

1.3.E.1 Inmate Access to the Courts

I Policy Index:



Date Signed: 07/18/2019
Distribution: Public
Replaces Policy: 1. A.15
Supersedes Policy Dated: 12/21/2016
Affected Units: All Institutions
Effective Date: 08/13/2019
Scheduled Revision Date: July 2020
Revision Number: 15
Office of Primary Responsibility: DOC Administration

II Policy:

The Department of Corrections (DOC) will afford inmates reasonable access to the courts in all legal claims involving direct appeal from the conviction which they are incarcerated, habeas petitions, civil rights actions or conditions of confinement. Inmates will have access to approved legal forms, legal assistance, legal materials and to his/her attorney to provide them reasonable opportunity to prepare legal documents. Nothing in this policy or processes affect an inmate's ability to independently pursue actions on their own or to obtain outside legal counsel.

III Definitions:

ADA Facility Coordinator:

The staff person assigned to facilitate ADA compliance at each DOC facility and investigate all allegations and complaints by inmates with disability related issues made known within the facility. The ADA Facility Coordinator shall have the authority to make recommendations to the Warden and ADA Director and to implement approved corrective action to ensure compliance with the ADA.

Conditions of Confinement:

Those lawsuits that allege in the initial pleadings that an agent, employee or officer of the South Dakota DOC is holding the inmate-plaintiff under circumstances or conditions that violate rights under the U.S. Constitution.

Legal Documents:

Affidavits, motions, orders, or like documents that constitute pleadings before a court. For purposes of this policy, legal documents are limited to those documents required for writs of habeas corpus, complaints testing conditions of confinement, or direct appeals from an inmate's sentence or conviction.

Legal Staff:

An attorney or paralegal hired by the DOC, either through contract or as a state employee, to provide legal assistance to inmates as described in this policy.

IV Procedures:

1. Legal Assistance:

- A. The DOC will provide legal staff to each of its permanent facilities for eligible inmates. Facilities include Mike Durfee State Prison, South Dakota State Penitentiary (includes Jameson Annex) South Dakota Women's Prison (includes Unit E), Sioux Falls Community Work Center, Pierre Community Work Center, Yankton Community Work Center and Rapid City Community Work Center.
- B. Inmates may request assistance from legal staff by sending an ADA Request for Accommodation to the ADA Facility Coordinator (See DOC policy 1.1.E.7 [Americans with Disabilities Act \(ADA\)](#)). The Coordinator will verify the inmate is eligible to receive assistance from legal staff and, if eligible, will promptly alert legal staff of the inmate's request.
- C. Inmates eligible for legal assistance by way of legal staff and/or an inmate typist are limited to those who are:
 1. Limited English Proficient, as determined by DOC Education staff. For the purpose of this policy, this means an inmate who is unable to read, write or speak English; or
 2. Illiterate. For the purposes of this policy, this means an inmate who is unable to read or write the English alphabet; or
 3. Disabled. For purposes of this policy, this means an inmate who has a disability that prevents the inmate from drafting pleadings or using a tablet or kiosk. Inmates known to have a disability are tracked within the Comprehensive Offender Management System (COMS).
- D. The DOC will ensure inmates have reasonable access to legal materials and/or legal staff. All inmates, regardless of eligibility or financial status, will be provided meaningful and reasonable access to the courts (ACA 4-42176), consistent with the legitimate penological objectives of the DOC. All inmates will be permitted the opportunity to access legal materials while in DOC custody to prepare legal pleadings, to include:
 1. Opportunity to communicate with the courts and legal counsel (See DOC policies 1.5.D.1 [Inmate Visiting](#), 1.5.D.3 [Inmate Correspondence](#) and 1.5.D.4 [Inmate Access to Telephones and Tablets](#));
 2. Access to approved legal materials, including those available on LexisNexis;
 3. Access to approved and available legal forms and copies;
 4. Access to designated computers with OpenOffice software or similar software program that allow and inmate to type legal documents (See DOC policy 1.5.A.7 [Inmate Use of Computers](#));
- E. Inmates are permitted to purchase or obtain soft cover legal reference books and printed legal matter sent directly to the inmate from a publisher or distributor, consistent with DOC policy 1.3.C.4 [Inmate Personal Property](#) and DOC policy 1.5.D.3 [Inmate Correspondence](#).
- F. Inmates will have access to legal paper, writing tools, legal and manila envelopes through commissary.

