

Idaho Department of Correction 	Standard Operating Procedure	Title: Access to Courts		Page: 1 of 15
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Open to the public: ☒ Yes ☐ No

This document is referenced in a POST lesson plan.

SCOPE

This standard operating procedure (SOP) applies to all residents, and to all employees involved in the planning, management, or operations governing the access to courts for residents of Idaho Department of Correction (IDOC) facilities.

Version Summary
Version 7: This SOP replaces and rennumbers previous SOP 405.02.01.001 v6.0, <i>Access to Courts</i> . This SOP updates terminology, organizational structure, and use of technology.

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A. STATUTORY AUTHORITY

1. Idaho Code § 20-217A, Appointment of Director – Salary – Powers and Duties
2. Idaho Code § 20-244, Government and Discipline of the Correctional Facility – Rules and Regulations

B. BOARD OF CORRECTION IDAPA RULE NUMBER

None

C. GOVERNING POLICY STATEMENT

It is the policy of the Idaho Board of Correction that IDOC and its contractors to develop and maintain an adequate method to ensure residents have direct access to the courts in order to pursue constitutionally mandated legal actions and qualified legal claims.

D. PURPOSE

1. This SOP establishes resources and procedures for the Access to Courts (ATC) program and for providing IDOC residents access to courts to pursue constitutionally protected legal actions and other legal filings identified by IDOC.
2. ATC is limited in its scope and is not for all legal actions. This SOP does not limit a resident's right to retain counsel.

E. RESPONSIBILITY

1. Facility head or designee

- a. Ensure ATC request forms and locked drop boxes for the forms are readily

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available to residents.

- b. Designate a location to store legal resource material.

2. Transparency Manager:

- a. Ensure supervision of the ATC Program and the requirements of this SOP.

3. Access to Courts Supervisor:

- a. Directly supervise the legal assistants providing ATC services in accordance with this SOP and relevant field memoranda.
- b. Coordinate with the facility head to establish the location of the ATC Center within each facility.
- c. Establish the hours of operation of the ATC Center in consultation with the transparency manager and the facility head.
- d. Review annual audits of ATC Centers and assist with action items necessary to bring deficiencies in compliance with this SOP.
- e. Obtain and maintain legal resource materials for residents.
- f. Provide guidance to legal assistant staff, facility staff, and IDOC administration regarding ATC.
- g. Request clarification from the Deputy Attorneys General regarding ATC.
- h. Identify staff who should be granted electronic access to the IDOC shared files for ATC, determine the level of access needed, and issue and maintain the appropriate level of access to electronically stored and protected materials.

4. Legal Assistant:

- a. Assist residents in completing legal packets and forms; accessing IDOC-provided legal resources, notary services, and translator services; and understanding the state and federal court system processes as they relate to qualified legal claims.
- b. Provide services across all facilities in a consistent manner.
- c. Respond to requests described in this SOP.
- d. Provide notary services to residents.
- e. Enable translation services for non-English speaking residents through the approved vendor to assist with the completion of initial pleadings for qualified legal claims.
- f. Maintain the logs and forms required for this SOP in the ATC Center:
- g. A legal assistant must not do the following:
 - i. Assist residents in filling any claim beyond the scope of this SOP.

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- ii. Offer legal advice.
- iii. Represent a resident.
- iv. Refer residents to attorneys or attorneys to residents.
- v. Make unauthorized changes to the shared ATC folder containing forms and/or packets.
- vi. Schedule appointments for residents to meet with each other.

F. DEFINITIONS

- 1. Facility Head:** The person primarily responsible for overseeing, managing, or operating a department facility.
- 2. Indigent Resident:** A resident whose trust account balance is less than \$0.15 and has had no deposits for 30 consecutive days.
- 3. Legal Advice:** Refers to the written or oral counsel about a legal matter that would affect the rights and responsibilities of the resident receiving the advice; applies a specific law or legal theory to a particular set of circumstances. Actual legal advice requires the careful analysis of the law as it applies to a resident's specific situation.
- 4. Legal Mail:** Confidential communication directly between (1) a resident and an attorney (for the purposes of seeking or providing legal services only), (2) a resident and the court, (3) opposing parties for service of documents (pursuant to court rules), or (4) sheriff offices for service of documents (pursuant to court rules).
- 5. Legal Resources:** Those statutes, codes, court rules, legal reference materials, and publications provided by IDOC for use by residents on legal matters.
- 6. Access to Courts Center:** An area of a facility designated and approved by the facility head where legal resources are maintained, and the photocopying and mailing of legal materials are performed pursuant to relevant SOPs and Field Memoranda.
- 7. Resident:** A person who has been convicted of a crime against the laws of the state and ordered into the care and custody of the Board of Correction. Resident includes any use in Idaho law, Board of Correction rule, or IDOC policy or procedure of the terms "offender(s)," "prisoner(s)," "resident(s)," "incarcerated person(s)," or any other term referring to a person residing in a correctional facility in the care and custody of the Board of Correction.
- 8. Unauthorized Practice of Law:** The practicing of law by any person (a) who has not become duly admitted and licensed to practice law within the state of Idaho; (b) whose right or license to practice within the state of Idaho has been terminated either by disbarment, suspension, or failure to pay license fees; or (c) who practices or presumes to act or hold himself out to any other

