

THE STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS
SOUTH

SUPERIOR COURT

Docket No. 226-2019-CR-814

State of New Hampshire
v.
Dale Holloway

OBJECTION TO MOTION FOR COURT ORDER FOR ACCESS TO LEGAL WORK

NOW COMES the State of New Hampshire, Department of Corrections, by and through its attorneys, the Office of the Attorney General, and respectfully objects to Dale Holloway's Motion for Access to Legal Work, hereby stating:

1. Mr. Holloway's trial has concluded the evidentiary phase, and sentencing is scheduled for January 29, 2024. During the pendency of Mr. Holloway's trial, the New Hampshire Department of Corrections ("NHDOC") provided Mr. Holloway extraordinary access to materials he claimed were necessary for his case. Mr. Holloway's access was in accord with and above and beyond this court's September 14, 2023 and October 18, 2023 orders regarding Mr. Holloway's access to his voluminous materials. Mr. Holloway's extraordinary access during the trial was outside of established NHDOC policy¹ and presented an extraordinary administrative and security burden on NHDOC during the pendency of his trial. During the trial, Mr. Holloway variously had additional out-of-cell time to review materials, Mr. Holloway was given a non-networked laptop to review

¹ Access to such materials is typically in accordance with Policy and Procedure Directive 386, which is attached as Exhibit A. In sum, this policy allows a resident like Mr. Holloway to access two (2) cubic feet of printed material at any given time in his living quarters, which he may cycle out for other materials, not to exceed two cubic feet at any given time. Mr. Holloway is also entitled to ask to make copies of electronic or other materials. *See* Exhibit A Section 10 ¶¶ 5-7.

materials, and Mr. Holloway was allowed to maintain in his cell materials that went beyond the amount mandated by NHDOC policy for his perusal. This additional access was not specifically mandated by an order of this court but was to a large extent left open to NHDOC to fairly determine. *See October 18, 2023 Order* (“[i]t also appears that the prison officials will provide the defendant with additional access and accommodations for purposes of trial preparation.” Emphasis added.).

2. In relation to this additional access, Mr. Holloway elected to print many thousands of pages of materials. The printing of these materials was discussed in this court’s October 25, 2023 order which followed the Trial Management Conference in the case. In the instant motion, Mr. Holloway appears to be arguing for this same trial-level of access for the next many weeks until his sentencing hearing. That level of extraordinary, outside-of-policy access is both unnecessary and an extreme security and administrative burden on NHDOC for a person in the Special Housing Unit (“SHU”). No law, rule or constitutional provision entitles Mr. Holloway to dictate that he be afforded extraordinary and unlimited access to materials on a continuous basis for every facet of his case. Simply put, Mr. Holloway’s current access to his materials, detailed below, meets all legal requirements for Mr. Holloway’s sentencing hearing preparation.
3. When Mr. Holloway’s evidentiary trial concluded, he was told by NHDOC staff that he was entitled to access his materials in accordance with the NHDOC policy instead of the extraordinary access he had been afforded during the trial phase. It was reported to Warden Edmark that Mr. Holloway was granted access to his legal work on November 15th and during that time Mr. Holloway went through the materials and took the allowable 2 cubic feet (which itself is in excess of the 1 Cubic foot allowed in SHU, due

to the nature of Mr. Holloway's specific and unique circumstance-see *Exhibit A* at Section 10 ¶ 6) of legal work of his choosing. Mr. Holloway knows and understands how to navigate the NHDOC policy. For example, on November 23, 2023, after receiving a request slip from Mr. Holloway, Mr. Holloway was granted access to trade out legal paperwork, and he again returned to his cell with 2 cubic feet of paperwork.

