

STATE OF VERMONT AGENCY OF HUMAN SERVICES DEPARTMENT OF CORRECTIONS	Associated Policy #385	Page 1 of 14
Attorney and Third-Party Standard Operating Procedure		
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TABLE OF CONTENTS

Facility Guidelines for Attorneys and Third Parties.....	2
A. General Guidelines.....	2
B. Application for Public Defender Services, Arraignments, and Court Ordered Conditions of Release	3
C. Court-Ordered Evaluations	4
Visitation, Audio and Video Calls, Mail, and Electronic Mail.....	4
A. Visitation.....	4
B. Communications to and from Incarcerated Individuals.....	7
C. Obtaining a Personal Identification Number (PIN) to use the Confidential Attorney Line	8
D. United States Postal Service (USPS) and Electronic Mail to Incarcerated Individuals.....	9
Providing Electronic Discovery Materials to Incarcerated Individuals	10
A. General Overview	10
B. Incarcerated Individual’s Review of Electronic Discovery Supervision by the Attorney.....	10
C. Attorneys Transferring Electronic Files Through GlobalScape	11
Suspension During an Emergency	14
Staff Inquiries	14

Attorney and Third-Party Standard Operating Procedure

FACILITY GUIDELINES FOR ATTORNEYS AND THIRD PARTIES

A. General Guidelines

1. For the purposes of this document:
 - a. “Attorney” refers to a licensed attorney or their representative, unless otherwise specified. An attorney’s representative may be a paralegal, certified legal intern, legal assistant, secretary, retained expert, investigator employed by the attorney, or a Vermont Law School Student under the supervision of an attorney; and
 - b. “Third party” refers to a person who is employed by a government agency or an organization (e.g., Department for Children and Families (DCF), treatment court, Commissioner’s Registry Review Unit (CRRU), transitional housing community partners).
2. A third party intending to enter a correctional facility shall contact a Facilities Operation Manager to obtain required security and Prison Rape Elimination Act (PREA) clearances.
3. Facility staff shall assist attorneys in scheduling visits with incarcerated individuals.
4. Communication and documentation between attorneys, third parties, and incarcerated individuals shall only be available through the United States Postal Service (USPS), unit telephone, confidential attorney line, the incarcerated individual’s tablet, or by meeting with the incarcerated individual in person at the correctional facility or courthouse.
5. Incarcerated individuals shall not use State-issued staff equipment (e.g. telephones, computers, laptops) or staff offices to communicate with courts, attorneys, or third parties.
6. Facility staff:
 - a. Shall use court-installed equipment for only Vermont court proceedings accommodated by the DOC, in accordance with the court process standard operating procedure (SOP); and
 - b. Shall not use, or allow incarcerated individuals, attorneys or third parties to use, State-issued DOC staff equipment or the court installed or mobile equipment for visits, depositions, meetings with professionals, interviews, assessments, community programs, services, residential applications, appearances as witnesses, or anything not listed as a court proceeding, in accordance with the

Attorney and Third-Party Standard Operating Procedure

court processes SOP. The court's mobile equipment may be used for court-ordered evaluations.

7. DOC staff shall forward all requests from an attorney or third party that are outside the scope of the access to courts policy, court processes SOP, and attorney and third-party SOP to the DOC Office of the General Council (OGC) before taking any action.

B. Application for Public Defender Services, Arraignments, and Court Ordered Conditions of Release

1. Incarcerated individuals wishing to be represented by a public defender shall complete and submit the application for public defender services form directly to the court prior to arraignment, unless an alternate process is approved in a policy document or a memo from the Facilities Division Director, or designee.
2. Facility staff shall not provide the application and assist the incarcerated individual in completing the form or transmit it to the court on the incarcerated individual's behalf.
3. Public defenders may attend remote arraignments in person at a correctional facility with an incarcerated individual to:
 - a. Provide the application for public defender services and assist the incarcerated individual in completing the application; and
 - b. Attest to the completion of the application for public defender services to the court, so the court may approve the application immediately prior to the arraignment.
4. Courts may use their assigned PIN to call the incarcerated individual on the confidential attorney line prior to the arraignment by coordinating with the designated Facility Operations Manager to obtain a PIN for the confidential attorney line.
5. Vermont-charged, pre-sentenced incarcerated individuals and their attorneys are responsible for coordinating arrangements to comply with their conditions for release, including transportation, assessments, and programming applications. Facility staff:
 - a. May assist individuals who are detained and their attorneys with release to a treatment program, providing time and resources permit. This assistance shall not include:
 - i. Finding a responsible adult or organization to supervise the release; or

Attorney and Third-Party Standard Operating Procedure

- ii. Providing transportation to or from courts and treatment facilities.
- b. Shall continue to aid and assist sentenced incarcerated individuals with release planning, in accordance with DOC policies.
- 6. Third parties shall conduct applications, interviews, and assessments in person or by utilizing the attorney line, unit telephone, or tablet. Third parties may contact the assigned Corrections Services Specialist (CSS) to schedule an in-person or free tablet video visit.

