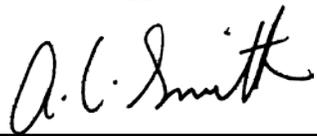


SUBJECT: Inmate Access to Court and Counsel	PAGE <u> 1 </u> OF <u> 8 </u>
	NUMBER: 59-LEG-01
RULE/CODE REFERENCE: 5120-9-17 thru 5120-9-20; 5120-9-33; 5120-9-55	SUPERSEDES: 59-LEG-01 dated 02/14/13
RELATED ACA STANDARDS: 4274, 4275, 4276, 4280, 4489	EFFECTIVE DATE: December 2, 2019
	APPROVED: 

I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

II. PURPOSE

The purpose of this policy is to establish guidelines that ensure ~~that~~ inmates have adequate access to courts, attorneys, and legal research materials.

III. APPLICABILITY

This policy applies to all institutional employees and all inmates incarcerated with the Ohio Department of Rehabilitation and Correction (ODRC).

IV. DEFINITIONS

Departmental Offender Tracking System (DOTS) - The web-based information platform which serves as the primary information system for information on all offenders under ODRC supervision. The system contains information regarding the offender from reception to final release under supervision. This system is updated throughout each day. Access to DOTS Portal is restricted to essential users only.

DRC Inmate Citrix Network - The secure, centralized information technology network and all associated information technology infrastructure, hosted at the State of Ohio Computer Center, used to build and store approved resources, such as education applications, and distribute those resources to an ODRC computing device used by ODRC inmates.

General Legal Materials - Items such as law books, formbooks, photocopied research materials, blank legal forms, and stationery.

Illiterate Inmate - Inmates who function below a 6th grade level of reading or writing proficiency shall be deemed illiterate. The institutional school administrator or his/her designee shall determine the inmate's literacy.

Indigent Inmate - An inmate is considered indigent if, during the 30 days immediately preceding the request, the inmate has earned or received less than \$12.00 and, if the inmate's account balance has not exceeded \$12.00 at any time during the thirty (30) days immediately preceding the request. In the case of an inmate who has been incarcerated for less than thirty (30) days, the inmate is considered indigent if the inmate's account balance has not exceeded \$12.00 at any time during the period of incarceration.

Legal Disc - A read-only CD or read-only DVD sent by an attorney to the attorney's inmate client.

Legal Mail - Mail addressed to an inmate clearly bearing the return address of an attorney-at-law, a public service law office, a law school legal clinic, court of law, or the correctional institution inspection committee. It may be opened and inspected for contraband only in the presence of the inmate-addressee. Postcards from a court of law indicating fees and/or fines owed are not considered legal mail.

Personal Legal Materials - Those documents that pertain to active litigation to which the inmate is a party. Examples of such materials include pleadings, motions, memoranda, orders, judgments, and transcripts.

V. **POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (ODRC) to permit inmates access to legal counsel by means of visitation which will permit confidential communication, uncensored written correspondence, and telephone communication. Inmates shall have access to courts so that they may challenge their convictions, sentences, or the conditions of their confinement. Inmates who are foreign nationals shall have access to the diplomatic representative of their country of citizenship. Pursuing such legal matters shall not subject the inmate to reprisals or punishment of any sort.

VI. **PROCEDURES**

A. **Law Library**

1. Each institution law library shall, at a minimum, provide access to the following materials in electronic format:
 - a. Published decisions of the U.S. Supreme Court, Federal Courts of Appeals, U.S. District Courts, Ohio Supreme Court, Ohio Courts of Appeal, Common Pleas Courts, and the Court of Claims;
 - b. U.S. Code, U.S. Constitution, Federal Rules of Civil Procedure, Federal Rules of Criminal Procedure, Federal Rules of Evidence, Federal Rules of Appellate Practice, and Rules of the Federal Courts located in Ohio;
 - c. Ohio Revised Code, Ohio Constitution, Ohio Rules of Civil Procedure, Ohio Rules of Criminal Procedure, Ohio Rules of Evidence, Ohio Rules of Appellate Practice; Ohio Rules of Court;
 - d. Ohio Administrative Code;

