


Idaho Department of Correction 	Standard Operating Procedure	Title: Attorney and Professional Individual Access to Inmates		Page: 1 of 12
		Control Number: 604.02.01.002	Version: 2.0	Adopted: 11-05-2014

Henry Atencio, director, approved this document on 09/04/2018.

Open to the public: **Yes**

SCOPE

This SOP applies to all Idaho Department of Correction (IDOC) correctional facilities and central office.

Revision History
Revision date (09/04/2018) version 2.0: Added paragraph to section 3 which explains that electronic attorney communications sent via the electronic communications system (ECS) are not confidential or privileged.

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BOARD OF CORRECTION IDAPA RULE NUMBER 604

Visiting Inmates

POLICY CONTROL NUMBER 604

Visiting

PURPOSE

This standard operating procedure (SOP) establishes rules and procedures for access to inmates by attorneys, attorney agents, and other professionals for court proceedings and other legitimate professional needs.

RESPONSIBILITIES

The chiefs of the education, treatment, and reentry division and the prisons division are responsible to implement this standard operating procedure (SOP).

GENERAL REQUIREMENTS

1. Individuals Acting in their Official Capacity

Individuals acting in their official capacity, such as Idaho Department of Health and Welfare caseworkers or law enforcement officials, are allowed to conduct official business with IDOC inmates without the completion of an application or record check. Such officials must provide identification that confirms their employment and they must indicate the purpose of their business. These individuals must contact the facility in advance for approval and scheduling.

If there is any concern regarding the legitimacy of a professional individual's access, the facility head or designee may confirm the individual's activities with the individual's employer.

2. Attorney and Attorney Agent Access

The IDOC allows meetings between inmates and attorneys or their agents, or both, to work on a legal claim or proceeding.

Attorneys or their agents **may have social visits** with inmates pursuant to standard visiting procedures (see *Visiting*, SOP 604.02.01.001).

To the extent possible--based on staffing and facility design--facility heads must identify an area that allows the inmate and the attorney, or the attorney's agent, the opportunity to conduct legal business where staff members are able to observe the meetings but cannot overhear or record the conversation.

Upon first contact, IDOC staff provides attorneys or the attorney's agent a copy of this SOP or instruction on how to access the SOP and forms on the internet.

All items taken into a facility are subject to search for contraband. Before allowing access to the inmate, staff requires attorneys, or their agents, to turn on any computer or other approved electronic device to ensure that it works.

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3. Attorney Communications

Attorney Telephone Calls

Telephones and Electronic Communications: Inmate, SOP 503.02.01.001 governs all attorney telephone calls. If the call cannot be placed in accordance with SOP 503.02.01.001, follow the process described in *Access to Courts*, SOP 405.02.01.001.

Attorney Mail – hard copy

Mail Handling in Correctional Facilities, SOP 402.02.01.001 governs general mail-handling procedures. *Access to Courts*, SOP 405.02.01.001 governs legal mail between inmates and their attorneys.

Attorney Mail - electronic

Telephones and Electronic Communication Systems: Inmate, SOP 503.02.01.001 governs the electronic communications system (ECS). Electronic communications via the ECS are not confidential or privileged. Instead, all electronic communications via the ECS are subject to recording and archiving and may be monitored and reviewed at any time, regardless of who is communicating with the inmate.

4. Access to Correctional Facilities

Inmates may meet with their attorney of record, the attorney of record's agent, or an attorney considering representing an inmate. Attorneys who are not an attorney of record for an inmate may meet with the inmate up to three times to consider representation. The facility head may approve additional meetings.

Hours for attorney access are Monday through Friday from 08:00 to 16:00 hours. The facility head or designee may approve alternate hours on an individual basis.

Attorney and attorney agent meetings are conducted in accordance with the custody level of the facility. Non-contact areas might be used when staffing prevents contact meetings.

