

## Internal Memo

**Interim Guidance Memo Number: 302.020.01**

**Date: 11/25/2024**

**To: Facilities Mailroom Staff, Wardens, Assistant Wardens, Captains**

**From: Commissioner Paul Schnell**

### **Interim Guidance: Policy 302.020.01 Mail**

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Effective 11/20/2024, DOC is changing provisions in the policy listed below, which will be incorporated into the policy document in a future policy revision. These changes in procedure are part of DOC's emergency action to stop drug contraband from entering facilities in the mail.

#### **What Policies Are Being Affected and/or Replaced:**

- Policy 302.020 Mail: Special/legal mail is changed to require the following:
  - Legal mail
    - The definition of legal mail is changed to only include attorney-client privileged mail which, as of December 2, 2024, will use the TextBehind verification process. Current legal mail procedures will only apply to attorney-client privileged mail moving forward.
    - The legal mail delivery log will only be used for attorney-client privileged mail.
    - Bulk mail from law firms, such as advertising material, does not qualify as legal mail. Correspondence to/from DOC attorneys is not legal mail.
  - Special mail
    - Special mail must use official envelopes and official letterhead representing the office from which it came. If it does not, it must be returned to sender.
    - All Special Mail must be tested for contraband.
    - Special Mail will no longer be opened in the presence of the incarcerated person unless it is explicitly marked privileged or confidential on the envelope.
    - Special mail must not be sealed by the incarcerated person when sending it

out.

- The Special Mail list is expanded to include government, official, and non-attorney-client privileged mail. Correspondence to incarcerated person from state and federal courts will now be treated as special mail that can be sent directly to facilities, rather than legal mail that must use the TextBehind process.

### **Explanation for the Change:**

The DOC has entered into an emergency contract with TextBehind® to process standard and attorney-client privileged mail. Because of this, changes in the way DOC processes Special Mail need to occur. These changes in procedure are part of DOC's emergency action to stop drug contraband from entering facilities in the mail.

Should you have any questions related to Policy 302.020, please contact Associate Warden Lisa Connors, Policy Chair, or Captain Ashlee Berts. Thank you for your immediate attention to this change while we work make broader revisions to this policy in the coming year.

### **Definition Changes in Policy 302.020 "Mail"**

- Attorney-client privileged mail is defined as:
  - "Attorney-client privileged mail – correspondence:
    - to or from licensed attorneys or established groups of attorneys involved in legal representation of the specific incarcerated person the correspondence is addressed to; and
    - that meets the protection that applicable law provides for confidential attorney-client communications, such as the provision of legal advice or disclosure of sensitive details attorneys need to build defense strategies."
- Legal mail is deleted.
  - ~~Legal mail – correspondence to or from a court, court staff, licensed attorneys, and established groups of attorneys involved in the representation of offenders in judicial proceedings. The destination or return address must clearly indicate that it is to or from one of these sources in order to be treated as legal mail. Mail to/from an attorney or law firm must contain the attorney's name in the destination or return address along with terms such as "attorney at law" or "law offices." Abbreviations such as "Esq.," "L.L.P. or P.A.," or phrases such as "legal mail" and "attorney/client privileged" are not sufficient to identify mail as legal. Bulk mail from law firms, such as advertising material, does not qualify as legal mail. Correspondence to/from DOC attorneys is not legal mail.~~
- Special mail is defined as:

- “Special Mail – correspondence to or from those state and federal officials, using official envelopes and letterhead, using the business address of the state or federal official, designated by the department mail committee. The destination or return address must clearly indicate it is to or from one of these sources (using the business address) in order to be treated as special mail. ~~Special mail does not need to be logged as legal mail and is opened only in the offender’s presence.”~~

