



State of Indiana
Indiana Department of Correction

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**POLICY AND ADMINISTRATIVE
PROCEDURE**
Manual of Policies and Procedures

Title
OFFENDER ACCESS TO THE COURTS

Legal References (includes but is not limited to)	Related Policies/Procedures (includes but is not limited to)	Other References (includes but is not limited to)
IC 11-8-2-5(a)(8); 11-11-3-8(3); 11-11-5-4; 11-11-7-1	00-02-301; 02-01-102; 02-01-103; 02-04-101; 02-04-102; 03-02-101; 03-02-102	ACA: CO: 2-CO-3C-01;2-CO-5D-01; ACI: 4-4268; 4-4274; 4-4275; 4-4276; JTS: 3D-01; 3D-02; 3D-05

I. PURPOSE:

The purpose of this policy and administrative procedure is to establish guidelines for offender access to legal representation and the courts.

II. POLICY STATEMENT:

The Department of Correction shall ensure that each offender is provided with the opportunity to have access to legal representatives, including consular officials, and the courts to the extent required by statute, treaty, court order, rule or applicable policy or rule. Offenders shall be permitted to have confidential communications with their legal representative and the courts within the parameters established by law. In a similar manner, the Department shall ensure that each offender who is a foreign national has access to the diplomatic representative for his or her country of citizenship.

The Department shall not impose restrictions on visitation, correspondence, or telephone communications with legal representatives that would obstruct the availability of adequate legal representation, except as necessary due to security and manageability of the facility. Restrictions on access to the courts, legal counsel, personal legal papers and legal research materials shall be reasonable as necessary for the safety and security of the facility.

The Department shall afford an offender reasonable access to legal materials for the preparation and filing of legal documents. The Department shall provide the offenders with the ability to prepare, copy, and mail legal documents, either at the offender's expense or at the Department's expense in accordance with statute, court orders and Department policy.

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The Superintendent may suspend the rights presented in this policy upon the declaration of an emergency that threatens the general safety and security of the facility.

An offender shall not be subject to reprisals or penalties due to communication with a legal representative or a court, unless the communication violates the law or is an attempt to circumvent Department policy.

III. DEFINITIONS:

For the purpose of these administrative procedures, the following definitions are presented:

- A. **DIPLOMATIC REPRESENTATIVE:** An employee or agent of a foreign nation whose principle place of employment is that nation's embassy or consulate(s).
- B. **INDIGENT OFFENDER:** An offender who has a Trust Fund account balance of less than fifteen dollars (\$ 15.00) on the day of request and has not had a total of more than fifteen dollars (\$ 15.00) credited to the Trust Fund account in the preceding thirty (30) days.
- C. **LAW LIBRARY:** An area set aside for books and reference material related to local, state and federal law which offers space for review and equipment necessary for preparing and copying legal documents.
- D. **LEGAL CORRESPONDENCE:** Correspondence mailed directly from or to a court, a judge or an attorney, whether it is an attorney in a criminal or civil action involving the offender, including opposing counsel, and which has been identified as legal mail. (This correspondence includes mail to the embassies/consulates of foreign nations by foreign nationals, organizations, such as the American Civil Liberties Union [ACLU], Indiana Civil Liberties Union [ICLU], Legal Services Organization [LSO] or the Public Defender Council or Notices of Tort Claim sent to the Commissioner.)
- E. **LEGAL REPRESENTATIVE:** A licensed member of the legal profession, retained on behalf of an offender or appointed by a court, or a representative as designated in writing by an attorney, such as a paralegal, representing the offender in a criminal or civil case.
- F. **OFFENDER:** An adult or juvenile person committed to a department of correction (federal, state, or local) and housed or supervised in a facility either operated by the department of correction or with which the department of correction has a contract, including an adult or juvenile under parole supervision; under probation supervision following a commitment to a department of correction; in a minimum security assignment, including an assignment to a community transition program.