Attorney Agents

Attorneys who have established an attorney-client relationship with an inmate may request that agents of that attorney meet with the inmate client for assisting in the attorney's representation of the inmate client. Agents of the attorney may include individuals such as investigators, paralegals, retained expert witnesses, or mitigation specialists. Before an attorney agent meets with an inmate, a letter from the attorney requesting access is required, along with a completed *Attorney Agent Application*. The letter must be written on the attorney's letterhead and contain the following:

- Name of the agent
- Name and IDOC number of the inmate client to be seen
- An approximate length of time the agent needs access, not to exceed one year (agents must resubmit applications and new letters annually when the case exceeds one year).
- The signature of the attorney representing the inmate

Group Meetings

Meeting with a group of inmates is permitted only when the office of the DAG assigned to represent the IDOC has verified class certification or co-parties.

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Inmates under Sentence of Death

Meeting with inmates who are under a death warrant must be in accordance with *Execution Procedures*, SOP 135.02.01.001.

Facility Tours or Inspections

An attorney requesting access to a facility for the purpose of inspecting or touring any portion of a facility must submit a written request to the facility head. The facility head forwards the request to the DAG assigned to represent the IDOC.

The DAG reviews and evaluates the request and returns the request and a recommendation to the facility head. The DAG must determine if the requested tour or inspection is valid in relationship to an ongoing case. If access is recommended, the DAG must include specifics regarding the areas to be toured or inspected.

The facility head, in consultation with the prison division chief or designee approves, modifies, or denies the request and notifies the attorney of the decision. Those requests that are approved or modified must be specific regarding the scope, individuals, length, date, and time. Cameras, recording devices, or cell phones **are not** allowed unless the facility head specifically approves them.

Unless specifically approved, the attorney or attorney’s agent is not allowed to talk to or question inmates or staff.

5. Contact Type by Custody Level and Housing Status

- Community Reentry Center: Contact
- Minimum Custody: Contact
- Medium Custody: Contact (non-contact maybe used at the discretion of the facility head)
- Close Custody: Contact and non-contact
- Restrictive Housing: Non-contact or restricted contact (*Restrictive Housing*, SOP 319.02.01.001)

6. Attorney Agent Process

Use the following procedures for approving attorney agents.

Functional Roles and Responsibilities	Step	Tasks
Attorney’s Agent	1	Download <i>Rules for Meeting with Inmates and Attorney Agent Application</i> from the Idaho Department of Correction’s Internet website or obtain these forms from the inmate or staff member. Obtain a letter as described in section 4.
	2	Read <i>Rules for Meeting with Inmates</i> and complete the application. Mail the completed application and letter from attorney representing the inmate client to the facility.

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Functional Roles and Responsibilities	Step	Tasks
IDOC Staff	3	Review the application and letter for completeness. If the application is complete, proceed to step 4. If the application is not complete, return it to the agent of the attorney, explaining what additional information is required.
	4	Request or conduct a criminal background check and if necessary, confirm the agent's employment with the attorney.
Background Check Staff	5	Conduct a criminal background check. Complete the 'background check' box at the bottom of the application and forward the application to the appropriate staff. In the CIS, backgrounds/document/clearance: <ul style="list-style-type: none"> Select all items that were verified, add any applicable comments. Enter the 'completed date' and 'completed by' fields.
IDOC Staff	6	Review the criminal background history and the application. If the agent has no arrests, incarcerations, or periods of probation or parole supervision during the last five years, and the request meets the other criteria outlined in this SOP do the following: In the CIS backgrounds/document/clearance: <ul style="list-style-type: none"> Select all items that were verified, add any applicable comments. Attach the attorney to the applicable inmate number location. (Proceed to step 10.)
	7	If the application does not meet the approval criteria, <ul style="list-style-type: none"> Forward the application and attorney's letter to the facility head (or designee).
Facility Head or Designee	8	Review the application and attorney's letter and approve or deny the application.
Facility Head or Designee	9	Send a letter and a copy of the original letter to the attorney, informing the attorney of the decision to grant or deny access. Return the application with the documented decision to the applicable staff.

