

§ 1-08 Access to Courts and Legal Services.

(a) *Policy.* People in custody are entitled to access to courts, attorneys, ~~legal assistants~~ attorney assistants and legal materials.

(1) Attorney assistants are law students, legal paraprofessionals, social workers, investigators, interpreters, and other individuals part of a legal team working under the supervision of an attorney representing a person in custody.

Rationale: Changing the term “legal assistant” to “attorney assistant” maintains consistency with other parts of the Minimum Standards, such as § 1-08(e). Additionally, legal assistant is currently an undefined term. The modified definition of attorney assistant clarifies that all members of an individual’s legal team are included under this term.

(b) *Judicial and administrative proceedings.*

(1) People in custody shall not be restricted in their communications with courts or administrative agencies pertaining to either criminal or civil proceedings except pursuant to a court order.

(2) Timely transportation shall be provided to people scheduled to appear before courts or administrative agencies. Vehicles used to transport people in custody must meet all applicable safety and inspection requirements and provide adequate ventilation, lighting and comfort.

(c) *Access to counsel.*

(1) People in custody shall not be restricted in their communication with attorneys or attorney assistants and shall not have their communications recorded. The fact that someone is represented by one attorney shall not be grounds for preventing that person from communicating with other attorneys. Any properly identified attorney or attorney assistant may visit any person in custody with that person's consent. Any legal visits or legal telephone calls shall not be included in calculating the total number of visits or calls to which someone in custody is entitled.

Rationale: The Department is already prohibited from recording legal calls, yet many institutional providers report that legal counsel are often not added to the Department’s Do Not Record list, or that even when they are, their calls are still unlawfully recorded. Codifying this requirement is essential to ensure consistent compliance and oversight to protect attorney-client privilege. Further, persons in custody have limited time with which they can communicate with family or other loved ones—one of the few privileges granted in jail. Any attorney phone call should not count towards a person in custody’s permissible number of phone calls . DOC’s own Directive 6002 already states this but the Department is not following this directive in practice, which means they need to be held to a higher standard by an independent oversight body—namely the Board.

(i) An attorney may be required to present identification to a designated official at the central office of the Department in order to obtain a facility pass. This pass shall permit the attorney to visit any person in the custody of the Department.

(ii) The Department only may require such identification as is normally possessed by an attorney.

(iii) The Department shall promulgate standardized and efficient legal visit protocols, which shall be posted online, in the legal visit space, and in the counsel waiting area of each jail facility. All relevant Department staff shall be trained biannually on the legal visit protocols.

a. The Department shall commence every in-person legal visit within 30 minutes of the time that such attorney or attorney assistant registers at the jail facility or 45 minutes from their arrival at a stand-alone reception building unless a change of count is in progress or a discrete emergency exists that prevents the person in custody from being moved. In the event that a counsel visit is precluded due to an emergency lock-in, the Department shall immediately notify the legal visitor, the designated contact for each defense office, and the attorney of record who represents the person. Routine operational delays, extraordinary staffing shortages, and conditions in housing units other than where the person in custody is held do not constitute an emergency. If the attorney or attorney assistant has multiple in-person visits on the same day, after the initial visit any subsequent visits on the same day shall commence within 30 minutes of the conclusion of the prior visit, or if the person in custody is in a different facility, then within 30 minutes of the attorney or attorney assistant arriving at the next facility.

Rationale: This section addresses the extreme delays and difficulties for legal counsel to visit their clients. Such delays infringe upon an individual's right to counsel and impede an legal counsel's ability to meet with multiple clients during the hours permitted for legal visits. To that end, this section also creates a standardized procedure for legal visits when the legal visitor is visiting multiple people in custody on the same day. The purpose of this section is to provide efficiency regarding legal visit procedures, and establish jail procedures for legal visits ensuring consistent access to counsel, protecting constitutional rights, and promoting accountability.

b. Attorneys or attorney assistants shall not be required to wait outside a facility unless adequate shelter is provided and the requirements of 40 RCNY § 1-09(b)(4) are met. The Department shall not require attorneys or attorney assistants to wait inside locked rooms or cells or any other area that lacks either immediate access to restrooms or Department personnel to assist them. The legal visit waiting area shall be by the entrance of the facility and any attorney or attorney assistant shall be allowed to leave the facility from the waiting area without permission or escort from staff.