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IV. OFFENDER ACCESS TO THE COURTS:

All offenders shall be provided the opportunity to have access to the judicial system to present issues, including:

- A. The legality of their conviction or confinement;
- B. Redress for perceived illegal conditions or treatment while under correctional control;
- C. Remedies related to civil issues; or,
- D. Any rights protected by law.

The opportunity for offenders to have access to the judicial system permits offenders to contact the courts by various methods including, but not limited to:

- Personal contact with legal representatives;
- Personal contact with state and federal courts; and,
- Unrestricted and uncensored correspondence with their legal representatives and the courts.

V. CONSULTATION BY LEGAL REPRESENTATIVES:

Offenders shall be allowed visits from legal representatives. Visits by legal representatives shall be in accordance with the administrative procedure for Policy 02-01-102, "Offender Visitation."

Offender access to legal representatives shall include:

- A. Attorneys retained by or for an offender, or attorneys who are authorized by an offender, in writing, to visit for the purpose of legal consultation;
- B. Public Defenders or attorneys appointed by a court; or,
- C. Representatives (e.g., paralegals) of a retained or appointed attorney.

Visitations by legal representatives shall be during regular business hours. The number and length of visits by legal representatives shall be unrestricted provided that the visits are at reasonable times and consistent with the security and staffing of the facility. The Superintendent or designee may approve special visits by legal representatives. Visits by legal representatives for business purposes shall not be considered as visits for purposes of the offender's visiting schedule.

The facility shall make a reasonable effort to ensure offender visits with legal representatives are held in private or remain confidential. Visits with legal representatives shall not be monitored or recorded. Staff may maintain visual contact with an offender and the legal representative; however, staff shall not listen to the conversation and shall not interfere with the visit, other than to maintain the safety and security of the facility and those persons involved.

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The Superintendent or designee may restrict or deny a visit by a legal representative. Restrictions or denials shall be documented after a complete examination of the facts indicates the visit presents a threat to the security or orderly operation of the facility. The offender shall be advised of the denial or restriction of the visit in the manner as prescribed in the administrative procedure for Policy 02-01-102, "Offender Visitation."

VI. DIPLOMATIC ACCESS TO FOREIGN NATIONAL OFFENDERS:

When an offender who is not a citizen of the United States of America is arrested or detained, that offender must be advised of his/her right to have consular officials notified. In some cases, the nearest consular office must be contacted regardless of the foreign national offender's wishes. When a foreign national is received by an intake unit, staff shall determine the foreign national's home country. The Superintendent or designee shall contact, as soon as possible, the Division of Legal Services and provide information on the foreign national's identity, native country, and details of the commitment. It shall be the responsibility of the Division of Legal Services to notify the nearest embassy or consulate of that country of the foreign national's incarceration, if appropriate.

An offender who is a foreign national shall be granted access to diplomatic representatives from his/her native country upon request. Diplomatic representatives displaying appropriate identification shall be granted access to foreign national offenders of that nation. Diplomatic representatives shall be granted the same access as legal representatives indicated in Sections V and VII.

Correspondence to the embassies/consulates of foreign nations by foreign national offenders shall be considered legal correspondence.

VII. LEGAL CORRESPONDENCE AND TELEPHONE CALLS:

Legal correspondence shall be materials as established in the administrative procedure for Policy 02-01-103, "Offender Correspondence." The procedures for the receiving and sending of legal correspondence as established for Policy 02-01-103 shall apply. Once the offender is given his/her legal correspondence, it shall be handled in accordance with the procedures established for Policy 02-01-101, "Offender Personal Property."

