
Division of Institutions
Policy and Procedure

I. PURPOSE

The purpose of this policy is to provide guidance and ***ensure every offender committed to serve a sentence of incarceration in a prison facility with the North Carolina Department of Adult Correction (DAC), Division of Institutions shall be afforded reasonable access to the courts (5-ACI-3D-01).***

II. APPLICABILITY

This policy applies to the Division of Institutions.

III. POLICY

A. General

In an effort to provide such access, the Department has agreed to contract with various attorneys to provide assistance for offenders. This program, called the attorney assistance program, will provide meaningful access to the courts to each offender requesting assistance.

B. Access to Courts

All offenders are to be advised in offender orientation of the availability and opportunity to utilize the offender tablet and digital law library and/or legal services contractor in order to access the courts if they so choose (5-ACI-4A-22, 5-ACI-4B-22). No offender will be penalized or punished for use of legal services to initiate an action against the Department, its employees or staff or due to allegations made against the Department or its employees and staff. ***No offender will be discriminated against on the basis of disability, or any other reason, in regards to court access (5-ACI-5E-02).***

C. Institutions Responsibility

1. Facility Responsibility: ***The Department will facilitate offender access to counsel and assist offenders in making confidential contact with attorneys and their authorized representatives. The contact includes, but is not limited to telephone communications, uncensored correspondence and visits (5ACI-3D-02).*** Each Warden will be responsible for the following:

a) Appointing a facility coordinator to facilitate offender access to the contractor.

- b) Ensuring that unit staff become familiar with the names and proper identification of contractor's staff; and
 - c) Designating reasonably private area(s) in the facility for the offender and attorney to meet, consistent with custody, security, and operational requirements and Department policy and procedure. The contractor's attorneys and staff, as well as any private attorney retained by an offender, will not be permitted access to staff or any other areas of the facility without the approval of the Secretary or designees.
2. Court Attire: In accordance with NC Gen. Stat. § [15-176](#), when an offender appears in any "court for trial", the offender cannot be required to wear prison clothing by the sheriff or law enforcement. The offender must be afforded the opportunity to wear civilian attire during criminal proceedings if he or she chooses.¹ Discharge clothing will be provided for this purpose. Unless otherwise directed by the Attorney General's Office, offenders appearing in court for civil action will be neatly attired in prison clothing commensurate with their custody grade.
 3. Legal Mail: Written communication to and from the legal services contractor shall be considered legal mail and shall be managed in accordance with Institutions policy [D .0300, Offender Use of the Mail](#).
 4. Notary Services: Each facility will have available a Notary Public to notarize legal papers for offenders at reasonable times.
 5. Notice: All facilities within Institutions shall post in conspicuous locations, a notice from the contractor, identifying services available and the method of contacting the legal services contractor.
 6. Orientation: Newly admitted offenders will be provided orientation during the Diagnostic process regarding the availability of legal assistance from the contractor. This will be provided both in writing and in video form.
 7. Complaints: Each Warden will be responsible for documenting staff and offender complaints regarding the contractor's staff or provision of services. Complaints should be forwarded through the chain of command to the Deputy Secretary of Institutions.
 8. **Supplies: Offenders will be provided with paper, carbon paper, and writing implements with which the legal services contractor may be contacted.**
 9. **Law Libraries and Legal Material: With the implementation of tablets for offenders, as facilities are equipped with the infrastructure and the tablets, all offenders will have access to a digital law library. The law library should cover, at a minimum, state and federal constitutions, state statutes and decisions, procedural rules, and decisions and related commentaries, federal case law materials, court rules and practice treatises, and legal periodicals and indices. In addition, offenders have access to the courts through**

¹ *State v. Westry*, 15 N.C. App. 1 (1972).

² *Bounds v. Smith*, 430 U.S. 817 (1977).

assistance of contracted attorneys to provide legal assistance²through North Carolina Prisoner Legal Services.

10. ***Offender Law Clerk: Each facility will have an offender assigned as a Law Library Clerk who will be assigned to assist other offenders with legal materials as needed (5-ACI-3D-03).***

D. Offender – Contractor Access

The primary method of offender access to the courts is through the attorney assistance program as established by the Department under the contract as specified in this policy. Offenders indicating a desire to seek legal assistance should be told to contact the legal services contractor.

1. **Special Provisions for Non-English Speaking or Illiterate Offenders:** The Warden, or their designee, will initiate the contact on behalf of any non-English speaking or illiterate offender who makes it known that legal assistance is requested. Once contact has been made, the contractor is responsible for providing any special assistance which may be needed.
2. **Access to Offenders:** The contractor will be provided access to offender clients as frequently as is required to provide adequate legal representation and consistent with the terms and conditions as specified in the contract. Contact between offenders and the contractor are to be in the form of written correspondence or personal visits within the prison facility at pre-determined times and locations, in accordance with Institutions policy [D .0200, Visitation](#).

