

State of Utah - Department of Corrections



Department Manual

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| FD06 - Legal Access | PROCEDURE |
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| <u>Table of Contents:</u> 01.00 PROVIDING LEGAL SERVICES 01.01 General Requirements 01.02 Contract Legal Services 01.03 Duplication of Legal Services 01.04 Inmate to Inmate Transfers 01.05 Inmate In the Inmate Placement Program 01.06 Private Attorneys 01.07 Public Interest Attorneys 01.08 Inmate Self-Representation 02.00 SERVICE OF LEGAL DOCUMENTS ON INMATES 02.01 Service of Legal Documents on Inmates Documentation of Process Service 03.00 VISITING ACCESS 03.01 General Requirements 03.02 Scheduling Visits 03.03 Process 03.04 Paralegals and Other Attorney Representatives 03.05 Attorney Conduct 03.06 Depositions, Mediations, and Proceedings 03.07 Electronics 03.08 Inmate Phone Calls 04.00 LEGAL MATERIAL 04.01 Storing Legal Material 04.02 Electronic Access to Legal Material 05.00 ATTORNEY EXPERT VISIT 05.01 Attorney Expert Visit Process | <u>Cross Reference:</u> AC28 Implementation of GRAMA Requests AG12 Americans with Disabilities Act Implementation & Complaint Process for Offenders FD03 Inmate Mail FD04 Visiting FD05 Inmate Communication: Telephones FD12 Inmate Funds FD14 Inmate Property FD15 Indigent Status FF24 Searches Utah Code Annotated 64-13-17 |

01.00 PROVIDING LEGAL SERVICES

01.01 General Requirements

- A. The Utah Department of Corrections (UDC) shall provide inmates with free legal assistance through an electronic legal database or contract attorneys to assist inmates in preparing and filing habeas corpus and conditions-of-confinement complaints.
- B. Legal access through an electronic legal database may be available on desktop computers, inmate kiosks, and tablets at some Department facilities. Where electronic law libraries are available, they shall generally be used instead of a contract attorney. Depending on the housing location, an electronic law library may not be available to the inmate.
- C. Inmates may represent themselves if they choose.
- D. Inmates may represent themselves but may not represent other inmates.

01.02 Contract Legal Services

- A. If an electronic law library is not available or if there is a need for an inmate to meet with a contract attorney regarding the filing of a habeas corpus or condition-of-confinement complaint, the inmates shall:
 - 1. complete the "Inmate Request for Attorney Appointment" form available on inmate kiosks, tablets, or desktop computers;
 - 2. A physical copy of the form shall be provided to the inmate in locations where an electronic option to complete the form is unavailable. When completing the physical copy of the Inmate Request for Attorney Appointment form, the inmate shall:
 - a. complete the form and retain the Goldenrod copy; and
 - b. place the other three copies in the envelope marked "Inmate Request for Attorney Appointment" and the envelope in the mailbox.
 - 3. the mailroom handler shall pick up the envelope with the regular mail and take it to the mailroom;
 - 4. the request shall then be forwarded to the designated staff member in the Warden's office for processing.; and
 - 5. the processing staff member shall open, date-stamp, review for completeness, apply the appropriate reference number to the form, and record the form number in a log.
- B. Distribution of the forwarded copies of the requested form shall be as follows:
 - 1. white copy: retained by processing staff;
 - 2. pink copy and canary copy: picked up by contract attorney/representative who retains a pink copy; and
 - 3. canary copy.
 - a. The contract attorney/representative indicates in the comments section:
 - i. whether the visit was completed or not;
 - ii. visit disposition;
 - iii. date; and
 - iv. signature.

- b. The contract attorney/representative returns the form to the processing staff before leaving the institution or provides the form to the appropriate processing staff within two working days.
- C. Processing staff members shall document the process in the log and retain a copy of the request for the file.
- D. The processing staff member compiles a master list of contract attorney/representative appointments each week and gives it to the legal contract attorneys' representatives along with their copies of the Inmate Request for Attorney Appointment form.
- E. Requests received by designated staff for processing after the Tuesday morning mail at USCF and Friday morning mail at CUCF shall be included on the following week's master list.
- F. The master list shall include the following:
 1. inmate's name;
 2. offender number;
 3. inmate's housing assignment; and
 4. name and firm of the contract attorney/representative with whom the appointment is requested.
- G. The contract attorney/representative should obtain the inmate appointment master list and attorney request form (canary and pink copies) from the facilities' designated locations on scheduled appointment days.
- H. The contract attorney/representative should visit inmates often enough to respond to their requests and visit inmates scheduled for appointments on the master list within a reasonable time.
- I. Upon receipt of the completed form by the designated processing staff:
 1. if a follow-up appointment is scheduled, the designated processing staff shall:
 - a. complete an Inmate Request for Contract Attorney form;
 - b. assign the same reference number; and
 - c. add the letter "B" for the second appointment, the letter "C" for the third appointment, and so on until a follow-up appointment is no longer required.
 2. if an additional appointment is not necessary, the processing staff shall:
 - a. complete the appointment tracking log; and
 - b. file the attorney appointment request form.
- J. Completed appointment forms and tracking logs shall be retained as per GRAMA requirements.

