dealer, or an established attorney of record.<sup>205</sup> Incarcerated individuals cannot receive books with content that depicts weapons or escape or advocates racial or religious hatred, among other criteria.<sup>206</sup> The prison facility is not required to notify the publisher if the book is rejected, but the Publication Review Committee (“PRC”) is required to maintain a “List of Approved/Rejected Publications” including specific reasons for rejection and forward the list to all centers electronically.

In response to an open records request, the Georgia DOC shared a “most recently updated annual master lists of approved and denied publications.” The lists were dated 2015 through 2017 and contained specific magazine issues that were approved and rejected. Among the books and magazines that were prohibited were specific issues of *The Economist*, *Scientific American*, *The Oprah Magazine*, *National Geographic*, and *Under Lock & Key*.<sup>207</sup> More troublingly, *The Noble Quran* and *The Interpretation of the Meanings of the Noble Quran* were also censored.<sup>208</sup>

In 2012, the Sheriff of Walton County in Georgia implemented a postcard only mailing policy and an outright publication ban on all incoming correspondence to those incarcerated. The policy dictated that all correspondence to or from those in prison be written on a postcard, thereby banning all incoming publications.<sup>209</sup> Prison Legal News challenged the constitutionality of the postcard only policy and the publication ban. In 2014, the Middle District of Georgia ruled against Walton County, finding that the publication policy violated the First Amendment and the lack of a notice and appeal policy violated the Fourteenth Amendment.<sup>210</sup>

In 2019, the Chatham County Detention Center in Georgia banned virtually all books and publications; the only way to access books was by requesting access to a book cart and those incarcerated inside the Chatham County Detention Center were limited to whatever books happened to be on the cart that day. After pushback from civil rights groups, the policy was subsequently reversed. However, the facility still limits access to books to only a few select vendors.<sup>211</sup>

**2019**

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205 Ga. Dep't of Corr., *Offender Receipt Of Mail*, IV-B(4) (Feb. 26, 2018), <https://www.powerdms.com/public/GADOC/documents/105727>.

206 *Id.* at IV-H.

207 Email from McCall Trammell, Ga. Dep't. of Corr., to author (May 6, 2019 12:33 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

208 *Id.*

209 Complaint, *Prison Legal News v. Chapman* 3:12-cv-00125-CAR (M.D. Ga. 2012).

210 Judgment, *Prison Legal News v. Chapman* 3:12-cv-00125-CAR (M.D. Ga. 2014).

211 <https://www.aclu.org/press-releases/aclu-urges-chatham-county-sheriff-rescind-policy-banning-books-publications-jail>



## HAWAII:

In Hawaii, incarcerated individuals can only receive publications from a publisher, book club, or bookstore via subscription or purchase. Hawaii DOC does not maintain a list of excluded publications list or approved publications or vendors, but some facilities may provide incarcerated individuals with an authorized subscription list.<sup>212</sup> Publications might be denied if they include self-defense and martial arts techniques, racism or degradation of one race or political group by another, or depict tattoo patterns that would provide a visual aid for incarcerated individuals seeking to replicate the type of body modification.<sup>213</sup>

## IDAHO:

Idaho DOC requires that all incoming publications come directly from a book store or publisher. Used books are permitted, provided that they come from a publisher or book store.<sup>214</sup> Private individuals cannot send books directly to incarcerated individuals.<sup>215</sup> Incarcerated individuals are prohibited from joining book clubs with third parties outside the prison.<sup>216</sup>

Idaho also performs a content-review of all publications. Publications “advocating that any ethnic, racial, or religious group is inferior or that make such groups an object of ridicule and scorn” are prohibited, as well as publications that encourage violence or are sexually explicit.<sup>217</sup>

Idaho DOC does not maintain a list of banned publications.<sup>218</sup>

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212 Halawa Medium Security Facility, *Inmate Guidelines*, p. 23 (Feb. 1999), <https://www.law.umich.edu/special/policyclearinghouse/Documents/Hawaii%20Halawa%20CF%20Inmate%20Handbook.pdf>. See also Email from Off. of Dir., Haw. Dep’t. of Pub. Safety, to author (Feb. 14, 2019 04:39 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

213 Haw. Dep’t. of Pub. Safety, *Inmate Access to Publications*, §6.0 (Feb. 1, 2016), <https://dps.hawaii.gov/wp-content/uploads/2018/04/COR.15.05.pdf>.

214 Idaho Dep’t. Of Corr., *Mail Handling in Correctional Facilities*, 3 (Mar. 11, 2018), <http://forms.idoc.idaho.gov/WebLink/ElectronicFile.aspx?docid=283201&dbid=0>.

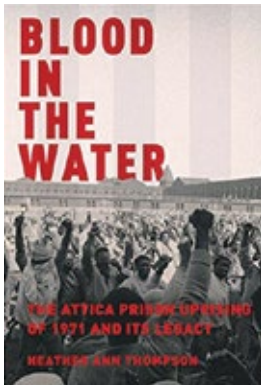
215 Idaho Dep’t. Of Corr., *Property: State-Issued and Inmate Personal Property*, 25 (Jan. 15, 2019), <http://forms.idoc.idaho.gov/WebLink/0/edoc/281012/Property%20State%20Issued%20and%20Inmate%20Personal%20Property.pdf>.

216 Idaho Dep’t. Of Corr., *Mail Handling in Correctional Facilities*, 4 (Mar. 11, 2018), <http://forms.idoc.idaho.gov/WebLink/ElectronicFile.aspx?docid=283201&dbid=0>.

217 *Id.* at 5-6.

218 Email from Ammie Mabie, Constituent Serv. Manager, Idaho Dep’t. Of Corr., to author (Feb. 20, 2019 05:53 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

## ILLINOIS:



Illinois uses a restrictive vendor policy and also adopts a content review policy for all incoming books. Books must come from pre-approved publishers. Illinois has a Publication Review Officer, who determines whether the publication is obscene or detrimental to security, or mental health, or is likely to facilitate criminal activity. The review process takes 30 days and the incarcerated individual may appeal after that period. A review committee may review instead of a single officer.

In 2019, the Clinic received a 305-page long list of books that have been reviewed by the Illinois DOC, containing both approved and rejected books. The Illinois DOC has rejected issues of *The Abolitionist*, *Prison Legal News*, *Prison Action News*, *Prison Life*, and *Prison News Service*.<sup>219</sup> Sam Greenlee's civil rights satire, *The Spook Who Sat by the Door* and Natalie Moore and Lance Williams' *The Almighty Black P. Stone Nation*, which provides a history of the street organization, have also been banned. When Natalie Moore attempted to contact the Illinois DOC to find out why her book was banned, she received no response.<sup>220</sup>

As of writing, the Illinois DOC is defending a civil suit brought by an LGBTQ publication, *Black & Pink*, alleging that their magazine has been improperly censored.<sup>221</sup> *Black & Pink* has about 900 subscribers in Illinois states prisons, and they distribute monthly newsletters to more than 13,000 people in prison nationwide. Eleven prisons in Illinois have censored *Black & Pink*, on more than 200 occasions.<sup>222</sup> The publication is geared towards the LGBTQ community, but the suit notes that that the publication also focuses on criminal justice reform. The complaint notes that various prison officials have referred to *Black & Pink's* publications as "propaganda" that promote "violence with strong language and strange artwork."<sup>223</sup>

Similarly, in September 2018, Heather Thompson, the author of the Pulitzer Prize winning book, *Blood in the Water: The Attica Prison Uprising of 1971 and Its Legacy*, sued the Illinois DOC for censoring her book.<sup>224</sup> As of writing, the litigation is still pending; the Illinois DOC has maintained that Thompson's book was properly censored.

A graphic with a light blue background and rounded corners. On the left, there is a stylized illustration of a stack of five books with red and blue spines. A blue line with a dot at the end extends from the right side of the stack towards the text. The text '305-PAGE' is written in large, bold, red letters. Below this, in smaller black text, it says: 'In 2019, the Clinic received a 305-page long list of books that have been reviewed by the Illinois DOC, containing both approved and rejected books.'

219 Email from Denise Sturm, Ass't. Dir. Off., Ill. Dep't. Of Corr., to author (Feb. 20, 2019 11:23 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

220 Natalie Moore, *My Book is Banned in Illinois Prisons — I Tried to Figure Out Why*, WBEZ News (Feb. 8, 2019), <https://www.wbez.org/shows/wbez-news/my-book-is-banned-in-illinois-prisons-i-tried-to-figure-out-why/2cb0427f-04ce-465b-a325-3385f809e597> (providing the list of books banned in Illinois).

221 Matt Masterson, *LGBTQ Publication Suing Illinois Prison Officials Over Censored Materials*, WTTW News (Oct. 18, 2018), <https://news.wttw.com/2018/10/18/lgbtq-publication-suing-illinois-prison-officials-over-censored-materials>

222 *Id.*

223 *Id.*

224 Answer to Amended Complaint, par. 19, *Thompson v. Baldwin*, No. 18-cv-3230 (C.D. Ill. 2018).

## INDIANA:

Indiana requires all incoming books to be from the publisher only. The state also performs a content review of all incoming books. Indiana's DOC website indicates that, "Offenders may receive correspondence, legal mail, and publications from publishers only, which are reviewed to determine whether they are obscene or constitute a danger to safety and security."<sup>225</sup>

Indiana does not allow books that depict methods of escape, methods of brewing alcohol, activities which may lead to the use of violence and any publications that contain nudity, or criminal activity.<sup>226</sup>

Indiana does not accept books from used bookstores.

As of 2019, three correctional facilities in Indiana maintain banned book lists - Westville Correctional, Wabash Valley Correctional, and Pendleton Correctional. Among the books censored in these facilities are *GED Language Arts & Writing*; *Black Awakening in Capitalist America*; *Black Voices: An Anthology of African American Literature*; *Live from Death Row* by Mumia Abu Jamal; *Post Conviction DNA Testing*; various books about Malcolm X; *Racism Repression and Racial Profiling*; and *Under Lock and Key*.<sup>227</sup>

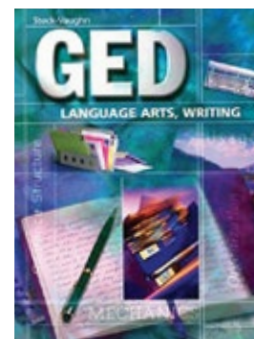
## IOWA:

Iowa DOC requires that all publications be sent directly from an approved publisher or bookstore. Donations are allowed, as long as they are sent directly from the approved vendor.<sup>228</sup> In addition to the publisher requirements, Iowa also implements a content based review policy.

Each institution in Iowa is tasked with developing their own procedures for internal publication review. Publications in Iowa prisons may be denied for a number of reasons, such as the publication presents danger to security and the institution, is inconsistent with rehabilitation goals, contains information of criminal activity, or contains information relating to an escape.<sup>229</sup>

When an internal review determines that the publication violates Iowa's DOC policies, the publication and an accompanying form is sent to a Publications Review Committee.<sup>230</sup>

The Publications Review Committee is a three person committee and includes a person with "broad exposure to various publications and two persons representing correctional operations."<sup>231</sup> The Publications Review Committee is the final decision-maker on matters relating to prison censorship.



225 Ind. Dep't Of Pub. Safety and Corr. Serv., *Offender Correspondence*, 02-01-103

226 *Id.*, [https://www.in.gov/idoc/dys/files/02-01-103\\_\\_8-17-09.pdf](https://www.in.gov/idoc/dys/files/02-01-103__8-17-09.pdf)

227 Email from Margaux Auxier, Comm's Director, In. Dep't. of Corr, to author (Mar. 4, 2019 10:31 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

228 Iowa Dep't. Of Pub. Safety and Corr. Serv., *Incoming Publications — Mail Room Procedures*, OP-MTV-02

229 *Id.*

230 *Id.*

231 *Id.*



Iowa maintains a list of the books that they ban. The list, which is publically available upon request, contains all incoming books over the last five years and whether they are accepted, rejected, or allowed in a confined reading room. The list also indicates the reasoning behind a book's banning, which corresponds with Iowa's DOC incoming publications policy. The bulk of the approximately 500 rejected books in the latest list, relate to violence, sex, or escape tactics. However, the list also included some surprising additions, such as John Grisham's *A Time to Kill*, specific issues of the *Rolling Stones*, *A Stolen Life* (the memoir of Jaycee Dugard, a woman who was kidnapped and held in captivity), and *Native American Medicinal Plants*.<sup>232</sup> As a comparative matter, however, Iowa's censorship policy is relatively transparent and does not suffer from the capriciousness of other state censorship policies.

Like most states, Iowa bans pornography. A lawsuit was filed in the U.S District Court of Des Moines in efforts to overturn a state law which banned designated "pornography reading rooms." The plaintiffs are incarcerated at Fort Dodge Correctional Facility, however the case was recently dismissed on procedural grounds.<sup>233</sup> Iowa recently changed their laws to reflect these policies, as books that had nudity were previously allowed.<sup>234</sup>

## KANSAS:

In Kansas, all publications must be sent directly from the vendor or the publisher.<sup>235</sup> Amazon is an acceptable vendor. Material is censored if it contains nudity, sexual activity, sexually explicit language, and material that promotes illegal activity.<sup>236</sup> Further, the facility does not allow role playing games or books related to role playing games.<sup>237</sup> The Kansas DOC's policy requires incarcerated individuals to mail censored materials to a designated Secretary of Corrections for inspection on appeal.

Kansas does not maintain a list of books banned in all facilities; the determination to ban a book is made at a facility-wide level.<sup>238</sup>

In 2018, an incarcerated individual in El Dorado Correctional Facility sued the prison for censoring his incoming books and magazines, including *Men's Fitness*, *US Weekly*, *Crazy Crow Trading Post* (a Native American crafts publication), and *Latina*.<sup>239</sup> The court did not adjudicate over the merits of the claim, but the suit highlights the opportunity for arbitrary censorship in Kansas prisons.

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232 Email from Cord Overton, Comm's Director, Io. Dep't. of Corr, to author (Feb. 15, 2019 11:20 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

233 Trish Mehaffey, *Judge tosses inmates' lawsuit over porn ban at Iowa prisons*, The Gazette (December 11, 2018), <https://www.thegazette.com/subject/news/public-safety/judge-tosses-inmates-lawsuit-over-porn-ban-at-iowa-prisons-20181211>

234 Kaitlyn Alanis, 58 Iowa prisoners still want their porn — so they're suing the state, documents show, The Wichita Eagle (November 17, 2018), <https://www.kansas.com/news/nation-world/national/article222367955.html>

235 Ky. Dep't of Corr., *Policies and Procedures — Inmate Correspondence*, 16.2 <https://corrections.ky.gov/About/cpp/Documents/16/CPP%2016.2.pdf>

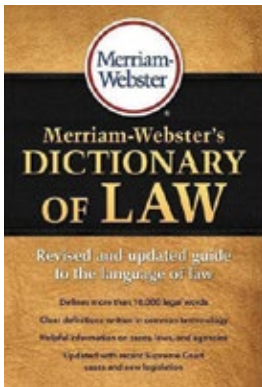
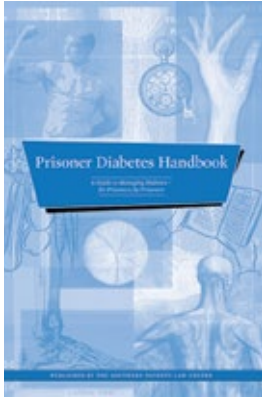
236 *Id.*

237 Email from Cheryl Claude, Kan. Dept. of Corr. to author (Feb. 18, 2019 5:06 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

238 *Id.*

239 <http://www.kscourts.org/cases-and-opinions/Opinions/Unpublished/Ctapp/2018/20180427/117818%20.pdf>

## KENTUCKY:



Kentucky has a content based and restrictive vendor policy in place regarding incoming books to prisons. According to this policy, books can be banned if they are “not directly sent from publisher or authorized distributor” and are not on a pre-approved vendor list. Additionally, publications can be banned if they are sexually explicit, create a threat to the security of the institution, or contain obscene language or drawings.<sup>240</sup>

Kentucky does not maintain a list of banned publications.<sup>241</sup>

HRDC filed a federal suit against the Kentucky DOC in 2017 for violating its free speech, due process, and equal protection rights.<sup>242</sup> HRDC alleged that KDOC has unconstitutionally blocked the delivery of numerous books to the incarcerated persons in that state. Those books have included the *Prisoner's Diabetes Handbook*, the *Merriam-Webster Dictionary of Law* and the *Prisoner's Self Help Litigation Manual*, all sent by HRDC.<sup>243</sup> In January 2019, KDOC agreed to a settlement, in which it denied any liability, but agreed to lift its blanket-ban on all issues of *Prison Legal News*. In the event that KDOC rejects a *Prison Legal News* issue or any publication from HRDC, KDOC also agreed to send the sender a notice that includes an explanation of why the publication was rejected.<sup>244</sup>

As recently as 2015, Kentucky has banned books that may “promote homosexuality.” The ACLU sued in 2016 and, as a result, the ban was lifted.<sup>245</sup>

A graphic illustration featuring a stack of four books with red and blue spines. To the right of the books, a blue line connects to the year "2017" in large red font. Below the year, there is a short paragraph of text.

