

	State of Indiana Indiana Department of Correction	Effective Date	Page 1 of	Number
		11/1/2022	10	00-01-102
POLICY AND ADMINISTRATIVE PROCEDURE Manual of Policies and Procedures				

Title <i>ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS</i>
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Legal References (includes but is not limited to) IC 11-8-2-5(a)(8); 11-11-3-8(3); 11-11-5-4; 11-11-7-1	Related Policies/Procedures (includes but is not limited to) 00-02-301; 02-01-102; 02-01-103; 02-04-101; 02-04-102; 03-02-101; 03-02-102	Replaces: 00-01-102 (Eff. Date 6-1-2022 / ED # 22-25)
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I. PURPOSE:

The purpose of this policy and administrative procedure is to establish guidelines for incarcerated individuals' access to legal representation and the courts.

II. POLICY STATEMENT:

The Department of Correction shall ensure that each incarcerated individual is provided with the opportunity to have access to legal representatives, including consular officials, and the courts to the extent required by statute, treaty, court order, rule, or applicable policy or rule. Incarcerated individuals shall be permitted to have confidential communications with their legal representative and the courts within the parameters established by law. In a similar manner, the Department shall ensure that each incarcerated individual who is a foreign national has access to the diplomatic representative for their country of citizenship.

The Department shall not impose restrictions on visitation, correspondence, or telephone communications with legal representatives that would obstruct the availability of adequate legal representation, except as necessary due to security and manageability of the facility. Restrictions on access to the courts, legal counsel, personal legal papers, and legal research materials shall be reasonable as necessary for the safety and security of the facility.

The Department shall afford an incarcerated individual reasonable access to legal materials for the preparation and filing of legal documents. The Department shall provide the incarcerated individuals with the ability to prepare, copy, and mail legal documents in accordance with statute, court orders, and Department policy.

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	2	10

Title
ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS

The Warden may suspend the rights presented in this policy upon the declaration of an emergency that threatens the safety and security of the facility.

An incarcerated individual shall not be subject to reprisals or penalties due to communication with a legal representative or a court unless the communication violates the law or is an attempt to circumvent Department policy.

III. DEFINITIONS:

For the purpose of this policy and administrative procedure, the following definitions are presented:

- A. **DIPLOMATIC REPRESENTATIVE:** An employee or agent of a foreign nation whose principal place of employment is that nation’s embassy or consulate(s).
- B. **INCARCERATED INDIVIDUAL:** An adult person or juvenile person committed to a department of correction (federal, state, or local) and housed or supervised in a facility operated by the department of correction, including an adult or juvenile under parole supervision; under probation supervision following a commitment to a department of correction; in a minimum security assignment, including an assignment to a community transition program.
- C. **INDIGENT INCARCERATED INDIVIDUAL:** An incarcerated individual who has a Trust Fund account balance of less than \$15.00 (not including monies in the incarcerated individual’s Re-Entry Administrative Account) on the day of request and has not had a total of more than \$15.00 credited to the Trust Fund account (not including the incarcerated individual’s Re-Entry Administrative Account) in the preceding 30 days or credits of more than \$90.00 in the last 180 days.
- D. **LAW LIBRARY:** An area set aside for books and reference material related to local, State and federal law which offers space for review and equipment necessary for preparing and copying legal documents.
- E. **LEGAL CORRESPONDENCE:** Correspondence mailed directly from or to a court, a judge or an attorney, whether it is an attorney in a criminal or civil action involving the incarcerated individual, including opposing counsel, and which has been identified as legal mail. (This correspondence includes mail to the embassies/consulates of foreign nations by foreign nationals, organizations, such as the American Civil Liberties Union [ACLU], Indiana Civil Liberties Union [ICLU], Legal Services Organization [LSO] or the Public Defender Council or Notices of Tort Claim sent to the Commissioner.)

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	3	10
Title ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS			

F. **LEGAL REPRESENTATIVE:** A licensed member of the legal profession, retained on behalf of an incarcerated individual or appointed by a court, or a representative as designated in writing by an attorney, such as a paralegal, representing the incarcerated individual in a criminal or civil case.