01.03 Duplication of Legal Papers

- A. Legal material photocopies shall be prepared by the contract attorney/representative at a cost to the inmate.
- B. An inmate requiring legal papers to be copied shall:
 1. obtain an envelope entitled "Attorney Request" at the housing unit officers station;
 2. complete a money transfer:
 - a. payable to the Utah State Prison;
 - b. containing the inmate's signature and offender number;
 - c. witnessed and signed by an appropriate staff member; and

- d. leaving the exact amount blank to cover the total cost of the photocopy request.
3. seal the completed money transfer and legal papers to be duplicated in an envelope entitled "Attorney Request;"
4. Mark the envelope in the section entitled "Legal Material to be Copied" and provide the following information on the outside of the envelope:
 - a. the inmate's name;
 - b. the offender number;
 - c. the specific housing unit;
 - d. the exact number of pages in the document to be copied; and
 - e. the number of document photocopies desired.
5. ensure that a staff member witnesses the money transfer and attaches the money order to the sealed envelope; and
6. place the sealed envelope into the housing unit mail depository.
- C. The mailroom staff shall collect the "Attorney Request" envelopes from the housing unit mail depositories and, without opening the envelopes, shall forward them to the warden's office for processing. The mailroom staff should forward the attorney request when it is collected.
- D. Upon receipt of the "Attorney Request" envelope checked "Legal Material to be Copied," the warden's office shall immediately forward it without opening it to the contract attorney.
- E. An indigent inmate's process to duplicate legal material shall be as follows:
 1. an inmate shall qualify for indigent status consistent with requirements outlined in FD15, "Indigent Status." The warden's office shall verify an inmate's indigent eligibility;
 2. An indigent inmate can have a maximum of 25 pages of legal material photocopied weekly without charge. Inmates who use or attempt to use their indigent status to make copies for other inmates shall be subject to disciplinary action and suspension of indigent copying privileges;
 3. to obtain legal material photocopies, an indigent inmate shall:
 - a. obtain an envelope entitled "Attorney Request;"
 - b. insert completed and authorized Duplication of Legal Paper for Indigent Inmate form and legal materials to be duplicated (not to exceed 25 pages) into the "Attorney Request" envelope; and
 - c. mark the envelope in the section entitled "Legal Material to be Copied" and provide the following information on the outside of the envelope:
 - i. the inmate's name;
 - ii. the offender number;
 - iii. the specific housing unit;
 - iv. "indigent" in the space which follows "Amount of Enclosed Money Transfer;" and
 - v. the exact number of pages in the document to be copied (the number shall not exceed 25 unless accompanied by a written explanation of exigent circumstances).
 4. failure to provide all required information shall result in the request being denied and returned; and

5. due to exigent circumstances (i.e., material that is time-dated by the court or by the Rules of Civil Procedure), if more than 25 pages need to be copied, the following procedure shall be followed:
 - a. the inmate shall attach a written explanation to the legal material to be copied, articulating the specific reason additional pages are required;
 - b. the inmate shall complete the "Exception to the Weekly Photocopy Allocation" section on the "Duplication of Legal Papers for Indigent Inmates" form;
 - c. upon receipt of a valid written explanation, the contract attorney/representative shall date, sign, and honor the requests;
 - d. if contract attorneys believe that the inmate's request for additional legal material photocopies is without merit, they shall:
 - i. duplicate only the first 25 legal copies submitted by the inmate; and
 - ii. indicate the reason for denying the inmate's request for additional legal photocopies on the "Duplication of Legal Papers for Indigent Inmates" form.
 - e. contract attorneys shall ensure:
 - i. the "Duplication of Legal Papers for Indigent Inmate" form (with notations as necessary) is submitted promptly to the Warden's office for filing; and
 - ii. the Inmate Money Transfer is deposited at the Inmate Funds Accounting Office for processing.
 - f. the Inmate Funds Accounting Office shall complete a disciplinary for insufficient funds to cover IMTs submitted for photocopies; and
 - g. if the contract attorney/representative believes the inmate's request is an attempt to use their indigent status to make copies for another inmate, the attorney/representative shall indicate on the request.
 - i. The contract attorney/representative shall forward the inmate's request to the warden's office.
 - ii. If the warden/designee determines that the inmate is abusing their indigent status, they shall request the Housing Unit Manager/designee to complete a major disciplinary report and complete a C-note suspending copying privileges.
- F. Failure to provide all required information shall result in the request being denied and returned.
- G. The cost of duplicating legal material for inmates on IPP status may vary from the rate established in this chapter. The rate shall be consistent with the established local rate of the receiving agencies.