4. Mr. Holloway has printed thousands of pieces of paper (previously litigated before this court and reflected in the court's October 25, 2023 order) for purposes of his trial that he continues to have access to in accordance with NHDOC policy. Mr. Holloway now seems to vaguely cite a need for simultaneous and continuous access to all of these materials at the same time for a hearing not to occur for nearly two-months. For example, On November 19, 2023 Mr. Holloway indicated to NHDOC that he needed to "review [his] laptop discovery and trial notes...." Mr. Holloway has already printed the needed contents of what would be viewable on the laptop and illustrated that he understands how to swap out the hard copies of these documents for his review. Notably, Mr. Holloway has been non-specific about whether there is some specific item he wishes to review that has not been printed and has instead just asked for "access" to all of the contents of the laptop. Mr. Holloway has also vaguely referred to "trial notes" but after NHDOC attempts to engage Mr. Holloway on any trial notes, he has again remained non-specific.
5. To the extent that Mr. Holloway took notes during his trial or has other unprinted materials that were previously identified as legal materials, NHDOC will allow Mr. Holloway to identify and print those items at his own cost. NHDOC has confirmed that as of 11/27/2023 he has \$51.64 in his resident account.

6. Mr. Holloway continues to have access to LexisNexis in his cell 24 hours a day, and has access to request copies, or legal materials through the librarian as any other resident does. Additionally, as detailed above, Mr. Holloway can maintain and exchange printed materials in his cell.
7. Mr. Holloway has specifically identified an NHDOC employee, (Mot. at ¶ 3) and has asked for a restraining order against that employee in his motion due to a lack of “access” to legal materials. That employee and all NHDOC staff have acted with the utmost professionalism in allowing Mr. Holloway access to his materials. NHDOC categorically denies that any NHDOC employee has restricted Mr. Holloway’s access to legal materials. Instead, NHDOC personnel have afforded Mr. Holloway access to materials in accord with NHDOC policy since the conclusion of the evidentiary phase of the trial. Mr. Holloway’s motion appears to be an attempt to force NHDOC to provide Mr. Holloway with extraordinary and continuous access to materials around the clock, at Mr. Holloway’s discretion in violation of NHDOC policy. No rule or constitutional provision cited by Mr. Holloway (or any other) entitle Mr. Holloway to unlimited access to all of the trial materials simultaneously as Mr. Holloway chooses. Notably, Mr. Holloway has provided no factual basis in his motion for why his current access is insufficient, he only demands that he have such access. His requests for “access” and for a restraining order should accordingly be denied.

WHEREFORE, the State of New Hampshire respectfully requests this Honorable Court:

- a. Deny Mr. Holloway’s requests for relief to have special access to his legal materials in violation of NHDOC policy;
- b. Deny Mr. Holloway’s request for a restraining order; and
- c. Grant such further relief as may be deemed just and proper.

Respectfully submitted,

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF CORRECTIONS

By its attorney,

JOHN M. FORMELLA
ATTORNEY GENERAL

Date: December 1, 2023


/s/ Michael R. Grandy
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via court e-filing system and mailed to Dale Holloway #117157, P.O. Box 14 Concord, NH 03301.

/s Michael R. Grandy
Michael R. Grandy

EXHIBIT A

NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE Pursuant to NH RSA 21-H:8 (III) Internal Practices and Procedures	CHAPTER <u>Property Management</u> STATEMENT NUMBER <u>386</u>
SUBJECT: ISSUANCE AND CONTROL OF INDIVIDUAL PROPERTY PROPONENT: <u>Warden</u> <i>Name/Title</i> <u>NNHCF</u> <u>271-5601</u> <i>Office</i> <i>Phone #</i>	EFFECTIVE DATE <u>05/05/2020</u> REVIEW DATE <u>05/05/2023</u> SUPERSEDES PPD# <u>9.02</u> DATED <u>03/01/2013</u>
ISSUING OFFICER:  <i>Helen E. Hanks, Commissioner</i>	DIRECTOR'S INITIALS _____ DATE _____ APPENDIX ATTACHED: YES _____ NO _____
REFERENCE NO: See reference section on last page of PPD.	

