

1.1.E.3 Offender Access to DOC Records

I Policy Index:



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II Policy:

Records regarding individual offenders, facility and agency operations are the property and responsibility of the Department of Corrections. These records are confidential by law; however, offenders may access public records as detailed in SDCL Chapter § 1-27 and as outlined in DOC policies and applicable rules.

III Definitions:

Offender:

For the purposes of this policy, offender means an inmate (in the custody of the Department of Corrections institutional system or a parolee (under parole or suspended sentence supervision by South Dakota Parole Services).

Custodian of Records:

For the purposes of this policy, the Custodian of Records (custodian) is the person who maintains the records.

Public Record Officer:

For the purposes of this policy, the Public Record Officer is the Secretary of the Department of Corrections (DOC) or his designee to which a request is directed (See SDCL §§ 1-27-42 and 1-27-43).

IV Procedures:

1. Offender Requests for Records:

- A. Offender requests for documents or records will be made through an offender's unit staff or through parole staff as applicable.
- B. If appropriate, unit or parole staff will forward the offender's request to the custodian of the record.
 1. The custodian of the record may provide the offender with the document or record at the cost of \$0.15 per one sided page (legal sized document) and at the cost of locating, assembling and reproducing the record if the dedication of staff time exceeds one hour. The record will only be provided after payment for all costs has been received (See SDCL § 1-27-35).
 2. For any informal requests likely to involve a cost to the offender in excess of fifty (\$50.00) dollars, the custodian shall provide an estimate of the total cost to the offender prior to assembling the

documents or records and wait for written confirmation from the offender stating his/her acceptance of the cost and agreement to pay (See SDCL § 1-27-36).

- a. Offenders accepting the cost will submit a signed commissary slip for the amount due.
 - b. An offender may not exceed the thirty-five (\$35.00) per week withdrawal limit from their spend account for records fees, incur a negative balance or go further into the negative in order to obtain these copies (See DOC policy 1.1.B.2 *Inmate Accounts and Financial Responsibility*).
 - c. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest (See SDCL § 1-27-36).
- C. Unit or parole staff may deny the offender's request if it is contrary to state or federal statutes or rules regarding public access or confidentiality, DOC policy or institutional OMs.
- D. If an informal request is denied in whole or in part by the custodian of record, a written request may be made by the offender to the public records officer (See SDCL § 1-27-37).
1. The public records officer shall promptly respond to the written request, but in no event later than ten (10) business days from receipt of the request. The public records officer shall respond to the request by:
 - a. Providing the record in whole or in part to the offender upon payment of any applicable fees;
 - b. Denying the request for the record; or
 - c. Acknowledging that the public record officer has received the request and providing an estimate of the time reasonably required to further respond to the request.
 2. If the public records officer fails to respond to an offender's written request within ten (10) business days, the request shall be deemed denied.
- E. The custodian of the record or the public records officer (as applicable) shall maintain a file of all letters of denial of requests for records (See SDCL § 1-27-1.4).

2. Information Restricted From Offenders:

- A. The DOC will deny offenders access to, or copies of the following information, records and/or documents (See SDCL §§ 1-27-1.5(26), 1-27-1.13 and 24-2-20):
1. Any individual voting records by members of any institutional classification committee or institutional disciplinary committee.
 2. Identity of cooperating individuals, confidential informants or any information given in confidence.
 3. Maps, diagrams, videos, or schematics of the physical layout of any DOC facility or building (unless the offender is being employed by the DOC for construction/maintenance projects. Such activities will be closely monitored by the Immediate Work Supervisor).
 4. The release of information to offenders or their agents regarding inmate records, policies, procedures, OMs, post orders or other written instructions that would jeopardize the safety, security or disciplined operation of any DOC facility or agency, a person or the public (See SDCL § 1-27-1.13).

Note: This does not apply to an offender's attorney requesting information that is subject to disclosure under this chapter.