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person as a person qualified to practice law, to include giving legal advice and counsel, and the preparation of instruments and contracts by which legal rights are secured, although such matter may or may not be pending in a court.

G. STANDARD PROCEDURES

1. ATC Resources

- a. The ATC Centers maintain and have available for residents all ATC publications, forms, and packets. Resources are provided through institutional mail or checked out as approved by Legal Assistant staff.
- b. ATC Centers provide a limited law library for residents to check out books and provides residents access to digital resources. Digital resources include a digital law library and case law for legal research.
- c. If a resident wants additional research materials not available in the ATC Center, the materials may be obtained by contacting the State Law Library, or via friends and family, and received through the mail in accordance with [SOP 402.02.01.001](#), *Mail Handling in Correctional Facilities*.

2. Qualified Legal Claims

- a. State Court
 - i. Idaho Criminal Rule 35 (correction or reduction of sentence)
 - ii. Idaho Criminal Rule 35
 - iii. UPCPA (Uniform Post-Conviction Procedure Act)
 - iv. State Civil Rights (42 USC § 1983)
 - v. State Habeas Corpus
 - vi. Credit for Time Served
 - vii. Appeal of criminal conviction or of any legal claims listed above.
 - viii. Reduce/Suspend Child Support
 - ix. Tort Claim
 - x. Power of Attorney
- b. Federal Court
 - i. Federal Civil Rights (42 USC § 1983)
 - ii. Federal Habeas Corpus Petition (28 USC § 2254)
 - iii. 9th Circuit Court Appeal
 - iv. Petition for Writ of Certiorari to the U.S. Supreme Court
- c. The department provides forms and instructions for the initial filing of

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these matters.

i. Authorized forms for qualified legal claims are maintained in the shared ATC electronic folder.

ii. Prohibited Forms for Residents

1) Completed or blank transports orders

2) Blank letterhead stationery relating to any agency, organization, or entity

d. If a resident needs assistance other than what is identified as a qualified legal claim above, the request for assistance should be sent by resident concern form to the ATC supervisor for consideration.

3. ATC Request Process

Functional Roles and Responsibilities	Step	Tasks
Resident	1	1. If in need of an Access to Courts Request Form, contact the facility legal assistant or housing unit staff. 2. Request legal assistant assistance, services, and resources using the <i>Access to Courts Request Form</i>. 3. Place the completed form in the designated lock box.
Legal Assistant	2	1. Regularly collect completed <i>Access to Courts Request Forms</i>. 2. Fulfill the requests by any of the following listed methods: a. Send requested authorized resources or information by institutional mail b. Schedule an appointment to meet the resident c. Provide the list of Qualified Legal Claim Packets available from the ATC Center d. Check out legal reference material to the resident for a designated period 3. If books are checked out, log in the Book Check-out Log.

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Functional Roles and Responsibilities	Step	Tasks
Legal Assistant	3	If the resident is unable to read or write English or suffers from physical or cognitive impairment which renders the resident incapable of writing or filling out ATC requests, provide the necessary assistance to the resident to complete the authorized court filings.
Legal Assistant	4	If the resident is unable to understand English, do any of the following to assist the resident: 1. Arrange for an IDOC staff member to interpret 2. Arrange for another resident to interpret 3. Access interpretation from third-party service provider
Resident	5	Complete the claim for filing with the court.