**2017**

HRDC filed a federal suit against the Kentucky DOC in 2017 for violating its free speech, due process, and equal protection rights.

<sup>240</sup> Ky. Dep't of Corr., *Policies and Procedures — Inmate Correspondence*, 16.2 <https://corrections.ky.gov/About/cpp/Documents/16/CPP%2016.2.pdf>

<sup>241</sup> *Id.* at D(4)(a).

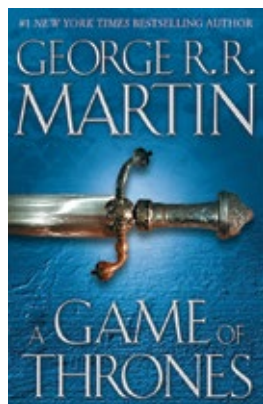
<sup>242</sup> Human Rights Defense Center, *Lawsuit: Kentucky Department of Corrections Guilty of Censorship, Due Process, Equal Protection Violations* (July 20, 2018) <https://www.criminallegalnews.org/media/pdfs/KDOC%20Lawsuit%20FINAL.pdf>

<sup>243</sup> *Id.*

<sup>244</sup> *Human Rights Defense Center v. Ballard*, Settlement Agreement of Injunctive Claims, 3:17-cv-00057-GFVT (E.D.KY 2019).

<sup>245</sup> Amber Duke, *Victory! Prison's Anti LGBT Literature Ban Lifted*, ACLU Kentucky (June 7, 2016) <https://www.aclu-ky.org/en/news/victory-prisons-anti-lgbt-literature-ban-lifted>

## LOUISIANA:



Louisiana DOC adopts a content-based ban on books. Prison material can be rejected only if it interferes with a legitimate penological objective.<sup>246</sup> A penological objective is based on Louisiana's interests to the deterrence of crime, rehabilitation of offenders, or maintenance of internal/ external security of an institution.<sup>247</sup> Publications that contain "racially inflammatory material" or material that could threaten the offender population, staff, and security of the facility can also be banned.<sup>248</sup>

According to the Louisiana DOC, all publications (books, pamphlets, or similar documents),<sup>249</sup> must be received directly from the publisher.<sup>250</sup> The only printed materials that are exempt from this requirement are newspaper and magazine clippings. Multiple copies of publications for one individual are not allowed.<sup>251</sup> All incoming publications are subject to inspection to determine if they include contraband or unacceptable material.

Incarcerated individuals may appeal the rejection of a publication through the Administrative Remedy Procedure.<sup>252</sup> Incarcerated individuals must appeal within 90 days.<sup>253</sup> However, challenging a rejection a publication is not a simple task. The incarcerated individual must represent themselves *pro se* and many times do not have the requisite knowledge to effectively navigate the legal process.<sup>254</sup> Furthermore, it is not unusual for the officer that they are bringing charges against to have retained counsel.<sup>255</sup>

In July 2018, in response to a Freedom of Information Act request, Louisiana released a list of 950 books banned in Louisiana prisons.<sup>256</sup> The list includes *Game of Thrones*, *Black Panther*, several books by Elijah Muhammad, *Native American Crafts & Skills*, *The Complete Idiot's Guide to Linux-Software*, and *100 Years of Lynching*.<sup>257</sup> Specific issues of *The Economist*, *Newsweek*, *Vanity Fair*, *New Yorker*, *National Geographic*, and *ESPN Magazine* are also prohibited.<sup>258</sup> Frantz Fanon's *Black Skin, White Masks*, one of the most important anti-colonial works of the post-war period, is also banned. The banning of Fanon's book is emblematic of the problems with Louisiana's censorship policies. Books are banned with no justification, leaving incarcerated individuals, authors, and the public with little understanding of why a particular book was banned and thus making it difficult to challenge the ban.

When pressed for the justification behind the banning of these books, DOC spokesperson Ken Pastorick stated, "Books that could be seen as divisive or provocative, those are the kinds of things we don't want in our institutions."<sup>259</sup> Notably, the rejected publications list does not contain any justification for how any of the 950 books ended up on the list.

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246 C-02-009 La. Dep't. Reg. § 9(C).

247 *Id.*

248 C-02-009 La. Dep't. Reg. § 9(C)(1)(f).

249 *See* C-02-009 La. Dep't. Reg. (2012).

250 *Id.* § 9(A).

251 *Id.*

252 C-02-009 La. Dep't. Reg. § 9(C)(4).

253 *See* LA Rev Stat § 15:1172(b)(1) (2002).

254 *See* Wells v. Vannoy, No. 3:10-CV-821 (M.D. La. 2012).

255 *Id.*

256 Julia O'Donoghue, *At Louisiana Prisons, There's Some Mystery n What Gets a Book Banned* Nola (Nov. 28, 2018), <https://www.nola.com/expo/news/erry-2018/11/ced87bf3338591/at-louisiana-prisons-theres-so.html>.

257 Louisiana Department of Corrections List of Books and Publications Rejection List *available at* [https://www.scribd.com/document/394398095/Louisiana-Department-of-Corrections-list-of-banned-books-and-publications#from\\_embed](https://www.scribd.com/document/394398095/Louisiana-Department-of-Corrections-list-of-banned-books-and-publications#from_embed) (last accessed Feb. 13, 2019).

258 *Id.*

259 O'Donoghue, *supra* 63.

## MAINE:

Maine DOC employs a broad restrictive vendor based policy.<sup>260</sup> Publications must be sent directly from the publisher.<sup>261</sup> Any publication that creates a risk to safety, security, or the general order of the facility is considered contraband.<sup>262</sup> Maine's list of accepted publishers includes Amazon, Books N Things Warehouse, Hamilton Books, Prison Legal News, and Shutterstock.<sup>263</sup>

Maine does not maintain a list of prohibited publications throughout its correctional facilities.<sup>264</sup>

## MARYLAND:

Maryland Department of Public Safety and Correctional Services (“DPSCS”) employs a content review for reading materials on an issue-by-issue basis.<sup>265</sup> Managing officials at each facility decides whether to withhold incoming books and publications.<sup>266</sup> DPSCS broadly bans materials that threaten prison safety and security, such as those describing escape plans or the design or manufacturing of prison security systems or equipment.<sup>267</sup> Notably, DPSCS also bans materials that advocate for or provide instructions on how to form unions in prisons.<sup>268</sup> In some cases, Maryland's prohibition on maps, has resulted in books like *Game of Thrones*, which contain fictional maps, being banned.<sup>269</sup>

Maryland does not maintain a list of banned books in all of its facilities.<sup>270</sup>

Prior to June 2018, DPSCS limited the frequency by which incarcerated individuals could order books from approved vendors and prevented incarcerated persons from receiving books from third-party individuals through the mail.<sup>271</sup> The restriction was put in place because books were being used to smuggle a nearly undetectable and dangerous drug, SUBOXONE, and some corrupted vendors had smuggled in other contraband.<sup>272</sup> In response, DPSCS limited incarcerated individuals to ordering publications from two vendors: Edward Hamilton Books and Books N Things.<sup>273</sup> The vendors lacked a number of important pieces of literature and non-fiction, including *To Kill a Mockingbird*, any of Martin Luther King's writings, and *The Autobiography of Malcolm X*.<sup>274</sup>



260 Me. Dep't. Of Corr. Prisoner Handbook, *Prisoner Mail*. <https://www.law.umich.edu/special/policyclearinghouse/Documents/Maine%20State%20Prison%20Inmate%20Handbook.pdf>

261 *Id.*

262 *Id.*

263 Me. Dept. of Corr., Pol. No. 10.1, Attachment C “Approved Book Distributors.”

264 Email from Jane Tower, Sec. Sp., Me. Dept. of Corr., to author (Feb. 19, 2019 12:42 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

265 Md. Dep't. Of Pub. Safety and Corr. Serv., *Inmate Mail — Mail Room Procedures*, §.05 (July 17, 2017), <http://itcd.dpscs.state.md.us/PIA/ShowFile.aspx?fileID=1458>.

266 *Id.*

267 *Id.* §.05(3)(b).

268 *Id.* §.05(3)(b)(xv).

269 Jack Godwin, *Here's the bizarre reason why the 'Game of Thrones' books are banned in this prison*, vt. News (July 9th, 2018), <http://vt.co/news/weird/heres-the-bizarre-reason-why-the-game-of-thrones-books-are-banned-in-this-prison/>.

270 Email from Renata Seergae, Acting Director of Communications, Md. Dep't. Of Pub. Safety and Corr. Servs, to author (Feb. 14, 2019 06:53 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

271 Letter from Stephen T. Moyer, Secretary, Maryland Department of Public Safety and Correctional Services, to Sonia Kumar, Staff Attorney, American Civil Liberties Union (Jun. 11, 2018), <https://www.documentcloud.org/documents/4501550-Maryland-Department-of-Public-Safety-and.html>. [hereinafter Moyer Letter].

272 *Id.*

273 Lauren Lumpkin, *Maryland prisons rescind controversial policy that advocates say restricted inmate book access*, Baltimore Sun (June, 12, 2018), <https://www.baltimoresun.com/news/maryland/bs-md-maryland-prisons-overturn-book-policy-20180612-story.html>.

274 ACLU of Maryland, *ACLU Calls on Prison System to Reverse Rule Severely Limiting Access to Books in Violation of the First Amendment* (May 31, 2018), <https://www.aclu-md.org/en/press-releases/aclu-calls-prison-system-reverse-rule-severely-limiting-access-books-violation-first>.

Additionally, incarcerated individuals were previously forbidden from receiving free book donations.<sup>275</sup> For example, Maryland's Charles County Detention Center rejected and returned a shipment of books from Free Minds Book Club, stating "Book Clubs are not approved for our inmates @ CCDC."<sup>276</sup> Free Minds Book Club was also unable to deliver books to incarcerated individuals in Prince George's County, Montgomery County, and Baltimore City.<sup>277</sup>

In May 2018, the ACLU of Maryland wrote an open memorandum urging DPSCS to rescind the policy due to First Amendment violations and the irrationality and arbitrariness of the policy's response to security concerns.<sup>278</sup> In response, DPSCS rolled back the aforementioned restrictions in attempts to balance their priority of safety and security of correctional facilities with the importance of access to books for rehabilitative purposes; specifically, incarcerated individuals are now allowed to receive books from family and third parties through the mail.<sup>279</sup> As of May 2019, Maryland does not place any restrictions on vendors from which incarcerated can purchase books.<sup>280</sup>

## MASSACHUSETTS:

The Massachusetts DOC enforces a policy not to read, censor, or reject incoming correspondence, except where necessary to protect legitimate governmental interests.<sup>281</sup> The Superintendent has the authority to authorize, censor, or disapprove of incoming correspondence only to prevent interference with institutional goals of security, order, discipline, or if the correspondence might facilitate, encourage, or instruct criminal activity. The policy states that censorship cannot be based on any correctional officer's personal views about the materials.<sup>282</sup> The Massachusetts DOC policy also prohibits publications that contain depictions or descriptions of: procedures for constructing and using weapons, methods of escape from correctional facilities, encouragement of activity that may lead to physical violence or group disruption, and sexually explicit pictorial material.<sup>283</sup>

The policy further states that when any correspondence or publication is censored, the intended recipient must be notified promptly in writing 1) the reason why the publication was censored or rejected, and 2) that the intended recipient or the sender has the right to appeal the censorship.<sup>284</sup>

Statutory law prohibits deputy superintendents from establishing a list of excluded publications; instead, each publication should be reviewed on an individual basis.<sup>285</sup>

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275 Letter from ACLU of Maryland to Stephen Moyer, Secretary, Department of Public Safety and Correctional Services (May 31, 2018), [https://www.aclu-md.org/sites/default/files/field\\_documents/doc\\_book\\_letter\\_5\\_31\\_18.pdf](https://www.aclu-md.org/sites/default/files/field_documents/doc_book_letter_5_31_18.pdf) [hereinafter ACLU of Maryland Letter].

276 Brief for Prison Books Clubs, *supra* note 27, at 17.

277 *Id.*

278 ACLU of Maryland Letter, *supra* note 252, at 6.

279 Moyer Letter, *supra* note 250, at 39.

280 Email from Renata Seergae, Acting Director of Communications, Md. Dep't. Of Pub. Safety and Corr. Servs, to author (May 7, 2019 09:00 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

281 103 Mass. Code Regs. § 481.13(1) (2018).

282 *Id.* § 481.13(2).

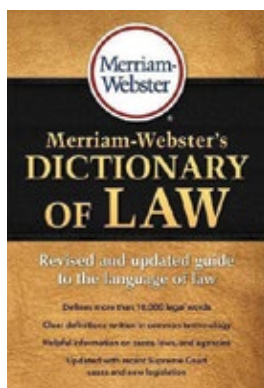
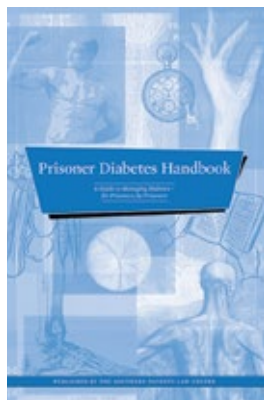
283 *Id.*

284 103 Mass. Code Reg. § 481.15(1-2).

285 *Id.* at (3)(e).