IV. ACCESS TO THE COURTS:

The incarcerated population shall be provided the opportunity to have access to the judicial system to present issues, including:

- A. The legality of their conviction or confinement;
- B. Redress for perceived illegal conditions or treatment while under correctional control;
- C. Remedies related to civil issues; or,
- D. Any rights protected by law.

The opportunity for incarcerated individuals to have access to the judicial system permits incarcerated individuals to contact the courts by various methods including, but not limited to:

- Personal contact with legal representatives;
- Personal contact with state and federal courts; and,
- Unrestricted and uncensored correspondence with their legal representatives and the courts.

V. CONSULTATION BY LEGAL REPRESENTATIVES:

Incarcerated individuals shall be allowed visits from legal representatives. Visits by legal representatives shall be in accordance with the administrative procedure for Policy 02-01-102, "Visitation."

Access to legal representatives shall include:

- A. Attorneys retained by or for an incarcerated individual, or attorneys who are authorized by an incarcerated individual, in writing, to visit for the purpose of legal consultation;
- B. Public Defenders or attorneys appointed by a court; or,
- C. Representatives (e.g., paralegals) of a retained or appointed attorney.

Visitation by legal representatives shall be during regular business hours. The number and length of visits by legal representatives shall be unrestricted provided that the visits are at reasonable times and consistent with the security and staffing of the facility. The Warden or designee may approve special visits by legal representatives. Visits by legal representatives for business purposes shall not be considered as visits for purposes of the incarcerated individuals 's visiting schedule.

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	4	10

Title

ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS

The facility shall make a reasonable effort to ensure visits with legal representatives are held in private or remain confidential. Visits with legal representatives shall not be monitored or recorded. Staff may maintain visual contact with an incarcerated individual and the legal representative; however, staff shall not listen to the conversation and shall not interfere with the visit, other than to maintain the safety and security of the facility and those persons involved.

The Warden or designee may restrict or deny a visit by a legal representative. Restrictions or denials shall be documented after a complete examination of the facts indicates the visit presents a threat to the security or orderly operation of the facility. The incarcerated individual shall be advised of the denial or restriction of the visit in the manner as prescribed in the administrative procedure for Policy 02-01-102, "Visitation."

VI. DIPLOMATIC ACCESS TO FOREIGN NATIONALS :

When an incarcerated individual who is not a citizen of the United States of America is arrested or detained, that individual must be advised of their right to have consular officials notified. In some cases, the nearest consular office must be contacted regardless of the foreign national individual's wishes. When a foreign national is received by an Intake unit, staff shall determine the foreign national's home country. The Warden or designee shall contact, as soon as possible, the Division of Legal Services and provide information on the foreign national's identity, native country, and details of the commitment. It shall be the responsibility of the Division of Legal Services to notify the nearest embassy or consulate of that country of the foreign national's incarceration, if appropriate.

An incarcerated individual who is a foreign national shall be granted access to diplomatic representatives from their native country upon request. Diplomatic representatives displaying appropriate identification shall be granted access to foreign nationals of that nation. Diplomatic representatives shall be granted the same access as legal representatives indicated in Sections V and VII.

Correspondence to the embassies/consulates of foreign nations by foreign nationals shall be considered legal correspondence.

VII. LEGAL CORRESPONDENCE AND TELEPHONE CALLS:

Legal correspondence shall be materials as established in the administrative procedure for Policy 02-01-103, "Correspondence." The procedures for the receiving and sending of legal correspondence as established for Policy and Administrative Procedure 02-01-103 shall apply. Once the incarcerated individual is given their legal correspondence, it shall be handled in accordance with Policy and Administrative Procedure 02-01-101, "Personal Property."

