



Operating Procedure

Effective Date March 1, 2015	Number 866.3
Amended 4/3/17	Operating Level Department
Supersedes Operating Procedure 866.3 (3/1/12)	
Authority COV §47.1-1 et seq., §53.1-10; §53.1-40; §8.01-243.2	
ACA/PREA Standards 4-4268, 4-4272, 4-4274, 4-4275, 4-4276, 4-4280; 4-ACRS-6A-01, 4-ACRS-6A-02; 2-CO-3C-01	
Office of Primary Responsibility IOP Committee	

Subject
OFFENDER LEGAL ACCESS

Incarcerated Offender Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	FOIA Exempt Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Attachments Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
--	--

I. PURPOSE

This operating procedure provides guidance for offender access to courts and legal representatives, and ensures legal resources are available to offenders confined in Department of Corrections facilities.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

Facility Court Appointed Attorney - Attorney(s) appointed by the Judge of the Circuit Court jurisdiction in which the facility is located to advise and assist offenders regarding legal matters related to their incarceration

Indigent Offender - An offender with less than \$5.00 in his/her offender account for discretionary spending during the previous month and has no job or other source of income that provided as much as \$5.00 during the previous month or an offender who is newly received into a facility and does not have available funds nor hygiene items.

Law Library - An area set aside within a facility that contains resources for accessing information related to local, state, and federal law as well as DOC and Local Operating Procedures to assist offenders in the preparation of their legal work; the Law Library generally provides working space for material review, preparation of legal documents, and limited supplies for offender use.

Law Library Supervisor - A facility employee designated to supervise the daily operation of the law library and the offenders working as clerks or aids in the law library.

Legal Correspondence - Correspondence sent to or received from verified attorneys, officers of state, federal, and local Courts, the Virginia State Bar, and tort claims filed with the Division of Risk Management; the sender must clearly identify outer envelopes and contents as legal correspondence.

Magistrate - An independent judicial officer who has the authority to issue warrants or summonses upon review of complaints of criminal conduct and a finding of probable causes; a magistrate is only authorized to act within the magisterial region for which they are appointed.

Notary Public - A staff member available to notarize a signature affixed to legal documents.

IV. PROCEDURE

A. Offenders shall be provided access to the courts without being subjected to reprisal or penalty for accessing the courts in order to challenge the legality of their confinement, seek redress for illegal conditions or treatment while under correctional control, pursue remedies in connection with civil legal problems and assert against any rights protected by constitutional or statutory law. (4-4274; 4-ACRS-6A-02; 2-CO-3C-01)

B. Access to Attorney

1. General Provisions

- a. All offenders, regardless of housing status, shall have access to counsel and confidential contact with licensed attorneys and bona fide legal assistants who are acting under the authority and supervision of that attorney through telephone communications, uncensored correspondence, and visits. (4-4275; 4-ACRS-6A-01; 2-CO-3C-01)
- b. The facility shall not be involved in any interaction between an offender and an attorney except as requested by the attorney in an effort to facilitate communication.
- c. Offenders who have been verified as illiterate shall receive appropriate assistance from staff with writing attorney requests.

2. Facility (Court Appointed) Attorney

- a. Pursuant to COV §53.1-40, a court appointed attorney will be made available to offenders incarcerated in state facilities. Offenders may request an appointment with a court appointed attorney for assistance in the preparation of legal documents that pertain to their present incarceration.
- b. The names and addresses of facility court appointed attorneys shall be available and posted for unrestricted access by offenders. Newly arrived offenders shall be informed, in writing, of procedures for contacting the attorney.
- c. The facility and court appointed attorney should develop a mutually agreed upon plan to set times and dates of forthcoming appointments, and provide the names of offenders requesting an appointment. Appointments should be set at a time when work and program schedules do not interfere.
- d. Offender complaints about court appointed attorneys should be sent directly to the attorney, the local Circuit Court, or the Virginia State Bar.