C. Court-Ordered Evaluations

- 1. Evaluators should schedule court-ordered evaluations in advance, using the facility alias.
- 2. If the court ordered evaluation is not in person, DOC staff shall not use State-issued staff equipment and only facilitate remote court-ordered evaluations using the court-provided portable mini-device or non-staff-issued equipment that the Facilities Division Director, or designee, has previously approved.
- 3. Court-ordered evaluations shall not be conducted in staff offices.

VISITATION, AUDIO AND VIDEO CALLS, MAIL, AND ELECTRONIC MAIL

A. Visitation

- 1. Facility staff shall allow:
 - a. Authorized third parties to visit incarcerated individuals during correctional facility business hours, from 8:00 am to 4:00 pm, as facility space and staffing allow. DOC staff shall require third parties to obtain:
 - i. Security and PREA clearances no more than 12 months prior to visiting; and
 - ii. Approval from the Superintendent, or designee, at least 24 hours prior to the visit, if their visit is expected to exceed or take place outside correctional facility business hours.
 - b. Visits by attorneys at any time. If the attorney provides at least 24-hour notice of their visit, facility staff shall reserve a room for the visit.

Attorney and Third-Party Standard Operating Procedure

2. Attorneys and third parties do not need to be on the incarcerated individual's visitor list. Facility staff shall log the visit in accordance with the policy on facility security.
3. Facility staff shall require:
 - a. Attorneys and authorized third parties to present a government-issued or an official employment photographic identification (ID) card at the time of the visit.
 - b. An attorney to present their current Vermont law license ID card or their assigned PIN.
 - c. An attorney's employed representative(s) and an authorized third party to present a letter of introduction, signed by their supervisor, on law firm, agency, or business letterhead. The introduction letter shall include the:
 - i. Name of the visitor;
 - ii. Job title of the visitor;
 - iii. Name, address, and telephone number of the employing law firm, agency, organization, or business;
 - iv. Name of the client's attorney or third party's supervisor;
 - v. Docket number;
 - vi. Purpose of the visit; and
 - vii. Full legal name of the incarcerated individual the attorney or third party wishes to meet.
4. To reasonably preserve the confidentiality of the attorney-client relationship, facility staff shall visually observe, but not listen to or record, any visit between an incarcerated individual and their attorney.
5. Facility staff shall not allow third parties to bring items, except for paperwork, into the correctional facility, unless the Superintendent, or designee, has approved it in advance.
6. Attorneys may bring the following items into the correctional facility, provided they are approved in advance of the visit and inspected and inventoried at the time of the visit:
 - a. Laptop, tablet, or e-reader without cellular capacity (only one is permitted);
 - b. Paper files which may include printed photographs, case notes, application forms, or other paperwork;
 - c. Writing utensils, whiteboards, and calculators;
 - d. Texts and published materials; and

Attorney and Third-Party Standard Operating Procedure

- e. External memory devices (e.g., digital recorder; external hard drives, USB flash drives, compact discs), may be allowed during the visit, provided they are approved by the Superintendent, or designee, in advance.
- 7. Facility staff shall ensure that attorneys who bring any of the above items into a correctional facility leave with those items.
- 8. Unless the Superintendent, or designee, approves the item prior to the visit, facility staff shall not permit any of the following items into the correctional facility:
 - a. Contraband. Facility staff shall handle any item identified as contraband in accordance with the policy on contraband;
 - b. Telecommunication devices, including cell phones, smartwatches, smart glasses, or smartphones;
 - c. Any other technological device with internet capabilities (e.g., MP3 or MP4 music players, iPods, digital cameras);
 - d. Photographic equipment;
 - e. Mobile hotspots;
 - f. Paper fasteners, paperclips, or binder clips of any size;
 - g. Staplers, tape, or whiteout; or
 - h. Scissors or any other cutting tool.
- 9. If the Superintendent, or designee, determines that any equipment or item the attorney wishes to bring into the correctional facility may jeopardize the safety or security of the correctional facility, they shall:
 - a. Advise the attorney to read this SOP;
 - b. Provide an explanation of why the item is not being permitted into the secure perimeter at that time;
 - c. Allow the attorney to store the item outside the secure perimeter; and
 - d. Reschedule the visit if the item is identified as an item not permitted on the property, so the visitor can remove the contraband from the grounds.
- 10. All attorneys and third parties entering a correctional facility may be subject to a search of their persons and possessions at any time. Searches may include being asked to walk through a metal detector, a visual inspection, and a clothed search (e.g., pat-down), in accordance with the policy on searches of individuals.