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	5	10
Title ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS			

Incarcerated individuals shall be allowed unrestricted access to legal representatives and courts through the mail. The free stationery and envelopes issued to incarcerated individuals as provided in Policy and Administrative Procedure 02-01-103 may be used for legal mail. Legal mail shall not be delayed simply due to the fact that the incarcerated individual does not have sufficient funds in the Inmate Trust Fund account to pay for the postage. If an incarcerated individual is indigent, the facility shall mail legal correspondence without charge. In cases where an offender is not indigent but does not have sufficient funds to pay for postage for legal mail, the facility shall determine the amount of funds available in the individual's Inmate Trust Fund (i.e., funds not already dedicated to paying court filing fees, medical co-payments, and restitution/court orders). Any available funds in the incarcerated individual's account shall be applied towards the cost of the postage. The incarcerated individual shall sign an Inmate Trust Fund transaction form (State Form 35720 "Request for Remittance") for the balance of the cost of the postage. The facility shall deduct the amount indicated on the transaction form as soon as any available funds are applied to the incarcerated individual's account. The incarcerated individual must show that they are either initiating litigation or has pending litigation and that the mailing of the legal correspondence is necessary for this litigation. In these cases, the same procedures as indicated above shall be followed. Mail sent by an incarcerated individual to numerous attorneys in an attempt to find an attorney to represent the incarcerated individual shall be at the incarcerated individual's expense. If postage costs for legal mail cannot be recovered from an incarcerated individual, the facility may take funds from the Inmate Recreation Fund to recoup the loss, if such funds are available. The amount of postage provided shall be the amount necessary to mail the correspondence at the current rate for first class postage. It shall be the responsibility of the incarcerated individual to pay for any mail that is sent certified or insured. Indigent incarcerated individuals must provide justification as to why legal mail is required to be sent certified or insured in order for such correspondence to be mailed without charge.

If the facility determines after opening the mail in the presence of the individual that it is not legal mail, in whole or in part, then the mail may be read and that portion which is not legal mail may be censored or delayed. When mail of this sort is read, copied, censored, or delayed, State Form 11984, "Notification and Report of Action Taken on Correspondence," shall be completed and a copy given to the incarcerated individual, in accordance with the administrative procedure for Policy and Administrative Procedure 02-01-103.

Incarcerated individuals shall be allowed to make telephone calls to legal representatives. These telephone calls shall not be monitored or recorded. Provisions made for access to telephones to communicate with legal representatives shall be in accordance with Policy and Administrative Procedure 02-01-105, "Telephone Privileges."

VIII. ACCESS TO LAW LIBRARY (See Facility Directive):

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	6	10

Title
ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS

Incarcerated individuals shall have access to legal reference material to assist them in access to the courts. For those facilities with a Law Library, Attachment I provides a list of the type of materials which shall be included in the Law Library. State Form 19704, "Law Library Request," shall be used by individuals to request access to the law library. The facility shall establish specific hours of Law Library operation. Available hours shall consider the work and housing assignments of the incarcerated, whenever possible; however, the safety and security of the facility shall be the primary consideration.

Individuals housed in restrictive status housing units, protective custody, a lockdown unit, an idle housing unit, or whose movement is restricted shall be allowed access to legal reference material.

Facilities without Law Libraries (e.g., Level I facilities, Work Release Centers and Division of Youth Services facilities) shall provide a process that will allow incarcerated individuals to access a Law Library or a suitable substitute, such as a public library or another Department facility's Law Library. Facilities that do not have ready access to another facility Law Library shall use resources in the community to allow incarcerated individuals access to legal materials. If an incarcerated individual has a constant need to have access to a Law Library consideration shall be given to transferring them to a facility which maintains a law library.

When an incarcerated individual requests legal reference materials, they shall submit the request in sufficient time to allow Law Library staff to obtain the necessary materials. The incarcerated individual is to use State Form 19704, "Request for Law Library," to document such requests. The Department shall not be responsible for the incarcerated individual not receiving requested legal materials in a timely fashion if they do not allow the Law Library sufficient time to obtain and provide the requested materials. The facility shall allow an incarcerated individual to review legal cases without charge. The facility may develop a "loan" system in which individuals may be provided a copy of one (1) or more legal documents. Failure of the incarcerated individual to return "loaned" documents in accordance with the facility's procedures may result in the incarcerated individual being charged the cost of reproducing the copies. The facility shall attempt to provide the incarcerated individual with requested material consistent with operational needs of the facility.