## MICHIGAN:



The Michigan DOC employs both a content-review and restrictive-vendor policy that permits incarcerated individuals to receive books by two methods: 1) a member of the public purchases a book from an approved internet vendor or from a publisher and sends the book directly to the prison; or 2) the incarcerated individual orders from an approved vendor or a publisher and the book is sent directly to the prison.<sup>286</sup>

Members of the public may order publications for those in prison from six vendors: Amazon.com, BarnesandNoble.com, EdwardRHamilton.com and HamiltonBooks.com, Prison Legal News, Schulerbooks.com, and Walmart.com.<sup>287</sup> Incarcerated individuals may order non-used publications from three vendors: Edward R. Hamilton Bookseller, Prison Legal News/Human Rights Defense Center, and Schuler Books & Music.<sup>288</sup>

Michigan DOC regulates incoming books through a Policy Directive that governs all incoming mail. The Policy Directive prohibits mail advocating racial supremacy or ethnic purity or attacking a racial or ethnic group disruption in the facility.<sup>289</sup> Further, "Prisoners are prohibited from receiving mail that may pose a threat to the security, good order, or discipline of the facility, may facilitate or encourage criminal activity, or may interfere with the rehabilitation of the prisoner."<sup>290</sup> If the DOC believes incoming mail violates this policy, the DOC will withhold it.<sup>291</sup> The DOC will then send a notice of rejection to the designated recipient and sender.<sup>292</sup> The Notice identifies both the item in violation and why it was believed to violate the policy.<sup>293</sup>

Following the Notice, the DOC schedules a prompt hearing, which is conducted by a hearing officer.<sup>294</sup> During this time, the incarcerated individual will be given the opportunity to review the mail at dispute, unless it is predetermined that such a review would: 1) threaten the order and security of the facility; 2) encourage or provide instruction in criminal activity; or 3) interfere with the rehabilitation of the incarcerated individual.<sup>295</sup> If such a determination is made, the hearing officer will state the reasoning behind the decision on the Administrative Hearing Report.<sup>296</sup>

When the hearing officer finds that a publication is in violation of policy because of its written or pictorial content, it is sent to the facility head along with a copy of the Notice and the Administrative Hearing Report. If the facility head does not agree with the hearing officer's decision, the publication is promptly delivered to the incarcerated individual.<sup>297</sup> However, if the facility head agrees with the hearing officer's decision, copies of the Notice, the Administrative Hearing Report, the publication's cover, and a representative

286 Mich. Dep't of Corr. Policy Directive 05.03.118, *Prisoner Mail*, Sec. Z (Mar. 1, 2018), [https://www.michigan.gov/documents/corrections/05\\_03\\_118\\_645850\\_7.pdf](https://www.michigan.gov/documents/corrections/05_03_118_645850_7.pdf).

287 *Id.* at Attachment A, Sec. A.

288 *Id.* at Attachment B, Sec. A.

289 05.03.118 Mich. Dep't Reg. § MM(6) (2009).

290 *Id.* § NN.

291 *Id.* § UU.

292 *Id.*

293 *Id.*

294 *Id.* § WW.

295 *Id.*

296 *Id.*

297 *Id.*

sampling of the specific sections of the publication found to be in violation are sent to the CFA Deputy Director or designee for a final determination.<sup>298</sup> If the CFA Deputy Director or designee agree that publication violates policy for the reasons identified in the Administrative Hearing Report, the publication is placed on the Restricted Publications List and is banned in all facilities without the need for a hearing.<sup>299</sup>

The incarcerated may appeal the proposed rejection within ten days after the date of the Notice, but the facility head may not respond if the publication was referred to the CFA Deputy Director until a decision is made.<sup>300</sup> If the appeal is granted, the decision will be noted on the Administrative Hearing Report and the publication will be promptly delivered to the incarcerated individual.<sup>301</sup>

Michigan does not publicize its banned books list, but released the list to the Clinic in response to a public information request. Che Guevara's *Che Guevara Talks to Young People* is banned because it "advocates violence/revolution." Other books that are banned include *Form Your Own Limited Liability* ("Threat to custody and security; contains IRS tax forms"), *Genius of Huey P. Newton* ("Advocates revolution and advocates group disruption"), *Grant Writing for Dummies* ("mail providing instruction in the commission of criminal activity"), *How to Form a Nonprofit* ("the book includes tax forms which may be used to facilitate the filing of false or fraudulent tax documents"), *If They Come in the Morning* by Angela Davis, *Law of Contracts and the Uniform Commercial Code* ("Uniform commercial code book facilitates criminal activity"), *Lovely Bones*, and *Papillon* by Henri Charriere.<sup>302</sup>

As it pertains to the content of the books, Michigan also rejects books that advocate "racial supremacy or ethnic purity or attack[s] a racial or ethnic group, when the material is reasonably likely to cause violence or group disruption in the facility."<sup>303</sup> The DOC censored *Black Skin, White Masks* by Frantz Fanon, *Blueprint for Black Power* by Amos N. Wilson, and *The End of White World Supremacy: Four Speeches* by Malcolm X because it advocates for racial supremacy.<sup>304</sup>

Another noteworthy publication that is on Michigan's Restricted Publications List is *Peaches: The Wee Hours II*.<sup>305</sup> The ban of this publication is unusual as it is not banned because of its content, but because of who authored it—W.D. Burns, an incarcerated man. The listed reason for banning this book is that it threatens "the good order of the facility . . . because the author is currently [an] incarcerated MDOC prisoner, pressure could be exerted to have the book purchased or distributed by other prisoners as a means of compensation, communication or influence peddling."<sup>306</sup> In other words, Mr. Burns' book is banned not because of the content, but because of the possibility that he might pressure others to purchase the book. Under MDOC's nonsensical interpretation of a threat to "good order," all personal property belonging to an incarcerated individual could be banned because it *could* be used as a means of compensation or influence peddling.

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298 *Id.* § AAA.

299 *Id.* § BBB - CCC.

300 *See id.* § EEE.

301 *See id.*

302 Email from Barbara Brown, FOIA Analyst Mich. Dep't. Of Corr. to author (Feb. 25, 2019 12:37 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

303 *Id.* at Sec. NN-6.

304 Tom Blunt, *The Banned Books Michigan Prisoners Aren't Allowed to Read, Signature* (Aug. 9, 2017), <https://www.signature-reads.com/2017/08/here-are-the-books-that-michigan-prisoners-arent-allowed-to-read/>.

305 Bill Castanier, *Prison reads and restraint*, City Pulse (Aug. 24, 2017), <https://lansingcitypulse.com/article-15234-Prison-reads-and-restraints.html>.

306 Alec Shea, *Banning Black Liberation: Michigan prisoners are barred from reading Frantz Fanon*, Muckrock. (Aug. 4, 2017), <https://www.muckrock.com/news/archives/2017/aug/04/michigan-doc-fanon/>.



## MINNESOTA:

Minnesota DOC restricts books if there is a reasonable belief that limiting access to a book protects public safety, rehabilitation of the incarcerated individual, or facility security.<sup>307</sup> Incarcerated individuals may only receive books directly from the publisher or an authorized vendor.<sup>308</sup>

Minnesota DOC assigns a particular prison facility's mailroom staff to review all incoming publications to determine if they are allowable or not, and this responsibility rotates annually amongst facilities.<sup>309</sup>

Mailroom staff post a weekly list of denied and approved issues of magazines on the Minnesota DOC intranet, but the state does not maintain a list of books that have been banned.<sup>310</sup>

## MISSISSIPPI:

The Mississippi DOC allows incarcerated individuals to purchase books only from a recognized publisher, distributor, or authorized retailer.<sup>311</sup> While the Mississippi DOC's policy does not have a list of restricted vendors, they do not consider secondary markets like eBay or other auction sites to be authorized retailers or vendors.<sup>312</sup>

Mississippi DOC also restricts publications with content that poses a threat to institutional order and security, like instruction on manufacturing dangerous substances and verbiage that could reasonably communicate information leading to "offender disruption" like strikes or riots.<sup>313</sup>

In April 2018, Big House Books, a nonprofit that sends books to incarcerated individuals in Mississippi correctional facilities, filed suit against the DOC, alleging that the state was impermissibly limiting access to reading materials.<sup>314</sup> Specifically, two correctional facilities in Mississippi were returning books on the grounds that incarcerated individuals could only receive religious books. Big House Books and the Mississippi DOC filed notice in a federal court that they had settled and asked a judge to dismiss the lawsuit.<sup>315</sup> Mississippi DOC rewrote its policy to recognize nonprofit groups and allow both religious and secular books to be sent to prison facilities.<sup>316</sup> Notably, Mississippi DOC's 2014 Offender Mail Services policy did not explicitly prohibit secular reading materials.

Mississippi does not maintain a list of prohibited books in all facilities.<sup>317</sup>

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307 Minn. Dep't. of Corrections, Policy Number 302.020 (June 19, 2018), [http://www.doc.state.mn.us/DOcpolicy2/html/DPW\\_Display.asp?Opt=302.020.htm](http://www.doc.state.mn.us/DOcpolicy2/html/DPW_Display.asp?Opt=302.020.htm).

308 *Id.* at Sec. M.

309 *Id.* at Sec. N(1)

310 *Id.* at Sec. N(3)(d). *See also* Email from Aaron Swanum, Info. Off. Minn. Dep. of Corr., to author (Feb. 15, 2019 06:52 PM ET) (on file with author).

311 Miss. Dep't of Corr., *Offender Mail Services*, 13 (Jul. 1, 2018) (on file with the Thurgood Marshall Civil Rights Center).

312 *Id.*

313 *Id.* at 14.

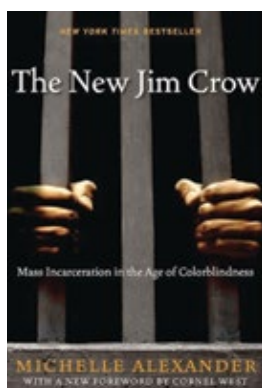
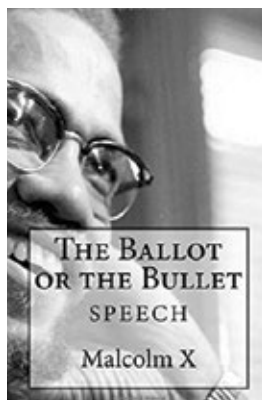
314 Jeff Amy, *Mississippi inmates can get more books now, group says. Lawsuit against state dropped.*, Clarion Ledger (Dec. 28, 2018), <https://www.clarionledger.com/story/news/2018/12/28/lawsuit-mississippi-over-books-inmates-dropped-after-state-rewrites-policy/2428976002/>.

315 *Id.*

316 *Id.*

317 Email from Miss. Dep't of Corr. Office of Comm'n. to author (Mar. 5, 2019 07:49 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

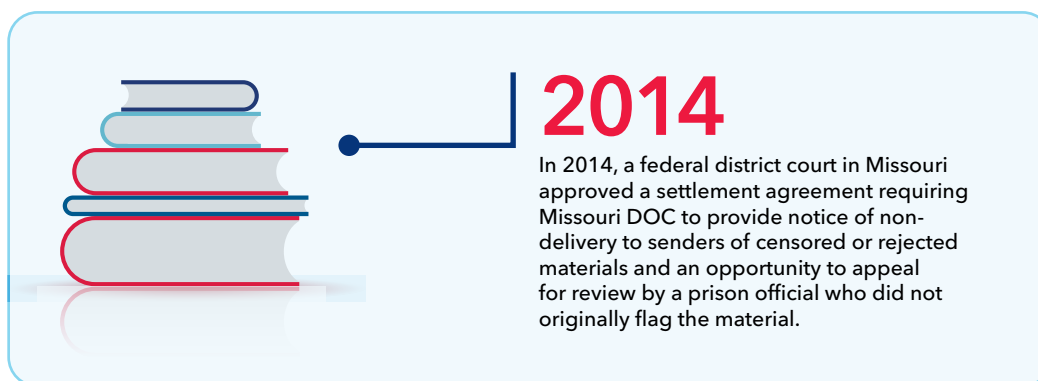
## MISSOURI:



Missouri censors books based on content. Missouri DOC utilizes a censorship committee, a group established by the chief administrative officer at each facility, to determine if an incoming book's content is detrimental to the order of the institution or offender rehabilitation.<sup>318</sup> Missouri DOC accepts donations from private individuals as long as they meet the same content-review criteria as books ordered directly from publishers.<sup>319</sup>

However, the content-review can result in over-censorship — in 2015, the Eight Circuit upheld a Missouri prison's decision to ban a *Newsweek* issue to an incarcerated individual because the issue contained images of dead bodies and those images “[promote] violence, disorder or the violation of state or federal law including inflammatory material.”<sup>320</sup> Similarly, in 2013, Missouri prisons censored an *Economist* issue because the magazine included a picture of a Klansman holding a noose.<sup>321</sup> In 2014, a federal district court in Missouri approved a settlement agreement requiring Missouri DOC to provide notice of non-delivery to senders of censored or rejected materials and an opportunity to appeal for review by a prison official who did not originally flag the material.<sup>322</sup> The ruling was the result of a class action lawsuit initiated by the owner of a publishing company on behalf of all current and future authors, distributors, and publishers who mail written materials to incarcerated individuals under Missouri DOC's supervision.<sup>323</sup>

Missouri maintains a list of banned books, that as of writing, contained almost 4,000 books and publications. Included on the list of publications are *Malcolm X— The Revolutionary The Ballot or the Bullet*; *Malcolm X Collected Speeches, Debates & Interviews*; *The New Jim Crow*; *Black Skin, White Masks*; *Racism the Black Family & American Culture Part One*; *Abu Ghraib Comes to America: Torture Unit Under Construction at Virginia's Red Onion State Prison*; and *Torture in United States Prisons*. Occasionally, the list would include a brief reason for the publication's rejection— one such reason is “position against prisons.”<sup>324</sup>



# 2014

In 2014, a federal district court in Missouri approved a settlement agreement requiring Missouri DOC to provide notice of non-delivery to senders of censored or rejected materials and an opportunity to appeal for review by a prison official who did not originally flag the material.

318 Mo. Dep't. Of Corr., *IS12-1.2 Censorship Procedure*, (Oct. 5, 2013), [https://www.law.umich.edu/special/policyclearinghouse/Documents/MO%20-%20Missouri%20Censorship%20Procedure%20\(from%20State\).pdf](https://www.law.umich.edu/special/policyclearinghouse/Documents/MO%20-%20Missouri%20Censorship%20Procedure%20(from%20State).pdf)

319 Mo. Dep't of Corr., *Library Mission Statement* (2016) (on file with the Thurgood Marshall Civil Rights Center).

320 *Murchison v. Rogers*, 779 F.3d 882, 885 (8th Cir. 2015).

321 *The Economist*, *Why prisons in Missouri censor The Economist* (Aug. 22, 2013), <https://www.economist.com/united-states/2013/08/22/sense-and-censorship>.

322 *Lane v. Lombardi*, 2014 U.S. Dist. LEXIS 149823 (US District Court of Missouri Central Division) (Oct. 22, 2014).

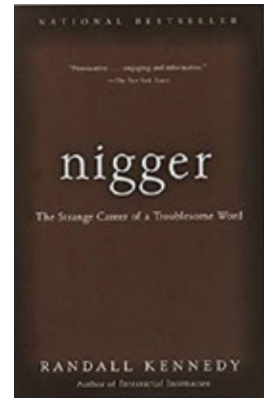
323 *Id.*

324 Email from Karen Pojmann, Comm'n Dir. Mo. Dep't. Of Corr., to author (Feb. 25, 2019 11:49 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

## MONTANA:

Montana censors books based on content. Montana DOC only allows incarcerated individuals to receive books directly from publishers, book clubs, or bookstores as long as prison staff find that the content does not violate prison policy.<sup>325</sup> Books that contain, advocate for, or encourage instructions for manufacturing weapons or drugs, violence or disruption of facility security, and racial or national supremacy hatred are among the categories of banned materials.<sup>326</sup>

Montana has a rejected publications list containing about 300 books. The list contains the date that each book was banned, with the most recent date being in 2013. In addition, the list states the reason for each book's banning. The reasons range from "Security Threat," "Sexually Explicit," "Spells," "Roll [sic] Playing Game," and "Racism" among others. Books have also been rejected because they are a "Hardcover" and "Over policy set size limit." Books such as *Nigger* (a respected work of nonfiction, by the critical race scholar, Randall Kennedy), *Politics of Chicano Liberation*, *The Concept of Race*, *The History of White People*, *The Holocaust Industry* (an often-cited work of non-fiction by the scholar, Norman Finkelstein), and *The Other Side of Racism* are prohibited in Montana. It appears that in Montana, the mere mention of race in the title of the book is enough to merit its prohibition.<sup>327</sup>



## NEBRASKA:

Nebraska DOC requires that all books must be sent directly from the publisher or bookstore.<sup>328</sup> While the Nebraska DOC policy does not list specific review criteria for all facilities, wardens have the authority to issue guidelines defining the types of books are prohibited, which are a threat to the safety, order, and security of the facility are prohibited.<sup>329</sup> In the youth facilities, broad regulations against contraband are often applied against incoming publications—for example, books that contain maps, or incite violence, or “constitute a threat to the safety, security or good order” of the correctional facilities are prohibited.<sup>330</sup> In the Tecumseh State Correctional Institution, materials that advocate or incite violent or illegal acts, advocate gang-related activities, portray or depict “martial arts,” and “any other printed, published or photographed materials that are deemed by the Warden to constitute a threat to the safety, security, or good order of the facility” are considered contraband.<sup>331</sup>

In the event that a publication is rejected, the incarcerated individual will receive a “grievance response” that cites the specific reasons for denial of the publication.<sup>332</sup> The incarcerated individual is then required to exhaust his or her administrative remedies to appeal the denial of the publication.<sup>333</sup>

In January 2018, the Nebraska DOC issued a ban on pornography in its facilities.<sup>334</sup> Nebraska DOC Director Scott Frakes stated “reform requires us to . . . determine where positive changes could be implemented to create a safer, more re-entry-focused environment.”<sup>335</sup>

Nebraska does not maintain a list of books banned in all facilities.<sup>336</sup>

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325 Mont. Dep't. Of Corr., *Offender Mail*, Sec. E1 (June 29, 2018), <https://cor.mt.gov/Portals/104/Resources/Policy/Chapter3/3.3.6%20Offender%20Mail%2006.29.2018.pdf?ver=2018-06-29-112231-043>.