Offenders shall be allowed unrestricted access to legal representatives and courts through the mail. The free stationery and envelopes issued to offenders as provided in the administrative procedure for Policy 02-01-103 may be used for legal mail. Offender legal mail shall not be delayed simply due to the fact that the offender does not have sufficient funds in the Inmate Trust Fund account to pay for the postage. If an offender is indigent, the facility shall mail legal

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correspondence without charge to the offender. In cases where an offender is not indigent but does not have sufficient funds to pay for postage for legal mail, the facility shall determine the amount of funds available in the offender's Inmate Trust Fund (i.e., funds not already dedicated to paying court filing fees, medical co-payments, and restitution/court orders). Any available funds in the offender's account shall be applied towards the cost of the postage. The offender shall sign an Inmate Trust Fund transaction form (State Form 35720 "Request for Remittance") for the balance of the cost of the postage. The facility shall deduct the amount indicated on the transaction form as soon as any available funds are applied to the offender's account. The offender must show that he/she is either initiating litigation or has pending litigation and that the mailing of the legal correspondence is necessary for this litigation. In these cases, the same procedures as indicated above shall be followed. Mail sent by an offender to numerous attorneys in an attempt to find an attorney to represent the offender shall be at the offender's expense. If postage costs for legal mail cannot be recovered from an offender, the facility may take funds from the Inmate Recreation Fund to recoup the loss, if such funds are available. The amount of postage provided shall be the amount necessary to mail the correspondence at the current rate for first class postage. It shall be the responsibility of the offender to pay for any mail that is sent certified or insured.

The facility shall not read, censor, copy, or unreasonably delay any legal mail sent to or from an offender. If the facility determines after opening the mail in the presence of the offender that it is not legal mail, in whole or in part, then the mail may be read and that portion which is not legal mail may be censored or delayed. When mail of this sort is read, copied, censored, or delayed, State Form 11984, "Notification and Report of Action Taken on Correspondence," shall be completed and a copy given to the offender, in accordance with the administrative procedure for Policy 02-01-103.

Offenders shall be allowed to make telephone calls to legal representatives. These telephone calls shall not be monitored or recorded. Provisions made for access to telephones to communicate with legal representatives shall be in accordance with Policy and Administrative Procedure 02-01-105, "Telephone Privileges."

VIII. ACCESS TO LAW LIBRARY:

Offenders shall have access to legal reference material to assist offenders in access to the courts. For those facilities with a law library, ATTACHMENT I provides a list of the type of materials which shall be included in the law library. State Form 19704, "Law Library Request," shall be used by offenders to request access to the law library. The facility shall establish specific hours of law library operation. Available hours shall consider the work and housing assignments of offenders, whenever possible; however, the safety and security of the facility shall be the primary consideration.

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Offenders housed in restrictive status housing units, protective custody, a lockdown unit, an idle housing unit, or whose movement is restricted shall be allowed access to legal reference material.

Facilities without Law Libraries (e.g. Level I facilities, Work Release Centers and juvenile facilities) shall provide a process that will allow offenders to access a law library or a suitable substitute, such as a public library or another department facility's law library. Facilities that do not have ready access to another facility law library shall use resources in the community to allow offenders access to legal materials. If an offender has a constant need to have access to a law library consideration shall be given to transferring the offender to a facility which maintains a law library.

When an offender requests legal reference materials, the offender shall submit the request in sufficient time to allow law library staff to obtain the necessary materials. The offender is to use State Form 19704, "Request for Law Library," to document such requests. The Department shall not be responsible for the offender not receiving requested legal materials in a timely fashion if the offender does not allow the law library sufficient time to obtain and provide the requested materials. The facility shall allow an offender to review legal cases without charge. The facility may develop a "loan" system in which offenders may be provided a copy of one (1) or more legal documents. Failure of the offender to return "loaned" documents in accordance with the facility's procedures may result in the offender being charged the cost of reproducing the copies. The facility shall attempt to provide the offender with requested material consistent with operational needs of the facility.

A Facility Directive shall be developed addressing access to the law library, including the manner and time frame the offender has access to the law library or legal materials.

IX. ACCESS TO NOTARY PUBLIC SERVICES:

Facilities shall establish a schedule which ensures offenders in general population with reasonable access to the services of a notary public within 72 hours of request, excluding weekends and holidays. Offenders confined to special housing, restrictive status housing, or protective custody shall be provided notarial services at least two times per week. Requests for access to notarial services shall be made by submitting State Form 19704, "Request for Use of Law Library."

