



SOUTH DAKOTA  DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE		POLICY NUMBER 1500-02	PAGE NUMBER 1 OF 5
		DISTRIBUTION:	Public
		SUBJECT:	Offender Access to the Courts
RELATED STANDARDS:	<b>ACA 5-ACI: 3D-01, 3D-03</b>	EFFECTIVE DATE:	October 1, 2022
		SUPERSESSION:	07/18/2020
DESCRIPTION: Offender Legal Services	REVIEW MONTH: September	 <b>KELLIE WASKO</b> <b>SECRETARY OF CORRECTIONS</b>	

## I. POLICY

It is the policy of the South Dakota Department of Corrections (DOC) to afford offenders 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. Offenders 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 contained within affect an offender's ability to independently pursue actions on their own or to obtain outside legal counsel.

## II. PURPOSE

The purpose of this policy is to provide offenders 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.

## III. DEFINITIONS

### ADA Facility Coordinator

The staff person assigned to facilitate ADA compliance at each DOC facility and investigate disability-related issues and complaints made known by an offender within the facility. The Coordinator has authority to make recommendations to the Warden and ADA Director and implement approved corrective actions to ensure compliance with ADA.

### Conditions of Confinement:

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

### Legal Documents:

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

## IV PROCEDURES

### 1. Offender Access to Legal Materials:

SECTION	SUBJECT	DOC POLICY	Page 2 of 5
Offender Legal Services	Offender Access to the Courts	1500-02	Effective: 10/01/2022

- A. ***Written policy, procedure, and practice provide for the right of offenders to have access to an appropriate law library and to paper and other supplies and services related to legal matters [ACA 5-ACI-3D-03].*** The DOC will ensure offenders have reasonable access to legal materials. ***All offenders***, regardless of eligibility or financial status, will ***have access to the courts [ACA 5-ACI-3D-01]***, consistent with the legitimate penological objectives of the DOC. All offenders will be permitted 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.
  2. Access to approved legal materials, including those available on the offender tablets and kiosks.
  3. Access to approved and available legal forms and copies.
  4. Access to designated computers with OpenOffice software or similar software that allows offenders to type legal documents.
- B. Offenders are permitted to purchase or obtain soft cover legal reference books and printed legal matter sent directly to the offender from a publisher or distributor, consistent with DOC policy.
- C. Offenders shall have access to approved legal paper, writing tools, and legal and/or manila envelopes through commissary.
1. Envelopes for legal mail are available from staff. Postage will be paid by the DOC for up to five (5) mailings per week or fifteen dollars (\$15.00) total postage per month.
- D. Offenders shall have access to free Notary Services through unit staff. Unit staff are not required to notarize documents. Any document presented to a staff member for notarization is subject to review by staff to ensure the staff member is notarizing documents he/she is permitted to notarize.
- E. Legal materials will be maintained for offender access and use at all adult DOC facilities, within designated locations.
- F. The DOC will provide access to legal reference materials via offender tablets and kiosks, which shall be made available to offenders at all adult DOC facilities.
- G. Procedures are in place at all DOC facilities to provide offenders reasonable access to legal materials and legal assistance.
1. An approved list of the legal reference materials provided on the offender tablets and kiosks is found in Section 3. Any additions or deletions to the resources identified in Section 3 are subject to approval by the DOC attorney.
  2. Offenders may pay a fee to receive a copy of necessary legal materials/forms and maintain these within 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 offenders with forms, documents, or legal materials from other states. It is the offender's duty to contact the courts within that state to request such materials or forms.
  5. Exceptions may be made for out of state boarders in SD DOC facilities.
  6. The DOC reserves the right to discontinue, or substitute select legal material subscriptions.