4. Mailing and Photocopying Court Documents and Legal Mail

- a. Residents are charged \$.10 per page for photocopies. Double-sided photocopies are \$.20.
- b. Residents should use their own envelopes for court filings. However, to meet a court filing deadline, a resident may purchase envelopes from the ATC Center at the equivalent price purchased by IDOC at the time of filing.
 - i. If a resident is indigent, there is no charge for photocopies or envelopes.
- c. Page limitations on pleadings may be enforced in accordance with court rules and court orders.
- d. Authorized photocopies are for documents and all attachments for qualified legal claims, as identified in this SOP, that are ready to be filed with a court and served on the opposing party.
- e. A resident may request a certified copy of their Resident Trust Account Statement at the time of filing to attach to required legal pleadings if seeking a waiver of court fees under Idaho Code §31-3220A, or appeal under Idaho Appellate Rule 24(h), or if seeking *In Forma Pauperis* status for the U.S. District Court under 28 USC §1915.
- f. A resident requesting a Resident Trust Account Statement must submit an [Access to Courts Request Form](#) to the facility legal assistant according to

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the process identified in this SOP. Unless the resident is indigent, a fee of \$.10 per page will be assessed.

i. The following information must be included with the resident's request:

1) A prepared [Resident Personal Funds Withdrawal Slip](#) for the cost of the certified copy.

2) The date range required by the court.

ii. The legal assistant will affix a certification stamp to each page of the resident's trust account statement.

g. If there is a question regarding the documents or attachments to be filed or served to an opposing party, the legal assistant staff will determine the documents needed and number of copies necessary based on court rules or by contacting the court.

h. If a resident is served with a summons and complaint that require a response per Idaho Rules of Civil Procedure or Federal Rules of Civil Procedure, the resident will be provided with the opportunity to file a response. Legal assistant staff must provide mailing and photocopying services consistent with court filing requirements.

5. Procedures for Filing Pleadings and Other Documents with a Court

Functional Roles and Responsibilities	Step	Tasks
Resident	1	1. Complete the documents, forms, or pleadings to be photocopied and mailed. 2. Submit the Access to Courts Request Form to the legal assistant staff for copies, notary, and mailing services as needed. 3. Complete a Resident Personal Funds Withdrawal Slip for envelopes, copies, and postage, unless indigent.
Legal Assistant	2	1. Meet with the resident, if necessary. 2. Determine those documents authorized for photocopying in accordance with the SOP. 3. Notarize the documents that require a notary. 4. Photocopy the documents as required by court rules.

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Functional Roles and Responsibilities	Step	Tasks
Legal Assistant	4	1. Complete the Outgoing Legal Mail Log and if needed, the Notary Services Log. 2. Forward the legal mail and withdrawal slips to the mailroom for postage and mailing or file electronically, if applicable.

6. Class Action and Multiple Resident Legal Actions

- a. When residents jointly file documents and attachments with a court as co-plaintiffs (parties to the same legal action) photocopies must not be made for all parties to the legal action. Instead, a full photocopy must be maintained in the ATC Center and a case file created. However, the resident who filed the legal action with the court has the option of paying for one additional full photocopy as a personal copy. Upon request, all other parties to the legal action may review the photocopy maintained in the ATC Center.
- b. Photocopies of subsequent filings in that case are placed in the case file maintained in the ATC Center.
- c. If a resident who is a party to the legal action is transferred to another facility, a full photocopy of the filings may be made for that resident at their own expense. However, if the resident is indigent, ATC will provide that resident access to the filings upon their request at no expense to the resident.

7. Service of Documents upon Opposing Parties

- a. A resident must neither attempt, nor cause another resident acting on his behalf to attempt to personally serve any legal document on IDOC, the Idaho Board of Correction, the Idaho Commission of Pardons and Parole, or any employee thereof.
- b. Service on IDOC, the Idaho Board of Correction, the Idaho Commission of Pardons and Parole, or any employee thereof, by a resident or member of the public, must be made by personal service upon a deputy attorney general representing IDOC. Service upon a deputy attorney general must be in accordance with applicable court rules and take place at the Idaho Department of Correction - Central Office, located at 1299 N. Orchard, Suite 110 Boise, ID 83706.
- c. Service on any person or entity is to be by personal service and is the sole responsibility of the resident.

