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**VIA EMAIL**

Dear Mr. Hart and Sheriff Wilcher:

Thank you for your letter of May 15, 2019, attaching the Chatham County Detention Center's revised policy on "Inmate Mail (Correspondence, Access to Publications, Inspections of Letters and Packages)." We have reviewed this document, as well as the Inmate Handbook dated May 2019. While we are pleased that Chatham County has rescinded its ban on receipt of books and publications by people detained in the Detention Center, we remain concerned about the revised policy's remaining constitutional infirmities. Below, we highlight and offer comments on specific provisions of the revised policy as reflected in the May 2019 Inmate Handbook and the policy appended to your May 15, 2019 letter.<sup>1</sup>

Additionally, we have attached a consent injunction that the Sheriff's Office in Berkeley County, South Carolina, entered into with the purpose of ensuring people detained at its Detention Center receive publications and religious material in accordance with the First Amendment of the United States Constitution and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). This consent injunction should serve as a useful guide as Chatham County strives, too, to design a publications policy that protects the constitutional and federal rights of those detained in its Detention Center and those in the outside world who wish to communicate with them.

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<sup>1</sup> Our comments pertain only to the portions of these documents governing receipt of publications by detainees; we have not reviewed other portions of these documents.

## **Inmate Handbook**

The Chatham County Detention Center’s revised publications policy, as outlined in the May 2019 Inmate Handbook, remains unconstitutional in at least three (3) important ways: 1) it arbitrarily limits the number of publications a detained person may possess at a time; 2) it bans newspaper subscriptions; and 3) its blanket ban on “sexually explicit material” is impermissibly vague and overbroad.

The four-publications limit established in the May 2019 Inmate Handbook is arbitrary and would be difficult to defend. Chatham County Detention Center Inmate Handbook (May 2019), p. 11, *available at* <http://sheriff.chathamcounty.org/Portals/Sheriff/Corrections/Inmate%20Visitation%20Handbook.pdf> (“Inmates may have a maximum of four (4) paperback books, magazines and other publications in their possession at a time. . . . A maximum of four (4) subscriptions may be received.”). When courts have upheld numerical limits, the number of publications allowed has been significantly higher than four. *See, e.g., Neal v. Lewis*, 414 F.3d 1244, 1248 (10th Cir. 2005) (finding no First Amendment violation where incarcerated person was allowed to possess up to twelve books plus the primary text of his religion); *Weir v. Nix*, 114 F.3d 817, 821 (8th Cir. 1997) (finding no First Amendment violation where prison allowed the possession of up to 25 books).

The ban on newspaper delivery through the mail is unconstitutional to the extent it prohibits a detained person’s access to the newspaper of his or her choice. *See* Chatham County Detention Center Inmate Handbook (May 2019), p. 11 (“Newspapers [sic] subscriptions are only allowed in digital form to be viewed on the tablets.”). Courts have consistently struck down bans on newspapers. *See, e.g., Spellman v. Hopper*, 95 F. Supp. 2d 1267, 1271 (M.D. Ala. 1999) (finding that detained people “have a First Amendment right to receive magazines and newspapers through the mail.”); *Green v. Ferrell*, 801 F.2d 765, 772 (5th Cir. 1986) (concluding “the jail’s prohibition on newspapers violates the first amendment.”).

Finally, the prohibition of “sexually explicit material” in the May 2019 Inmate Handbook is impermissibly vague and overbroad. *See* Chatham County Detention Center Inmate Handbook (May 2019), p. 12 (“Sexually explicit material will not be allowed.”). This is unconstitutional. *See, e.g., Prison Legal News v. Ryan*, No. CV-15-02245-PHX-ROS, 2019 WL 1099882, at \*10 (D. Ariz. Mar. 8, 2019) (concluding the Arizona Department of Corrections’ “policy prohibiting sexually explicit material violates the First Amendment on its face”).

**Policy (appended to R. Jonathan Hart letter dated May 15, 2019)**

To the extent the Policy contains provisions substantially identical to those set forth in the Inmate Handbook, the comments offered above with regard to the Handbook also apply to the Policy referenced in and attached to the May 15, 2019 letter. We have the following additional proposals pertaining to the Policy: 1) delineate what detained people are permitted to do under your General Procedures; 2) clarify that third parties, such as friends and family, may send gift subscriptions to people detained in the Detention Center; and 3) devise a process by which a sender is provided notice and an opportunity to appeal whenever a publication is rejected.

First, under Section II, “Procedures,” there appears to be text missing from the sentence beginning with “Inmates are permitted to” under subsection A, “General.”

**II. PROCEDURES:**

**A. General**

1. Inmates are permitted to

This section should be edited to include the remainder of the sentence, outlining what detained people are permitted to do or possess per the Detention Center’s rules and procedures.

Secondly, subsection H of Section II seems inconsistent with the May 2019 Inmate Handbook. Subsection H reads as follows:

- H. Inmates who have sufficient funds on their inmate commissary account may file a request form to the Unit Counselor to subscribe to a publication. The Counselor shall ensure that the funds are available and shall assist the inmate in obtaining the subscription. The inmate is financially responsible for the subscription. A check will be drawn against the inmate's commissary account to cover the expenses involved.

This provision establishes a process whereby a detained person may subscribe directly to a publication by paying for the subscription with funds in his or her inmate commissary account. Missing from this provision is an allowance for third parties, like friends and family, to send gift subscriptions to people detained in the Detention Center. The May 2019 Inmate Handbook, on the other hand, contemplates such an arrangement, stating “Inmate family, or friends, may purchase a subscription and have it sent directly to the inmate in the facility.” The Policy should be modified to be consistent with the Inmate Handbook, because prohibitions on subscriptions paid for by a third party are unconstitutional. *See, e.g., Crofton v. Roe*, 170 F.3d 957, 960-61 (9th Cir. 1999) (finding policy that required incarcerated people to order and pay for publications using their own prison accounts, thus prohibiting gift orders, violated the First Amendment).

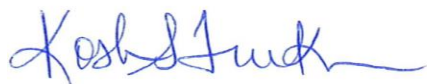
Finally, neither the Inmate Handbook nor the Policy provides that when a book or publication is rejected, the sender receives notice of the rejection and an opportunity to appeal. Such notice is constitutionally required. *See, e.g., Jacklovich v. Simmons*, 392 F.3d 420, 433-34 (10th Cir. 2004) (recognizing that “publishers have a right to procedural due process when publications are rejected.”); *Montcalm Publishing Co. v. Beck*, 80 F.3d 105, 109 (4th Cir. 1996) (holding that “publishers are entitled to notice and an opportunity to be heard when their publications are disapproved for receipt by inmate subscribers.”).

\* \* \* \*

While a step in the right direction, the Chatham County Detention Center’s revised policy still violates the rights of persons in the Detention Center and those in the outside world who wish to communicate with them, and thus exposes the County and Sheriff’s Department to liability. The attached consent injunction in *Prison Legal News v. DeWitt*, No. 2:10-cv-2594-SB-BM (D.S.C. Jan. 13, 2012), may offer some guidance to you in designing a constitutional mail and publications policy.

Thank you for your consideration.

Sincerely,



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ACLU of Georgia



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cc: Georgia Sheriffs’ Association (w/enclosure)