### **Under Procedures in Policy 302.020**

- Every reference to “legal mail” in policy 302.020 should be replaced with and read as “attorney-client privileged mail”.
- Sections L. 1 – 5 are deleted and replaced with the below procedures.
- “Section L. Attorney-client privileged and Special mail
  1. Incoming mail that meets the definition of attorney-client privileged mail must have a QR code from TextBehind on the envelope. Attorney-client privileged mail without a verified QR code will be returned to sender.
    - a. When delivering attorney-client privileged mail to an incarcerated person, staff must:
      - i. Scan the QR code to verify its legitimacy; and
      - ii. In the presence of the incarcerated person, staff must test the envelope and contents for contraband (if possible).
      - iii. Skim the contents to ensure that it is legal in nature.
      - iv. Provide the envelope and contents to the offender.
      - v. If the item contains contraband, staff must write an incident report and enter the envelope and contents into evidence.
    - b. The incarcerated person must sign acknowledging receipt of attorney-client privileged mail.
    - c. Mailroom staff in adult facilities must log all incoming and outgoing attorney-client privileged mail.
    - d. An incoming or outgoing item purporting to be attorney-client privileged mail that fails to meet the policy requirements for designation as attorney-client privileged mail will be returned to sender.
  2. Incoming mail meeting the definition of special mail and listed in the Special Mail List (attached) will be reviewed by staff for confidential or privileged markings or labels.
    - a. If no such marking exists, special mail will be opened and inspected by staff who must:
      - i. Open the envelope, remove the contents, search the contents for physical contraband, test for contraband (if possible), and skim the

- contents to ensure that it is official in nature.
    - ii. If the item passes inspection, staff must deliver the envelope and contents to the incarcerated person.
  - b. If marked confidential or privileged, special mail will be opened in the presence of the incarcerated person by staff who must:
    - i. Open the envelope, remove the contents, search the contents for physical contraband, test for contraband (if possible), and skim the contents to ensure that it is official in nature.
    - ii. If the item passes inspection, staff must deliver the envelope and contents to the incarcerated person.
  - c. An incoming or outgoing item purporting to be special mail that fails to meet the policy requirements for designation as special mail will be returned to sender.
- 3. Questionable special mail should be forwarded to a supervisor for processing per policy 302.020-Mail, Proc. L(3).
- 4. If the item contains contraband, staff must write an incident report and enter the envelope and contents into evidence.
- 5. Mailroom staff in adult facilities must log all incoming and outgoing attorney-client privileged mail in the incarcerated person mail computer application.”

#### Attachment B: Special Mail List

- Attachment B: Special Mail List is deleted and replaced with:
  - Commissioner of Minnesota Department of Corrections
  - Deputy and Assistant Commissioners of the Minnesota Department of Corrections
  - Minnesota Department of Corrections - Grievance Appeal Coordinator in Central Office
  - Office of the Attorney General – State of Minnesota
  - Office of the Governor – State of Minnesota
  - Minnesota State Agencies
  - Minnesota Bureau of Criminal Apprehension
  - Minnesota Ombuds for Corrections
  - State and Federal Court Administrators Offices
  - County Attorney Offices
  - Minnesota Chapter – National Alliance on Mental Illness
  - PELSBI - Professional Educator Licensing and Standards Board
  - Americans with Disabilities Act appeals
  - Sheriff and Police departments
  - All federal agencies

- Minnesota county and local government agencies/offices
- American Civil Liberties Union
- Bureau of Indian Affairs
- Elected members of the Minnesota and United States legislatures (except bulk mail)
- Federal Bureau of Investigation
- Foreign Country Consulates
- Lawyer's Board of Professional Responsibility
- Minnesota and Federal Departments of Health
- Minnesota Assistant Commissioner Facilities Division
- Minnesota Board of Behavioral Health and Therapy
- Minnesota Board of Dentistry
- Minnesota Board of Dietetics and Nutrition Practice
- Minnesota Board of Marriage and Family Therapy
- Minnesota Board on Judicial Standards
- Minnesota Board on Lawyers Professional Responsibility
- Minnesota Board of Medical Examiners
- Minnesota Board of Medical Practice
- Minnesota Board of Nursing
- Minnesota Board of Optometry
- Minnesota Board of Peace Officer Standards and Training
- Minnesota Board of Pharmacy
- Minnesota Board of Psychology
- Minnesota Board of Physical Therapy
- Minnesota Board of Podiatric Medicine
- Minnesota Board of Social Work
- Minnesota Office of the Legislative Auditor
- Minnesota Ombudsman for Mental Health and Developmental Disabilities
- Minnesota State Bar Association
- Minnesota Joint House/Senate Subcommittee on Claims
- Office of Special Investigations
- President of the United States
- Prison Rape Elimination Act (PREA) Advocates (as identified by facility OSI staff)
- Professional Licensing Boards
- State Law Library (LLSP)
- Tribal Councils (outgoing only)
- United States Department of Justice
- United States Office of Civil Rights
- United States Marshal's Office
- *More items may be added*