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Functional Roles and Responsibilities	Step	Tasks
IDOC Staff	10	<p>In the CIS backgrounds/document/clearance:</p> <ul style="list-style-type: none"> • If the agent is approved, select facility's established inmate number for CIS as established in <i>Volunteer Services in Correctional Facilities</i>, SOP 606.02.01.001 (multiple numbers may exist if the attorney's agent accesses multiple locations), select approved, complete and save. • If the agent is denied, select your facility's established inmate number, select denied, complete, and save. • Notify the attorney's agent via letter, telephone, or email.

7. Scheduling Attorney and Attorney's Agent Meetings

Use the following procedures for scheduling attorney and attorney agents meetings.

Functional Roles and Responsibilities	Step	Tasks
Attorney or Attorney's Agent	1	Call the designated IDOC staff at least 24 hours before the meeting to schedule.
IDOC Staff	2	<p>Ask the attorney or attorney's agent if he has a copy of <i>Rules for Meeting with Inmates</i> and if he does not, transmit a copy of <i>Rules for Meeting with Inmates</i> to him or provide instructions on how to obtain the forms from the Internet.</p> <p>Schedule the meeting.</p> <p>If requested time is not available, work with the attorney or agent to identify and schedule an alternate time.</p> <p>Confirm meeting time with the attorney or agent.</p>
Attorney or Attorney's Agent	3	Upon entry at the facility, present bar association card (attorney) or official photo identification (agent) to the IDOC staff.

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Functional Roles and Responsibilities	Step	Tasks
IDOC Staff	4	Facilitate the meeting. <ul style="list-style-type: none"> • When the meeting begins, in CIS, select the attorney or agent in using the 'visitors' link within the inmate profile. • When the meeting ends, in CIS, select the check-out box next to the attorney or agent name and save.

8. Court-appointed Professional Individual Access

If ordered by a court that has jurisdiction, professional individuals may have contact meetings with inmates.

Court-ordered professional individuals can bring testing equipment and supplies into the facility if the equipment and supplies are specifically listed in the court order.

In addition, at least 48 hours before testing, the professional individual must submit to the facility head or designee by email or facsimile, a list of the equipment, description of how the equipment is used and how the inmate is in contact with the equipment, the purpose of the equipment, and an estimate of the time needed for the procedure.

IDOC staff must search all testing equipment and supplies entering and exiting the facility. All electronic equipment must be turned on and briefly demonstrated.

If the inmate is housed in administrative segregation and removal of restraints is necessary, the professional individual must sign a *Waiver of Liability*, before staff removes the restraints.

9. Service of Civil Process

Facility heads must write field memoranda identifying staff designated to coordinate service, the location where service of process is done, and circumstances under which inmates are served directly or when staff accept service and deliver the documents to the inmate.

A summons and complaint against the IDOC or IDOC staff in relationship to IDOC employment must be served at central office on a deputy attorney general (DAG) assigned to the department in accordance with *Legal Actions Against Personnel*, Policy 106.

Service of all process must be made by an officer authorized by law to serve process, or by a person over the age of eighteen, not a party to the action. The person executing process may have copies and do not need to have the original summons and complaint in his possession.

Civilian Process Servers

Civilian process servers are required to call the facility and schedule a date and time to serve the inmate. The designated staff may allow service if the process server fails to schedule if it is safe and reasonable to do so.

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Civilian process servers must serve the summons and complaint in the administration or visiting area and are not allowed inside the secured, living, or operational areas of a facility.

Officers Authorized by Law

Authorized officers such as sheriff's deputies, immigration officers, and federal marshals are not required to schedule service. Normally, service is done in the administration or visiting area. However, the field memorandum may authorize service in the living area. Such service is limited to cell-side service of inmates in restrictive housing and IDOC staff must escort the officer.

Process Service Procedures

The person executing the service must present legal identification such as a state driver's license or state identification card, military identification card, passport, or government agency identification card.