## 2. General Provisions

SECTION	SUBJECT	DOC POLICY	Page 3 of 5
Offender Legal Services	Offender Access to the Courts	1500-02	Effective: 10/01/2022

- A. Offenders assisting other offenders with legal matters shall do so voluntarily and may not receive any form of compensation. Offenders are permitted to assist other offenders with legal matters; however, offenders will not be permitted to possess the legal work of another offender outside the presence of the offender they are assisting. Offenders assisting other offenders with legal work must comply with all facility and DOC rules and regulations. The DOC shall take no affirmative steps to assist offenders in helping other offenders with legal claims. Offenders will not be provided any privileges ordinarily afforded to legal staff, even if the offender was an attorney before his/her incarceration.
1. Offenders requiring assistance may notify his or her respective ADA Facility Coordinator, in accordance with DOC policy.
  2. Offenders found charging for legal assistance provided, or bartering in exchange for providing legal assistance, or creating a safety or security concern, are subject to disciplinary action and may be precluded from assisting offenders with legal assistance in the future. No offender shall be allowed to assist another offender if the Warden or Associate Warden determines such action creates a safety risk.
- B. Offender complaints regarding legal assistance or legal materials must be addressed through the administrative remedy process.
- C. Offenders seeking judicial or administrative relief will not be subjected to reprisals or penalties because of their decision to seek relief.
- D. The cost of all legal photocopies will be five cents (\$0.05¢) per sheet. Offenders who are indigent will be permitted to make photocopies of legal materials for a value up to, but not exceeding, two dollars (\$2.00) 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. Offenders who do not have sufficient funds to pay for 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.
- E. If special circumstances warrant, an offender may be allowed to overdraw his/her commissary spending account by two dollars (\$2.00) per month for the purpose of obtaining legal copies.
1. Requests for such copies will be directed to an offender's unit team, who shall have authority to approve or deny such copies based on the threshold of a maximum overdraft for copies.
  2. An offender 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.

### **3. Legal Reference Books**

- A. The South Dakota Department of Corrections agrees to provide the following materials to offenders 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. United 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.

SECTION	SUBJECT	DOC POLICY	Page 4 of 5
Offender Legal Services	Offender Access to the Courts	1500-02	Effective: 10/01/2022

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.

#### **4. Legal Assistance for Qualified ADA Offenders**

- A. The DOC will make available to eligible ADA offenders, legal staff at each of its adult facilities. Facilities include Mike Durfee State Prison (MDSP), South Dakota State Penitentiary (SDSP) (includes Jameson Annex) South Dakota Women's Prison (SDWP) (includes Unit E), Sioux Falls Minimum Center (SFMC), Pierre Minimum Center (PMC), Yankton Minimum Center (YMC), and Rapid City Minimum Center (RCMC).
- B. Offenders may request assistance from legal staff by sending a completed ADA Request for Accommodation form to the ADA Facility Coordinator. The coordinator will verify the offender is eligible to receive assistance from legal staff. If determined eligible, the coordinator or designee shall promptly alert legal staff of the offender's request of legal assistance.
- C. Offenders eligible for legal assistance by way of legal staff and/or an offender typist, must meet one of the following criteria:
  1. Limited English proficient, as determined by DOC Education staff. For the purpose of this policy only, this means an offender who is unable to read, write, or speak English.
  2. Illiterate. For the purposes of this policy, this means an offender who is unable to read or write the English alphabet, as determined by DOC Education staff.
  3. Disabled. For purposes of this policy only, this means an offender who has a disability that prevents the offender from drafting pleadings or using an offender tablet or the kiosks. Offenders known to have a disability or who have requested an accommodation based on having a disability, are tracked within the Comprehensive Offender Management System (COMS).
- D. Notwithstanding any other provision relating to offenders assisting other offenders with legal materials, each facility shall provide through an offender job assignment, an offender typist position as needed. Duties shall include providing eligible offenders with assistance typing legal materials.

### **V. RESPONSIBILITY**

The Division of Prison Operations is responsible for the annual review of this policy and revising as necessary.

### **VI. AUTHORITY**

None.

### **VII. HISTORY**

September 2022  
July 2021  
July 2020  
June 2019  
July 2016  
July 2015  
July 2014  
July 2013  
August 2012  
July 2011

SECTION	SUBJECT	DOC POLICY	Page 5 of 5
Offender Legal Services	Offender Access to the Courts	1500-02	Effective: 10/01/2022

## **ATTACHMENTS**

1. DOC Policy Implementation / Adjustments