01.04 Inmate-to-Inmate Transfers

- A. Legal material may not be transferred to another inmate.
- B. Legal – Privileged includes attorney-client correspondence and other non-public material that could compromise the inmate's legal position if disclosed.
 1. Inmates who have a legitimate need to communicate with other inmates regarding specific legal actions shall:
 - a. place legal correspondence in the pre-printed envelope, marking the appropriate box;
 - b. print the name, offender number, and housing location of the sending inmate on the envelope;

- c. print the name, offender number, and housing location of the receiving inmate on the envelope; and
 - d. place the envelope in the institutional mail system.
2. The institutional mail unit shall forward the mail to the contract attorney/representative via the DPO office.
3. The contract attorney/representative shall:
 - a. screen the contents of the envelope to ensure that it is privileged material as defined in this chapter and FD03, "Inmate Mail;"
 - b. reseal the documents in the envelope and deliver them to the receiving inmate; and
 - c. sign the consent form and give a copy of the form to the receiving inmate to authorize their possession of another inmate's legal material.
4. If the attorney/representative discovers abuse of this process, he/she shall note it on the outside of the envelope, sign, and date it, and deliver it to the warden/designee.

01.05 Inmates in the Inmate Placement Program

- A. Inmates under the supervision of the IPP and housed within receiving agencies within the state of Utah shall be afforded legal access to the Department through attorneys under contract to provide such services.
- B. Minor delays in responding to an inmate's request for service may result from the schedule and availability of attorneys/representatives providing the service.
- C. If the attorney/representative cannot personally visit with an inmate within ten days of receipt of the appointment request, the attorney/representative shall contact the inmate by telephone.
- D. Legal access to the courts for State of Utah issues related to habeas corpus and conditions-of-confinement by inmates housed out of state on interstate compact agreements shall be afforded by the inmate writing to the department's contract attorney. The inmate shall mail the letter to the USCF mailroom for processing. For legal issues dealing with the receiving state, the inmate will need to follow the receiving state's policy governing legal access.

01.06 Private Attorneys

Inmates are entitled to contact and employ private attorneys, but the Department shall not pay for private attorneys. Financial arrangements for a private attorney/representative are the inmate's responsibility.

01.07 Public Interest Attorneys

In addition to Department-provided contract attorneys or private attorneys arranged through their efforts, inmates may request to be represented by public interest groups such as the American Civil Liberties Union (ACLU), Legal Aid Society, the Disability Law Center, or other groups.

01.08 Inmate Self-Representation

- A. Inmates may represent themselves.
- B. Inmates providing legal services to other inmates shall be subject to disciplinary action.

02.00 SERVICE OF LEGAL DOCUMENTS ON INMATES

02.01 Service of Legal Documents on Inmates

- A. Process servers from outside agencies shall be directed to the warden's office.
- B. The warden's office shall review the documents to be served and, in the presence of the server/agent, establish the inmate's current location to be served.
 - 1. If the inmate is not housed at the USCF or CUCF facilities, the server/agent shall be advised of the inmate's location, and the server/agent shall remain responsible for service.
 - 2. If the inmate is currently housed at the USCF or CUCF facilities, and if the documents to be served are deemed appropriate as per this chapter, a staff member from the warden's office shall receive the server/agent by signature. The receiving party will also take the name and telephone number of the process server, note it on the log, and begin the service process.
- C. Process Service documents can also be sent to the Warden's office email address or through the US Mail.
- D. After accepting the documents to be served, within one business day, staff shall create a Certificate of Service for the document to be served and make two copies of the document. The designated staff member shall then:
 - 1. deliver one copy to transportation if transport is required;
 - 2. retain one copy for DPO records; and
 - 3. deliver/email the original to the inmate's Case Manager and copy the supervising Programming Lieutenant.
- E. If the inmate refuses service or refuses to sign for the documents, the Case Manager shall document the event with a brief statement.
- F. All DPO copies of served documents shall be signed by the inmate with the date of service and shall be recorded.
- G. the filing agency may request a Return of service.

