

# **State of Iowa Department of Corrections**

## **Policy and Procedures**

Policy Number: IO-OR-05

Applicability: DOC

Policy Code: Public Access

Iowa Code Reference: 13B.7

Chapter 3: INSTITUTIONAL OPERATIONS

Sub Chapter: OFFENDER RIGHTS

Related DOC Policies: AD-GA-11, OP-MTV-01, OP-MTV-03

Administrative Code Reference: N/A

Subject: INCARCERATED INDIVIDUAL LEGAL ACTIVITIES

PREA Standards: N/A

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Authority:

### **1. PURPOSE**

To describe the legal resources that shall be available to incarcerated individuals confined in Iowa Department of Corrections (IDOC) institutions.

### **2. POLICY**

It is the policy of the IDOC to provide confined incarcerated individuals with access to the courts and legal services as may be necessary to safeguard their statutorily and constitutionally mandated rights.

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### **3. DEFINITIONS**

A. Access to Courts - Federal or state judges, law clerks, and officers of the court including prosecuting attorneys, court administrators, clerk of court, ombudsman's office or attorneys.

B. Indigent- An incarcerated individual who has less than \$6.00 in his/her account, has not exceeded a \$6.00 balance in his/her account in the last thirty days and whose net revenue has not exceeded \$6.00 in the last thirty days.

C. See IDOC Policy **AD-GA-16** for additional Definitions.

### **4. PROCEDURES**

#### **A. Access to Courts**

Incarcerated individuals confined in IDOC institutions shall be afforded access to the courts, counsel, and other resources adequate to enable them to pursue necessary legal activities.

1. Institutions shall have procedures permitting incarcerated individuals to have access to courts. The procedures shall include:

A guideline for use of mail, visits, and use of equipment and supplies.

2. Electronic Law Library (ELL)

- a. ELL stations are placed throughout institutions at the discretion of the Warden.
- b. ELL stations will have a printed resource guide and laminated instructions explaining databases and overviews of content within each database.
- c. Incarcerated individuals can also access ELL training materials in the form of online help screens. The screens provide research instructions and tips on navigating the databases.

- d. ELL stations will be restricted to research and read-only functions with no internet connectivity or printing.
- e. Incarcerated individuals wanting printed copies of ELL material may contact the State Law Library or other outside resources. Incarcerated individuals are responsible for copying fees.
- f. There is no "save" function or "back" button to allow incarcerated individuals to track the history of their research. Incarcerated individuals must make written notations of their searches prior to logging out because each "log-in" begins a new research session.
- g. Incarcerated individuals may be required to sign up to allow equal opportunities for all incarcerated individuals to use the kiosk.
- h. Incarcerated individuals who provide written proof of a pending court deadline will be given priority to access the ELL stations. However, incarcerated individuals are required to manage their deadlines, so there is ample time for ELL access to be scheduled by institutional staff. Failure of the incarcerated individual to do so will be taken into account by institutional staff whose primary responsibility is to afford all incarcerated individuals an opportunity for ELL access.
- i. ELL sessions may be limited as necessary by institutional staff to afford other incarcerated individuals access, but an incarcerated individual will normally be allowed to conduct research for up to 45 minutes, at which time the incarcerated individual will be automatically logged off.
- j. Incarcerated individuals who display inappropriate behavior while accessing the ELL station may be immediately removed and institutional disciplinary procedures will be initiated.

### 3. Legal Material

The ELL stations will provide incarcerated individuals the following legal resources:

- a. Iowa case law
- b. Iowa Annotated Statutes

- c. Iowa Administrative Rules
- d. 8<sup>th</sup> Circuit case law
- e. U.S. Supreme Court Reporter decisions
- f. United States Code Annotated
- g. Federal Practice and Procedure
- h. *Sherpard's* Citations Service – U.S., Federal, Iowa
- i. Federal Habeus Corpus Practice and Procedure
- j. Constitutional Rights of Prisoners
- k. Bender's Federal Forms
- l. Iowa Court Rules
- m. Iowa Constitution
- n. U.S. Constitution
- o. Federal Court Rules

#### 4. Incarcerated Individual ELL Assistants

- a. The Warden will designate incarcerated individuals to act as an incarcerated individual ELL Assistant. The number of incarcerated individuals designated to act as ELL Assistant will be at the discretion of the Warden and will be based on the incarcerated individual population and institutional need.
- b. The incarcerated individual ELL Assistant will be trained by the ELL provider, with the assistance of the Office of General Counsel.
- c. Incarcerated individual ELL Assistant will be responsible for assisting other incarcerated individuals with locating information on the ELL stations and shall be prohibited from giving their personal opinions regarding any incarcerated individual's case.