Rationale: The Department has often forced attorneys and attorney assistants to wait in highly problematic conditions. It is incumbent on the Board to circumscribe the basic standards of the waiting area. There are numerous reports of attorneys and attorney assistants being locked inside windowless rooms without access to either bathrooms, water, or means of communication with personnel that could assist them. Reports include attorneys and attorney assistants being locked in rooms for hours with no ability to leave or contact anyone within the facility. There have additionally been reports of attorney and attorney assistants being forced to wait outside facilities for an hour or more during extreme weather in order to visit their clients. These incidents have happened both before and after client visits. Attorneys and attorney assistants should have access to basic needs for the entirety of their visit to a detention facility.

c. The person in custody shall be notified that an attorney or attorney assistant has arrived, and they shall either be provided a pass or be escorted to the legal counsel visiting area immediately upon notification unless a change of count is in progress or an emergency exists that prevents the person in custody from being moved. Routine operational delays, extraordinary staffing shortages, and conditions in housing units other than where the person in custody is held do not constitute an emergency. The person in custody shall be allowed to pick up legal material for the visit, and if this causes a delay, it shall be noted as a reason for the delay with the Legal Visit Liaison.

Rationale: People in custody have complained that they are not notified when their attorneys or attorney assistants arrive for a legal visit. Even though Directive 6002 lays out similar procedures, showing that the Department is able to comply with such procedures, in practice they are not followed. This is why it is important to codify them here.

d. The Department shall establish and maintain clear and consistent procedures for documenting refusals of legal visits. Any written or video-recorded refusals shall be retained as an agency record. The Department shall ensure that refusal documentation is logged and stored in a consistent manner so that records may be reliably tracked, accessed, and reviewed. Such records shall be made available, upon request, to the person in custody and their legal team, consistent with applicable law.

Rationale: Requiring the Department to consistently document, retain, log, and store refusals in a designated and centralized location ensures that such documents remain accessible. Standardized recordkeeping makes refusal records easier to track and access upon request. Current procedures are opaque and the Department has previously asserted that they could not locate a refusal slip. This system ensures that they will be easier to locate.

e. The Department shall commence legal video teleconferences within 10 minutes of their scheduled start time. Any delays by the Department, regardless of their reason, shall not be counted towards the time allotted for video teleconferences. In the event of delay caused by the Department, the video teleconference shall be extended by the amount of time lost due to the delay. Under no circumstances shall delays associated with one individual's video teleconference

shorten or compromise the duration of video teleconferencing opportunities for persons scheduled thereafter.

Rationale: Video teleconferences are a crucial aspect of an individual's access to counsel, and since they are scheduled in advance, there should be a limited window for delays. There have been numerous reports of attorneys and attorney assistants waiting over an hour so that their client could be produced for their video teleconferences, as well as instances of clients not being produced at all. If there are delays, that time should not be counted towards an individual's time allotted for their legal video teleconferences. Additionally, if there are delays with an individual's video teleconference this should not impact any other person's video teleconference afterwards.

(iv) The Department shall designate amongst staff a Legal Visit Liaison at each jail facility, who is responsible for addressing any issues that arise during legal visits in real time and who is available and on-site to support attorneys or attorney assistants during scheduled legal visiting hours. The Legal Visit Liaison shall have their name and contact information posted online, in each legal visit space, and in the counsel waiting area of each jail facility.

Rationale: As has been described, issues consistently arise during legal visits. Currently, there is no remediation process. To address reports of legal visits violating existing departmental directives, and any future violations of the Minimum Standards, the Department should designate an individual from their staff to serve as a Legal Visit Liaison at each jail facility. This will create a point-of-contact for attorneys and attorney assistants to report any issues and shall allow for a more centralized system.

(v) The Department shall record the time when an attorney or attorney assistant arrived at the counsel waiting area, and shall alert the Legal Visit Liaison after 30 minutes have elapsed since the time they arrived at the jail facility or 45 minutes from the time they arrived at a standalone reception building. The Legal Visit Liaison shall then expedite the legal visit process, and shall investigate and record the length and reason given for the delay. A written report of the results of this investigation shall be submitted to the Criminal Justice Bureau, or an equivalent entity, and be available to the attorney or attorney assistant upon request. The Department shall also submit to the Board of Correction, on a quarterly basis, a written report containing: the total number of instances in which delays occurred during the reporting period, a description of the reasons for each such delay, and the outcomes of any investigations related to such delay, including any corrective actions taken.

