

1.1.A.5 Lawsuits

I Policy Index



Date Signed: 04/01/2021
Distribution: Public
Replaces Policy: 1A-12
Supersedes Policy Dated: 02/25/2020
Affected Units: All Units
Effective Date: 04/01/2021
Scheduled Revision Date: February 2022
Revision Number: 20
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 and Office of Risk Management](#)).
- 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 lawsuit report will be updated as changes occur with pending cases. Information is stored in the Lawsuit Database.
- B. 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 and Office of Risk Management](#)

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

VI Revision Log:

Removed revisions from February 2002-February 2010.

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.

February 2020: Reviewed with no changes.

April 2021: Added "and Office of Risk Management" to the policy title for 1.1.A.3 Staff Reporting Information to DOC Administration and Office of Risk Management to references throughout the policy.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

04/01/2021

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