5. Reports, memoranda, or other documents prepared specifically for the South Dakota State Attorney General's Office, DOC Counsel or any other attorney retained by the State of South Dakota during the course of litigation.
 6. Law enforcement or Special Security investigative reports.
 7. Any information not originated or written by DOC personnel.
 8. Records already denied to an offender through DOC policy, procedure, OM, post order or directive or made closed or confidential by state of federal statute or rule (See DOC policy 1.1.A.2 [Policy and Operational Memorandum Management](#)).
 9. Any other record where a determination is made by the Secretary of Corrections, the Executive Director of the Board of Pardons and Paroles, a Warden or designee that such information would result in:
 - a. Substantial risk of retaliation.
 - b. Endangerment of the safety, security, or disciplined operation of any person, DOC facility/agency, the public or property.
 - c. Disclosure of the DOC's position in litigation.
 10. Access to professional records or evaluations may be denied if it is determined by the Secretary of Corrections, a Warden or the Executive Director of the Board of Pardons and Paroles that the information, if known by the offender, could result in disruption of his/her adjustment or rehabilitation.
 11. Offender's will not be allowed copies or to view their NCIC report obtained by the DOC.
 12. The offender's record developed and maintained by the Department of Corrections regarding the history and conduct of each adult offender, including but not limited to written or electronically generated or stored documentation or records of each offender's institutional adjustment and rehabilitative progress. (See SDCL §§ [24-2-17](#), [24-2-19](#), [24-15A-14](#), [24-15-1](#) and [24-2-20](#)).
 13. Additional copies from what is initially provided to the offender involving a disciplinary violation or administrative grievance (including final disposition) (See DOC policies 1.3.C.2, [Inmate Discipline System](#) and 1.3.E.2, [Administrative Remedy for Inmates](#)).
 14. Any stored records, documents, databases, which if disclosed, would constitute an unreasonable release of personal information, e.g., social security numbers, driver license numbers, debit, credit card or bank account numbers.
- B. In no case will an unauthorized person be provided access to any offender's legal or institutional file or record or be given information contained in the said file(s) or record. No offender will be provided access to another offender's legal or institutional file or record or be given information contained in said file(s) or record(s) (See DOC policy 1.1.E.1 [Adult Offender Case Records Content and Management](#)).
- C. DOC staff will not provide an offender with copies or any information regarding official statements, a pre-sentence investigation (PSI) or notifications (See SDCL § [23A-27-10](#) and DOC policy 1.1.E.4 [Release Notification Requests](#)).

- D. An offender will not be provided access to records generated by Parole Services (See SDCL §§ 24-15-1 and 24-15A-14). Parole staff may apply certain exceptions if the request is for information/records pertinent to the offender which are not otherwise held in confidence by law.
- E. Staff will exercise due diligence in allowing offenders to view or work with a database containing information or records regarding offenders.
 - 1. Offenders are not permitted access or use of any database that contains information on any individual offender classification levels, individual offender crimes, offender release dates, offender disciplinary records, offender social security numbers or any other information that could compromise the safety or security of an offender or the institution.
 - 2. If there is any doubt about allowing an offender access to a database, staff will obtain the approval of their respective Warden or Executive Director of Board of Pardons and Parole before allowing an offender to access the database.

3. Release of Information to an Offender:

- A. An offender will be provided:
 - 1. One (1) free copy of his/her commitment papers documenting the judgment and sentence upon his/her initial arrival.
 - 2. One (1) free copy of any amended commitment papers at or about the time the amended paperwork is received by the DOC.
 - 3. One (1) free copy of any holds/detainers/requests for law enforcement notification placed on their record, on or about the time the request is received by DOC staff.
- B. An offender can request a copy of the following information only from his/her own record by submitting a request slip to their assigned unit team or parole staff member, who may provide the requested copies to the offender:
 - 1. Computer generated disciplinary history, approved visitors list, and sentence key dates.
- C. Offenders will be provided copies of approved documents as provided for through DOC policy and/or institutional OMs.
- D. The following records from his/her file may be viewed by the offender, however, the offender will not be provided a copy of this information:
 - 1. Physical description/pictures.
 - a. Offenders may receive a copy of their photo for purposes of securing identification documents and as a discharge ID.
 - 2. Section details from the latest classification assessment.
 - 3. Accident reports which have been placed in the offender's legal file.
- E. An offender who requests to review his/her own health records for the time that he/she was incarcerated in a DOC facility shall submit a written request to the Clinical Supervisor (for medical records) or the Clinical Director (for mental health records), indicating the specific portions of the record he/she wants to review. Outside medical records remain the property of the outside provider.

Any requests for medical records generated by an outside provider must be directed to the outside provider.

1. Health Services/Mental Health staff may approve and supervise the review per the Department of Health guidelines and applicable operational memorandums/policies.
 2. Offenders may request copies of relevant portions of their health record, provided the offender signs the appropriate release required by Health Services or Mental Health and pays for the cost of duplication prior to obtaining copies of such records.
 - a. As these documents are original medical records, Health Services/Mental Health staff will prepare and duplicate the documents.
 - b. An offender cannot incur a negative balance or further increase an existing negative balance in their institutional banking account(s) to obtain these copies.
 3. An offender will be charged the applicable medical co-pay when initiating a visit to Health Services to view his/her medical records (See DOC policy 1.4.E.10 *Inmate Medical Co-Pay*).
 4. Offenders requesting copies or to review psychological and/or psychiatric evaluations, reports or files included in their institutional health records must obtain written permission from the author of the material prior to duplication, release or review.
 - a. The offender is responsible for contacting the author and requesting he/she forward the signed release to DOC Health Services staff.
 - b. The release, once received and properly authenticated by DOH staff, will be filed in the medical file from which the records were copied.
- F. An offender will be denied copies of documents not specifically listed in this section or approved through another policy or institutional operational memorandum.
- G. Offenders may not review or request the medical or mental health records of another offender.
- H. Unless otherwise stated in this section or through another policy or institutional operational memorandum, requests for copies of documents may result in a charge for the cost of copying and staff time to produce the copies as described in Section 1 of this policy.