- (a) **PURPOSE:**
To establish and provide procedures for the issuance and control of individual property.
- (b) **APPLICABILITY:**
To all staff and individuals.
- (c) **POLICY:**
It is the policy of the Department of Corrections to issue certain types and quantities of State property to individual for their use during the term of their confinement. Except as otherwise provided herein, all State property issued to individual will be returned to the State at the time of release from custody. Individual will only be allowed to retain in their possession those items of personal property that are specifically authorized; any item in excess of authorization or not authorized will be taken from the individual and disposed of as outlined below.
- (d) **PROCEDURE:**
 - (1) **Property Control.**
Control of property begins when an individual is in-processed. At this point all property that the individual brings in will be separated as authorized and unauthorized. Money and negotiable instruments will be processed and turned over to the Individual Accounts Office. Property that is authorized will be inventoried on a property record with a copy for the property file and a copy for the individual. The individual will be allowed to retain this property. Property which is either unauthorized or in excess of authorization will be taken from the individual and prepared to be sent out. An inventory of this property will be made with one copy for the property file, one for the electronic offender record and one copy for the individual. The individual will be required to give an address to which this property can be sent and to bear the expense of sending it out. Each individual will receive written notice and acknowledge receipt (5-Day Notice Form

SP-36 Attachment 5) of same at time of intake that all personal clothing that the individual was wearing upon arrival and unauthorized property must be removed within five business days of intake/reception; otherwise it will be disposed of by the State. The individual will be advised that if the property is returned as being undeliverable it will be disposed of as contraband.

(2) Prescription and Non-Prescription Medication.

- a. No personal medication is allowed. Any medication brought into the facility will be delivered to health services staff for review and disposition to the Pharmacy for destruction. (See attachment 6)
- b. The Department of Corrections Pharmacy Department provides prescription and non-prescription medication upon the order of an authorized prescriber. The individual may purchase certain non-prescription medication from the canteen.

(3) Authorized Property.

- a. The Department maintains a list of authorized property for all facilities (Attachment 1) and housing units describing what property may be kept where, what will be issued to whom, when, and where property will be stored or maintained. An issue of suitable clothing will be given to all individuals. The clothing will be properly fitted, climatically suitable, durable and presentable. An issue of articles necessary for maintaining proper personal hygiene will be given to each individual. When necessary, special, and when appropriate, protective clothing and equipment, will be issued to individuals assigned to the institution's food service area, hospital area, farm, garage, physical plant maintenance shop areas and other special work details. The lists will be available to all individuals, posted on appropriate bulletin boards and carefully adhered to by both staff and individuals.
- b. Given the security needs of Reception, C4 and C5 housing units it is reasonable to believe that any authorized property list will be notably more restrictive than general population and/or reduced custody housing units. Because of storage limitations, individuals who are reclassified to a higher security status will be required to dispose of any personal property that is in excess of the higher classification current authorized property list. Disposal of personal property will be done in accordance with the provisions of sections F & G below of this policy. Refusing to dispose of excess personal property until the individual obtains a reduced classification will not suffice as a justification to not comply with this standard.

(4) Acquiring Personal Property.

- a. If an authorized item, regardless of the brand, is available in the Canteen, it must be purchased there.
- b. If an authorized item is not available through the Canteen, it must be shipped directly from an approved publisher, manufacturer or vendor. At no time can a piece of property pass through or appear to have passed through the hands of anyone except the vendor (e.g. personal note written in the cover).
- c. All items ordered from a retailer must be prepaid. No deferred payment plans or COD deliveries will be allowed.
- d. Persons under Departmental supervision may not receive property from other persons under Departmental supervision or relatives of other persons under Departmental supervision.
- e. In order to mitigate instances of debt paying, stealing and/or strong arming, all items received will be listed on the individual's property record and engraved or marked with identifying information whenever applicable.
 1. Individual's personal t-shirts, sweat shirts, sweat pants, sweat shorts and other garments will be marked with the individual's name and ID number in 1" block letters in the same location as state issued clothing using a black sharpie or other similar marking instrument.
 2. Individual personal footwear will be marked conspicuously with the individual's name and ID number using a black sharpie or other similar marking instrument.
 - i. The first position of choice for conspicuous marking will be on the rear of the

heel.

iii. The 2nd position of choice will be the outside of the heel and only if the rear of the heel is not practical.

iii. Any item that cannot be marked in either of these two locations will be referred to the Property Officer who will determine the marking location.

