

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 02/01/2020	NUMBER 05.03.116
SUBJECT PRISONERS' ACCESS TO THE COURTS		SUPERSEDES 05.03.116 (12/16/2019)	
		AUTHORITY MCL 791.203; Administrative Rule 791.6603; 2003 PA 238; MCL 55.261 et seq.	
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POLICY STATEMENT:

Prisoners are permitted to exercise their constitutional right of access to the courts subject to legitimate penological interests.

POLICY:

- A. Prisoners have a constitutional right of access to the courts that may not be arbitrarily impeded. No retaliation may be taken against a prisoner who has filed a lawsuit or is pursuing litigation. A copy of a lawsuit that a prisoner has filed against the Department or its employees, or information on such a lawsuit, shall not be placed in that prisoner's commitment files.

ACCESS TO ATTORNEYS AND THEIR REPRESENTATIVES; CONFIDENTIALITY

- B. A prisoner shall be allowed visits with an attorney, or representative acting on the attorney's behalf, on official business with the prisoner in accordance with PD 05.03.140 "Prisoner Visiting." Authorized representatives include paralegals, law students, and special investigators. If requested by the attorney, staff shall arrange a location where the visit can be conducted without being overheard by staff or other prisoners. Whenever possible, such a request should be made in advance of the visit to assist in planning for a private room or other area.
- C. Prisoners in general population, including protective housing, shall be allowed reasonable telephone access to an attorney as set forth in PD 05.03.130 "Prisoner Telephone Use." Additional calls, and calls outside normal hours, may be authorized by the Warden or designee if requested by the attorney. A prisoner in segregation shall be allowed telephone access to an attorney only as set forth in PD 04.05.120 "Segregation Standards." Telephone calls between prisoners and attorneys that are not part of a prisoner's regular telephone usage shall be placed by a staff member but shall not be listened to by staff.
- D. Prisoners shall be allowed to have confidential and uncensored correspondence with an attorney, the courts, and legitimate legal assistance organizations as set forth in PD 05.03.118 "Prisoner Mail." This includes consulate or embassy staff if the prisoner is a foreign national.
- E. If it is discovered that an attorney, or a representative acting on the attorney's behalf, has violated a Michigan Department of Corrections (MDOC) policy directive or operating procedure, or aided a prisoner in violating an MDOC policy directive or operating procedure, they may be restricted from communicating with the prisoner by the means in which the violation occurred. A hearing shall be conducted pursuant to Administrative Rule 791.3310 prior to restricting the attorney's, or their representative's, communication with the prisoner.
- F. Prisoners are authorized to possess legal materials as set forth in PD 04.07.112 "Prisoner Personal Property." Legal papers that are in a prisoner's personal property may be searched for contraband but shall not be read unless there is reasonable cause to believe they are not truly legal correspondence.

PROVISION OF LEGAL CORRESPONDENCE MATERIAL

- G. All prisoners must be provided means for filing a lawsuit and corresponding with attorneys and consulate or embassy staff. Writing materials, envelopes, and postage are available for purchase in prisoner stores as set forth in PD 04.02.130 "Prisoner Store." These items also are available to prisoners who do not have sufficient funds to purchase the items as set forth in PD 05.03.118 "Prisoner Mail." A prisoner who is in segregation may be deprived of writing materials if they are being used in a

manner that presents a serious threat to order and security in accordance with PD 04.05.120 "Segregation Standards."