- G. Inmates will have access to free Notary Services through unit staff. Unit staff are not required to notarize documents. Any document presented to a staff member is subject to review to ensure the staff member is notarizing documents he/she is permitted to notarize.

2. Legal Staff (Contract Attorney):

- A. Legal staff will provide assistance in drafting initial pleadings required to attack an inmate's sentence, either directly or collaterally; or to present a constitutional challenge to the conditions of confinement.
1. Legal staff will provide assistance to eligible inmates in drafting notices of appeal of an inmate's sentence and/or conviction for which they are incarcerated.
 - a. The obligation of legal staff regarding a notice of appeal does not extend beyond the filing of a notice of appeal and a request for appointment of counsel. The obligation arises only upon the refusal or anticipated failure of the inmate's trial counsel to file such a notice of appeal.
 - b. In all other applicable circumstances, the duties of legal staff end at the point in which the inmate has his/her case into court.
 2. The duties of legal staff will include lawsuits and petitions for writs of habeas corpus in which an inmate housed at an adult DOC facility alleges the South Dakota Board of Pardons & Paroles has acted in a manner violative of rights secured under the U.S. Constitution or the South Dakota Constitution.
 3. The DOC is not obligated to provide copies of documents to inmates pursuing general civil claims arising only under state law.
- B. Legal staff will assist eligible inmates in matters:
1. Grounded in fact and supported by legal arguments that are warranted by existing law.
 2. That contain good faith arguments for the extension, modification, or reversal of existing law.
 3. Legal staff may not actively assist inmates in the filing of non-qualified legal claims, which for the purpose of this policy are defined as those **not involving** petitions for writs of habeas corpus, or complaints designed to test the conditions of confinement, or habeas petitions in which the inmate alleges the Board of Pardons and Paroles has denied parole to the inmate in a manner that violates the inmate's rights under the U.S. or South Dakota Constitutions.
 - a. Inmates seeking assistance in non-qualified legal claims may seek assistance of outside counsel, the courts or other legal assistance offered outside the DOC.
 - b. Nothing in the policy interferes with an inmate's right to retain counsel, to the extent the inmate can afford counsel and is willing to pay for the services or avail themselves to pro bono services of an attorney.
 - c. Inmates who are not able to draft pleadings or complete required forms without assistance, who choose not to access legal assistance available at the facility, or who may not be eligible for legal staff assistance, may:
 - 1) Contact an attorney directly, at the inmate's expense; or
 - 2) Request the court appoint an attorney to represent them.