A Facility Directive shall be developed addressing access to the Law Library, including the manner and time frame the incarcerated individual has access to the Law Library or legal materials.

IX. ACCESS TO NOTARY PUBLIC SERVICES:

Facilities shall establish a schedule which ensures in general population with reasonable access to the services of a notary public within 72 hours of request, excluding weekends and holidays. Incarcerated individuals confined to special housing, restrictive status housing, or protective custody shall be provided notarial services at least two times per week. Requests for access to notarial services shall be made by submitting State Form 19704, "Request for Use of Law Library."

POLICY AND ADMINISTRATIVE PROCEDURE			
Indiana Department of Correction			
Manual of Policies and Procedures			
Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	7	10
Title			
ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS			

X. MATERIALS AND SUPPLIES:

The Law Library shall have equipment (e.g., desks, chairs, typewriters, copy machines, etc.) and supplies (e.g., paper, forms, pens, pencils, etc.) to prepare legal documents. The facility shall use the Recreation Fund to purchase equipment and supplies to operate the law library.

Incarcerated individuals shall be permitted to make copies only of court documents that are necessary for either initial or pending litigation, including copies of pleadings, briefs, and other documents necessary to submit to a court.

Incarcerated individuals shall receive copies of legal documents free of charge in accordance with this policy and administrative procedure.

The incarcerated individual must show proof that they have pending litigation or is attempting to file new litigation. If the request is to make copies of documents to include with the incarcerated individual's submission to the court, the individual must show that the court has requested these copies. Incarcerated individuals must provide justification for the number of copies for which they are asking.

While facilities may make typewriters available to incarcerated individuals, it is not necessary for them to have access to personal typewriters or word processors. Incarcerated individuals acting *pro se* may be permitted by the courts to submit handwritten pleadings and briefs. If the incarcerated individual submits a handwritten pleading or brief, the courts require that it be legible and that it complies with all other applicable rules of the court.

Even though typewritten pleadings and briefs are generally not required, cases may arise where a particular court issues an order indicating that a pleading or brief must be typewritten. If an incarcerated individual provides the facility with such an order or with other proof that the pleading or brief must be typewritten, the facility shall ensure that they are provided access to a typewriter. This access may be through the Law Library or through another source within the facility. It will not be necessary to allow the incarcerated individual to keep the typewriter in their living area or to allow them to purchase a typewriter.

While facilities may make word processing computers available to incarcerated individuals, the facilities are under no obligation to save an incarcerated individual's legal documents on the facilities' servers or hard drives.

XI. REPRISALS FOR SEEKING JUDICIAL RELIEF:

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number 00-01-102	Effective Date 11/1/2022	Page 8	Total Pages 10
Title ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS			

Staff shall impose no reprisal or penalty on an incarcerated individual because of their decision or efforts to seek judicial relief. For the purposes of this policy and administrative procedure, the filing of a violation of Policy and Administrative Procedure 02-04-101, "The Disciplinary Code for Adult Offenders," shall not be considered a reprisal or penalty for seeking judicial relief.

XII. FRIVOLOUS, UNREASONABLE OR GROUNDLESS CIVIL CLAIMS:

Incarcerated individual who file frivolous, unreasonable or groundless civil claims in a state (pursuant to IC 35-50-6-5) or federal (pursuant to the Prisoner Litigation Reform Act) court shall be charged with a violation of Policy and Administrative Procedure 02-04-101, "The Disciplinary Code for Adult Offenders." It shall be necessary for the court to indicate in the court records that the case is being dismissed due to being frivolous, unreasonable or groundless. In those cases, when the facility receives the appropriate documentation from the court, the facility shall charge the incarcerated individual with a violation of Disciplinary Code 243, a Class B offense.

XIII. COURT FILING FEES:

Federal courts will assess filing fees against incarcerated individuals who file civil actions. Additionally, state courts may require an incarcerated individual to pay a filing fee for civil actions. When the incarcerated individual attempts to proceed *in forma pauperis* in a federal court, the court will order them to provide a copy of their Inmate Trust Fund account statement, if available, for the six (6) month period immediately preceding the filing of the action. The incarcerated individual shall be required to make an initial payment of either the full filing fee or any amount ordered by the court.