Rationale: This lays out the process to redress the aforementioned delays. Currently, the Department's procedure appears inconsistent, if it exists at all. Institutional defenders consistently have problems alerting Departmental staff to visitation problems, and often staff is unaware of what procedures exist or whom to contact. Therefore, this section creates a more centralized, efficient, and transparent system, and allows for better oversight regarding any access to counsel issues stemming from visitation problems.

(vi) The Department shall allow, but not require, individuals to schedule legal visits with persons in custody in advance of the visit pursuant to the online scheduling system outlined in AC § 9-170 upon its effective date.

Rationale: AC § 9-170 establishes a procedure for scheduling in-person and video teleconferences with persons in custody and this section would allow, but not require, attorneys and attorney assistants to utilize this scheduling system for legal visits.

~~—(2) The Department may limit visits to any attorney of record, or an attorney with a court notice for individuals undergoing examination for competency pursuant to court order.~~

Rationale: This rule impedes clients' access to counsel in several common scenarios. Many clients will have a legal team that extends beyond the attorney of record on file with the court. It is common among institutional providers to assign a second chair attorney. That attorney is not the named attorney of record, but may need to visit the client without the attorney of record being present. Further, if a client's case is reassigned to another attorney at the same office between court dates, this rule would prevent the client's new attorney from visiting them. Moreover, clients seeking counsel on potential civil claims may receive visits from attorneys who have not yet been retained, and therefore would not be considered an attorney of record. Finally, the broad wording of this rule creates the risk that Department staff may rely on it to refuse visits by attorney assistants like social workers, investigators, and paralegals, when they are not accompanied by the attorney of record. This is a tremendous barrier to clients' access to counsel and their ability to receive robust representation by a complete legal team.

~~(3)~~ (2) Each facility shall maintain a specially-designated area to host legal visits.

Rationale: There have been numerous reports that certain facilities do not have an appropriate area to host legal visits. For example, the RESH legal visit area is simply two repurposed adjoining cells with a plexiglass window constructed in between. It is extremely difficult to hear between this partition. In addition, there is no way to alert Department staff when the visit is over, often forcing attorneys and attorney visitors to bang on the door until someone - usually a person in custody - notifies a correction officer. The text below will establish clear, basic standards for the attorney visit space, and will also ensure that legal visits are kept confidential and protected in accordance with 40 RCNY § 1-09.

(i) Visits between people in custody and attorneys shall be kept confidential and protected, in accordance with provisions of 40 RCNY § 1-09. The Department shall not monitor communications during the legal visit and shall not interrupt the legal visit.

Rationale: In order to ensure and maintain confidentiality during a legal visit, the Department cannot be allowed to monitor or interrupt the visit.

(ii) Legal visits shall be permitted at least eight hours per day between 8 a.m. and 8 p.m. During business days, four (4) of those hours shall be 8 a.m. to 10 a.m., and 6 p.m. to 8 p.m. The Department shall maintain and post the schedule of legal visiting hours at each facility.

(iii) The legal visit space shall contain multiple attorney-client visiting rooms or booths, that provide adequate seating, and which shall each be individually soundproofed to ensure all communications during legal visits are private and confidential in accordance with provisions of 40 RCNY § 1-09. When there are medical concerns that require a legal visit to be conducted with no physical contact and only using a telephone, the legal visit space shall include at least two telephone lines for attorneys and attorney assistants and provide adequate seating. Unless medical concerns require such a no-contact, telephone-only visit, the Department must provide alternative accommodations that allow unrestricted, confidential as per 40 RCNY § 1-09, and direct verbal communication without telephones to ensure confidential and effective communication.

(iv) The legal visit space shall allow the person in custody to freely communicate with members of the legal team and jointly view evidence and legal documents without impediment.

Rationale: The legal visit space must provide adequate seating for multiple members of an individual's legal team to consult with their client and share legal documents. If not enough seating is provided, people in custody will be limited in their access to counsel. In addition, in order to comply with requirements for confidentiality, each legal visit space must be separated from others, and be soundproofed so that conversations are private. Institutional defenders have reported having issues communicating with clients at the West Facility because booths only have one phone, and therefore communication is limited to one person at a time. In order to avoid such limitations to access to counsel, the Department must provide alternative accommodations so that the person in custody can speak to legal counsel without obstructions.

(v) The legal visit space and any booths provided to persons in custody for either in-person or scheduled videoconferences shall be well-ventilated and climate-controlled.