- C. Eligible inmates sentenced under South Dakota law, but who are housed outside the state of South Dakota, whose cause of action in the named categories of cases arose within the state of South Dakota, may contact legal staff to request legal services as described within this policy.
1. Legal staff will initiate contact with an eligible out-of-state inmate requesting legal services under this provision, not more than ten (10) days after the date the request is posted.
 2. DOC staff will coordinate a time to contact the out-of-state inmate with the out-of-state facility.
- D. Legal staff will not duplicate the work of a private attorney or another recognized legal service assisting the inmate, nor will legal staff provide help to a private attorney or another recognized legal service assisting the inmate.
- E. If an inmate receiving legal assistance is transferred from one DOC facility to another, legal staff assigned to the receiving facility will assume responsibility for providing legal assistance to the transferred inmate and assist the inmate with any legal assistance already in progress.
1. If legal staff agrees it would be in the best interest of all parties, legal staff initially assigned to provide legal assistance to the inmate may continue providing legal assistance to the transferred inmate.
- F. Inmates assisting other inmates with legal matters shall do so voluntarily and may not receive any form of compensation. Inmates are permitted to assist other inmates with legal matters; however, inmates will not be permitted to possess the legal work of another inmate outside the presence of the inmate to whom the legal work belongs. Inmates assisting other inmates with legal work must comply with all facility and DOC rules and regulations while rendering assistance. The DOC shall take no affirmative steps to assist inmates helping other inmates with legal claims. Inmates will not be provided any privileges ordinarily afforded to legal staff, even if the inmate was an attorney before his/her incarceration.
1. Notwithstanding any other provision relating to inmates assisting other inmates with legal materials, each facility shall provide through an inmate job position/ an inmate typist position, whose duties shall include providing eligible inmates with assistance typing legal materials. Inmates eligible for such assistance are set forth within Section 1 of this policy.
 2. Inmates requiring such assistance must notify his or her respective ADA Facility Coordinator, who will determine if the inmate is eligible for the service.
 3. Inmates found charging for legal assistance provided or bartering in exchange for providing legal assistance, or who are creating a safety or security concern, may be subject to disciplinary action and precluded from assisting inmates with legal assistance. No inmate shall be allowed to assist another inmate if the Warden or Deputy Warden determines such action creates a safety risk.
- G. Inmate complaints regarding legal assistance or legal materials must be addressed through the administrative remedy process (See DOC policy 1.3.E.2 - [Administrative Remedy for Inmates](#)).
- H. Inmates seeking judicial or administrative relief will not be subjected to reprisals or penalties because of their decision to seek relief (ACA 4-4274).

3. Copies:

- A. The cost of all legal photocopies will be 5 cents per sheet. Inmates who are indigent will be permitted to make photocopies of legal materials for a value up to, but not exceeding, two dollars per month. A new month starts the first full week of the month (If the end of the month falls in the middle of the week, the new month starts the next week).
 - 1. Inmates who do not have sufficient funds to pay for the photocopies or legal mail postage at the time of the request may be denied copies or postage if the request is for a non-qualified legal claim.
- B. If special circumstances warrant, an inmate may be allowed to overdraw his/her commissary spending account by \$2 per month, for the purpose of obtaining copies (See DOC policy 1.1.B.2 [Inmate Accounts and Financial Responsibility](#)).
 - 1. Requests for such copies will be directed to an inmate's unit team, who has authority to approve or deny such copies based on the threshold of a maximum overdraft for copies.
 - 2. An inmate will not be allowed to carry a negative balance for the purpose of obtaining copies of documents that pursue general civil claims arising only under state law.

4. Legal Liaison:

- A. Each facility will assign a staff liaison to work with legal staff.
- B. The staff liaison will:
 - 1. Ensure compliance with existing policies and procedures permitting inmates to request and receive legal assistance and access.
 - 2. Provide and maintain a work area/area to meet with eligible inmates.
 - 3. Arrange for the necessary access to the facility and inmates. This includes access to inmates through attorney visits or telephone communication.
 - 4. Support timely response by DOC staff to inmate requests for legal assistance or access to legal materials.
 - 5. Investigate and provide information to the Warden concerning inmate administrative remedy grievances pertaining to legal assistance and/or legal materials at the facility.
 - 6. Assist the ADA Facility Coordinator in facilitating timely legal assistance for eligible inmates and coordinating communication between legal staff and eligible inmates.
 - 7. Maintain current contact information for legal staff providing legal assistance to inmates at the facility.
 - 8. Ensure legal materials are current (See Attachment 1).

5. Conflict of Interest:

- A. Legal staff will not be required to provide services to any eligible inmate with whom a bona fide conflict of interest exists. A bona fide conflict of interest does not exist until:

1. Relevant papers from a court of competent jurisdiction have been served, or a formal complaint against the legal staff person has been filed with the South Dakota State Bar by the inmate, or;
 2. Legal staff who normally provide legal assistance to the inmate is the subject of an appeal to the inmate's sentence and/or conviction.
- B. Legal staff will notify DOC immediately of any such determination and will cooperate fully with any alternative legal representative designated/assigned to provide legal contractual services to the inmate.
- C. Eligible inmates are not required to use legal staff in preparing or filing legal documents.