- d. Incarcerated individual ELL Assistant will be prohibited from receiving compensation for any legal assistance given, other than the institutional allowance for serving as a law clerk.
  - e. Incarcerated individual ELL Assistant will not type forms or letters for other incarcerated individuals or provide any other form of legal assistance.
  - f. Incarcerated individual ELL Assistant who violate these restrictions may be removed from their duties and subject to discipline.
5. Visits with attorneys and bona fide legal assistants (certified by an attorney as being qualified and under their supervision).
6. One incarcerated individual, not designated as a ELL Assistant, may assist another with in-house legal research/document preparation and is subject to the following restrictions:
- a. Incarcerated individual may not be compensated for such assistance.
  - b. Incarcerated individual must be present when assisting another incarcerated individual.
  - c. Incarcerated individual shall not be allowed to possess another incarcerated individual's legal material.

## **B. Law Books**

An incarcerated individual may retain in his/her possession personally owned law books that have been searched by staff, provided that permissible property levels are not exceeded. Department legal services established in IDOC Policy **AD-GA-11**, *Legal Assistance for Staff*, are not available to incarcerated individuals, but the IDOC's General Counsel shall oversee the incarcerated individual legal access program.

## **C. Visits**

1. A confidential legal visiting area shall be identified where an incarcerated individual may discuss legal matters privately with an attorney or

authorized paralegal when an attorney has certified in writing as to the status of that paralegal.

2. An incarcerated individual must agree to a legal visit and may decline to see an attorney making a request for a visit.
3. Limitations on attorney visits shall be imposed only in rare cases after a complete factual examination clearly indicates that such a visit presents a threat to the security of the institution and after consultation with IDOC General Counsel.
4. Visiting hours for attorneys shall be during regular visiting room hours. The Warden or Designee may approve special visiting hours.
5. The attorney visiting area shall be under the general supervision of staff. The supervising officer shall be able to visually observe the conduct of the visit without monitoring or recording of the discussions.

#### **D. Telephone Access**

1. Telephone access to attorneys shall be in accord with IDOC policy **OP-MTV-03**, *Incarcerated Individual Access to Telephones*.
2. No properly placed attorney/client phone call shall be monitored, other than verifying a legal call.
3. Staff shall advise incarcerated individuals in the orientation program and through the orientation handbook of the means of obtaining an unmonitored attorney phone call.
4. Incarcerated individuals may contact the ELL provider with research questions by dialing 1-866-293-4261 and providing account number 0099770643. Any misuse of the telephone will result in immediate disciplinary action including, but not limited to, this research number being removed from your call list.

#### **E. Correspondence**

Correspondence shall be permitted between incarcerated individuals and counsel properly identified as such without any review by staff other than inspection for contraband. IDOC Policy **OP-MTV-01**, *Incarcerated Individual Correspondence*, regulates this practice.

## **F. Personal Legal Matters**

Legal material of a personal nature may be retained by an incarcerated individual in the housing unit, subject to reasonable limitations on volume relating to safety and sanitation.

## **G. Oaths and Personal Legal Materials**

1. Each institution shall have at least one employee on its staff that is qualified under the laws of the state to administer oaths and acknowledgments (Notary).
2. If casework staff are statutorily or regulatory provided that authority, no additional personnel resources are required.
3. Where no sworn or affirmed statement is needed to file legal documents, this requirement is null.
4. An incarcerated individual's attorney who is otherwise qualified to do so may provide this service to a client during a legal visit.
5. Where non-case management staff members are used to satisfy this requirement and those personnel are not available readily to the incarcerated individual population, a system shall be established that provides prompt access to those services by written request. Such a request shall generally be honored within two working days after receipt, unless a compelling court deadline can be shown.

## **H. Mail Service**

An incarcerated individual may obtain, at personal expense, registered or certified mail service of process upon a demonstration that this manner of service is required to preserve a legal right or course of redress.

## **I. Indigent Status-Legal Correspondence**

1. An incarcerated individual declared "Indigent" may be granted financial assistance for legal correspondence as needed.

2. If an incarcerated individual is determined to be indigent, the incarcerated individual may receive up to \$3.50 credit to purchase supplies for legal correspondence (writing utensil, paper or legal pad, stamped envelopes).
3. The incarcerated individual shall sign a store order to allow recovery of supply charges upon a deposit into the incarcerated individual's account.
4. The incarcerated individual's spending record may be considered prior to granting future credits.
5. The Warden or designee must approve any financial credit of more than the \$3.50 limit.