It shall be the responsibility of the incarcerated individual to notify the facility to prepare a copy of their Trust Fund account statement whenever so requested by the court. The incarcerated individual shall be required to provide the facility with a copy of the order requesting the account statement for the preceding six (6) months. The facility shall comply with this request as quickly as possible, noting that the incarcerated individual has thirty (30) days within which to comply.

Following the review of the incarcerated individual’s Trust Fund account statement for the preceding six (6) months, the court will notify the facility what the initial payment of the filing fees shall be. It shall not be necessary for the incarcerated individual to sign a “Request for Remittance” or similar form for the facility to withdraw the designated monies from their account for the payment of court ordered filing fees. The facility shall ensure that the incarcerated individual is notified that the funds have been withdrawn from their Trust Fund account in accordance with the court order.

Following the initial partial payment, the court may order the facility to make monthly payments until the full amount has been paid. These monthly payments may consist of either 20% of the

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number 00-01-102	Effective Date 11/1/2022	Page 9	Total Pages 10
Title ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS			

preceding month's income credited to the incarcerated individual's Trust Fund account or an amount specified by the court for each month in which the incarcerated individual has more than \$ 10.00 credited to the Inmate Trust Fund account. The facility shall determine the total amount of income credited to the Trust Fund account during the preceding month. Whenever the incarcerated individual's Trust Fund account exceeds ten dollars (\$ 10.00), the facility shall send the amount specified by the court to the court until the full fee is paid. The facility shall ensure that the incarcerated individual's name, the title of the cause and the cause number is indicated on any check sent to the court.

In those cases where an incarcerated individual has multiple cases filed, the payments shall be considered cumulative. (i.e., the incarcerated individual will be required to pay 20% of the preceding month's income, if more than \$ 10.00 is credited to their Inmate Trust Fund account, for each of the cases filed.) If the incarcerated individual has more than five (5) cases pending at any one time, any additional filing fees will be held in abeyance until one of the filing fees is paid in full. Once one of the filing fees has been paid in full, the facility will begin paying the filing fees for first case received after the five (5) cases. Payments in excess of the five (5) cases may be made if an incarcerated individual has sufficient funding credited to their Inmate Trust Fund account.

When an incarcerated individual who is required to make partial payments of court ordered filing fees is transferred to another facility, the sending facility shall ensure that information is provided to the receiving facility regarding these payments. Minimally, this information shall include notification that filing fees are being paid and the cause number(s) for the case(s). Additionally, this information shall include the total amount of the filing fees and the amount that has been paid as of the date of transfer. Also, the sending facility shall notify the Clerk of the court that ordered the filing fees that the incarcerated individual has been transferred and the name of the new housing facility and its address. If the incarcerated individual is released from the facility to Parole, probation, Community Transition, or discharge, the facility shall notify the Clerk of the Court as to the incarcerated individual's status and their last known address.

The payment of court filing fees shall take precedence over all other deductions from the incarcerated individual's account. An incarcerated individual shall not be considered indigent solely due to the requirement that the court filing fees must be deducted monthly from the Trust Fund account. However, the facility shall ensure that the incarcerated individual has the opportunity to obtain the minimum necessary hygiene items and/or over-the-counter medications through purchase from the commissary or from the facility in accordance with Policy 02-01-104, "Grooming, Clothing and Personal Hygiene."

XIV. APPLICABILITY:

POLICY AND ADMINISTRATIVE PROCEDURE

Indiana Department of Correction

Manual of Policies and Procedures

Number	Effective Date	Page	Total Pages
00-01-102	11/1/2022	10	10
Title			
ACCESS TO THE COURTS FOR INCARCERATED INDIVIDUALS			

This policy and administrative procedure is applicable to all Department facilities, staff, and incarcerated individuals, except those on Parole, and to those facilities that are operating under a court order or consent decree that mandates different procedures.

signature on file
Christina Reagle
Commissioner

Date