4. Progress Reports:

- A. Progress reports are prepared by the offender's assigned unit staff, approved by the Warden and may be released to the sentencing judge, a court service worker representing the sentencing judge, the prosecuting attorney, the defense attorney or other correctional agencies.
- B. The request to prepare a progress report must come from the sentencing judge, a court services worker, the defense or prosecuting attorney or other correctional agencies.
 1. Offenders may not request a progress report on their own behalf.

V Related Directives:

SDCL §§ [1-15-20.1](#), [1-27](#), [23A-27-10](#), [24-2-17](#), [24-2-19](#), [24-2-20](#), [24-15-1](#) and [24-15A-14](#)

DOC policy 1.1.A.2 – *Policy and Operational Memorandum Management*

DOC policy 1.1.B.2 -- *Inmate Accounts and Financial Responsibility*

DOC policy 1.1.E.1 – [Adult Offender Case Records Content and Management](#)
 DOC policy 1.1.E.4 – [Release Notification Requests](#)
 DOC policy 1.3.C.2 – [Inmate Discipline System](#)
 DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)
 DOC policy 1.4.E.10 – [Inmate Medical Co-Pay](#)
 DOH policy P-H-01 – [Health Record Format and Contents](#)
 DOH policy P-H-02 – [Confidentiality of Health Records and Information](#)

VI Revision Log:

June 2002: Defined Offender and changed Inmate to Offender where applicable.

June 2003: Added reference to policy 1.1.E.1. Noted that record requests could be turned down if contrary to another DOC policy. Merged former Attachment 1 into the policy section **Release of Information to an Offender**. Changed the name of the policy to *Offender Access to Records*. Added rule and law as other reasons to deny requests for records. Changed wording in item “A” of **Information Restricted From Offenders**.

May 2004: Added reference to SDCL § 23A-27-10, 24-15-1 and 24-15A-14. Deleted section title Offender Access to Files and moved contents to other sections. Added reference to DOH policies PH 01 and PH 02. Noted that offenders cannot access case history documents from the Parole Department. Changed Director of the Board of Pardons and Paroles to the Executive Director.

June 2004: Noted that DOC staff will not provide inmates with a copy of their NCIC III or permit an inmate to view his/her NCIC III.

May 2005: Added language restricting inmate access to information on databases. Added language regarding medical co-pay and a reference to policy 1.4.E.10.

May 2006: Updated referenced policy name. Added confidential notifications as an item that inmates will not be given access to. Changed the area to request additional copies of sentencing paperwork from Central Records to Unit Staff. Added a requirement that progress reports are approved by the Warden. Deleted the voting records of the Board of Pardons and Paroles as an item inmates are denied access to. Clarified that inmates working on construction/maintenance projects can have access to some diagrams, etc. of a DOC facility.

May 2007: Rewrote the section on Release of Information to an Offender to clarify what an inmate may have copies of and when. Moved information on progress reports to a separate section. Deleted the reference to the security of the institutional file.

April 2008: Revised formatting of policy in accordance with DOC policy 1.1.A.2 Policy and Operational Memorandum Management. Added to the (Policy statement) that these records are generally confidential, therefore offenders may access specified portions of these records as outlined in this and other DOC policies, OMs and rules. Replaced “unit team” to ‘unit staff’ throughout policy. Replaced “operational memorandum” to “OM or OMs” throughout policy. Replaced “work supervisor” to “Immediate Work Supervisor” in subsection (A-3 of Information Restricted from Offenders section). Added “DOC Council” to subsection (A5 of Information Restricted from Offenders section) regarding reports prepared for SD State Attorney General’s office or any other attorney retained by the state of SD. Clarified policy to read “DOC policy” when speaking of records already denied to an offender through another policy, procedure, OM, post order or directive. Replaced “inconsequential” with “unrelated” when speaking of records unrelated to an offender’s rehabilitation. Clarified in subsection (B of Information Restricted from Offenders section) to state that in no case will an offender be given information from another inmate’s file. Added “or Executive Director of Board of Pardons and Parole” in subsection (E2 of Information Restricted from Offenders section) relating to offenders access to a database. Added in subsection (B and D of Release of Information to an Offender section) that specific information from his/her own file may be viewed by the offender. Added sentence stating that inmates may receive a copy of their photo for purposes of securing identification documents and as a discharge ID in subsection (D1a of Release of Information to an Offender section). Revised order of numbers 1, 2 and 3 in subsection (E of Release of Information to an Offender section). Removed “Executive Director” in subsection (10 of the Information Restricted from Offenders section). Replaced “reprisal” with “retaliation” in subsection (10a of the Information Restricted from Offenders section). Replaced “want” with “request” for offenders requesting to review their health records. Added “or to review” when speaking of inmates requesting copies of their psychological or