6. Legal Materials:

- A. Legal materials will be maintained for inmate use at all adult DOC facilities within designated locations, accessible to inmates..
- B. The DOC will provide access to legal reference materials through LexisNexis (or some other company provider), via inmate tablets and kiosks, which shall be made available to inmates at all adult DOC facilities.
- C. Procedures are in place at SDSP to provide inmates in the Sioux Falls Community Work Center reasonable access to legal materials and legal assistance. Procedures are in place at MDSP to provide inmates at the Yankton Community Work Center and Rapid City Community Work Center reasonable access to legal materials and legal assistance. Procedures are in place at SDWP to provide inmates at Pierre Community Work Center reasonable access to legal materials and legal assistance.
1. An approved list of the legal reference materials provided by LexisNexis is found in Attachment 1. Any additions or deletions to the resources identified in Attachment 1 are subject to approval by the DOC attorney.
 2. Inmates may pay to copy the printed resources necessary to obtain a personal copy of the resource and maintain this within their legal resources in their cell/room.
 3. All revised or rescinded legal materials or forms shall be promptly removed and/or replaced at the direction of the DOC attorney. Older versions will not be retained or archived.
 4. The DOC does not provide inmates with forms, documents or any legal materials from other states. It is the inmate's duty to contact the state court to request any such materials or forms.
 5. The DOC reserves the right to discontinue or substitute select legal material subscriptions.

V Related Directives:

- DOC policy 1.1.B.2 – [Inmate Accounts and Financial Responsibility](#)
- DOC policy 1.2.E.1 – [Inmate Commissary](#)
- DOC policy 1.3.C.4 – [Inmate Personal Property](#)
- DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)
- DOC policy 1.1.E.7 – [Americans with Disabilities Act \(ADA\)](#)
- DOC policy 1.5.A.7 – [Inmate Use of Computers](#)
- DOC policy 1.5.D.3 – [Inmate Correspondence](#)

VI Revision Log:

April 2003: **Added** A.1.a.1. under Legal Staff section; **deleted** A.1.b. in same section. **Revised** A.2. in Legal Assistance for Inmates section. **Clarified** inmates are responsible to pay for copies under G.1. and H.2. under Legal Assistance for Inmates.

July 2004: **Moved** some information from the policy statement into the procedure section. **Deleted** the statement that the quarterly summary report is included with the monthly report. **Clarified** that legal staff is provided for permanent adult institutions. **Revised** the duties of the legal liaison to “monitor” rather than “establish” procedures. **Added** reference to policy 1.3.E.2. **Added** another circumstance to a bona fide conflict of interest.

July 2005: **Changed** the receiver of the quarterly reports from the Secretary of Corrections to the Policy and Compliance Manager.

August 2006: **Revised** the policy statement. **Deleted** the reference to a designated monitoring authority. **Rearranged** the order of information on an inmate overdrawing his/her account for legal copies.

August 2007: **Revised** the definitions of Legal Staff and Conditions of Confinement. **Deleted** repetitive language regarding the role of legal staff. **Clarified** the language on inmates paying for photocopies of reported judicial decisions.

June 2008: **Revised** formatting of policy in accordance with 1.1.A.2 Policy and Operational Memorandum Management policy. **Revised** minor grammatical changes throughout policy. **Replaced** “3rd Edition” to “4th Edition” in bullet # 6 of Attachment 1. **Replaced** bullets with numbers in Attachment 2. **Deleted** “1 Volume” and “2 Volumes” in #2, **added** “civil rights” and “habeas corpus” to #2, and replaced #7 with “Federal Civil Judicial Procedures and Rules, (current year)” and **added** #11 and #12 regarding SDDOC public policies and public facility OMs.