- e. A means of cross referencing, following history of cases or statutes, etc. such as through Shepard's Citations, or some other method.
2. In addition, the institution law library shall provide access to the printed materials listed in Appendix A.
3. ODRC Policies, excluding security policies, may be provided either electronically or as hardcopy.
4. Each law library shall establish a schedule of reasonable hours that provide inmates with adequate access to legal materials. At least some of these hours shall not conflict with normal work assignments, visitation, counseling or other programs, and shall include weekend and evening hours.
5. Each law library shall facilitate the access of inmates who are foreign nationals to the diplomatic representative of the country of their citizenship by maintaining a current copy of the U.S. Government Publication entitled "Foreign Consular Offices in the United States."

B. Inmate Clerks

1. Inmate clerks may be employed in the law library to assist inmates in the use of legal materials, to maintain the library collection, for typing and other clerical duties. Such clerks shall operate under the direct supervision of the librarian or other staff member designated by the managing officer.
2. The staff member designated by the managing officer shall determine the duties of the clerk positions in the law library. This staff member shall assign tasks to the inmate clerks. The clerks shall not be permitted to take it upon themselves to determine which inmates they will assist or what tasks they will perform. Inmate clerks shall not be permitted to supervise other inmates or assign tasks to other inmates.
3. Inmates requesting assistance with typing, reading, writing, or researching legal materials or documents shall request such assistance from a staff member designated by the managing officer who may assign the specific task to one of the inmate clerks.

C. Illiterate Inmates

1. Illiterate inmates, or inmates who have physical or mental impairments which prevent them from reading or writing, may request assistance in preparing their initial pleadings to be filed with a court. Such assistance may include assistance with reading or writing their initial pleadings. These requests for assistance must be directed to the staff person designated by the managing officer who shall ensure that the necessary assistance is made available.
2. Inmates requiring the assistance of a translator may receive such assistance from a staff member, inmate, and volunteer or, if necessary, a person retained under contract for such purpose.

3. Inmates shall be instructed, both orally and in writing, on how they may obtain assistance in preparing or filing initial pleadings with the court. This information shall also be conveyed in a manner that is reasonably calculated to reach the inmates who might need such assistance.

D. Legal Service to Indigent Inmates

1. An indigent inmate shall receive a free legal kit containing, at a minimum, the items listed in Appendix B from the Law Library. The inmate shall direct his/her request to the librarian, or other staff person designated by the managing officer, who shall confirm the inmate's indigent status with the Cashier's Office and maintain a log of free kits issued utilizing Indigent Kit Log (DRC1005). An inmate may make such request once every thirty (30) days.
2. An indigent inmate is also entitled to free first-class mail to courts of law only. To be eligible for free first-class mailing, an indigent inmate must address the mail to the "Clerk of Court" and must also identify the specific court by name above the address. Mail addressed to an individual other than the court's Clerk of Court or that does not identify the specific court name is not entitled to free first-class mail, and shall be returned to the indigent inmate with an indication to the inmate that the mail, as addressed, is not entitled to free postage because it is not addressed to the Clerk of Court, does not identify the name of the court, or both, as the case may be. The free mail to courts of law for indigent inmates is in addition to the one (1) free stamped envelope per month available to all inmates.

E. Legal Materials

1. Inmates are permitted to possess a reasonable amount of general and personal legal materials.
2. General and personal legal materials shall be maintained within the inmate's overall 2.4 cubic feet property limitation as provided in Administrative Rule 5120-9-33, Packages and Property Restriction, and applicable institutional policies. General legal materials are subject to the general possession limits applicable to books, law books, stationery, or writing materials, etc. as provided in Administrative Rule 5120-9-33, Packages and Property Restrictions, and ODRC Policy 61-PRP-01, Inmate Personal Property, and applicable institutional rules and policies.
3. Inmates are required to keep personal legal materials organized by title and case number. Each document associated with a case shall be identified with at least the correct case number.
4. Inmates may be required to produce a list of their active cases any time such materials are packed up and placed in storage for any reason. This list shall identify each active case by title of the case, case number, and the court in which the action is pending.