02.02 Documentation of Process Service

- A. A chronological service ledger shall be maintained at the Warden's office. This ledger shall contain:
 - 1. the name of the person served;
 - 2. the date received;
 - 3. the document type and case number;
 - 4. who delivered the documents to be served, including telephone number or email address;
 - 5. the requirements (court or transport); and
 - 6. any remarks.
- B. Service on DPO inmates housed in county jails shall be accomplished per the policies and procedures of the local jurisdiction involved and shall not be accepted by the DPO.

03.00 VISITING ACCESS

03.01 General Requirements

- A. Visits between inmates and legal counsel shall not be monitored and shall occur in areas that permit privacy.
- B. Staff members shall not listen to or monitor these privileged conversations.
- C. Visual observation shall be permitted. However, it shall not be so close as to permit staff to observe the contents of documents.
- D. When a signature or documents must be exchanged during barrier visits, staff members may hand-carry the materials between the attorney/representative and the inmate. Reasonable steps shall be taken to maintain the privacy of the materials. No paperwork will be left with the inmate. If the attorney has documents for the inmate to keep, they must be sent directly to the inmate, marked legal mail, or left at the warden's office for service upon the inmate.

03.02 Scheduling Visits

- A. A valid, approved application must be on file to schedule a visit.
- B. Attorneys/representatives shall request to visit an inmate in advance using the public website corrections.utah.gov to schedule a time to meet with their clients and to reduce administrative or unintended security delays.
- C. Two attorneys are allowed in each time slot and must be scheduled in advance.
- D. Each time slot is 1 hour. An additional timeslot may be scheduled if more time is anticipated for the visit.
- E. Visits should be scheduled three days in advance.
- F. Attorneys/representatives will receive an email confirming their appointment or notifying them that no appointment times are available for the date requested. The attorney/representative can return to the public website, request another date and time, and wait for a confirmation email.
- G. Attorneys/legal representatives of record shall be required to complete the Attorney/Legal Representative Rules and Regulations form and the Attorney or Legal Assistant Application form before visiting with the inmate. The form is located on the public website.
 - 1. The processing and approval may take up to 3 business days to be completed.
- H. The Attorney or Legal Assistant Application and the Rules and Orientation Form must be completed annually. The calendar year runs from January 1 through December 31.
- I. Attorney representatives shall present a photo ID and a verified letter of introduction from the attorney of record. Visiting Days/Times.
 - 1. Attorneys/representatives may:
 - a. conduct business with their inmate clients at the USCF facility Monday through Friday, 0800-1100 hours and 1300-1500 hours, excluding state and federal holidays.
- J. Under exigent circumstances, if an attorney visit is needed outside the legal access hours or with less than 24-hour notice, and there is not sufficient time to schedule a visit, attorneys may contact the Warden's office at;
 - 1. CUCF – 435-528-6010; or
 - 2. USCF – 801-522-7001.
- K. prior clearance from the Warden/designee may be obtained for exigent circumstances for alternate times.

1. If a request for an alternative time is made, it must include the alternative request's reasoning.
- L. Unscheduled or "drop-in" visits will not be accommodated.

03.03 Process

A. Check-In

1. After passing through the VDS, Attorneys/representatives shall check in at the Screening Building (SCR) upon arrival at the institution.
2. Attorneys shall present a valid state bar card and a current photo ID to the officer in the Screening Building, and the officer will verify the attorney/representative has a confirmed appointment for that date and time. The attorney/representative should arrive 15 minutes before their appointment to ensure they are afforded their allotted time of 1 hour. If the attorney/representative arrives late, that time will be deducted from their 1-hour visit.

B. Processing Visit

1. The attorney/representative shall be processed through the screening area and then directed to the approved location for the meeting.
2. The inmate shall be notified to report to the designated meeting area for the visit.

C. Dress Code

1. The dress code is professional. Modest dress is required.
2. Skirts, dresses, and capris (including slits in garments) need to be knee-length or longer when standing.
3. Shorts, sleeveless shirts, short skirts, or other revealing clothing are prohibited.