X. MATERIALS AND SUPPLIES:

The law library shall have equipment (e.g. desks, chairs, typewriters, copy machines, etc.) and supplies (e.g. paper, forms, pens, pencils, etc.) to prepare legal documents. The facility shall use the Offender Recreation Fund to purchase equipment and supplies to operate the law library.

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Offenders shall be permitted to make copies only of court documents that are necessary for either initial or pending litigation, including copies of pleadings, briefs, and other documents necessary to submit to a court. Offenders shall pay for the cost of making copies; such cost shall be determined by the amount charged for copies to private citizens established by the Department of Administration.

Offenders who are indigent shall receive copies of legal documents free of charge in accordance with this policy and administrative procedure. In the event the facility receives a court order indicating the offender's indigent status is no longer recognized by the court, the offender will no longer be considered indigent the Facility for the purpose of this policy and administrative procedure. In those cases where an offender is not indigent but does not have sufficient funds in the Inmate Trust Fund to pay for necessary copies of pleadings or other documents to be filed with a court, the facility shall provide the offender:

- A. Two (2) copies for the court or another amount as required by the court;
- B. One (1) copy for each opposing party or their legal representative; and,
- C. One (1) copy for the offender's records.

The offender must show proof that he/she has pending litigation or is attempting to file new litigation. If the request is to make copies of documents to include with the offender's submission to the court, the offender must show that the court has requested these copies. If the offender is not indigent but does not have sufficient funds to pay for requested copies, the facility may deduct any amount of funds available in the offender's Inmate Trust Fund and require the offender to sign a Trust Fund transaction form (e.g., Request for Remittance) for the balance of the copying costs. The facility shall apply this transaction form to the offender's Inmate Trust Fund account as soon as the offender receives any available funds (i.e. funds not already dedicated to paying court filing fees, medical co-payments, or restitution /court orders). If the facility cannot collect these funds from the offender, the cost of these copies may be absorbed by the Inmate Recreation Fund, if adequate funds are available.

While facilities may make typewriters available to offenders, it is not necessary for offenders to have access to personal typewriters or word processors. Offenders acting *pro se* may be permitted by the courts to submit handwritten pleadings and briefs. If the offender submits a handwritten pleading or brief, the courts require that it be legible and that it complies with all other applicable rules of the court.

Even though typewritten pleadings and briefs are generally not required, cases may arise where a particular court issues an order indicating that a pleading or brief must be typewritten. If an offender provides the facility with such an order or with other proof that the pleading or brief must be typewritten, the facility shall ensure that the offender is provided access to a typewriter. This access may be through the offender Law Library or through another source within the

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facility. It will not be necessary to allow the offender to keep the typewriter in the offender's living area or to allow the offender to purchase a typewriter.

While facilities may make word processing computers available to offenders, the facilities are under no obligation to save an offender's legal documents on the facilities' servers or hard drives.

XI. REPRISALS FOR SEEKING JUDICIAL RELIEF:

Staff shall impose no reprisal or penalty on an offender because of the offender's decision or efforts to seek judicial relief. For the purposes of this policy and administrative procedures, the filing of a violation of Policy 02-04-101, "The Disciplinary Code for Adult Offenders," as provided in Procedure IX of this policy and administrative procedure shall not be considered a reprisal or penalty for seeking judicial relief.

XII. FRIVOLOUS, UNREASONABLE OR GROUNDLESS CIVIL CLAIMS:

Offenders who file frivolous, unreasonable or groundless civil claims in a state (pursuant to IC 35-50-6-5) or federal (pursuant to the Prisoner Litigation Reform Act) court shall be charged with a violation of Policy and Administrative Procedure 02-04-101, "The Disciplinary Code for Adult Offenders." It shall be necessary for the court to indicate in the court records that the case is being dismissed due to being frivolous, unreasonable or groundless. In those cases, when the facility receives the appropriate documentation from the court, the facility shall charge the offender with a violation of Code 243, a Class B offense.