The summons and complaint are public documents. Staff must read them to the extent necessary to ensure they are civil process documents, do not contain contraband, and that the person serving is not a party to the action. If the staff member is concerned that the summons and complaint contains contraband or information that is not a legitimate summons and complaint, the staff member will take a photocopy of the server's identification card, obtain his contact information, and forward all the documents to the facility head or designee for further review and action. If any or all of the documents are withheld from the inmate, the facility head or designee must contact the division chief and a DAG assigned to the department.

Whenever possible, the person executing the process must serve the inmate directly. Staff must supervise the service process.

A staff member can accept the summons and complaint and then deliver the summons and complaints to the inmate, in which case the staff member must complete a *Process Service Documentation Form*. The form must be filed in accordance with the field memorandum and maintained for at least two years.

Procedure if Inmate is Unavailable or Moved

If the inmate is unavailable due to a work assignment, hospital or doctor's appointment, restrictive housing, etc., staff may either ask the server to return at time when the inmate is available or accept service and then give it to the inmate and complete the *Process Service Documentation Form* (staff do not complete the affidavit of service). Staff cannot refuse service in accordance with this section.

If the inmate has been moved to another facility, the service must be arranged at the inmate's current facility. If the inmate has moved within the south Boise complex, staff will attempt to coordinate with the housing facility so that service can be accomplished that same day.

Rules and Responsibilities

In accordance with court rules, service can be accomplished by leaving copies of the summons and complaint with an agent authorized by appointment or by law. As custodians of inmates sentenced to confinement in an IDOC facility, staff members are agents authorized by appointment. Service cannot be declined except when the inmate is no longer assigned to your facility; or if the person attempting service is under 18

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years of age or a party to the action. Either the process server must serve the inmate or staff must accept service and deliver the summons and complaint to the inmate.

Identification of the process server is limited to official identification as describe in this section. The IDOC does not conduct criminal history checks, checks for warrants, etc.

10. Attorney, Attorney Agent, or Professional Individual Misconduct

IDOC Facilities

When there is cause to believe an attorney, attorney agent, or professional individual is abusing his access or communication privileges with an inmate, the facility head (or designee) is authorized to:

- Require proof from the attorney that he and the inmate are involved in active litigation **or** have a legitimate legal reason for contact.
- Initiate an initial inquiry to determine if an investigation is warranted.
- Where good cause exists, take administrative action to temporarily modify and/or suspend the attorney's and/or attorney agent's privileges, specifically facility and/or telephone access, and request an investigation from the IDOC special investigations unit (SIU).

Contract Facilities

When there is cause to believe an attorney, attorney agent, or professional individual is abusing his access or communication privileges with an inmate, the facility head or designee must immediately contact the IDOC contract-prisons oversight deputy warden or designee. The deputy warden must follow the steps 1, 2, and 3 outlined in section 11.

11. Reporting, Investigating, and Handling Attorney or Attorney Agent Misconduct

When a facility head or designee becomes aware of an allegation of misconduct, do the following:

Functional Roles and Responsibilities	Step	Tasks
Facility Head or designee	1	If necessary, conduct an initial inquiry to determine if an investigation is warranted or if the violation is minor, take corrective action outlined in section 12.
	2	If appropriate, temporarily restrict the individual's access to the facility.
	3	Consult with the prisons division chief or designee to determine whether good cause exists to believe that misconduct occurred.
Prisons Division Chief or Designee	4	Consult with a DAG who represents the IDOC and if appropriate the IDOC director, and if good cause exists, request that the SIU conduct an investigation.
Special Investigations Unit	5	Conduct investigation and submit investigative report to the prisons division chief.

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Functional Roles and Responsibilities	Step	Tasks
Prisons Division Chief or Designee	6	Consult with a DAG and if applicable the director and additional division chiefs and determine course of action.