Attorney and Third-Party Standard Operating Procedure

B. Communications to and from Incarcerated Individuals

1. The DOC provides incarcerated individuals with the following ways to communicate with the court, attorneys, and third parties:
 - a. A unit telephone;
 - b. The confidential attorney line; and
 - c. The incarcerated individual's tablet for video visits, emails, and calls.
2. Facility living units are communal living spaces. The only option to ensure privacy and confidentiality of communications with clients is to meet with the incarcerated individual in person at the correctional facility or courthouse.
3. To use the unit telephone or incarcerated individual's tablet, the incarcerated individual must request the correctional facility's approval to add telephone numbers to their call list.
4. Assigned attorneys are advised to contact a new client immediately to allow facility staff enough time to process the incarcerated individual's call list and designate the attorney's telephone number as confidential.
5. Facility staff shall not use State-issued DOC staff equipment (e.g., computers, laptops, telephones, printers, fax machines) or facility staff offices to facilitate communication between incarcerated individuals and attorneys or third parties, including:
 - a. Placing or receiving telephone calls;
 - b. Sending or printing emails or verbally delivering information or other messages;
 - c. Printing, providing documents to, or obtaining signatures from, an incarcerated individual, including on third-party releases of information (ROIs); or
 - d. Scheduling and conducting any stage of litigation, including investigation, hearings, status conferences, discovery, mediation, pre-trial, trial, settlement, sentencing, and appeals.
6. Facility staff shall advise the attorney or third party to use the unit telephone, attorney line (if permitted), incarcerated individual's tablet, USPS mail, or to meet with the incarcerated individual in person at the correctional facility or courthouse, for all communication with the incarcerated individual.

Attorney and Third-Party Standard Operating Procedure

C. Obtaining a Personal Identification Number (PIN) to use the Confidential Attorney Line

1. A PIN is required prior to using the confidential attorney line. DOC assigns each eligible person their own individual PIN.
 - a. PINs assigned to attorneys are valid as long as the attorney has an active license to practice law.
 - b. PINs assigned to non-attorneys must be renewed every 12 months.
2. Attorneys may request a PIN for themselves and their representative(s). The following documentation must be submitted to the designated Facility Operations Manager for a PIN to be issued:
 - a. For attorneys, a copy of their current license to practice law;
 - b. For attorney's representatives, the full name of the person, their position in the firm, and a copy of the representative's ID, as outlined under [this Heading, in Section A., Visitation, subsection 3., division c.](#), submitted by the attorney; and
 - c. For a Vermont Law School student, their name, contact information and school ID, submitted by the professor.
3. Third parties may request a PIN by submitting their government-issued or an official employment photographic ID to the designated Facility Operations Manager.
4. Upon receipt of a request for a PIN, the designated Facility Operations Manager shall:
 - a. Confirm the attorney's or third party's information;
 - b. Assign each eligible person their own PIN;
 - c. Provide a letter with the PIN and user information to the person authorized to use the PIN; and
 - d. Maintain a current list of approved PINs assigned to the authorized user.
5. Each family, probate, and civil court unit is assigned one PIN for all court users. Criminal courts may receive a PIN upon request.
6. Facility staff shall confirm the identification of anyone requesting to use the confidential attorney line with the current list of approved users and assigned PINs. If they do not have a PIN facility staff shall advise them to contact the designated Facility Operations Manager to obtain a PIN.
7. Individuals who are assigned a PIN are not permitted to share it. If a person uses a PIN assigned to someone else, DOC shall permanently ban both the user and person to whom the PIN is assigned from utilizing the

Attorney and Third-Party Standard Operating Procedure

confidential attorney line in DOC correctional facilities including supplemental housing correctional facilities.

