

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 328.00

DATE: 30 April 2021

**SUBJECT: ACCESS TO COURTS AND
COUNSEL**

POLICY DIRECTIVE

PURPOSE:

To ensure the right of inmates and residents to have access to courts. To ensure and facilitate inmate and resident access to counsel and assist in making confidential contact with attorneys and their authorized representatives.

REFERENCE:

WV Code §§15A-4-6; 15A-4-7; and 15A-4-8.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject, including DOC Policy Directive 327.01, dated 01 January 2004; DOC Policy Directive 328.00, dated 01 January 2004; RJA Policy 14001, dated 20 March 2002; and DJS Policy 333.00, dated 01 October 2015.

APPLICABILITY:

All facilities within the Division of Corrections and Rehabilitation. This Policy is available for general distribution and shall be made available for inmate and resident review.

DEFINITIONS:

Attorney: Person licensed to practice law in their respective state and authorized to perform both civil and criminal legal functions for clients, including drafting of legal documents, giving of legal advice, and representing such before courts, administrative agencies, boards, and the like.

POLICY:

- I. The right of access to the Courts minimally provides that inmates and residents have the right to present any issue, including the following:
 - A. Challenging the legality of their conviction or confinement.
 - B. Seeking redress for illegal conditions or treatment while under correctional control.
 - C. Pursuing remedies concerning all civil legal problems.
 - D. Asserting against correctional or other government authority any other rights protected by constitutional or statutory provision or common law.
- II. Inmates and residents seeking judicial relief shall not be subjected to reprisals or penalties because of their decision to seek such relief.
- III. All facilities shall facilitate inmate's and resident's access to counsel and assist inmate's/residents in making confidential contact with attorneys and their authorized representatives. Such contact includes, but not limited to, uncensored telephone communications, uncensored correspondence, and visits.
 - A. To safeguard the sanctity of the attorney-client privilege, telephone calls or electronic communications to or from an attorney shall not be monitored, intercepted, recorded, or disclosed in any matter.
 - B. To safeguard the sanctity of the attorney-client privilege, mail to or from an attorney shall not be monitored, reviewed, copied, and kept by the facility, or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, that mail may be checked for weapons, drugs, and other contraband provided it is done in the presence of the inmate/resident and there is a reasonable basis to believe that any weapon, drug, or other contraband exists in the mail.
 - C. Provisions shall be made for personal private visits with an inmate's/resident's attorney. Conversations between inmates/residents and their attorneys shall not be monitored but may be visually observed for security reasons.
 1. Facilities shall maintain guidelines that govern visits between inmates/residents and their attorneys. Facility procedures shall specify the conditions of such visits.
 2. Regular attorney visitation at jails shall occur between the hours of 7:30 and 11:00 am; 12:00 and 5:00 pm; and 6:00 and 9:00 pm.
 - a. Requests for visitation during other times shall be made to the Shift Supervisor by either the attorney or the inmate. Such requests shall be liberally granted but require an explanation of the extenuating circumstances justifying visitation.

Examples of such circumstances include, but may not be limited to, signing court documents requiring expeditious action; and first-time attorney contact following initial incarceration of the inmate.

- b. The Shift Supervisor shall approve a justified request for special attorney visitation unless the visit would jeopardize facility security. In no cases may a visit be approved during mealtimes or during inmate counts.
- IV. Inmates/residents shall have reasonable access to necessary supplies related to legal matters, such as paper for legal documents, writing instruments, envelopes and reasonable postage, and reasonable copying.
- A. All facilities will provide inmates/residents with the opportunity to have copies of documents to be filed as a part of court actions.
 - B. Upon request from an inmate/resident, and upon verification that a court action has been initiated, staff will provide the inmate/resident with three (3) copies of legal documents necessary for filing the aforementioned court action free of charge up to a total of seventy-five (75) pages.
 - C. Inmates/residents will be assessed ten (10) cents per page thereafter for any other requests for copies except as provided in above paragraph.
 - D. Indigent inmates/residents may not be denied access to legal copies but may be charged a negative balance in their Trustee Account until they gain sufficient funds to reimburse the facility for copying.

ATTACHMENT(S):

None.

APPROVED SIGNATURE: _____


Betsy C. Jividen, Commissioner


Date