NOTE: Individuals are unable to return footwear to vendors after they have been marked. Therefore, individuals will need to be afforded the opportunity to try on the footwear before they are marked. The delivering staff member will be responsible for marking the footwear upon delivery to the individual and after affording the individual the opportunity to try on the footwear.

3. No additional markings of any kind or color are permitted. Items marked in a manner not consistent with this policy will be confiscated and disposed of accordingly.
4. In order to maintain the feasibility of this policy; any property with the numbers altered will be confiscated, documented and disposed of appropriately. **Stolen property with altered numbers will be sent out, not returned.** If an individual proves ownership, they will be allowed to send the item out and the individual in possession will be written up and in addition to normal sanctions, a mandatory sanction of restitution will be imposed.

f. Approved packages, whether sent by U.S. Mail or by other carriers, must abide by the U. S. Postal Service content regulations.

g. A Resident transferred from another state or jurisdiction may be allowed to retain all property items that are forwarded to a NHDOC facility by means of direct transfer or shipping as long as the individual property item is "like" or "very similar" to property items authorized to NHDOC Residents. This will be limited to items authorized at the classification that the Resident is initially assigned by the NHDOC. The facility Property Officer will be the entity that determines "like" or "very similar" with appeals being considered by the facility Chief of Security or higher authority.

(5) Disposing of Personal Property.

Individuals may dispose of personal property in several ways:

- a. Property can be mailed to a designated person as long as the individual pre-pays postage. Property returned as being undeliverable will be disposed of as contraband.
- b. Individuals may write to the Property Officer and name a person and specific time when the item(s) will be picked up during posted property hours. It is advisable for persons to call and verify that the property room is open before making a special trip.
- c. Individuals may allow property to be donated to a charitable organization or may authorize the Property Officer to destroy or dispose of the items(s) to the benefit of the State.
- d. Transitional Housing Unit residents' property will be held at the Transitional Housing Unit for a maximum of 30 days. After 25 days, a final notice will be sent to the resident informing them they have five days to dispose of the property. After the five days, any unclaimed property will be disposed of to the benefit of the State.
- e. Working television sets may be donated by individuals to either the Concord or Berlin Prison Infirmary as property of Health Services. Donated television sets will have the respective infirmary inscribed on the television. The Property Officer will contact the Health Services Center and speak to the Nursing Coordinator/Designee to find out if there is a need for the television set prior to accepting the donated television set. The infirmary staff will be responsible for maintaining an inventory of all donated television sets.

(6) Disposal of, Abandoned or Unclaimed Property.

- a. NH RSA 471-C:14, "Property held in State Agency Storage Rooms. Notwithstanding any other law to the contrary, all non-contraband abandoned or lost property having a value of less than \$250 that has been held in a state agency storage room for a period of at least 60 days may be disposed of by the state agency after the agency has made a good

faith effort to return the property to the owner, if known. If the owner cannot be determined or the property cannot be returned for any other reason, the property shall be transferred to the division of Plant & Property Management to be sold at public auction with the proceeds to be turned over to the state treasurer. The state shall be free of all liability for any claim thereafter arising or made with respect to property disposed of under this section".

