

	DEPARTMENT OF PUBLIC SAFETY CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: DEC 22 2009	POLICY NO.: COR.12.02
		SUPERSEDES (Policy No. & Date): COR.12.02 (4/20/94); COR.12.07 (1/14/93); COR.12.08 (10/01/2002); COR.12.11 (6/28/93); COR.12.12 (6/01/94)	
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1.0 PURPOSE

To delineate the legal resources that shall be made available to inmates, and establish guidelines for the access to these resources.

2.0 REFERENCES AND DEFINITIONS

.1 References:

- a. Departmental Policies and Procedures (P&P) COR.08.04, Notice of Laws Relating to Contraband; and COR.15.02, Correspondence.
- b. Docketed Status: This status is reached when an inmate provides documentation to Department of Public Safety (PSD) staff that the inmate has an active lawsuit currently filed in court.

.2 Definitions:

- a. Indigent Inmate: An inmate who has a zero balance in his/her trust account during the previous 30 days.

3.0 POLICY

The Department shall afford inmates a right of access to the courts. This right shall be provided by ensuring reasonable access to legal materials or legal counsel.

4.0 PROCEDURES

- .1 The Department shall afford inmates reasonable opportunity to prepare legal documents and reasonable access to legal materials, legal counsel, and to the courts. The inmate's correctional program shall continue without undue disruption by legal concerns except in those instances where inmates are confronted with imminent deadlines established by the court in which inmates' legal actions are being heard. In such instance, correctional program activities may be suspended while the inmate pursues their legal claims.
- .2 Facilities shall permit the inmate access to legal assistance provided that security operations are not disrupted and unreasonable demands are not

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imposed on the facility's resources. Facilities shall also ensure within reason that inmates who are illiterate, uneducated, or indigent have equitable access to seek assistance in preparing their legal materials.

- .3 Where complaints are filed by an inmate against certain conditions or practices of correctional control or other governmental authorities, branch administrative personnel shall recommend that inmates seek recourse under the Inmate Grievance Process prior to filing a complaint with the Ombudsman's office, courts, or other legal counsel. However, the inmates have a right to file litigation or a complaint with the Ombudsman any time they feel it necessary.
- .4 No inmate shall be penalized for seeking or for gaining access to the courts or legal services.
- .5 The Wardens shall establish procedures whereby the inmate shall have access to:
 - a. **Notary public services.** Facilities are no longer required to provide notary public services to inmates filing claims/documents with the courts or other agencies. Inmates who are preparing their pleadings/petitions challenging their criminal convictions, their custody or the condition of their confinement only need to include a signed declaration in federal court. In state court, inmates can submit a signed declaration in lieu of an affidavit. However, for the following categories, inmates must make arrangements through the facility to schedule outside visits of private notaries (at inmate's expense):
 - 1) personal real estate transactions
 - 2) legal guardianship
 - 3) power of attorney
 - 4) other civil matters
 - b. Any legal reference materials kept in the facility's library; and
 - c. List of legal agencies and procedures for contacting such services that are available to the inmate; e.g.:
 - 1) Public Defender's Office,
 - 2) Ombudsman's Office, and
 - 3) Private and public pro bono organizations.
- .6 The PSD Library Services Officer (LSO) shall set up a system to coordinate and provide inmate access to facility law library. All facilities shall maintain

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adequate legal collections. All facilities shall use form PSD 8280 (see attachment) when an inmate requests to use the Law Library. The LSO shall maintain a filing system of all inmate requests to utilize the Law Library.