July 2009: **Replaced** “\$.15” to “\$.25” per page throughout policy. **Added** reference to ARSD 10:10:01:03 throughout policy. **Added** hyperlinks throughout policy.

July 2010: **Replaced** \$.25 cents with \$.15 cents in ss (D2, G and H2 of Legal Assistance For Inmates)

July 2011: **Added** facilities to Section 1. **Deleted** “will not provide legal assistance and” in Section 2 A. 3. **Added** 4. “DOC staff (other than legal staff assigned to the facility) will not provide legal advice to offenders and/or their family members” to Section 2 A. **Added** “or as updates are made available” to Section 5 A. 3.

August 2012: **Added** “Rapid City Minimum Unit” to Section 1 A. **Deleted** “The court or bar has made a preliminary determination that the action has merit” in Section 4 A. 2. **Deleted** “in a suitable and designated place” in Section 5 A.

July 2013: **Reviewed** with no changes.

July 2014: **Deleted** “The DOC will also make provisions for inmates to obtain or provide” and **Replaced** with “Processes and procedures shall be in place for inmates to have reasonable access to legal materials for preparation of legal documents and to” in the policy statement. **Added** “for which they are incarcerated” in Section 2 A. 1. **Added** 3. a. & b. to Section 2 B. **Deleted** “.15 cents and **Replaced** with .25 cents” and **Added** “this is payable through a commissary slip” in Section D. 2. G. and H.2. all in Section 2. **Added** “Inmates deemed indigent in accordance with DOC policy may be allowed to overdraw their account by \$10 per month for the purpose of obtaining legal copies” in Section 2 I. **Added** J. to Section 2. **Added** B. to Section 6 **Added** “Facilities must replace any misplaced or destroyed volumes within a reasonable time after staff become aware of the loss. Facilities are responsible for providing all new additions which are deemed necessary. Out-of-date materials will be properly disposed of when updated materials are received. Facilities are not required to possess and shall not possess older versions of the law. Facilities do not provide archive services” in Section 6 B. 2. **Added** “reasonable” and “law library” and **Added** “Procedures should be included in the unit plan and/or staff may advise inmates of the rules and local procedures governing use of the inmate law library. Under special circumstances, inmates who are unable to visit the law library may obtain legal reference books for use outside the law library” in Section 6 C. **Added** 1. to Section 6 C. **Added** D. to Section 6.

July 2015: **Updated** names of the minimum units. **Added** L. to Section 2.

July 2016: **Reviewed** with no changes.

June 2019: **Changed** title from Inmate Legal Assistance to “Inmate Access to the Courts”. **Revised** policy statement. **Deleted** “staff” and **Replaced** with “Assistance” in Section 1 title. **Added** “for eligible