3. Private Attorney

- a. Offenders may retain an attorney of their own choosing at their own expense. Contact may be made via mail in accordance with Operating Procedure 803.1, *Offender Correspondence*, or by telephone in accordance with Operating Procedure 803.3, *Offender Telephone Service*.
- b. An attorney, or attorney's representative acting on official business, may request to visit with an offender by submitting a [Legal Visit Request](#) 851_F3 to the facility with reasonable advance notice (normally 48 hours but not less than 24 hours) of the intended visit. Operating Procedure 851.1, *Visiting Privileges*, governs attorney visits.

C. Local Magistrate

1. Offenders shall have direct access to a local magistrate via U.S. Postal Service.

- a. Offenders seeking to file criminal charges may request a hearing before a magistrate by writing to the Chief Magistrate using the mailing address provided by the facility, and must include a summary of their complaint within the correspondence.
- b. The magistrate may reply to the offender in writing or by scheduling an interview with the offender through proper facility channels.
- c. All mail to and from the magistrate shall be treated as legal mail.

2. DOC employees will not interfere with offender access to the magistrate; however the facility should designate an employee to be the liaison with the magistrate to schedule appointments.

- a. The facility shall accommodate a requested interview in an expeditious manner.
- b. No DOC employee other than the liaison shall place a call for an offender or relay information to a magistrate.

3. Magistrates may have access to the facility during normal working hours, and at other times as approved by the Facility Unit Head or Administrative Duty Officer.

- a. The facility shall provide a confidential meeting space for magistrate meetings with offenders.
 - b. A Corrections Officer should be present during the meeting for sight supervision only.
4. If requested by the magistrate, the Facility Unit Head or Administrative Duty Officer should grant permission for the magistrate to view any incident reports, etc. pertaining to an alleged incident.

D. Facility Law Library (4-4276; 2-CO-3C-01)

1. Offenders shall have access to a law library or comparable space based on facility resources.
2. The facility law library shall provide, at a minimum, the materials available through the *Electronic Law Library Contract* which includes relevant and up-to-date constitutional, statutory, and case law materials, applicable court rules and practice treatises and a current edition of the *American Correctional Association Standards* under which the facility is audited.
3. Access to typewriters, typing services or other resources may be provided as necessary to address legal matters.
4. The staff person in charge of the law library will ensure that additional assistance is provided to offenders who are unable to make meaningful use of the law library on their own.
5. Offenders in special housing shall be provided resources for assistance in obtaining information from the law library and the facility may establish rules for the amount of material these offenders may receive at one time, as well as time frames for their return to the law library. (4-4268)
6. Facilities shall develop protocol for the daily operation of a facility law library and shall ensure that it is supervised on a regular basis by an employee. At minimum, this protocol shall include:
 - a. Law library hours and institutional practices should accommodate law library access for offenders who may be involved in work, school, or program activities.
 - b. Ensure physical security of the library and all materials therein, to include approved, established hours of operation. Adjustments may be made to accommodate other facility schedules.
 - c. Ensure orderly operation of the law library, the number of offenders having access at any given time, recordkeeping of offenders who enter and exit the area, and limits or prohibition of items permitted to be carried into and out of the law library (i.e. food, books, discs, etc.). General rules shall be posted in a conspicuous place for offender information.
 - d. Organized system for processing all requests for materials and supplies to operate the library
 - i. All requests for legal materials should be honored in a timely manner, with priority given to offenders with verifiable deadlines.
 - ii. Materials shall not be removed from law libraries, except as authorized by an assigned law clerk or the law library supervisor.
 - iii. During lockdown, legal reference materials from the law library should only be provided for those offenders who can verify they have a court deadline.
 - e. Appropriate supervision of assigned law library clerks or aids, whose jobs may include maintaining inventory of law materials, helping to guide offenders in the preparation of legal work, providing janitorial services for the area and conducting day to day operations of law libraries.
 - i. Computers and law library equipment are to be used for legitimate purposes only as allowed in the facility law library rules.
 - ii. Use of these computers and equipment for any other purpose is strictly prohibited and should result in disciplinary action per Operating Procedure 861.1, *Offender Discipline*.
 - f. Ensure that law library books, pamphlets, materials and other resources are current and in proper order.
 - g. When case information is not available in the law library, offenders may send a request for information to the facility court appointed attorney. Offenders on interstate compact requesting case law relevant to their home state must request assistance from the Interstate Compact Coordinator. The court appointed attorney is not required to obtain out of state case law for these