Rationale: The legal visit space and booth must be comfortable enough for the attorney or attorney assistant and the person in custody to be able to remain in the space for the duration of the visit. This comes in response to complaints of spaces that are so physically uncomfortable that individuals cannot remain in the space and have to shorten their legal visits. This is a violation of a person's access to counsel, as the physical space becomes an impediment for people in custody to access their attorneys and legal team.

(vi) The Department shall provide a clear, easily accessible mechanism for attorneys or attorney assistants to notify and request assistance from Department staff for requests such as an exit from a legal visit. Any such mechanism or procedure shall not infringe upon the confidentiality of the legal visit.

Rationale: Attorney and attorney assistants have had difficulties notifying Department staff to various requests, such as an exit from their legal visit.

(4) (3) Mail between people in custody and attorneys shall not be delayed, read, or interfered with in any manner, except as provided in 40 RCNY § 1-11.

(5) (4) Telephone communications between people in custody and attorneys shall be kept confidential and protected, in accordance with the provisions of 40 RCNY § 1-10.

(5) When the Department receives a subpoena duces tecum requesting disclosure of any recorded phone calls, the Department shall adhere to CPL § 610.20 and § 610.25, including any requirements regarding where to send subpoenaed evidence. In accordance with these provisions, the Department shall not return subpoenaed evidence directly to a requesting agency without specific instructions from the relevant local court with jurisdiction over the criminal or civil matter.

Rationale: The Department needs to comply with Criminal Procedure Law § 610.20 and § 610.25 in regards to disclosures of recorded phone calls. In *People v. Natal*, 75 N.Y.2d 379, 385 (1990) the Court held that District Attorneys may not issue subpoenas except through the process of the court. Institutional providers have documented how the Department has unlawfully provided recorded phone calls directly to the District Attorney, in violation of relevant laws. By circumventing the courts, the District Attorney avoids the protections against abuses of the subpoena process, and jail facilities should not be allowed to assist in such unlawful activities.

(d) *Access to co-defendants.* Upon reasonable request, regular visits shall be permitted between people awaiting trial and all of their co-defendants who consent to such visits. If any of the co-defendants are incarcerated, the Department may require that an attorney of record be present and teleconferencing shall be used, if available.

(e) *Attorney assistants.*

(1) Attorney assistant, as defined in § 1-08 (a)(1), Law students, legal paraprofessionals, and other attorney assistants working under the supervision of an attorney representing a person in custody shall be permitted to communicate with that person by mail, telephone and personal visits, to the same extent and under the same conditions that the attorney may do so for the purpose of representing the individual, and need not be accompanied by the attorney during any visit or other communication. Attorney assistants ~~Law students, legal paraprofessionals and other attorney assistants working under the supervision of an attorney~~ contacted by a person in custody shall be permitted to communicate with that individual by mail, telephone, or personal visits to the same extent and under the same conditions that the attorney may do so.

Rationale: This amendment makes clear that people in custody have the same rights to access attorney assistants, as defined in §1-08(a)(1), integral members of their legal team, as they do their attorney of record.

(2) An attorney assistant may be required to present a letter of identification from the attorney to a designated official at the central office of the Department in order to obtain a facility pass. A pass shall not be denied based upon any of the reasons listed in 40 RCNY § 1-09(h)(1).

(3) The pass shall permit the assistant to perform the functions listed in subdivision (e) of this section. It may be revoked if specific acts committed by the legal assistant demonstrate the legal assistant's threat to the safety and security of a facility. This determination must be made pursuant to the procedural requirements of paragraphs (2), (4) and (5) of subdivision (h) of 40 RCNY § 1-09.

(f) *Law libraries.* Each facility shall maintain a properly equipped and staffed law library.

(1) The law library shall be located in a separate area sufficiently free of noise and activity and with sufficient space and lighting to permit sustained research.

(2) Each law library shall be open for a minimum of five (5) days per week including at least one (1) weekend day. On each day a law library is open:

(i) in facilities housing more than six hundred (600) people, each law library shall be operated for a minimum of ten (10) hours, of which at least eight (8) shall be during lock-out hours;

(ii) in facilities housing six hundred (600) or fewer people, each law library shall be operated for a minimum of eight (8) and a half hours, of which at least six (6) and a half shall be during lock-out hours;

(iii) in all facilities, the law library shall be operated for at least three (3) hours between 6 p.m. and 10 p.m.; and

(iv) the law library will be kept open for people's use on all holidays which fall on regular law library days except New Year's Day, July 4th, Thanksgiving, and Christmas. The law library may be closed on holidays other than those specified provided that law library services are provided on either of the two days of the same week the law library is usually closed. On holidays on which the law library is kept open, it shall operate for a minimum of eight (8) hours. No changes to law library schedules shall be made without written notice to the Board of Correction and shall be received at least five (5) business days before the planned change(s) is to be implemented.