- .7 Legal materials shall be made available for inmate use.
- a. Library staff will prepare and distribute the weekly schedule to inform inmates and facility staff on specific access dates and times.
 - b. Only legal materials may be submitted for copying. Facility/library staff shall review all legal materials submitted for copying. Depending on equipment and staffing constraints, every effort shall be made to complete copying of bona fide legal materials in a timely manner. However, it is the inmate's responsibility to submit timely photocopy requests. Generally, three working days shall be required for photocopying, and inmates are required to plan accordingly.
 - c. Facilities with heavy inmate copying demands may restrict copy service to a maximum of (30) copies per day per inmate (again depending on equipment and staffing constraints).
 - d. Inmates shall be required to pay for the costs of copying legal material. Copying charges for legal materials are \$.25 per page and \$.50 for a two-sided document. If an inmate is indigent, their account shall be debited until some future time when they have adequate money in their account.
 - 1) All requested photocopies must directly relate to litigation in which the inmate is proceeding.
 - 2) The Library will provide inmates with three copies of their completed application to precede In Forma Pauperis (IFP) supporting documentation and order. After inmates receive they're assigned court number and have the approved IFP, then they will receive all necessary copies for distribution to named defendants (no Jane Doe or John Doe).
 - 3) Material not intended to be filed with the court does not impact on the inmate's right of access to the court and need not be photocopied.
 - 4) Inmates shall be required to reasonably substantiate that the requested photocopying is directly related to a docketed case and may not avoid this by a claim of confidentiality. Library staff will

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consult with the Attorney General's Office on questionable photocopying inquiries

- .8 Purchase, Possession, and Disposal of Law Books and Other Legal Materials by Inmates.
- a. If inmates have the financial means to purchase law books, they shall be allowed to do so. It is inappropriate for a Branch Administrator to make the determination that the specific material sought by an inmate is not relevant to the inmate's case. If there appears to be clear and compelling reasons to disallow a purchase, library staff in conjunction with the Corrections Programs Services Administrator shall be consulted before a final determination on the matter is made.
 - b. Law books and other materials shall be procured from the primary source of supply; i.e., the publisher in the case of law books, the clerk or judge of the proper court in the case of court documents.
 - c. An inmate may donate legal materials to the PSD collection of legal materials. Branches shall notify the PSD's Library Services Officer of the proposed donation to decide in which branch library the donated material should be placed.
 - d. Branch facility regulations may limit the accumulation of law materials within the confines of an inmate's cell or unit only to the extent necessary due to space limitations, fire hazard, and smuggling problems.
 - 1) Before action is taken to remove excess materials, the inmate shall be given the opportunity to donate them to the facility library or to some other acceptable done
 - 2) No restraints are to be placed upon the possession of legal materials which would, in effect, deny the inmate reasonable access to the courts.
 - 3) Legal material in the possession of inmates is subject to the regulations governing the prevention and control of contraband.
- .9 Preparation of Legal Materials by Inmates.
- a. Inmates shall be allowed to have a reasonable amount of time to prepare their documents. However, if a facility cannot accommodate all inmates

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requesting maximum law library time, then the hours granted shall be as follows:

- 1) Inmates shall be allowed a minimum of one (3) hour session per week.
- 2) The possibility of (3) additional hours of access may be provided to inmates with verified lawsuits that are still active in court (depending if scheduling permits).
- 3) If an inmate is illiterate, non-English speaking, or has any other verified inability to complete a legal claim, the inmate may request assistance through the Warden. Upon request, the Warden may designate another inmate to assist the inmate requesting assistance.

- b. Legal documents should always be forwarded without delay to the proper address or facility. If the inmate is released, the documents shall be forwarded to the last known home address on file. These documents are to be sent unhindered as privileged mail.
- c. Inmates in segregation shall be given the opportunity to work on their legal matters, and be given access to legal reference materials to the same extent as those persons in the general population of the branch facility.

.10 Use of Typewriters.

- a. Both the Hawaii and the federal district courts accept handwritten documents making the use of typewriters discretionary by the Department depending on funding availability.

.11 Access to Courts or Legal Assistance.

- a. Each inmate shall be afforded the opportunity to consult with legal counsel of his or her choice at any reasonable time. It is necessary for the inmate to indicate to the facility the name or names of their personal attorney. In all cases, the burden is on the attorney and/or inmate to provide sufficient information to corroborate the allegation that the attorney actually represents the inmate.
- b. Attorney Visits.
 - 1) Attorneys shall be advised by the facility to give prior notice of their

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intent to visit an inmate outside of regular visiting hours. Attorneys should be encouraged to visit their clients during the normal visiting hours set by a facility. Each facility should establish contingency plans for necessary attorney visits during the evenings or weekends where there is an emergent situation with the inmate's case. Attorneys shall be required to furnish their active bar number for identification purposes whenever visiting or making appointments for visits outside of the regular visiting hours.