NOTARY SERVICES

- H. All prisoners shall have access to a notary public. All non-custody housing unit staff, librarians, and library assistants/library technicians are required to be notaries public and to notarize prisoners' signatures on legal documents if requested. There is a charge of \$1.00 for each document notarized. Funds for this service shall be loaned by the Prisoner Benefit Fund to prisoners who lack sufficient funds to pay for this service. Funds collected to repay the loan shall be returned to the PBF that loaned the funds. Requests to notarize signatures on documents where notarized signatures are not required, including Department documents, legal briefs, and personal letters, may be denied even if the prisoner claims they are legal documents. Prisoners in segregation shall be provided notary services within two business days of making a request for such services.
- I. Staff performing a notarial act are responsible for:
1. A jurat notarization. This is required when the signer must attest to the content of the document, such as for affidavits and pleadings filed in a court. In executing a jurat, the notary guarantees that the signer personally appeared before the notary, was given an oath or affirmation by the notary attesting to the truthfulness of the document, and signed the document in the notary's presence. The notary must positively identify the signer. The following language may be used to administer the oath or affirmation: "Do you solemnly swear or affirm that the content of this document is true and correct?" If the signer does not so swear or affirm, the jurat notarization cannot be performed. An oath or affirmation must be administered whenever the document requiring notarization indicates that it was "sworn to before me."
 2. An acknowledgement. This merely confirms the identity of the document signer and acknowledges that the signer actually signed the document. In such cases, a sworn oath is not required.
- J. When performing a notarial act, staff are required to clearly and legibly print, type, stamp, or otherwise imprint mechanically or electronically all of the following information near their signature:
1. Their name exactly as it appears on their application for commission as a notary public;
 2. The statement: "Notary public, State of Michigan, County of _____;"
 3. The statement: "My commission expires _____;"
 4. If performing a notarial act in a county other than the county of commission, the statement "Acting in the County of _____;"
 5. The date the notarial act was performed.
- K. Staff are not responsible for the written content of documents they notarize, however, this does not mean that staff must ignore the content prior to notarizing the document. Staff may conduct a cursory review of the document to ensure that it is not something that would ordinarily be confiscated as posing a threat to the custody and security of the institution if found in the prisoner's possession (e.g., an escape plan; threat to physically harm another). If such a concern exists after review, staff should contact appropriate supervisory staff for direction on how to proceed. Staff should not refuse to notarize a document solely because they disagree with its content or because they believe it includes inaccurate statements about staff, prisoners, or others.
- L. Staff who are notaries public must comply with requirements set forth in 2003 PA 238, Michigan Notary Public Act, MCL 55.261 *et seq.* State law prohibits prisoners from serving as notaries public.

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LEGAL PROPERTY

- M. Prisoners shall be permitted to possess their personal legal property as defined and set forth in PD 04.07.112 "Prisoner Personal Property" and, if in segregation, PD 04.05.120 "Segregation Standards." If a prisoner's property exceeds allowable limits due to items claimed to be legal property, a hearing shall be conducted in accordance with PD 04.07.112 and OP 04.07.112 "Excess Legal Property Hearings" to determine if the items are legal property and thus allowed to be possessed.

LEGAL PHOTOCOPYING SERVICES

- N. Prisoners shall be provided photocopying services to obtain one copy of an item needed for legal research. Prisoners also shall be provided photocopying services to obtain copies of documents in their possession, or available to them in the law library, in the quantities that are necessary for the prisoner to file with a court or serve on a party to a lawsuit. Prisoners shall use the Legal Photocopy Disbursement Authorization form (CSJ-602) to request photocopying. The forms shall be available to prisoners in the housing unit and institutional law libraries. A fee of 10 cents shall be charged for each page copied.
- O. Prisoners who lack sufficient funds to pay for copies of documents in their possession, or available to them in the law library, that are necessary for the prisoner to file with the court or serve on a party to a lawsuit shall be loaned funds to pay for the copying. Funds shall not be loaned, however, for copying a document that can otherwise be reproduced by the prisoner, except if the document is notarized or was created for the prisoner through the Legal Writer Program and as otherwise required by court order for service of a federal lawsuit. If a document could be denied notarization pursuant to Paragraph H, funds shall not be loaned to photocopy the document.
- P. A prisoner may be required to present documentation (e.g., court rule, copy of the pleading) to show that requested copies are necessary. If the prisoner presents their personal legal materials, staff shall read only those portions that are necessary to determine whether the copies shall be provided and, if applicable, whether funds will be loaned. If a loan is approved, it shall be considered an institutional debt and collected as set forth in PD 04.02.105 "Prisoner Funds."