D. United States Postal Service (USPS) and Electronic Mail to Incarcerated Individuals

1. Facility staff shall process all USPS mail in accordance with the policies on mail and facility security.
2. Facility staff shall treat USPS mail from an attorney as privileged correspondence only if it is in an official envelope, with a verifiable return address.
3. The Correctional Facility Shift Supervisor (CFSS), or designee, shall open incoming privileged correspondence in the presence of the incarcerated individual to whom it is addressed.
4. The CFSS, or designee, shall inspect the contents of the incoming correspondence to verify that the materials do not contain contraband. The CFSS, or designee, shall complete this investigation without reading the materials.
5. If no issues are identified, the CFSS, or designee, shall give the incarcerated individual the contents of the envelope but not the envelope.
6. If the CFSS, or designee, finds material that does not appear to be privileged or appears to contain contraband, they shall consult with the Superintendent, or designee, to decide the ultimate disposition of the mail.
7. If facility staff suspect the privileged correspondence contains contraband, a photocopy of the privileged correspondence may be provided to the incarcerated individual. With the incarcerated individual, staff shall compare the photocopy and the original to ensure that the copy is complete and correct.
8. If the incarcerated individual to whom privileged correspondence is addressed is not currently housed at the correctional facility, facility staff shall forward the mail, in accordance with the policy on mail. Facility forwarded privileged correspondence shall be treated as privileged correspondence at the receiving facility.
9. Attorneys, third parties, or incarcerated individuals may send electronic mail messages to each other through the incarcerated individuals' tablets, at a cost to the incarcerated individual.

Attorney and Third-Party Standard Operating Procedure

PROVIDING ELECTRONIC DISCOVERY MATERIALS TO INCARCERATED INDIVIDUALS

A. General Overview

1. Laptops, external hard drives, USB flash drives, compact discs, and external storage mediums are contraband and may not be dropped off for, sent to, operated by, or left in the possession of an incarcerated individual.
2. DOC staff shall not operate external electronic storage devices on State equipment, in accordance with AHS's policy on personal equipment, software, and data and DOC's policies on contraband, mail, and systems user security.
3. Attorneys may provide electronic discovery materials pertaining to criminal prosecutions and conditions of confinement to incarcerated individuals if they:
 - a. Have entered an attorney client relationship with the incarcerated individual;
 - b. Have been appointed to represent the incarcerated individual by the court or by the incarcerated individual's written authorization;
 - c. Are prosecuting a pro se criminal defendant; or
 - d. Are defending against a pro se incarcerated individual's civil case (e.g., conditions of confinement) listed in the court processes SOP.
4. Incarcerated individuals may only review eligible electronic discovery materials:
 - a. With their attorney in person at the correctional facility; or
 - b. Through DOC's Enhanced File Transfer System (GlobalScape) on a Personal Computer (PC) available in the law library and some living units.

B. Incarcerated Individual's Review of Electronic Discovery Supervision by the Attorney

1. Incarcerated individuals are not permitted to use laptops, tablets, e-readers (with or without cellular capacity), digital players, and recorders brought into a correctional facility by an attorney to review electronic discovery material with the incarcerated individual. In these cases:

Attorney and Third-Party Standard Operating Procedure

- a. The equipment shall be inspected and inventoried as outlined in [Visitation, Audio and Video Calls, Mail, and Electronic Mail Heading, Section A., Visitation, subsection 6](#); and
- b. The attorney must personally supervise and control the operation of their personal equipment while the incarcerated individual reviews the electronic discovery thereon; and
- c. This method must be used when the:
 - i. Discovery is for legal matters outside the scope of criminal prosecutions or civil cases listed in the court processes SOP;
 - ii. Discovery materials are confidential;
 - iii. Incarcerated individual resides in a restricted housing unit, is not authorized to access the law library, and a law terminal is not available in their restricted housing unit;
 - iv. Incarcerated individual has not signed, or refuses to sign, the access to electronic equipment acknowledgement form, in accordance with the policy on incarcerated individual access to electronic equipment; or
 - v. Incarcerated individual lost the privilege to use the facility's law terminals.
2. The Superintendent, or designee, at any time for any reason, may prohibit an attorney from bringing electronic equipment into the correctional facility.