- b. When the owner has declined to advise staff as to the property's disposition, or when the property owner is unknown, said property will be transferred to the Division of Purchase and Property at the end of the 60 day period in consonance with the law and the routines established by the Division of Purchase and Property.
 - c. All property of individuals in escape status for 60 days or more will be disposed of as in 1 & 2 above.
 - d. Property belonging to individuals of other jurisdictions that is left here will be disposed of expeditiously by turning it over to the jurisdiction to whom the prisoner belongs; i.e., U.S. Marshals, other state or county authorities. This transfer will ordinarily be done by giving the property to transportation officers from these jurisdictions. State funds will not be used to mail this property without approval of the Director of Administration.
 - e. New Hampshire state individuals transferred to another jurisdiction are given an inventory of their property (Attachment 2). They may take the inventoried property authorized by the receiving jurisdiction with them. Property not authorized at the receiving institution will not be stored at any DOC facility and must be sent out. Individuals who return to a NH State Correctional facility may bring with them any property that was on the inventory when they left. Any property sent out at time of transfer will not be allowed back in.
- (7) Lost, Stolen, Damaged or Traded Property.
- a. Property, whether issued by the prison or personally owned, is solely for the individual issued or allowed the item.
 - b. If an item is lost or stolen, the individual must report the loss at once to staff. If the item cannot be located it may be replaced after a 60 day waiting period. The individual must pay for any lost, missing or stolen state issued clothing or property. If it subsequently is retrieved, the item will be returned to the owner, who may have only either the lost, missing or stolen item or the replacement item, not both (See (D) (6) (d) above for restrictions).
 - c. Damages to personal property are the owner's responsibility. Individuals obtain and maintain property at their own risk and the State is not liable for the safety or security of these items.
 - d. New Hampshire RSA 541-B:9(V) states in part: "the department of corrections shall have exclusive jurisdiction to investigate, conduct hearings and make decisions, and render or deny awards on claims against the department of corrections when the amount involved is less than \$500. Persons under Departmental control are advised that if they choose to possess the following property and it is determined that the Department did not use the appropriate standard of care, the Department will award no more than the following:

Sun glasses - \$10	Watches -	\$50
TV - \$120	Rings -	\$100
Typewriters - \$150	Fans -	\$25
Tablets - \$100	Cass/Radios/MP3-4 -	\$50
 - e. In order to submit a claim, individuals may write to any housing unit supervisor for a claim form. When the form is completed, it should be sent to the Warden who will arrange to investigate the claim. The claim is then reviewed by a series of officials. The process frequently takes six months or longer. A claim will not be paid unless it can clearly be demonstrated that a State official is responsible for the loss.
 - f. Damaged items may be replaced immediately as long as the damage has been reported and the damaged item is given to the Property Officer for appropriate disposal. Repairs

must be made outside of the prison by mailing the item to a bonafide repair service that has been approved in advance.

- g. Items sold, traded, borrowed or gambled with another individual will become contraband. The item will be seized and be kept by the State. Individuals involved will be subject to disciplinary action. Items with identifying marks, which have been altered or defaced, are also contraband.
- (8) Processing and Safeguarding Confiscated, Unclaimed or Abandoned Individual Property.
Whenever individual property is confiscated, unclaimed or abandoned, the staff member confiscating, finding and/or receiving such property shall:
- a. Physical Property:
 1. Inventory the property (if more than one item);
 2. Tag each item/article and give individual a receipt (5-day notice);
 3. Secure the property in the appropriate container: "Evidence Envelope", bag, box, etc.;
 4. Complete an incident or disciplinary report including an accurate inventory of the property;
 5. If the property is NOT evidence, immediately deliver the property to the custody of the Property Officer or, if the Property Office is closed, immediately deliver the property to the custody of the Shift Commander, the Shift Commander will secure the property in their office and make arrangements to have the Property Officer take custody on the next work day. Complete the "chain of custody" section and/or receipt in presence of delivering Corrections Officer or staff member;
 6. If the property is EVIDENCE -- the instrument or fruit of a policy violation or criminal offense -- immediately deliver the property/evidence to the Investigations Unit; or if the Investigations Unit is not available, immediately deliver the property/evidence to the custody of the Shift Commander.
 - b. Monies and/or Negotiation Instruments:
 1. Ask a Corrections Supervisor with the rank of Sergeant or higher to be present;
 2. Count and/or account for all monies and/or negotiable instruments and give the individual a receipt;
 3. Complete an incident or disciplinary report including a listing of all denominations of currency and/or amounts and numbers of negotiable instruments;
 4. Place monies and/or negotiable instruments and a copy of completed incident or disciplinary report in a PLAIN envelope;
 5. Seal the envelope and sign across the sealed envelope flap;
 6. Print the individual's name on the front of the envelope;
 7. Place the sealed plain envelope in a standard "Evidence Envelope" and give it to the Corrections Supervisor witnessing the transaction;
 8. The Corrections Supervisor witnessing and receiving monies and/or negotiables subject to this PPD shall:
 - (i) Complete the required information on the rear of the "Evidence Envelope" under "Chain of Custody" in the presence of the Corrections Officer or staff member finding/delivering same;
 - (ii) Depending on the nature of the monies and/or negotiables, the day of the week and/or time of day, deliver the sealed "Evidence Envelope" directly to one of the following:
 - i. Investigations Unit
 - ii. Shift Commander
 - iii. Inmate Accounts Office (new inmates)
- (9) Control/Inventory.
- a. All property issued to or properly in possession of individuals will be inventoried any time DOC staff takes possession of the property or at the following points during confinement:
 1. At the time of initial issue, by the Reception/Property Officer issuing the property.
 2. Upon transfer between any NH DOC facility by the sending facility.

