	DEPARTMENT OF PUBLIC SAFETY	EFFECTIVE DATE: September 22, 2023	POLICY NO.: COR.12.02
	CORRECTIONS ADMINISTRATION POLICY AND PROCEDURES	SUPERSEDES (Policy No. & Date): COR.12.02 of 10/03/2019	
	SUBJECT: INMATE LEGAL ACTIVITIES	Page 1 of 9	

1.0 PURPOSE

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

2.0 SCOPE

This policy shall apply 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, DEFINITIONS & FORMS

.1 References:

- a. Hawaii Revised Statutes (HRS), Chapter 96-18, Agencies may not open letters to ombudsman.
- b. Department of Public Safety (PSD), Policy and Procedures (P&P), COR.08.04, Notice of Laws Relating to Contraband.
- c. PSD, P&P, COR.12.03, Inmate Grievance Program.
- d. PSD, P&P, COR.15.02, Correspondence.
- e. PSD, P&P, COR.15.03, Access to Telephones & Tablets.
- f. PSD, P&P, COR.15.05, Inmate Access to Publications.
- g. *Lewis v. Casey*, 518 U.S 343, 350 (1996).
- h. *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 staff that the inmate has an active lawsuit currently filed in court.
- c. Indigent Inmate: An inmate who has a balance of at least three dollars

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(\$3.00) or less in his/her trust account during the previous 30 days.

- d. Official Correspondence: Mail, incoming and outgoing, between an inmate and the courts (State of Hawaii or the United States), Ombudsman, Attorney General, Hawaii Paroling Authority, Elected state or federal officials to include the Governor's Office, Director of the Department of Public Safety and Corrections Division Administrators.
- e. Privilege Correspondence: Mail, incoming and outgoing, between an inmate and his/her attorney.
- f. *Pro Se* Inmate: An inmate representing himself/herself in a docketed case.

.3 Forms:

- a. PSD 8280 – Request for Law Library Session form (attached).
- b. PSD 8733 – Personal Allowed Numbers form (attached).

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 faced with imminent deadlines established by the court in which inmates' legal actions are being heard. In such instances, correctional program activities may be suspended while the inmate pursues his/her 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

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personnel shall recommend that inmates seek administrative recourse under P&P COR.12.03, Inmate Grievance Program, 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 using the facility request form via the case manager for Warden/Designee approval to schedule outside visits of private notaries (at inmate's expense):
 1. Personal real estate transactions;
 2. Legal guardianship;
 3. Power of Attorney; and
 4. Other civil matters requiring a notarized signature.
 - 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:
 1. Public Defender's Office
 2. Ombudsman's Office; and
 3. Telephone Directories

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- .6 The Department Library Services Officer (LSO) shall set up a system in coordination with the facility librarian to provide inmates access to the facility law library including inmates in restricted (segregation) housing. All facilities shall maintain adequate legal collections. All facilities shall use PSD 8280 when requesting to use the law library. The facility librarian 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 of specific access dates and times. Failure to show up for three (3) scheduled consecutive sessions shall result in being placed last on the priority docketed case list.
 - b. Only legal materials belonging to the inmate may be submitted for copying; no personal documents shall be copied. Facility/Library staff shall review all legal materials submitted for copying to ensure legal documents being copied, belongs to the inmate making the request. 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 thirty (30) copies per day per inmate (depending on equipment and staffing constraints). Inmates may have the option to leave their legal materials to be copied with the librarian for later pickup.
 - 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. For indigent inmates, 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. For new cases not yet filed, requested photocopies may be allowed at the facility librarian's discretion.
 2. The library will provide inmates with three (3) 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, they will receive all necessary

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copies for distribution to named defendants (no Jane Doe or John Doe).

3. Material not intended to be filed with the court and does not impact the inmates' right of access to the court, need not be photocopied. At the facility librarian's discretion, the LSO may be contacted for additional review.
 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 route questionable photocopying inquiries to the LSO prior to consulting with the Attorney General's Office.
- .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 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. In accordance with P&P COR.15.05, Inmate Access to Publications, 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 Department's collection. Facilities shall notify the LSO of the proposed donation to determine which branch 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 option.

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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 three (3) additional hours of access may be provided to inmates with a docketed case (if scheduling permits).
 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, and/or
 - c) Illiteracy
- b. Legal documents should always be forwarded without delay to the proper address or facility. If the inmate has been released, the documents shall be forwarded to the inmate's last known home address on file as privileged mail.
- c. Inmates in segregation shall be given the opportunity to work on their legal matters and access to legal reference materials to the same extent as those persons in the general population of the facility.

.10 Use of Typewriter

Both the Hawaii courts and the federal district courts accept handwritten

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documents making the use of typewriters discretionary by the Department depending on the availability of funding.

.11. Access to Courts of Legal Assistance

a. Each inmate shall be afforded the opportunity to consult with legal counsel of his/her choice at any reasonable time. The attorney and/or inmate is responsible for notifying the facility of the name(s) of legal counsel.

b. Attorney Visits.

1. Attorneys should be encouraged to visit their clients during the normal visiting hours set by a facility. Attorneys shall be advised by the facility to give prior notice of their intent to visit an inmate outside of regular visiting hours. Depending on the facility's resources, contingency plans for necessary attorney visits during the evenings or weekends where there is an emergency situation with the inmate's case may be established.

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. In accordance with P&P COR.08.04, Notice of Laws Relating to Contraband, 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 provided that the attorney provides notice to the facility in advance of the visit of his/her plans to use a recording/digital 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.

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6. Any other electronic equipment such as cell phones, smart watches, laptop computers, tablets, etc., are not allowed in the facility.
 7. 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 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 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 Attorney General shall be treated as official mail in accordance with P&P COR.15.02, Correspondence.
 3. Incoming and outgoing correspondence between an inmate and the Ombudsman's Office shall be in accordance with §96-18, HRS.
- d. Telephone Calls
1. It is the Department's goal to provide telephone access that is effectively regulated and handled in a manner that 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 P&P COR.15.03, Access to Telephones & Tablets, attorneys of record, including landlines and cell phones, shall be identified as a legal call on 8733, Personal Allowed Numbers, and shall not be subject to monitoring or recording. Any legal calls not identified, shall not be protected from recording and monitoring.
 3. Calls to the Ombudsman's Office shall be free and at no charge.
- e. *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.

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.12 Access to the Ombudsman

Inmates shall be allowed to seek assistance from the Ombudsman via inmate phone system and/or written correspondence. 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.

APPROVAL RECOMMENDED:




 Deputy Director for Corrections




 Date

APPROVED:



 DIRECTOR



 Date

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