LEGAL ASSISTANCE

- Q. In addition to legal assistance available in the community from attorneys, from foreign consulates and embassies, and legal service organizations, prisoners have access to legal research materials and are provided legal assistance through the Legal Writer Program as set forth below. To avoid exploitation of prisoners, prisoners are prohibited from directly or indirectly charging or receiving compensation in any form, including money, goods, or services, for providing or receiving legal services from another prisoner, including through the Legal Writer Program.

LEGAL RESEARCH MATERIALS

- R. Prisoners shall have access to legal research materials as set forth in PD 05.03.115 "Law Libraries." Legal research materials beyond that available in the law library shall be available to prisoners as set forth in PD 05.03.115.

LEGAL WRITER PROGRAM

- S. The Legal Writer Program provides eligible prisoners in Correctional Facilities Administration (CFA) institutions with legal assistance on matters relating to their criminal conviction or conditions of confinement. Only prisoners not represented by counsel who are unable to effectively help themselves by using the law library or other available legal resources are eligible to receive Legal Writer Program services. Legal Writer Program assistance shall be provided through prisoners at the institution who have successfully completed the legal writer training program and are assigned by the facility as legal writers. A staff person designated by the Warden shall provide oversight and supervision of the Legal Writer Program and supervise the legal writers. There is no attorney-client privilege between the legal writer and the prisoner receiving the assistance.

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- T. A prisoner is eligible to receive Legal Writer Program services if they meet any of the following criteria:
1. Does not have a verified GED or high school diploma.
 2. Does not speak, read, or write English.
 3. Has a documented physical or mental impairment or a learning disability that may affect their ability to use the law library to prepare and file a legible and coherent pleading.
 4. Is undergoing reception center processing.
 5. Is housed in any form of segregation other than temporary segregation.
 6. Is housed in a Department operated inpatient medical unit.
 7. Is housed in protective housing, or other non-traditional general population housing, that does not allow for direct access to legal research materials as approved by the Deputy Director or designee.
- U. An on-site Legal Writer Program shall be available only at institutions identified by the CFA Deputy Director. All prisoners requesting assistance from the Legal Writer Program shall be screened by a staff person designated by the Warden to determine the prisoner's eligibility. If a prisoner is determined to be eligible for the assistance, staff designated by the Warden shall make arrangements for the prisoner to have access to a legal writer. If the facility does not have an on-site Legal Writer Program, the prisoner may be transferred to a facility that does have an on-site program.
- V. After meeting with the prisoner, the legal writer shall prepare all necessary pleadings, motions, and other documents for the prisoner under the direction of off-site private attorneys under contract with the Department. If the prisoner receiving the assistance is dissatisfied with the quality of the documents received, they may address the matter with the legal writer. However, the Legal Writer Program does not operate as a "typing service" for the prisoner and changes shall not be made solely based on the prisoner's personal preferences (e.g., different formatting; phrasing of legal argument). The prisoner receiving the assistance shall be responsible for obtaining required copies of the documents and mailing the documents to the courts or other parties. A prisoner who lacks adequate funds to pay for photocopying or postage shall be loaned the funds as set forth in PD 05.03.118 "Prisoner Mail."
- W. The CFA Deputy Director shall ensure that a manual regarding the Legal Writer Program is maintained and is available for use by staff involved in the Legal Writer Program. The manual shall specifically include information on the oversight and supervision that is to be provided by staff at institutions that have an on-site Legal Writer Program.

PROCEDURES

- X. If necessary, to implement requirements set forth in this policy directive, Wardens shall ensure that operating procedures are developed or updated.

AUDIT ELEMENTS

- Y. A Primary Audit Elements List has been developed and is available on the Department's Document Access System to assist Wardens with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

APPROVED: HEW 01/05/2020