(3) The law library schedule shall be arranged to provide access to people in custody during times of the day when other activities such as recreation, commissary, meals, school, sick call,

etc., are not scheduled. Where such considerations cannot be made, people shall be afforded another opportunity to attend the law library at a later time during the day.

(4) Each person in custody shall be granted access to the law library for a period of at least two (2) hours per day on each day the law library is open. Upon request, extra time may be provided as needed, space and time permitting. In providing extra time, people who have an immediate need for additional time, such as people on trial and those with an impending court deadline shall be granted preference.

(5) Notwithstanding the provisions of paragraph (f)(4), people housed for medical reasons in the contagious disease units may be denied access to the law library. An alternative method of access to legal materials shall be instituted to permit effective legal research.

(6) The law library hours for people in restrictive housing as defined in 40 RCNY [Chapter 6](#) may be reduced or eliminated, provided that an alternative method of access to legal materials is instituted to permit effective legal research.

(7) Legal research classes for people housed in general population shall be conducted at each facility on at least a quarterly basis. Legal research training materials shall be made available upon request to people in restrictive housing.

(8) The Department shall report annually to the Board detailing the resources available at the law library at each facility, including a list of titles and dates of all law books and periodicals and the number, qualifications and hours of English and Spanish-speaking legal assistants.

(g) *Legal documents and supplies.*

(1) Each law library shall contain necessary research and reference materials which shall be kept properly updated and supplemented and shall be replaced without undue delay when materials are missing or damaged.

(2) People in custody shall have reasonable access to typewriters, dedicated word processors, and photocopiers for the purpose of preparing legal documents. A sufficient number of operable typewriters, dedicated word processors, and photocopy machines will be provided for people's use.

(3) Legal clerical supplies, including pens, legal paper and pads shall be made available for purchase by people in custody. Such legal clerical supplies shall be provided to indigent individuals at Department expense.

(4) Unmarked legal forms which are commonly used by people in custody shall be made available. Each person shall be permitted to use or make copies of such forms for the person's use.

(h) *Law library staffing.*

(1) During all hours of operation, each law library shall be staffed with trained civilian legal coordinator(s) to assist people with the preparation of legal materials. Legal coordinator coverage shall be provided during extended absences of the regularly assigned legal coordinator(s).

(2) Each law library shall be staffed with an adequate number of permanently assigned correction officers knowledgeable of law library procedures.

(3) Spanish-speaking people in custody shall be provided assistance in use of the law library by employees fluent in the Spanish language on an as needed basis.

(i) *Number of legal documents and research materials.*

(1) People in custody shall be permitted to purchase and receive law books and other legal research materials from any source.

(2) Reasonable regulations governing the keeping of materials in cells and the searching of cells may be adopted, but under no circumstances may people's legal documents, books, and papers be read or confiscated by correctional personnel without a lawful warrant. Where the space in a cell is limited, an alternative method of safely storing legal materials elsewhere in the facility is required, provided that a person in custody shall have regular access to these materials.

(j) *Limitation of access to law library.*

(1) People in custody may be removed from the law library if they disrupt the orderly functioning of the law library or do not use the law library for its intended purposes.

(2) Any determination to limit a person's right of access to the law library shall be made in writing and shall state the specific facts and reasons underlying such determination. A copy of this determination, including the appeal procedure, shall be sent to the Board and to any person affected by the determination within one business day of the determination.

(3) An alternative method of access to legal materials shall be instituted to permit effective legal research for any person excluded from the law library. A legal coordinator shall visit any excluded person to determine his or her law library needs upon request.

(4) Any person affected by a determination made pursuant to this subdivision (j) may appeal such determination to the Board.

(i) The person affected by a determination shall give notice in writing to the Board and to the Department of his or her intent to appeal the determination.

(ii) The Department and any person affected by the determination may submit to the Board for its consideration any relevant material in addition to the written determination.

(iii) The Board or its designee shall issue a written decision upon the appeal within five (5) business days after receiving notice of the requested review.

(Amended City Record 6/9/2021, eff. 7/9/2021; amended City Record 6/28/2024, eff. 7/28/2024)