326 *Id.*

327 Email from Amy Barton, Int. Dir. of Comm., Mont. Dep't. of Corr., to author (Feb. 15, 2019 04:02 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

328 Neb. Dep't of Corr. Serv., Administrative Reg. No. 205.01, I-D(1)(a) (Dec. 31, 2018), [https://corrections.nebraska.gov/system/files/rules\\_reg\\_files/205.01\\_2018.pdf](https://corrections.nebraska.gov/system/files/rules_reg_files/205.01_2018.pdf).

329 *Id.* at i-f.

330 Neb. Dep't. Of Corr. Serv., Neb. Corr. Youth Facility, Inmate Mail 205.1.1, I(A) (Dec. 31, 2018).

331 Neb. Dep't of Corr. Serv., Tecumseh State Corr. Inst. No. 205.01.01 I(B) (Dec. 31, 2018).

332 Neb. Dep't of Corr. Serv., Administrative Reg. No. 205.01, I-D(1)(f).

333 *Id.*

334 JoAnne Young, *Nebraska Department of Corrections will ban prison porn*, Lincoln Journal Star (May 22, 2017), [https://journalstar.com/news/state-and-regional/govt-and-politics/nebraska-department-of-corrections-will-ban-prison-porn/article\\_80385e29-f47b-5976-884b-13e92a65ce84.html](https://journalstar.com/news/state-and-regional/govt-and-politics/nebraska-department-of-corrections-will-ban-prison-porn/article_80385e29-f47b-5976-884b-13e92a65ce84.html).

335 *Id.*

336 Email from Sean Banks, Pub. Disclosure & Record Retention, Neb. Dep't of Corr. Serv., to author (Feb. 22, 2019 11:59 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

## NEVADA:

The Nevada DOC only allows incarcerated individuals to order and receive books directly from verified publishers and vendors.<sup>337</sup> Incoming books are inspected by mail room staff and if suspected to violate established criteria, turned over to a Publication Review Committee, composed of prison officials, for review and either acceptance or rejection.<sup>338</sup> Nevada bans books based on whether the material consists of content that is detrimental to the threat, order, or discipline of the institution or facilitates criminal activity.<sup>339</sup> Determinations are made by the Warden of each specific facility.

Nevada does not maintain a centralized banned book list.<sup>340</sup>

In 2013, the ACLU of Nevada filed suit on behalf of Prison Legal News, a publication aimed at educating incarcerated individuals and protecting their legal rights, alleging unconstitutional censorship of the publication by Nevada DOC.<sup>341</sup> The complaint alleged that the designation of only one vendor, Amazon, as an “approved vendor” was unconstitutional since there was no alternative means for incarcerated individuals to obtain reading materials from other publishers.<sup>342</sup> This fact was also relevant in light of a September 2000 settlement with Prison Legal News in which Nevada DOC agreed to allow those in prison to subscribe to the publication of their choice, pending security interests.<sup>343</sup> In 2015, Prison Legal News and the Nevada DOC reached a settlement agreement in which the DOC agreed to evaluate incoming publications on a case-by-case basis instead of relying solely on the presence or absence of a sender’s name on a list of approved publishers, distributors, or vendors.<sup>344</sup>

## NEW HAMPSHIRE:

New Hampshire DOC uses a Literary Review Committee (“LRC”) to review incoming books according to DOC’s mail service guidelines.<sup>345</sup> The LRC is composed of three individuals with a representative from security, mental health, and education, and preference is shown to those who have an associate’s degree or higher in a behavioral health field or have completed extensive behavioral health training.<sup>346</sup>

New Hampshire DOC does not compile a list of excluded publications, but the LRC prohibits books based on general criteria like whether the material jeopardizes institutional security or includes non-medical sexually explicit material that would encourage unlawful sexual practices.<sup>347</sup>

As of February 2019, New Hampshire DOC does not have a list of approved or restricted vendors, but requires that approved books come from “bona fide” publishers or bookstores.<sup>348</sup> However, those incarcerated in New Hampshire have reported that the DOC has banned all books by Robert Greene, the author of *The 48 Laws of Power*, *Mastery*, and *The Art of Seduction*.<sup>349</sup> Additionally, the

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337 Nev. Dep’t of Corr., *Inmate General Correspondence and Mail*, § 750.08 (Dec. 17, 2013), [http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative\\_Regulations/AR%20750%20-%20121713.pdf](http://doc.nv.gov/uploadedFiles/docnv.gov/content/About/Administrative_Regulations/AR%20750%20-%20121713.pdf).

338 *Id.* at §750.03(1).

339 *Id.* at § 750.01(O)(2).

340 Email from Brooke Santina, Public Information Specialist, Nev. Dep’t of Corr. to author (Feb. 14, 2019 06:34 PM EST) (on file with the Thurgood Marshall Civil Rights Center).

341 Sean Whaley, *ACLU battles Nevada prison system over censorship*, Las Vegas Review-Journal (Aug. 15, 2013), <https://www.reviewjournal.com/news/aclu-battles-nevada-prison-system-over-censorship/>.

342 ACLU of Nevada, *Censorship Lawsuit Filed Against Nevada Department of Corrections* (Jul. 5, 2013), <https://www.aclunv.org/en/news/censorship-lawsuit-filed-against-nevada-department-corrections>

343 *Id.*

344 In the Matter of Prison Legal News v. Cox, et al., Case No. 3:00-cv-00373-HDM-WGC (D. Nev. Nov. 18, 2015), <https://www.clearinghouse.net/chDocs/public/PC-NV-0007-0003.pdf>.

345 N.H. Dep’t of Corr., *Policy and Procedure Directive* at §IV-C(1) (Sept. 15, 2017), <https://www.nh.gov/nhdoc/policies/documents/5-26.pdf>.

346 *Id.*

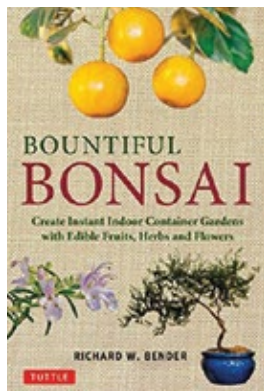
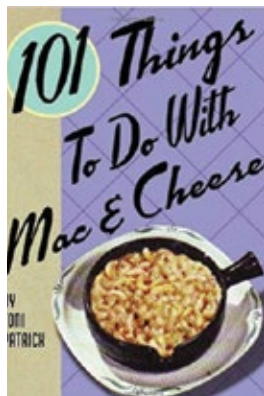
347 *Id.* at §IV-C(2).

348 *Id.* at §IV-D(1). *See also* Email from Tina Thurber, N.H. Dep’t. of Corr. Pub. Info. Officer, to author (Feb. 15, 2019 01:41 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

349 Mark Engebretson, *Exhibit highlights banned prison books*, University of Minnesota Libraries (Dec. 1, 2018), <https://www.continuum.umn.edu/2018/12/exhibit-highlights-banned-prison-books/>.

organization, Books to Prisoners published a list of banned books from 2014, that includes *The Lovely Bones* for being “sexually explicit & offensive,” the Pulitzer Prize winning book on the Attica uprising for “security concerns-encourage group disruption,” *Prison Nation*, a book about the prison-industrial complex, for “security threat group/white supremacy,” *Locked Up But Not Locked Down*, a book on surviving the American prison system, for “institutional security concerns,” and *Coming Out of Concrete Closets*, a book on queer individuals’ experiences in prison, for “unlawful sexual practice.”<sup>350</sup>

## NEW JERSEY:



The New Jersey DOC uses a content-review and restricted vendor policy. Incarcerated individuals may only receive books from an authorized source of sale including but not limited to, the book’s publisher, a book club, or a bookstore.<sup>351</sup> Incoming books may be inspected for contraband, but should not be read unless there is reason to believe the book contains prohibited content; additionally, a list of all publications that have been read for inspection is required to be maintained in a confidential space.<sup>352</sup>

New Jersey prohibits all publications that can threaten safety and security. Books that contain “information concerning activities. . . which would be subject to criminal prosecution under the laws of New Jersey or the United States” are also prohibited.<sup>353</sup> Additionally, New Jersey DOC prohibits materials which “lack, as a whole, serious literary, artistic, political, or scientific value,” leaving the decisions to reject or accept books to the “experience and professional expertise of correctional administrators.”<sup>354</sup>

Staff members in the prisons’ mailrooms can withhold a publication if they determine it violates the aforementioned criteria, but they must complete a written report with information regarding the withholding, including the category which the publication violates, to be given to the shift commander at the end of their shift.<sup>355</sup> The shift commander can either give the book to the incarcerated individual within 48 hours if they disagree with the staff members decision or sign off on the report and withhold the book.<sup>356</sup>

New Jersey DOC’s wide discretion in prohibiting books was publicly critiqued in January 2018 when the ACLU of New Jersey filed an Open Public Records Act request in response to multiple complaints from incarcerated individuals regarding a ban on *The New Jim Crow* at two New Jersey prison facilities.<sup>357</sup> The ACLU of New Jersey wrote a memorandum explaining the unconstitutional nature of the ban in the absence of the prohibition’s relation to the interests of safety and security for the correctional facilities; notably, the memorandum also identified the irony in New Jersey, the state with the worst racial disparities in incarceration in the United States, banning a book written to examine racial disparities in the criminal justice system.<sup>358</sup> In response, the New Jersey DOC announced that the ban on *The New Jim Crow* would be lifted at the two prisons where it was listed amongst other banned books.<sup>359</sup>

350 Kelly Jenson, *New Hampshire Prisons Ban books Critical of Prison System*, Award Winners (May 28, 2019), <https://bookriot.com/2019/05/28/new-hampshire-prisons-ban-books/>

351 N.J.A.C §10A:18-4.2(a).

352 *Id* at §10A-18-4.5(a)-(b).

353 *Id* at §10A:18-4.9(a)(4).

354 *Id* at (a)(6).

355 *Id* at §10A:18-4.11(a)(2).

356 *Id* at §10A:18-4.11(3).

357 Shaun King, *ACLU Says New Jersey Prisons’ Banning of “The New Jim Crow” is Unconstitutional*, *The Intercept* (Jan. 8, 2018), <https://theintercept.com/2018/01/08/new-jim-crow-ban-prisons-nj-new-jersey-aclu/>.

358 *Id*.

359 David Foster, *DOC lifts ban of “The New Jim Crow” book at 2 NJ prisons after ACLU protests policy*, *The Trentonian*. (Jan. 8, 2018), [https://www.trentonian.com/news/doc-lifts-ban-of-the-new-jim-crow-book-at/article\\_201865d1-2fc4-53f6-92ae-0d88c7f7d979.html](https://www.trentonian.com/news/doc-lifts-ban-of-the-new-jim-crow-book-at/article_201865d1-2fc4-53f6-92ae-0d88c7f7d979.html).



New Jersey maintains a list of prohibited books. It currently has just over 100 books. Among the more curious additions to New Jersey's rejected books list are *101 Things to do with Mac and Cheese*, *Absolute Green Lantern*, *DC Comics Encyclopedia*, and *Bountiful Bonzai*. Specific issues of *Cosmopolitan*, *GQ*, and *New York* magazines have also been prohibited.<sup>360</sup>

## NEW MEXICO:

New Mexico prisons restrict publications that are not sent directly from the publisher or vendor. New Mexico DOC also prohibits publications that include nudity, pornography, or gang-related materials.<sup>361</sup> Depending on the facility and security level of that facility in which the incarcerated individual is housed, New Mexico limits the number of books and magazines that the incarcerated individuals may have in their possession, between zero and three.<sup>362</sup>

Prisons in New Mexico recently settled a case with the Human Rights Defense Center ("HRDC") after HRDC alleged that their First and Fourteenth Amendment rights had been violated as a result of their book banning policies.<sup>363</sup> HRDC is a national nonprofit group that sends publications to people in jails and prisons. Some of the banned books in New Mexico facilities include, *The Habeas Citebook: Ineffective Assistance of Counsel*, *Protecting Your Health and Safety*, *Prisoners' Guerrilla Handbook: A Guide to Correspondence Programs in the United States and Canada*.<sup>364</sup>

In response, the parties agreed that correctional facilities run by Management and Training Corporation ("MTC"), mainly the New Mexico DOC and the Ohio DOC would deliver all publications to incarcerated individuals if they were consistent with the applicable rules.<sup>365</sup> MTC also agreed not to "censor or withhold publications based solely on the presence or absence of a sender's name on a list of approved publishers or distributors unless required to do so."<sup>366</sup>

New Mexico does not maintain a list of banned publications.<sup>367</sup>

## NEW YORK:

The New York Department of Corrections and Community Service ("DOCCS") has a mail policy that allows incarcerated individuals to read publications, provided that the publications do not encourage behavior that might be disruptive to orderly facility operations.<sup>368</sup> However, all reading materials must comply with mail policies. Generally, the materials must not incite violence, advocate and present a clear and immediate risk of lawlessness, violence, anarchy or rebellion against governmental authority, incite disobedience towards law enforcement, nor give instruction in the use or manufacture of firearms, explosives, and other weapons. If the Superintendent of the facility or his/her designee believes that the printed materials are a possible threat to orderly facility operations, the materials will be referred to the Facility Media Review Committee ("FMRC") for assessment and disposition. The FMRC is required to respond to the incarcerated individual within ten working days and if the publication is disapproved then a written form must be filled out with detailed explanation and page numbers where the content violates the policy. An incarcerated individual may appeal to the Central Office Media Review Committee ("COMRC"), which is required to return a decision within three weeks.

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360 Email from John Falvey, NJ Dep't. of Corr. Custodian, to author (Feb. 19, 2019 9:59 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

361 N.M. Corr. Dep't Policy CD-151200 *Correspondence Regulations* §E(6)(e) (7/31/2018), <https://cd.nm.gov/wp-content/uploads/2019/06/CD-151200.pdf>.