3. At the time of departure due to parole, expiration of sentence, Court ordered release, or transfer to another jurisdiction, or any transfer that results in the individual leaving the direct custody, care and supervision of the New Hampshire Department of Corrections.
 4. Any time an individual moves due to their classification increasing as this usually involves a PAR and our taking possession of their property. A PAR Inventory will be completed (Attachment 3) as well as the normal inventory (Attachment 2).
 5. Property inventories are not required for movement within a facility when the individual is moving to the same or lesser security classification unless NH DOC staffs take possession of the property from the individual. Security staff at the sending and receiving unit will make a security inspection of the property before leaving and when entering a housing unit.
 6. Individuals leaving a DOC facility for a period of less than 5-days may request to have their property maintained in their rooms, at their own peril by completing the Waiver of Inventory form (Attachment 5).
- b. At each of the above inventory points, all items of State and personal property will be recorded. A copy of the record will be given to the individual and a copy sent to the Warehouse. If the inventory of State property is not complete, the housing unit will submit a Warehouse Order Form (WOF) for deficient item(s). Indication must be noted on the WOF that it is necessary for the individual to reimburse the State for missing items. The Warehouse Superintendent will then inform the Inmate Accounts clerk of that action. A copy of all initial issues and departing inventories and/or property return records will be sent to Offender Records.
- c. Property Collection and Return:
1. Individuals who are departing should wear privately owned clothes when they leave if such clothing is available. However, if they do not possess privately owned clothing to wear one set of seasonally appropriate State clothing may be taken. The individual can retain underwear and socks that have been used. New items will be recovered and reissued.
 2. Non-clothing items in the individual's possession that belong to the State, such as books, tools or similar items, will be collected at the inventory points described above and returned to the issuer.
 3. When an individual is transferred from one housing unit to another, the cell or dormitory space will be inspected to insure that it is clean and neat, that the issued equipment is present and that the area is ready for occupancy by the next individual to be assigned to that area. Individuals who decline or refuse to prepare their area for the next occupant will not be transferred until this is accomplished except for individuals who are moving backwards in custody status, in which case their refusal will be noted, appropriate reports rendered and the transfer made.
 4. Individuals who have lost or cannot produce State-issued items that they were issued will be expected to pay for them prior to a downward movement in custody or prior to release. For individuals being released, earnings can be used to pay for lost items. Individuals are not authorized to transfer items between or among individuals.
 5. Individuals transferring between locations may bring with them those items prescribed for their new location and will surrender items not authorized or in excess of authorization at the new location. Items so turned in will be returned for reissue under regular supply procedures.
 6. Any clothing not accounted for will be charged to the individual's account at a fair price to be determined by the Director of Administration. Any individual found in possession of clothing not issued to him/her will face disciplinary action.
 7. All returned clothing will be laundered and returned to the stockroom for re-issue.