psychiatric files. **Deleted** "Release of information signed by the offender is not required for progress reports unless the offender has discharged" from subsection (B of Progress Reports section). **Deleted** "Parent's Signature" on Attachment 3 and **added** DOC policy Offender Access to Records in header and **revised** formatting of "Person/Organization/Address). **Revised** other minor grammatical changes throughout policy.

March 2009: **Replaced** inmate with offender when appropriate throughout policy. **Added** reference to SDCL 24-2-20 within ss (A of Information Restricted From Offenders) and within (Section V). **Revised** minor wording throughout policy.

April 2010: **Revised** formatting of Section 1. **Deleted** reference to offenders within definition of Custodian of Records. **Added** SDCL 1-27-42 to definition of Public Record Officer. **Revised** policy significantly in accordance with SDCL 1-27. **Deleted** DHS policies P-H-01 and P-H-02 in ss (E of Release of Information to an Offender. **Deleted** Attachment 1.

May 2011: **Replaced** term "Requester" with "Offender throughout the policy. **Added** "Offenders will submit a signed commissary slip for the amount due." to Section 1 ss 2. **Added** "An offender may not exceed the \$35.00 per week withdrawal limit from their spend account for records fees, incur a negative balance or go further into the negative in order to obtain these copies." to Section 1 ss 2. **Added** "or copies of" to Section 2 A. **Added** "records and/or documents" to Section 2 A. **Added** "or property" to Section 2 A. 9 b. **Added** written documentation of to Section 2 A. 12. **Deleted** "and medical history" from Section 2 A. 12.

May 2012: **Deleted** "written" in Section 1 B. **Deleted** "reproduction" and **Replaced** with "locating, assembling and reproducing the record" and **Added** "dedication of staff time" and **Added** "The record will only be provided after payment for all costs has been received" in Section 1 B. 1. **Added** "accepting the cost" in Section 1 B. 2. a. **Added** "state or federal statutes or rules regarding public access or confidentiality" to Section 1 C. **Deleted** 1. "If denied, or no response is received from the custodian of the record, the offender may submit a written request to the public records officer" in Section 1 C. **Deleted** "informants" and **Replaced** with "cooperating individuals, confidential informants" in Section 2 A. 2. **Added** "or made closed or confidential by state or federal statute or rule" in Section 2 A. 8. **Added** 14. to Section 2 A. **Added** "Parole staff may apply certain exceptions if the request is for information/records pertinent to the offender which are not otherwise held in confidence by law." in Section 2 D. **Added** "containing information or records regarding offenders." in Section 3 E. **Added** "included in their institutional health records" in Section 3 E. 4.

February 2013: **Deleted** "Copies of the offender's query sentence (QS) screen or his/her NCIC III Report" and **Deleted** "to view this screen from a staff person's computer" and **Replaced** with "copies of to view their NCIC III reported obtained by the DOC" in Section 2 A. 11. **Added** "or electronically generated or stored" to Section 2 A. 12. **Deleted** "Personnel information or other records" and **Replaced** with "Any stored records, documents, databases" and **Added** "or bank account numbers" in Section 2 A. 14. **Added** "offender social security numbers" to Section 2 E. 1. **Deleted** "Criminal History (minus any active protection orders) from the Citrix database" in Section 2 B. **Deleted** "housing" **Deleted** "work and **Replaced** with "history, **Added** "approved list" and **Deleted** "summary screen; and date computation worksheet(s) and **Replaced** with "sentence key dates" in Section 2 B. 2. **Added** "Section details from the latest" and **Deleted** "documents" and **Replaced** with "assessment" and **Deleted** "limited to the initial and reclassification custody forms" in Section 3 D. 2. **Added** "Outside medical records remain the property of the outside provider. Any requests for medical records generated by an outside provider must be directed to the outside provider" in Section 3 E.

Denny Kaemingk (original signature on file)

Denny Kaemingk, Secretary of Corrections

03/31/2013

Date