362 *Id.*

363 Human Rights Def. Ctr. v. Bd. of Cty. Commissioners of the Cty. of Santa Fe Cty., NM, 2018 WL 3068061, (D.N.M. June 21, 2018)

364 Derek Gilma, *New Mexico Jail Sued by HRDC for Censoring Book Orders*, Prison Legal News (2018) <https://www.prisonlegalnews.org/news/2018/may/7/new-mexico-jail-sued-hrdc-censoring-book-orders/>

365 *Id.*

366 *Id.*

367 Email from Catherine Ahring, IRPA Paralegal, N.M. Corr. Dep't., to author (Apr. 11, 2019 10:31 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

368 N.Y. Comp. Codes R. & Regs. tit. 7, § 712.2.

In December 2017, The DOCCS enacted a pilot project under Directive 4911A that limited incoming packages for three facilities (Greene, Green Haven, and Taconic) to only six approved vendors.<sup>369</sup> The ostensible purpose of this project was to increase security and limit contraband. In January 2018, there was a mere total of 77 books on the approved vendor list.<sup>370</sup> Many families and advocates expressed concern about the dramatic changes in policy and noted that restricting care packages prevented incarcerated individuals from receiving nutritional food, clothes, health products, and education materials. Moreover, 4911A banned books from being donated to incarcerated people.<sup>371</sup> New York Governor Andrew Cuomo also disagreed with the new policy on his official Twitter account and stated “I am directing the Department of Corrections to rescind its flawed pilot program that restricted shipment of books and care packages to incarcerated individuals. Concerns from families need to be addressed, while we redouble efforts to fight prison contraband.”<sup>372</sup> After public backlash, the Governor directed the New York State DOCCS to suspend the program in addition to other criminal justice reform advocates that started petitions for a full termination of the directive.<sup>373</sup> As of January 2018, the policy was suspended by the New York State corrections due to “concerns raised by families of incarcerated persons regarding the availability and price of products under the programs.”<sup>374</sup>

Currently, New York does not maintain a list of publications that are banned across all facilities. Under New York’s policies, “no publication is permanently denied.”<sup>375</sup>

In the past, DOCCS has punished incarcerated individuals for the books that are in their possession. In 2002, a DOCCS correctional officer discovered Shabaka Shakur’s New Afrikan political books.<sup>376</sup> DOCCS maintained that the books were “Nubian gang materials” and were from a “revolutionary organization that was designed to mobilize an armed war movement.”<sup>377</sup> Shakur was given a 12 month penalty for violating Rule 105.12.<sup>378</sup> Shakur was charged three more times for having these books before he was approved to go to the FMRC, which found that only three pages out of the entire book incited violence.<sup>379</sup> The court stated the regulation was too broad and not rationally related to any governmental interest.<sup>380</sup>

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369 Incarcerated Workers Organizing Committee, *No Package Restrictions for NYS Prisoners!*, DIYRootsAction, <https://diy.rootsoaction.org/petitions/no-package-restrictions-for-nys-prisoners>

370 Christopher Zoukis, *NY book ban to make prisons “safer” draws backlash*, HuffPost (Jan. 13, 2018), [https://www.huffingtonpost.com/entry/ny-book-ban-to-make-prisoners-safer-draws-backlash\\_us\\_5a5a4b00e4b01ccdd48b5cd0](https://www.huffingtonpost.com/entry/ny-book-ban-to-make-prisoners-safer-draws-backlash_us_5a5a4b00e4b01ccdd48b5cd0).

371 <https://bookriot.com/ny-rescinds-prison-ban-on-book-donations/>

372 Andrew Cuomo, (@NYGovCuomo), Twitter (Jan. 12, 2018, 10:40AM), <https://twitter.com/NYGovCuomo/status/951886741484589056>.

373 Vivian Wang, *Cuomo Halts a Controversial Prison Package Policy*, The New York Times (Jan. 12, 2018), <https://www.nytimes.com/2018/01/12/nyregion/prison-package-policy-suspended.html>.

374 *Id.*

375 Email from Robin J. Lawyer, Ass. Rec. Access Officer, FOIL Unit, to author (Feb. 19, 2019 3:56 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

376 *Shakur v. Selsky*, 391 F.3d 106, 109 (2d Cir. 2004).

377 *Id.*

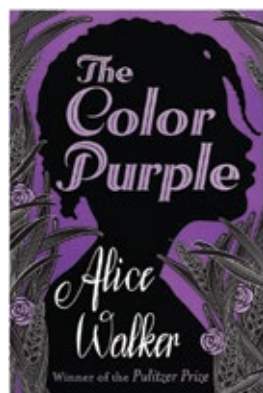
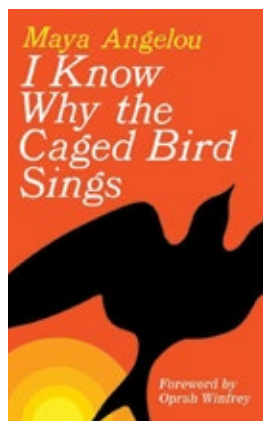
378 Rule 105.12 provides that “[i]nmates shall not . . . possess . . . or use unauthorized organizational insignia or materials. An unauthorized organization “is any gang or any organization which has not been approved by the deputy commissioner for program services.”; *see Shakur v. Selsky*, 391 F.3d 106, 109 (2d Cir. 2004).

379 *Id.* at 109-10.

380 *Id.* 115.



## NORTH CAROLINA:



Section .0100 of the North Carolina Department of Public Safety (“NCDPS”) regulations governs what publications incarcerated individuals can receive.<sup>381</sup> The Warden or Deputy of each facility will approve or disapprove publications for receipt or possession by incarcerated individuals on a case-by-case basis.<sup>382</sup> Before rejecting a publication, the Warden or Deputy must perform an individual review to determine if the material poses a threat to specific objectives or threatens the security of incarcerated individuals or staff.<sup>383</sup> The DOC cannot reject publications only because they appeal to a particular ethnic, racial, or religious group.<sup>384</sup> If the Warden or Deputy of the facility rejects a publication, then he/she must submit the publication to the chairperson of the Publications Committee, which consist of two members and one chairperson, who are appointed by the Director of Prisons or his designee.<sup>385</sup> If the incarcerated individual chooses, she may appeal the decision of the Warden to the Publication Review Committee for final review and approval or disapproval.<sup>386</sup> The Publication Review Committee will conduct independent reviews of the disapproved publications.<sup>387</sup> If the Committee does not agree to the outcome, the Chairperson will make the final approving authority.<sup>388</sup> The chairperson records the decisions of the Committee on the Master List of Disapproved Publications in OPUS, which is available to all facilities.<sup>389</sup>

On February 24, 2017, NCDPS banned *The New Jim Crow*, a critically acclaimed work of non-fiction on mass incarceration in the United States, claiming that it was likely to provoke confrontation between racial groups.<sup>390</sup> NCDPS claims that the book was banned because it would provoke confrontation between racial groups.<sup>391</sup> The fear seems to be more based on the fact that publications on mass incarceration underline the reality that communities of color are disproportionately incarcerated in North Carolina and the United States.<sup>392</sup> The banning of *The New Jim Crow* shows that, while on its face the NCDPS Policy and Procedure Manual is not arbitrary or ambiguous and is geared towards maintaining institutional security for both incarcerated people and staff members, its application allows for arbitrariness and abuse. The ACLU of North Carolina wrote a letter calling the ban unconstitutional and contrary to the prison system’s own regulations.<sup>393</sup> In response, the book was immediately removed from the banned book list and a process began to review the entire list of banned books to determine whether others should be removed as well.<sup>394</sup>

381 N.C. Dep’t. of Corr. Div. of Prisons, *Publications Received/Possessed by Inmates*, Chapter D, § .0100 (2010), [https://www.doc.state.nc.us/dop/policy\\_procedure\\_manual/d0100.pdf](https://www.doc.state.nc.us/dop/policy_procedure_manual/d0100.pdf). In 2012, the North Carolina Department of Correction consolidated with the Department of Crime Control and Public Safety and the Department of Juvenile Justice and Delinquency Prevention to form the North Carolina Department of Safety. See N.C. Dep’t. of Pub. Safety, *History of North Carolina’s Corrections Systems*, <https://www.ncdps.gov/adult-corrections/history-of-corrections>.

382 *Id.* §.0102(a)-(b).

383 *Id.*

384 *Id.* §.0109(a).

385 *Id.* § .0102(c); *Id.* § .0104.

386 *Id.* § .0103(d)(1).

387 *Id.* § .0104.

388 *Id.*

389 *Id.* § .0103(a).

390 Jonah Bromwich, *Why Are American Prisons So Afraid of this Book?*, *The New York Times* (Jan. 18, 2018), <https://www.nytimes.com/2018/01/18/us/new-jim-crow-book-ban-prison.html>.

391 *Id.*

392 N.C. Dep’t. of Pub. Safety, *Research Bulletin*, Issue No. 61, p.2 (March 2018), <https://randp.doc.state.nc.us/pubdocs/0007080.PDF> (showing that 53% of the total state prison population in North Carolina at the end of 2016 was black).

393 ACLU of North Carolina, *ACLU Calls for North Carolina Prisons to Lift Ban on ‘The New Jim Crow’* (Jan. 23, 2018), <https://www.acluofnorthcarolina.org/en/press-releases/aclu-calls-north-carolina-prisons-lift-ban-new-jim-crow>.

394 Amanda Mangus & Frank Stasio, *North Carolina Audits the List of Banned Books in Prisons*, *WUNC 91.5* (Jan. 26, 2018), <http://www.wunc.org/post/north-carolina-audits-list-banned-books-prisons#stream/0>.

The banning of *The New Jim Crow* catalyzed closer scrutiny over what books were banned by NCDPS. In January 2018, NCDPS' banned books included the *Encyclopedia of North Carolina*, *I Know Why the Caged Bird Sings*, *Marvel: Avengers*, *The Color Purple*, *The Complete Guide to Writing*, issues of *Newsweek* and *Mother Jones*, and *Webster's Large Print Dictionary*. The list includes 480 books.<sup>395</sup> The banning of books such as *The Color Purple* and *I Know Why the Caged Bird Sings* points to a larger pattern of banning books significant to African American history and culture.

The most recently acquired list of banned books, dated February 22, 2019, includes *Black Girl Lost*, a work of urban fiction about an incarcerated girl, *Blackwater: The Rise of the World's Most Powerful Mercenary Army*, *Hitler's First Victims*, *Sigmund Freud*, *The Art of War* by Sun Tzu, *Jail House Strong*, *Jailed for Freedom*, *Nutritional Destruction of Black People*, *The Women of San Quentin - Soul Murder of Transgender Women in Male Prisons*, *There Goes the Neighborhood: How Communities Overcome Prejudice and Meet the Challenge of American Immigration*, and *White Trash*.<sup>396</sup>

Additionally, issues of *Criminal Legal News*, *Guild Notes* (a publication from the National Lawyers Guild), *Human Rights Defense Center Annual Report*, *Men's Health*, *Prison Focus*, *Prison Health News*, *Prison Legal News*, *San Francisco Bay View*, *The Abolitionist*, *The New Yorker*, *Under Lock & Key*, and *Women's Health* have been banned.<sup>397</sup>

In a letter to the Thurgood Marshall Civil Rights Center, one incarcerated individual in a state prison in North Carolina described having a 400 page art book denied to him because of one page containing nudity. He wrote, "they refused to tear that one page out and give me the book." The individual further described how North Carolina has a mail policy for banning books but that they "don't always follow it", adding that "the policy is clear that nudity is allowed in art books."<sup>398</sup>

One individual wrote to the Center and described how they were not allowed to read the fiction series *Game of Thrones* while incarcerated in a North Carolina state prison due to the "rape scene."<sup>399</sup>

Another incarcerated individual at a state prison in North Carolina wrote that he had been denied "books by African American liberators such as M.L.K, Malcom X, Marcus Garvey, etc." and that he was told that the reasoning for these books being denied was that "it would cause an uprising in the institution."

One incarcerated individual in North Carolina pointed out the discriminatory practices involved in book censorship, writing, "[b]ooks by black authors are rejected at a disproportionate rate." The same individual reported being denied access to (among others) a Jamaican newspaper, James Baldwin's "I am Not Your Negro", Prison Legal News Magazine, and The Authobiography of Malcom X.<sup>400</sup> The individual added that publications "geared towards non-christians" such as "muslims" and "geared towards...Rastafarian ways of life" are also "rejected and/or censored at an alarming rate."<sup>401</sup>

Notably, an additional prisoner in North Carolina reported having books censored that deal with "activist organizing", "prison reform", "litigation", "prison uprisings" and "prison lawsuit success."<sup>402</sup>

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395 N.C. Dep't of Pub. Safety, *Disapproved Publications Report (Bulletin Board Posting)* (Jan. 23, 2018), <http://media2.newsobserver.com/content/media/2018/1/23/BannedBookList.pdf>.

396 Email from Wilbert Darcus, N.C. Dep't. of Pub. Safety, to author (Feb. 22, 2019 02:20 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

397 *Id.*

398 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

399 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

400 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

401 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

402 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

## NORTH DAKOTA:

North Dakota correctional facilities only accept publications directly from major bookstores, such as Amazon.<sup>403</sup> These facilities do not accept used or previously read materials.<sup>404</sup> To enforce this policy, publications that are sent to correctional facilities in North Dakota must have a delivery note attached to the package that clearly lists all the books included and showing them as new books and listing their individual prices.<sup>405</sup>

North Dakota censors books that contain criminal activity, sexually suggestive images, escape plans, or anything that constitutes a safety risk to the facility, specific individuals or to the general public.<sup>406</sup> North Dakota does not maintain a list of books that are prohibited throughout the state.<sup>407</sup>

## OHIO:

Ohio's prison censorship policies vary throughout the state. Generally, Ohio correctional facilities employ a restrictive vendor based policy. Printed materials may be received in reasonable quantities; but only, directly from a publisher or distributor.<sup>408</sup> Incarcerated persons may receive printed materials from other sources (e.g., family, friends, etc.), but only with the prior approval of the managing officer or designee.<sup>409</sup>

The Human Rights Defense Center has sued several facilities within Ohio, alleging that these correctional facilities have violated their First Amendment rights by refusing to deliver the educational books and *Prison Legal News*, a monthly magazine.<sup>410</sup> Lawsuits commenced by HRDC often end in settlement agreements with the correctional facilities; and jails are moving towards changing their policies as a result of the lawsuits.<sup>411</sup>

Ohio maintains a list of prohibited books that contains approximately 800 books and magazine issues. The list is regularly updated. The list contains the date of the publication's banning but does not provide the reasoning behind the ban.<sup>412</sup> Most of the books banned relate to sex or nudity, but some notable books include *From Privilege to Prison* (a memoir of a woman's time behind bars), *Moral Injury and Nonviolent Resistance*, *Prison Ramen: Recipes and Stories from Behind Bars*, *Prison Stories*, *The Hot House: Life Inside Leavenworth Prison*, and *Trans Bodies, Trans Selves: A Resource for the Transgender Community*. Specific issues of *Newsweek*, *Psychology Today*, *Rolling Stone*, *San Francisco Bay View*, *National Black Newspaper*, *The Abolitionist*, *The Atlantic*, *Voices of Disenfranchised*, *Workers World*, and *Wired* are also prohibited in Ohio correctional facilities.

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403 N.D. Dep't of Corr., *Communication, Mail, and Visiting*, available at <https://www.law.umich.edu/special/policyclearinghouse/Documents/North%20Dakota%20-%20Inmate%20Handbook.pdf>.