5. If an inmate has personal legal material which exceeds his/her capacity to store in the space allotted, the inmate may request that he/she be permitted to store the excess personal legal material in a secure location designated by the managing officer for such purpose.
 - a. A staff person designated by the managing officer shall review this request. A request for additional storage shall not be granted unless the volume of the inmate's personal legal material is greater than one half of the inmate's footlocker.
 - b. Only personal legal material as defined in this policy may be stored in this manner. The inmate shall provide a list of the active litigation upon request.
 - c. Inmates requesting additional space must first make reasonable efforts to reduce the amount of legal material in their possession. (e.g., reducing general material, such as stationery supplies, blank forms, photocopied materials, etc.; reducing personal legal material, such as duplicate documents, drafts, outdated or unnecessary correspondence, inactive case files, etc.). All excess material, including inactive case files, must be either mailed out of the institution at the inmate's expense or otherwise disposed of by the inmate.
6. Additional space granted to an inmate is subject to review every sixty (60) days by a staff person designated by the managing officer. Inmates may exchange stored materials with those in their immediate possession once every thirty (30) days.
7. All legal content generated or downloaded by inmates via accessing the ODRC Inmate Citrix Network shall be retained and stored on the ODRC Inmate Citrix Network as provided in ODRC Policy 05-OIT-11, Inmate Access to Information Technology.
8. Inmates may receive a legal disc only if the managing officer/designee has provided prior approval, per Administrative Rule 5120-9-19. A legal disc that has been sent to an inmate without prior approval of the managing officer/designee shall be treated as contraband by the institution mailroom. The managing officer/designee shall determine the disposition pursuant to Administrative Rules 5120-9-17, Incoming Mail and 5120-9-55, Contraband.
9. If a legal disc is sent with prior approval from the managing officer/designee, the legal disc shall be logged in the same manner as other legal mail, as provided in ODRC Policy 75-MAL-01, Inmate Mail.
10. If the managing officer/designee approves the receipt of legal discs, the managing officer/designee shall establish procedures for the receipt, retention, viewing, and destruction of legal discs.
11. The content of legal discs can be accessed and inspected for contraband only in the presence of the inmate.

F. Inmate Legal Assistance

1. Inmates are permitted to assist one another in the preparation and filing of legal documents or other legal matters. General population inmates should generally be permitted to assist each other in common areas such as the library, dayroom, etc.
2. Although inmates may receive assistance from other inmates, this privilege is not without limitation:
 - a. Inmates do not have a right either to receive assistance from a specific inmate or to aid a specific inmate.
 - b. Managing officers/designees can impose reasonable time, manner, and place restrictions on the access inmates have with each other even though such restrictions may have an impact on their ability to assist one another. Such restrictions must be based on a legitimate interest in maintaining the good order and discipline of the institution, institutional security, and the personal safety of inmates and staff. In considering time, manner, and place restrictions, institutions shall consider factors such as the housing assignments, custody level, and separations, etc.
 - c. Managing officers/designees may, in their discretion, approve special or individualized arrangements for inmates to assist one another where a need has been demonstrated and it is otherwise appropriate.
 - d. The fact that one inmate is assisting another does not entitle such inmate to maintain possession of the legal materials of another inmate. Inmates may maintain possession of their own legal materials as provided above in section VI.E.
3. No inmate law clerk, library assistant, or any other inmate shall, in any manner, trade, exchange or deal his/her assistance with legal matters to another inmate. The institution shall prominently display a notice in the law library, and in either the inmate handbook, or orientation materials, which states: "It is a violation of institutional rules for inmates to require payment of any kind for providing legal assistance. No inmate shall be required to pay or deal for legal services. If you or someone you know has been asked to pay or deal for legal assistance, please notify your unit manager or the law librarian."
4. No inmate shall hold himself/herself out in any manner as a paralegal or an attorney at law or as authorized to practice law in any capacity.
 - a. No inmate shall use the words "lawyer," "attorney at law," "counselor at law," "law," "law office," "esquire," or other equivalent words in connection with his/her own name, either in writing or orally, in an effort to induce others to believe that he/she is an attorney.
 - b. Any inmate who violates section VI.F.4.a of this policy may be issued a conduct report for giving false information.