- d. When residents are returned to custody from a Transitional Housing Unit, it is the resident's responsibility to within 30 days provide the staff with written instructions for the disposal of property that is not authorized to return to the institution(s).
 - e. Individuals are not allowed to purchase or possess accessories to items that they do not have in their possession such as:
 - TV Cables or remote if they do not have a TV;
 - Batteries if they do not have a battery operated device;
 - Cassette tapes if they do not have a cassette player;
 - Headphones if they do not have a TV or radio;
 - Denture adhesive if they do not have dentures;
 - Dental floss if they do not have natural teeth;
 - Etc.
 - f. If an electronic device fails such as a TV or radio the individual will have 60 days to reorder the TV or radio or they will need to send the accessories out of the institution.
 - g. Individuals are allowed two 6 foot extension cords, or one 10 foot extension cord, but not both or a combination of both.
 - h. Grandfathered items cannot be repaired or replaced, and any upgrade in an individual's classification voids and grandfather privilege.
- (10) Legal Material.
- a. Legal material shall be classified as Active and Inactive.
 1. Active legal material constitutes pleadings (i.e., complaint, petition or answer), legal motions and memoranda, affidavits, court orders and judgments, correspondence, and other documents (including discovery and exhibits, transcripts, legal research), in or directly pertaining to a resident's own pending, active (i.e. through final appeal) or prospective cases or lawsuits related to conditions of confinement or sentencing.
 2. Inactive legal material constitutes pleadings, correspondence, discovery material, exhibits, transcripts, and legal research that is from a closed case, (i.e. a case where final disposition has been reached).
 3. Excess legal material constitutes any active or inactive legal material that exceed the standards set in 3 and 4 below.
 4. Legal materials, court transcripts, copies of prior cases, and other public documents that are very commonly used and generally available to the public shall be handled the same as all other property, books, and papers and not be considered legal material as defined above.
 5. Legal materials including active and inactive shall not exceed a maximum volume of two cubic feet, or as may fit in a container, available from an approved vendor, not exceeding two cubic feet so as to ensure adequate sanitary conditions, fire code restrictions, equitable storage limitations, efficient and safe security inspections. If a container is purchased, its only use shall be for legal materials.
 6. Legal materials shall be restricted to one cubic feet (12 in. x 12 in. x12 in.) for those residents classified as maximum security (C5) in order to achieve the same penological interests as discussed in paragraph 3 above.
 7. Where a resident is in possession of legal material (active and/or inactive) in excess of the limitations described herein the following shall apply:
 - b. The resident shall be informed by the housing unit security officer that there is an excess amount of legal material and shall be provided a voluntary opportunity to reduce the legal materials so as to comply with the limitation standards.
 - c. If within 5 business days, the resident does not comply with the limitation standards for legal material the resident shall be provided the opportunity to reduce the amount of legal materials and shall be given a 5-day notice directing that the resident dispose of what the resident determines as excess, either out of the facility to a person identified by the resident or through destruction by security staff.
 - d. If the resident refuses to reduce such material or dispose of the material through the 5-day

notice process, all of the legal material shall be confiscated. The confiscated legal material shall then be stored in the property room with directions to not remove without the approval of the chief of security or higher authority. The resident may then grieve the confiscation under Cor 313, FORMAL COMPLAINTS AND GRIEVANCES BY PROBATIONERS, PAROLEES, RESIDENTS, requesting a waiver that describes a particular hardship.