404 *Id.*

405 *Id.*

406 *Id.*

407 Email from Michelle Linster, N.D. Dep't. Of Corr., to author (Feb. 25, 2019 11:40 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

408 *Ohio Rev. Code 5120-9-18*

409 *Id.*

410 Kait Howard, *Ohio private prison sued for censoring inmates' reading materials*, Melville House (May 26, 2017). <https://www.mhpbooks.com/ohio-private-prison-sued-for-censoring-inmates-reading-materials/>

411 Richard Wilson, *HRDC settles censorship lawsuit against Ohio Jail*, Human Rights Defense Center (2018) <https://www.humanrightsdefensecenter.org/action/news/2018/hrdc-settles-censorship-suit-against-ohio-jail/>

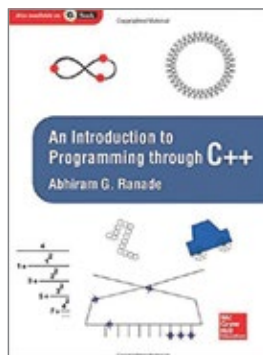
412 Email from Tyler Brown, Staff Counsel, Oh. Dept. of Corr., and Rehab., to author (Feb. 15, 2019 04:18 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

## OKLAHOMA:

Oklahoma allows publications from book stores or major book vendors.<sup>413</sup> Correctional facilities in Oklahoma do not universally prohibit any periodicals, magazines, or newspapers, but rather censors them on an issue by issue basis.<sup>414</sup> Each issue of the material has to be received and reviewed to determine whether it violates the correspondence restrictions of this agency.<sup>415</sup>

According to a representative at the Oklahoma DOC, Oklahoma does not maintain a list of books prohibited in its correctional facilities.<sup>416</sup>

## OREGON:



Oregon requires that all publications come directly from the publisher. Oregon does, however, allow used books. Oregon prohibits publications that are sexual in nature, portrays “excretory functions,” and any material that is “detrimental to the security, safety, health, good order or discipline” of the facility.<sup>417</sup> If a publication is censored, a formal process begins where a Central Administrative official reviews the publication and then affirms, or reverses the original rejection.<sup>418</sup>

In 2014, Prison Legal News sued Columbia County in Oregon for preventing incarcerated individuals’ access to its magazines. At the time, Columbia County had a “postcard-only” policy, prohibiting all incoming mail that was larger than a postcard. The Ninth Circuit agreed with Prison Legal News and ordered Oregon to pay \$802,000 in attorney’s fees and costs.<sup>419</sup>

Oregon maintains a banned book list that contains approximately 1,600 books.<sup>420</sup> Banned books include *An Introduction to Programming Through C++* (“material that threatens”), various books on Blockchain (banned because it “threatens” or because it is “material which an inmate shall not possess”), *Fun with Origami* (“material which an inmate shall not possess”), *How to Make Friendship Bracelets* (“material that threatens”), *Illustrated Stories from the Bible* (“sexually explicit”), *Inner Structure Of Tai Chi* (“material that threatens”), *Learn American Sign Language* (“material that threatens”), *New York Times Sunday Crossword Puzzles* (“material which an inmate shall not possess”), and *The Chess Player’s Bible* (“items which a[n] inmate shall not possess”).<sup>421</sup>

413 Okla. Dep’t of Corr., *Correspondence, Publications and Audio/Video Media Guidelines*, § 030117

414 *Id.*

415 *Id.*

416 Email from Matt Elliott, Public Info. Manager, Ok. Dept. of Corr., to author (Feb. 15, 2019 04:51 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

417 Or. Dep’t. Of Corr., 291-131-0035 Div. 131 *Mail (Inmate)*.

418 *Id.*

419 Human Rights Defense Center, In the News *PLN awarded \$802,00 in fees and costs in Oregon jail censorship case*, (Mar. 25, 2014), <https://www.humanrightsdefensecenter.org/action/news/2014/pln-awarded-802000-in-fees-and-costs-in-oregon-jail-censorship-case/>

420 Email from Michelle Dodson, Records Officer, Or. Dep’t. Of Corr. to author (Apr. 16, 2019 11:30 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

421 *Id.*

Additionally, books that reference crime are banned. *Corruption Officer: From Jail Guard to Perpetrator* by Gary Heward is banned because it discusses “criminal activity” and “conversion of weapons.” *Section 8* by K’wan, which tells the story of a mother living in the projects, is prohibited because of “simulated or threatened acts.”<sup>422</sup>



**\$802,000**

In 2014, Prison Legal News sued Columbia County in Oregon for preventing incarcerated individuals’ access to its magazines. At the time, Columbia County had a “postcard-only” policy, prohibiting all incoming mail that was larger than a postcard. The Ninth Circuit agreed with Prison Legal News and ordered Oregon to pay \$802,000 in attorney’s fees and costs.

## PENNSYLVANIA:

At the time of drafting, the Pennsylvania DOC publications policy was particularly stringent. Following a lockdown of all state correctional facilities in August of 2018, the DOC published revised incoming mail and publications policies with the stated purpose of preventing the introduction of contraband into DOC facilities.<sup>423</sup> These policies stipulated that incarcerated individuals could only purchase publications by first requesting the book from the DOC and, after being informed of the price, purchasing the book using the DOC system.<sup>424</sup> Family members were no longer allowed to purchase books from outside vendors or publishers to send to incarcerated individuals.<sup>425</sup> At the time this report was compiled, the DOC had not yet published a policy to allow family members to purchase books on behalf of roommates from the DOC system nor for free books to be donated to the general incarcerated population.<sup>426</sup>

The DOC policy did not state what vendors they would use to furnish hard copy books, but indicated that a “reasonable price” would be a “critical factor” in the location of books.<sup>427</sup> Further, these books remain subject to the long standing DOC screening process outlined in DC-ADM 803, which allows for the review and potential prohibition of certain publications based on content.<sup>428</sup> Publications may be prohibited for a myriad of reasons, including but not limited to: publications which advocate violence or insurrection; create danger within the context of the correctional facility; contain racially inflammatory material; or contain instruction in the manufacture of explosives, weapons, alcohol or drugs.<sup>429</sup>

<sup>422</sup> *Id.*

<sup>423</sup> Pa. Dep’t of Corr., *FAQ – New Procedures* (Sept. 10, 2018), <https://www.cor.pa.gov/Initiatives/Pages/FAQ-New-Procedures.aspx#Publications>.

<sup>424</sup> *Id.*

<sup>425</sup> *Id.*

<sup>426</sup> *Id.*

<sup>427</sup> *Id.*

<sup>428</sup> Pa. Dep’t of Corr., DC-ADM 816, Mail & Incoming Publications (Oct. 3, 2018), <https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/803%20Inmate%20Mail%20and%20Incoming%20Publications.pdf>.

<sup>429</sup> *Id.*

Further, the PA DOC has partnered with Global Tel Link (“GTL”) to make tablets and eBooks available to incarcerated individuals for purchase.<sup>430</sup> Tablets may be purchased for \$147 plus tax, and the cost of eBooks range from \$2.99-\$24.99.<sup>431</sup> The listing of eBook titles, exclusively available for purchase from GTL, was comprised of approximately 8,500 books at the time this report was compiled.<sup>432</sup> GTL’s online eBook repository does not include several notable titles relevant to the exploration of race and incarceration, including *The Autobiography of Malcolm X*, *The New Jim Crow* nor any books by Frantz Fanon.<sup>433</sup> Incarcerated individuals may also use the tablets to play a limited number of games, access music, and communicate with family and friends using the “Connect Network”—a platform provided by GTL.<sup>434</sup>

These policies presented several new challenges to incarcerated individuals’ access to books. Pennsylvania DOC incarcerated persons who work or attend eligible classes are paid between \$0.19 - \$0.51 per hour,<sup>435</sup> which likely limits incarcerated individuals’ ability to independently purchase hard copy books, tablets or eBooks. Further, many of the eBooks available for purchase through GTL are available for free on other online platforms.<sup>436</sup> These increased financial barriers did not go unnoticed. In an Op-Ed published in the Washington Post, the co-chair of Book ‘Em, a non-profit dedicated to sending free reading material to correctional facilities, criticized the new policies, writing “[i]ncreasing literacy and education should be an essential part of the correctional apparatus, but by imposing financial barriers to accessing books and restricting content, Pennsylvania is failing to serve the greater good.”<sup>437</sup>

In response to widespread protests over this policy, in November 2018, the DOC rescinded the policy. The updated policy allows for book donations from nonprofits and for families and friends to purchase books through “original sources,” such as publishers, bookstores, and online distributors. All incoming books and magazines are sent to a central Security Processing Center, which will inspect the publications before distributing them to the intended recipients.<sup>438</sup>

Pennsylvania also maintains a master list of all books prohibited in its correctional facilities on its website.<sup>439</sup> The list includes about 150 books and includes issues of the *Abolitionist*, *Earth First Journal*, *Popular Science*, *Rolling Stone*, and *San Francisco Bayview*.<sup>440</sup> The list of approved titles includes “Caught Looking, Erotic Tales of Voyeurs” but prohibits “IWOC (Incarcerated Workers Organizing Committee) Directory & Reference Guide/Application for Membership.”<sup>441</sup> The list does not provide an explanation for why books are banned.

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430 Pa. Dep’t of Corr., *Tablets*, <https://www.cor.pa.gov/Inmates/Pages/Tablets.aspx> [hereinafter Pa. DOC Tablets Information]; Pa. Dep’t of Corr., *Ebooks*, <https://www.cor.pa.gov/Inmates/Pages/ebooks.aspx>.

431 *Id.*

432 Pa. Dep’t of Corr., Full List of eBooks, <https://www.cor.pa.gov/Inmates/Documents/master-ebook-list.pdf>; <https://www.cor.pa.gov/About%20Us/Documents/DOC%20Policies/803%20Inmate%20Mail%20and%20Incoming%20Publications.pdf>; Samantha Melamed, *One review of Pa. prisons’ pricey ebooks: ‘Books that are available for free, that nobody wants anyway’*, *The Philadelphia Inquirer* (Sept. 21, 2018), <https://www.philly.com/philly/news/pennsylvania-department-corrections-books-through-bars-philly-new-jim-crow-malcolm-x-20180921.html>.

433 *Id.*

434 Hereinafter, PA DOC Tablets Information, *supra* note 126, at 16.

435 Pa. Dep’t of Corr., DC-ADM 816, *Inmate Compensation Manual*, §1-B (2012).

436 Jodi Lincoln, *Incarcerated Pennsylvanians now have to pay \$150 to read. We should all be outraged*, *The Washington Post* (Oct. 11, 2018) [https://www.washingtonpost.com/opinions/incarcerated-pennsylvanians-now-have-to-pay-150-to-read-we-should-all-be-outraged/2018/10/11/51f548b8-cbd9-11e8-a85c-0bbe30c19e8f\\_story.html?noredirect=on&utm\\_term=.7c5a24f4afe](https://www.washingtonpost.com/opinions/incarcerated-pennsylvanians-now-have-to-pay-150-to-read-we-should-all-be-outraged/2018/10/11/51f548b8-cbd9-11e8-a85c-0bbe30c19e8f_story.html?noredirect=on&utm_term=.7c5a24f4afe)

437 *Id.*

438 Pennsylvania Department of Corrections, <https://www.cor.pa.gov/About%20Us/Newsroom/Documents/2018%20Press%20Releases/Updated%20Book%20Policy%20PR.pdf>

439 Pa. Dep’t of Corr., DOC Publications Denial Listing, <https://www.cor.pa.gov/Inmates/Documents/DOC%20Publication%20Denial%20Listing.xlsx> (last visited Feb. 13, 2019).

440 Pa. Dep’t of Corr., *Denied Publications* <https://www.cor.pa.gov/Inmates/Pages/Publication-Denial-Listing.aspx>.

441 *Id.*



## RHODE ISLAND:

In Rhode Island, books are only accepted if they are received through USPS. Only new, paperback publications sent directly from the publisher will be allowed.<sup>442</sup> This excludes local bookstores and any distributor within 50 miles radius of the respective facility.<sup>443</sup> Publications may be censored if they facilitate or encourage criminal activity or contribute to a hostile work environment.<sup>444</sup>

Wardens at correctional facilities in Rhode Island have the discretion to censor publications on a case by case basis. An investigator then notifies all other wardens about the specific publication and requires that the publication be banned until a final determination is made.<sup>445</sup>

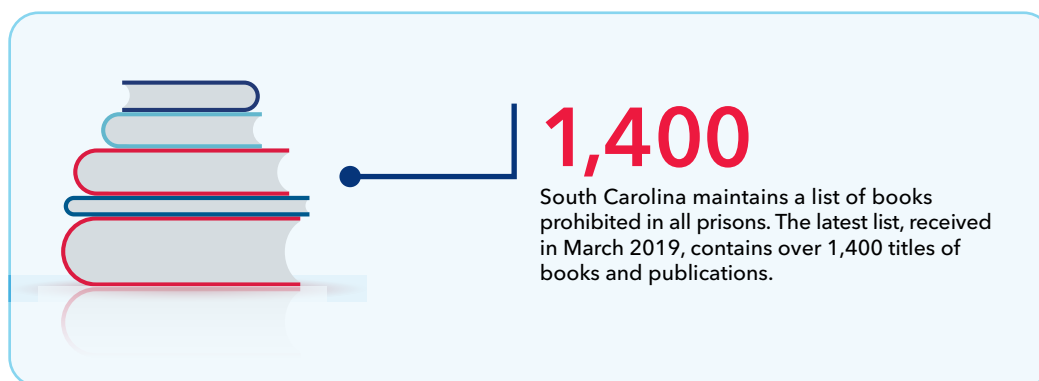
Rhode Island does not maintain a list of banned publications.<sup>446</sup>

## SOUTH CAROLINA:

South Carolina only allows books directly from the publisher, but also allows some donations.<sup>447</sup> In some cases, the DOC Education Superintendent reviews all donated books before they are allowed into the facilities.<sup>448</sup>

In 2012, a South Carolina jail settled a case with Prison Legal News (PLN), where PLN alleged that their First Amendment rights had been violated by the DOC's policies.<sup>449</sup> PLN filed suit after the jail rejected bibles and other monthly publications that PLN sent to incarcerated persons at the jail.<sup>450</sup> As a result of the settlement, the county agreed to extensive changes such as implementing policies related to incoming publications and providing training to jail staff related to those policies.<sup>451</sup>

South Carolina maintains a list of books prohibited in all prisons. The latest list, received in March 2019, contains over 1,400 titles of books and publications. The list includes *Political Prisoners, Prisons, and Black Liberation* by Angela Davis, *The Black People's Prison Survival Guide*, *Publication Coalition for Prisoners' Rights*, and various dictionaries. Additionally, issues of *Under Lock and Key*, *Newsweek Magazine*, *The Abolitionist*, and *The New Yorker* are among the magazines that are banned.<sup>452</sup>



442 R.I. Dep't. Of Corr., *Inmate Mail*, 24.01-6  
<http://www.doc.ri.gov/documents/administration/policy/24.01-6%20DOC.pdf>

443 *Id.*

444 *Id.*

445 *Id.*

446 Email from Diane M. Gill, Off. of Legal Counsel, R.I. Dep't. Of Corr., to author (Feb. 26, 2019 01:54 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

447 S.C. Dep't of Corr., *Library Services*, § 08.04

448 *Id.*

449 PLN settles "Bible" censorship suit against South Carolina Jail, (2012), <https://www.humanrightsdefensecenter.org/action/news/2012/pln-settles-bible-censorship-suit-against-south-carolina-jail/>.

450 *Id.*

451 *Id.*

452 Email from Jonathan Eckstrom, Gen. Counsel, S.C. Dep't. Of Corr., to author (Mar. 13, 2019 10:27 PM ET) (on file with the Thurgood Marshall Civil Rights Center). An



## SOUTH DAKOTA:

South Dakota requires that all incoming books, newsletters, magazines, or periodicals must be sent “directly from the publisher, distributor or accredited institution of higher learning” or with prior approval from the Warden. South Dakota has a content review policy that prohibits “material inconsistent or contrary to the legitimate penological objectives of the DOC, including maintaining institutional order, discipline, security interests, preventing escape and encouraging rehabilitation of inmates within the facility.”<sup>453</sup> South Dakota further specifies that a publication that “illustrates, explains, encourages, describes or teaches the ability to frustrate a crowd, group disruption or methods to incite a riot,” are also prohibited.<sup>454</sup>

Staff in each mailroom review incoming publications to ensure compliance with South Dakota’s policies.<sup>455</sup> In the event that a book is rejected, mailroom staff will send a notice to the sender. The intended recipient may also appeal the decision through the administrative remedy process.

