

STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS

Directive: 385.01

Subject: Inmate Access To Courts
Effective Date: January 11, 1999 **Review and Re-Issue Date:**
Supersedes: August 1, 1997 **APA Rule Number:**

Recommended for approval by:		Authorized By:	
_____	_____	_____	_____
Signature	Date	Signature	Date

1. Authority:

1.1. Vermont Department of Corrections Policy 385.

2. Purpose:

2.1. The purpose of this Directive is to establish the process by which the Vermont Department of Corrections will provide access to the courts to inmates in the physical custody of the Commissioner, as described in Policy 385.

3. Applicability/Accessibility

3.1. Anyone may have a copy of this directive.

4. Directive

4.1. Access in the areas of state or federal post conviction relief and civil rights complaints pertaining to conditions of confinement will be provided by a combination of:

4.1.1 Direct minimal legal assistance for inmates by the ILA;

4.1.2 Direct limited assistance in locating and utilizing legal materials contained in the law library and facilitating access to other legal resources available to the inmate by the ILL;

4.1.3 Primary and secondary legal materials and preprinted court forms made available to all inmates at Vermont's correctional facilities;

4.1.4 Inmate legal education for qualified inmates at Vermont's central facilities; and

4.1.5 Inmate Access to Courts and Litigation Manual made available to all inmates at all correctional facilities.

4.2 Scope of Access

Directive 385.01 Inmate Access To Courts

4.2.1 Access does not apply to all legal matters, but only to state or federal post-conviction relief and civil rights complaints pertaining to conditions of confinement.

4.3 Provision of Services

4.3.1 Inmate Services

4.3.1.1 ILLs and ILAs are specifically prohibited from offering legal advice, undertaking representation in court proceedings or entering into attorney/client relationships with offenders in the custody of the Vermont Commissioner of Corrections.

4.3.1.2 The scope of inmate services involves provisions for a range of services, supervised by the LED, include:

4.3.1.2.1 Direct limited legal assistance provided by trained and certified ILAs.

4.3.1.2.2 Minimal direct legal assistance provided by trained ILLs.

4.3.1.2.3 Current secondary legal materials, preprinted court forms, case banks and inmate "how to" manuals maintained in good condition in the facility law libraries.

4.3.1.2.4 Inmate legal education at central facilities provided by a paralegal educational institution or qualified legal professional.

4.3.1.2.5 All inmate services are subject to the ongoing review and approval by the Vermont Department of Corrections.

4.3.2 Primary and Secondary Legal Materials, Preprinted Court Forms and Photocopying.

4.3.2.1 The superintendent at each facility will:

4.3.2.1.1 Locate law library materials in the same or adjacent secure area as provided for assisting inmates.

4.3.2.1.2 Ensure that close custody units have separate storage areas for law library materials.

4.3.2.1.3 Designate (in consultation with the LED) an ILL to provide direct limited legal assistance to inmates and facilitate access to law library materials.

4.3.2.1.4 Designate (in consultation with the LED) an ILA to provide direct minimal legal assistance to inmates.

4.3.2.1.5 Provide inmates with reasonable access to the law library materials of no less than 12 hours of scheduled time each week, subject to security and disciplinary policies, directives and facility procedures previously established. The hours of operation for the law library will be posted in all units, including the housing units and outlined in the inmate orientation manual. Insure that no inmate is permitted access

Directive 385.01 Inmate Access To Courts

to the law library unless the ILL or ILA is in attendance. Additional or out of schedule time may be provided in a case by case basis in unusual circumstances.

- 4.3.2.1.6** Ensure that law library is properly staffed and materials are secure.
- 4.3.2.1.7** **KEEP LAW LIBRARY OPEN DURING PRE-ESTABLISHED POSTED TIMES.** Facility superintendents must insure that law library access hours do not unduly interfere with inmate work, program, education, and visiting schedules unless alternate accommodations can be made for the inmate experiencing a scheduling conflict. Inmates under segregation restrictions will be provided with the law library inventory and may request copies of forms and cases be delivered to him or her. Inmates under segregation restrictions may also be permitted to sign out law library books. Illiterate inmates under segregation restrictions who request access to legal materials or otherwise need legal assistance shall be provided with prompt and direct assistance from the ILL or ILA in a non-contact room subject to policies, directives and facility procedures previously established.
- 4.3.2.1.8** Provide basic reasonable supplies for the Law Library (i.e. tape, markers, stapler, envelopes, carbon paper, file folders, pencils) subject to security restrictions and previously established policies, directives and facility procedures. Provide indigent inmates with free supplies in a reasonable quantity (paper and writing implements) consistent with policies, directives and facility procedures previously established and subject to security and disciplinary directives.
- 4.3.2.1.9** Provide and maintain in good condition in all facility law libraries a current copy of the "B" Policy and Classification Manuals.
- 4.3.2.1.10** Provide Notary Services by an individual legally empowered to witness and certify documents.
- 4.3.2.1.11** Ensure that photocopying services will be available at each facility for photocopying of inmate court filings pertaining to state or federal post conviction remedies and civil rights actions involving conditions of confinement. As a general rule; captioned (i.e., Joe Inmate V. Sally Commissioner; it may or may not have a docket number) materials and exhibits

