

## 1.3.E.1 Inmate Legal Assistance

### I Policy Index:



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**Office of Primary Responsibility:** DOC Administration

### II Policy:

The Department of Corrections (DOC) will provide legal assistance to inmates through the provision of legal reference materials, legal staff or both. Processes and procedures shall be in place for inmates to have reasonable access to legal material for preparation of legal documents and copies of legal documents necessary to access the courts in actions attacking an inmate's sentence, either directly or collaterally, or presenting a constitutional challenge to the conditions of an inmate's confinement.

### III Definitions:

#### 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.

#### 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.

#### 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.

### IV Procedures:

#### 1. Legal Staff:

A. The DOC will provide legal staff to each of its permanent institutions. Institutions include Yankton Community Work Center, Rapid City Community Work Center, Mike Durfee State Prison, South Dakota State Penitentiary (includes Jameson Annex and Sioux Falls Community Work Center) and the South Dakota Women's Prison (includes Pierre Community Work Center and Unit E).

1. The DOC will ensure inmates have reasonable access to legal materials and legal staff.

2. Legal staff will generate a quarterly summary of legal services provided to the inmate population. Reports will be distributed to designated DOC staff.

B. Inmates may request assistance from legal staff by 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).

## 2. Legal Assistance For Inmates:

A. Legal staff will provide inmates 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 an inmate's confinement.

1. Legal staff will provide assistance 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 also 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.
4. DOC staff (other than legal staff assigned to the facility) will not provide legal advice to inmates (See DOC policy 1.1.C.1 [Code of Ethics](#)).

B. Legal staff will assist 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, defined as those not involving conditions of confinement, appeals from conviction or habeas petitions.
  - a. Inmates seeking assistance in non-qualified legal claims may seek assistance of outside counsel, the courts or other assistance 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 or avail themselves to pro bono services of a licensed, court appointed attorney.

C. Legal staff will provide legal services as described in the section titled [Legal Assistance for Inmates](#) to 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.

1. Legal staff will initiate contact with an out-of-state inmate requesting legal services under this provision not more than ten (10) days after the date the request for legal services is posted.
  2. Legal staff will coordinate the time of the call to the out-of-state inmate with the out-of-state facility.
- D. The cost for duplication of original legal documents prepared by legal staff required to allow the requesting inmate to attack his/her sentence, either directly or collaterally, or duplication of documents used to present a constitutional challenge to the conditions of his/her confinement will not be charged to the inmate.
1. The documents making up the pleadings and the number of additional copies required by the court will be determined by the legal staff.
  2. For the purpose of initial access to the court, if an inmate requests additional copies other than what is required, the cost for additional copies of the original legal documents is twenty-five .25 cents per page (See ARSD [10:10:01:03](#)).
- E. 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 on a specific issue.
- F. 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 assisting 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.
- G. Legal staff will approve inmate requests for photocopies of initial pleadings and documents to be appended to or otherwise necessary to the filing of such initial pleadings. If an inmate requests photocopies of initial pleadings and/or documents to be appended to, the inmate may be charged twenty-five .25 per page (See ARSD [10:10:01:03](#)).
- H. Legal staff will approve inmate requests for copies of reported judicial decisions that, within the legal staff's reasonable discretion, are relevant to an initial pleading for the inmate requesting the copies.
1. An inmate's request for copies of reported judicial decisions will not exceed eight (8) decisions per month, per inmate.
  2. Approved inmate requests for copies of reported judicial decisions relevant to initial pleadings will be charged to the inmate at a rate of twenty-five.25 cents per page (See ARSD [10:10:01:03](#)).
- I. If special circumstances warrant, an inmate may be allowed to overdraw his/her commissary spending account by ten dollars (\$10.00) 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 will have the authority to approve or deny such copies based on the threshold of a maximum overdraft for copies of \$10.00 per month.
  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.

3. 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.
- J. Inmates assisting other inmates with legal matters shall do so voluntarily and may not receive any form of compensation. 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.
- K. Inmate complaints regarding legal assistance will be addressed through the administrative remedy process (See DOC policy 1.3.E.2 - [Administrative Remedy for Inmates](#)).
- L. Inmates seeking judicial relief will not be subjected to reprisals or penalties because of their decision to seek judicial relief (ACT 4-4274).