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8. ATC Supplies for Indigent Residents

- a. Indigent supplies are:
 - i. Blank paper for preparing court filings (no more than 25 sheets in a resident's possession at any time).
 - ii. Envelopes for mailing to the court, opposing parties, and a verifiable attorney at the time of filing.
 - iii. One security pen (black ink only).
- b. To ensure court filings are in the proper format, all residents should use preprinted forms provided by the ATC Center when available. Blank sheets of indigent paper must have the term 'indigent legal paper' printed in the bottom left corner of at least one side of the paper to identify it as paper that has been authorized for legal work.
- c. If the resident is misusing or wasting the indigent supplies, the facility head or designee may limit the number of indigent supplies the resident has on hand or is issued.
- d. If a resident does not meet the requirements as defined to be considered indigent, the legal assistant or other designated staff member must ensure the resident is able to access the courts in accordance with this SOP.
 - i. For example, if a resident has one dollar and twenty cents (\$1.20) in their resident trust account and needs to make 30 photocopies of a motion and mail it to the court to be filed, the legal assistant or other designated staff member must accommodate the request even though the resident does not have sufficient funds in their account to cover the full expense of photocopying and mailing the motion. The charge can cause a negative balance on the resident account.
- e. Indigent residents can request indigent supplies using the [Access to Courts Request Form](#).

9. Resident-to-Resident Assistance

- a. Residents may assist one another with legal work if they meet all the following conditions:
 - i. Both residents must have access to one another during normal facility operations.
 - ii. A resident cannot possess another resident's legal materials.
 - iii. A resident must not receive any item, compensation, or service for helping another resident with legal work.
 - iv. A resident must not represent another person in any legal proceeding.
- b. Residents must not engage in the unauthorized practice of law (Idaho

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Code, § 3-420; and *In Re: Matthews*, 58 Idaho 772). Residents may be referred to the Idaho State Bar for prosecution for the unauthorized practice of law.

10. Court Hearings

- a. Designated facility staff will facilitate resident remote attendance for court hearings using the area designated by the facility head. The legal assistant must log the hearing using the Individual Activity Log.
- b. The resident must provide a copy of the court order or notice of hearing to the legal assistant or designated facility staff at least 24 hours before the court hearing. If the resident fails to provide 24-hour notice of the hearing, the legal assistant or designated facility staff will facilitate remote attendance, if possible.
 - i. If remote attendance is not possible to accommodate withing less than 24-hour notice, staff will notify the court.

11. Attorney Phone Calls

- a. Residents may place unmonitored telephone calls to their attorney using the digital resource.
- b. If a resident is unable to place a direct call to their attorney using the digital resource, the resident may contact the attorney by mail and request the attorney call the facility legal assistant or designated facility staff and ask to arrange a telephone call with the resident.
- c. An attorney or attorney's staff member may contact the facility legal assistant or designated facility staff member to arrange a time for the resident to call the attorney or attorney to call the resident.
- d. The legal assistant must log the call using the Individual Activity Log.

12. Searching of Legal Material

Information regarding the search of residents' legal material is in [SOP 317.02.01.001](#), *Searches: Cell/Living Unit, and Resident*. If feasible, legal assistant staff should participate in the search of residents' legal material.

13. Storage of Excess Legal Materials

- a. Each facility head must identify an area secure from residents and unauthorized staff for storing a resident's legal materials for an active case which exceed the property limits set in [SOP 320.02.01.001](#), *Property: State-issued and Resident Personal Property*.
 - i. Each facility must develop a field memorandum to describe the process for residents to store and retrieve their excess legal materials, and a process to inventory the material.
- b. IDOC will only store legal materials related to active and ongoing qualified legal claims that cannot be contained in a resident's authorized personal

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property. IDOC will not store excess legal materials, multiple copies of pleadings, research materials, or materials not directly related to the resident's active and ongoing litigation.

- c. When excess legal material is confiscated and forwarded to the property officer or designee for handling, material will be held in accordance with [SOP 320.02.01.001](#), *Property: State-Issued and Resident Personal Property*.
- d. If the resident would like to store their excess legal materials, they must submit a [Request to Store Excess Legal Materials](#) form to the legal assistant.
- e. If a resident receives legal material in an electronic format, such as a CD or thumb drive, these items are required to be stored in a lockable container in the facility ATC Center. A resident must submit an [Access to Courts Request Form](#) to the facility legal assistant to review the materials. The legal assistant will schedule a time for the resident to view the materials on a computer. At no time will copies be made of the electronic materials, unless specific documents are to be attached to a court filing for a qualified legal claim. A resident may mail their digital legal materials to a third party in accordance with [SOP 320.02.01.001](#), *Property: State-Issued and Inmate Personal Property*.
- f. Annually, legal assistant staff must review stored excess legal materials with the resident present. If it is determined during this review that materials being stored are no longer associated with active and ongoing litigation, the legal assistant will advise the resident of options (detailed in the [Request to Store Excess Legal Materials](#) form) for disposition of these excess materials. Validation and determination will be accomplished by using iCourt Portal, the U.S. District Court for the District of Idaho Electronic Case File System, or the 9th Circuit Court of Appeals website. If the resident cannot be present, the legal assistant staff must document the reason for the resident's absence in the resident's Individual Activity Log. The refusal of the resident to attend the review does not warrant the review to be postponed.
- g. When a resident is released to parole, any legal material left at the facility must be forwarded to the resident's new address and documented in the correctional management system and ATC database.
- h. When a resident is released from IDOC custody at the completion of their term, legal materials must be disposed of in accordance with [SOP 320.02.01.001](#), *Property: State-issued and Resident Personal Property*.