Investigation of Misconduct Report

Following the investigation, the SIU investigator must provide the prison division chief, IDOC director, and DAG an investigation report. Copies of all documents relevant to the investigation, including any previous written warning or other written instruction, are attached to the report, or otherwise made available for the prisons division chief **and** the DAG's review. The report should include the following information:

- Case number (if applicable)
- Summary of allegation and the source of the allegation
- Names of the witnesses interviewed and all available contact information, except where such contact information is confidential or disclosure of such contact information would create a security risk, in which case the SIU investigator may limit the contact information
- Summary of the witnesses' statements made to the SIU investigator and information or evidence found to support statements or allegations
- Brief description regarding the attorney or attorney agent against whom the allegation was made, including (at a minimum) the attorney's name and bar number, a multi-state criminal background check on the attorney, a report on the status of all current cases the attorney is handling for IDOC inmates, and how long the attorney has had access privileges at IDOC facilities
- Any previous allegations or issues related to the individual's access at IDOC facilities
- A brief description of the incident or incidents that gave rise to the allegation of misconduct and any action taken by the IDOC in response
- A statement of the investigator's conclusion, based on the investigator's review of all evidence, as to whether good cause exists to believe that misconduct by the attorney has occurred

12. Corrective Action

Minor Violations

A facility head may issue written warnings for minor or first-time violations of facility or IDOC rules, policies, and procedures. Violations that constitute a misdemeanor or felony are not considered minor.

Written warnings must include that if any additional violations occur, the individual's access and confidential privileges with the inmate may be modified and/or suspended. The facility head must maintain a copy of the written warning and forward a copy of the written warning to the prisons division chief or designee and the DAG. The division of prisons maintains a copy for a minimum of two years.

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Repeated and/or Serious Infractions or Violations

Any repeat or serious violation may result in a one-year or indefinite modification or suspension of facility access, telephone, or mail privileges, or any combination of the three—depending on the severity of the offense in question.

If an attorney or agent engages in repeated or serious infractions or violations as described above, the facility head or designee must immediately consult with the prisons division chief.

If the SIU investigation indicates that good cause exists, the department takes one or more of the following actions:

- If the violation constitutes a misdemeanor or felony, the case is referred to law enforcement (the individual does not receive any notification of this referral).
- Issue a formal written warning.
- Modify the individual's access to the inmate to include but not limited to, non-contact access, block telephone number(s), remove telephone numbers from the non-monitor list, convert the access to standard visitation.
- File a petition or notification with the court.
- File a complaint with the Idaho State Bar.
- Temporarily restrict access to IDOC facilities.
- Permanently restrict access to IDOC facilities.

13. Procedure for Corrective Action

Except in cases referred to law enforcement for criminal investigation, the IDOC issues a written notice of corrective action that describes the rules violated and the corrective action to be taken. The individual has 14 days to respond. If the individual fails to respond within 14 days, the corrective action becomes final. If the individual responds to the corrective action within 14 days, the prison division chief or designee issues a final decision within 14 days following the receipt of the individual's response.

The individual can file a written appeal with the IDOC director within 30 days of the prison division chief or designee decision. The IDOC director issues a decision on the appeal within 30 days following receipt of the individual's appeal.

The corrective action stated in the notice of corrective action is effective as of the date of the notice and remains in effect during any response and appeal period.

If the corrective action was restriction from IDOC facilities for more than one year, the individual may apply to the prisons division chief or designee for reconsideration annually.

DEFINITIONS

Attorney Agent: A person qualified through education, training or work experience, who is employed or retained by an active attorney member of the Idaho State Bar, another state's bar or a governmental agency in a capacity or function which involves the performance of specifically delegated legal work, under the direct supervision of an attorney, who must maintain a direct relationship with the inmate client.

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Attorney of Record: An attorney appointed by a court or retained by an inmate or on behalf of the inmate in a specific legal action.

Good Cause: For the purpose of this SOP only, the term 'good cause' means sufficient facts and circumstances from which a reasonable person could infer it is more probable than not that misconduct has occurred.

Professional Individual: For the purpose of this SOP, professional individual means individuals acting in an official capacity such as Idaho Department of Health and Welfare employees, law enforcement officers, court-ordered experts, etc.

REFERENCES

[Rules for Meeting with Residents](#)

[Attorney Agent Application](#)

[Process Service Documentation Form](#)

[Waiver of Liability](#)

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