



Operating Procedure

Effective Date August 1, 2018	Number 866.3
Amended	Operating Level Department
Supersedes Operating Procedure 866.3 (3/1/15)	
Authority COV §8.01-243.2; §47.1-1 et seq., §53.1-10; § 53.1-25; §53.1-40	
ACA/PREA Standards 4-4268, 4-4272, 4-4274, 4-4275, 4-4276, 4-4280; 4-RH-0023, 4-RH-0026; 4-ACRS-6A-01, 4-ACRS-6A-02; 2-CO-3C-01	
Office of Primary Responsibility Operations Support Manager	

Subject
OFFENDER LEGAL ACCESS

Incarcerated Offender Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Public Access Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Attachments Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
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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

Communication Disability - Any impairment related to speech, language and/or auditory processing; it includes hearing impairments, visual impairments and cognitive impairments evidenced by an inability to speak, read and/or understand written or oral communications of information provided at the facility.

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 their 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 aides in the law library

Legal Compact Discs (CDs) - Compact discs containing legal video, audio, or document digital files

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

Reasonable Accommodation - A modification, action, or adjustment that will assist an offender with a disability in the performance of essential functions or that is necessary to prevent an offender with a disability from being excluded from participation in or being denied the benefits of the services, programs

and/or activities of the facility or subjected to discrimination by the facility without causing an undue hardship to the facility or to the safety and security of the offender, or any other person

Stand-Alone/Free standing Computer - A computer that is not attached to any network

Undue Hardship - An accommodation that would be unduly costly, expensive, substantial, or disruptive; undue hardship refers not only to financial difficulty, but to accommodations that would fundamentally alter the nature or operation of the business or work performed by or at the facility or creates a direct threat to the health and safety of others.

IV. ACCESS TO THE LEGAL SYSTEM

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. 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-RH-0026, 4-ACRS-6A-01; 2-CO-3C-01)

a. 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.

b. All provisions of Operating Procedure 803.3 *Offender Telephone Service*, shall apply to telephone communications with attorneys.

i. All attorney and offender telephone communications must be conducted through the Offender Telephone System.

(a) 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).

(b) At institutions operating Special Housing Units, 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)

ii. At the discretion of The Facility Unit Head or Administrative Duty Officer, an offender may be permitted to receive and/ or place a call to an attorney through the Administrative Telephone System.

(a) Use of the administrative telephone for attorney and offender communication will be limited to a bona fide emergency where access through the Offender Telephone System is not feasible.

(b) A facility employee will dial the telephone number and maintain only visual observation of the offender during the call.

(c) Verified attorney calls will not be recorded.

(d) The time limit for telephone calls on the Administrative Telephone System should not exceed 20 minutes.

iii. When facility staff, designated to coordinate attorney calls, have determined that access through the Offender Telephone System is feasible; the offender and attorney will be instructed to utilize the Offender Telephone System.

c. Legal correspondence will be mailed at the offender's expense in accordance with Operating Procedure 803.1, *Offender Correspondence*.

i. Only correspondence meeting the definition of legal correspondence should be handled as legal mail.

ii. 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.

- iii. 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.
- iv. 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 institutions. 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 institution 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. Offenders should send complaints about Court appointed attorneys 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 Unit Head 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 designated 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 may grant permission for the magistrate to view any incident reports, etc. pertaining to an alleged incident.

D. Diplomatic Access

1. Offenders who are foreign nationals shall have access to the diplomatic representative of their country of citizenship. (4-4280)
2. Arrangements for visits with the diplomatic representative will be the same as attorney visits.
3. Addresses may be found at www.embassyworld.com

V. FACILITY LAW LIBRARY (4-4276; 4-ACRS-6A-02; 2-CO-3C-01)

- A. Offenders shall have access to an appropriate law library to conduct their own legal research and prepare their legal documents.

- B. The institution's law library shall provide, at a minimum, the following materials.

1. The *Electronic Law Library Contract*, which includes relevant and up-to-date constitutional, statutory, and case law materials, applicable Court rules and practice treatises.
 - a. When case information is not available in the electronic law library, offenders may send a request for information to the facility Court appointed attorney.
 - b. 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.
2. A current edition of the *American Correctional Association Standards* under which the institution is audited.
3. Department and Local level Operating Procedures and Implementation Memoranda pertaining directly to offender populations and those considered by the institution administration to be appropriate for offender viewing should be available in the law library for review.
4. An adequate supply of Virginia pre-printed legal forms for direct filing with the Courts at no cost to offenders.
 - a. Such forms may include, but are not limited to:
 - i. General Power of Attorney Forms
 - ii. Petition for Writ of Habeas Corpus
 - iii. Notice of Tort Claim
 - iv. In Forma Pauperis Affidavit
 - v. §1983 Title 42 US Code
 - vi. §2254 Title 28 US Code
 - vii. §2255 Title 28 US Code
 - viii. AO 240 US District Court Application to Proceed without Prepayment of Fees
 - b. Specific requests for forms not available at the institution should be directed to the Clerk of the appropriate State or Federal Court.