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i. Process Steps: Storage of Excess Legal Materials

Functional Roles and Responsibilities	Step	Tasks
Resident	1	Complete an ATC Center Request to Store Excess Legal Materials form and submit to legal assistant
Legal Assistant	2	1. Verify the legal materials are in excess of the allowed space for personal papers and legal materials per SOP 320.02.01.001, Property: State Issued and Resident Personal Property 2. Verify case numbers, titles, court information, and whether required signatures are provided to determine eligibility for storage a. If this information is not submitted, return the form to the resident and end the process here until the required information is submitted.
Legal Assistant	3	Inform the resident when to bring the excess legal materials to the secure storage location or when they will be picked up by the legal assistant. If needed, provide the resident with a box to store excess legal materials. If the resident wants to organize the excess legal materials, it is the resident's responsibility to purchase organizing materials from commissary and organize their excess legal materials before storing.
Legal Assistant	4	Search the excess legal materials for unauthorized items and dispose of the unauthorized items in accordance with SOP 320.02.01.001, Property: State Issued and Resident Personal Property .
Legal Assistant	5	Clearly mark and identify each file folder, envelope, or box with the resident's name, IDOC number, and case number.
Legal Assistant	6	Inventory the excess legal materials using the Individual Activity Log.

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14. Attorney Access

Attorney access is explained in [SOP 604.02.01.002](#), *Attorney and Professional Individual Access to Residents*.

15. ATC Procedures for Facilities without an ATC Center

- a. The facility head or designee at facilities without an ATC Center must designate a facility staff member to help residents with general, day-to-day operational issues regarding ATC matters.
- b. The designated facility staff must forward Access to Court Request Forms to the appropriate ATC Center identified below and ensure the resident receives the services or resources indicated by the ATC Center legal assistant.
 - i. The legal assistant logs the services in the ATC database
- c. The ATC supervisor may temporarily reassign legal assistant contacts for each facility to accommodate training or staff shortages. Temporary assignments should not exceed 60 days.
- d. ATC Centers supporting additional facilities/locations:
 - i. Idaho Correctional Institution Orofino (ICIO) also supports:
 - 1) North Idaho Correctional Institution (NICI)
 - 2) County Jails – District 1 & 2
 - ii. South Idaho Correctional Institution (SICI) also supports:
 - 1) East Boise CRC
 - 2) Nampa CRC
 - 3) South Boise Women’s Correctional Center
 - 4) Treasure Valley CRC
 - 5) County Jails – District 3, 4, & 5
 - iii. Pocatello Women’s Correctional Center (PWCC) also supports:
 - 1) Idaho Falls CRC
 - 2) Saint Anthony Work Camp
 - 3) County Jails – District 6 & 7

16. Record Retention

Legal assistant staff must retain copies of ATC forms, attachments, and other logs and documentation in accordance with [SOP 108.002](#), *Records Retention and Destruction*.

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H. REFERENCES

1. Forms

- a. [Access to Court Request Form](#)
- b. [Request to Store Excess Legal Materials](#)
- c. [Resident Personal Funds Withdrawal Slip](#)

2. Cited Documents

- a. Federal Rules of Civil Procedure | <https://www.uscourts.gov/forms-rules/current-rules-practice-procedure/federal-rules-civil-procedure>
- b. Idaho Code, § 3-420, *Unlawful Practice of Law – Penalty*
- c. Idaho Rules of Civil Procedure | <https://isc.idaho.gov/rules-procedure/ircp>
- d. *In Re: Matthews*, 58 Idaho 772, 79 P. 2d 535, (1938)
- e. [SOP 317.02.01.001](#), *Searches: Cell/Living Unit, and Resident*
- f. [SOP 320.02.01.001](#), *Property: State-issued and Resident Personal Property*
- g. [SOP 402.02.01.001](#), *Mail Handling in Correctional Facilities*
- h. [SOP 604.02.01.002](#), *Attorney and Professional Individual Access to Residents*

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