offenders.

- h. Department and Local level Operating Procedures and Implementation Memoranda pertaining directly to offender populations or those considered by the facility administration to be appropriate for offender viewing should be available in the law library for review.
 - i. Ensure that law library equipment, resources and typewriters are available for preparing legal documents only, and not used for typing personal letters, request forms, grievances, disciplinary appeals, etc. Any unauthorized use of typewriters is prohibited and may result in disciplinary action or loss of typewriter privileges.
7. Offender law library clerks (or library aides) may be hired to assist offenders with locating the proper resources needed for legal work.
- a. Any clerk work area inside a law library is unauthorized and prohibited for access by offenders other than the offender assigned to work in that area.
 - b. Clerks or aides shall be under the supervision of an employee supervisor and paid utilizing the offender pay system.
 - c. Under no circumstances is an offender allowed to act as an attorney or receive any compensation from another offender for any legal assistance rendered. Charging or accepting any kind of compensation from another offender for legal or other services is a violation of Operating Procedure 861.1, *Offender Discipline*.
8. The facility shall make available pre-printed legal forms for direct filing with the courts, and will ensure that an adequate supply of forms is maintained in the library at no cost to offenders. Specific requests for forms not available at the facility should be directed to the Clerk of the appropriate State or Federal Court. Such forms may include, but are not limited to:
- a. General Power of Attorney Forms
 - b. Petition for Writ of Habeas Corpus
 - c. Notice of Tort Claim
 - d. In Forma Pauperis Affidavit
 - e. §1983 Title 42 US Code
 - f. §2254 Title 28 US Code
 - g. §2255 Title 28 US Code
 - h. AO 240 US District Court Application to Proceed without Prepayment of Fees
9. Work Center orientation handbooks should provide for offenders who do not have direct access to a law library to access materials in the host facility law library and a court appointed Attorney.
10. Community Corrections facility offenders who do not have direct access to a law library may request the facility administration to provide copies of specific statutes and legal citations. The offender shall be responsible for any copying charges and other fees incurred. (4-ACRS-6A-02)
- E. Offender Access to Legal Supplies and Materials
1. Offenders are generally required to purchase their own materials and supplies for legal work. Legal supplies should be made available for purchase in the commissary. Those who are newly received or are indigent may obtain legal materials by submitting a request in accordance with Operating Procedure 802.2, *Offender Finances*. The facility may establish a limit on requested supplies for items such as various types of paper, envelopes, pens and pencils.
 2. Offenders in housing areas that are not allowed physical access to the law library (i.e. special housing, mental health, infirmary, work center) may request copies of case law or other legal materials. The facility shall establish protocol for the quantity of materials the offender may receive, the length of time the materials may be retained by the offender, the manner in which the requests for materials may be processed and delivered, and procedures utilized when an offender fails to return requested materials within established timeframes.

3. Offenders shall be responsible for the storage of their personal legal materials in their housing area in accordance with Operating Procedure 802.1 *Offender Property*. If storage of materials becomes excessive within the housing area, the facility may restrict possession of legal materials to pending cases or those that the offender is preparing to file.