- C. Institutions shall develop a written protocol for the daily operation of the law library. At minimum, this protocol shall include:

1. The established law library hours of operation and institutional practices that accommodate law library access for offenders who may be involved in work, school, or program activities; adjustments may be made to accommodate other facility schedules.
2. All physical security requirements of the library and the materials therein, to include but not limited to 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.
3. Information on the on-line *Electronic Law Library*, when applicable.
 - a. Offenders in institutions with an on-line law library, who wish to utilize the *Electronic Law Library*, must submit a request to the Law Library Supervisor to have a law library account created.
 - b. Upon receipt of the offender's request, the Law Library Supervisor will request the offender's account online at [School Dude](#).
 - c. Offender law library accounts are normally created within five working days.
 - d. If the offender has a verified Court deadline and access to the on-line law library is needed sooner than five working days, the Law Library Supervisor will submit the request as an emergency and document that the offender has a Court deadline in the *Comments* section of the request.
 - e. The Law Library Supervisor will be responsible for all password resets and changes to offender law library accounts; offenders who have forgotten their password should notify the Law Library Supervisor for assistance.
 4. An organized system for processing all requests for materials and supplies to operate the library
 - a. All requests for legal materials should be honored in a timely manner, with priority given to offenders with verifiable deadlines.
 - b. Materials shall not be removed from law libraries, except as authorized by the Law Library Supervisor.
 - c. During lockdown, legal reference materials from the law library should only be provided for those offenders who can verify they have a Court deadline.
 5. The process for an offender to request personal copies of legal content from the *Electronic Law Library* and the method and time for delivery. The offender will be required to pay for the copies at the established rate.
 6. Access to typewriters, typing services or other resources should be provided as necessary to prepare legal documents. (4-4276)
 7. The process for accessing and viewing legal Compact Discs (CDs) received from the Courts or verified attorneys.
 - a. Envelopes and/or packages containing legal CDs shall be logged and searched in the same manner as all other incoming legal correspondence as provided in Operating Procedure 803.1, *Offender Correspondence*.
 - i. If during the search no contraband is found, a copy of the envelope and, enclosed contents, and the legal CDs will be issued directly to the offender in Security Level W - 3 institutions.
 - ii. Offenders in Security Level 4 and above institutions are not authorized to possess CDs.
 - (a) Once the legal correspondence and/ or package is opened and searched in the presence of the offender and if no contraband is found; the offender will be provided a photocopy of the envelope with the number of legal CDs documented on the photocopy.
 - (b) All enclosed legal CDs will be forwarded to the Records Office to be stored until retrieved by institutional staff for offender viewing.
 - (c) When an offender transfers, Records staff will ensure that the offender's legal CDs are sent with the Facility Folder or Historical Hard Copy, as appropriate.
 - iii. Suspicious items received in legal correspondence and/ or packages should be turned over to the appropriate investigative authority for evaluation.
 - iv. Legal CD's will be documented, inventoried, and recorded in VACORIS as personal property in accordance with Operating Procedure 802.1, *Offender Property*.
 - (a) Legal CDs will be documented on a [Personal Property Request-Add/Drop](#) 802_F1 with a copy provided to the offender and the original forwarded to the Personal Property Officer for recording in VACORIS.
 - (b) Legal CDs will not be counted toward the maximum number of CDs authorized for

offender possession at Security Level W - 3 institutions on the appropriate *Institutional Property Matrix* (see Operating Procedure 802.1, *Offender Property*, Attachment 2 for male institutions, and Attachment 3 for female institutions) nor will an offender be required to possess a CD Player to receive legal CDs.