- e. At any time during the grievance period, the resident may elect to voluntarily reduce the excess material through a request to review the material to the chief of security or higher authority. Thirty days after confiscation the chief of security shall determine if the resident has grieved the restriction. If no grievance has been filed, the resident shall be given a final opportunity to purge any excess material, or to identify what is required active legal material and extract any such active legal materials. The resident will be provided reasonable time based on the chief of security's determination to reduce their legal mail to meet policy. The extracted active legal materials shall be separately held and the excess shall be destroyed.
 - f. The active legal materials shall be clearly labeled with the resident's name, identification number, and date the materials were packaged. This shall be done by the resident in the presence of staff. Staff shall have the ability to question materials as they are placed in the package looking for items such as case law, legal texts or books, or multiple copies of legal material as excess active legal material. Any material in question shall be stored adjacent to the legal materials in a separate container and consultation shall be sought with the attorney general's office or other departmental legal designee, who in the presence of the resident will review the materials to determine their alignment to the definition of legal materials in this policy.
 - g. In responding to the grievance, the warden/designee may consult with the office of the attorney general to determine what, if any, litigation is active, or pending. The resident shall be given reasonable access, consistent with operational considerations, to any active legal materials.
 - h. The resident may appeal a denial of a request to maintain excess legal material to the commissioner pursuant to Cor 313. The commissioner, in making any decision, shall balance the merits in maintaining excessive active legal material with the legitimate safety, security and operational needs of the particular facility. The resident may also seek an injunction through the courts relative to the destruction of the materials.
 - i. At 90 calendar days post the "5-day notice," the chief of security shall confirm whether the grievance appeal has been granted or if injunctive relieve has been sought. If relief has been granted by the commissioner's office or the court (as evidenced by a legal court order), the chief of security shall facilitate access to the active legal materials in the facilities' designated area as established through local procedures. If no relief has been granted by the commissioner's office or the court (as evidenced by a legal court order), the chief of security shall then seek the final approval from the warden/director to dispose of the excess active legal material pursuant to the departmental policy regarding property.
 - j. Exceptions shall not be given for the storage of inactive legal materials that exceed the property limitations established herein.
- (11) Misc.
- a. Inmates may request a copy of their electronic property inventory once per calendar year. The request must be made on an Inmate Request Slip to the housing lieutenant who will approve or deny the request and print the inventory. Current photocopying charges will apply so a Cash Withdrawal Slip must also be included.
 - b. Book size is limited to 9 inch x 12 x 2 1/2 inch, and magazine size is limited to 15x17x1.
 - c. Requests for changes in property items will be submitted through the inmate communications committee and will be considered at regularly scheduled meetings of the wardens with the commissioner. No property items will be approved or deleted without an amendment to this policy.

REFERENCES:

Florida Department of Corrections Rule 33-602.01 Inmate Property 8/17/2016

State of Washington Department of Corrections – Transport of Offender Property Revision Date: 10/1/2015

State of Washington Department of Corrections – Legal Access for Incarcerated Individuals Revision Date: 9/25/2018

Massachusetts Department of Corrections Rule 103 CMR 403.00 Inmate Property

Seale v. Manson, 326 F. Supp. 1375 – United States District Court for the District of Connecticut, May 5, 1971 Civ. No. 14077

“The inmate's possession of reading materials may, of course, be preceded by a careful examination to detect contraband, and considerations of space, sanitation and orderliness may require certain limitations which would otherwise be constitutionally offensive if an ordinary citizen were involved.”

Wis. Admin.Code § DOC 303.47 directs prison wardens to develop policies and procedures relating to the acquisition, possession, and use of personal property by inmates, to make a list of personal property items permitted at their institutions, and to determine the permissible methods by which personal property may be acquired. Section DOC 303.47(3)(d) forbids inmates to possess more personal property than can fit into a receptacle 32" x 16" x 16", or 8192 cubic inches, excluding medically prescribed items, hobby materials, legal materials, electronic equipment, typewriters, fans, or other large items. Section DOC 303.47(3)(e) requires that an inmate's hobby materials fit into a receptacle 14" x 14" x 14", or 2744 cubic inches, excluding one over-sized item. Section DOC 303.47(3)(f) requires that an inmate's legal materials fit into a receptacle no larger than 20" x 20" x 20", or 8000 cubic inches, and allows wardens to authorize additional storage space on a temporary basis upon a demonstrated need in connection with on-going litigation and consistent with fire codes and regulations.

Other

KENCH/lb

Attachments:

Individual Property List

Property Inventory Form

PAR Property List

Property Waiver Form

5-day Notice SP36

Ph 707.03 Board Authorized Controlled Drug Destruction