03.04 Paralegals and Other Attorney Representatives

- A. Attorneys may elect to have a representative visit an inmate client instead of visiting personally.
- B. Attorney representatives may include paralegals, investigators, law clerks, or other attorneys.
- C. The procedure for attorneys to obtain authorization for representatives to visit requires that:
 1. attorneys submit a Legal Representative/Non-Attorney of Record Application and USCF Legal Access Agreement to the warden's office, giving the name and title of the representative, the name of the attorney, and the name of the inmate to be visited;
 2. a BCI records check shall be conducted on the attorney representative;
 3. if any attorney representative has a criminal record, they may be denied access to the facility unless it is established that the:
 - a. supervising attorney has a compelling reason for utilizing this particular legal representative rather than another, equally qualified individual;
 - b. the legal representative in question presents no safety, security, management, or control problem for the facility as determined by the warden/designee; and
 - c. the division director and executive director approve the legal representative's access.
- D. The supervising attorney may attempt to establish that their legal representative does not present a problem to the facility due to their criminal record by establishing the following:
 1. remoteness in time or lack of seriousness of the criminal offense;
 2. good character of the legal representative; and

3. unavailability of another legal representative to the supervising attorney or particular expertise or training possessed by the attorney/representative who is available.
- E. If exigent circumstances require a visit before appropriate screening can be completed, the warden/designee may approve temporary approval for a visit.
- F. Subsequent visits should follow established clearance procedures.

03.05 Attorney Conduct

Attorneys/representatives shall adhere to the Legal Access Agreement.

A. Searches of Attorneys/Representatives

1. A search shall be made of all material (e.g., briefcases, coats) brought into and out of any facility by all attorneys/representatives. Such searches shall be performed only in the presence of the attorney/representative.
2. If any written materials are deemed privileged, they shall not be read by staff; however, the attorney/representative may be required to leaf through these materials in the presence of staff to assist in inspecting for contraband.
3. If reasonable suspicion exists that an attorney/representative possesses undeclared contraband, the visit shall be suspended, and the attorney/representative shall be directed to the Warden's office for resolution.
4. If the attorney/representative refuses to leave, they are in violation of institutional rules and regulations, and External Security shall be notified. An incident report shall be filed documenting the incident.

B. Denial of Visit

1. If a search request is refused by the attorney/representative, they shall be denied the visit and required to leave prison property.
2. If a warden/designee determines that a safety, security, control, or management problem could result in allowing an attorney/representative access to a facility, the warden/designee may deny such access.
 - a. Such denial shall be based upon good cause as determined by the warden/designee.
3. Any attorney/representative who violates any Department policy or rule or who provides false information may be denied access to the facility.
4. A visit may be suspended, restricted, or revoked for refusal to comply with institutional rules and regulations.
5. Access may be denied to any individual due to any facility responding to an emergency.
6. If a visit is denied, suspended, restricted, or revoked for reasons other than facility emergencies, a complete report of the incident shall be submitted to the warden, DPO division director, and the Utah Attorney General's Office.
7. If a representative is denied a visit for refusing a search/inspection, the attorney for whom the representative works shall also be notified.
8. An attorney/representative may request a hearing before the executive director if they believe the denial of access for them or their representative was arbitrary, capricious, or in violation of Department policy.

03.06 Depositions, Mediations, and Proceedings

- A. These proceedings must be court-ordered and scheduled two (2) weeks in advance. Along with a copy of the court order, a background clearance of all persons coming into the facility (attorney, court recorders, videographers, etc.) shall be turned in to the Warden's Office.
- B. A copy of the court order must be submitted to the warden's office at udc-uscwardensoffice@utah.gov two (2) weeks in advance.

03.07 Electronics

- A. The Warden's Office must approve electronics on an authorized clearance before arriving on prison property. Electronic items shall be listed on the Attorney Scheduling form to be approved for the visit. Each request to bring electronics into the prison will be evaluated on a case-by-case basis with appropriate justification provided by the requesting attorney.
- B. Examples of electronic devices include:
 - 1. smartwatches;
 - 2. cameras;
 - 3. tape recorders;
 - 4. cell phones;
 - 5. laptops, and
 - 6. any WiFi-capable device.
- C. If electronics are not approved through the scheduling portal, they will not be allowed inside the institution.