In May 2017, Global Tel\*Link (“GTL”), one of the largest prison and jail phone service providers in the United States, rolled out tablets in South Dakota prisons. The tablets have telephone and text message capabilities, as well as games, academic programs, and books. The cost for the ebooks through the tablet is \$4 a month. Despite GTL paying \$80 per tablet, if a tablet is damaged due to what is deemed to be at the fault of the user, the person is responsible to pay \$199 for a replacement.<sup>456</sup> The move was described as cost-saving initiative, as the LexisNexis software on the tablets were intended to replace the law libraries and paralegals, which assisted incarcerated individuals with their legal claims. Incarcerated individuals brought two separate complaints against SDDOC, challenging the loss of legal assistance as a result of the introduction of tablets. Both cases were brought by *pro se* litigants and were dismissed on procedural grounds.<sup>457</sup>

South Dakota does not publicly make available a list of banned books.

## TENNESSEE:

Tennessee conducts content reviews of all publications, facilitated by the warden, or the superintendent.<sup>458</sup> The warden, or the superintendent acting in the warden’s place, will determine if the publication is a threat to Tennessee’s DOC’s pecuniary goals.<sup>459</sup> According to Tennessee’s regulations, publications that attempt to incite violence based on race, religion, sex, creed or nationality; present a risk of lawlessness, violence, anarchy, or rebellion against government authority; sexually explicit material or material featuring nudity which by its nature or content poses a threat to the security, good order, or discipline of the institution, or facilitates criminal activity threaten pecuniary goals.<sup>460</sup> If the warden or superintendent determines that the publication is consistent with the DOC’s pecuniary goals, it is passed on to the recipient.<sup>461</sup> However, if the publication is deemed to be a threat to such goals, then the publication is withheld, and a notice is given to the recipient stating that the recipient may appeal the warden’s decision within 14 days.<sup>462</sup> Upon appeal, the publication is sent to the Assistant Commissioner of Prisons for a final determination.<sup>463</sup> If the Assistant Commissioner of Prisons disagrees with the warden’s decision, the publication shall be returned to the sender.<sup>464</sup> However, if the decision is affirmed, the publication is returned to the sender. All publications that are sent to Tennessee prisons must be sent directly from the publisher or a recognized commercial distributor.<sup>465</sup>

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453 S.D. Dep’t. Of Corr., *Inmate Correspondence*, 1.5.D.3 at 8.A.

454 *Id.*

455 *Id.* at 8B.

456 Prison Policy Initiative, *A Tale of Two Technologies: Why “digital” doesn’t always mean “better” for prison law libraries*, <https://www.prisonpolicy.org/blog/2020/10/28/digital-law-libraries/>

457 *Gard v. Fluke*, 2019 U.S. Dist. LEXIS 113512, at \*4 (D.S.D. July 9, 2019) *certificate of appealability denied*, No. 19-2486, 2020 U.S. App. LEXIS 1421 (8th Cir. Jan. 13, 2020); See also *Brakeall v. Stanwick-Klemik*, No. 4:17-CV-04101-LLP, 2017 WL 6278872, at \*8 (D.S.D. Dec. 8, 2017)

458 TDOC 507.02 § C(3(a)-(b) (2017).

459 *Id.* § D.

460 See generally *id.* at § C.

461 See *id.* § N.

462 *Id.* § L(1)(d),(e).

463 *Id.* § K(7).

464 *Id.* § N.

465 *Id.*

Tennessee DOC's ban on nudity can prevent those in prison from accessing educational books. For example, the DOC rejected a book about the Holocaust because it contained an image of "nude bodies of people killed by the Nazis."<sup>466</sup>

When asked whether Tennessee maintains a list of books prohibited in all facilities, a representative from the DOC stated that they do not have a banned book list.<sup>467</sup>

## TEXAS:

The Texas Department of Criminal Justice ("TDCJ") aggressively polices incarcerated individuals' access to publications. At the time this report was compiled, the TDCJ list of banned and approved publications included over 10,000 banned publications and over 248,000 approved titles.

Under the Uniform Offender Correspondence Rules, policy number BP-03.91, incarcerated individuals or parties external to the prison system may order publications directly from publishers and bookstores<sup>468</sup> and a centralized TDCJ review body, the Mail System Coordinators Panel ("MSCP"), assesses the publication to determine if the content complies with TDCJ content policies. If a prison receives a publication that the MSCP has yet to review, mailroom staff are authorized to review and either restrict or allow the publication.<sup>469</sup>

TDCJ's content policy prohibits publications containing sexually explicit images, contraband that cannot be removed, sexual behavior in violation of the law, information regarding the manufacture of drugs, explosives or weapons, setting up and operation of criminal schemes and other content deemed to threaten prison safety and order.<sup>470</sup> The policy further provides that publications will not be rejected "solely because the publication advocates the legitimate use of offender grievance procedures, urges offenders to contact public representatives about prison conditions, or contains criticism of prison authorities."<sup>471</sup>

If incarcerated individuals disagree with the decision to prohibit a book, they may file an appeal with the Director's Review Committee ("DRC"), a panel of appointed TDCJ administrators.<sup>472</sup> If the panel agrees with the decision to prohibit the publication, the incarcerated individual's only recourse is to bring legal action, allow for the book to be destroyed, or pay for the book to be sent to someone outside of the prison system.<sup>473</sup> The incarcerated individual may appeal the book's placement on the list of prohibited publications after six months.<sup>474</sup> TDCJ policy requires that the list of banned and approved publications be updated monthly and be made available via the TDCJ library.<sup>475</sup>

Despite the explicit categories of book content that are prohibited by TDCJ's publication policy, TDCJ's extensive list of banned and approved books appears to lack consistency. Banned books include *The Color Purple* and a pop-up version of *A Charlie Brown Christmas*, but Adolf Hitler's *Mein Kampf* and books by white nationalists, including former Grand Wizard of the Ku Klux Klan, David Duke, are approved.<sup>476</sup> These discrepancies have attracted media attention and questions regarding the impartiality of TDCJ's book restrictions.<sup>477</sup>

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466 Brief for Amici Curiae Prison Book Clubs in Support of Petitioner at 7, *Prison Legal News v. Julie L. Jones, Secretary, Fla. Dep't. of Corr.*, 139 S.Ct. 795, (2019) (No. 18-355).

467 Email from Neysa Taylor, Dir. of Comm., Tenn. Dep't. of Corr., to author (Feb. 15, 2019 05:03 PM ET) (on file with author).

468 Tex. Dep't of Criminal Justice, BP-03.91 (rev. 3), Uniform Offender Correspondence Rules, 8 (Aug. 23, 2013), <https://www.tdcj.texas.gov/documents/policy/BP0391.pdf>.

469 *Id.* at 11.

470 *Id.*

471 *Id.*

472 *Id.* at 13-14.

473 *Id.* at 13.

474 *Id.* at 14.

475 *Id.* at 12.

476 Lauren McGaughy, *What should Texas inmates read? Banned book list under review*, The Dallas Morning News (Jan. 2018), <https://www.dallasnews.com/news/crime/2018/01/11/texas-reviewing-prison-policy-banned-books>. (listing book banned from Texas prisons as of January 2018).

477 Matthew Haag, *Texas Prisons Ban 10,000 Books. No 'Charlie Brown Christmas' for Inmates*, NYT (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/banned-books-texas-prisons.html>; Lauren McGaughy, *Why do Texas prisons ban certain books, such as 'Freakonomics,' but not Hitler's 'Mein Kampf'?* (Nov. 2017) <https://www.dallasnews.com/news/crime/2017/11/27/texas-prisons-ban-freakonomics-big-book-angels-adolf-hitlers-mein-kampf>; Emma Platoff, *Texas prisons ban over 10,000 books. An Israeli diplomat wants to know why Hitler's 'Mein Kampf' is allowed* (Dec. 6, 2017), <https://www.texastribune.org/2017/12/06/texas-prisons-ban-more-10000-books-israeli-diplomat-wants-know-why-hit/>; Edward Helmore, *Texas prisons ban The Color Purple and Monty Python- but Mein Kampf is fine* (Dec. 2, 2017), <https://www.theguardian.com/us-news/2017/dec/02/texas-prisons-ban-books-mein-kampf-color-purple>

TDCJ's publication policy was challenged in *Prison Legal News v. Livingston*, in which Prison Legal News argued that TDCJ violated the First Amendment by censoring five books (*Prison Masculinities* by Don Sabo; *The Perpetual Prison Machine: How America Profits from Crime* by Joel Dyer; *Lockdown America: Police and Prisons in the Age of Crisis* by Christian Parenti; *Soledad Brother: The Prison Letters of George Jackson* by George Jackson; and *Women Behind Bars: The Crisis of Women in the U.S. Prison System* by Silja J.A. Talvi) because TDCJ's disapproval decisions were arbitrary and unrelated to a valid penological interest.<sup>478</sup> The U.S. District Court for the Southern District of Texas granted summary judgement to TDCJ, concluding that TDCJ allows other publications critical of prisons into its facilities<sup>479</sup> and that the book restrictions were reasonable in light of TDCJ's penological interests.<sup>480</sup> During appeal, the ACLU of Texas—in conjunction with other civil liberties organizations, including the Southern Poverty Law Center—filed a brief in support of Prison Legal News' case, and released a statement critical of the decision, “TDCJ’s censorship of these books is a transparent attempt to suppress speech that is critical of the government – specifically, books concerning prison conditions, the mistreatment of prisoners, and/or the system of mass incarceration in this country.”<sup>481</sup> Despite these concerns, the Fifth Circuit Court of Appeals affirmed the lower court's decision.<sup>482</sup> This decision demonstrates how courts may often serve as an ineffective check on prison conditions.

TDCJ has also banned incarcerated persons from reading *The Ugly Side of Beautiful: Rethinking Race and Prison in America* —a book written by Bryonn Bain, a Black man who was racially profiled and wrongfully convicted during his second year at Harvard Law School. The book details the author's experience with racial discrimination and being wrongfully incarcerated during his second year as a law student. TDCJ has claimed that its grounds for banning Mr. Bain's book is that “[i]t contains material that a reasonable person would construe as written solely for the purpose of communicating information designed to achieve the breakdown of prisons through offender disruption such as strikes or riots.” More specifically, the “racial content”...has been characterized as constituting “objectionable material” deserving of this ban.” In his appeal letter, Mr. Bain explained how his book was widely read in colleges and prisons throughout the country for over a decade and how the allegation that the book was written “solely for the purpose of communicating information designed to achieve the breakdown of prisons” was not only unreasonable but false given that the book was written to account his experience and encourage needed conversations around systemic racism throughout the criminal justice system. Mr. Bain concluded his appeal letter with the following powerful statement: “Denying those imprisoned of their first amendment right to read, write, distribute, dialogue and debate books like *The Ugly Side of Beautiful* — which speak to and shed light on their experience from a range of perspectives - is unconstitutional and an impractical approach to the penological objective of rehabilitation. Censorship of this kind cuts those incarcerated off from the outside world, denies essential opportunities to deepen literacy, delve into the realities of the world awaiting most, and diminishes their ability to prepare for transitioning into life after prison.”<sup>483</sup>

An individual incarcerated in a Texas state prison described the importance of having access to books in a letter she wrote to the Center, stating that, “reading in prison is the only escape that is possible for us.”<sup>484</sup>

Another incarcerated person in Texas wrote, “[t]he majority of my knowledge of the free-world that has any practical value or application I have acquired in prison, and a large portion of that has been through reading.”<sup>485</sup>

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478 *Prison Legal News v. Livingston*, No. C-09-296, 2011 U.S. Dist. LEXIS 385 (S.D. Tx. 2012).

479 *Id.*

480 *Id.*

481 Dotty Griffith, *ACLU of Texas Urges Reversal of Prison Censorship Decision* (May 31, 2011), <https://www.aclutx.org/en/press-releases/aclu-texas-urges-reversal-prison-censorship-decision>

482 *Prison Legal News v. Livingston*, 683 F.3d 201, 218 (5th Cir. 2012).

483 Email from Bryonn Bain, to author (July 31, 2021 04:23 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

484 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

485 Anonymous, Prison Letter (on file with the Thurgood Marshall Civil Rights Center).

## UTAH:

Utah DOC requires that books are sent directly from the publisher.<sup>486</sup> Publications cannot be rejected solely because of their religious, political, social, or sexual content, but can be rejected if they are “detrimental to the security, order or discipline” of the prison or if they “might facilitate criminal activity.”<sup>487</sup> Publications that may be inconsistent with these factors are reviewed on an issue-by-issue basis.<sup>488</sup>

Utah maintains a list of magazines that are prohibited. Most of the magazines are sexual in nature, but notably, all issues of *Rolling Stone* and *Glamour* magazines are prohibited. Utah only bans two books in all of its prisons— *The 48 Laws of Power* and *The Art of Seduction*, both of which are by Robert Greene.<sup>489</sup>

## VERMONT:

Vermont conducts a restrictive vendor policy that only permits publications that are sent from publishers or commercial distributors, with the exception of assigned educational materials, approved religious publications, and approved legal texts and materials.<sup>490</sup> Each publication is reviewed individually by staff persons and may not be rejected solely because its content is philosophical, political, or socially unpopular.<sup>491</sup> However, the publication will be prohibited if the prison staff determine that it: is a threat to the safety, security, or order of the facility; features nudity or sexually explicit pictures; or could cause harm to the recipient.<sup>492</sup> Any publication that contains one or more sections that are inconsistent with these guidelines is rejected in its entirety.<sup>493</sup> If such a determination is made, the publication is sent to the Security and Operations Supervisor for review.<sup>494</sup> If the Supervisor disagrees with the staff person’s recommendation, the publication is forwarded to the recipient.<sup>495</sup> However, if the Supervisor agrees with the recommendation, the publication is forwarded to the Director of Security, Operations, and Audits for review.<sup>496</sup> If the Director agrees with recommendation the publication is withheld and the recipient is given notice of the rejected publication and the rationale behind the rejection.<sup>497</sup> The recipient has a right to appeal and the publication will be retained by the Security, Operations, and Audits Unit until all appeals are exercised.<sup>498</sup>

When asked whether Vermont maintains a list of prohibited books, a representative from the DOC stated that he understood that Vermont once maintained such a list, but he could not locate a list currently in use.<sup>499</sup> However, a 2012 article noted that a local Vermont publication, *Seven Days*, was, at that point, banned in Vermont prisons.<sup>500</sup>

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486 Utah FD03/ 01.05 (2018); *see also* Utah FD03/07.01 § A (2018).

487 FD03/ 07.01 § A(3),(5) (2018); *compare with* Courtney Tanner, *Why are these two books banned at the Utah State prison?*, The Salt Lake Tribune (Jan. 11, 2017), <https://www.sltrib.com/news/2017/01/11/why-are-these-two-books-banned-at-the-utah-state-prison/> (Utah’s Department of Corrections has banned Robert Greene’s books *The 48 Laws of Power* and *The Art of Seduction* on the basis of being “manipulative.” Utah’s ACLU, however, finds the decision to be arbitrary because people can learn to be manipulative “through all sorts of different sources”).

488 *Id.* § C.

489 Email from Kaitlin Felsted, Pub. Info. Officer, Utah Dep’t. Of Corr., to author (Feb. 21, 2019 11:03 AM ET) (on file with the Thurgood Marshall Civil Rights Center).

490 Vt. #409.05 § 1 (2010).

491 *Id.* § 3(a).

492 *Id.* § 3(b).

493 *Id.* § 3(c).

494 *Id.* § 3(d)(i).

495 *Id.* § 3(d)(ii).

496 Vt. #409.05 § 3(d)(ii) (2010).

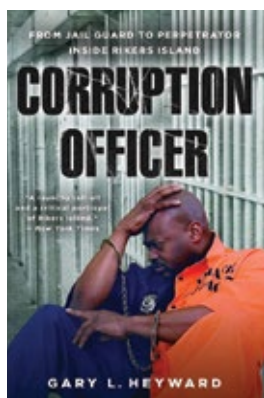
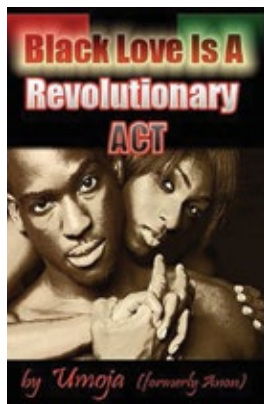
497 *Id.* § 3(d)(iii).