E. Access to Private Counsel

Offenders may retain private counsel for legal representation. Such attorneys shall be permitted access to offenders in accordance with Institutions policy [D.0200, Visitation](#), and must show proof that an attorney-client relationship has been established with an offender prior to being permitted access. ***Phone restrictions for offenders in disciplinary status would not apply to calls related specifically to access to the attorney of record (5-ACI-4A-26).***

F. Telephone Access to Offender Clients

1. **Telephone communications between offenders and Attorneys:** In exceptional situations where legal deadlines make a personal visit or written correspondence impractical, attorneys must contact the facility housing the offender and make a formal written request to communicate with the offender via telephone. The written request shall indicate they currently represent the offender they wish to contact, and that a legal deadline or other exceptional circumstance makes a personal visit or written correspondence impractical. In addition, the attorney must: provide the case number or file designation otherwise associated with the pending matter, include a photocopy of his or her bar card, and provide a signed written statement indicating that they are a currently licensed member of the North Carolina State Bar or are otherwise authorized to practice in the State of North Carolina. Furthermore, the attorney must provide a toll-free number or number for a collect call. The request must be received by the facility three (3) business days prior to the requested phone call date. When an offender wishes to call their attorney it must also be approved by the Warden or their designee. These phone calls must be documented,

- identifying the person called as the attorney. During the call between the offender and their attorney, the offender shall be provided with sufficient privacy that the conversation cannot be overheard by a third party (including correctional staff), to preserve attorney-client privilege. This generally means a room or office with a door that can be shut but with a window that will permit staff to maintain visual supervision.
2. Telephonic Hearings: In exceptional situations an offender's attorney or the court may request for an offender to participate in a court hearing by telephone. A written request must be sent to the facility housing the offender for approval. The attorney or the court making the request must indicate the date and time of the Telephonic Hearing. The attorney or court must set up and provide a conference bridge (toll-free number) in their initial request. Requests must be made seven business days in advance of the hearing to allow prison officials to effectively coordinate the scheduled call. This includes locating appropriate space for the hearing where the offender can have relative privacy, and securing a phone line that can be used. An offender's refusal to participate in phone hearings at the request of the attorney or court will be documented and copies of this refusal sent to the attorney and or court.
 3. ALL calls to or from Attorneys/Court will NOT be monitored or recorded and will be made utilizing facility telephones.
 4. Videoconferencing – The Courts may order legal proceedings to occur via a facility's videoconferencing equipment when available. Facilities will be made aware of videoconferencing proceedings at least seven business days in advance to allow prison officials to effectively coordinate the scheduled hearing. Any request for, or Court ordered, videoconference proceeding should be faxed or scanned/emailed to the Institutions Executive Services Section, DAC General Counsel, and DAC Division of Information Technology staff so that the feasibility of complying with the request/order can be determined. If a facility does not have videoconferencing equipment, and no reasonable substitute can be found, the facility will need to arrange transport of the offender to the nearest facility having such capabilities for the duration of the legal proceeding.
 - a) An offender's refusal to participate in the videoconferencing proceeding will be documented and copies sent to the attorney or court and Executive Services Section.
 - b) If for some reason access to the proceeding cannot be adequately provided to the offender, the reasons for this will be documented fully in a written report.

G. Pro Se Representation

Offenders may represent themselves in legal matters before the courts. This includes initiating litigation and filing documents with the court. Offenders will not be penalized or punished in any way for accessing the courts. Specifically, offenders will not be punished or penalized for initiating litigation against the Department or any of the Department's staff or employees. However, the facility will not facilitate such representation beyond the requirements outlined in Section III. C.

H. Legal Materials

An offender may possess legal texts and materials consistent with Institutions policy [F .0500, Offender Personal Property](#), and [D .0100, Publications Received/Possessed by Offenders](#). However, such items will not be provided by the Department, nor will the Department be responsible for the adequacy of these materials.

1. The amount of legal materials and texts which an offender may be permitted to keep at the prison facility will be limited based upon the following:
 - a) The amount of personal storage space provided to the offender, based upon the offender's custody classification;
 - b) The amount of personal storage space available within the prison facility's physical plant; and
 - c) The security, safety, sanitation and fire hazard considerations affecting the orderly operation of the prison facility.
2. Items of personal property, including legal materials, which exceed the amount the prison can reasonably accommodate, will be disposed of in accordance with Institutions policy [F .0500, Offender Personal Property](#). The offender will be given the opportunity to mail these items to an addressee of their choice at the offender's expense if they do not wish for them to be disposed of pursuant to policy. Indigent offenders may have items mailed through the Offender Welfare Fund. This provision shall not apply to any property seized as contraband.

I. Offender Assistance

1. As it is unlawful for any person, other than an active member of a state Bar to practice law, it shall be a disciplinary infraction for offenders to provide legal assistance to other offenders or to otherwise practice law as defined by NC Gen. Stat. § [84-2.1](#) if they are not duly licensed as an attorney. Offenders who violate this rule may be charged with violating disciplinary offense C20 in accordance with Institutions policy [B .0200, Offender Disciplinary Procedures](#) and/or prosecuted under NC Gen. Stat. § [84-4](#) and NC Gen. Stat. § [84-8](#).
2. However, offenders who are blind or illiterate may appoint, with the express permission of the Warden, another offender to assist them in either reading aloud the contents of the legal materials, or by transcribing the written content the appointing offender wishes to produce. Those offenders properly appointed will not be charged with an offense, as described above. However, the Department makes no representation, or assumption of liability, regarding the acts of these appointed offenders.
3. Designated law library clerks will not offer any legal advice. Their responsibility is to ensure the offenders have access to materials needed (carbon paper), the physical library or other designated location if one is such designated for the purposes of studying/writing legal materials and can assist with the mechanics of operating a tablet if the offender has been issued a tablet that contains a digital law library.

IV. REFERENCES

A. 5th Edition Standards for Adult Correctional Institutions

5-ACI-3D-01, 5-ACI-3D-02, 5-ACI-3D-03, 5-ACI-4A-22, 5-ACI-4A-26, 5-ACI-4B-22, 5-ACI-5E-02

B. NC Gen. Stat. § [15-176](#), [84-2.1](#), [84-4](#), [84-8](#)

G .0200_08_11_23.doc