03.08 Inmate Phone Calls

In limited circumstances, an attorney of record for an inmate may be able to set up a telephone call with a client. To be approved:

- A. the attorney must have a valid, approved application and a completed background check;
- B. each request will be reviewed on a case-by-case basis;
- C. if approved, a phone call will be facilitated, or the housing unit will be notified to pass the message to the inmate, who will be asked to initiate the call; and
- D. if an attorney knows in advance that a phone call will be needed, they should schedule with the inmate directly.

04.00 LEGAL MATERIAL04.01 Storing Legal Material

- A. During the R&O intake process, inmates shall be issued two 13" x 18" clear plastic pouches for storing legal materials only.
- B. Pouches shall be marked and contain legal information as outlined below:
 - 1. Legal - Public: case copies, court rules, publicly filed court documents (but not books) which are necessary to process the case and may otherwise exceed the applicable property matrix;
 - 2. Legal - Privileged: attorney-client correspondence and other non-public material that qualifies as privileged;

3. Legal - Privileged pouches may be inspected, but contents shall not be read; and
4. Legal - Public pouches shall be subject to regular inspection rules and have no privilege against reading.
- C. Books may be obtained as property according to FD14, "Inmate Property."
- D. CD-formatted (Compact Disc) materials may be retained by an inmate with a property contract issued by an Offender Management Review Team (OMR) per FD14 Inmate Property.
- E. Inmates may request additional legal pouches as described in FD14.

04.02 Electronic Access to Legal Material

- A. Where available, inmates may use electronic equipment to access an electronic law library database.
- B. Any use of electronic equipment for legal access may be dependent on:
 1. the housing unit or facility availability of electronic equipment options; and
 2. inmate compliance with regulations associated with the use of electronic equipment.

05.00 ATTORNEY EXPERT VISIT

This section aims to provide a consistent, systematic method of ensuring the safety, security, and orderly management and control of the facility in UDC's decision to grant visits by experts. Its purpose is also to help UDC inform the court of department policy as it necessarily considers UDC policy in issuing visitor Orders as required by Utah Code Ann. § 64-13-17.

05.01 Attorney Expert Visit Process

- A. To ensure the safety and security of the facility, the Warden shall approve visits by experts at least seven days in advance or as issued by court order after considering UDC policy.
- B. The visit by the expert should not interfere with inmate count, meals, or inmate transportation to courts, medical facilities, or other UDC housing facilities.
 1. UDC shall set the day and time for the expert visit.
 2. If the facility is on lockdown or the inmate is otherwise unavailable to attend a visit, the visit may be canceled and rescheduled on short notice.
- C. Visits should not extend beyond 3 hours.
- D. At least 14 days prior to the visit, the attorney requesting the visit shall provide the expert's name and Curriculum Vitae (CV). The expert and attorney shall be subject to background checks and clearance per standard UDC policy. See FD04–Visiting procedures.
- E. At least 14 days in advance, the attorney requesting the visit shall send a list detailing the items the expert intends to bring. In this list, the expert should describe the item to be brought, the serial number of the item, and the purpose and justification for requesting to bring the item(s) into the prison with particularity. The requested items may only be allowed if approved by the Warden and in compliance with UDC policy–FF01 Clearances. There is no expectation that an item shall be allowed in the facility. In most cases, a notepad and pencil/pen are the preferred approved items for the visit.
 1. In no case shall a video recording device be allowed (unless ordered by a court after considering UDC policy per Utah Code Ann. § 64-13-17).

2. Cell phones are not allowed (unless ordered by a court after considering UDC policy per Utah Code Ann. § 64-13-17).
 3. A voice recording device may only be approved if it is reasonably sized, hand-held, absolutely necessary for the expert visit, and approved by the warden or court-ordered. The recording device cannot do anything other than record a voice.
 4. Computers and other electronic devices are generally prohibited. If the facility warden determines a justifiable need and approves a computer or other electronic device to be brought into the prison, the device's internet capacity must be turned off and the user may not attempt to access the internet (unless ordered by a court after considering UDC policy per Utah Code Ann. § 64-13-17).
- F. After approval of the expert visit and approval of items that may be brought into the prison, the visitor and items will be searched prior to entering the facility per UDC policy. UDC may still deny the visit or particular items per this visitor policy if the visitor or item reasonably presents a danger to the facility's safety, security, and orderly management.
- G. Visitors shall comply with all prison rules, policies, and procedures per UDC's visiting policy and procedure.
- H. Any visitor who fails to comply with all rules shall have his or her visit terminated in accordance with UDC visiting procedures.
- I. To maintain the facility's safety and security, a correctional officer will always be present in the vicinity of the visit.