XIII. COURT FILING FEES:

Federal courts will assess filing fees against offenders who file civil actions. Additionally, state courts may require an offender to pay a filing fee for civil actions. When the offender attempts to proceed *in forma pauperis* in a federal court, the court will order the offender to provide a copy of the offender's Inmate Trust Fund account statement, if available, for the six (6) month period immediately preceding the filing of the action. The offender shall be required to make an initial payment of either the full filing fee or any amount ordered by the court.

It shall be the responsibility of the offender to notify the facility to prepare a copy of the offender's Trust Fund account statement whenever so requested by the court. The offender shall be required to provide the facility with a copy of the order requesting the account statement for the preceding six (6) months. The facility shall comply with this request as quickly as possible, noting that the offender has thirty (30) days within which to comply.

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Following the review of the offender's Trust Fund account statement for the preceding six (6) months, the court will notify the facility what the initial payment of the filing fees shall be. It shall not be necessary for the offender to sign a "Request for Remittance" or similar form for the facility to withdraw the designated monies from the offender's account for the payment of court ordered filing fees. The facility shall ensure that the offender is notified that the funds have been withdrawn from the offender's Trust Fund account in accordance with the court order.

Following the initial partial payment, the court may order the facility to make monthly payments until the full amount has been paid. These monthly payments may consist of either 20% of the preceding month's income credited to the offender's Trust Fund account or an amount specified by the court for each month in which the offender has more than \$ 10.00 credited to the Inmate Trust Fund account. The facility shall determine the total amount of income credited to the offender's Trust Fund account during the preceding month. Whenever the offender's Trust Fund account exceeds ten dollars (\$ 10.00), the facility shall send the amount specified by the court to the court until the full fee is paid. The facility shall ensure that the offender's name, the title of the cause and the cause number is indicated on any check sent to the court.

In those cases where an offender has multiple cases filed, the payments shall be considered cumulative. (i.e., the offender will be required to pay 20% of the preceding month's income, if more than \$ 10.00 is credited to the offender's Inmate Trust Fund account, for each of the cases filed.) If the offender has more than five (5) cases pending at anyone time, any additional filing fees will be held in abeyance until one of the filing fees is paid in full. Once one of the filing fees has been paid in full, the facility will begin paying the filing fees for first case received after the five (5) cases. Payments in excess of the five (5) cases may be made if an offender has sufficient funding credited to his/her Inmate Trust Fund account.

When an offender who is required to make partial payments of court ordered filing fees is transferred to another facility, the sending facility shall ensure that information is provided to the receiving facility regarding these payments. Minimally, this information shall include notification that filing fees are being paid and the cause number(s) for the case(s). Additionally, this information shall include the total amount of the filing fees and the amount that has been paid as of the date of transfer. Also, the sending facility shall notify the Clerk of the court that ordered the filing fees that the offender has been transferred and the name of the new housing facility and its address. If the offender is released from the facility to parole, probation, Community Transition, or discharge, the facility shall notify the Clerk of the court as to the offender's status and the last known address of the offender.

The payment of court filing fees shall take precedence over all other deductions from the offender's account. An offender shall not be considered indigent solely due to the requirement that the court filing fees must be deducted monthly from the Trust Fund account. However, the facility shall ensure that the offender has the opportunity to obtain the minimum necessary

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hygiene items and/or over-the-counter medications through purchase from the commissary or from the facility in accordance with Policy 02-01-104, "Offender Grooming, Clothing and Personal Hygiene."

XIV. APPLICABILITY:

This policy and administrative procedure is applicable to all Department facilities, staff, and offenders, except those offenders on Parole, and to those facilities that are operating under a court order or consent decree that mandates different procedures.

signature on file
Bruce Lemmon, Commissioner

Date