

1.1.A.5 Lawsuits

I Policy Index



Date Signed: 03/18/2019
Distribution: Public
Replaces Policy: 1A-12
Supersedes Policy Dated: 02/28/2018
Affected Units: All Units
Effective Date: 03/18/2019
Scheduled Revision Date: February 2020
Revision Number: 18
Office of Primary Responsibility: Senior Staff Attorney and DOC Administration

II Policy:

The attorneys for the Department of Corrections will monitor the status of all open lawsuits involving the DOC.

III Definitions:

None.

IV Procedures:

1. Notification of a Lawsuit:

- A. Each DOC institution and unit shall designate persons who will accept service of summonses and complaints. The persons designated may only accept service for current DOC employees. If non-DOC employees need to be served (DOH, DSS, food service contractor, etc.), the persons designated to accept service for DOC employees can assist by contacting an on-site representative for those entities but may not accept service on their behalf.
- B. When a summons and complaint is served, the person accepting service shall immediately scan and email all documents received, as well as a list of those defendants for whom service was accepted, to the following individuals:
 1. Secretary of DOC or designee.
 2. DOC Senior Staff Attorney.
 3. Attorney General's Office.
 4. Public Entity Pool for Liability/State Risk Management Office.
 5. Attorney at the South Dakota State Penitentiary (SDSP) if the summons and complaint are applicable to the adult institutional system.

- C. The person who accepts service shall make an entry on the Lawsuit Tracking Log ([Attachment 1](#)) indicating the date and time of service, who served the summons and complaint, a list of the defendants for whom service was accepted (not a list of all named defendants), and the name of the person who accepted service.
- D. The person accepting service may accept service from the U.S. Marshals, a sheriff's office, or process server.
- E. The DOC attorneys will maintain contact with the attorney defending the matter to remain informed of all significant actions and developments.
- F. The Senior Staff Attorney and Executive Director of the Public Entity Pool for Liability (Risk Management) will be notified when any institution or agency within the DOC receives a notice of intent to file a lawsuit per SDCL § 3-21 (See DOC policy 1.1.A.3 [Staff Reporting Information to DOC Administration](#)).
- G. If a *Writ of Habeas Corpus* (or any follow-up paperwork related to the *Writ*) is received by a DOC staff member, the staff member will scan and e-mail the documents to the DOC attorneys. The DOC attorneys will then forward the information to the Attorney General's office.
- H. Any other legal paperwork (notice of small claims action, notice of appeal, etc.) received by a staff member shall be immediately scanned and emailed to the DOC attorneys.
- I. Staff members are to comply with all matters regarding the defense of a lawsuit as directed by the attorney defending the lawsuit. This includes providing information to assist in the defense, providing information required pursuant to discovery requests, and testifying at depositions or trial.

2. Public Comment on Lawsuits:

- A. No DOC staff member may publicly comment, discuss, editorialize, or provide verbal or written statements, including statements of opinion pertaining to ongoing or current lawsuits involving the state or the DOC without prior authorization from the Secretary of Corrections or designee (See DOC policy 1.1.A.4 [Relationship with News Media, Public and Other Agencies](#)).
- B. This restriction does not apply to discussions with defense counsel or legal proceedings such as a deposition or testimony in court.

3. Lawsuit Reporting and Documentation:

- A. The Senior Staff Attorney will report monthly during the Metrics meeting on the status of active lawsuits involving the department.
- B. The lawsuit report will be updated as changes occur with pending cases. Information is stored in the Lawsuit Database.
- C. All settlement agreements will be saved to the Settlement Agreements folder located in the M-drive\DOC\Administration\Lawsuits folder.

V Related Directives:

SDCL § 3-21.

DOC policy 1.1.A.3 -- [Staff Reporting Information to DOC Administration](#)

DOC policy 1.1.A.4 -- [Relationship With News Media, Public and Other Agencies](#).

VI Revision Log:

February 2002: **Added** section on lawsuit database. **Revised** responsibility for monthly summary of lawsuits in monthly report. **Revised** "Central Office" references to "DOC Administration".

June 2003: **Revised** the policy statement. **Revised** the section on Notification of a Lawsuit to include more specific contact information.

April 2004: **Changed** the reference from Central Office Corrections Specialist to Policy and Compliance Manager throughout the policy. **Changed** "institution or agency within the DOC" to "DOC Unit".

March 2005: **Deleted** the requirement that a monthly summary of active lawsuits be included in the DOC monthly report by DOC Administration Staff. **Added** information on contacting the Policy and Compliance Manager if problems develop with the Citrix database. **Added** information on how to access the lawsuit database.

April 2006: **Added** notification requirements for lawsuits and writs. **Added** a section regarding public comment on lawsuits.

March 2007: **Clarified** notification of lawsuits only involves lawsuits that are served. **Added** language that the Policy and Compliance Manager will ensure the Secretary of Corrections and the DOC Senior Staff Attorney are provided a copy of a summons and complaint. **Added** the DOC Senior Staff Attorney as a contact person for SDCL 3-21 notices. **Added** additional contact duties on *Writs of Habeas Corpus*. **Added** reference to DOC policy 1.1.A.4.

March 2008: **Added** the procedure of who should be contacted when a summons and complaint is filed towards any DOC Unit and clarified that the CEO's contact for each facility is responsible for entering the lawsuit into the Citrix lawsuit database. **Clarified** the language in the Notification of a Lawsuit section by combining bullets. **Clarified** the CEO's designated contact person as a staff member of each facility.

February 2009: **Revised** formatting of policy in accordance with DOC policy 1.1.A.2. **Added** reference to only lawsuits pertaining to the adult system in ss (A1f of Notification of a Lawsuit).

February 2010: **Revised** formatting of Section 1. **Added** only lawsuits pertaining to the adult system with ss (A2e of Notification of a Lawsuit). **Revised** minor grammar in ss (A of Public Comment on Lawsuits). **Added** hyperlinks.

February 2011: **Deleted** individual names from SS 1 in section 1. a. b. c. e. f. and in SS 1. section 2.

April 2012: **Deleted** "non-public" and **Replaced** with "Public". **Deleted** "Policy & Compliance Manager" and **Replace** with "Senior Staff Attorney" in the policy index and throughout the body of the policy. **Deleted** "(Only lawsuits pertaining to the adult system" from Section 1 A. 1. f. **Deleted** 2. and a. - e. in Section 1. A. **Deleted** "contact person" and **Replaced** with "Senior Staff Attorney or the attorney at SDSP" in Section 2 A. 1. **Deleted** reference to "Citrix Program" throughout the policy.

March 2013: Reviewed with no changes.

March 2014: **Removed** reference to the "lawsuit database".

March 2015: **Reviewed** with no changes.

February 2016: **Added** "if the summons and complaint are applicable to the adult institutional system" in Section 1 A. 1. f. **Added** "without prior authorization from the Secretary of Corrections or designee" to Section 3 A.

March 2017: **Extensive** changes to the policy. **Added** Attachment 1.

March 2018: **Reviewed** with no changes.

February 2019: **Added** Section 3.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

03/18/2019

Date

Attachment 1: Lawsuit Tracking Log

Date	Time	Inmate	Delivered by Sheriff's Office or US Marshal	List of people served	Name of who accepted service