498 *Id.* § 3(d)(vii).

499 Email from David Turner, Facilities Operation Manager, Vt. Dept. of Corr., to author (Feb. 15, 2019 04:14 PM ET) (on file with author).

500 Kevin J. Kelley, *Did Someone Miss the Memo on Prisons’ List of Banned Magazines?*, *Seven Days* (Dec. 5, 2012), <https://www.sevendaysvt.com/vermont/did-someone-miss-the-memo-on-prisons-list-of-banned-magazines/Content?oid=2242391>.

## VIRGINIA:



Virginia conducts a restrictive vendor policy that only permits publications that are sent directly from a vendor on the approved vendor list that is established at the Department level.<sup>501</sup> Publications that are received from private individuals and publications that have been altered are not permitted.<sup>502</sup> Publications can also be placed in facility libraries or provided to individual recipients through facility approved, on-going programs.<sup>503</sup> Such programs include Books Behind Bars, which has placed up to one million books in prisons throughout Virginia.<sup>504</sup>

The Facility Unit head, or a designee, reviews and approves all request to order publication.<sup>505</sup> If the publication is rejected by the Publication Review Committee upon review, then the request is denied, and the recipient is notified.<sup>506</sup> If a portion of a publication is disapproved, the entire publication will be disapproved and there will be no effort to censor sections that are inconsistent with the penological goals of Virginia prisons.<sup>507</sup> If a publication has been disapproved following review, the publication is placed on the Disapproved Publications List and are no longer subject to appeal.<sup>508</sup> The Committee rejects publications that emphasize explicit or graphic depictions or threaten the safety, security, or order of the institution; such as escape, manufacturing and concealing weapons and explosives, or instructions on physically disabling, injuring, or killing a person.<sup>509</sup>

As of 2019, Virginia's banned publication list contains over 1,400 books, over 3,500 magazines and periodicals.<sup>510</sup> Some of the prohibited books include, *The Prison Inside the Prison*, *Black Love is a Revolutionary Act*, and *Corruption Officer*. Prohibited magazines include *Coalition for Prisoners Rights Newsletter* (banned because it “Encourages offenders [sic] to rise up against the prison system”), *Ebony*, *Men's Health* (one issue was banned because it “promotes disorder”), *National Geographic* (one was issued was banned because it depicts sex acts), *The Atlantic*, *The New York Review of Books*, *The New York Times Newspaper*, *The New Yorker*, and *US Weekly*.

501 VDOC 803.2 IV(A)(5) (2017).

502 *Id.* at IV(C)(1)(c).

503 *Id.* at IV(K)(1).

504 See Maria Glod, *Free Books for Inmates Banned by Va. Prisons*, Seattle Times (Sept. 11, 2009), <https://www.seattletimes.com/nation-world/free-books-for-inmates-banned-by-va-prisons/> (Virginia's Corrections Department banned the Books Behind Bars program because banned items, such as springs and CDs that were packaged inside of the books, were finding its way into the prisons).

505 VDOC 803.2 IV(D)(1) (2017).

506 *Id.*

507 *Id.* at IV(C)(1)(f).

508 *Id.* at IV(F)(3).

509 *Id.* at IV(I)(C).

510 Email from Toni McDougald, Va. Dept. of Corr. Central Office, to author (Feb. 19, 2019 03:10 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

## WASHINGTON:

Washington conducts a restrictive vendor policy that only permits publications that are sent directly from an approved vendor or from a non-profit organization approved by the Superintendent.<sup>511</sup> Publications cannot be solely be withheld on the basis of their appeal to a given ethnic, racial, religious, sexual orientation, or political group.<sup>512</sup> However, publications can be rejected for having content that violates any department policy or facility specific procedure.<sup>513</sup> Reasons for rejection include advocating violence, appears to be in code, and advocates that a group of individuals or a protected class are inferior.<sup>514</sup>

All incoming publications are first scanned and reviewed by the mailroom.<sup>515</sup> Upon rejection, the publication is forwarded to the Publication Review Committee and the recipient is given notice of the rejection.<sup>516</sup> If the Committee agrees with mailroom's determination, the recipient has ten business days to submit an appeal.<sup>517</sup> The publication is then forwarded to the Headquarters Correctional Manager, who will provide a final determination on the publication.<sup>518</sup> Such a determination is binding for at least three years and will be stored in a database.<sup>519</sup>

Washington's book banning practices appear to be among the most transparent in the United States. Washington DOC maintains a regularly updated list of rejected publications on its website.<sup>520</sup> The list includes the date for rejection, the reasoning behind the rejection, and the result of the appeal (if any at all). Based on the publicly available data, it appears that the Publication Review Committee is thoughtful, and routinely rules against initial determinations. For example, a *National Geographic* issue was rejected in one facility because it contained images of naked children. On appeal, the Committee overturned the decision, finding that the images were not intended for sexual gratification. However, they also have also upheld the banning of books and publications related to prisoner rights. In August 2013, the mailroom rejected an issue of *The Abolitionist* because the newsletter had "an article on national demands for incarcerated people in federal, immigration and state prisons to do work strikes, sit ins, and food strikes during a specific time in August and September to raise awareness to their plights."<sup>521</sup> The Committee concurred with the mailroom's decision, and the issue remained banned on appeal. The Washington DOC determined that protests in prisons would be a threat to "legitimate penological objectives."<sup>522</sup>

On April 3, 2019, the Washington DOC issued a press release notifying the public that it would be implementing a policy to discontinue directly accepting used books from nonprofit organizations, citing an increase in contraband involving books.<sup>523</sup> The Washington DOC noted 17 instances of contraband found in books in 2018.<sup>524</sup> Incarcerated individuals have access to books through a contract between the DOC and the Washington State Library system, whose satellite locations at prisons will continue to accept book donations. Individuals looking to donate books to the prison are advised to speak with the librarian at the satellite facility to determine whether the publication will be accepted or denied. The policy was subject to immediate criticism by nonprofit organizations like Seattle-based Books to Prisoners, one of the largest organizations working to get donated publications to incarcerated individuals.<sup>525</sup> Books to Prisoners confirmed with Washington State Library that they have no special staff or screening procedures and are currently not provided extra staff or money to deal with the anticipated influx of books.<sup>526</sup>

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511 Wash. DOC 450.100 (X)(B)(1) (2017).

512 *Id.* at (X)(F).

513 *Id.* at (X)(H).

514 Wash. DOC 05-252 Rejection Notice (Rev. 06/29/16).

515 Wash. DOC 450.100 (X)(H)(3)(a) (2017).

516 DOC 405.100 (X)(H)(3)(b).

517 *Id.* at (X)(H)(4)(a).

518 *Id.* at (X)(H)(5)(a); *see also* Dep't. of Corr., Wa. State. (2018), <https://www.doc.wa.gov/docs/publications/reports/400-RE003.pdf> (once publications have definitively rejected by the Headquarters Correctional Manager, they are placed on the Department's list of disapproved publications).

519 *Id.* at (X)(H)(6).

520 Washington Publications Report, *supra* note 8, at 6.

521 *Id.* at p. 19.

522 *Id.*

523 Press Release, Dep't of Corr. Wash. State, *Book Donation Acceptance Process* (Apr. 3, 2019) (available at <https://www.doc.wa.gov/news/2019/04032019p.htm>).

524 *Id.*

525 Kelly Jensen, *Washington Department of Corrections Quietly Bans Book Donations to Prisoners from Nonprofits*, BookRiot (Apr. 3, 2019), <https://bookriot.com/2019/04/03/book-ban-in-washington-prisons/>.

526 *Id.*



## WASHINGTON, DISTRICT OF COLUMBIA

The District of Columbia Department of Corrections (“DCDOC”) grants incarcerated individuals access to unlimited publications, so long as they are soft cover and mailed directly to the prison from the original source or an authorized distributor.<sup>527</sup> DCDOC defines original sources and authorized distributors as including, but not limited to the following: publishers, bookstores, faith based organizations, community organizations, and other entities as determined by the DCDOC.<sup>528</sup> Senders may mail more than one copy of a softcover book for multiple incarcerated individuals to the Directors of Chaplaincy services, and the DCOC will distribute the books to the named recipients.<sup>529</sup>

DCDOC also restricts which books incarcerated individuals can purchase based on content; books that advocate violence or gang activity, have demonstrably caused violence or disruption of institutional security, contain martial arts or self-defense instruction, among other criteria, will be rejected.<sup>530</sup> If a book is rejected or returned to the sender, the sender may appeal to the Warden or his designee by written requests, and an incarcerated individual may appeal by filing a grievance pursuant to DCDOC’s Inmate Grievance Procedures.<sup>531</sup>

## WEST VIRGINIA:

West Virginia’s Division of Corrections and Rehabilitations (“WVDCR”) does not publicize its book censorship policies in adult facilities. WVDCR requires that books comes directly from the vendor.<sup>532</sup> Secondary sources state that WVDCR prohibits books that contain nudity, describe the manufacturing of alcohol, drugs, or weapons, and books that risk the security and order of the institution.<sup>533</sup> Books in juvenile facilities may be censored for “contraband or inappropriateness;” the intended recipient of the censored book must be promptly informed of any censorship.<sup>534</sup>

WVDCR does not maintain a central list of all banned books. However, one facility, the Huttonsville Correctional Center, has a limited list of nine books that are banned. These books generally relate to persuasion and seduction, but also include the Icelandic saga, *The Saga of Grettir the Strong*. Additionally, all catalogs are banned.<sup>535</sup>



527 D.C. Dep’t. of Corr., *Inmate Correspondence and Incoming Publications*, §14(a) (Dec. 16, 2015), [https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204070.4G%20Inmate%20Correspondence%20and%20Incoming%20Publications%2012-16-15\\_0.pdf](https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/PP%204070.4G%20Inmate%20Correspondence%20and%20Incoming%20Publications%2012-16-15_0.pdf).

528 *Id.* §14(a)(1).

529 *Id.* §14(a)(2).

530 *Id.* §14(c).

531 *Id.* §17(a)-(c).

532 Prison Pro, *West Virginia Inmate Phone/Sending Money & Mail* (describing how to send books and magazines to inmates) <http://www.prisonpro.com/content/west-virginia-inmate-phonessending-money-mail> (last visited Aug. 27, 2019 4:59 PM ET).

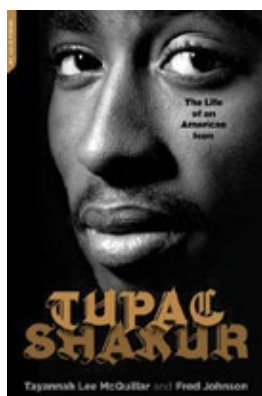
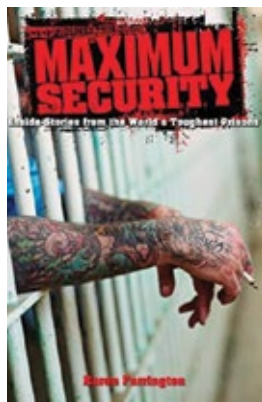
533 *Id.*

534 W. Va. Div. of Juv. Serv., Policy 509.00 §2(e) (July 1, 2017) (describing notification of incoming mail) available at <https://dcr.wv.gov/resources/Documents/juvenile-center-and-facility-policies/509.00%20-%20Telephone,%20Mail%20and%20Publications.pdf>

535 Email from Suzanne Y. Summers, Paralegal, W.V. Div. of Corr. & Rehab., to author (Mar. 15, 2019 11:04 AM ET) (on file with the Thurgood Marshall Civil Rights Center).



## WISCONSIN:



Wisconsin has a “direct from publisher” policy that only permits received publications that are sent directly from the publisher or other recognized commercial sources.<sup>536</sup> The security director keeps a record of any mail, including publications, that is censored.<sup>537</sup> If a record of a publication is not sent to recipient, it is kept by security director and will include the name of the sender, the recipient, the date the publication was sent, and the reason the publication was not given to the recipient.<sup>538</sup> Afterwards, the recipient will be given written notice of the withheld publication.<sup>539</sup> The recipient may appeal the security director’s decision to withhold the publication to the warden.<sup>540</sup> Incarcerated individuals are not permitted to receive publications that teach or advocate violence or hatred that presents a danger to the institution’s security or order; violates the law; or the use of weapons, drugs, or explosives.<sup>541</sup> Wisconsin’s DOC also does not permit publications that are “injurious,” or publications that depict pornography or presents a threat to the security, orderly operation, discipline or safety of the institution.<sup>542</sup> However, publications cannot be prohibited solely on the basis of its appeal to a particular ethnic, racial, or religious audience.<sup>543</sup>

Wisconsin maintains a list of prohibited books—the state maintains three lists, one on prohibited books, one on prohibited periodicals, and one on prohibited books in the library.<sup>544</sup>

Prohibited books include *Maximum Security: Inside Stories from the World’s Toughest Prisons*, *Tupac Shakur*, and *The Black Panther Program: Service to the People Program*. *Orchard Beach: The Bronx Riviera*, a series of portraits celebrating the diversity of Bronx’s Orchard Beach, is also banned because “it poses a threat to security.” Issues of *The Abolitionist*, *Men’s Health*, *National Geographic*, *Prison Legal News*, and *Rolling Stone* have also been prohibited.

536 Wis. DOC 309.05(2)(a) (2018).

537 *Id.* 309.04(4)(d).

538 *Id.*

539 *Id.* 309.04(4)(e)(1).

540 *Id.* 309.04(4)(f).

541 Wis. DOC 309.05(2) (2018).

542 *Id.* 309.04(4)(c)(8).

543 *Id.* 309.05(2)(c).

544 Email from Bambi Dolphin, Office Operations Assoc., Wisc. Dept. of Corr., to author (Feb. 21, 2019 02:05 PM ET) (on file with the Thurgood Marshall Civil Rights Center).

## WYOMING:



Wyoming requires that all incoming publications be sent directly from the publisher.<sup>545</sup> Additionally, Wyoming conducts a content review of all publications. Wardens of each facility or their designated staff review incoming publications to ensure that it is not detrimental to the security, good order, or discipline of the correctional facility.<sup>546</sup> The Warden may not reject a publication solely because its content is religious, philosophical, political, social or because its content is unpopular.<sup>547</sup> If a publication is rejected, the recipient is notified within two working days of the rejection along with the rationale behind the rejection.<sup>548</sup> If there are only four pages or less that has content that is found to be detrimental to the security, good order, or discipline of the facility, the recipient is given the option to receive the publication upon removing those four pages or having the publication rejected completely.<sup>549</sup>

Wyoming maintains a list of magazines and books that are prohibited in all facilities. Compared to other states' lists, Wyoming's list is relatively short— containing 20 magazines and four books. The prohibited magazines include specific issues of *Rolling Stone*, *Newsweek*, and *GQ*. A *Time* magazine issue was also banned because it included an article titled *Opioid Diaries*. Wyoming also bans *White Power* and *The White Man's Bible*, both white supremacist books. *Might is Right*, an anarchist book favored by white supremacists is also banned.<sup>550</sup>

545 Wyo. Dep't. of Corr. Policy and Procedure #5.401 (IV)(F)(1) (2017).

546 *Id.* (IV)(F)(9)(i).

547 *Id.* (IV)(F)(9)(iv).

548 *Id.* (IV)(D)(3)(iii)(e)(1).

549 *Id.* (IV)(F)(9)(ii)(a).

550 Email from Mark Horan, Pub. Info. Officer, Wy. Dep't. of Corr., to author (Feb. 15, 2019 01:09 PM ET) (on file with the Thurgood Marshall Civil Rights Center).





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2900 Van Ness Street, NW Room #107,  
Notre Dame, Washington, D.C. 20009  
202-806-6100 | [www.howard.edu](http://www.howard.edu)