C. Attorneys Transferring Electronic Files Through GlobalScape

1. Prior to requesting access to GlobalScape, the attorney should verify with the incarcerated individual's assigned CSS that they have:
 - a. A custody status that permits access to the law library and use of law terminals;
 - b. Signed the access to electronic equipment acknowledgement form, in accordance with the policy on incarcerated individual access to electronic equipment; and
 - c. Not had their privilege to access the law library and law terminal revoked.
2. Once verified the attorney shall contact the Legal Education Director (LED) and request access to GlobalScape which ensures the secure transfer of sensitive data. Their request shall include the:
 - a. Legal name of the incarcerated individual;

Attorney and Third-Party Standard Operating Procedure

- b. Correctional facility where the incarcerated individual is currently housed;
 - c. Docket number for the active court case;
 - d. Name of the attorney representing the incarcerated individual; and
 - e. Name and email address of the person uploading the discovery material to GlobalScape.
3. When discovery materials are voluminous and exceed the folder limit, attorneys are encouraged to:
 - a. Upload video and audio files only;
 - b. Combine and flatten individual photos into one portable document format (PDF) file;
 - c. Bring their laptop into the correctional facility and supervise the incarcerated individual's review of any video and audio discovery materials that cannot be converted to the required law terminal formats or exceed the file size limit on their laptop; and
 - d. Provide the incarcerated individual with paper copies of documents via the USPS for the remaining discovery materials.
4. The LED shall create a secure folder on GlobalScape. GlobalScape will notify the attorney that the folder is ready to upload files and instruct the attorney to create a password. The GlobalScape folder will be active for seven days, to allow the attorney to complete their upload. Following the seven days the folder will be deleted.
5. Prior to uploading discovery materials to GlobalScape, it is the attorney's responsibility to:
 - a. Ensure that each file is:
 - i. Properly formatted or converted to a .pdf, .mp3, or .mp4 file;
 - ii. Free of active links or urls, including hidden links (e.g., flatten all PDF files);
 - iii. Without errors;
 - iv. Descriptively named;
 - v. Less than 1.5 gigabytes (GBs);
 - vi. Not copy-protected, encrypted, password protected, or in a proprietary format; and
 - vii. Able to load or run without any special program or code.
 - b. Ensure that the GlobalScape folder:
 - i. Has no more than 25 files. This can be achieved by combining files, when possible; and

Attorney and Third-Party Standard Operating Procedure

- ii. Does not exceed 10 GBs; and
 - c. Notify the LED when the upload to GlobalScape is complete.
- 6. The LED shall:
 - a. Inspect and delete any file that is considered contraband, in accordance with DOC policies on contraband and mail;
 - b. Not correct errors, report unreadable files, remove, convert, or reformat files; and
 - c. Send the allowable files, as is, to the state contractor.
- 7. The state contractor shall:
 - a. Not correct errors, report unreadable or remove files, and convert or reformat files;
 - b. Transfer files, as is, onto a secure correctional facility leased server accessible from the desktop of a scrubbed Windows based operating system on the leased law terminals;
 - c. Assign a password to the incarcerated individual to access the electronic discovery folder; and
 - d. Notify the LED when the files are available for the incarcerated individual's review.
- 8. Once the contractor completes the transfer to the correctional facility's server the LED shall:
 - a. Contact the incarcerated individual by emailing the correctional facility law library administrator (LLA);
 - b. Provide the password and instructions for the incarcerated individual to review the electronic discovery materials; and
 - c. Copy the incarcerated individual's attorney with the communication.
- 9. The incarcerated individual shall follow the correctional facility's local procedures and rules to:
 - a. Schedule time in the law library;
 - b. Access the law library and law terminal; and
 - c. Use a personal headset in the law library.
- 10. Incarcerated individuals view discovery materials on equipment, and in an area, shared by other incarcerated individuals and observed by facility staff. Attorneys should caution incarcerated individuals regarding privacy accordingly.
- 11. Electronic discovery files are available to incarcerated individuals for 60 days. Following the 60 days the LED, or designee, shall delete the electronic discovery files

Attorney and Third-Party Standard Operating Procedure

SUSPENSION DURING AN EMERGENCY

In an emergency or extended disruption of normal facility operations, the Superintendent, or designee, may suspend any provision or section of this SOP for a specific period.

STAFF INQUIRIES

DOC staff shall contact the designated Facility Operations Manager or the Legal Education Director with questions about the procedures in this SOP or related issues not covered in the policy on access to courts or court processes SOP. For immediate events as they are occurring with a court, attorney, or third party, facility staff shall contact the Facilities Division Director or OGC to intervene.