G. Communication with Attorneys

1. Legal mail, including inmate mail to and from attorneys, shall be handled pursuant to Administrative Rules 5120-9-17, Incoming Mail, and 5120-9-18, Outgoing Mail. Letters to ~~or~~ from staff members of the ODRC do not qualify as legal mail under this provision.
2. Attorneys shall be permitted to visit inmates under the procedures set forth in Administrative Rule 5120-9-20, Visits by Attorneys and Inmates Access to Legal Services. Attorney visits shall take place in a room designated for that purpose where they can talk in private but be subject to visual observation.
3. An attorney may request to confer with his/her client by telephone when there is not enough time for the attorney to either correspond with or personally visit the inmate due to the circumstances of the inmate's litigation. Such requests shall be directed to the managing officer or the person designated by the managing officer. Such conversations between the inmate and the attorney shall be considered confidential; the same as in-person visits.
4. Inmates may contact attorneys by telephones placed in the institution for general inmate use; however, because calls from such phones may be monitored and/or recorded, these phones should not be used to discuss confidential attorney/client matters.

H. Communication with Attorneys at Privately Operated Prisons

1. In the case of a state correctional institution that is privately operated and managed pursuant to Ohio Revised Code (ORC) section 9.06, if normal meeting locations for attorneys and their inmate/resident clients are in areas where video cameras are present, the managing officer shall establish local procedures for accommodating an attorney request for a camera-free meeting area unless:
 - a. Doing so would violate requirements of the ODRC as set forth in its administrative rules and policies;
 - b. Doing so would interfere with the secure, safe, and orderly operation of the facility; or
 - c. Doing so would endanger the security or safety of any person.
2. The managing officer of a state correctional institution that is privately operated and managed pursuant to ORC section 9.06 may limit the number of simultaneous camera-free meetings and require advance scheduling of camera-free meeting spaces by visiting attorneys to ensure the orderly operation of the facility is not disrupted.

I. Certified Mail

1. Inmates shall be permitted to send certified mail for mail addressed to an attorney at-law, a public service law office, a law school legal clinic, a court of law, or the Correctional Institution Inspection Committee. Such mail must be clearly addressed reflecting one of the above addressees and be marked "legal mail" by the inmate.

2. Certified mail shall be sent at inmate expense. Inmates may request certified mail service provided they bear the full expense of postage, the cost of certification, and the cost of return receipts, if requested. When the receipt is returned, it will be given to the inmate, not maintained in the institutional mailroom.

Attachments:

Appendix A	Minimum Required Legal Materials List
Appendix B	Minimum Required Materials for Legal Kits

Related Department Forms:

Indigent Kit Log	DRC1005
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APPENDIX A
SUPPLEMENTAL LEGAL MATERIALS

I. Soft-Cover Printed Materials

- A. Ohio Criminal Law Handbook, Anderson Pub. Paperback contains compilation of criminal and related statutes, procedural rules, and other materials.

II. Other Materials by Subject Matter:

A. Legal Research:

Legal Research in A Nutshell, West Pub.

B. Criminal Law, Practice, and Procedure

1. General materials:

- a. Complete Manual of Criminal Forms
- b. Criminal Procedure in a Nutshell, West Pub.
- c. Post Conviction Remedies, by Larry Yackle, Clark Boardman Callaghan, West Pub.

2. Ohio Law:

- a. Ohio Criminal Law, Katz & Giannelli, West Pub.

C. Conditions of Confinement

- 1. Law of Sentencing and Corrections in a Nutshell, West Pub.

D. Foreign Nationals

- 1. Foreign Consular Offices in the United States (available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402)

E. Legal Directory: Ohio Legal Directory, published annually by Legal Directories Publishing

APPENDIX B

MINIMUM REQUIRED MATERIALS FOR LEGAL KITS

1. Two large manila envelopes, 10" x 15";
2. One black ink pen;
3. Five sheets of carbon paper, 8-1/2" x 11" or, in lieu of carbon paper, an institution may: (a) allow the inmate to have a total of twenty copies made free of charge or (b) provide the inmate with a copy card or cards that would allow the inmate to make twenty copies free of charge;
4. Forty sheets of white bond or copy paper, 8-1/2" x 11"; and
5. One 8-1/2" x 11" white writing-paper tablet.