inmates” to Section 1 A. **Deleted** “completing a legal kite and placing the request in the designated repository box on the housing unit (or other designated area(s) of the facility)” and **Replaced** with “sending an ADA Request for Accommodation to the ADA Facility Coordinator. The Coordinator will verify the inmate is eligible to receive assistance from an attorney and, if eligible, will promptly alert legal staff of the inmate’s request” in Section 1 B. **Added** C. 1-3 to Section 1. **Added** D. -G. **Added** “to eligible inmates” in Section 2 A. 1. **Deleted** 4. “DOC staff (other than legal staff assigned to the facility) will not provide legal advise to inmates” in Section 2. A. **Added** “eligible” to section 2 B. **Added** “which for the purpose of this policy are defined as those not involving petitions for writs of habeas corpus, or complaints designed to test the conditions of confinement, appeals from conviction or habeas petitions in which the inmate alleges the Board of Pardons and Paroles has denied parole to the inmate in a manner that violates the inmate’s rights under the U.S. or South Dakota Constitutions” in Section 2 B. 3. **Added** c. 1) and 2) in Section 2 B. **Added** “Inmates are permitted to assist other inmates with legal matters; however, inmates will not be permitted to possess the legal work of another inmate outside the presence of the inmate to whom the legal work belongs. Inmates assisting other inmates with legal work must comply with all facility and DOC rules and regulations while rendering assistance” in Section 2 F. **Added** 1-3 to Section 2 F. **Added** new section 3. Copies. **Deleted** “ten (\$10) and **Replaced** with “\$2” in Section 3 C. **Deleted** 2. An inmate who is deemed indigent in accordance with DOC policy 1.2.E.1 *Inmate Commissary* may be allowed to overdraw his/her spending account by ten dollars (\$10.00) per month for the purpose of obtaining copies.” in Section 3 C. **Deleted** Section 3. “Special Needs Inmates”. **Added** 4-7 in Section 4 B. **Added** “eligible” to Section 5 A. **Deleted** 1. “Inmates bear their own costs for preparing or filing legal documents in such instances” and **Deleted** 2. “Requests for copies of legal documents prepared or supplied by a source other than legal staff must be approved by legal staff assigned to the facility” in Section 5 C. **Deleted** “reference books” and **Replaced** with “materials” in Section 6 A. **Added** B. to Section 6. **Deleted** “reference books” and **Replaced** with “materials and legal assistance” in Section 6 C. **Added** “provided by Lexis Nexis is found in Attachment 1 and **Added** “Any additions to the resources identified in Attachment 1 are subject to approval by the DOC attorney” in Section 6 C. 1. **Added** 2-3 to Section 6 C. **Deleted** 2. “The legal reference books will be updated annually, or as updates are made available (ACA 4-4276). Facilities must replace any misplaced or destroyed volumes within a reasonable time after staff become aware of the loss. Facilities are responsible for providing all new additions. Out-of-date materials will be properly disposed when updated materials are received. Facilities are not required to possess, and shall not possess, older versions of legal reference books. Facilities do not provide archive services” in Section 6 B. **Added** “or substitute” and **Deleted** “or to substitute appropriate volumes for legal reference books” in Section 6. **Deleted** “Each facility will develop procedures for inmate use and reasonable access to legal reference books/law library (ACA 4-4276). Procedures should be included in the unit plan. Staff may advise inmates of the rules and local procedures governing use of the law library in Section 6. **Deleted** “Under special circumstances, inmates who are unable to visit or access the law library may obtain legal reference books for use outside the law library” in Section 6. **Deleted** “Unauthorized possession of law library materials by an inmate constitutes a prohibited act, generally warranting disciplinary action” in Section 6. **Deleted** “Each facility where legal reference books are maintained will set aside sufficient area where legal reference books will be kept to allow inmates the opportunity to work without the need for removing the materials” in Section 6. **Revised** Attachment 1.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

07/17/2019

Date

Attachment 1: Legal Reference Books

The South Dakota Department of Corrections agrees to maintain a contract with LexisNexus, which will provide the following materials to inmates via tablets and kiosks:

- 1 South Dakota Codified Law, Annotated.
- 2 South Dakota State caselaw.
- 3 All Federal Courts caselaw.
- 4 USCA: United States Constitution and Amendments.
- 5 South Dakota Constitution.
- 6 Unites States Code Service-Titles 1 through 54.
- 7 South Dakota Court Rules.
- 8 Federal Court Rules.
- 9 Federal Rules Annotated.
- 10 South Dakota Administrative Code.
- 11 Constitutional Rights of Prisoners.
- 12 Criminal Defense Techniques.
- 13 Criminal Law Advocacy.
- 14 Criminal Law Deskbook.
- 15 Moore's Federal Practice-Civil.
- 16 Moore's Federal Practice-Criminal.
- 17 Weinstein's Evidence Manual.
- 18 Ballentine's Law Dictionary.
- 19 The Law Dictionary.
- 20 South Dakota Criminal Pattern Jury Instructions (published by the South Dakota State Bar).

The South Dakota Department of Corrections reserves the right to discontinue selected subscriptions or to substitute appropriate reference materials for those indicated.