- 2) Attorneys and all their belongings and equipment are subject to search for contraband upon entry to a facility. Attorneys must show documentation they are attorneys prior to their admission into the facility.
- 3) All inmate and attorney visits shall be in an area where the attorney client privilege can be honored, but that staff may keep visual contact with the inmate without monitoring the conversation.
- 4) Attorney visits shall not be counted as one of an inmate's regular visits.
- 5) Tape recordings may be used by an attorney during a visit with an inmate client provided that the attorney provides notice to the facility in advance of the visit of his plans to use a recording/player device. Any other equipment that an attorney believes is required during the inmate visit must be cleared in advance with the facility before the attorney will be allowed to bring the equipment in.
- 6) Any attorney that does not comply with the rules and regulations of the department or of the facility may be subject to restrictions imposed by the Director. These restrictions may include not being able to call or visit a facility for violations that endanger the security or orderly operation of the facility. A list of rules for attorneys will be posted at every facility and will also be available upon request at any facility.

c. Correspondence.

- 1) Correspondence addressed to the courts or an attorney shall be treated as privileged mail. Refer to Departmental policy COR.15.02, Correspondence.

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d. Telephone Calls.

- 1) Inmates shall request permission in writing to communicate by telephone on legal matters. The request shall be addressed to the Warden. The request must explain the need to communicate by phone in lieu of using other means of court access such as personal visits by their attorney, communication by mail, or use of the law library for research. If the inmate demonstrates a justifiable need to use a telephone, they shall be allowed to do so. The purpose of this procedure is to provide guidance to the inmate in considering alternative means that are available for access to the courts instead of a telephone, which can become a costly means of court access.
- 2) Telephone calls on legal matters shall generally be restricted to no more than three calls per week (this includes local and long distance calls). Each telephone call may be limited to ten minutes duration. If a situation arises in the inmate's case that warrants more than three calls per week, the Warden must approve any additional calls after reviewing the inmate's situation.
- 3) *Pro se* inmates shall receive no special dispensation from this provision.
- 4) They shall be provided the same means of access to the courts that are provided to all inmates.

.12 Access to the Ombudsman.

Inmates shall be allowed to seek assistance from the Ombudsman. The Ombudsman is statutorily empowered to make inquiries and obtain information. Staff from the Ombudsman's Office may enter any Hawaii State facility without notice to inspect the premises and hold private hearings. A letter to the Ombudsman from an inmate shall be forwarded immediately unopened. Upon written request, an inmate shall be allowed to place a phone call to the Ombudsman within a reasonable amount of time.

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5.0 SCOPE

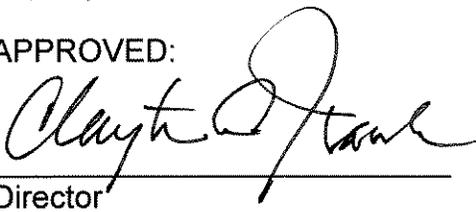
This policy is effective upon the date of signing and applies to all correctional facilities.

APPROVAL RECOMMENDED:


 Deputy Director for Corrections

12/17/09
 Date

APPROVED:


 Director

12/22/09
 Date

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

_____ FACILITY
Inmate Request Form

REQUEST FOR LAW LIBRARY SESSION

TO: LIBRARY UNIT Date: _____

FROM: _____ HSE: _____ - _____ - _____
(PRINT) LAST FIRST MOD BLK QUAD

SECURITY CLASSIFICATION _____ SID NO.: # _____

DOCKET STATUS: YES NO

Please schedule me for next week's LAW LIBRARY session:
Scheduling will be made according to space availability. To be scheduled for more than one session, you must produce documents or have documentation on file with the Library unit indicating your "Docketed Status".

NOTICE: YOU ARE RESPONSIBLE TO INFORM US OF THE NAME, DATE, AND TIME OF RELIGIOUS PROGRAMS YOU ARE ATTENDING WHICH MAY CONFLICT WITH SCHEDULING OF YOUR LAW LIBRARY TIME. Please clearly PRINT all conflicts on the lines below.

Case Manager's Signature

Inmate's Signature