- (c) If the offender does not wish to retain legal CDs for viewing, the offender may request a copy of any documents stored on the CD. The offender will be required to pay for the copies at the established rate and dispose of the CD in accordance with Operating Procedure 802.1, *Offender Property*.
 - b. CDs are the only acceptable data storage format for legal materials, all other data storage devices are prohibited and must be disposed of in accordance with Operating Procedure 802.1, *Offender Property*.
 - c. Legal CDs will be visually scanned by staff in the presence of the offender but the documents cannot be read without first obtaining instructions from the appropriate Regional Administrator and the Attorney General's office. (4-4275, 4-ACRS-6A-01)
 - i. Reading documents on an offender's legal CD may require Court approval based upon specified probable cause to believe that a state or federal criminal statute is being violated, or that there exists a valid threat to the security of the facility.
 - ii. Where such probable cause exists, the CD may be temporarily held until instructions are obtained or a Court order is approved.
 - d. Offenders will be permitted to view their legal CDs on the facility law library computers. At institutions and for institutional housing areas that do not provide offender physical access to the law library, offenders will be permitted to view their legal CDs on designated stand-alone/free standing computers.
8. When offenders are not allowed physical access to the law library to conduct their own legal research due to restricted offender movement, the orientation manual shall provide information on how to access available resources and receive assistance in obtaining legal information.
- a. The institution will establish a written protocol on the following and ensure that the offender is notified: (4-4268; 4-RH-0023)
 - i. Process to request copies of case law or other legal materials
 - ii. Quantity of materials the offender may receive
 - iii. Length of time the materials may be retained by the offender
 - iv. Manner in which the requests for materials will be processed and delivered
 - v. Procedures utilized when an offender fails to return requested materials within established timeframes
 - vi. Process to review legal CDs on a designated stand-alone /free standing computer
 - b. 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)
- D. The law library will be supervised on a regular basis by an employee who is responsible for the daily management of the law library and shall:
- 1. Provide additional assistance to offenders who are unable to make meaningful use of the law library on their own. (4-4276)
 - a. Illiterate offenders may obtain assistance to complete necessary legal documents through appropriate institutional channels.
 - b. Reasonable accommodations, that do not pose an undue hardship, will be made to ensure offenders with a communication disability are able to effectively use legal resources.
 - c. Before assistance is provided, the institution should establish by review of the record or direct knowledge that the offender is unable to correspond or complete such documents.
 - 2. Ensure that law library equipment and resources i.e. books, pamphlets, materials, pre-printed legal

- forms, etc., are current, in proper order, and available for offender use.
- a. Computers, typewriters, and other law library equipment are to be used for legitimate purposes only.
 - i. Law library computers shall be used to conduct legal research and view legal CDs, only. Use of the computers to prepare and store legal or personal documents is prohibited.
 - ii. Typewriters shall be used for the preparation of legal documents only, the typing of personal letters or books, request forms, grievances, disciplinary appeals, etc. is prohibited.
 - b. Any offender who uses the law library computers, typewriters, or other equipment for a purpose other than as authorized in this operating procedure or as permitted in the facility law library rules should be subject to a disciplinary offense in accordance with Operating Procedure 861.1, *Offender Discipline, Institutions*.
3. Submit all Information Technology (IT) requests regarding institutional law library computers to include the installation and repair of equipment, installation and removal of software, and creation of offender law library accounts online at [School Dude](#).
 4. Supervise and train assigned law library clerks or aides, whose jobs may include providing clerical assistance, maintaining inventory of law library materials, assisting offenders with navigating the electronic law library, providing janitorial services for the area, and conducting day to day operations of law libraries.
 - a. Offender law library clerks or aides shall be under the supervision of an employee supervisor and paid utilizing the offender pay system.
 - b. Law library clerks or aides will be hired to assist offenders with locating the proper resources needed for legal work.
 - c. Law library clerks or aides may be allowed to access the on-line reference materials to assist in providing case law or other legal information available from the law library to offenders who are not provided physical access.
 - d. 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.
 - e. Under no circumstances is a law library clerk or aide allowed to review another offender's legal documents without their consent. The law library clerk or aide may not provide legal guidance or interpretations, or otherwise act as an attorney or legal assistant.
 - f. No offender shall 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, Institutions*.

VI. OFFENDER ACCESS TO LEGAL SERVICES AND SUPPLIES

- A. 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).
- B. 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*).
1. Payment arrangements shall be made in accordance with Operating Procedure 802.2, *Offender Finances*.
 2. Copies should be provided for indigent offenders in response to a Court requirement, and the cost debited to the offender's account.
 3. 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.
- C. 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.
1. Those who are newly received or are indigent may obtain legal materials by submitting a [Request for Indigent Services](#) in accordance with Operating Procedure 802.2, *Offender Finances*.
 2. The facility may establish a limit on requested supplies for items such as various types of paper, envelopes, pens and pencils.
 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.

VII. 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, Institutions*

VIII. FORM CITATIONS

[Personal Property Request-Add/Drop](#) 802_F1
[Request to Block Attorney Numbers](#) 803_F4
[Legal Visit Request](#) 851_F3

IX. REVIEW DATE

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

Signature Copy on File

A. David Robinson, Chief of Corrections Operations

6/26/18

Date