F. Telephone Communication, Legal Correspondence, Copying and Other Services

1. All provisions of Operating Procedure 803.3 *Offender Telephone Service* shall apply to telephone communications with attorneys. Offender telephone calls may be recorded and monitored. It is the offender's responsibility to request a recording block to prevent recording and monitoring of an attorney call (see [Request to Block Attorney Numbers](#) 803_F4). Offenders assigned to pre-hearing detention and disciplinary segregation are generally not permitted telephone privileges except for calls specifically to the attorney of record. (4-4272)
2. At the discretion of the Facility Unit Head or Administrative Duty Officer, an offender may be permitted to place a collect call to an attorney in a bona fide emergency using an administrative telephone if access through the offender telephone system is not feasible. A facility employee will dial the telephone number and observe the offender during the call.
3. Legal correspondence will be mailed at the offender's expense in accordance with Operating Procedure 803.1 *Offender Correspondence*. Offenders will not be denied mail access to the courts because of insufficient funds. If it is established that an offender does not have adequate funds, a loan shall be provided up to the equivalent value of 40 first class postage stamps per month to cover the cost of first class postage only.
4. Illiterate offenders may obtain assistance to complete necessary legal documents through appropriate facility channels. Before assistance is provided, the facility should establish by review of the record or direct knowledge that the offender is unable to correspond or complete such documents.
5. Offenders will have access to copying services and are required to pay for all copies, including legal copies at the rate set by the current *Copy Charges Memorandum* (see Operating Procedure 050.6, *Offender Access to Record Information*).
 - a. Payment arrangements shall be made in accordance with Operating Procedure 802.2, *Offender Finances*.
 - b. Copies should be provided for indigent offenders in response to a court requirement, and the cost debited to the offender's account.
 - c. An offender who has an account debit in excess of \$50.00 for photocopies will not be provided any further photocopies until the offender presents a court order instructing the facility to provide additional photocopying service loans.
6. Offenders who are foreign nationals shall have access to the diplomatic representative of their country of citizenship. (4-4280) Arrangements for visits with the diplomatic representative will be the same as attorney visits. Addresses may be found at www.embassyworld.com
7. Offenders are not allowed to receive legal documents or other correspondence by FAX. If a document for an offender is received via FAX, it shall be forwarded to facility administration and the sender shall be notified.

G. Each facility shall make notary services available to offenders. The purpose of notary services is only to attest to the identity of the person signing the document and does not validate a document's contents or sanction any action.

1. Such services shall be free of charge and granted within one working day of the request.
2. The offender will provide adequate space for all signatures and information required by the Virginia Notary Act. (COV §47.1-1 et seq.)
3. Materials submitted for notary services will not be read except as required for notarization, and shall be notarized in the presence of the offender, signed, and returned to the offender.

4. Notary services shall be provided based only on verification of the offender's identification. Before the offender signs the documents to be notarized and before such documents are notarized, the offender must present an identification card to verify that the offender is the subject of the notarial act.
5. The notary will include the information required by the Virginia Notary Act.
6. To ensure there is no conflict of interest in the notary being a party to the document, each notarial act should include the following statement, which must be signed by the offender under oath: "I certify that the above notary is not a party to this action." (offender signature).

V. REFERENCES

Operating Procedure 050.6, *Offender Access to Record Information*

Operating Procedure 802.1 *Offender Property*

Operating Procedure 802.2, *Offender Finances*

Operating Procedure 803.1, *Offender Correspondence*

Operating Procedure 803.3, *Offender Telephone Service*

Operating Procedure 851.1 *Visiting Privileges*

Operating Procedure 861.1, *Offender Discipline*

VI. FORM CITATIONS

[Request to Block Attorney Numbers](#) 803_F4

[Legal Visit Request](#) 851_F3

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

The office of primary responsibility reviewed this operating procedure in March 2016 and no changes are needed at this time.

The office of primary responsibility reviewed this operating procedure in March 2017 and no changes are needed at this time.

Signature Copy on File

1/10/15

A. David Robinson, Chief of Corrections Operations

Date