### **3. Special Needs Inmates:**

- A. Accommodations shall be made, as needed, to ensure access to the courts for inmates with special needs, to include inmates who are illiterate, non-English speaking, and/or disabled.
- B. Arrangements shall be made for inmates who have limited access to the facility's law library to review legal resource materials or to meet with legal staff.

### **4. Legal Liaison:**

- A. Each institution will assign a staff liaison to work with legal staff.
- B. The duties of the staff liaison will include:
  1. Ensure policies and procedures for inmates to request assistance from the legal staff are followed.
  2. Provide for a work area and basic equipment for legal staff.
  3. Arrange for the necessary institutional training to allow legal staff to obtain an identification badge and to properly access the facility and inmates (See DOC policy 1.1.D.3 [Facility Access & ID Requirements](#)).
  4. Ensure legal reference books are current ([See Attachment 1](#)).

### **5. Conflict of Interest:**

- A. Legal staff will not be required to provide services to any 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. Inmates are not required to use legal staff in preparing or filing legal documents.
  - 1. Inmates bear their own costs for preparing or filing legal documents in such instances.
  - 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.

## 6. Legal Reference Books:

- A. Legal reference books will be maintained for inmate use at the South Dakota State Penitentiary (SDSP), Jameson Annex, Mike Durfee State Prison (MDSP) and South Dakota Women's Prison.
- B. Procedures will be in place at SDSP to provide inmates in the Sioux Falls Community Work Center reasonable access to legal reference books, Procedures will be in place at MDSP to provide inmates at the Yankton Community Work Center and Rapid City Community Work Center reasonable access to legal reference books. Procedures will be in place at SDWP to provide inmates at Pierre Community Work Center reasonable access to legal reference books.
  - 1. A list of the legal reference books will be maintained at each facility responsible for maintaining legal reference books ([See Attachment 1](#)).
  - 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.
  - 3. The DOC reserves the right to discontinue select legal material subscriptions or to substitute appropriate volumes for legal reference books.
- C. 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.
  - 1. 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.
  - 2. Unauthorized possession of law library materials by an inmate constitutes a prohibited act, generally warranting disciplinary action.
- D. 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.

## V Related Directives:

ARSD [10:10:01:03](#)

DOC policy 1.1.B.2-- [Inmate Accounts and Financial Responsibility](#)

DOC policy 1.1.C.1 -- [Code of Ethics](#)

DOC policy 1.1.D.3 -- [Facility Access & ID Requirements](#)

DOC policy 1.2.E.1 -- [Inmate Commissary](#)

DOC policy 1.3.E.2 -- [Administrative Remedy for Inmates](#)

## 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** "3<sup>rd</sup> Edition" to "4<sup>th</sup> 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.

*Denny Kaemingk (original signature on file)*

Denny Kaemingk, Secretary of Corrections

12/21/2016

Date

## Attachment 1: Legal Reference Books

The South Dakota Department of Corrections agrees to maintain the following books (unless an item is out of print) for inmate use in a suitable and designated place at the South Dakota State Penitentiary, the Jameson Annex, the Durfee State Prison and the South Dakota Women's Prison:

1. South Dakota Codified Law, Annotated (Full Set).
2. USCA: United States Constitution and Amendments (10 volumes), 42 USCA 1983 – civil rights and 28 USCA 2241 – 2254 – habeas corpus.
3. West Federal Civil Judicial Procedures and Rules.
4. Local Rules of the U.S. Court of Appeals for the Eighth Circuit.
5. United States District Court Local Rules, District of South Dakota.
6. M. Schwartz & J. Kirklin, Section 1983 Litigation, Claims and defenses (4th Edition).
7. Federal Civil Judicial Procedures and Rules, (current year)
8. ARSD Article 17 (Corrections).
9. South Dakota Criminal Pattern Jury Instructions (published by the State Bar).
10. Am.Jur.2d selected volumes: Appellate review (Vol. 4 & 5), Civil Rights (Vol. 15), Constitutional Law (Vol. 16, 16A, 16B), Criminal Law (Vol. 21-21A), Evidence (Vol. 29 & 29A), Pardons and Parole (Vol. 59) and Trial (Vol. 75, 75A, 75B).
11. SDDOC public policies.
12. Local facility public OMs.

Any additional books or reference material must be approved by the respective facility. The South Dakota Department of Corrections reserves the right to discontinue selected subscriptions or to substitute appropriate volumes for those indicated.