Directive 385.01 Inmate Access To Courts

attached thereto will be copied, in sufficient quantity to allow for a copy for the plaintiff/inmate and each of the defendants\commissioner, state, nurse, CO. The original is mailed by the inmate to the court. Indigent inmates will not be charged. Inmates who are not indigent may be charged \$.04 cents for each page photocopied. All requests for photocopying should be made in writing by the inmate (or on behalf of the inmate by the ILA or ILL) on form 385.01-A (attached) or other similar form required by the correctional facility. If an inmate does not complete the approved form, his or her photocopying request may be denied. The inmate must sign the form authorizing the appropriate deductions be made from his or her account. It is up to each facility to determine whether photocopying deductions will be made (or not) from the inmates account. The ILL or ILA will check the photocopying, date the request, then give the completed form along with the materials to be photocopied to Access to Courts Facility Coordinator for photocopying. **PHOTOCOPY SHOULD BE RETURNED TO THE ILL OR ILA WITHIN 2 DAYS.** The ILL or ILA will give the photocopied material to the inmate requesting same and complete the remainder of the form including the date that the material was returned to the ILL or ILA by the Access to Courts Facility Coordinator. The completed form will be sent by the ILL or ILA to the LED. All questions regarding photocopying inmate legal materials will be referred to the LED.

4.3.2.1.12 Inmates will have access to photocopying services. Administrative staff, volunteers, or other designated persons including ILL(s) and ILA(s) may be utilized to provide photocopying services. Persons photocopying inmate legal materials who operate the photocopiers will not read the materials. Each photocopier that is used to copy inmate litigation materials will have a sign posted and clearly visible stating: **"TO ALL PERSONS PHOTOCOPYING INMATE LITIGATION MATERIALS. DO NOT READ."**

4.3.2.1.13 All inmate mail addressed to any court (excluding Bankruptcy, Family, and Probate Courts) must be mailed promptly. Local

Directive 385.01 Inmate Access To Courts

procedures will be developed to insure that all inmate mail addressed to any court (excluding Bankruptcy, Family, and Probate Courts) will not be delayed due to the indigence of an inmate.

4.3.2.1.14 Designate an administrative staff member, volunteer or "other" person to act as "Access to Courts" facility coordinator to oversee the law library(s), ILLs and ILAs, and coordinate the delivery of services to inmates with the LED. Responsibilities include overseeing and/or completing the following tasks:

4.3.2.1.14.1 (I) Review the law library general inventory completed each month by the ILA or ILL and submit a copy of the completed inventory to the LED Coordinate communication (written and telephone) between ILA and/or ILL and LED. No ILA or ILL should be required to pay postage in the performance of the duties.

4.3.2.1.14.2 Coordinate inmate legal material photocopying and mailing services within the facility subject to reasonable restrictions, directives, and facility procedures.

4.3.2.1.14.3 Coordinate legal assistance between illiterate, hearing or vision challenged or non-English speaking inmates under segregation restrictions and the ILL or ILA and LED.

4.3.2.1.14.4 Coordinate the delivery and return of law library materials to inmates under segregation restrictions.

4.3.2.1.14.5 Make available for viewing at least four times each year to all interested inmates any legal information video, included but not limited to An Introduction to Legal Research maintained in the law library.

Directive 385.01 Inmate Access To Courts

4.3.2.1.14.6 Recommend additional resources necessary for the delivery of services to inmates to the LED.

4.3.2.1.14.7 Perform other duties as assigned by the LED in consultation with the facility superintendent and director of correctional services.

4.3.3 Inmate Access to Courts and Litigation Manual

4.3.3.1 The LED will create and update inmate access to courts litigation manual to explain how the access to the courts by prisoners in Vermont is intended to operate and will include:

4.3.3.1.1 A summary of the most common Vermont issues (i.e., the difference between section 1983 and federal habeas corpus, Vermont habeas corpus and Vermont post-conviction relief, how to contact the courts and Prisoners' Rights Office, etc.);

4.3.3.1.2 Standard forms for the Vermont courts (i.e., in forma pauperis applications, notices of appeal, Rule 75 blank pleadings, etc.);

4.3.3.1.3 The federal in forma pauperis/habeas/1983 forms; and

4.3.3.1.4 Commonly used DOC regulations and policies, such as statutory good time reductions for behavior and disciplinary reports.

4.3.3.2 In addition to the Inmate Access to Courts Litigation Manual all facility law libraries will be provided with the following:

4.3.3.2.1 Cites to and synopses of the key decisions pertaining to state and federal post conviction remedies and civil rights decisions relating to conditions of confinement; and

4.3.3.2.2 Copies of all the Magistrates' and U.S. District Court's civil rights/habeas corpus rulings (Vermont District) since 1990.

4.4 Inmate Legal Education

Directive 385.01 Inmate Access To Courts

4.4.1 A contract paralegal educational institution or qualified legal professional shall, from time to time, provide legal education courses at the central facilities.

4.4.2 The curriculum shall include instruction in the areas of state and federal post conviction remedies, civil rights/conditions of confinement or other inmate relevant legal courses.

4.5 AUDIT PROCESS

4.5.1 The Director of Correctional Services will institute a system of periodic audits of the Inmate Access to Courts process on behalf of the Commissioner. These audits will be conducted by the LED who will submit a report to the Director of Correctional Services.

5 Training Method

5.1

6 Quality Assurance Processes

6.1

7 Financial Impact:

8 References

3 V.S.A. § 3052 (a) and 28 V.S.A. §102 (b) (2) and (1). Bounds v. Smith, 430 U.S. 817 (1977); Halpin, et al. v. Patrissi, et al./ Civil Nos. 5:89-CV-359; 5:92-45; 5:92-CV-75; 5:92-CV-295. Lewis v. Casey, 116 S.Ct. 2174 (U.S.Ariz. 1996).

9 Responsible Director and Draft Participants

This directive researched and written by Carol Callea, Legal Education Director (802-241-1164).