

	<b>DEPARTMENT OF PUBLIC SAFETY</b>	<b>EFFECTIVE DATE:</b> October 3, 2019	<b>POLICY NO.:</b> COR.12.02
	<b>CORRECTIONS ADMINISTRATION          POLICY AND PROCEDURES</b>	<b>SUPERSEDES (Policy No. &amp; Date):</b> COR.12.02 & 12/22/2009	
<b>SUBJECT:</b> <b>INMATE LEGAL ACTIVITIES</b>		Page 1 of 9	

## 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 SCOPE

This policy applies to all correctional facilities. To the extent any individual facility's policy conflicts with the statewide policy, the statewide policy shall control.

## 3.0 REFERENCES, DEFENITIONS & FORMS

### .1 References

- a. Department of Public Safety (PSD), Policy and Procedures (P & P), COR.08.04, Notice of Laws Relating to Contraband.
- b. PSD, P & P, COR.15.02, Correspondence.
- c. PSD, P & P, COR.15.03, Access to Telephones
- d. Hawaii Revised Statutes (HRS), § 96-18, Agencies may not open letters to ombudsman.
- e. *Goff v. Burton*, 91 F.3d 1188 (CA8 1996).
- f. *Lewis v. Casey*, 518 U.S. 343, 350 (1996).
- g. *Martinez v. Espinas*, 938 F. Supp. 650 (D. Haw. 1996)

### .2 Definitions

- a. Docketed Case: An active lawsuit currently filed in court.
- 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.
- c. Indigent Inmate: An inmate with less than ten dollars (\$10.00) of income in his/her spendable or restricted account.

**NOT-CONFIDENTIAL**

<b>COR</b>  <b>P &amp; P M</b>	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 2 of 9</b>

d. Pro Se Inmate: An inmate representing himself/herself in a docketed case.

.3 Forms

a. PSD 8280 Request for Law Library Session

**4.0 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.

**5.0 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 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 imposed on the facility's resources. Facilities shall also ensure that inmates are able to request assistance in preparing their legal documents as indicated in section 5.9a.3 of this policy.
- .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

**NOT-CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 3 of 9</b>

- .5 The Wardens shall establish procedures whereby the inmate shall have access to:
- a. 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 and state court. 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 adequate legal collections. All facilities shall use form PSD 8280 Request for Law Library Session (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.

**NOT-CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 4 of 9</b>

- b. Only legal materials belonging to the inmate 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 the inmate's docketed case.
  - 2. The Library will provide inmates with three copies of their completed application to proceed In Forma Pauperis (IFP) supporting documentation and order. After inmates receive their assigned case 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 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 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 Warden to make the determination that the specific material sought by an inmate is not

**NOT-CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 5 of 9</b>

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. Facilities shall notify the PSD's Library Services Officer of the proposed donation to decide in which facility library the donated material should be placed.
- d. 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 location.
  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 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 a docketed case (depending if scheduling permits).

**NOT-CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 6 of 9</b>

3. Inmates may request assistance through the Warden in preparing legal documents for the following reasons:
    - a) A disability exists which requires a modification, auxiliary aid, or service,
    - b) Limited English Proficiency, or
    - c) Illiteracy.
  - 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.
  - 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 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 the availability of funding.
- .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 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 emergency situation with the inmate's case.

**NOT-CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 7 of 9</b>

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. Incoming and outgoing correspondence between an inmate and an attorney shall be treated as privileged mail in accordance with PSD, P&P, COR.15.02, Correspondence.
  2. Incoming and outgoing correspondence between an inmate and a court or government agency such as the Department of the Attorney General shall be treated as official mail in accordance with PSD, P&P, COR.15.02, Correspondence.

**NOT-CONFIDENTIAL**

COR  P & P M	<b>SUBJECT:</b>  <b>INMATE LEGAL ACTIVITIES</b>	<b>POLICY NO.:</b> <b>COR.12.02</b>
		<b>EFFECTIVE DATE:</b> <b>October 3, 2019</b>
		<b>Page 8 of 9</b>

3. Outgoing mail from an inmate to the Ombudsman's Office only is treated differently from incoming mail from the Ombudsman's Office, as required by statute. Refer to section 5.12 of this policy.

d. Telephone Calls.

1. It is the Department's goal to provide telephone access that is effectively regulated and handled in a manner which does not compromise legitimate penological interests. All telephone calls, with the exception of legal calls, are subject to monitoring and recording.
2. In accordance with PSD, P&P, COR.15.03, attorneys of record, including landlines and cell phones, shall be identified as a legal call on PSD 8733, Personal Allowed Numbers.
3. *Pro se* inmates shall receive no special dispensation from this provision. They shall be provided the same 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 sent to the Ombudsman from an inmate shall be forwarded, unopened, immediately upon receipt. Inmate calls to the Ombudsman's office shall be free and at no charge.

**NOT-CONFIDENTIAL**



COR P & P M	SUBJECT:  INMATE LEGAL ACTIVITIES	POLICY NO.: COR.12.02
		EFFECTIVE DATE: October 3, 2019
		Page 9 of 9

APPROVAL RECOMMENDED:

*John M. ...* October 3, 2019  
Deputy Director for Corrections Date

APPROVED:

*John P. ...* October 3, 2019  
DIRECTOR Date

**NOT-CONFIDENTIAL**

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.: # \_\_\_\_\_

DOCKETED STATUS:  YES  NO

Please schedule me for next week's LAW LIBRARY session: [Scheduling will be on a space-available basis. To be scheduled for more than one session, you must have documents 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 WHICH MAY CONFLICT WITH SCHEDULING OF YOUR LAW LIBRARY TIME. Please clearly PRINT all conflicts on the lines below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Check here if you need an auxiliary aid or service due to a disability, and complete form PSD 8773, Request for Accommodation/Modification, which you can get from your case manager. If you already have an approved auxiliary aid or service, please state it here:

\_\_\_\_\_

\_\_\_\_\_  
Case Manager's Signature

\_\_\_\_\_  
Inmate's Signature